



Western Australia

## **Family Court Rules 2021**

Compare between:

[18 Aug 2021, 00-a0-00] and [23 Aug 2021, 00-b0-00]



# Family Court Rules 2021

## Part 1 — Preliminary

### Division 1 — Introduction

**1. Citation**

These rules are the *Family Court Rules 2021*.

**2. Commencement**

These rules come into operation as follows —

- (a) Part 1 Division 1 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the later of —
  - (i) the day after that day; and
  - (ii) 23 August 2021.

**3. Application**

These rules apply to the federal and non-federal jurisdictions of the Family Court of Western Australia and the Magistrates Court throughout Western Australia in relation to matters contained in these rules.

**4. Terms used**

In these rules —

*Act* means the *Family Court Act 1997*;

*address for service* means the street address, postal address or email address given by a party where documents may be left for the party or to where documents may be sent for the party;

***affidavit*** means a document that complies with rules 238, 239 and 483;

***appeal*** —

- (a) means an appeal to the Court from a court of summary jurisdiction; and
- (b) includes a cross-appeal;

***appellant*** includes a cross-appellant;

***applicant*** includes a cross-applicant who is seeking other orders in response to an application;

***application*** includes —

- (a) an initiating application; and
- (b) an application in a case; and
- (c) an application for divorce; and
- (d) an application for consent orders; and
- (e) an application for contempt; and
- (f) an application alleging a contravention of an order of the Court or of a provision of the Act or of the Family Law Act; and
- (g) a notice of appeal; and
- (h) a cross-application set out in a response to an application (response to an initiating application) or response to an application in a case;

***approved form***, in relation to a provision of these rules, means a form approved under rule 486 for the purposes of the provision;

***assessment hearing*** means a hearing conducted by a registrar at which the amount to be paid on an itemised costs account is assessed;

***attend*** means to present at a court event (including by electronic communication);

***bankrupt*** has the meaning given by the Bankruptcy Act section 5(1);



***child support assessment*** includes —

- (a) an administrative assessment for child support under the Child Support (Assessment) Act Part 5; and
- (b) an amended assessment to give effect to an order;

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

***Child Support Registrar*** means the Child Support Registrar under the Child Support (Registration and Collection) Act section 10;

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

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

***contact*** has the same meaning as in the Family Law Act Part VII;

***corporation*** includes —

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

***Corporations Act*** means the *Corporations Act 2001* (Commonwealth);

***Corporations Rules*** means the *Federal Court (Corporations) Rules 2000* (Commonwealth);



- (d) an attendance with a family consultant performing the functions of a family consultant; and
- (e) an attendance with a single expert witness performing the functions of a single expert witness;

**cross-vesting law** means a law relating to cross-vesting jurisdiction of —

- (a) the Commonwealth, other than the Corporations Act Part 9.6A; or
- (b) a State or Territory;

**declaration as to validity**, in relation to a marriage, divorce or annulment, means an order that the marriage, divorce or nullity order is valid or invalid;

**discontinue**, in relation to a case, means to withdraw all or part of the case;

**draft consent order** means a document that complies with rule 166(3);

**each person to be served** has the meaning given in rule 122(4);

**earnings** include —

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





***expert witness*** means an expert who has been instructed to give or prepare independent evidence for the purpose of a case;

***family report*** means a report concerning the best interests of a child, prepared under section 73 of the Act or the Family Law Act section 55A(2) or 62G;

***filing registry*** means the registry of the court in which a case has commenced or to which a case is transferred;

***final order*** means the order of the court that finally decides a case commenced by an initiating application;

***financial agreement*** means an agreement that is a financial agreement under section 205ZN, 205ZO or 205ZP of the Act, or the Family Law Act section 90B, 90C or 90D, other than an ante-nuptial (pre-marriage) or post-nuptial (after marriage) settlement to which the Family Law Act section 85A applies;

***financial case*** means a case (other than an appeal) involving an application —

- (a) relating to the maintenance of 1 of the parties to a marriage, or to a de facto relationship after the breakdown of the relationship, including an application for permission to start a spouse maintenance case; or
- (b) relating to the property of the parties to a marriage, or to a de facto relationship after the breakdown of the relationship, or of either of them, including —
  - (i) an application for permission to start a property case; and
  - (ii) an application to set aside an order altering property interests; and
  - (iii) an application in relation to a financial agreement or termination agreement; and
  - (iv) an application in relation to a transaction to defeat a claim;

or



- (g) an application relating to contempt in the face of the court arising from an event occurring after 30 June 2008;
- (h) an appeal, and a re-hearing following an appeal;
- (i) an application for review of final orders made by a registrar;

**hearing** means the process, other than a trial, of determining —

- (a) an application in a case; or
- (b) an application for divorce; or
- (c) an application mentioned in rule 74; or
- (d) part of a case; or
- (e) an enforcement application;

**itemised costs account** means a document prepared in accordance with rule 339;

**judicial officer** includes a judge, a registrar, and a magistrate (including a family law magistrate);

**lawyer** means a person who is enrolled as a legal practitioner of —

- (a) a federal court; or
- (b) the Supreme Court of a State or Territory;

**legislative provision** includes —

- (a) a provision in an applicable Act; and
- (b) these rules; and
- (c) the regulations; and
- (d) any other applicable regulations made under the Act or the Family Law Act; and
- (e) any conventions mentioned in a regulation made under the Act or the Family Law Act;

**maintenance application** means an initiating application in which the only orders sought are for maintenance (including a



***person with a disability***, in relation to a case, means a person who, because of a physical or mental disability —

- (a) does not understand the nature or possible consequences of the case; or
- (b) is not capable of adequately conducting, or giving adequate instruction for the conduct of, the case;

***pre-action procedure*** means the set of principles and procedures (the text of which is set out in Schedule 1) with which the parties must comply before starting a case;

***prescribed child welfare authority*** means the CEO as defined in the *Children and Community Services Act 2004* section 3;

***prescribed property***, for a person, means —

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

***property*** includes —

- (a) real and personal property; and
- (b) superannuation;

***property case*** means a case in which orders (other than consent orders) are sought relating to —

- (a) the property of the parties to a marriage, or to a de facto relationship after the breakdown of the relationship, or of either of them; or
- (b) the vested bankruptcy property in relation to a bankrupt party to a marriage, or to a de facto relationship after the breakdown of the relationship;

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



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

**third party debt notice** means a notice given to a third party who holds money for, or owes money to, a payer demanding that the money be paid to a payee to satisfy an obligation that the payer owes the payee;

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

**transcript** means a written or electronic transcription of a hearing or a trial prepared by a contractor providing transcription services to the court for the case;

**trial** means the process of determining a case started by an initiating application specified in item 1 of the Table to rule 26;

**undertaking as to damages** has the meaning given in rule 316(4);

**unreasonable**, in relation to costs for work done in a case, means costs for work that would not normally be done in a case of a particular type;

**work done for a case** includes work done in relation to the case (including in relation to the pre-action procedure) and work done in anticipation of starting the case;

**working day** means a day other than a Saturday, a Sunday or a public holiday;

**written notice** means a document (for example, a letter) that complies with rule 483(1) or (2).

## **Division 2 — Purpose**

### **5. Main purpose**

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



**6. Promoting main purpose**

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

- (a) encouraging and helping parties to consider and use a dispute resolution method rather than having the case resolved by trial; and
- (b) having regard to unresolved risks or other concerns about the welfare of a child involved; and
- (c) identifying the issues in dispute early in the case and separating and disposing of any issues that do not need full investigation and trial; and
- (d) at an early stage, identifying and matching types of cases to the most appropriate case management procedure; and
- (e) setting realistic timetables, and monitoring and controlling the progress of each case; and
- (f) ensuring that parties and their lawyers comply with these rules, any practice directions and procedural orders; and
- (g) considering whether the likely benefits of taking a step justify the cost of that step; and
- (h) dealing with as many aspects of the case as possible on the same occasion; and
- (i) minimising the need for parties and their lawyers to attend court by, if appropriate, relying on documents; and
- (j) having regard to any barriers to a party's understanding of anything relevant to the case.

**7. Achieving main purpose**

To achieve the main purpose, the court must apply these rules in a way that —

- (a) deals with each case fairly, justly and in a timely manner; and
- (b) encourages parties to negotiate a settlement, if appropriate; and
- (c) is proportionate to the issues in a case and their complexity, and the likely costs of the case; and
- (d) promotes the saving of costs; and
- (e) gives an appropriate share of the court's resources to a case, taking into account the needs of other cases; and
- (f) promotes family relationships after resolution of the dispute, where possible.

**8. Responsibility of parties and lawyers in achieving main purpose**

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

- (a) ensuring that any orders sought are reasonable in the circumstances of the case and that the court has the power to make those orders; and
- (b) complying with the duty of disclosure; and
- (c) ensuring readiness for court events; and
- (d) providing realistic estimates of the length of hearings or trials; and
- (e) complying with time limits; and
- (f) giving notice, as soon as practicable, of an intention to apply for an adjournment or cancellation of a court event; and

- (g) assisting the just, timely and cost-effective disposal of cases; and
  - (h) identifying the issues genuinely in dispute in a case; and
  - (i) being satisfied that there is a reasonable basis for alleging, denying or not admitting a fact; and
  - (j) limiting evidence, including cross-examination, to that which is relevant and necessary; and
  - (k) being aware of, and abiding by, the requirements of any practice direction or guideline published by the court; and
  - (l) complying with these rules and any orders.
- (2) A lawyer for a party has a responsibility to comply, as far as possible, with subrule (1).
- (3) A lawyer attending a court event for a party must —
- (a) be familiar with the case; and
  - (b) be authorised to deal with any issue likely to arise.

### **Division 3 — Court's power in all cases**

#### **9. Power of court to make orders**

- (1) Unless a legislative provision states otherwise, a court may make an order, on application or on the initiative of the court, in relation to any matter specified in these rules.
- (2) When making an order, a court may —
  - (a) impose terms and conditions; and
  - (b) make a consequential order; and
  - (c) specify the consequence of failure to comply with the order; and
  - (d) take into account whether a party has complied with a pre-action procedure.

**10. Procedural orders in cases of doubt or difficulty**

A court may make any orders that the court considers necessary if satisfied that —

- (a) a legislative provision does not provide a practice or procedure; or
- (b) a difficulty arises, or doubt exists, in relation to a matter of practice or procedure.

**11. Court may set aside or vary order**

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

**12. Court may dispense with rules**

- (1) These rules apply unless a court, on application or the court's own initiative, orders otherwise.
- (2) A court may dispense with compliance with any of these rules at any time, before or after the occasion for compliance arises.
- (3) In considering whether to make an order under this rule, a court may consider —
  - (a) the main purpose of these rules; and
  - (b) the administration of justice; and
  - (c) whether the application has been promptly made; and
  - (d) whether non-compliance was intentional; and
  - (e) the effect that granting relief would have on each party and parties to other cases in the court.

**13. Judicial officer hearing application**

Unless a legislative provision states otherwise, an application or appeal under these rules may be listed before another judicial

officer who has jurisdiction to hear the application or appeal if —

- (a) these rules provide that the application or appeal is to be heard by a particular judicial officer or class of judicial officer; and
- (b) that person is unavailable.

### **Division 4 — Time**

#### **14. Calculating time**

- (1) Time in a case runs during a period when the filing registry is closed.
- (2) If the period allowed by these rules or by an order for an action to be validly taken is 5 days or less and that period includes a day when the filing registry is closed, the day on which the registry is closed is not counted.
- (3) For the calculation of time of 1 day or more from a particular day, or from the occurrence of a particular event, the particular day, or the day on which the event occurs, is not counted.
- (4) If the last day for taking an action requiring attendance at a filing registry is on a day when the filing registry is closed, the action may be taken on the next day on which the filing registry is open.

#### **15. Shortening or extending time**

- (1) A party may apply to the court to shorten or extend a time that is fixed under these rules or by a procedural order.
- (2) A party may make an application under subrule (1) for an order extending a time to be made even though the time fixed by the rule or order has passed.

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

**16. Time for compliance**

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

**Division 5 — Court administration**

**17. Court sittings**

(1) The Court and a court constituted by a family law magistrate must sit at the places and the times that the Chief Judge directs.

(2) The Court and a court constituted by a family law magistrate must not sit on a Saturday, Sunday, or public holiday unless the judicial officer constituting the court otherwise directs.

**18. Registry hours**

(1) The Court's registry must be open every day, except a Saturday, Sunday or public holiday.

(2) The Court's registry must be open from 9 am to 4 pm, unless the Chief Judge otherwise directs.

**19. Records, registers and indexes**

(1) The Principal Registrar must —

(a) cause to be kept such records, registers and indexes as the Chief Judge directs; and

(b) ensure that every decree of a court is recorded by the proper officer of the court in a record kept for that purpose.

(2) Records, registers and indexes may be made and kept in physical format or in electronic format.

**20. Documents in electronic format**

(1) In this rule —

*document* includes —

(a) a notice, declaration, affidavit, request, form or other record of information; and

(b) an application, subpoena, warrant, order or other instrument in proceedings of the Court;

*process*, in relation to a document —

(a) includes give, make, file, lodge, issue, make available, register and record; but

(b) does not include serve.

(2) A requirement in these rules that a document be processed in writing, or in a written format, is satisfied if the document is processed by means of the ECMS in an electronic format that conforms to —

(a) the requirements of these rules; and

(b) the requirements and standards of the ECMS.

(3) A document that is to be signed is taken to be signed, and is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10, if —

(a) it is processed under these rules by means of the ECMS in an electronic format that conforms to —

(i) the requirements of these rules; and

(ii) the requirements and standards of the ECMS;

and

(b) the document generates an image that shows the name of the person who is to sign it.

(4) If a document that has been filed or issued by means of the ECMS or that has been recorded in the ECMS under rule 491 is required to be produced or to be served on any person —

(a) a copy of the document may be printed from the ECMS and produced or served; and

(b) for the purposes of the Act and these rules the document is then taken to have been produced or served, as the case may be.

(5) Subrule (4) does not apply to a requirement to produce a sworn document for inspection under rule 489.

### **Division 6 — Other matters**

#### **21. Relationship between this Part and specific rules**

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

(2) If a rule in another Part of these rules conflicts with a rule in this Part, the rule in this Part prevails.

#### **22. Pre-action procedure**

(1) Before starting a case each prospective party to the case must comply with the pre-action procedures set out in Schedule 1.

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

(a) only parenting orders are sought in the case; or

(b) the case involves allegations of family violence, or the risk of family violence, or fraud; or

(c) the application is urgent; or

(d) the application would be unduly prejudiced; or

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

(f) the case is an application for divorce; or



- (g) the case is a child support application or appeal; or
- (h) the case involves the Court's jurisdiction in bankruptcy under the Bankruptcy Act section 35 or 35B.

**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 Act, 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.

Penalty for this subrule: a fine of \$5 500.

(2) Subrule (1) does not apply to a photograph or recording made at the request of —

- (a) a court; or
- (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.

**24. Publishing lists of cases**

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

- (a) published in the law list in a newspaper or on the Court's website or in another physical or electronic medium; and

- (b) made available to members of the legal profession and their employees.
- (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 case; 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 case in which the Court has jurisdiction in bankruptcy under the Bankruptcy Act section 35 or 35B, the list may contain the given name of a party.

**25. Seal of Court**

- (1) The seal of the Court must contain the words “The Seal of the Family Court of Western Australia”.
- (2) The seal of the Court —
  - (a) may be impressed on a document in physical format with the use of a seal die or a rubber stamp or by a similar process; and
  - (b) may be attached to a document in electronic format by electronic means.
- (3) A document in electronic format that is required to be sealed by the Court is taken to be sealed, and is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10, if —
  - (a) the seal of the Court has been attached to the document in electronic format under subrule (2)(b); and
  - (b) the document generates an image which includes a facsimile of the seal of the Court.



<u>Item</u>	<u>Column 1</u> <u>Kind of application</u>	<u>Column 2</u> <u>Application form to be filed</u>
<u>3.</u>	<u>Interim order sought after an application for final orders is made</u>	<u>Application in a case</u>
<u>4.</u>	<u>Procedural, ancillary or other incidental order relating to an order or application sought at the same time as an application for final orders is made</u>	<u>Initiating application</u>
<u>5.</u>	<u>Procedural, ancillary or other incidental order relating to an order or application sought after an application for final orders is made</u>	<u>Application in a case</u>
<u>6.</u>	<u>Enforcement of a financial obligation or parenting order</u>	<u>Application in a case</u>
<u>7.</u>	<u>Review of an order of a registrar</u>	<u>Application in a case</u>
<u>8.</u>	<u>Divorce</u>	<u>Application for divorce</u>
<u>9.</u>	<u>Consent order when there is no current case</u>	<u>Application for consent orders</u>
<u>10.</u>	<u>Contravention of an order or other obligation affecting children</u>	<u>Application — contravention</u>



<u>Item</u>	<u>Column 1 Application</u>	<u>Column 2 Documents to be filed with application</u>
		(ii) <u>an exemption form under the Case Management Guidelines</u>
2.	<u>Response to initiating application in which a parenting order is sought, or reply to a response to initiating application in which a parenting order is sought as a new cause of action</u>	<u>A case information affidavit pursuant to the Case Management Guidelines</u>
3.	<u>Initiating application in which a financial order is sought relating to a de facto relationship, or response to initiating application in which a financial order is sought relating to a de facto relationship as a new cause of action</u>	(a) <u>The documents required by an item in this Table that applies to the application (for example, items 3 to 8); and</u>  (b) <u>an affidavit setting out the facts relied upon to establish jurisdiction of the court</u>



<u>Item</u>	<u>Column 1 Application</u>	<u>Column 2 Documents to be filed with application</u>
6.	<p><u>Initiating application or response to an initiating application relying on a cross-vesting law, or seeking an order under Part 4 Division 2 —</u></p> <ul style="list-style-type: none"> <li>• <u>for a medical procedure; or</u></li> <li>• <u>for step-parent maintenance, if there is consent; or</u></li> <li>• <u>for nullity of marriage; or</u></li> <li>• <u>for a declaration as to validity of a marriage or divorce or annulment</u></li> </ul>	<u>An affidavit in support</u>
7.	<u>Initiating application or response to an initiating application in which a child support application or appeal is made</u>	<u>The documents specified in rule 67 for the application</u>
8.	<u>Application in a case or response to application in a case (other than application seeking review of a decision of a registrar)</u>	<u>An affidavit in support</u>



<u>Item</u>	<u>Column 1 Application</u>	<u>Column 2 Documents to be filed with application</u>
<u>9.</u>	<u>Application for consent orders</u>	<p>(a) <u>If a financial order is sought for a de facto relationship — an affidavit setting out the facts relied upon to establish jurisdiction of the court; or</u></p> <p>(b) <u>if the orders sought relate to a superannuation interest — proof of the value of the interest</u></p>
<u>10.</u>	<u>Application — contravention of an order or other obligation not affecting children</u>	<u>An affidavit setting out all of the facts relied upon</u>
<u>11.</u>	<u>Application — contravention of an order or other obligation affecting children</u>	<p>(a) <u>An affidavit setting out all of the facts relied upon; and</u></p> <p>(b) <u>either —</u></p> <p style="padding-left: 20px;">(i) <u>a certificate given to the applicant by the family dispute resolution practitioner under section 66H(7) of the Act or the</u></p>

<u>Item</u>	<u>Column 1 Application</u>	<u>Column 2 Documents to be filed with application</u>
		<u>Family Law Act section 60I(8); or</u> <u>(ii) an exemption form under the Case Management Guidelines</u>
<u>12.</u>	<u>Application — contempt</u>	<u>An affidavit setting out all of the facts relied upon</u>

(2) If a document specified in the Table to subrule (1) is not in English, the person filing the document must file —

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

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

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

### Division 2 — Brochures

#### 28. Service of brochures

A person who files an initiating application or an application for divorce must, when serving the application on the respondent, also serve a brochure approved by the executive manager of the

Court appointed under section 25(1)(c) of the Act, giving information about —

- (a) non-court based family services; and
- (b) the Court's processes and services; and
- (c) reconciliation.

### **Division 3 — Notification in certain cases**

#### **Subdivision 1 — Cases involving allegation of abuse or family violence in relation to child**

##### **29. Application of Subdivision**

This Subdivision applies to a case if an application is made to a court for a parenting order.

##### **30. Notice of child abuse, family violence or risk of family violence**

A notice of child abuse, family violence, or risk of family violence must be in the approved form.

##### **31. Notice of family violence in existing cases**

(1) This rule applies if, in a case to which this Subdivision applies —

(a) proceedings were instituted under the Act before 5 October 2013 or under the Family Law Act before 7 June 2012 (in either case the *specified date*); and

(b) a party to the relevant proceedings alleges that —

(i) there has been family violence by one of the parties to the proceedings; or

(ii) there is a risk of family violence by one of the parties to the proceedings;

and

(c) the party making the allegation did not file a notice of child abuse, family violence or risk of family violence before the specified date.

(2) The party making the allegation must —

(a) file a notice of child abuse, family violence or risk of family violence in the court hearing the proceedings; and

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

(3) If the alleged family violence (or risk of family violence) is abuse of a child (or risk of abuse of a child), the Registry Manager must, as soon as practicable, notify the prescribed child welfare authority.

**32. Family violence order**

(1) A party must file a copy of any family violence order affecting the child or a member of the child's family —

(a) when a case starts; or

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

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

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

(b) the date of the order; and

(c) the court that made the order; and

(d) the details of the order.

(3) Subrule (2) does not apply to a party starting a case by filing an application for consent orders.

(4) If, during the case, a family violence order affecting the child or a member of the child's family is varied, any party affected by

the variation must, as soon as practicable after the order is varied, file a copy of the variation.

**Subdivision 2 —Property settlement or spousal or de facto maintenance cases**

**33. Notification of proceeds of crime or forfeiture application**

If a party to a property settlement or spousal maintenance case, or a de facto property settlement or maintenance proceedings, is required to give the Registry Manager written notice 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; and
- (b) if the person is required to give a document to the Registry Manager, attach the document to the notice.

**34. Proceeds of crime**

(1) If the proceeds of crime authority applies to stay a property settlement or spousal maintenance case, or a de facto property settlement or maintenance proceedings, the authority must, at the same time, file a sealed copy of the proceeds of crime order or forfeiture application covering the property of the parties or either of them, if not already filed.

(2) An application to lift a stay of a property settlement or spousal maintenance case, or a de facto property settlement or maintenance proceedings, must have filed with it —

- (a) proof that the proceeds of crime order has ceased to be in force or that the forfeiture application has been finally determined; and
- (b) if made by a party, the written consent of the proceeds of crime authority.

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**35. Notification to spouse (Act s. 205ZB(3))**

(1) This rule applies to a de facto partner who —

(a) has a spouse; and

(b) is a party to an application under the Act Part 5A  
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(2) The de facto partner must, as soon as practicable after the filing  
of the application and, if applicable, any response to the  
application, give their spouse written notification of —

(a) the application; and

(b) any response filed to the application.

## Part 3 — Divorce

### Division 1 — Application for divorce

#### 36. Fixing of hearing date

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

(2) The date fixed must be —

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

(b) for any other application —

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

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

#### 37. Amendment of application for divorce

An applicant may amend an application for divorce —

(a) no later than 14 days before the hearing; or

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

#### 38. Discontinuance of application for divorce

An applicant may discontinue an application for divorce by filing and serving a notice of discontinuance at least 7 days before the date fixed for the hearing.

## Division 2 — Response

### 39. Response

- (1) A respondent to an application for divorce who seeks to oppose the divorce or contest the jurisdiction of the court must file a response to an application for divorce —
- (a) if the respondent is served in Australia, within 28 days after the day when the application for divorce is served on the respondent; or
  - (b) if the respondent is served outside Australia, within 42 days after the day when the application for divorce is served on the respondent.
- (2) If a respondent files a response to an application for divorce —
- (a) the hearing must proceed in open court; and
  - (b) each party must attend the hearing or be represented at the hearing by a lawyer.
- (3) If the response opposes the application for divorce on the basis that a ground has not been established then, at the hearing, the court may make directions for the further conduct of the application before a judge or a family law magistrate.

### 40. Objection to jurisdiction

- (1) If, in a response to an application for divorce, a respondent objects to the jurisdiction of the court, the respondent will not be taken to have submitted to the jurisdiction of the court by also seeking an order that the application be dismissed on another ground.
- (2) The objection to the jurisdiction must be determined before any other orders sought in the response to an application for divorce.



**41. Late filing of response**

If a respondent files a response to an application for divorce after the time allowed under rule 39(1) —

- (a) the applicant may consent to the late filing; or
- (b) if the applicant does not consent, the court may continue the case as if the response had not been filed.

**42. Affidavit in reply**

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

**Division 3 — Hearing of application**

**43. Attendance at hearing**

- (1) A party may apply under rule 81 to attend the hearing of an application for divorce by electronic communication.
- (2) Subject to Division 4 —
  - (a) if the applicant fails to attend the hearing in person or by a lawyer, the application may be dismissed; and
  - (b) if the respondent fails to attend the hearing in person or by a lawyer, the applicant may proceed with the hearing as if the application were undefended.

**Division 4 — Hearing in absence of parties**

**44. Seeking hearing in absence of parties**

A court may determine an application for divorce (except a case started by joint application) in the absence of the parties if —

- (a) no response has been filed; and

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

(c) the applicant has requested that the case be heard in the absence of the parties; and

(d) the respondent has not requested the court not to hear the case in the absence of the parties.

**45. Hearing of joint application in absence of parties**

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

**46. Request not to hear case in absence of parties**

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

**Division 5 — Events affecting divorce order**

**47. Application for rescission of divorce order**

A party may, before a divorce order nisi becomes absolute, apply for the order to be rescinded by filing an application in a case.

**48. Death of party**

If a party to an application for divorce dies after the divorce order nisi is made but before the order becomes absolute, the surviving party must inform the Registry Manager of the death of the other party by filing —

(a) the death certificate of the deceased party; or

(b) an affidavit stating the details of the deceased party's date and place of death.

**Division 6 — Other matters relating to application for divorce**

**49. Corroboration of service**

Further evidence by way of corroboration of service of an application for divorce will be required if there is not already corroboration by —

- (a) the respondent appearing at the same hearing; or
- (b) a notice of address for service in an approved form having been filed by, or on behalf of, the respondent; or
- (c) the respondent being represented at the hearing by a lawyer who has filed a notice of address for service on behalf of the respondent (or who gives a suitable undertaking to file a notice of address for service); or
- (d) an affidavit having been filed by or on behalf of the respondent setting out to the satisfaction of the court that the respondent has been served.

**50. Corroboration requirements in cases involving parties living under same roof**

- (1) This rule applies if, in an application for divorce, it is claimed that parties have lived separately and apart under the same roof during any part of the period of 12 months immediately before the date of filing of the application.
- (2) The claim referred to in subrule (1) must be corroborated by the filing of an affidavit by each applicant and by an independent witness.

## **Part 4 — Final orders**

### **Division 1 — Applications for final orders**

#### **51. Contents of application for final order**

(1) In an initiating application, the applicant must —

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

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

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

(a) an order that a marriage be annulled;

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

(c) an order authorising a medical procedure under Division 2 Subdivision 3.

(3) Despite subrule (2), in the same application a party may seek both —

(a) an order that a marriage be annulled; and

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

#### **52. Filing affidavits**

A party must not file an affidavit with an initiating application unless permitted or required to do so by these rules.

#### **53. First court date**

On the filing of an initiating application, the Registry Manager must fix a date —

(a) in a parenting or financial case, for a procedural hearing that is as near as practicable to 42 days after the application was filed; or

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

## Division 2 — Specific applications

### Subdivision 1 — General

#### 54. General provisions still apply

If a rule in this Division specifies particular requirements for an application, those requirements are in addition to the general requirements for an initiating application.

#### 55. Applications by Attorney General for transfer of case

If the Attorney General of the Commonwealth, or of a State or Territory, applies for the transfer of a case under Subdivision 2 or Part 25, the Attorney General does not, by that application, automatically become a party to the case.

### Subdivision 2 — Cross-vesting

#### 56. Cross-vesting matters

- (1) If a party filing an initiating application or a response to an initiating application relies on a cross-vesting law, the party must specify, in the application or response, the particular State or Territory law on which the party relies.
- (2) A party relying on a cross-vesting law after a case has started must file an application in a case seeking procedural orders in relation to the matter.

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

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

(b) the rules of evidence and procedure (except those of the court) on which the party relies; and

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

**57. Transfer of case**

A party to a case to which rule 56 applies may apply to have the case transferred to another court by filing an application in a case.

**Subdivision 3 — Medical procedure**

**58. Application for medical procedure**

(1) Any of the following persons may make a medical procedure application in relation to a child —

(a) a parent of the child;

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

(c) the child;

(d) the independent children’s lawyer;

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

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

**59. Evidence supporting application**

- (1) If a medical procedure application is filed, evidence must be given to satisfy the Court that the proposed medical procedure is in the best interests of the child.
- (2) The evidence must include evidence from a medical, psychological or other relevant expert witness that establishes the following —

  - (a) the exact nature and purpose of the proposed medical procedure;
  - (b) the particular condition of the child for which the procedure is required;
  - (c) the likely long-term physical, social and psychological effects on the child —

    - (i) if the procedure is carried out; and
    - (ii) if the procedure is not carried out;
  - (d) the nature and degree of any risk to the child from the procedure;
  - (e) if alternative and less invasive treatment is available, the reason the procedure is recommended instead of the alternative treatment;
  - (f) that the procedure is necessary for the welfare of the child;
  - (g) if the child is capable of making an informed decision about the procedure, whether the child agrees to the procedure;
  - (h) if the child is incapable of making an informed decision about the procedure, that the child —

    - (i) is currently incapable of making an informed decision; and
    - (ii) is unlikely to develop sufficiently to be able to make an informed decision within the time in

which the procedure should be carried out, or within the foreseeable future;

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

(3) The evidence may be given —

(a) by affidavit; or

(b) with the Court’s permission, orally.

#### **60. Service of application**

The persons on whom a medical procedure application and any document filed with it must be served include the prescribed child welfare authority.

#### **61. Fixing date of hearing**

(1) On the filing of a medical procedure application, the Registry Manager must fix a date for a hearing before a judge.

(2) The date fixed must be —

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

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

#### **62. Procedure on first court date**

On the first court date for a medical procedure application, the court must —

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

(b) hear and determine the application.

#### **Subdivision 4 — Spousal or de facto maintenance**

#### **63. Applications for spousal or de facto maintenance**

(1) Applications for final orders seeking only spousal maintenance (including de facto spousal maintenance) must be listed in a



General List before a magistrate for directions only, within 42 days after the date of filing, if practicable.

- (2) At the directions hearing the magistrate may make an order —
- (a) for the filing of further affidavit material; and
  - (b) for the issuing of subpoenas; and
  - (c) in regard to disclosure; and
  - (d) fixing a time for a future hearing.
- (3) If practicable the magistrate who conducted the directions hearing will hear and determine the application.

**64. Evidence to be provided**

- (1) At the first court date and at the hearing date of an application for a final order seeking only spousal maintenance (including de facto spousal maintenance), each party must bring to the court the following documents —
- (a) a copy of the party's taxation returns for the 3 most recent financial years;
  - (b) the party's taxation assessments for the 3 most recent financial years;
  - (c) the party's bank records for the period of 3 years ending on the date on which the application was filed;
  - (d) if the party receives wages or salary payments, the party's payslips for the past 12 months;
  - (e) if the party owns or controls a business, either as sole trader, partnership or a company, the business activity statements and the financial statements (including profit and loss statements and balance sheets) for the 3 most recent financial years of the business;
  - (f) any other document relevant to determining the income, needs and financial resources of the party.

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

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

**Subdivision 5 — Child support and child maintenance**

**65. Application of Subdivision**

This Subdivision applies to —

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

(b) an application under the Child Support (Registration and Collection) Act section 111C; and

(c) an application for child maintenance (regardless of the age of the child); and

(d) an application under the *Family Law Regulations 1984* (Commonwealth) Parts III and IV.

**66. Commencing proceedings**

An application under this Subdivision must be made in accordance with an initiating application.

**67. Documents to be filed with application**

(1) A person must file, with an application specified in column 1 of an item in the Table, the documents specified in column 2 of the Table.

Table

<u>Item</u>	<u>Column 1</u> <u>Application</u>	<u>Column 2</u> <u>Documents to be filed with application</u>
<u>1.</u>	<u>All applications for child support</u>	<u>An affidavit setting out the facts relied on in support of the application, attaching —</u>  <u>(a) a schedule setting out the section of the Child Support Act under which the application is made; and</u>  <u>(b) a copy of any decision, notice of decision or assessment made by the Child Support Registrar relevant to the application and statement of reasons for that decision; and</u>  <u>(c) a copy of any document lodged by a party with the Child Support Registrar, or received by a party from the Child Support Registrar, relevant to the decision or assessment</u>

<u>Item</u>	<u>Column 1 Application</u>	<u>Column 2 Documents to be filed with application</u>
<u>2.</u>	<u>Application under the Child Support (Assessment) Act sections 111, 116, 123, 129, 136, 139 and 143 and the Child Support (Registration and Collection) Act section 111C</u>	<u>An affidavit setting out the facts relied on in support of the application, attaching —</u> <u>(a) the documents mentioned in this column in item 1; and</u> <u>(b) a completed financial statement; and</u> <u>(c) a copy of any relevant order or agreement</u>
<u>3.</u>	<u>All applications for child maintenance</u>	<u>(a) A completed financial statement; and</u> <u>(b) an affidavit in support</u>

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

**68. Child support agreements**

A person who makes an application in relation to a child support agreement must register a copy of the agreement with the court by filing 1 of the following —

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

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

**69. Time limits for applications under Child Support (Assessment) Act**

A person must file an application for a declaration under the Child Support (Assessment) Act section 106A(2) or 107(1) within 56 days after being served with a notice given under section 33 or 34 of that Act.

**70. Service of application**

- (1) An application under this Subdivision must be served on the following persons —

(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.

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

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

**71. Service by Child Support Registrar**

For the purposes of rule 69, if the Child Support Registrar serves a document on a person under the Child Support (Assessment) Act, the document is taken to have been served on the person on the day specified in rule 135.

**72. Procedure on first court date**

On the first court date of a child maintenance application or a child support application, the court may make orders for the future conduct of the case, including the exchange of affidavits between the parties and the listing of the case for hearing.

**73. Evidence to be provided with application**

(1) This rule applies to —

(a) a child support application under the Child Support (Assessment) Act section 111, 116, 123, 129, 136, 139 or 143; and

(b) a child support application under the Child Support (Registration and Collection) Act section 111C; and

(c) a child maintenance application.

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

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

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

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

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

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

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

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

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

### **Subdivision 6 — Nullity and validity of marriage and divorce**

#### **74. Application of Subdivision**

This Subdivision applies to —

- (a) an application for an order that a marriage is a nullity; and
- (b) an application for a declaration as to the validity of a marriage; and
- (c) an application for a declaration as to the validity of a divorce or annulment of marriage.

#### **75. Fixing hearing date**

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

(2) The date fixed must be —

- (a) if the respondent is in Australia, at least 42 days after the application is filed; or
- (b) if the respondent is outside Australia, at least 56 days after the application is filed.

#### **76. Affidavit to be filed with application**

An applicant must file with the application an affidavit stating —

- (a) the facts relied on; and

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- (b) for an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, details of the type of marriage ceremony performed; and
- (c) for an application for a declaration as to the validity of a divorce or annulment of marriage —
  - (i) the date of the divorce or order of nullity; and
  - (ii) the name of the court that granted the divorce or order of nullity; and
  - (iii) the grounds on which the divorce or order of nullity was ordered.



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

### Division 1 — General

#### 77. Restrictions in relation to applications

- (1) A party may apply for an interim, procedural, ancillary or other incidental order in relation to a cause of action only if —
  - (a) the party has made an application for final orders in that cause of action; and
  - (b) final orders have not been made on that application.
- (2) A party may apply for an interim, procedural, ancillary or other incidental order only if the order sought relates to a current case.
- (3) Subrule (2) does not apply if the party is seeking —
  - (a) permission to start a case or extend a time limit to start a case; or
  - (b) to start a case for a child or a person with a disability under rule 105; or
  - (c) an order for costs.
- (4) This rule does not apply to restrict the filing of an application in a case by —
  - (a) an independent children’s lawyer; or
  - (b) the Director of Public Prosecutions, when making an application to stay or lift a stay of a property settlement or spousal or de facto maintenance case; or
  - (c) a bankruptcy trustee; or
  - (d) a trustee of a personal insolvency agreement.
- (5) 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.

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(6) If a party applies for an interim, procedural, ancillary or other order at the start of a case, the application must be in an initiating application.

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

**78. Filing of applications seeking parenting orders during Christmas school holiday period**

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

(2) The application must be filed before 4 pm on the 2<sup>nd</sup> Friday in November of the application year.

**79. Procedure before filing application**

(1) Before filing an application seeking interim, procedural, ancillary or other incidental orders, a party must make a reasonable and genuine attempt to settle the issue to which the application relates.

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

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

(b) the applicant 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) After a property case has started, no application or response in a case will be accepted for filing unless the circumstances referred to in subrule (4) apply.

(4) For the purposes of subrule (3), the circumstances are —

(a) parties have conferred on a without prejudice basis for the purpose of identifying, resolving and narrowing the issues in dispute; and

(b) the application or response is filed with a certificate of conferral stating whether the parties have conferred to try to resolve the matters giving rise to the application or response and identifying the matters that remain in issue between the parties.

(5) The court may waive the requirements specified in subrule (4) if the matter is urgent or for other good reason.

(6) The reasons must be set out in a letter accompanying the application or response in a case.

**80. Fixing hearing date**

(1) On the filing of an application in a case, or an initiating application in which application is made for interim, procedural, ancillary or other orders, the Registry Manager must fix a date for a hearing or a procedural hearing on a date that is as near as practicable to 28 days after the application was filed.

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

(3) If an application in a case is filed after another related application, the application in a case may be listed for the same first court date as the related application if a registrar considers it to be reasonable in the circumstances.

(4) The Registry Manager may fix an earlier date for the hearing of an application in a case, or an initiating application in which application is made for interim, procedural, ancillary or other incidental orders, if a registrar is satisfied that —

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

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

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

**81. Attendance by electronic communication**

(1) A party may request permission to do any of the following things by electronic communication at a hearing —

(a) attend;

(b) make a submission;

(c) give evidence;

(d) adduce evidence from a witness.

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

(3) A request must —

(a) be in writing; and

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

(c) set out details of the notice in relation to the request that has been given to any other party; and

(d) state whether any other party agrees or objects to the request; and

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

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

(5) The court may take the following matters into account when considering a request —

(a) the distance between the party's residence and the place where the court is to sit;

(b) any difficulty the party has in attending because of illness or disability;

(c) the expense associated with attending;

(d) the expense to be incurred, or the savings to be made, by using the electronic communication;

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

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

(6) If the court grants the request, it may —

(a) order a party to pay the expense of using the electronic communication; or

(b) apportion the expense between the parties.

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

**82. Attendance of party or witness in prison**

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

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

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

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

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

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

(a) be in writing; and

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

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

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

(5) Rule 81(4) and (7) apply to a request under this rule.

**Division 2 — Hearings for interim and procedural applications**

**83. Matters to be considered for interim orders**

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

(a) in a parenting case, the best interests of the child;

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

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

(d) the main purpose of these rules;

(e) whether the parties would benefit from participating in 1 of the dispute resolution methods.

**84. Affidavits**

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

(a) subject to rule 152, 1 affidavit by each party;

(b) 1 affidavit by each witness, provided the evidence is relevant and cannot be given by a party.

**85. Hearing time for interim or procedural application**

- (1) The hearing of an interim or procedural application must be no longer than 2 hours.
- (2) Cross-examination will be allowed at a hearing only in exceptional circumstances.

**86. Party's failure to attend hearing**

- (1) If a party does not attend when a hearing starts, the other party may seek the orders sought in that party's application, including (if necessary) adducing evidence to establish an entitlement to the orders sought against the party not attending.
- (2) If no party attends the hearing, the court may dismiss the application and response (if any).

**Division 3 — Applications without notice**

**87. Application without notice**

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

(a) satisfy the court about why —

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

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

and

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

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

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- (ii) whether there has been a previous case between the parties and, if so, the nature of the case; and
- (iii) the particulars of any orders currently in force between the parties; and
- (iv) whether there has been a breach of a previous order by either party to the case; and
- (v) whether the respondent or the respondent's lawyer has been told of the intention to make the application; and
- (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; and
- (vii) the capacity of the applicant to give an undertaking as to damages; and
- (viii) the nature of the damage or harm that may result if the order is not made; and
- (ix) why the order must be urgently made; and
- (x) the last known address, or address for service, of the other party.

**88. Necessary procedural orders**

If a 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.

**Division 4 — Hearing on papers in absence of parties**

**89. Request for hearing in absence of parties**

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



**90. Objection to hearing in absence of parties**

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

- (a) the respondent must notify the court and the other party, in writing, of the objection at least 7 days before the date fixed for the hearing; and
- (b) the parties must attend on the first court date for the application.

**91. Court decision not to proceed in absence of parties**

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

- (a) to fix a new date for hearing the application; and
- (b) to notify the parties that they are required to attend court for the hearing.

**92. Procedure for hearing in absence of parties**

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

- (a) a list of documents to be read by the court; and
- (b) a supporting submission.

(2) A supporting submission must —

- (a) state the reasons why the orders sought by that party should be made; and
- (b) refer to any material in a document filed with the application by the page number of the document, and should not repeat the text of that material; and
- (c) not be more than 5 pages; and
- (d) have all paragraphs consecutively numbered; and

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

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

**Division 5 — Postponement of interim hearing**

**93. Administrative postponement of interim hearing**

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

(2) A request must —

(a) be in writing; 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) that the event has been postponed; and

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

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**Division 6 — Application for certain orders**

**94. Application for suppression or non-publication order**

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

- (a) the public interest in suppressing or not suppressing publication;
- (b) why further anonymisation of the judgment would not be sufficient;
- (c) whether publication of the entire judgment should be suppressed or only part of the judgment;
- (d) whether publication should be suppressed in 1 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 of the grounds on which the application is made.

## **Part 6 — Parties**

### **Division 1 — General**

#### **95. Term used: party**

In this Part —

*party* includes the following —

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

#### **96. Necessary parties**

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

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

- (a) the parents of the child;
- (b) any other person in whose favour a parenting order is currently in force in relation to the child;
- (c) any other person with whom the child lives and who is responsible for the care, welfare and development of the child;
- (d) if a State child order is currently in place in relation to the child, the prescribed child welfare authority.

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

**Division 2 — Adding or removing party**

**97. Adding party**

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

(2) A party who relies on subrule (1) 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 specified in paragraph (a); and

(iii) any other relevant document filed in the case.

**98. Removing party**

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

**99. Intervention by person seeking to become party**

If a person who is not a party to a case (except a person to whom rule 100 applies) seeks to intervene in the case to become a party, the person must file —

(a) an application in a case; and

(b) an affidavit —

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

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

**100. Intervention by person entitled to intervene**

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

(2) The person intervening must file —

(a) a notice of intervention by a person entitled to intervene; and

(b) an affidavit —

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

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

(3) On the filing of a notice of intervention by a 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.

**101. Notice of constitutional matter**

(1) A party must give written notice to the Attorneys General of the Commonwealth and of each State and Territory and to each other party if the party is, or becomes, aware that the case involves a matter that —

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

(b) is a genuine issue in the case.

(2) The notice must state —

(a) the nature of the matter; and

(b) the issues in the case; and

(c) the constitutional issue to be raised; and

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

### **Division 3 — Case guardian**

#### **102. Term used: manager of the affairs of a party**

In this Division —

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

#### **103. Conducting case by case guardian**

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

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

#### **104. Who may be case guardian**

A person may be a case guardian if the person —

(a) is an adult; and

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

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

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

#### **105. Appointment, replacement or removal of case guardian**

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

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

(a) a notice of address for service; and

(b) an affidavit which —

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

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

**106. Attorney General may nominate case guardian**

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

(2) A person nominated by the Attorney General to be a case guardian of a person with a disability is taken to be appointed as such if the person files —

(a) a consent to act in relation to the person with a disability; and

(b) a copy of the written nomination of the person as a case guardian; and

(c) a notice of address for service.

**107. Notice of appointment of case guardian**

A person appointed as a case guardian of a party must give written notice of the appointment to each other party and any independent children's lawyer in the case.

**108. Costs of case guardian**

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

(a) by a party; or



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

**109. Duties of case guardian**

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

(a) is bound by these rules; and

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

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

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

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

**Division 4 — Progress of case after death**

**110. Death of party**

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

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

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

**Division 5 — Progress of case after bankruptcy or personal insolvency agreement**

**111. Terms used**

In this Division —

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

- (a) the bankruptcy of a relevant party; or
- (b) a relevant party's capacity as a debtor subject to a personal insolvency agreement;

*relevant case* means any of the following —

- (a) a pending case for —
  - (i) child maintenance (regardless of the age of the child); or
  - (ii) modification of a child maintenance order (regardless of the age of the child); or
  - (iii) spousal maintenance; or
  - (iv) declaration as to property interests; or
  - (v) alteration of property interests; or
  - (vi) setting aside an order for alteration of property interests; or
  - (vii) modification of a spousal maintenance order;
- (b) a pending case under the Child Support (Assessment) Act Part 7 Division 4 or 5;
- (c) a pending case for enforcement of an order made under a provision specified in paragraph (a) or (b);

*relevant party* means a person who is —

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

**112. Notice of bankruptcy or personal insolvency agreement**

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

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

(b) the bankruptcy trustee or the trustee of the personal insolvency agreement, as the case may be, about the relevant case in accordance with rule 113; and

(c) the court in which the relevant case is pending, in accordance with rule 114.

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

**113. Notice under rule 112(1)(b)**

For the purposes of rule 112(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 case, the response (if any), and any other relevant documents; and

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

**114. Notice under rule 112(1)(c)**

For the purposes of rule 112(1)(c), notice to the court must —

(a) be in writing; and

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**Division 5** Progress of case after bankruptcy or personal insolvency agreement

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(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 rule 112(1)(a) and (b).

**115. Notice of bankruptcy proceedings**

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

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

(b) each other party to the case.

(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.

**116. Notice of application under Bankruptcy Act section 139A**

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

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

- (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 subrule (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 the Bankruptcy Act section 139A; and
  - (c) state the date and place of the next court event in the proceedings under the Bankruptcy Act section 139A.
- (3) For the purposes of subrule (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 the Bankruptcy Act section 139A; and
  - (c) attach a copy of the application, other initiating process and any other relevant documents in the application under the Bankruptcy Act section 139A; and
  - (d) state the date and place of the next court event in the proceedings under the Bankruptcy Act section 139A.

**117. Official name of trustee**

- (1) In this rule —
  - prescribed official name of the trustee* has the meaning given by —
    - (a) for a bankruptcy trustee, the Bankruptcy Act section 161(2); and
    - (b) for a trustee of a personal insolvency agreement, the Bankruptcy Act section 219(2).

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

## Part 7 — Service

### Division 1 — General

#### 118. Application of Part

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

#### 119. Service

Service of a document may be carried out by special service or ordinary service unless otherwise required by a legislative provision.

#### 120. Discretion regarding service

- (1) A court may find that a document has been served or that it has been served on a particular date, even though these rules or an order have not been complied with in relation to service.
- (2) The court may order a party, or a person applying to intervene in a case under rule 100, to serve a document or give written notice of a matter or case to a person specified in the order.

#### 121. Service of documents

A person must serve a document specified in column 1 of an item in the Table in the manner specified in column 2 of that item.

Table

<u>Item</u>	<u>Column 1 Document</u>	<u>Column 2 Manner of service</u>
<u>1.</u>	<u>Initiating application</u>	<u>Special service</u>

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<u>Item</u>	<u>Column 1 Document</u>	<u>Column 2 Manner of service</u>
<u>2.</u>	<u>Application in a case fixing an enforcement hearing</u>	<u>Special service</u>
<u>3.</u>	<u>Application for divorce</u>	<u>Special service</u>
<u>4.</u>	<u>Subpoena or a copy of a subpoena required to be served under rule 249 or 533</u>	<u>The manner of service required by that rule</u>
<u>5.</u>	<u>Application — contravention</u>	<u>Special service by hand</u>
<u>6.</u>	<u>Application — contempt</u>	<u>Special service by hand</u>
<u>7.</u>	<u>Document specified in item 3, 4, 5 or 6 of the Table to rule 27 that must be filed with a form mentioned in this Table</u>	<u>The form of service specified in this Table for that form</u>
<u>8.</u>	<u>Brochure required by these rules to be served with a form specified in this Table</u>	<u>The form of service specified out in this Table for that form</u>
<u>9.</u>	<u>Order made on application without notice</u>	<u>Special service</u>



<u>Item</u>	<u>Column 1 Document</u>	<u>Column 2 Manner of service</u>
10.	<p>Document that is not required to be served by special service, for example —</p> <ul style="list-style-type: none"><li>• an application in a case (other than an application in a case mentioned in item 2) and any document filed with it</li><li>• a document filed after a case is started</li><li>• a notice required to be given under these rules</li></ul>	Ordinary service

## 122. Service of filed documents

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

(a) if a provision elsewhere in these rules specifies a time for service — within the specified time; or

(b) in any other case — as soon as possible after the date of filing and within 12 months after that date.

(2) Despite subrule (1) and rule 121, 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 385 or a third party debt notice under rule 403.
- (3) If a document or notice is served on or given to a party under these rules, a copy of the document or notice must also be served on or given to any independent children’s lawyer.
- (4) For the purposes of subrule (1) —  
each person to be served, for a case, includes —
- (a) all parties to the case; and
- (b) any independent children’s lawyer; and
- (c) any other person specifically required by a legislative provision or order to be served in the case.

### Division 2 — Special service

#### 123. Special service

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

#### 124. Special service by hand

- (1) A document to be served by hand must be given to the person to be served (the *receiver*).
- (2) If the receiver refuses to take the document, service occurs if the person serving the document —
- (a) places it down in the presence of the receiver; and
- (b) tells the receiver what it is.
- (3) A party must not serve another party by hand but may be present when service by hand occurs.

**125. Special service by post or electronic means**

- (1) A document may be served on a person in Australia by sending a copy of it to the person's last known address by post.
- (2) A document may be served on a person in Australia by sending it to the person by electronic means.
- (3) A person serving a document by post or electronic means must include with the document —
- (a) an acknowledgment of service for the person served to sign; and
  - (b) for service by post within Australia, a stamped self-addressed envelope.

**126. Special service through lawyer**

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

- (a) a lawyer representing the person agrees, in writing, to accept service of the document for the person; and
- (b) the document is served on the lawyer in accordance with rule 124 or 125.

**127. Special service on persons with disability**

- (1) A document that is required to be served by special service on a person with a disability must be served —
- (a) on the person's case guardian; or
  - (b) on the person's guardian appointed under a State or Territory law; or
  - (c) if there is no one under paragraph (a) or (b) — on an adult who has the care of the person.
- (2) For the purposes of subrule (1)(c), the person in charge of a hospital, nursing home or other care facility is taken to have the care of a person who is a patient in the hospital, nursing home or facility.

**128. Special service on prisoners**

- (1) A document that is required to be served by special service on a prisoner must be served by special service on the person in charge of the prison.
- (2) At the time of service of an application, subpoena or notice of appeal on a prisoner, the prisoner must be informed, in writing, about the requirement to attend by electronic communication under rule 82 or 194 (whichever applies).

**129. Special service on corporations**

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

**Division 3 — Ordinary service**

**130. Ordinary service**

- (1) If special service of a document is not required, the document may be served on a person —
- (a) by any method of special service; or
- (b) if the person has given an address for service —
- (i) by delivering it to the address in a sealed envelope addressed to the person; or
- (ii) by sending it to the address by post in a sealed envelope addressed to the person; or
- (iii) by sending it to the facsimile or email address stated in the address for service by electronic means addressed to the person;
- or
- (c) if the person has not given an address for service —
- (i) by handing it to the person; or



**132. Proof of special service**

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

(2) If service was by post or electronic means, service is proved by —

(a) attaching to an affidavit of service, an acknowledgment of service signed by the respondent; and

(b) evidence identifying the signature on the acknowledgment of service as the respondent's signature.

**133. Evidence of identity**

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

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

**Division 5 — Other matters about service**

**134. Service by electronic means**

A document served by electronic means must include a cover page stating —

(a) the sender's name and address; and

(b) the name of the person to be served; and

(c) the date and time of transmission; and

(d) the total number of pages, including the cover page, transmitted; and

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

- (f) the name and telephone number of a person to contact if there is a problem with transmission; and
- (g) a return email address.

**135. When service is taken to have been carried out**

A document is taken to have been served —

- (a) on the date when service is acknowledged; or
- (b) if served by post to an address in Australia, on the 3<sup>rd</sup> day after it was posted; or
- (c) if served by delivery to a document exchange, on the next working day after the day when it was delivered; or
- (d) on a date fixed by the court.

**136. Service with conditions or dispensing with service**

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

- (a) to serve the document in another way; or
- (b) to dispense with service of the document, with or without conditions.

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

- (a) the proposed method of bringing the document to the attention of the person to be served; and
- (b) whether all reasonable steps have been taken to serve the document or bring it to the notice of the person to be served; and
- (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; and
- (d) the likely cost of service; and
- (e) the nature of the case.

(3) A document is taken to be served if the court orders that service of a document is to be —

(a) dispensed with unconditionally; or

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

### **Division 6 — Service in non-convention country**

#### **137. Service in non-convention country**

(1) A person may serve a document on a person in a non-convention country —

(a) in accordance with the law of the non-convention country; or

(b) if the non-convention country permits service of judicial documents through the diplomatic channel, through the diplomatic channel.

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

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

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

(3) If the Registry Manager receives a request under subrule (2), the Registry Manager must —

(a) seal the documents to be served; and

(b) send to the Secretary of the Department of Foreign Affairs and Trade —

(i) the sealed documents; and

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



**138. Proof of service in non-convention country**

(1) This rule applies if —

(a) a document is sent to the Secretary of the Department of Foreign Affairs and Trade for service on a person in a non-convention country; and

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

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

## Part 8 — Right to be heard, address for service and submission of notices

### Division 1 — Right to be heard and representation

#### 139. Right to be heard and representation

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

#### 140. Independent children's lawyer

- (1) A party may apply for the appointment or removal of an independent children's lawyer by filing an application in a case.
- (2) If the court makes an order for the appointment of an independent children's lawyer —
  - (a) it may request that the representation be arranged by the Legal Aid Commission of Western Australia; and
  - (b) it may order that the costs of the independent children's lawyer be met by a party.
- (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 case as if the independent children's lawyer were a party.

(5) The appointment of an independent children’s lawyer ceases —

(a) when the parenting case is determined or withdrawn; or

(b) if there is an appeal, when the appeal is determined or withdrawn; or

(c) upon the court discharging the independent children’s lawyer.

**141. Lawyer: conflicting interests**

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

**142. Lawyer: ceasing to act**

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

(a) by serving on the party a notice of ceasing to act and, no sooner than 7 days after serving the notice, filing a copy of the notice; or

(b) with the court’s permission.

(2) If, when a lawyer ceases to act for a party, the party’s address for service is the business address of the lawyer, the party’s last known street, postal or email address becomes the party’s address for service, unless and until the party gives a different address for service.

**Division 2 — Address for service**

**143. Address for service**

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

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

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

(2) A party must give only 1 address for service for each application filed.

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

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

(b) by filing a notice of address for service.

(4) An address for service —

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

(b) must include a telephone number at which the party may be contacted; and

(c) may include a facsimile number and an email address for service by electronic means.

**144. Change of address for service**

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

**Division 3 — Submitting notices**

**145. Submitting notices**

(1) A party who has been served with an application referred to in subrule (2) and who does not want to contest the relief sought in the application may file a submitting notice in the approved form.

(2) The applications are the following —

(a) an initiating application seeking final orders;

(b) a response to an initiating application;

(c) a reply to a response to an initiating application;

(d) a notice of appeal.

(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 an application referred to in subrule (2)(a), (b) or (c) must be filed —

(a) before the first court date fixed under rule 53; or

(b) if the party was added to the case after that date — before the date for the procedural hearing set under rule 180(3).

(5) A submitting notice for a party served with a notice of appeal must be filed within 14 days after the party was served with the notice of appeal.

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

(7) An application under subrule (6) must be accompanied by an affidavit stating —

(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.

## **Part 9 — Response and reply**

### **Division 1 — Response to initiating application**

#### **146. Response to initiating application**

- (1) A respondent to an initiating application who seeks to oppose the orders sought in the application or seeks different orders must file a response to an initiating application.
- (2) A response to an initiating application must —
  - (a) state the facts in the application with which the respondent disagrees; and
  - (b) state what the respondent believes the facts to be; and
  - (c) give full particulars of the orders the respondent wants the court to make.
- (3) In addition to the matters in subrule (2), a response to an initiating application may —
  - (a) consent to an order sought by the applicant; or
  - (b) ask that the application be dismissed; or
  - (c) ask for orders in another cause of action.
- (4) A response to an initiating application 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 Part 4 Division 2 Subdivision 3 authorising a medical procedure.

#### **147. Response objecting to jurisdiction**

- (1) A respondent seeking to object to the jurisdiction of the court —
  - (a) must file a response to an initiating application; and

(b) is not taken to have submitted to the jurisdiction of the court by seeking other orders in the response to an initiating application.

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

### **Division 2 — Reply to response to initiating application**

#### **148. Applicant to reply to response to initiating application**

An applicant must file a reply if —

(a) in the response to an initiating application, the respondent seeks orders in a cause of action other than a cause of action specified in the application; and

(b) the applicant seeks —

(i) to oppose the orders sought in the response to an initiating application; or

(ii) different orders in the cause of action specified in the response to an initiating application.

#### **149. Additional party to reply to response to initiating application**

(1) This rule applies if, in a response to an initiating application, a respondent seeks orders against a person other than the applicant (an *additional party*).

(2) An additional party who seeks to oppose the orders sought in the response to an initiating application, or who seeks different orders, must file a reply.

### **Division 3 — Response to application in a case**

#### **150. Response to application in a case**

A respondent to an application in a case who seeks to oppose the application or seeks different orders must file a response to an application in a case.

#### **151. Affidavit must be filed with response to application in a case**

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

(2) Subrule (1) does not apply to a response to an application in a case filed in response to an application to review an order of a registrar.

#### **152. Affidavit may be filed in reply to response to application in a case**

An applicant may file an affidavit setting out the facts relied on by the applicant if —

(a) a respondent files a response to an application in a case seeking orders in a cause of action other than a cause of action specified in the application in a case; and

(b) the applicant opposes the orders sought in the response to an application in a case.

### **Division 4 — Filing and service**

#### **153. Time for filing and service of response or reply**

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



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

(3) All affidavits in a case started by an application in a case or a response to an application in a case must be filed at least 2 days before the date fixed for the hearing.

## **Part 10 — Ending case without trial**

### **Division 1 — Offers to settle**

#### **Subdivision 1 — General**

#### **154. How to make offer**

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

#### **155. Open and without prejudice offer**

- (1) An offer to settle is made without prejudice (a *without prejudice offer*) unless the offer states that it is an open offer.
- (2) A party must not mention the fact that a without prejudice offer has been made, or the terms of the offer —
  - (a) in any document filed; or
  - (b) at a hearing or trial.
- (3) If a party makes an open offer, any party may disclose the facts and terms of the offer to other parties and the court.
- (4) Subrule (2) does not apply to —
  - (a) an application relating to an offer; or
  - (b) an application for costs.

**156. How to withdraw offer**

- (1) A party may withdraw an offer to settle by serving a written notice on the other party that the offer is withdrawn.
- (2) A party may withdraw an offer to settle at any time before —
  - (a) the offer is accepted; or
  - (b) the court makes an order disposing of the application or appeal to which the offer relates.
- (3) A 2<sup>nd</sup> or later offer by a party has the effect of withdrawing an earlier offer.

**157. How to accept 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.

**158. Counter-offer**

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

**Subdivision 2 — Offers to settle in property cases**

**159. Compulsory offer to settle**

- (1) This rule applies to a property case.
- (2) Each party must make a genuine offer to settle to all other parties within —
  - (a) 28 days after the conciliation conference; or

(b) if no conciliation conference has been held, 28 days after the procedural hearing at which attendance at a conciliation conference has been dispensed with; or

(c) any further time as ordered by the court.

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

**160. 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.

**Division 2 — Discontinuing case**

**161. Term used: case**

In this Division —

case includes —

(a) part of a case; and

(b) an order sought in an application; and

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

**162. Discontinuing case**

(1) A party may discontinue a case by filing a notice of discontinuance.

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

(a) the case relates to property of the parties, or a party, and 1 of the parties dies before the case is determined; or

(b) in an application for divorce, there are less than 7 days before the date of the hearing.

- (3) Discontinuance of a case by a party does not discontinue any other party's case.
- (4) If a party discontinues a case, another party may apply for costs within 28 days after the notice of discontinuance is filed.
- (5) A party may apply for the case to be stayed until costs are paid if —
  - (a) another party is required to pay the costs of the party because of the discontinuance of the case; and
  - (b) the party required to pay the costs starts another case on the same, or substantially the same, grounds before paying the costs.

### **Division 3 — Summary orders and separate decisions**

#### **163. Application for summary orders**

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

- (a) the court has no jurisdiction; 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.

#### **164. Application for separate decision**

A party may apply for a decision on any issue, if the decision may —

- (a) dispose of all or part of the case; or
- (b) make a trial unnecessary; or
- (c) make a trial substantially shorter; or
- (d) save substantial costs.

**165. What court may order under this Division**

On an application under this Division, the court may —

- (a) dismiss any part of the case; 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 case or part of the case.

**Division 4 — Consent orders**

**166. How to apply for consent order**

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

- (a) in a current case —
  - (i) orally, during a hearing or a trial; or
  - (ii) by lodging a draft consent order; or
  - (iii) by tendering a draft consent order to a judicial officer during a court event;

or

- (b) if there is no current case, by filing an application for consent orders.

(2) A party who files an application for a consent order if there is no current case must —

- (a) lodge a draft consent order; or
- (b) tender a draft consent order to a judicial officer during a court event.

(3) A draft consent order must —

- (a) set out clearly the orders that the parties ask the court to make; and
- (b) state that it is made by consent; and

(c) be signed by each of the parties.

(4) Subrule (1)(b) does not apply if a party applies for a consent order —

(a) for step-parent maintenance; or

(b) relying on a cross-vesting law; or

(c) approving a medical procedure; or

(d) for a parenting order when section 92 of the Act or the Family Law Act section 65G applies; or

(e) for an order under a Child Support Act.

(5) A party applying for a consent order in a case specified in subrule (4) must file an initiating application as soon as the consent is received.

**167. Consent parenting orders and allegations of abuse or family violence**

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

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

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

(b) must advise the court 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; and

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

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

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

(b) must certify in the annexure 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; and

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

**168. Notice to superannuation trustee**

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

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

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

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

(c) that the parties intend to apply for the order sought if no objection to the order is received from the trustee within the time specified 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 specified 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 subrule (3), if, after service of notice under subrule (2) on the trustee, the trustee consents, in writing, to the order being made, the parties may file the application for a consent order or lodge the draft consent order.

**169. Dealing with consent order**

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

- (a) make an order in accordance with the orders sought; or
- (b) require a party to file additional information; or
- (c) list the application for a procedural hearing; or
- (d) dismiss the application.

**170. 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 affidavit in the application for consent orders; and
- (b) the application for consent orders has not been filed.

## Part 11 — Case management

### Division 1 — Court's powers of case management

#### 171. General powers

The court may, in relation to a matter specified in column 1 of an item to the Table, exercise any of the powers specified in column 2 of that item to achieve the main purpose of these rules.

Table

<u>Item</u>	<u>Column 1 Subject</u>	<u>Column 2 Power</u>
<u>1.</u>	<u>Attendance</u>	<u>(a) Order a party to attend —</u> <u>(i) a procedural hearing;</u> <u>(ii) a family consultant;</u> <u>(iii) family counselling or</u> <u>family dispute</u> <u>resolution;</u> <u>(iv) a conference or other</u> <u>court event;</u> <u>(v) a post-separation</u> <u>parenting program;</u> <u>(b) require a party, a party's</u> <u>lawyer or an independent</u> <u>children's lawyer to attend</u> <u>court</u>

<u>Item</u>	<u>Column 1 Subject</u>	<u>Column 2 Power</u>
<u>2.</u>	<u>Case development</u>	<ul style="list-style-type: none"> <li>(a) <u>Consolidate cases;</u></li> <li>(b) <u>order that part of a case be dealt with separately;</u></li> <li>(c) <u>decide the sequence in which issues are to be tried;</u></li> <li>(d) <u>specify the facts that are in dispute, state the issues and make procedural orders about how and when the case will be heard or tried;</u></li> <li>(e) <u>with the consent of the parties, order that a case or part of a case be submitted to arbitration;</u></li> <li>(f) <u>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.</u></li> </ul>
<u>3.</u>	<u>Conduct of case</u>	<ul style="list-style-type: none"> <li>(a) <u>Hold a court event and receive submissions and evidence by electronic communication;</u></li> <li>(b) <u>postpone, bring forward or cancel a court event;</u></li> <li>(c) <u>adjourn a court event;</u></li> <li>(d) <u>stay a case or part of a case;</u></li> <li>(e) <u>make orders in the absence of a party;</u></li> </ul>

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**Part 11** Case management

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<u>Item</u>	<u>Column 1 Subject</u>	<u>Column 2 Power</u>
		<p>(f) <u>deal with an application without an oral hearing;</u></p> <p>(g) <u>deal with an application with written or oral evidence or, if the issue is a question of law, without evidence;</u></p> <p>(h) <u>allow an application to be made orally;</u></p> <p>(i) <u>determine an application without requiring notice to be given;</u></p> <p>(j) <u>order that a case lose listing priority;</u></p> <p>(k) <u>make a self-executing order;</u></p> <p>(l) <u>make an order granting permission for a party to perform an action if a provision of the rules requires a party to obtain that permission;</u></p> <p>(m) <u>for a fee that is required by law to be paid — order that the fee must be paid by a specified date</u></p>

**172. Failure to comply with legislative provision or order**

- (1) If a step is taken after the time specified for taking the step by these rules, the regulations or a procedural order, the step is of no effect.

(2) If a party does not comply with these rules, the regulations or a procedural order, the court may —

- (a) dismiss all or part of the case; or
- (b) set aside a step taken or an order made; or
- (c) determine the case as if it were undefended; or
- (d) make any of the orders specified in the Table to rule 171; or
- (e) order costs; or
- (f) prohibit the party from taking a further step in the case until the occurrence of a specified event; or
- (g) make any other order the court considers necessary, having regard to the main purpose of these rules.

**173. Relief from orders**

(1) A party may apply for relief from —

- (a) the effect of rule 172(1); or
- (b) an order under rule 172(2).

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

- (a) whether there is a good reason for the non-compliance; and
- (b) the extent to which the party has complied with orders, legislative provisions and the pre-action procedures; and
- (c) whether the non-compliance was caused by the party or the party's lawyer; and
- (d) the impact of the non-compliance on the management of the case; and
- (e) the effect of non-compliance on each other party; and
- (f) costs; and

(g) whether the applicant should be stayed from taking any further steps in the case until the costs are paid; and

(h) if the application is for relief from the effect of rule 172(1), whether all parties consent to the step being taken after the specified time.

**174. Certificate of vexatious proceedings order**

(1) A request under the Family Law Act section 102QC(1) for a certificate relating to a vexatious proceedings order must —

(a) be in writing; and

(b) include the following information —

(i) the name and address of the person making the request;

(ii) the person's interest in making the request.

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

(3) For the purposes of the Family Law Act section 102QC(2)(b), the certificate must specify the following information —

(a) the name of the person subject to the vexatious proceedings order;

(b) if applicable, the name of the person who applied for the vexatious proceedings order;

(c) the orders made by the court under section 102QB(2) of that Act.

**175. Application for leave to institute proceedings after vexatious proceedings order made**

(1) This rule applies if a court has made an order under a legislative provision specified in subrule (2) and the person against whom the order was made applies for leave to institute or continue proceedings.

(2) The legislative provisions are —

(a) section 242 of the Act or the Family Law Act section 102QB(2); or

(b) the Family Law Act section 118(1)(c) or (2) as in force immediately before the commencement of the *Access to Justice (Federal Jurisdiction) Amendment Act 2012* (Commonwealth) Schedule 3.

(3) An application under this rule must be —

(a) in the form of an application in a case; and

(b) made without notice to any other party.

(4) On the first court date for the application, the court may dismiss the application or —

(a) order the person to —

(i) serve the application and affidavit; and

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

and

(b) list the application for hearing.

**176. Dismissal for want of prosecution**

(1) If a party has not taken a step in a case for 1 year, the court may —

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

(b) order an act to be done within a fixed time, in default of which the party's application will be dismissed.

(2) The court must not make an order under subrule (1) unless, at least 14 days before making the order, the court has given the parties written notice of the date and time when it will consider whether to make the order.

(3) A party may apply for the case to be stayed until costs are paid if —

- (a) an application is dismissed under subrule (1); and
- (b) another party is ordered to pay the costs of the 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.

## **Division 2 — Limiting issues**

### **Subdivision 1 — Admissions**

#### **177. Request to admit**

(1) A party may, by serving a notice to admit on another party, ask the other party to admit, for the purposes of the case only, that a fact is true or that a document is genuine.

(2) A notice to admit must include a note to the effect that, under rule 178(2), failure to serve a notice disputing a fact or document will result in the party being taken to have admitted that the fact is true or the document is genuine.

(3) If a notice to admit mentions a document, the party serving the notice must attach a copy of the document to the notice, unless —

- (a) the other party has a copy of the document; or
- (b) it is not practicable to attach the copy to the notice.

(4) If subrule (3)(b) applies, the party must —

- (a) in the notice —
  - (i) identify the document; and
  - (ii) specify a convenient place and time at which the document may be inspected;

and



(b) produce the document for inspection at the specified place and time.

**178. Notice disputing fact or document**

(1) If a party who is served with a notice to admit seeks to dispute a fact or document specified in the notice, the party must serve on the party who served the notice, within 14 days after it was served, a notice disputing the fact or document.

(2) If a party does not serve a notice in accordance with subrule (1), the party is taken to admit, for the purposes of the case only, that the fact is true or the document is genuine.

(3) A party may be ordered to pay the costs of proof if —

(a) the party serves a notice disputing a fact or document; and

(b) the fact or the genuineness of the document is later proved in the case.

**179. Withdrawing admission**

(1) In this rule —

*admission* includes an admission in a document in the case or taken to be made under rule 178(2).

(2) A party may withdraw an admission that a fact is true or a document is genuine only with the court's permission or the consent of all parties.

(3) When allowing a party to withdraw an admission, the court may order the party to pay any other party's costs thrown away.

**Subdivision 2 — Amendment**

**180. Amendment by party or court order**

(1) A party who has filed an application or response may amend the application or response —

(a) for a case started by an initiating application —

(i) at any time before the readiness hearing or the time at which the case is allocated a date for trial, whichever is the earlier; or

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

(b) for an application in a case —

(i) at or before the first court date; or

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

and

(c) for all other applications, at any time, with the consent of the other parties or by order of a court.

(2) A party must amend the form in accordance with this Subdivision if the party —

(a) has filed an initiating application or response to an initiating application; and

(b) seeks to add or substitute another cause of action or another person as a party to the case.

(3) If an amendment specified in subrule (2) is made after the first court date, the Registry Manager must set a date for a further procedural hearing.

(4) If a date is set for a further procedural hearing, the party amending the initiating application or response to an initiating application under subrule (2) must give each other party written notice of the hearing.

**181. Time limit for amendment**

A party who has been given permission by the court to amend an application must do so within 7 days after the order is made.

**182. Amending document**

(1) A party must amend a document by filing a copy of the document —

(a) with the amendment clearly marked; and

(b) if the document is amended by order, endorsed with the date when the order and amendment are made.

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

**183. 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 182; and

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

**184. Disallowance of amendment**

The court may disallow an amendment of a document.

**Division 3 — Venue**

**Subdivision 1 — Open court and chambers**

**185. Cases in chambers**

(1) Subject to subrule (2), a judicial officer may exercise their jurisdiction in chambers.

(2) A trial must be heard in open court.

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

(4) A judicial officer who determines a case in chambers must record the following —

- (a) the file number;
- (b) the names of the parties;
- (c) the date of the determination;
- (d) the orders made.

(5) If a judgment is given in proceedings —

- (a) the judgment must be pronounced in open court; and
- (b) if the reasons for judgment are reduced to writing — the written reasons must be published by delivering them to the registrar or an associate in open court.

### **Subdivision 2 — Transferring case**

#### **186. Transfer to another court or registry**

A party may apply to have a case —

- (a) heard at another place; or
- (b) transferred to another registry or a court exercising jurisdiction under the Act or the Family Law Act.

#### **187. Factors that may be considered for transfer**

(1) In making a decision under rule 186 or in deciding whether to remove a case from another court under the Family Law Act section 46(3A), the court may consider —

- (a) the public interest; and
  - (b) whether the case, if transferred or 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;
- and

- (c) the availability of a judicial officer specialising in the type of case to which the application relates; and
  - (d) the availability of particular procedures appropriate to the case; and
  - (e) the financial value of the claim; and
  - (f) the complexity of the facts, legal issues, remedies and procedures involved; and
  - (g) the adequacy of the available facilities, having regard to —
    - (i) any disability of a party or witness; and
    - (ii) any safety concerns;
  - and
  - (h) the wishes of the parties.
- (2) Subrule (1) does not apply to —
- (a) a case raising, or relying on, a cross-vesting law in which a party objecting to the case being heard in the court applies to have the case transferred to another court; or
  - (b) the transfer of a case under the Corporations Act; or
  - (c) a case that must be transferred in accordance with a legislative provision.

### **Subdivision 3 — Transfer of court file**

#### **188. Transfer between courts**

If an order is made to transfer or remove a case from the court to another court, the Registry Manager, after receiving the file, must —

- (a) fix a date for a procedural hearing; and
- (b) give each party notice of the date fixed.

## **Part 12 — Court events**

### **Division 1 — Application of Part**

#### **189. Application of Part**

This Part applies to all initiating applications, except —

- (a) a medical procedure application; and
- (b) a maintenance application; and
- (c) a child support application or appeal; and
- (d) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment.

### **Division 2 — Specific court events**

#### **190. Property case: exchange of documents before first court date**

At least 2 days before the first court date in a property case, each party must, as far as practicable, exchange with each other party a copy of all of the following documents —

- (a) a copy of the party's 3 most recent taxation returns and assessments;
- (b) if relevant, documents about any superannuation interest of the party, including —
  - (i) if not already filed, the completed superannuation information form for the superannuation interest, or if the fund to which the form relates is an accumulation fund, the 2 most recent member benefit statements received by the person relating to the fund; and
  - (ii) if the party is a member of a self-managed superannuation fund, a copy of the trust deed and

the 3 most recent financial statements for the fund;

(c) for a corporation in relation to which a party has a duty of disclosure under rule 199 —

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(ii) a copy of the corporation's most recent annual return that lists the directors and shareholders; and

(iii) if relevant, a copy of the corporation's constitution;

(d) for a trust in relation to which a party has a duty of disclosure under rule 199 —

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(ii) a copy of the trust deed;

(e) for a partnership in relation to which a party has a duty of disclosure under rule 199 —

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(ii) a copy of the partnership agreement;

(f) for a person or entity specified in paragraph (a), (c), (d) or (e), any business activity statements for the 12 months ending immediately before the first court date;

(g) unless the value is agreed, a market appraisal or an opinion as to value in relation to any item of property in which a party has an interest.

**191. Exchange of documents before conciliation conference**

(1) This rule applies to a party to a property case in which the parties are required to attend a conciliation conference.

(2) Within 28 days prior to the conciliation conference, each party must, as far as practicable, exchange with each other party —

(a) if not already exchanged, a copy of all the documents specified in rule 190; and

(b) any other documents ordered to be exchanged.

(3) By no later than 14 days prior to the conciliation conference each party must file, and must serve on each other party, a completed conciliation conference particulars form.

(4) At the conclusion of the conciliation conference, each conciliation conference particulars form that has been filed must be either —

(a) returned to the party that filed it; or

(b) deleted or otherwise disposed of by the Registry Manager.

**192. Conduct of conciliation conference**

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

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



**Division 3 — Attendance at court events**

**193. Party's attendance**

- (1) A party and the party's lawyer (if any) must attend each procedural hearing or conciliation conference.
- (2) Subrule (1) does not apply if the parties are seeking a consent order that will finally dispose of the case.

**194. Attendance by electronic communication**

Rules 81 and 82 apply in relation to the use of electronic communication to attend a court event (other than a trial) as if the court event were a hearing.

**195. Failure to attend court events**

- (1) If an applicant does not attend a procedural hearing, the court may —
  - (a) dismiss the application; or
  - (b) make an order for the future conduct of the case.
- (2) If a respondent does not attend a procedural hearing, the court may —
  - (a) if the respondent has not filed a response to an initiating application, make the order sought in the application; or
  - (b) list the case for dismissal or hearing on an undefended basis; or
  - (c) make an order for the future conduct of the case.
- (3) If a party does not attend a conciliation conference, the court may —
  - (a) list the case for dismissal or hearing on an undefended basis; and
  - (b) make an order for the future conduct of the case.

**Division 4 — Adjournment and postponement of procedural hearings**

**196. Administrative postponement of procedural hearing**

- (1) If the applicant and any party served agree that a procedural hearing should not proceed on the date fixed for it, the applicant and any party served may jointly request the Registry Manager to postpone the hearing.
- (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 event is sought to be postponed; and
  - (d) be signed by each party making the request or the party's lawyer; and
  - (e) be received by the Registry Manager no later than 12 noon on the day before the date fixed for the hearing.
- (3) If a request is made, the Registry Manager must tell the parties —

  - (a) that the hearing has been postponed; and
  - (b) the date to which it has been postponed.
- (4) The Registry Manager must not postpone a procedural hearing more than twice under this rule.
- (5) If practicable, a hearing must not be postponed to a date that is more than 8 weeks after the date fixed for the hearing.

## Part 13 — Disclosure

### Division 1 — Disclosure between parties

#### Subdivision 1 — General duty of disclosure

##### 197. General duty of disclosure

- (1) Subject to subrule (3), each party to a case has a duty to the court and to each other party to give full and frank disclosure of all information relevant to the case, in a timely manner.
- (2) The duty of disclosure starts with the pre-action procedure for a case and continues until the case is finalised.
- (3) This rule does not apply to a respondent in an application alleging contravention or contempt.

#### Subdivision 2 — Duty of disclosure in financial cases

##### 198. Purpose of this Subdivision

- (1) This Subdivision sets out the duty of disclosure required by parties to a financial case.
- (2) This Subdivision does not apply to a party to a property case who is not a party to the marriage or de facto relationship to which the application relates, except to the extent that the party's financial circumstances are relevant to the issues in dispute.

##### 199. Full and frank disclosure

- (1) In this rule —  
*legal entity* means a corporation (other than a public company), trust, partnership, joint venture business or other commercial activity.

(2) A party to a financial case (including a payee or other respondent to an enforcement application) must make full and frank disclosure of the party's financial circumstances, including —

(a) the party's earnings, including income that is paid or assigned to another party, person or legal entity; and

(b) any vested or contingent interest in property; and

(c) any vested or contingent interest in property owned by a legal entity that is fully or partially owned or controlled by a party; and

(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; and

(e) the party's other financial resources; and

(f) any trust —

(i) of which the party is the appointor or trustee; or

(ii) of which the party, or the party's child, spouse or de facto partner, 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 partner, 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

(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 specified in any of subparagraphs (iv) to (vi), if the party, or the party's child, spouse or de facto partner, is a director or shareholder of the corporation;

and

(g) any disposal of property (whether by sale, transfer, assignment or gift) made by the party, a legal entity specified in paragraph (c), a corporation or a trust specified in paragraph (f) that may affect, defeat or deplete a claim —

(i) in the 12 months immediately before the separation of the parties; or

(ii) since the final separation of the parties;

and

(h) liabilities and contingent liabilities.

(3) Subrule (2)(g) does not apply to a disposal of property made with the consent or knowledge of the other party or in the ordinary course of business.

## **200. Financial statement**

(1) A party starting, or filing a response or reply to, a financial case (except by an application for consent orders) must file a financial statement at the same time.

(2) If a party is aware that the completion of a financial statement will not fully discharge the duty to make full and frank disclosure, the party must also file an affidavit giving further particulars.

**201. Amendment of financial statement**

If a party's financial circumstances have changed significantly from the information set out in the financial statement or the affidavit filed under rule 200, the party must, within 21 days after the change of circumstances, file —

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

**Division 2 — Duty to disclose documents**

**Subdivision 1 — Disclosure of documents for all cases**

**202. Duty to disclose documents**

The duty of disclosure applies to each document that —

- (a) is or has been in the possession, or under the control, of the party disclosing the document; and
- (b) is relevant to an issue in the case.

**203. Use of documents**

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

- (a) must use the document for the purpose of the case only; and
- (b) must not otherwise disclose the contents of the document, or give a copy of it, to any other person without the court's permission.

**204. Inspection of documents**

- (1) A party may, by written notice, require another party to provide a copy of, or produce for inspection, a document referred to —
- (a) in a document filed or served by a party on another party or independent children’s lawyer; or
  - (b) in correspondence prepared and sent by or to another party or independent children’s lawyer.
- (2) A party required to provide a copy of a document must provide the copy within 21 days after receiving the written notice.

**205. Production of original documents**

A party may, by written notice, require another party to produce for inspection an original document if the document is a document that must be produced under the duty of disclosure.

**206. Disclosure by inspection of documents**

- (1) If a party is required to produce a document for inspection under rule 204 or 205, the party must —
- (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.
- (2) The time fixed under subrule (1)(a) must be within 21 days after the party receives a written notice under rule 204 or 205 or as otherwise agreed.

**207. Costs of inspection**

A party who fails to inspect a document under a notice given under rule 204, 205 or 216(3)(a) may not later do so unless the

party tenders an amount for the reasonable costs of providing another opportunity for inspection.

**208. Documents that need not be produced**

Subject to rule 280, a party must disclose, but need not produce to the party requesting it —

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

(b) a document a copy of which is already disclosed, if the copy contains no change, obliteration or other mark or feature that is likely to affect the outcome of the case.

**209. 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.

**210. Consequence of non-disclosure**

If a party does not disclose a document as required under these rules —

(a) the party —

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





(4) A notice under subrule (1) must comply with rule 483(1) or (2) and state as follows —

This Notice is filed in accordance with the *Family Court Rules 2021* rule 211.

I [insert name]:

(a) have read the *Family Court Rules 2021* Part 13 Divisions 1 and 2; and

(b) am aware of my duty to the court and to each other party (including any independent children’s lawyer) to give full and frank disclosure of all information relevant to the issues in the case, in a timely manner; and

(c) undertake to the court that, to the best of my knowledge and ability, I have complied with, and will continue to comply with, my duty of disclosure.

I understand the nature and terms of this undertaking and that if I breach the undertaking, I may be guilty of contempt of court.

**212. Time for filing undertaking**

A notice under rule 211 must be filed at least 28 days before the readiness hearing.

**Subdivision 2 — Disclosure of documents for certain applications**

**213. Application of Subdivision**

This Subdivision applies to —

(a) an application for divorce; and

(b) an application in a case; and

- (c) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment; and
- (d) a maintenance application; and
- (e) a child support application or appeal; and
- (f) a contravention application; and
- (g) a contempt application.

**214. Party may seek order about disclosure**

A party to an application to which this Subdivision applies may seek only the following orders about disclosure —

- (a) that another party deliver a copy of a document;
- (b) that another party produce a document for inspection by another party.

**Subdivision 3 — Disclosure of documents: initiating applications**

**215. Application of Subdivision**

(1) This Subdivision applies to all initiating applications, except —

- (a) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment; or
- (b) a maintenance application; or
- (c) a child support application or appeal; or
- (d) an initiating application seeking an interim, procedural, ancillary or other incidental order.

(2) This Subdivision 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) another right of access to a document other than under this Subdivision; or

(c) an agreement between the parties for disclosure by a procedure that is not described in this Subdivision.

**216. Disclosure by service of list of documents**

(1) 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 no longer in the disclosing party's possession or control to which the duty would otherwise apply (with a brief statement about the circumstances in which the documents left the party's possession or control); and

(c) the documents for which privilege from production is claimed.

(3) The requesting party may, by written notice, ask the disclosing party to —

(a) produce a document for inspection; or

(b) provide a copy of a document.

(4) The disclosing party must, within 14 days after receiving a notice under subrule (3)(b), give the requesting party, at the requesting party's expense, the copies requested, other than copies of documents —

(a) in relation to which privilege from production is claimed; or

(b) that are no longer in the disclosing party's possession or control.

- (5) If a document that must be disclosed is located by, or comes into the possession or control of, a disclosing party after disclosure under subrule (2), the party must disclose the document within 7 days after it is located or comes into the party's possession or control.

**217. Disclosure by inspection of documents**

- (1) This rule applies if —

- (a) a party has requested the production of a document for inspection under rule 216(3)(a); or  
(b) it is not convenient for a disclosing party to provide copies of documents under rule 216(3)(b) because of the number and size of the documents.

- (2) The disclosing party must, within 14 days after receiving the notice under rule 216(3) —

- (a) notify the requesting party, in writing, of a convenient place and time at which the documents may be inspected; and  
(b) produce the documents for inspection at that place and time; and  
(c) allow copies of the documents to be made at the requesting party's expense.

**218. Application for disclosure order**

- (1) A party may apply to a court for an order that —

- (a) another party comply with a request for a list of documents in accordance with rule 216; or  
(b) another party disclose a specified document or class of documents by providing to the other party a copy of the document, or each document in the class, for inspection by the other party; or  
(c) another party produce a document for inspection; or

- (d) a party file an affidavit stating —
- (i) that a specified document or class of documents does not exist or has never existed; or
  - (ii) the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of that party;
- or
- (e) the party be partly or fully relieved of the duty of disclosure.
- (2) A party making an application under subrule (1) must satisfy the court that the order is necessary for disposing of the case or an issue or reducing costs.
- (3) In making an order under subrule (1), 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
  - (c) the likely time, cost and inconvenience involved in disclosing a document or class of documents taking into account the amount of the property, or complexity of the corporate, trust or partnership interests (if any), involved in the case; and
  - (d) the likely effect on the outcome of the case of disclosing, or not disclosing, the document or class of documents.
- (4) If the disclosure of a document is necessary for the purpose of resolving a case at the conciliation conference, a party (the *requesting party*) may, at the first court event, seek an order that another party —
- (a) provide a copy of the document to the requesting party;
- or

(b) produce the document to the requesting party for inspection and copying.

(5) The court may only make an order under subrule (4) in exceptional circumstances.

(6) If a party objects to the production of a document for inspection or copying, the court may inspect the document to decide the objection.

**219. 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.

**220. Electronic disclosure**

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

**Division 3 — Answers to specific questions**

**221. Application of Division**

This Division applies to all applications seeking final orders, except the following —

(a) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment;

(b) a maintenance application;

(c) a child support application or appeal.

**222. Service of specific questions**

(1) After a case has been the subject of a conciliation conference or entered into a defended list (whichever occurs first) 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 1 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 1 specific question); and

(c) not be vexatious or oppressive.

(4) If an answering party is required, by a written notice served under rule 216 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 Division 2 or the order has expired.

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

**223. 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 subrule (2)(b) must —

(a) specify the grounds of the objection; and



(b) briefly state the facts in support of the objection.

**224. Orders in relation to specific questions**

(1) A party may apply to a court for an order —

(a) that a party comply with rule 223 and answer, or further answer, a specific question served on the party under rule 222; or

(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) 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 case.

**Division 4 — Information from non-parties**

**225. Purpose of Division**

This Division sets out the information a party may require from an employer of a party to a financial case.

**226. Employment information**

(1) A court may order a party to advise the court, in writing, within a specified time, of —

(a) the name and address of the party's employer or, if the party has more than 1 employer, each of those employers; and

(b) other information the court considers necessary to enable an employer to identify the party.

(2) Subrule (3) applies if —

(a) a party (the *requesting party*) requests the employer of another party (the *employee*) to give particulars about —

(i) the employer's indebtedness to the employee; 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;

and

(b) the employer refuses, or fails to respond to, the requesting party's request.

(3) The requesting party may apply for an order that the employer advise the court, in writing, within a specified time, of the particulars specified in subrule (2)(a).

## Part 14 — Property orders

### 227. Orders about property

- (1) A court may make an order for the inspection, detention, possession, valuation, insurance or preservation of property if —
- (a) the order relates to the property of a party, or a question may arise about the property in a case; and
  - (b) the order is necessary to allow the proper determination of a case.
- (2) The court may order a party —
- (a) to sell or otherwise dispose of property that will deteriorate, decay or spoil; and
  - (b) to deal with the proceeds of the sale or disposal in a certain way.
- (3) A party may ask the court to make an order in relation to property authorising a person to —
- (a) enter, or to do another thing to gain entry or access to, the property; or
  - (b) make observations and take photographs of the property; or
  - (c) observe or read images or information contained in the property including, for example, playing a tape, film or disk, or accessing computer files; or
  - (d) copy the property or information contained in the property.
- (4) If the court makes an order under this rule, it may also order a party to pay the costs of a person who is not a party to the case and who must comply with the order.
- (5) The court may make an order under subrule (1) binding on, or otherwise affecting, a person who is not a party to the case.

**228. Service of application**

(1) A party who has applied for an order under rule 227 must —

- (a) make a reasonable attempt to find out who has, or claims to have, an interest in the property to which the application relates; and
- (b) serve the application and any supporting affidavits on that person.

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

**229. Inspection**

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

**230. Application for Anton Piller order**

(1) A party may apply for an Anton Piller order —

- (a) requiring a respondent to permit the applicant, alone or with another person, to enter the respondent's premises and inspect or seize documents or other property; and
- (b) requiring the respondent to disclose specific information relevant to the case; and
- (c) restraining the respondent, for a specified period of no more than 7 days, from informing anyone else (other than the respondent's lawyer) that the order has been made.

(2) The applicant may apply for an Anton Piller order without notice to the respondent.

(3) An application for an Anton Piller order must be supported by an affidavit that includes —

- (a) a description of the document or property to be seized or inspected; and

- (b) the address of the premises where the order is to be carried out; and
  - (c) the reason the applicant believes the respondent may remove, destroy or alter the document or property unless the order is made; and
  - (d) a statement about the damage the applicant is likely to suffer if the order is not made; and
  - (e) a statement about the value of the property to be seized; and
  - (f) if permission is granted, the name of the person (if any) who the applicant wishes to accompany the applicant to the respondent's premises.
- (4) If an Anton Piller order is made, the applicant must serve a copy of it on the respondent when the order is acted on.

**231. Application for Mareva order**

- (1) A party may apply for a Mareva order restraining another person from removing property from Australia, or dealing with property in or outside Australia, if —
- (a) the order will be incidental to an existing or prospective order made in favour of the applicant; or
  - (b) the applicant has an existing or prospective claim that is able to be decided in Australia.
- (2) The applicant must file with the application an affidavit that includes —
- (a) a description of the nature and value of the respondent's property, so far as it is known to the applicant, in and outside Australia; and
  - (b) the reason why the applicant believes —
    - (i) property of the respondent may be removed from Australia; and

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- (ii) dealing with the property should be restrained by order;
- and
- (c) a statement about the damage the applicant is likely to suffer if the order is not made; and
- (d) a statement about the identity of anyone, other than the respondent, who may be affected by the order and how the person may be affected; and
- (e) if the application is made under subrule (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.

**232. Notice to superannuation trustee**

- (1) This rule applies in a property case if —
  - (a) a party seeks an order to bind the trustee of an eligible superannuation plan; and
  - (b) the case has been listed for the first day of the trial.
- (2) 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 the terms of the order that will be sought at the trial to bind the trustee, and the date of the trial.
- (3) If the court makes an order binding the trustee of an eligible superannuation plan, the party that sought the order must serve a copy of the order on the trustee of the eligible superannuation plan in which the interest is held.

**233. Notice about intervention**

(1) A person who applies for orders for the alteration of property interests must serve a written notice on each person whose interests would be affected by the making of the orders.

(2) The notice must —

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

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

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

## **Part 15 — Evidence**

### **Division 1 — Children**

#### **234. Restriction on children’s evidence**

(1) A party applying under section 214A of the Act or the Family Law Act section 100B to adduce the evidence of a child 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 mentioned in subrule (1), it may order that —

(a) the child’s evidence be given by way of affidavit, video conference, closed circuit television or other electronic communication; and

(b) a person named in the order as a support person be present with the child when the child gives evidence.

#### **235. Family reports**

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

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

(b) receive the report in evidence; and

(c) permit oral examination of the person making the report; and

(d) order that the report not be released to a person or that access to the report be restricted.



**Division 2 — Affidavits**

**236. No general right to file affidavit**

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.

**237. 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.

**238. Form of affidavit**

An affidavit must —

(a) be divided into consecutively numbered paragraphs, with each paragraph being, as far as possible, confined to a distinct part of the subject matter; and

(b) state, at the beginning of the first page —

(i) the file number of the case for which the affidavit is sworn; and

(ii) the full name of the party on whose behalf the affidavit is filed; and

(iii) the full name of the deponent;

and

(c) have a statement at the end specifying —

(i) the name of the witness before whom the affidavit is sworn and signed; and

(ii) the date when, and the place where, the affidavit is sworn and signed;

and

(d) bear the name of the person who prepared the affidavit.

**239. Making affidavit**

(1) An affidavit must be —

- (a) confined to facts about the issues in dispute; and
- (b) confined to admissible evidence; and
- (c) sworn 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.

(2) Any insertion in, or erasure or other alteration of, an affidavit must be initialled by the deponent and the witness.

(3) A reference to a date (except the name of a month), number or amount of money must be written in figures.

**240. Affidavit of illiterate, blind or other person incapable of signing affidavit**

(1) If a deponent is illiterate, blind, or physically incapable of signing an affidavit, the witness before whom the affidavit is made must certify, at the end of the affidavit, that —

- (a) the affidavit was read to the deponent; and
- (b) the deponent seemed to understand the affidavit; and
- (c) for a deponent physically incapable of signing, the deponent indicated that the contents were true.

(2) If a deponent does not have an adequate command of English —

- (a) a translation of the affidavit and oath must be read or given in writing to the deponent in a language that the deponent understands; and
- (b) the translator must certify that the affidavit has been translated.

**241. Documents attached**

- (1) A reference in this rule to a document being attached to an affidavit is taken to include a reference to a document being annexed to an affidavit or being filed as an exhibit to an affidavit.
- (2) If documents are sought to be used in conjunction with an affidavit in support of an application for an interim or procedural order —

  - (a) no more than 5 documents are to be attached to an affidavit of a party; and
  - (b) no more than 2 documents are to be attached to an affidavit of a witness.
- (3) If documents are sought to be used in conjunction with an affidavit to be relied upon at trial —

  - (a) no more than 15 documents are to be attached to an affidavit of a party; and
  - (b) no more than 5 documents are to be attached to an affidavit of a witness.
- (4) If a party seeks to rely at a hearing or trial on documents that cannot be attached to an affidavit because of subrule (2) or (3) —

  - (a) each additional document must be identified in, but not attached to, the affidavit; and
  - (b) if the document is in the possession of the party on whose behalf the affidavit is filed, a copy must be served at the same time as the affidavit is served.
- (5) An application to rely on documents that cannot be attached to an affidavit because of subrule (2) or (3) may be considered only at the hearing or trial, and only if the applicant complies with this rule.

(6) Each page of an affidavit and of each document attached to the affidavit must be numbered consecutively, beginning with the first page of the affidavit and concluding with the last page of the last document attached.

**242. Striking out objectionable material**

(1) The court may order material to be struck out of an affidavit if the material —

(a) is inadmissible, unnecessary, irrelevant, unreasonably long, scandalous or argumentative; or

(b) sets out the opinion of a person who is not qualified to give it.

(2) If the court orders material to be struck out of an affidavit, the party who filed the affidavit may be ordered to pay the costs thrown away of any other party because of the material struck out.

**243. 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 28 days before the relevant date set for the commencement of the trial, give to the party who filed the affidavit a written notice stating the name of the deponent who is required to attend court for cross-examination.

(3) If a deponent fails to attend court in response to a notice under subrule (2), the court may —

(a) refuse to allow the deponent's affidavit to be relied on; 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.



- (2) A subpoena mentioned in subrule (1) must be in the approved form.
- (3) Subject to rule 469, the court will issue a subpoena mentioned in subrule (1) at the request of a party only if —

  - (a) the party has requested permission from the court; and
  - (b) the court has granted permission.
- (4) For the purposes of subrule (3)(a), a request for the court’s permission —

  - (a) may be made orally or in writing; and
  - (b) may be made without giving notice to any other parties; and
  - (c) may be determined in chambers in the absence of the other parties.
- (5) A party must not request the issue of a subpoena for production and to give evidence if production would be sufficient in the circumstances.
- (6) A subpoena must identify the person to whom it is directed by name or description of office.
- (7) A subpoena may be directed to 2 or more persons if —

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

  - (a) must identify the document to be produced and the time and place for production; and
  - (b) may require the named person to produce the document before the date of the trial.



- (ii) by a manner of service agreed between the issuing party and the named person;  
and  
(b) in relation to a subpoena to give evidence, or a subpoena for production and to give evidence, by hand.
- (3) The issuing party for a subpoena must serve a copy of the subpoena, in accordance with subrule (4), on —  
(a) each other party; and  
(b) each interested person in relation to the subpoena; and  
(c) the independent children’s lawyer (if any).
- (4) A document required to be served under subrule (3) must be served —  
(a) by ordinary service; or  
(b) by a manner of service agreed between the issuing party and the person to be served.
- (5) Unless the court directs otherwise, a document required to be served under subrule (1) or (3) must be served —  
(a) in relation to a subpoena for production, at least 10 days before the day on which production in accordance with the subpoena is required; and  
(b) in relation to a subpoena to give evidence, at least 7 days before the day on which attendance in accordance with the subpoena is required; and  
(c) in relation to a subpoena for production and to give evidence, at least 10 days before the day on which production and attendance in accordance with the subpoena is required.
- (6) A subpoena must not be served on a child without the court’s permission.





**252. Discharge of subpoena obligation**

- (1) A subpoena remains in force until the earliest of the following events —
- (a) the subpoena is complied with;
  - (b) the issuing party or the court releases the named person from the obligation to comply with the subpoena;
  - (c) the hearing or trial is concluded.
- (2) For the purposes of subrule (1)(c), a trial or hearing is concluded when all parties have finished presenting their case.

**253. Objection to subpoena**

- (1) This rule applies if —
- (a) a subpoena is issued in relation to proceedings; and
  - (b) the named person or an interested person in relation to the subpoena, or an independent children’s lawyer in the proceedings —
    - (i) seeks an order that the subpoena be set aside in whole or in part; or
    - (ii) seeks any other relief in relation to the subpoena.
- (2) The person referred to in subrule (1)(b) must, before the day on which attendance or production in accordance with the subpoena is required, apply to the court, in writing, for the relevant order.
- (3) If a person makes an application under subrule (2), the subpoena must be referred to the court for the hearing and determination of the application.
- (4) The court may compel a person to produce a document to the court for the purpose of determining an application under subrule (2).

**Subdivision 2 — Production of documents and access by parties**

**254. Application**

This Subdivision applies to a subpoena for production.

**255. Compliance with subpoena**

(1) In this rule —

copy includes —

(a) a photocopy; and

(b) a copy in an electronic format that is approved by the Registry Manager, and is capable of being printed in the form in which it was created without any loss of content.

(2) A named person may comply with a subpoena for production by providing to the court, at the place specified in the subpoena, on or before the day on which production in accordance with the subpoena is required —

(a) a copy of the subpoena; and

(b) either —

(i) the documents identified in the subpoena; or

(ii) copies of those documents, accompanied by a verification by the named person that they are accurate copies of the originals.

(3) The named person, when complying with the subpoena for production, must inform the Registry Manager in writing about whether —

(a) the documents referred to in the subpoena are to be returned to the named person; or

(b) the Registry Manager is authorised to dispose of the documents when they are no longer required by the court.

**256. Right to inspect and copy documents**

(1) This rule applies if —

(a) the court issues a subpoena for production in relation to proceedings; and

(b) at least 10 days before the day (the *production day*) on which production in accordance with the subpoena is required, the issuing party —

(i) serves the named person with the subpoena and the brochure in accordance with rule 249(1); and

(ii) serves each person mentioned in rule 249(3) with a copy of the subpoena in accordance with that subrule;

and

(c) no objection under rule 257 to production of a document required in accordance with the subpoena is made by the production day; and

(d) the named person complies with the subpoena; and

(e) on or after the production day, the issuing party files a notice of request to inspect in an approved form.

(2) Each party to the proceedings, and any independent children’s lawyer in the proceedings, may —

(a) inspect a document produced in accordance with the subpoena; and

(b) take copies of a document (other than a child welfare record, criminal record, medical record or police record) produced in accordance with the subpoena.

(3) Subrule (2) has effect subject to rule 257(4)(c).

(4) Unless the court orders otherwise, an inspection under subrule (2)(a) —

(a) must be by appointment; and

(b) may be made without an order of the court.

**257. Objections relating to production of documents**

- (1) Subrule (2) applies if a subpoena for production is issued in relation to proceedings, and —
- (a) the named person objects to producing a document in accordance with the subpoena; or
  - (b) any of the following objects to the inspection or copying of a document identified in the subpoena —
    - (i) the named person;
    - (ii) an interested person in relation to the subpoena;
    - (iii) another party to the proceedings;
    - (iv) any independent children’s lawyer in the proceedings.
- (2) The person or party (the *objector*) must, before the day on which production in accordance with the subpoena is required, give written notice of the objection and the grounds for the objection, to —
- (a) the Registry Manager; and
  - (b) if the objector is not the named person, the named person; and
  - (c) each party, or other party, to the proceedings; and
  - (d) each independent children’s lawyer, or each other independent children’s lawyer, in the proceedings.
- (3) If a subpoena for production requires the production of a person’s medical records, the person may, before the day (the *production day*) on which production in accordance with the subpoena is required, notify the Registry Manager in writing that the person wishes to inspect the medical records for the purpose of determining whether to object to the inspection or copying of the records.

(4) If a person (the *potential objector*) gives notice under subrule (3) —

(a) the potential objector may inspect the medical records; and

(b) if the potential objector wishes to object to the inspection or copying of the records, the potential objector must, within 7 days of the production day, give written notice of the objection and the grounds for the objection, to the Registry Manager; and

(c) unless the court orders otherwise, no other person may inspect the medical records until the later of —

(i) 7 days after the production day; or

(ii) if the potential objector makes an objection under paragraph (b), the end of the hearing and determination of the objection.

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

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

**258. Court permission to inspect documents**

A person may not inspect or copy a document produced in compliance with a subpoena for production, but not yet admitted into evidence, unless —

(a) rule 256 applies; or

(b) the court gives permission.

**259. Production of document from another court**

- (1) A party who seeks to produce to the court a document in the possession of another court must give the Registry Manager a written notice setting out —
- (a) the name and address of the court having possession of the document; 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.
- (2) On receiving a notice under subrule (1), a registrar may ask the other court, in writing, to send the document to the Registry Manager of the filing registry by a specified date.
- (3) A party may apply for permission to inspect and copy a document produced to the court.

**260. Return of documents produced**

- (1) This rule applies to a document produced in compliance with a subpoena that is to be returned to the named person.
- (2) If the document is tendered as an exhibit at a hearing or trial, the Registry Manager must return it at least 28 days, and no later than 42 days, after the final determination of the application or appeal.
- (3) The Registry Manager may return a document to the named person at a time that is earlier than the time mentioned in subrule (2) if —
- (a) the document is not tendered as an exhibit at a hearing or trial; and
  - (b) the party who filed the subpoena has been given 7 days' written notice of the Registry Manager's intention to return it.

(4) If the Registry Manager has received written permission from the named person to destroy the document —

(a) subrules (2) and (3) do not apply; and

(b) the Registry Manager may destroy the document, in an appropriate way, not earlier than 42 days after the final determination of the application or appeal.

### **Subdivision 3 — Non-compliance with subpoena**

#### **261. Non-compliance with subpoena**

(1) This rule applies if —

(a) a named person does not comply with a subpoena; and

(b) the court is satisfied that the named person was served with the subpoena and given conduct money in accordance with rule 250.

(2) The court may issue a warrant for the named person's arrest and order the person to pay any costs caused by the non-compliance.

### **Division 4 — Assessors**

#### **262. Application of Division**

This Division 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.

#### **263. Appointing assessor**

(1) A party may apply for the appointment of an assessor to assist the court under section 219 of the Act or the Family Law Act section 102B by filing —

(a) an initiating application and an affidavit; or





- (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.

## **Division 5 — Expert evidence**

### **Subdivision 1 — General**

#### **266. Term used: expert’s report**

In this Division —

*expert’s report* means a report by an expert witness, including a notice under rule 284(5).

#### **267. Application of Division**

- (1) This Division, except rule 280, does not apply to any of the following —

(a) evidence from a medical practitioner or other person who has provided, or is providing, treatment for a party or child if the evidence relates only to any or all of the following —

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

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

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

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

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

- (ii) describing the reasons for the expert's involvement and the results of that involvement;
  - (c) evidence from an expert who has been associated, involved or had contact with a party, child or subject matter of a case for a purpose other than the giving of advice or evidence, or the preparation of a report for a case or anticipated case, being evidence about that expert's association, involvement or contact with that party, child or subject matter;
  - (d) evidence from a family consultant, including from a person appointed under the *Family Law Regulations 1984* (Commonwealth) regulation 7.
- (2) Nothing in this Division prevents an independent children's lawyer communicating with a single expert witness.

**268. Purpose of this Division**

The purpose of this Division is —

- (a) to ensure that parties obtain expert evidence only in relation to a significant issue in dispute; and
- (b) to restrict expert evidence to that which is necessary to resolve or determine a case; and
- (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; and
- (d) to avoid unnecessary costs arising from the appointment of more than 1 expert witness; and
- (e) to enable a party to apply for permission to tender a report or adduce evidence from an expert witness appointed by that party, if necessary in the interests of justice.

**Subdivision 2 — Single expert witness**

**269. Appointment of single expert witness by parties**

- (1) If the parties agree that expert evidence may help to resolve a substantial issue in a case, they may agree to jointly appoint a single expert witness to prepare a report in relation to the issue.
- (2) A party does not need the court's permission to tender a report or adduce evidence from a single expert witness appointed under subrule (1).

**270. Order for single expert witness**

- (1) A 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), a court may take into account factors relevant to making the order, including —
  - (a) the main purpose of these rules and the purpose of this Division; and
  - (b) whether expert evidence on a particular issue is necessary; and
  - (c) the nature of the issue in dispute; and
  - (d) whether the issue falls within a substantially established area of knowledge; and
  - (e) whether it is necessary for the court to have a range of opinion.
- (3) A 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).

**271. Orders that court may make**

A court may, in relation to the appointment of, instruction of, or conduct of a case involving, a single expert witness make an order, including an order —

(a) requiring the parties to confer for the purpose of agreeing on the person to be appointed as a single expert witness; or

(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.

**272. Single expert witness's fees and expenses**

- (1) The parties are equally liable to pay a single expert witness's reasonable fees and expenses incurred in preparing a report.
- (2) A single expert witness is not required to undertake any work in relation to their appointment until the fees and expenses are paid or secured.

**273. Single expert witness's report**

- (1) A single expert witness must prepare a written report.
- (2) If the single expert witness was appointed by the parties, the expert witness must give each party a copy of the report at the same time.
- (3) If the single expert witness was appointed by the court, the expert witness must give the report to the Registry Manager.
- (4) An applicant who has been given a copy of a report must file the copy but does not need to serve it.

**274. 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 that 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.

**275. 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 28 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.

**Subdivision 3 — Permission for expert’s evidence**

**276. Permission for expert’s reports and evidence**

- (1) A party must apply for the court’s permission to tender a report or adduce evidence at a hearing or trial from an expert witness, except a single expert witness.
- (2) An independent children’s lawyer may tender a report or adduce evidence at a hearing or trial from 1 expert witness on an issue without the court’s permission.

**277. Application for permission for expert witness**

- (1) A party may seek permission to tender a report or adduce evidence from an expert witness by filing an application in a case.
- (2) The affidavit filed with the application must state —
- (a) whether the party has attempted to agree on the appointment of a single expert witness with the other party and, if not, why not; and
- (b) the name of the expert witness; and
- (c) the issue about which the expert witness’s evidence is to be given; and

- (d) the reason the expert evidence is necessary in relation to that issue; and
  - (e) the field in which the expert witness is an expert; and
  - (f) the expert witness's training, study or experience that qualifies the expert witness as having specialised knowledge on the issue; and
  - (g) whether there is any previous connection between the expert witness and the party.
- (3) When considering whether to permit a party to tender a report or adduce evidence from an expert witness, the court may take into account —
- (a) the purpose of this Division; and
  - (b) the impact of the appointment of an expert witness on the costs of the case; and
  - (c) the likelihood of the appointment expediting or delaying the case; and
  - (d) the complexity of the issues in the case; and
  - (e) whether the evidence should be given by a single expert witness rather than an expert witness appointed by 1 party only; and
  - (f) whether the expert witness has specialised knowledge, based on the person's training, study or experience —
    - (i) relevant to the issue on which evidence is to be given; and
    - (ii) appropriate to the value, complexity and importance of the case.
- (4) If the court grants a party permission to tender a report or adduce evidence from an expert witness, the permission is limited to the expert witness named, and the field of expertise stated, in the order.



**Subdivision 4 — Instructions and disclosure of expert’s report**

**278. Application of Subdivision**

This Subdivision does not apply to a market appraisal or an opinion as to value in relation to property obtained by a party under rule 190(g) or 191(2) for the purposes of a procedural hearing or conference.

**279. Instructions to expert witness**

(1) A party who instructs an expert witness to give an opinion for a case or an anticipated case must —

- (a) ensure the expert witness has a copy of the most recent version of, and has read, Subdivisions 4, 5 and 6; and
- (b) obtain a written report from the expert witness.

(2) All instructions to an expert witness must be in writing and must include —

- (a) a request for a written report; and
- (b) advice that the report may be used in an anticipated or actual case; 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.

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

(4) However, if the parties do not agree on a statement of facts —

- (a) unless the court directs otherwise, each of the parties must give to the expert witness 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 witness.

**280. Mandatory disclosure of expert's report**

(1) A party who has obtained an expert's report for a parenting case, whether before or after the start of the case, must give each other party a copy of the report —

(a) if the report is obtained before the case starts, at least 2 days before the first court event; or

(b) if the report is obtained after the case starts, within 7 days after the party receives the report.

(2) The party who discloses an expert's report must disclose any supplementary report and any notice amending the report under rule 284(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.

**281. Provision of information about fees**

A party who has instructed an expert witness must, if requested by another party, give each other party details of any fee or benefit received, or receivable, by or for the expert witness, for the preparation of the report and for services provided, or to be provided, by or for the expert witness in connection with the expert witness giving evidence for the party in the case.

**282. Application for provision of information**

(1) This rule applies if a 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.

**283. Failure to disclose report**

A party who fails to give a copy of an expert's report to another party or the independent children's lawyer (if any) must not use the report or call the expert witness to give evidence at a hearing or trial, unless the other party and independent children's lawyer consent to the report being used or the expert witness being called, or the court orders otherwise.

**Subdivision 5 — Expert witness's duties and rights**

**284. Expert witness's duty to court**

(1) An expert witness has a duty to help the court with matters that are within the expert witness's knowledge and capability.

(2) The expert witness's duty to the court prevails over the obligation of the expert witness to the person instructing, or paying the fees and expenses of, the expert witness.

(3) The expert witness has a duty to —

(a) give an objective and unbiased opinion that is also independent and impartial on matters that are within the expert witness's knowledge and capability; and

(b) conduct the expert witness's functions in a timely way; and

- (c) avoid acting on an instruction or request to withhold or avoid agreement when attending a conference of experts; and
  - (d) consider all material facts, including those that may detract from the expert witness's opinion; and
  - (e) tell the court —
    - (i) if a particular question or issue falls outside the expert witness's expertise; and
    - (ii) if the expert witness believes that the report prepared by the expert witness —
      - (I) is based on incomplete research or inaccurate or incomplete information; or
      - (II) is incomplete or may be inaccurate, for any reason;
  - and
  - (f) produce a written report that complies with rules 287 and 288.
- (4) The expert witness's duty to the court arises when the expert witness —
- (a) receives instructions under rule 279; or
  - (b) is informed by a party that the expert witness may be called to give evidence in a case.
- (5) An expert witness who changes an opinion after the preparation of a report must give written notice to that effect —
- (a) if appointed by a party, to the instructing party; or
  - (b) if appointed by the court, to the Registry Manager and each party.
- (6) A notice under subrule (5) is taken to be part of the expert's report.

**285. 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.
- (2) The request must —
  - (a) comply with rule 483(1) or (2); and
  - (b) set out the procedural orders sought and the reason the orders are sought.
- (3) The expert witness must serve a copy of the request on each party and satisfy the court that the copy has been served.
- (4) The court may determine the request in chambers unless —
  - (a) within 7 days of being served with the request, a party makes a written objection to the request being determined in chambers; or
  - (b) the court decides that an oral hearing is necessary.

**286. Expert witness's evidence in chief**

- (1) An expert witness's evidence in chief comprises the expert's report, any changes to that report in a notice under rule 284(5) and any answers to questions under rule 293.
- (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.

**287. Form of expert's report**

- (1) An expert's report must —
  - (a) be addressed to the court and the party 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.

I have read and understand the *Family Court Rules 2021* Part 15 Division 5 Subdivisions 4, 5 and 6 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.

**288. Content of expert's report**

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 following in support of the expert witness's conclusions —

(i) the expert witness's qualifications;

(ii) the literature or other material used in making the report;

(iii) the relevant facts, matters and assumptions on which the opinions in the report are based;

(iv) a statement about the facts in the report that are within the expert witness's knowledge;

(v) details about any tests, experiments, examinations or investigations relied on by the expert witness and, if they were carried out by another person, details of that person's qualifications and experience;

(vi) if there is a range of opinion on the matters dealt with in the report, a summary of the range of opinion and the basis for the expert witness's opinion;

(vii) a summary of the conclusions reached;

(viii) if necessary, a disclosure that —

(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.

**289. Consequences of non-compliance**

If an expert witness does not comply with these rules, the court may —

- (a) order the expert witness to attend court; and
- (b) refuse to allow the expert’s report or any answers to questions to be relied on; and
- (c) allow the report to be relied on but take the non-compliance into account when considering the weight to be given to the expert witness’s evidence; and
- (d) take the non-compliance into account when making orders for —
  - (i) an extension or abridgment of a time limit; or
  - (ii) a stay of the case; or
  - (iii) interest payable on a sum ordered to be paid; or
  - (iv) costs.

**Subdivision 6 — Clarification of single expert witness reports**

**290. Purpose of this Subdivision**

- (1) The purpose of this Subdivision 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 291 or by means of questions under rule 292.

**291. Conference**

- (1) Within 21 days after receipt of the report of a single expert witness, the parties may enter into an agreement about conferring with the expert witness for the purpose of clarifying the report.
- (2) The agreement may provide for the parties, or for 1 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 Subdivision.
- (5) Before participating in the conference, the expert witness must be advised of arrangements for the conference.
- (6) In seeking to clarify the report of the expert witness, the parties must not interrogate the expert witness.
- (7) If the parties do not agree about conferring with a single expert witness, the court, on application by a party, may order that a conference be held in accordance with any conditions the court determines.

**292. Questions to single expert witnesses**

- (1) A party seeking to clarify the report of a single expert witness may ask questions of the single expert witness under this rule —
  - (a) within 7 days after the conference under rule 291; or
  - (b) if no conference is held, within 21 days after receipt of the single expert witness's report by the party.
- (2) The questions must —
  - (a) be in writing and be put once only; and
  - (b) be only for the purpose of clarifying the single expert witness's report; and
  - (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.

**293. Single expert witness answers**

- (1) A single expert witness must answer a question received under rule 292 within 21 days after receiving it.
- (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 rule 287(1)(c); 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.

**294. Single expert witness costs**

- (1) In this rule —
- attend* includes attendance by electronic communication.
- (2) 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 1 of the parties attends the conference, by that party;

(b) if more than 1 of the parties attends the conference, by those parties jointly.

(3) If a single expert witness answers questions under rule 293, their reasonable fees and expenses incurred in answering any questions are to be paid by the party asking the questions.

(4) 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.

(5) Subrule (4) is not affected by rule 293(1).

**295. 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 Subdivision.

**Subdivision 7 — Evidence from 2 or more expert witnesses**

**296. Application of Subdivision**

This Subdivision applies to a case in which 2 or more parties intend to tender an expert's report or adduce evidence from different expert witnesses about the same, or a similar, question.

**297. Conference of expert witnesses**

(1) In a case to which this Subdivision applies —

(a) the parties must arrange for the expert witnesses to confer at least 28 days before the date fixed for the hearing or trial; and

(b) each party must give to the expert witness the party has instructed a brochure approved by the executive manager of the Court appointed under section 25(1)(c) of the Act, giving information about experts' conferences.

(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) Subdivisions 4, 5 and 6; 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 mentioned in paragraphs (a) to (d) and deliver a copy of the statement to each party.

(4) If the expert witnesses reach agreement on an issue, the agreement does not bind the parties unless the parties expressly agree to be bound by it.

(5) The joint statement may be tendered as evidence of matters agreed on and to identify the issues on which evidence will be called.

**298. Conduct of trial with expert witnesses**

At a trial, the court may make an order, including an order that —

- (a) an expert witness clarify the expert witness's evidence after cross-examination; or
- (b) the 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 1 subject or issue at a time, until the cross-examination or re-examination of all witnesses is completed.

**Division 6 — Other matters about evidence**

**299. Court may call evidence**

- (1) A court may, on its own initiative —
  - (a) call any person as a witness; and
  - (b) make any orders relating to examination and cross-examination of that witness.

(2) The court may order a party to pay conduct money for the attendance of the witness.

**300. Order for examination of witness**

(1) A court may, at any stage in a case —

(a) request that a person be examined on oath before any court, or an officer of any court, at any place in Australia; or

(b) order a commission to be issued to a person in Australia authorising that person to take the evidence of any person on oath.

(2) The court receiving the request, or the person to whom the commission is issued, may make procedural orders about the time, place and manner of the examination or taking of evidence, including that the evidence be recorded in writing or by electronic communication.

(3) The court making the request or ordering the commission may receive in evidence the record taken.

**301. Letters of request**

(1) If, under the *Foreign Evidence Act 1994* (Commonwealth), 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 specified in paragraph (a) in a language appropriate to the place where the evidence is to be taken; and

(c) an undertaking —

(i) to be responsible for all expenses incurred by the court, or by the person at the request of the court, in respect of the letter of request; and

(ii) to pay the amount to the Registry Manager of the filing registry, after being given notice of the amount of the expenses.

(2) A translation filed under subrule (1)(b) must be accompanied by an affidavit of the person making the translation —

(a) verifying that it is a correct translation; and

(b) setting out the translator's full name, address and qualifications for making the translation.

(3) If, after receiving the documents mentioned in subrules (1) and (2) (if applicable), the registrar is satisfied that the documents are appropriate, the Registry Manager must send them to the Secretary of the Attorney-General of the Commonwealth's Department for transmission to the judicial authorities of the other country.

### **302. Transcript receivable in evidence**

A transcript of a hearing or trial may be received in evidence as a true record of the hearing or trial.

### **303. 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.

## **Part 16 — Principles for conducting child-related proceedings**

### **304. Terms used**

In this Part —

*child-related proceedings provisions* means —

- (a) the Act Part 5 Division 11A; or
- (b) the Family Law Act Part VII Division 12A;

*prescribed form* means a form authorised by the Principal Registrar for the purposes of a party in a case giving consent to the case being treated as a child-related proceeding.

### **305. Application of Part**

This Part applies if the consent of the parties to a case is necessary before the child-related proceedings provisions can apply to the case.

### **306. Consent for case to be treated as child-related proceedings**

If a party to a case seeks to consent to the application of the child-related proceedings provisions to the case, or part of the case, the party must —

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

### **307. Application for case commenced by application before 1 July 2006 to be treated as child-related proceeding**

For the purposes of seeking the leave of the court for a case commenced by an application filed before 1 July 2006 to be treated as a child-related proceeding, an application for permission may be made to a court at a procedural hearing.



## Part 17 — Orders and undertakings

### Division 1 — Orders

#### 308. When order is made

- (1) An order is made —
  - (a) in a hearing or trial — when it is pronounced in court by the judicial officer; or
  - (b) in any other case — when it is signed.
- (2) An order takes effect on the date when it is made, unless otherwise stated.
- (3) A party is entitled to receive —
  - (a) a sealed copy of an order; 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.

#### 309. When order must be entered

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

(b) grants leave or makes a direction —

(i) to amend a document (other than an order); or

(ii) to file a document; or

(iii) for an act to be done by an officer of the court  
other than a lawyer;

or

(c) gives directions about the conduct of proceedings.

**310. Entry of orders**

(1) An order is entered by —

(a) the court, a person at the direction of the court or a  
registrar attaching the seal of the court to the order; and

(b) a judicial officer signing the order.

(2) An order may be entered, in accordance with subrule (1) —

(a) in a registry of the court; or

(b) in court; or

(c) in chambers.

**311. Varying or setting aside orders**

(1) A 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.

*~~{Parts 2-30 have not come into operation.}~~*

**312. Varying or setting aside reasons for judgment**

A 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.

**313. Rate of interest**

The prescribed rate at which interest is payable under the Act sections 205ZW(b) and 239 and the Family Law Act sections 87(11)(b), 90KA(b), 90UN(b) and 117B(1) is —

- (a) for the period beginning on 1 January and ending on 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 began; and
- (b) for the period beginning on 1 July and ending on 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 began.

**314. Order for payment of money**

(1) This rule applies if a person is ordered by a court (other than by way of consent) to pay money and —

- (a) the person is not present, or represented by a lawyer, in court when the order is made; or
- (b) the order is made in chambers.

(2) The person must be served with a sealed copy of the order —

(a) if the order imposes a fine — by the Marshal or other officer of the court; or

(b) in any other case — by the person who benefits from the order.

**315. Order for payment of fine**

If a court orders the payment of a fine or the forfeiture of a bond, the fine or forfeited amount must be paid immediately into the filing registry.

**Division 2 — Undertakings**

**316. Undertakings**

(1) An undertaking that a person must or may give under these rules may be given orally or in writing.

(2) 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.

(3) If a person gives an undertaking orally, a written record of the undertaking must be —

(a) signed by the person or the person’s legal representative; and

(b) filed in the filing registry within 14 days of the undertaking being given; and

(c) served within 14 days of the undertaking being given.

(4) 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.

(5) This rule is subject to any requirements specified in these rules for the giving of particular undertakings.

## **Part 18 — Powers of registrars**

### **Division 1 — General**

#### **317. Term used: registrar**

In this Part —

*registrar* means the Principal Registrar, a deputy registrar or a registrar.

#### **318. Exercise of functions**

(1) If under these rules a function is conferred upon a registrar, the function may also be performed —

(a) in the Court — by a judge; or

(b) in the Magistrates Court — by a magistrate.

(2) If a registrar is required or able to do an act not involving the exercise of judicial power it is sufficient if the act is done on behalf of the registrar by —

(a) a clerk in the office of the registrar; or

(b) another officer of the court or by a clerk in that person's office.

#### **319. Registrars not required to give reasons**

Unless requested by a party to do so a registrar need not give reasons for any order, direction or decision.

#### **320. Protection and immunity**

(1) In the exercise of a power of the court or in the conduct of a conference or enquiry under these rules, a registrar or other person acting under rule 318 has the same protection and immunity as a judge or a magistrate.

(2) A party, lawyer or witness appearing before a registrar or other person acting under rule 318 on the hearing of any application

or matter, or on the conducting of any conference or enquiry, has the same protection and immunity as the party, lawyer or witness would have if appearing in proceedings in a court.

## Division 2 — Delegation of judicial power to registrars

### 321. Delegation of powers to registrars

For the purposes of the Act section 33, the following powers of the Court are delegated to each Principal Registrar, registrar and deputy registrar —

- (a) the powers conferred under a provision —
- (i) of the Act specified in column 1 of the Table; or
  - (ii) of the Family Law Act specified in column 2 of the Table; or
  - (iii) of these rules specified in column 3 of the Table;

Table

<u>Column 1</u> <u>Act</u>	<u>Column 2</u> <u>Family Law Act</u>	<u>Column 3</u> <u>These rules</u>
<u>section 44</u>	<u>section 44(1C)</u>	<u>rule 9</u>
<u>section 215</u>	<u>section 45</u>	<u>rule 10</u>
<u>Part 8 Division 2</u>	<u>section 48</u>	<u>rule 11</u>
<u>section 237</u>	<u>section 55(2)</u>	<u>rule 12</u>
	<u>section 55A</u>	<u>rule 15</u>
	<u>section 57</u>	<u>Part 3</u>
	<u>section 98A</u>	<u>rule 81</u>
	<u>section 101</u>	<u>rule 82</u>

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<u>Column 1</u> <u>Act</u>	<u>Column 2</u> <u>Family Law Act</u>	<u>Column 3</u> <u>These rules</u>
	<a href="#">Part XI Division 2</a>	<a href="#">rule 110</a>
	<a href="#">section 117</a>	<a href="#">rule 120</a>
		<a href="#">rule 135</a>
		<a href="#">rule 136</a>
		<a href="#">rule 159</a>
		<a href="#">rule 162</a>
		<a href="#">rule 169</a>
		<a href="#">rule 171</a>
		<a href="#">rule 172</a>
		<a href="#">rule 173</a>
		<a href="#">rule 176</a>
		<a href="#">rule 180</a>
		<a href="#">rule 181</a>
		<a href="#">rule 182</a>
		<a href="#">rule 195</a>
		<a href="#">rule 210</a>
		<a href="#">rule 218</a>



<u>Column 1</u> <u>Act</u>	<u>Column 2</u> <u>Family Law Act</u>	<u>Column 3</u> <u>These rules</u>
		<a href="#">rule 219</a>
		<a href="#">rule 220</a>
		<a href="#">rule 235</a>
		<a href="#">Part 15</a> <a href="#">Division 3</a>
		<a href="#">rule 311(1)(e),</a> <a href="#">(f), (g) and (h)</a>
		<a href="#">Part 19, other</a> <a href="#">than Division 8</a>
		<a href="#">rule 376</a>
		<a href="#">rule 379</a>
		<a href="#">rule 382</a>
		<a href="#">rule 385</a>
		<a href="#">rule 403</a>

[\(b\) the power to make an order under the \*Prisons Act 1981\* section 85\(1\);](#)

[\(c\) the power to make an order the terms of which have been agreed upon by all the parties to the proceedings.](#)

**322. Applications to review exercises of powers and performance of functions by registrars**

[\(1\) This rule applies to the review of an order or direction made by the Principal Registrar, a registrar or a deputy registrar.](#)

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(2) A party to proceedings may apply to the Court to review an order or direction made by a registrar within 28 days after the Principal Registrar, registrar or deputy registrar makes the order or direction.

(3) An application under subrule (2) must be made by filing in the filing registry an application in a case and a copy of the order or direction appealed from.

(4) The filing of an application for a review of an order or direction does not operate as a stay of the order or direction.

(5) A party may apply for a stay of an order or direction in whole or in part.

**323. Power of Court on review**

(1) The Court must hear an application under rule 322 as an original hearing.

(2) On hearing the application, the Court may receive as evidence —

(a) any affidavit or exhibit tendered in the first hearing; or

(b) 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 under rule 322 in chambers on the documents.

## Part 19 — Party and party costs

### Division 1 — General

#### 324. Application of Part

(1) Subject to subrule (3), this Part —

(a) applies to costs for work done for a case, or in complying with pre-action procedures, in relation to a fresh application, paid or payable by 1 party to another; and

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

(2) A party may only recover costs from another party in accordance with these rules or an order.

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

#### 325. Interest on outstanding costs

Interest is payable on outstanding costs at the rate mentioned in rule 313.

### Division 2 — Obligations of lawyer about costs

#### 326. Duty to inform about costs

(1) In this rule —

*lawyer* does not include counsel instructed by another lawyer.

(2) If an offer to settle is made during a property case, to enable each party to estimate the amount the party will receive if the

case is settled in accordance with the offer to settle, after taking into account costs, the lawyer for the party must tell the party —

- (a) the party’s actual costs, both paid and owing, up to the date of the offer to settle; and
- (b) the estimated future costs to complete the case.

**327. Notification of costs**

(1) In this rule —

*court* includes a registrar;

*lawyer* does not include counsel instructed by another lawyer.

(2) This rule applies to the following court events —

- (a) the first court event;
- (b) the conciliation conference;
- (c) the readiness hearing;
- (d) the first day of the trial;
- (e) any other court events that the court orders.

(3) Immediately before each court event, the lawyer for a party must give the party a written notice of —

- (a) the party’s actual costs, both paid and owing, up to and including the court event; and
- (b) the estimated future costs of the party up to and including each future court event; and
- (c) any expenses paid or payable to an expert witness or, if those expenses are not known, an estimate of the expenses.

(4) At each court event —

- (a) a party’s lawyer must give to the court and each other party a copy of the notice given to the party under subrule (3); and

(b) an unrepresented party must give to the court and each other party a written statement of —

(i) the actual costs incurred by the party up to and including the event; and

(ii) the estimated future costs of the party up to and including each future court event.

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

(6) In a financial case, a notice under subrule (3) or a statement under subrule (4)(b) must specify the source of the funds for the costs paid or to be paid unless the court orders otherwise.

(7) At the end of a court event, the court must return the copy of the notice or statement given under this rule to the person who gave it.

(8) Copies of costs notifications provided pursuant to the rules should not be sent to the court unless in accordance with a specific order or direction.

### **Division 3 — Security for costs**

#### **328. Application for security for costs**

(1) A respondent may apply for an order that the applicant in the case give security for the respondent’s costs.

(2) In subrule (1) —

*respondent* includes an applicant who has filed a reply because orders in a new cause of action have been sought in the response.

(3) In deciding whether to make an order, the court may consider any of the following matters —

(a) the applicant’s financial means;

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- (b) the prospects of success or merits of the application;
- (c) the genuineness of the application;
- (d) whether the applicant's lack of financial means was caused by the respondent's conduct;
- (e) whether an order for security for costs would be oppressive or would stifle the case;
- (f) whether the case involves a matter of public importance;
- (g) whether a party has an order, in the same or another case (including a case in another court), against the other party for costs that remains unpaid;
- (h) whether the applicant ordinarily resides outside Australia;
- (i) the likely costs of the case;
- (j) whether the applicant is a corporation;
- (k) whether a party is receiving legal aid.

**329. Order for security for costs**

If a court orders a party to give security for costs, the court may also order that, if the security is not given in accordance with the order, the case of the party be stayed.

**330. 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.



**333. Costs orders against lawyers**

- (1) A person may apply for an order under subrule (2) against a lawyer for costs thrown away during a case, for a reason including —
- (a) the lawyer’s failure to comply with these rules or an order; and
  - (b) the lawyer’s failure to comply with a pre-action procedure; and
  - (c) the lawyer’s improper or unreasonable conduct; and
  - (d) undue delay or default by the lawyer.
- (2) The court may make an order, including an order that the lawyer —
- (a) not charge the client for work specified in the order; 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
  - (d) pay the costs of a party; or
  - (e) repay another person’s costs found to be incurred or wasted.

**334. Notice of costs order**

- (1) Before making an order for costs against a lawyer or other person who is not a party to a case, the court must give the lawyer or other person a reasonable opportunity to be heard.
- (2) If a party who is represented by a lawyer is not present when an order is made that costs are to be paid by the party or the party’s lawyer, the party’s lawyer must give the party written notice of the order and an explanation of the reason for the order.



### Division 5 — Calculation of costs

#### 335. Method of calculating costs

- (1) A 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, lawyer and client, party and party or indemnity); or
  - (c) to be calculated in accordance with the method stated in the order; or
  - (d) for part of the case, or part of an amount, assessed in accordance with Schedule 2.
- (2) If costs are payable under the Act, 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 —
- (a) the importance, complexity or difficulty of the issues; and
  - (b) the reasonableness of each party's behaviour in the case; and
  - (c) the rates ordinarily payable to lawyers in comparable cases; and
  - (d) whether a lawyer's conduct has been improper or unreasonable; and
  - (e) the time properly spent on the case, or in complying with pre-action procedures; and
  - (f) expenses properly paid or payable.

**336. 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; and

(b) if the 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 ~~1-3 have not come into~~ 2 and 3;

(b) for an expense mentioned in Schedule 3 (except Division 1 item 1) — the amount specified in that Schedule for that expense;

(c) for any other expenses — a reasonable amount.

**Division 6 — Claiming and disputing costs**

**Subdivision 1 — Itemised costs account**

**337. Request for itemised costs account**

A person who has received an account (except an itemised costs account) and wants to dispute the account, or any part of it, must, within 28 days after receiving the account, request the lawyer who sent it to serve an itemised costs account for the whole or part of the account disputed.

**338. Service of lawyer's itemised costs account**

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

- (2) For party and party costs, the person entitled to costs must serve a costs notice at the same time as the itemised costs account is served under subrule (1).

**339. Lawyer's itemised costs account**

- (1) An itemised costs account (the *account*) must specify each item of costs and expense claimed.
- (2) Each item specified in the account must be numbered and described in sufficient detail to enable the account to be assessed.
- (3) The account must set out, in columns across the page, the following information —
- (a) in relation to each item for which costs are payable —
    - (i) the date when the item occurred; 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;
  - (b) at the end of the column setting out the amount payable, the total amount payable for the items.
- (4) For each expense claimed, the account must include —
- (a) the date when the expense was incurred; 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.

**340. 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

the itemised costs account within 28 days after the account was served.

**341. Assessment of disputed costs**

(1) This rule applies if a notice disputing an itemised costs account has been served under rule 340.

(2) The parties to a dispute in relation to costs must make a reasonable and genuine attempt to resolve the dispute.

(3) If the parties are unable to resolve the dispute, either party may ask the court to determine the dispute by filing in the filing registry of the court where the case was conducted the itemised costs account and the notice disputing the itemised costs account no later than 42 days after the notice disputing the itemised costs account was served.

(4) The court may take into account a failure to comply with subrule (2) when considering any order for costs.

**342. Amendment of itemised costs account and notice disputing itemised costs account**

A party may amend an itemised costs account or a notice disputing an 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.

**Subdivision 2 — Assessment process**

**343. Fixing date for first court event**

(1) On the filing of an itemised costs account and a notice disputing the itemised costs account under rule 341(3), the registrar must fix a date for —

(a) a settlement conference; or

(b) a preliminary assessment; or

                    (c) an assessment hearing.

(2) The date fixed must be at least 21 days after the notice disputing the itemised costs account is filed.

**344. Notification of hearing**

A party filing a notice disputing an 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 343.

**345. Settlement conference**

At a settlement conference for an itemised costs account, the registrar —

(a) must —

(i) give the parties an opportunity to agree about the amount for which a costs assessment order should be made; or

(ii) identify the issues in dispute;

and

(b) must make procedural orders for the future conduct of the assessment process.

**346. Preliminary assessment**

(1) At a preliminary assessment of an itemised costs account, the registrar must, in the absence of the parties, calculate the amount (the *preliminary assessment amount*) for which, if the costs were to be assessed, the costs assessment order would be likely to be made.

(2) The registrar must give each party written notice of the preliminary assessment amount.

**347. Objection to preliminary assessment amount**

(1) A party may, within 21 days after receiving written notice of the preliminary assessment amount, object to the preliminary assessment amount by —

(a) giving written notice of the objection to the registrar and the other party; and

(b) paying into court a sum equal to 5% of the total amount claimed in the itemised costs account as security for the cost of any assessment of the account.

(2) On receiving a notice and security, the registrar must fix a date for an assessment hearing for the itemised costs account.

(3) The party objecting may be ordered to pay the other party's costs of the assessment from the date of giving notice under subrule (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.

**348. If no objection to preliminary assessment**

(1) The registrar may make a costs assessment order for the amount of the preliminary assessment amount if —

(a) the registrar does not receive a notice of objection under rule 347(1)(a); and

(b) an amount as security for costs is not paid under rule 347(1)(b).

(2) A costs assessment order made under this rule has the force and effect of an order of the court.

**349. Assessment hearing**

(1) The registrar conducting an assessment hearing for a disputed itemised costs account must —

- \_\_\_\_\_ (a) determine the amount (if any) to be deducted from each item included in the notice disputing the itemised costs account; and
- \_\_\_\_\_ (b) determine the total amount payable for the costs of the assessment (if any); 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 the itemised costs account.
  
- \_\_\_\_\_ (3) At the end of the assessment hearing, the registrar must —
  - \_\_\_\_\_ (a) make a costs assessment order; and
  - \_\_\_\_\_ (b) give a copy of the order to each party.
  
- \_\_\_\_\_ (4) Within 14 days after the costs assessment order is made, a party may ask the registrar to give reasons for the registrar's decision about a disputed item.
  
- \_\_\_\_\_ (5) A costs assessment order made under this rule has the force and effect of an order of the court.

**350. Powers of registrar**

- \_\_\_\_\_ (1) A registrar may do any of the following at an assessment hearing —
  - \_\_\_\_\_ (a) summon a witness to attend;
  - \_\_\_\_\_ (b) examine a witness;
  - \_\_\_\_\_ (c) require a person to file an affidavit;
  - \_\_\_\_\_ (d) administer an oath;

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- (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 Part, 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 —
    - (i) reasonably incurred; and
    - (ii) of a reasonable amount; and
    - (iii) 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.
- (2) On being satisfied that the time for reviewing a costs assessment order has passed, the registrar must —
- (a) determine how any amount paid as security for the costs of assessment is to be distributed or refunded; and
  - (b) order that the payment be made out of court.

**351. Assessment principles**

- (1) A registrar must not allow costs that, in the opinion of the registrar —



- (a) are not reasonably necessary for the attainment of justice; and
  - (b) are not proportionate to the issues in the case.
- (2) If the court has ordered costs on an indemnity basis, the registrar must allow all costs reasonably incurred and of a reasonable amount, having regard to, among other things —
- (a) the scale of costs in Schedule 2; 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) When assessing costs as between party and party, a registrar must not allow —
- (a) costs incurred because of improper, unnecessary or unreasonable conduct by a party or a party's lawyer; or
  - (b) costs for work (in type or amount) that was not reasonably required to be done for the case; or
  - (c) unusual expenses.

**352. Allowance for matters not specified**

- (1) A registrar may allow a reasonable sum for work properly performed that is not specifically provided for in Schedule 2.
- (2) When considering whether to allow an amount for costs or an expense, the registrar may consider —
  - (a) any other fees paid or payable to the lawyer and counsel for work to which a fee or allowance applies; and
  - (b) the complexity of the case; and
  - (c) the amount or value of the property or financial resource involved; and
  - (d) the nature and importance of the case to the party concerned; and

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- (e) the difficulty or novelty of the matters raised in the case; and
- (f) the special skill, knowledge or responsibility required, or the demands made, of the lawyer by the case; and
- (g) the conduct of all the parties and the time spent on the case; and
- (h) the place where, and the circumstances in which, work or any part of it was done; and
- (i) the quality of work done and whether the level of expertise was appropriate to the nature of the work; and
- (j) the time in which the work was required to be done.

**353. Neglect or delay before registrar**

- (1) This rule applies if, after a notice disputing the itemised costs account has been filed under rule 341(3), a party or a party's lawyer —
  - (a) fails to comply with these rules or an order; or
  - (b) puts another party to unnecessary or improper expense or inconvenience.
- (2) The registrar may —
  - (a) order the party to pay costs; or
  - (b) disallow all or part of the costs in the account.

**354. 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 338; and
  - (b) has not received a notice disputing the itemised costs account under rule 340.
- (2) A registrar may make a costs assessment order if the person has filed —
  - (a) a copy of the itemised costs account; and

(b) an affidavit stating —

(i) when the itemised costs account was served on the person liable to pay the costs; 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 the itemised costs account under rule 340; and

(iv) that the time for serving a notice disputing the 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 made under this rule has the force and effect of an order of the court.

### **355. Setting aside costs assessment order**

(1) This rule applies to a party who is liable to pay costs and receives a costs assessment order under rule 348(1) or 354(3).

(2) The party may, within 14 days after receiving the costs assessment order, apply to have it set aside.

## **Division 7 — Specific costs matters**

### **356. Costs in Magistrates Court**

(1) A party cannot recover from another party costs, for work done by a lawyer in the Magistrates Court, that are more than 80% of the amount specified in Schedule 2 that may be charged for the work.

(2) Subrule (1) does not apply to work done by a lawyer in the Magistrates Court constituted by a family law magistrate.

**357. Charge for each page**

(1) A lawyer may charge the amount specified in Schedule 2 for a document only if it complies with the requirements for documents specified in rule 483(1) or (2).

(2) For the purposes of Schedule 2 Division 1, 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 Principal Registrar.

**358. Proportion of costs**

If the scale in Schedule 2 Division 1 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.

**359. Costs for reading**

If it is reasonable for a lawyer to read more than 50 pages for a case, the amount to be charged under Schedule 2 Division 1 Subdivision 2 item 4 is at the discretion of the registrar.

**360. Postage within Australia**

The charge specified in Schedule 2 for producing a document (including a letter) includes an allowance for —

(a) preparing 1 file copy of the document; and

(b) postage of the document in Australia.

**361. Waiting and travelling time**

(1) Subrule (2) applies if —

(a) a lawyer has travelled less than 100 km from the lawyer's place of business to attend court; and

(b) it is not appropriate or proper for an agent to attend court instead of the lawyer.

(2) The lawyer may charge an amount for time reasonably spent attending a court event if the lawyer was —

(a) at court waiting for the court event to start or resume after the time allocated; or

(b) travelling to or from court.

(3) A lawyer who attends court for the hearing of 2 or more cases may charge, for each case, an amount that is reasonable, having regard to the time spent at each hearing —

(a) travelling to or from court; or

(b) waiting for each hearing to start or resume.

(4) The total amount that may be charged under this rule for all cases must not be more than the amount that may be charged under Schedule 2 Division 1 for one case.

**362. Agent's fees**

The costs claimed by a lawyer for work done by another lawyer as agent of the lawyer must not be more than the amount the lawyer would have been entitled to charge under Schedule 2 if the lawyer had personally done the work.

**363. Costs of cases not started together**

(1) This rule applies if —

(a) a lawyer starts a case for a client that could reasonably have been started at the same time, and in the same court, as another case between the same parties; and

(b) the case was not started at that time in that court.

(2) The lawyer may charge for work done for all the cases only the amount the lawyer could have charged if the lawyer had started all the cases at the same time in the same court.

**364. Certificate as to counsel**

The judicial officer hearing a case may certify that it was reasonable to engage a lawyer (including Queen's Counsel and Senior Counsel) as counsel to attend for a party.

**365. Lawyer as counsel: party and party costs**

(1) This rule applies to party and party costs for fees paid or to be paid to a lawyer engaged as counsel.

(2) The fees are a necessary expense for a case if —

(a) either —

(i) the case was heard by the Court in its appellate jurisdiction; or

(ii) in any other case, it was reasonable to engage counsel to attend in the case;

and

(b) for a hearing or trial, counsel —

(i) was present for a considerable part of the hearing or trial; and

(ii) gave substantial assistance during the period to which the fees relate in the conduct of the case;

and

(c) the fees are not more than the amount otherwise payable under these rules for counsel engaged to attend in a case.

**366. Lawyer as counsel: assessment of fees**

(1) This rule applies to party and party costs for fees paid or to be paid to a lawyer engaged as counsel.

(2) The registrar may allow the costs of engaging more than 1 counsel, including counsel who is not a Queen's Counsel or Senior Counsel.

(3) The registrar may allow a fee in accordance with Schedule 2 Division 1 for each further day or part of a day if —

- (a) counsel is engaged to attend at a trial; and
- (b) the trial takes more than 1 day.

(4) The registrar must not allow —

- (a) a fee paid to counsel as a retainer; or
- (b) a reading fee, unless —
  - (i) the case is unusually complex; or
  - (ii) the amount of material involved is particularly large;

or

- (c) for a case before a court of summary jurisdiction, an amount for counsel's fees, other than in accordance with Schedule 2 Division 1 Subdivision 3 item 3 or 4; or
- (d) if a daily fee for counsel's attendance is payable in accordance with Schedule 2 Division 1 Subdivision 3, an additional amount for work done for the case by counsel on any day for which the daily fee applies.

### **Division 8 — Review of assessment**

#### **367. Timing for filing application for review**

(1) A party may apply to the Court to review the decision of a registrar under rule 349 by filing an application in a case.

(2) A party must include in the affidavit filed with the application —

- (a) the number of each item in the itemised costs account to which the party objects to the registrar's decision; and
- (b) the reasons for objecting to the decision; and
- (c) the decision sought from the Court for each objection.

**368. Timing for filing application for review**

An application for review must be filed within 14 days after the applicant receives the registrar's reasons given after a request made under rule 349(4).

**369. 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 registrar; and

(ii) set aside or vary the registrar's decision; and

(iii) return any item to the registrar for reconsideration;

and

(c) a party may raise an issue only if it —

(i) was identified as a disputed item in the notice disputing the itemised costs account; or

(ii) concerns the costs of assessing the itemised costs account; or

(iii) concerns an alleged error of calculation in, or omission from, the assessment of the itemised costs account; or

(iv) concerns an alleged error of law or fact by the registrar, and the party has made a request under rule 349(4).

(3) A hearing of an application for review does not operate as a stay of the decision reviewed.



## Part 20 — Enforcement of financial orders and obligations

### Division 1 — General

#### 370. Enforceable obligations

(1) The following obligations may be enforced under this Part —

(a) an obligation to pay money;

(b) an obligation under the Act section 221 or the Family Law Act section 106A to execute a deed or instrument;

(c) an order entitling a person to the possession of real property;

(d) an order entitling a person to the transfer or delivery of personal property.

(2) For the purposes of subrule (1)(a), an obligation to pay money includes —

(a) a provision requiring a payer to pay money under —

(i) an order made under the Act, the Family Law Act or a Child Support Act; or

(ii) a registered parenting plan; or

(iii) a registered award made in arbitration; or

(iv) a maintenance agreement; or

(v) an approved maintenance agreement; or

(vi) a financial agreement or termination agreement; or

(vii) an agreement varying or revoking an original agreement dealing with the maintenance of a child; or

(viii) an overseas maintenance order or agreement that, under the regulations, is enforceable in Australia;

and

- (b) a liability to pay arrears accrued under an order or agreement; and
  - (c) a debt due to the Commonwealth under the Child Support (Registration and Collection) Act; and
  - (d) a child support liability; and
  - (e) a fine or the forfeiture of a bond; and
  - (f) costs, including the costs of enforcement.
- (3) For the purposes of subrule (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.
- (4) This Part applies to an agreement specified in subrule (2)(a) as if it were an order of the court in which it is registered or taken to be registered.

**371. When agreement may be enforced**

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

- (a) for an agreement approved under the Family Law Act section 87 — under the Family Law Act section 87(11)(c); or
- (b) for a financial agreement under the Act Part 5A Division 3 — under the Act section 205ZW(c); or
- (c) for a financial agreement under the Family Law Act Part VIIIA — under the Family Law Act section 90KA(c).

**372. When child support liability may be enforced**

- (1) This rule applies to a person seeking to enforce payment of a child support liability that is not an order and is not taken to be an order.

- (2) Before an enforcement order is made, the person must first obtain an order for payment of the amount owed by filing —
- (a) an application in a case and an affidavit setting out the facts relied on in support of the application; and
  - (b) if the payee is the Child Support Agency or is seeking to recover a liability under the Child Support (Registration and Collection) Act section 113A, a certificate under section 116 of that Act.
- (3) A payee who seeks to recover a child support liability in the payee's own name under the Child Support (Registration and Collection) Act section 113A 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.

**373. Who may enforce obligation**

The following persons may enforce an obligation —

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

**374. Enforcing obligation to pay money**

An obligation to pay money may be enforced by 1 or more of the following enforcement orders —

- (a) an order for seizure and sale of real or personal property, including under an enforcement warrant;
- (b) an order for the attachment of earnings and debts, including under a third party debt notice;
- (c) an order for sequestration of property;
- (d) an order appointing a receiver (or a receiver and manager).

**375. 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 —
  - (i) the name and address of the payee; and
  - (ii) the name and address of the payer; and
  - (iii) that the payee is entitled to proceed to enforce the obligation; and
  - (iv) that the payer is aware of the obligation and is liable to satisfy it; and
  - (v) that any condition has been fulfilled; and
  - (vi) details of any dispute about the amount of money owed; and

(vii) the total amount of money currently owed and any details showing how the amount is calculated, including —

(I) interest (if any); and

(II) the date and amount of any payments already made;

and

(viii) what other legal action has been taken in an effort to enforce the obligation; and

(ix) details of any other current applications to enforce the obligation; and

(x) the amount claimed for costs, including costs of any proposed enforcement;

and

(d) be sworn no more than 2 days before it is filed.

**376. General enforcement powers of court**

A court may make an order —

(a) declaring the total amount owing under an obligation; or

(b) that the total amount owing must be paid in full or by instalments and when the amount must be paid; or

(c) for enforcement; or

(d) in aid of the enforcement of an obligation; or

(e) to prevent the dissipation or wasting of property; or

(f) for costs; or

(g) staying the enforcement of an obligation (including an enforcement order); or

(h) requiring the payer to attend an enforcement hearing; or

(i) requiring a party to give further information or evidence;  
or

- \_\_\_\_\_ (j) that a payer must file a financial statement; or
- \_\_\_\_\_ (k) that a payer must produce documents for inspection by the court; or
- \_\_\_\_\_ (l) dismissing an application; or
- \_\_\_\_\_ (m) varying, suspending or discharging an enforcement order.

**377. 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 subrule (1)(d), a statement about the total amount to be paid must include —
  - \_\_\_\_\_ (a) the amount owing under the obligation to pay money; and
  - \_\_\_\_\_ (b) the amount of interest owing (if any); and
  - \_\_\_\_\_ (c) any costs of enforcing the order.

**378. 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.
- \_\_\_\_\_ (2) An application under subrule (1) does not stay the operation of the enforcement order.

## Division 2 — Information for aiding enforcement

### Subdivision 1 — Processes for aiding enforcement

#### 379. Processes for obtaining financial information

- (1) Before applying for an enforcement order, a payee may —
- (a) give a payer a written notice requiring the payer to complete and serve a financial statement within 14 days after receiving the notice; or
  - (b) by filing an application in a case and an affidavit that complies with rule 375, 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 officer may hear an application under subrule (1), in chambers, in the absence of the parties, on the documents filed.

### Subdivision 2 — Enforcement hearings

#### 380. Enforcement hearing

- (1) A payee may, by filing an application in a case and an affidavit that complies with rule 375, require the following persons to attend an enforcement hearing —
- (a) the payer; or
  - (b) if the payer is a corporation, an officer of the corporation.
- (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 specified in subrule (1) —
- (a) a list of the documents required; and

(b) a written notice requiring that the documents be produced.

(3) A payee must serve, by special service on a payer at least 14 days before an enforcement hearing —

(a) the documents mentioned in subrules (1) and (2); and

(b) a brochure approved by the executive manager of the Court appointed under the Act section 25(1)(c), giving information about enforcement hearings and the consequences of failing to comply with an obligation.

**381. Obligations of payer**

(1) A payer served with the documents mentioned in rule 380 must —

(a) attend the enforcement hearing —

(i) to answer questions; and

(ii) to produce any documents required;

and

(b) at least 7 days before the enforcement hearing, serve on the payee a financial statement setting out the payer's financial circumstances.

(2) Before the day of the enforcement hearing, the payer may produce any documents required to the payee at a mutually convenient time and place.

**382. Subpoena of witness**

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

**383. Failure concerning financial statement or enforcement hearing**

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

(a) comply with a notice under rule 379(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; or

(c) if the person is served with an enforcement hearing application —

(i) comply with rule 381(1)(a)(ii) and (b); and

(ii) attend the enforcement hearing in accordance with the application or an order;

or

(d) on attending an enforcement hearing in accordance with an enforcement hearing application or order, answer a question put to the person to the court's satisfaction.

Penalty for this subrule: a fine of \$5 500.

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

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

### Division 3 — Enforcement warrants

#### Subdivision 1 — General

#### 384. Term used: affected person

In this Division —

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

#### 385. Request for enforcement warrant

(1) A payee may, without notice to the payer, ask a 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 375; and

(b) include the following details of the property owned by the payer —

(i) for any real property —

(I) evidence that the payer is the registered owner; and

(II) details of registered encumbrances and of any other person with an interest in the property;

(ii) for any personal property —

(I) the location of the property; and

(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.

(3) If an enforcement warrant is issued, the payee must give the enforcement officer —

(a) the warrant; and

(b) either or both of the following —

(i) a written undertaking to pay all reasonable fees and expenses associated with the enforcement if they are greater than the amount recovered on the enforcement;

(ii) the amount (if any) required by the enforcement officer to be paid on account for the reasonable fees and expenses of the enforcement.

**386. Duration of enforcement warrant**

An enforcement warrant remains in force for 12 months from the date on which it was issued.

**387. Enforcement officer's responsibilities**

(1) An enforcement officer must —

(a) seize or sell property of the respondent in the sequence that the enforcement officer considers is best for —

(i) promptly enforcing the warrant; and

(ii) avoiding undue expense or delay; and

(iii) minimising hardship to the payer and any other person affected;

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 390; 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.

(2) The enforcement officer may —

(a) postpone the sale of the property; and

- (b) refuse to proceed with the sale of the property; and
  - (c) seek further information or documents from a payee; and
  - (d) defer enforcement until a fee or expense is paid or an undertaking to pay the fee or expense is given; and
  - (e) require the payee to indemnify the enforcement officer against any claims arising from the enforcement; and
  - (f) sign any documents relating to the transfer of ownership of the property, and any other documents necessary to give title of the property to the purchaser of the property; and
  - (g) recover reasonable fees and expenses associated with the enforcement.
- (3) For the purposes of subrule (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.

**388. 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 483(1) or (2); and
  - (b) set out the procedural orders sought and the reason for the orders; and
  - (c) have attached to it a copy of the order appointing the enforcement officer.
- (3) The enforcement officer must give a copy of the request to all parties.

(4) The court may determine the request in chambers unless —

- (a) within 7 days of the request being served on a party, the party makes a written objection to the request being determined in chambers; or
- (b) the court decides that an oral hearing is necessary.

**389. Effect of enforcement warrant**

(1) In this rule —

*total amount owed*, in relation to an enforcement warrant, includes the enforcement officer's fees and expenses incurred in enforcing the warrant.

(2) 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.

(3) 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.

**390. Advertising before sale**

(1) Before selling property seized under an enforcement warrant, an enforcement officer must advertise a notice of the sale —

- (a) at least once before the sale; and
- (b) stating —
  - (i) the time and place of the sale; and

- (ii) the details of the property to be sold;

and

(c) in a newspaper circulating in the town or district in which the sale is to take place.
- (2) Subrule (1) does not apply if the property seized is perishable.
- (3) For a sale of real property, the notice of sale must include the following details —

  - (a) a concise description of the real property, including its location, that would enable an interested person to identify it;
  - (b) a general statement about any improvements of the real property;
  - (c) a statement of the payer’s last known address;
  - (d) a statement of the payer’s interest, and any entries in the land titles register, that affect or may affect the real property as at the date of the advertisement;
  - (e) a statement about where a copy of the contract for sale of the property can be obtained.
- (4) A copy of the advertisement must be served on the payer at least 14 days before the intended date of sale.

**391. 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 rule 394(1)(b)(vi); and

(b) the amount of the highest bid received for the property at any auction of the property.

**392. Conditions of sale of property**

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

(2) The enforcement officer must specify as a condition of the sale of the property that the buyer —

(a) must pay —

(i) a deposit of at least 10% of the price fixed for the property when the buyer's offer for the property is accepted by the enforcement officer; and

(ii) the balance of that price within the period determined by the enforcement officer;

or

(b) must pay the whole of the price fixed for the property when the enforcement officer accepts the buyer's offer for the property.

(3) The period mentioned in subrule (2)(a)(ii) must —

(a) be determined before the property is offered for sale; and

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

**393. Result of sale of property under enforcement warrant**

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

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

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

(b) the balance of any amount owed to the payee under the enforcement warrant; and

(c) the remaining amount (if any) to the payer.

**394. 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 —

(I) the total amount owing is not paid; or

(II) arrangements considered satisfactory to the payee have not been made by a date specified in the notice;

and

(iii) the enforcement officer's name and address;

and

(b) provide the enforcement officer with evidence of the following —

(i) proof of compliance with paragraph (a);

(ii) that the warrant has been registered on the land titles register;

(iii) details of the real property proposed to be sold including the address and description of the land title of the property;



- (iv) details of all encumbrances registered against the real property on the date of registration of the enforcement warrant;
  - (v) the costs incurred to register the enforcement warrant;
  - (vi) the current value of the real property, as stated in a real estate agent's market appraisal.
- (2) The payee is liable to pay to the enforcement officer the reasonable fees and expenses of the enforcement.
- (3) The costs mentioned in subrule (1)(b)(v) and the fees and expenses mentioned in subrule (2) may —
- (a) be added to, and form part of, the costs of the enforcement warrant; and
  - (b) be recovered under the warrant.

**395. 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 to the court for an order —
- (a) that the real property be transferred or assigned to a trustee; or
  - (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 an order —
    - (i) about the possession or occupancy of the real property until its sale; and

- (ii) specifying the kind of sale, whether by contract conditional on approval of the court, private sale, tender or auction; and
  - (iii) setting a minimum price; and
  - (iv) requiring payment of the purchase price to a trustee; and
  - (v) settling the particulars and conditions of sale; and
  - (vi) for obtaining evidence of value; and
  - (vii) specifying the remuneration to be allowed to an auctioneer, estate agent, trustee or other person;
- or
- (d) about the disposition of the proceeds of the sale of the real property; or
  - (e) in relation to the reasonable fees and expenses of the enforcement.
- (3) The court may hear an application under subrule (2) in chambers, in the absence of the parties, on the documents filed.

**Subdivision 2 — Claims by person affected by enforcement warrant**

**396. Notice of claim**

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

(3) The enforcement officer must serve a copy of the notice of claim on the payee.

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

**397. Payee to admit or dispute claim**

A payee who is served with a notice of claim under rule 396(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.

**398. 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.

**399. 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 397.

(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.

**400. Hearing of application**

On the hearing of an application under rule 399, 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.

**Division 4 — Third party debt notice**

**401. Application of Division**

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.

**402. Money deposited in 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.

**403. Request for third party debt notice**

(1) A payee may, without notice to the payer or third party, ask a 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 375; and
- (b) include the following information —
  - (i) the name and address of the third party;
  - (ii) details of the debt to be attached to satisfy the obligation, including its nature and amount;
  - (iii) the information relied on to show that the debt is payable by the third party to the payer;
  - (iv) if it is sought to attach the payer's earnings —
    - (I) details of the payer's earnings; and
    - (II) details of the payer's living arrangements, including dependants; and
    - (III) the protected earnings rate; and
    - (IV) the amount sought to be deducted from the earnings each payday; and
    - (V) any information that should be included in the third party debt notice to enable the employer to identify the payer.

**404. 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 403; and

(b) a brochure approved by executive manager of the Court appointed under the Act section 25(1)(c) and setting out the effect of the third party debt notice and the third party debtor's obligations.

**405. General effect of third party debt notice**

(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.

**406. 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.

**407. Duration of third party debt notice**

A third party debt notice continues in force until —

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

(b) the notice is set aside.

**408. 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 to the court —

(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 mentioned in

subrule (1) — order the third party debtor to pay all or part of what was required under the notice or order.

**409. Discharge of third party debt notice**

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

**410. Claim by affected person**

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

**411. 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

(ii) the place of the payer’s employment by the new employer; and

(iii) the amount of the payer’s earnings from employment by the new employer.



(3) If the payer ceases to be employed by the employer, the employer must, within 21 days after the payer ceases to be so employed, give the court written notice of the date on which the payer's employment ceased.

(4) If the Registry Manager does not receive a written objection from the payee or the payer within 21 days after a notice under subrule (2) or (3) is given, a new third party debt notice naming the new employer as the third party debtor will be issued.

**412. Compliance with third party debt notice**

(1) A third party debtor commits an offence if the third party debtor —

(a) does not comply with a third party debt notice or an order varying, suspending or discharging a notice; or

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

Penalty for this subrule: a fine of \$5 500.

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

(3) A penalty imposed under subrule (1) does not affect —

(a) an obligation that the third party debtor may have in relation to the payer; or

(b) a right or remedy that the payer may have against the third party debtor under another legislative provision.

(4) If the court makes an order against a third party debtor under the Act or the Family Law Act in respect of an act or omission mentioned in subrule (1), the third party debtor must not be charged with an offence against subrule (1) in respect of that act or omission.

### Division 5 — Sequestration of property

#### 413. Application for sequestration of property

- (1) A payee may apply to the court for an enforcement order appointing a sequestrator of the property of a payer by filing an application in a case, setting out the details of the property to be sequestered, and an affidavit.
- (2) The affidavit must —
  - (a) comply with rule 375; 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.

#### 414. 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.

#### **415. Order relating to sequestration**

(1) This rule applies if any of the following people apply to the court for an order relating to a sequestration order —

(a) a party to the sequestration order;

(b) a creditor of the payer;

(c) the Marshal;

(d) a person whose interests are affected by an act or omission of, or decision made by, the sequestrator.

(2) The court may order —

(a) the sequestrator, or any other person associated with the sequestration, to attend to be orally examined; or

(b) the sequestrator to do or not do something; or

(c) the sequestrator to be removed from office.

#### **416. 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 483(1) or (2); and

(b) set out the procedural orders sought and the reason for the orders; and

(c) have attached to it a copy of the order appointing the sequestrator.

(3) The sequestrator must give a copy of the request to all parties.

(4) The court may determine the request in chambers unless —

(a) within 7 days of the request being served on a party, the party makes a written objection to the request being determined in chambers; or

(b) the court decides that an oral hearing is necessary.

### **Division 6 — Receivership**

#### **417. Application for appointment of receiver**

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

(2) The affidavit must —

(a) comply with rule 375; 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 the 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.

**418. Appointment and powers of receiver**

- (1) In considering an application under rule 417(1), the court must have regard to —
- (a) the amount of the debt; and
  - (b) the amount likely to be obtained by the receiver; and
  - (c) the probable costs of appointing and paying a receiver.
- (2) When appointing a receiver, the court must make orders about —
- (a) the receiver’s remuneration (if any); and
  - (b) the security to be given by the receiver; and
  - (c) the powers of the receiver; and
  - (d) the parties to whom, and the intervals or dates at which, the receiver is to submit accounts.
- (3) The court may authorise a receiver to do (in the receiver’s name or otherwise) anything the payer may do.
- (4) The receiver’s powers operate to the exclusion of a payer’s powers during the receivership.
- (5) The court may, on application by an interested person, make procedural orders about the powers of the receiver.

**419. Security**

- A receiver’s appointment by the court starts when —
- (a) the order appointing the receiver is made; and
  - (b) the receiver files any security ordered that is acceptable to the court for the performance of the receiver’s duties.

**420. 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.

**421. 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.

**422. 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.

**423. 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.

**Division 7 — Enforcement of obligations other than an obligation to pay money**

**424. Application for enforcement orders**

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

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

**425. 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.

**426. Warrant for delivery**

A person entitled under an order for the delivery of personal property specified in the order may apply to a court 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.

**427. Warrant for seizure and detention of property**

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

**Division 8 — Other provisions about enforcement**

**428. 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.

**429. Certificate for payments under maintenance order**

- (1) This rule applies if an order specifies that maintenance must be paid to a registrar of the 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 a 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.



**430. Enforcement by or against non-party**

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

**431. Powers of enforcement officer**

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

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

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**Part 21 — Enforcement of parenting orders,  
contravention of orders and contempt**

**Division 1 — Applications for enforcement of orders,  
contravention of orders and contempt of court**

**432. Application**

This Part applies to an application for an order —

- (a) to enforce a parenting order; or
- (b) under Part 5 Division 13 or Part 10 of the Act or the Family Law Act Part VII Division 13A or Part XIII A; or
- (c) that another person be punished for contempt of court.

**433. How to apply for order**

- (1) A person seeking to apply for an order specified in column 1 of an item in the Table must file an application form as specified in column 2 of that item.

**Table**

<b><u>Item</u></b>	<b><u>Column 1</u></b> <b><u>Kind of application</u></b>	<b><u>Column 2</u></b> <b><u>Application form to be filed</u></b>
<u>1.</u>	<u>Enforcement of parenting order</u>	<u>Application in a case</u>
<u>2.</u>	<u>Contravention of an order or other obligation affecting children</u>	<u>Application — contravention</u>
<u>3.</u>	<u>Contravention of an order or other obligation not affecting children</u>	<u>Application — contravention</u>

<u>Item</u>	<u>Column 1</u> <u>Kind of application</u>	<u>Column 2</u> <u>Application form to be filed</u>
4.	<u>An order that another person be punished for contempt of court</u>	<u>Application — contempt</u>
5.	<u>Failure to comply with a bond entered into in accordance with the Act or the Family Law Act</u>	<u>Application — contravention</u>

(2) A person filing an application specified in column 1 of the Table to subrule (1) must file with it an affidavit that —

- (a) states the facts necessary to enable the court to make the orders sought in the application; and
- (b) for an application mentioned in item 1, has attached to it a copy of any order, bond, agreement or undertaking that the court is asked to enforce or that is alleged to have been contravened.

(3) If the application is for an order specified in item 2 of the Table to subrule (1) and relates to a contravention of the Act section 156(2) or the Family Law Act section 67X(2), the affidavit must also state —

- (a) whether a court has previously found that the respondent contravened the primary order without reasonable excuse; and
- (b) the details of any finding made under paragraph (a), including —
  - (i) the date and place of the finding; and
  - (ii) the court that made the finding; and

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(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.

**434. Application made or continued by Marshal**

The court may direct the Marshal to make or continue an application under this Part.

**435. Contempt in court room**

(1) This rule applies if it appears to a court that a person is guilty of contempt in the court room.

(2) The court may —

(a) order the person to attend before the court; or

(b) issue a warrant for the person's arrest.

**436. Fixing hearing date**

On the filing of an application under rule 433(1), the Registry Manager must fix a date for a hearing or directions that is as near as practicable to 14 days after the date of filing.

**437. Response to application**

A respondent to an application specified in item 2, 3, 4 or 5 of the Table to rule 433(1) may file an affidavit but is not required to do so.

**438. Failure of respondent to attend**

If a respondent fails to attend the hearing in person or by a lawyer, the court may —

(a) determine the case; or

(b) for a respondent to an application specified in item 2, 3, 4 or 5 of the Table to rule 433(1) — issue a warrant for

the respondent's arrest to bring the respondent before the court; or

(c) adjourn the application.

**439. Procedure at hearing**

At the hearing of an application mentioned in item 2, 3, 4 or 5 of the Table to rule 433(1), the court must —

(a) hear any evidence supporting the allegation; and

(b) ask the respondent to state the response to the allegation; and

(c) hear any evidence for the respondent; and

(d) determine the case.

**Division 2 — Compliance with parenting orders**

**440. Duties of program provider**

(1) The provider of a post-separation parenting program required to inform the court of a matter pursuant to the Act section 205Q or the Family Law Act section 70NED must do so by notice in accordance with subrule (2).

(2) The notice must —

(a) be in writing and addressed to the Registry Manager of the filing registry; and

(b) comply with rule 483(1) or (2).

**441. Relisting for hearing**

If the Registry Manager receives a notice under rule 440(1), the Registry Manager may list the case for further orders.

**Division 3 — Location and recovery orders**

**442. Application of Division**

(1) This Division applies to the following orders —

(a) a location order;

(b) a State or Commonwealth information order;

(c) a recovery order.

(2) A person may apply for an order to which this Division applies by filing an application in a case.

**443. Fixing hearing date**

The Registry Manager must fix a date for a hearing that is within 14 days after the application was filed, if practicable.

**444. Service of recovery order**

(1) This rule applies to a person who is authorised by a recovery order to take action specified in the order.

(2) A person must serve the recovery order on the person from whom the child is recovered at the time the child is recovered if the person —

(a) is ordered to find and recover a child; and

(b) finds and recovers the child.

(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.

**445. Application for directions for execution of recovery order**

(1) The following people may, by written request to the court, seek procedural orders in relation to a recovery order —

(a) a party;

(b) a person who is ordered or authorised by a recovery order to take the action mentioned in the Act section 149(b), (c) or (d) or the Family Law Act section 67Q(b), (c) or (d).

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

(a) comply with rule 483(1) or (2); and

(b) set out the procedural orders sought; and

(c) be accompanied by an affidavit setting out the facts relied on and the reason for the orders.

(3) The court may determine the request in chambers.

#### **Division 4 — Warrants for arrest**

##### **446. 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 380; or

(ii) a subpoena or order directing the respondent to attend court; or

(iii) an application specified in item 2, 3, 4 or 5 of the Table to rule 433(1);

and

(b) the respondent does not attend at court on the date fixed for attendance.

(2) If a warrant is issued, it must have attached to it a copy of the application, subpoena or order mentioned in subrule (1)(a).

**447. Execution of warrant**

(1) A warrant may authorise the following persons to proceed to enforce the warrant —

(a) a member of the Australian Federal Police; or

(b) a member of the police service of a State or a Territory;  
or

(c) the Marshal; or

(d) any other person appointed by the court.

(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.

**448. Duration of warrant**

A warrant (except a warrant issued under the Act section 99(2) or the Family Law Act section 65Q(2)) ceases to be in force 12 months after the date when it is issued.

**449. Procedure after arrest**

(1) If a court issues a warrant for a person's arrest, the court may order that the person arrested —

(a) be held in custody until the hearing of the case; or

(b) be released from custody on compliance with a condition, including a condition that the person enter into a bond.

(2) A person who arrests another person under a warrant must —

(a) arrange for the person to be brought before the court that issued the warrant or another court having jurisdiction, before the end of the holding period; and



- (b) take all reasonable steps to ensure that, before the person is brought before a court, the person on whose application the warrant was issued is advised about —
- (i) the arrest; and
  - (ii) the court before which the person arrested will be brought; and
  - (iii) the date and time when the person arrested will be brought before the court.
- (3) When a person arrested under a warrant is brought before a court, the court may —
- (a) if the court issued the warrant —
    - (i) make any of the orders mentioned in subrule (1); or
    - (ii) adjourn the case and direct the Registry Manager to take all reasonable steps to ensure that the person on whose application the warrant was issued is advised about the arrest and the date and time when the person must attend before the court if the person wishes to bring or continue an application; 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 person's release from custody;
- and
- (b) if the court did not issue the warrant —
    - (i) order that the person be held in custody until the person is brought before the court specified in the warrant; and

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(ii) make any of the orders mentioned in subrule (1);  
and

(iii) make inquiries of the court that issued the  
warrant (for example, inquiries about current  
applications and hearing dates).

(4) A person arrested under this rule who is still in custody at the  
end of the holding period must be released from custody unless  
otherwise ordered.

(5) This rule does not apply to a person who is arrested —

(a) under a warrant issued under the Act section 99(2) or the  
Family Law Act section 65Q; or

(b) without a warrant, under a recovery order; or

(c) without a warrant, under the Act section 236 or the  
Family Law Act sections 68C and 114AA.

**450. Application for release or setting aside**

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.

## Part 22 — Appeals

### Division 1 — Preliminary

#### 451. Application of Part

- (1) This Part applies to an appeal to the Court from an order of the Magistrates Court.
- (2) This Part does not apply to —
  - (a) an appeal from an assessment or decision under a Child Support Act that was not made by a court; or
  - (b) a review of an order of a registrar to a judge of the Court; or
  - (c) an appeal to a Commonwealth court; or
  - (d) an appeal to the Court of Appeal.

### Division 2 — Starting appeal and procedural hearing

#### 452. Starting appeal

- (1) A person may start an appeal by filing a notice of appeal in the registry of the Court.
- (2) If an appeal cannot be started without the leave of the Court, leave must be sought in the notice of appeal.

#### 453. Time for appeal

A notice of appeal, including a notice of appeal in which leave to appeal is sought, must be filed within 28 days after the date the order appealed from was made.

#### 454. Parties to 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.

**455. Service**

A copy of a notice of appeal must be served on each person made a respondent under rule 454 within 14 days after it is filed.

**456. Cross-appeal**

A respondent to an appeal or an independent children's lawyer who intends to argue that an order under appeal should be varied or set aside must cross-appeal by filing a notice of appeal endorsed as a cross-appeal.

**457. Time for cross-appeal**

A notice of appeal for a cross-appeal must be filed within the later of —

- (a) 14 days after the notice of appeal for the appeal is served on the cross-appellant; or
- (b) 28 days after the date the order appealed from was made.

**458. 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 the procedural hearing under rule 462.
- (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.

**459. Notice of contention**

If a respondent to an appeal does not want to cross-appeal from any part of an order, but contends that the order should be affirmed on grounds other than those relied on by the Magistrates Court, the respondent must, within 14 days after the

notice of appeal was served on the respondent, file a notice of contention in the approved form.

**460. Stay**

- (1) The filing of a notice of appeal does not stay the operation or enforcement of the order appealed from, unless otherwise provided by a legislative provision.
- (2) If an appeal has been started, or a party has applied for leave to appeal against an order, any party may apply for an order staying the operation or enforcement of all, or part, of the order to which the appeal or application relates.
- (3) An application for a stay must be heard by the magistrate who made the order under appeal, or, if that magistrate is not available, another magistrate.

**461. Application for leave to appeal**

In considering an application for leave to appeal from an order, a judge or registrar may make procedural orders, including —

- (a) an order requiring the applicant to file a written undertaking to pay any filing fee; or
- (b) an order that the proposed appeal be argued at the same time as the application for leave to appeal; or
- (c) an order that the application be dealt with by the Court without an oral hearing and orders in relation to the conduct of the application, including the filing of written submissions.

**462. Procedural hearing**

- (1) On the filing of a notice of appeal the Registry Manager must fix a date for a procedural hearing before a judge, if practicable the judge who is to hear the appeal.

- (2) The date to be fixed under subrule (1) must be as soon as practicable after the 28<sup>th</sup> day after the date of the filing of the notice of appeal.

**463. Attendance at procedural hearing**

- (1) The appellant or the appellant's lawyer must attend on the first procedural hearing for the appellant's appeal.

- (2) Any of the following persons may also attend on the first procedural hearing —

- (a) a respondent in the appeal;
- (b) a lawyer for a respondent in the appeal;
- (c) an independent children's lawyer in the appeal.

**464. Procedural orders for conduct of appeal**

The procedural orders made by a judge at a procedural hearing may include orders about the following —

- (a) whether appeal books are required for the hearing of the appeal and, if so, the content of the appeal books;
- (b) if appeal books are not required, the arrangements for ensuring that the documents mentioned in rule 465(1) are before the Court at the hearing of the appeal;
- (c) a timetable for the party responsible to file and serve —
  - (i) the magistrate's reasons for judgment; and
  - (ii) the part or parts of the transcript of the hearing before the magistrate likely to be relevant to the appeal; and
  - (iii) a list of documents to be relied on; and
  - (iv) a summary of argument; and
  - (v) a list of authorities to be relied on;
- (d) a date for the hearing of the appeal.

**465. Documents for appeal hearing if appeal books not required**

(1) The documents that must be before the judge on the hearing of the appeal are the following —

- (a) the notice of appeal;
- (b) any notice of contention filed under rule 459;
- (c) any submitting notice filed under rule 145;
- (d) the order of the magistrate;
- (e) the magistrate's reasons for judgment;
- (f) any relevant previous or subsequent order;
- (g) the application relied on before the magistrate;
- (h) any response relied on before the magistrate;
- (i) relevant affidavits relied on before the magistrate;
- (j) any family report received in evidence;
- (k) relevant exhibits tendered before the magistrate;
- (l) the relevant part or parts of the transcript of the hearing before the magistrate; and
- (m) if the appeal involves a challenge to the exclusion of evidence, the document that is the subject of the challenge.

(2) The documents to be relied on in the appeal must not mention any offer to settle that has been made or the terms of the offer unless the terms of the offer are relevant to the appeal.

**Division 3 — Powers of the appeal judge and conduct of appeal**

**466. Non-attendance by party**

If a party does not attend, in person or by lawyer, when an appeal is called on for the hearing of the appeal, the Court may —

- (a) if the appellant does not attend — dismiss the appeal; or

(b) if the respondent does not attend — proceed with the appeal.

**467. Attendance by electronic communication**

(1) A party may request permission from the Court to attend the hearing of an appeal or an application for leave to appeal or an application in relation to an appeal or a procedural hearing by electronic communication.

(2) The request must —

(a) be in writing; and

(b) be made at least 14 days before the date fixed for the hearing; and

(c) 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 registrar or by the judge who is to conduct the 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 —

(i) any illness or disability; or

(ii) any safety concerns.

(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 of its own motion decides to hear an appeal, an application for leave to appeal or an application in relation to an appeal, or a procedural hearing, by electronic communication.

**468. Attendance of party in prison**

(1) A party who is in prison must attend a procedural hearing or the hearing of an appeal, an application in relation to an appeal or an application for leave to appeal, by electronic communication if practicable.

(2) A party who is in prison may seek permission from the Court to attend a procedural hearing or the hearing of an appeal, an application for leave to appeal or an application in relation to an appeal, in person.

(3) A request under subrule (2) must —

(a) be in writing; and

(b) be made at least 14 days before the date fixed for the 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.

**469. Subpoenas**

(1) A subpoena may be issued in an appeal only if leave to issue the subpoena has been given by the Court.

(2) A document produced in compliance with a subpoena issued in accordance with subrule (1) may be inspected only with the leave of the Court.

### **Division 4 — Applications in relation to appeals**

#### **470. Application in relation to appeal**

A party may make an application in relation to an appeal (other than an application for leave to appeal) by filing an application in a case together with an affidavit stating the facts relied on in support of the application.

#### **471. Hearing date for application**

On the filing of an application under rule 470, the Registry Manager must refer the application to a judge in chambers for directions as to the listing of the application.

### **Division 5 — Concluding appeal, application for leave to appeal or application in relation to appeal**

#### **472. Consent orders on appeal**

(1) If the parties to an appeal agree about the orders the Court will be asked to make on the appeal they may file a draft consent order, setting out the terms of their agreement.

(2) A judge may fix a date for hearing for the argument about costs, without requiring a procedural hearing to be held 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.

#### **473. Discontinuance of appeal or application**

(1) A party may discontinue an appeal, an application for leave to appeal or an application in relation to an appeal by filing a notice of discontinuance.

(2) The party may be ordered to pay the costs of all other parties.

(3) An application for costs must be filed within 28 days after the filing of the notice of discontinuance.

**474. Dismissal of appeal and application for non-compliance or delay**

(1) This rule applies if a party (the *defaulting party*) has not —

- (a) met a requirement under these rules; or
- (b) complied with an order in relation to the appeal (including an application for leave to appeal or application in relation to an appeal); or
- (c) shown reasonable diligence in proceeding with an appeal or application.

(2) The Court may —

- (a) if the defaulting party is the appellant or the applicant —
  - (i) dismiss the appeal or application; or
  - (ii) fix a time by which a requirement is to be met and order that the appeal or application will be dismissed if the order imposing the requirement is not complied with;

or

- (b) if the defaulting party is the respondent —
  - (i) fix a time by which a requirement is to be met and order that the appeal or application will proceed if the order imposing the requirement is not complied with; or
  - (ii) proceed to hear the appeal or application.

(3) The Court may make an order under subrule (2) on its own initiative if, at least 14 days before making the order, written notice has been given to the parties about the date and time when the Court will consider whether to make the order.

- (4) An application for costs in relation to an appeal or application dismissed under this rule must be made within 28 days after the dismissal.

### **Division 6 — Costs orders**

#### **475. 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 a case within 28 days after the Court makes an order disposing of an appeal or an application for leave to appeal.
- (3) A party applying for an order for costs on an indemnity basis must inform the Court if the party is bound by a costs agreement in relation to those costs and, if so, the terms of the costs agreement.
- (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.

## Part 23 — Registration of documents

### Division 1 — Registration of agreements, orders and child support debts

#### 476. Registration of agreements

- (1) This rule applies to an agreement that —
- (a) may be registered in a court having jurisdiction under the Act or the Family Law Act; and
  - (b) is not a parenting plan or an agreement revoking a parenting plan.
- (2) A party to an agreement mentioned in subrule (1) may register the agreement by filing an affidavit to which a copy of the agreement is attached.

#### 477. Registration of State child orders under Act or Family Law Act

- (1) In this rule —  
*State* includes a Territory.
- (2) For the purposes of section 204 of the Act, a State child order within the meaning of section 5(1) of the Act may be registered in a court having jurisdiction under the Act by filing a sealed copy of the order in the court's registry.
- (3) For the purposes of the Family Law Act section 70C, a State child order made under a law of a prescribed State may be registered in a court having jurisdiction under the Family Law Act Part VII by filing a sealed copy of the order in a registry of the court.
- (4) For the purposes of the Family Law Act section 70D, a State child order made by a court of a State may be registered in another State, in a court having jurisdiction under that Act, by

filing a sealed copy of the order in a registry of the court of the other State.

**478. Registration of de facto maintenance orders under Family Law Act**

For the purposes of the Family Law Act section 90SI(1), 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.

**479. Registration of debt due to Commonwealth under child support legislation**

A debt due to the Commonwealth under the Child Support (Registration and Collection) Act section 30 may be registered in a court by filing a certificate issued under section 116(2) of that Act.

**Division 2 — Parenting plans**

**480. Requirements for registration of agreement revoking registered parenting plan**

(1) This rule applies to an agreement to revoke a registered parenting plan (a *revocation agreement*).

(2) A revocation agreement must —

(a) be signed by each party to the parenting plan; and

(b) be a single document that complies with rule 483(1) or (2).

(3) A party may register a revocation agreement by filing —

(a) an affidavit, to which a copy of the revocation agreement is attached; and

(b) a written statement by each party to the revocation agreement —

(i) specifying that the party has been given independent legal advice about the meaning and effect of the agreement; and

(ii) counter-signed by the lawyer who gave the advice.

(4) The affidavit must state —

(a) the name, age and place of residence of each child to whom the revocation agreement relates; and

(b) why the parties propose to revoke the registered parenting plan.

**481. Court may require service or additional information**

Before deciding whether to register a revocation agreement, the court may —

(a) order that a copy of the affidavit filed under rule 480(3) be served on a specified person; or

(b) require a party to file additional information.

**482. Application may be dealt with in chambers**

An application for registration of a revocation agreement may be dealt with in chambers, in the absence of the parties and their lawyers (if any).

## Part 24 — Documents, filing, registry

### Division 1 — Requirements for documents

#### 483. General requirements

(1) A document in physical format for filing must —

(a) appear on 1 side only of white A4 paper; and

(b) be legibly printed —

(i) by machine; or

(ii) if it is not an affidavit, in ink, by hand;

and

(c) have left and right margins —

(i) sufficient to enable the page to be read when bound; and

(ii) no wider than 2.5 cm;

and

(d) have a font size of not less than 12 points and line spacing not exceeding 1.5 lines; and

(e) have each page consecutively numbered; and

(f) have all pages securely fastened; and

(g) for a document that is not approved or prescribed under these rules, have a coversheet, in a form approved by the Principal Registrar, that includes the following —

(i) on the right side of the page, a space that is at least 5 cm wide and 5 cm long, containing the following information —

(I) the full name of the court and registry where the document will be filed;

(II) the court file number;

(III) the client identification number;



- (IV) a blank space for the court's use only to insert the date of filing;
  - (ii) the name of the document and the rule number under which the document is filed;
  - (iii) the full name of each party to the case and of any independent children's lawyer appointed;
  - (iv) if not already provided, the full name, address for service, telephone number and email address (if any) of the person filing the document.
- (2) A document in electronic format for filing must generate an image that conforms to the requirements for a document in physical format set out in subrule (1).
- (3) Subrule (1) does not need to be strictly complied with if the nature of the document, or the manner of filing, means that strict compliance would be impracticable.
- (4) A document that is filed electronically has the same status as a document in paper form.
- (5) A document filed or served under these rules (except an affidavit) may be signed or given by —
- (a) a party; or
  - (b) the lawyer for the party.

**484. Corporation as party**

If a document (including an application for permission to intervene) names a corporation as a party, the document must include the corporation's full name, registered office and Australian Business Number.

**485. Change of name of party**

- (1) If a party's name is changed after the start of a case, the party must give written notice of the change of name to the court and each other party.

(2) The new name must be used in all documents later filed.

**486. Approved forms**

(1) The Chief Judge, in consultation with the other judges, may approve a form for the purposes of these rules.

(2) When approving a form under subrule (1) the Chief Judge —

(a) may specify that the form may be produced and used, or must be produced and used, in electronic format; and

(b) may specify conditions on which, or circumstances in which, the form may or must be so produced and used.

(3) A form approved under subrule (1) may be produced and used in physical format unless the Chief Judge specifies under subrule (2) that it must be produced and used in electronic format.

(4) Strict compliance with an approved form is not required; substantial compliance is sufficient.

**Division 2 — Filing documents**

**487. How document may be filed**

(1) A document must be filed by means of the ECMS unless —

(a) the ECMS has been declared unavailable for use by the Principal Registrar or by an officer to whom the Principal Registrar has delegated this function; or

(b) under these rules, Case Management Guidelines or practice directions, the document cannot be filed by means of the ECMS; or

(c) the document is filed by a person who is permitted by a registrar to file by other means; or

(d) the document is filed by a person who, under these rules, Case Management Guidelines or practice directions, is

exempt from the requirement to file by means of the ECMS.

(2) A document that is not required by subrule (1) to be filed by means of the ECMS may be filed by facsimile in accordance with rule 488 if —

(a) the matter is urgent; and

(b) the total number of pages, including the cover page, is not more than 25; and

(c) it is not practicable to file the document in the filing registry in any other way because —

(i) the filing party is unrepresented, and lives more than 20 km from the registry; or

(ii) the filing party is represented by a lawyer whose principal office is more than 20 km from the registry.

(3) A document that is not required by subrule (1) to be filed by means of the ECMS may be filed in any of the following ways —

(a) by being delivered to and received by the registry;

(b) by being posted to and received by the registry;

(c) by being sent to and received by the registry by email in accordance with rule 488;

(d) by being accepted for filing by a judicial officer in court during a court event.

(4) A person filing a document must —

(a) pay the filing fee (if any); or

(b) enter into an arrangement approved by the Principal Registrar for the payment of the filing fee.

(5) A document that is sent for filing by means of the ECMS, by facsimile or by email after 4 pm is taken to have been received

by the filing registry on the next day when the filing registry is open.

- (6) 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 2 days before the date fixed for that event.

**488. Filing document by facsimile or email**

- (1) To file a document by facsimile a person must send it to an approved facsimile number, accompanied by —

(a) a letter to the Registry Manager, setting out the facts relied on under rule 487(1) and (2) for filing the document by facsimile; and

(b) a cover page in accordance with rule 134.

- (2) To file a document by email, a person must —

(a) send the document —

(i) to an approved email address; and

(ii) in an approved electronic format; and

(iii) in a current case, to the filing registry;

and

(b) include a cover page in accordance with rule 134.

- (3) If a document (other than an acknowledgment of service) that is required to be signed, but not sworn, is filed by facsimile or email, it is taken to have been signed by the person who files it.

- (4) If a document that is required to be sworn is filed by facsimile or email, it is taken to have been sworn by the deponent if it bears the name of the deponent, the witness and the date and place of swearing.

**489. Originals of sworn documents filed by electronic means**

If a party or a party's lawyer files a sworn document by means of the ECMS, by facsimile or by email, the party or lawyer must —

- (a) keep the printed form of the document bearing the original signature until the end of the case or appeal; and
- (b) make the document available for inspection on request.

**490. Rejection of documents**

(1) A registrar or judicial officer may reject a document filed or received for filing if the document —

- (a) is not in the proper form in accordance with these rules; 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
- (e) on its face, appears to the judicial officer to be an abuse of process, frivolous, scandalous or vexatious; or
- (f) is tendered for filing in connection with a current case in a registry that is not the filing registry.

(2) If a judicial officer rejects a document filed or received for filing under subrule (1), the judicial officer may give directions about any step already taken on the document, including a direction about costs.

(3) A person may apply for review of a registrar's decision under subrule (1) or directions given by a judicial officer under subrule (2) by filing an application in a case without notice.

**491. Documents filed other than by means of ECMS**

(1) If a document is filed other than by means of the ECMS, the Registry Manager may —

(a) convert the document to an electronic format; and

(b) record it in the ECMS as if it had been filed electronically.

(2) If a document filed in physical format has been recorded in the ECMS under subrule (1)(b) —

(a) the original filed document must be retained in the registry for 180 days from the day on which it was filed (the *retention period*), unless collected under paragraph (b); and

(b) during the retention period the filing party may collect the original filed document from the registry; and

(c) if the original filed document has not been collected at the conclusion of the retention period, the Registry Manager may cause it to be destroyed without notice to the filing party.

**492. Filing notice of payment into court**

A person who pays money into court must file a notice of payment into court, stating the amount and purpose for which the money is paid into court.

**Division 3 — Registry records**

**493. 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.

**494. Searching court record and copying documents**

(1) In this rule —

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

(2) The following persons may search the court record relating to a case, and inspect and copy a document forming part of the court record —

(a) the Attorney General;

(b) the Attorney-General of the Commonwealth;

(c) a party, a lawyer for a party, or an independent children's lawyer, in the case;

(d) if the case affects, or may affect, the welfare of a child, a child welfare officer of a State or Territory;

(e) with the permission of the court, a person with a proper interest —

(i) in the case; or

(ii) in information obtainable from the court record in the case;

(f) with the permission of the court, a person researching the court record relating to the case.

(3) The parts of the court record that may be searched, inspected and copied are —

(a) court documents; and

(b) with the permission of the court, any other part of the court record.

(4) A permission —

(a) for the purposes of subrules (2)(e) and (f) and (3)(b), may include conditions, including a requirement for consent from a person, or a person in a class of persons, mentioned in the court record; and

(b) for the purposes of subrule (2)(f), 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;

(d) any limits or conditions that should be imposed on access to, or use of, the court record.

**495. 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 28 days, and no later than 42 days, after the final determination of the application or appeal (if any).

(5) Subrule (4) does not apply to a document produced by a person as required by a subpoena for production.



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**Part 25 — Applications under Corporations Act and  
Corporations (Aboriginal and Torres Strait  
Islander) Act**

**496. Term used: Corporations (Aboriginal and Torres Strait  
Islander) Act**

In this Part —

*Corporations (Aboriginal and Torres Strait Islander) Act*  
means the *Corporations (Aboriginal and Torres Strait Islander)  
Act 2006* (Commonwealth).

**497. Application**

This Part applies to a case started in, or transferred to, the Court  
under the Corporations Act or the Corporations (Aboriginal and  
Torres Strait Islander) Act.

**498. Application of Corporations Rules**

The Corporations Rules, as modified by rule 499 or an order,  
apply to an application under the Corporations Act or the  
Corporations (Aboriginal and Torres Strait Islander) Act in the  
Court as if those rules were provisions of these rules.

**499. Modification of Corporations Rules**

The Corporations Rules are modified to the extent necessary to  
give effect to rule 498.

**500. Application under Corporations Act or Corporations  
(Aboriginal and Torres Strait Islander) Act**

An application under the Corporations Act or the Corporations  
(Aboriginal and Torres Strait Islander) Act must not be  
dismissed only because it has been made in the wrong form.

**501. Transfer of cases under Corporations Act or Corporations  
(Aboriginal and Torres Strait Islander) Act**

The following persons must file an application in a case and an affidavit —

- (a) a person seeking to have a case under the Corporations Act or the Corporations (Aboriginal and Torres Strait Islander) Act transferred from the Court to another court;
- (b) a person seeking procedural orders under the Corporations Act section 1337P(1) or the Corporations (Aboriginal and Torres Strait Islander) Act.

**502. Fixing hearing date**

On the filing of an application in a case under rule 501, the Registry Manager must fix a date for hearing that is as near as practicable to 28 days after the date of filing or the date fixed for the hearing of the application starting the case, if possible.

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**Part 26 — Cases to which *Trans-Tasman Proceedings Act 2010* (Commonwealth) applies**

**503. Application of *Federal Court Rules 2011* (Commonwealth) Division 34.4**

The *Federal Court Rules 2011* (Commonwealth) Division 34.4, as modified by rule 504 or an order, applies to proceedings in the Court as if the rules in that Division were provisions of these rules.

**504. Modification of *Federal Court Rules 2011* (Commonwealth) Division 34.4**

The *Federal Court Rules 2011* (Commonwealth) Division 34.4 is modified to the extent necessary to give effect to rule 503.

## **Part 27 — Cases to which Bankruptcy Act applies**

### **Division 1 — Preliminary**

#### **505. Application of Part**

- (1) In a bankruptcy case, the rules in Part 1 apply to the case and override all other provisions in these rules.
- (2) To the extent to which a rule in this Part applies to a bankruptcy case, and does not conflict with a rule in Part 1, the rule in this Part applies to the case and overrides all other provisions in these rules.
- (3) Part 25 does not apply to a bankruptcy case.

### **Division 2 — General**

#### **506. Bankruptcy application and bankruptcy application in a case**

- (1) Unless this Part otherwise provides, a person must make an application required or permitted by the Bankruptcy Act to be made to the Court —
  - (a) if the application is not made in a bankruptcy case already commenced, by filing a bankruptcy application in the form *Bankruptcy — Application*; and
  - (b) otherwise, by filing a bankruptcy application in a case in the form *Bankruptcy — Application in a Case*.
- (2) A person may make an application to the Court in relation to a bankruptcy case in respect of which final relief has been granted by filing a bankruptcy application in a case in the form *Bankruptcy — Application in a Case*.
- (3) The form *Bankruptcy — Application* must state —
  - (a) each section of the Bankruptcy Act, or each regulation of the Bankruptcy Regulations, under which the case is brought; and

(b) the relief sought.

(4) The form *Bankruptcy — Application in a Case* must state —

(a) if appropriate, each section of the Bankruptcy Act, or each regulation of the Bankruptcy Regulations, or each rule of court under which the application is made; and

(b) the relief sought.

**507. Leave to be heard**

(1) The Court may grant leave to be heard in a bankruptcy case to a person who is not a party to the case.

(2) The Court may grant the leave on conditions and may revoke the leave at any time.

(3) The Court may order the person to pay costs if —

(a) the granting of leave to the person causes additional costs for a party to the case; and

(b) the Court considers that the costs should be paid by the person.

(4) The Court may also order that the person is not to be further heard in the case until the costs are paid or secured to the Court's satisfaction.

(5) The Court may grant leave or make an order under this rule on the Court's own initiative or on the application of a party or another person having an interest in the case.

(6) An application for leave or for an order must be made by filing the form *Bankruptcy — Application in a Case*.

**508. Appearance at application or examination**

A person who intends to appear at the hearing of an application, or take part in an examination, must file the form *Bankruptcy — Notice of Appearance*.

**509. Opposition to bankruptcy application or bankruptcy application in a case**

(1) In this rule —

*application* includes the forms —

(a) *Bankruptcy — Application*; and

(b) *Bankruptcy — Application in a Case*.

(2) A person who intends to oppose an application must, at least 3 days before the date fixed for the hearing of the application —

(a) file the form *Bankruptcy — Notice of Appearance*; and

(b) file the form *Bankruptcy — Notice stating grounds of opposition to an Application or Application in a Case*; and

(c) file an affidavit in support of the grounds of opposition; and

(d) serve the notices and supporting affidavit on the applicant.

**Division 3 — Examinations**

**510. Term used: relevant person**

In this Division —

*relevant person* means a relevant person within the meaning of the Bankruptcy Act section 81.

**511. Application for summons (Bankruptcy Act s. 81)**

(1) An application to the Court for a relevant person to be summoned for examination in relation to the person's bankruptcy must be in accordance with the form *Bankruptcy — Application for summons to examine relevant person or examinable person*.

(2) The application must be accompanied by —

(a) a draft of each summons applied for; and

(b) an affidavit identifying —

(i) each relevant person to be summoned; and

(ii) if the summons is to require the relevant person to produce books at the examination, the books that are to be produced.

**512. Hearing of application**

The application may be heard in the absence of a party or in chambers.

**513. Requirements of summons**

(1) A summons must be in accordance with the form *Bankruptcy — Summons for Examination*.

(2) A Registry Manager must —

(a) sign and seal the summons; and

(b) give it to the applicant for service on the relevant person.

(3) If the summons requires the relevant person to produce books at the examination, the summons must identify the books that are to be produced.

**514. Service of summons**

At least 8 days before the date fixed for the examination, the applicant must —

(a) serve the summons on the relevant person by special service, or in another way directed by the Court; and

(b) give written notice of the date, time and place fixed for the examination to each creditor of the relevant person of whom the applicant has knowledge.

**515. Failure to attend examination**

If the relevant person does not attend the examination in accordance with the summons, the Court may —

- (a) adjourn the examination generally or to another day, time or place; or
- (b) discharge the summons.

**516. Application for discharge of summons**

(1) A relevant person who is served with a summons and wishes to apply for an order to discharge the summons may do so by filing —

- (a) the form *Bankruptcy — Application in a Case* in the proceeding in which the summons was issued; and
- (b) an affidavit setting out the grounds in support of the application.

(2) As soon as possible after filing the form *Bankruptcy — Application in a Case* and supporting affidavit, the relevant person must serve a copy of each document —

- (a) on the person who applied for the summons; and
- (b) if the person who applied for the summons is not the Official Receiver, on the Official Receiver.



## Part 28 — Arbitration

### Division 1 — Disclosure relating to arbitration

#### 517. General duty of disclosure

(1) In this rule —

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

(2) Each party to an arbitration has a duty to the arbitrator and each other party to the arbitration to give full and frank disclosure of all information relevant to the arbitration in a timely manner.

(3) Without limiting subrule (2), a party to an arbitration must make full and frank disclosure of the party's financial circumstances, including —

(a) the party's earnings, including income that is paid or assigned to another party, person or legal entity; and

(b) any vested or contingent interest in property; and

(c) any vested or contingent interest in property owned by a legal entity that is fully or partially owned or controlled by a party; and

(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; and

(e) the party's other financial resources; and

(f) any trust —

(i) of which the party is the appointor or trustee; or

(ii) of which the party, or the party's child, spouse or de facto partner, 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 partner, 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
- \_\_\_\_\_ (vii) of which the party has the power to disapprove a proposed amendment of the terms or the appointment or removal of a trustee; or
- \_\_\_\_\_ (viii) over which a corporation has a power mentioned in any of subparagraphs (iv) to (vii), if the party, or the party's child, spouse or de facto partner, is a director or shareholder of the corporation;
- \_\_\_\_\_ and
- \_\_\_\_\_ (g) any disposal of property (whether by sale, transfer, assignment or gift) made by the party, a legal entity mentioned in paragraph (c), a corporation, or a trust mentioned in paragraph (f), that may affect, defeat or deplete a claim —
  - \_\_\_\_\_ (i) in the 12 months immediately before the separation of the parties; or
  - \_\_\_\_\_ (ii) since the final separation of the parties;
- \_\_\_\_\_ and
- \_\_\_\_\_ (h) liabilities and contingent liabilities.
- \_\_\_\_\_ (4) Subrule (3)(g) does not apply to a disposal of property made with the consent or knowledge of the other party or in the ordinary course of business.

**518. Duty of disclosure — documents**

(1) The duty of disclosure under rule 517(2) of a party to an arbitration applies to each document that —

- (a) is or has been in the possession, or under the control, of the party; and
- (b) is relevant to an issue in dispute between the parties to the arbitration.

(2) This Division does not affect —

- (a) the right of a party to an arbitration to inspect a document, if the party has a common interest in the document with the party who has possession or control of the document; or
- (b) another right of access to a document other than under this Division; or
- (c) an agreement between parties to an arbitration for disclosure by a procedure that is not described in this Division.

**519. Use of documents**

A person who inspects copies of a document produced under this Part in relation to an arbitration —

- (a) must use the document for the purposes of the arbitration only; and
- (b) must not otherwise disclose the contents of the document, or give a copy of it, to any other person without the court's permission.

**520. Party may require production of documents**

(1) A party to an arbitration may, by written notice, require another party to the arbitration to provide a copy of, or produce for inspection, a document referred to —

(a) in a document provided by a party to the arbitration to another party to the arbitration; or

(b) in correspondence prepared and sent by or to another party to the arbitration.

(2) Subject to rule 524, a party required to provide a copy of a document must provide the copy within 14 days after receiving the written notice.

**521. Document that need not be produced**

(1) A party to an arbitration must disclose, but need not produce —

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

(b) a document a copy of which has already been provided, if the copy contains no change, obliteration or other mark or feature that may affect the outcome of the arbitration.

(2) Subrule (1) has effect despite rules 520, 523 and 524.

**522. Objection to production**

(1) This rule applies if —

(a) a party to an arbitration (the *disclosing party*) claims —

(i) privilege from production of a document under this Division; or

(ii) that the disclosing party is unable to produce a document required to be produced under this Division;

and

- (b) another party to the arbitration, by written notice to the disclosing party, challenges the claim.
- (2) The disclosing party must, within 7 days after receiving the notice, give a statement setting out the basis of the claim to —

  - (a) the other party; and
  - (b) the arbitrator.
- (3) If a statement is given to the arbitrator under subrule (2) in relation to a claim and the arbitrator considers that determining the claim would not involve determining a question of law, the arbitrator must determine the claim or terminate the arbitration.
- (4) If a statement is given to the arbitrator under subrule (2) in relation to a claim and the arbitrator considers that determining the claim would involve determining a question of law, the arbitrator must notify the parties.
- (5) If, under subrule (3), the arbitrator terminates an arbitration under the Family Law Act section 13E, the arbitrator must, within 7 days, inform the court.

**523. Disclosure by giving a list of documents**

- (1) This rule applies if —

  - (a) the parties to an arbitration have made an agreement in relation to the arbitration; or
  - (b) the parties to an arbitration have been given a notice under the *Family Law Regulations 1984* (Commonwealth) regulation 67G.
- (2) A party to the arbitration (the *requiring party*) may, by written notice, require another party to the arbitration (the *disclosing party*) to give the requiring party a list of documents to which the duty of disclosure under rule 517(2) applies.
- (3) The disclosing party must, within 21 days after receiving the notice, give the requiring party a list of documents to which the duty of disclosure under rule 517(2) applies.

(4) The list must identify —

(a) the documents no longer in the disclosing party's possession or control to which the duty would otherwise apply (with a brief statement about the circumstances in which the documents left the party's possession or ceased to be under the party's control); and

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

(5) The requiring party may, by written notice, require the disclosing party to do either of the following in relation to a document included in a list given under subrule (3) —

(a) produce the document for inspection;

(b) provide a copy of the document.

(6) If the disclosing party receives a notice under subrule (5)(b) in relation to a document, the disclosing party must, within 14 days after receiving the notice, give the requiring party a copy of the document requested at the requiring party's expense.

(7) Subrule (6) has effect subject to subrule (8) and rule 524.

(8) Subrule (6) does not apply to a document —

(a) in relation to which privilege from production is claimed; or

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

(9) Subrule (10) applies if —

(a) a disclosing party gives the requiring party a list in accordance with subrule (3); and

(b) after doing so, a document identified in the list in accordance with subrule (4)(a) is located by, or comes into the possession or under the control of, the disclosing party.

(10) If this subrule applies, the disclosing party must, within 7 days, notify the requiring party of the fact referred to in subrule (9)(b).

**524. Disclosure by inspection of documents**

(1) This rule applies if a party to an arbitration (the *disclosing party*) receives a notice from another party to the arbitration (the *requiring party*) under rule 520(1) or 523(5)(a) requiring the disclosing party to produce a document for inspection.

(2) This rule also applies if —

(a) a party to an arbitration (the *disclosing party*) receives a notice from another party to the arbitration (the *requiring party*) under rule 520(1) or 523(5)(b) requiring the disclosing party to provide a copy of a document; and

(b) it is not convenient for the disclosing party to provide a copy of a document required by the notice because of the number and size of the documents specified in the notice.

(3) The disclosing party must, within 14 days after receiving the notice —

(a) notify the requiring party, in writing, of a convenient place and time at which the document may be inspected; and

(b) produce the document for inspection at that place and time; and

(c) allow copies of the document to be made, at the requiring party's expense.

(4) Unless the parties agree otherwise, the time notified under subrule (3)(a) must not be more than 21 days after the day on which the notice referred to in subrule (1) or (2) was given.

(5) If the requiring party fails to inspect the document at the time notified under subrule (3)(a), the requiring party is not entitled to inspect the document at a later time unless the requiring party tenders an amount to the disclosing party for the reasonable costs of providing another opportunity for inspection.

**525. Applications for orders relating to disclosure**

(1) A party to an arbitration may apply to a court for an order that the party be partly or fully relieved of the duty of disclosure under rule 517(2).

(2) Subrule (3) applies if —

(a) a party to an arbitration (the *requiring party*) gives another party to the arbitration (the *disclosing party*) a notice under rule 520(1) or 523(2) or (5); and

(b) the disclosing party fails to comply with the notice; and

(c) either —

(i) the disclosing party has not made a claim under rule 522 in relation to a document to which the notice relates; or

(ii) the disclosing party has made such a claim, and the arbitrator has determined the claim under rule 522(3) or has notified the parties under rule 522(4) in relation to the claim.

(3) If this subrule applies, the requiring party may apply for an order that the disclosing party —

(a) comply with a notice given by the requiring party to the disclosing party under rule 520(1) or 523(2) or (5); or

(b) disclose a document or class of documents to the requiring party by providing a copy of the document or documents or producing the document or documents for inspection; or



- (c) give the requiring party and the arbitrator a written statement —
- (i) that a specified document or class of documents does not exist or has never existed; or
- (ii) setting out the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of the disclosing party.
- (4) An arbitrator may apply for an order that —
- (a) a party to the arbitration comply with a notice given to the party under rule 520(1) or 523(2) or (5); or
- (b) a party to the arbitration comply with a determination by the arbitrator under rule 522(3); or
- (c) a party to the arbitration give the arbitrator and each other party to the arbitration a written statement —
- (i) that a specified document or class of documents does not exist or has never existed; or
- (ii) setting out the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of that party.
- (5) An application under this rule must be made by filing —
- (a) an application in accordance with the approved form; and
- (b) an affidavit stating the facts relied on in support of the application.
- (6) A person making an application under this rule must satisfy the court that the order is necessary to facilitate the effective conduct of the arbitration.

(7) In making an order under this rule, the court may consider the following —

(a) whether the disclosure sought is relevant to an issue in dispute between the parties to the arbitration;

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

(c) the likely time, cost and inconvenience involved in disclosing a document or class of documents, taking into account the amount of the property, or complexity of the corporate, trust or partnership interests (if any), involved in the arbitration;

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

(8) If a party to an arbitration objects to the production, in accordance with an order under this rule, of a document for inspection or copying, the court may inspect the document to decide the objection.

**526. Costs of compliance**

If the cost of complying with the duty of disclosure under rule 517(2) would be oppressive to a party to an arbitration, the court may order another party to the arbitration to —

(a) pay the costs; or

(b) contribute to the costs; or

(c) give security for costs.

**527. Electronic disclosure**

The court may make an order directing that documents be disclosed for the purposes of this Division by electronic means.

## Division 2 — Subpoenas

### Subdivision 1 — General

#### 528. Application of Division

This Division applies in relation to subpoenas issued, or to be issued, in relation to an arbitration.

#### 529. Terms used

(1) In this Division —

*interested person*, in relation to a subpoena, means a person who has a sufficient interest in the subpoena;

*issuing party* means the party for whom a subpoena is issued in accordance with this Division;

*named person* means a person required by a subpoena issued in accordance with this Division to give evidence or produce documents;

*subpoena for production* means a subpoena mentioned in rule 530(1)(b);

*subpoena for production and to give evidence* means a subpoena mentioned in rule 530(1)(c);

*subpoena to give evidence* means a subpoena mentioned in rule 530(1)(a).

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

#### 530. Issuing a subpoena

(1) The court may, on application, issue a subpoena requiring a person —

(a) to attend an arbitration to give evidence; or

(b) to produce documents to the court in relation to an arbitration; or

- (c) to produce documents to the court in relation to an arbitration and attend the arbitration to give evidence.
- (2) A subpoena mentioned in subrule (1) must be in the approved form.
- (3) An application under the *Family Law Regulations 1984* (Commonwealth) regulation 67N(2) by a party to an arbitration for the issue of a subpoena —

  - (a) may be made orally or in writing; and
  - (b) may be made without giving notice to any other party to the arbitration; and
  - (c) may be determined in chambers in the absence of the other parties to the arbitration.
- (4) A party to an arbitration must not request the issue of a subpoena for production and to give evidence if production would be sufficient in the circumstances.
- (5) A subpoena must identify the person to whom it is directed by name or description of office.
- (6) A subpoena may be directed to 2 or more persons if —

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

  - (a) must identify the document to be produced and the time and place for production; and
  - (b) may require the named person to produce the document before the day the arbitration is to start.
- (8) A subpoena to give evidence must specify the time and place at which the person must attend the arbitration to give evidence.

(9) A subpoena for production and to give evidence must —

- (a) identify the document to be produced; and
- (b) specify the time and place at which the person must attend the arbitration to produce the document and give evidence.

**531. Subpoena must not be issued in certain circumstances**

The court must not issue a subpoena —

- (a) on application by a self-represented party, unless the party has first obtained the court's permission to make the application; or
- (b) for production of a document in the custody of the court or another court.

**532. Amendment of subpoena**

A subpoena that has been issued, but not served, may be amended by the issuing party filing the amended subpoena with the amendments clearly marked.

**533. Service**

(1) The issuing party for a subpoena must serve the named person, in accordance with subrule (2), with —

- (a) the subpoena; and
- (b) a brochure, approved by the executive manager of the Court appointed under section 25(1)(c) of the Act, containing information about subpoenas.

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

- (a) in relation to a subpoena for production, either —
  - (i) by ordinary service; or



**534. Conduct money and witness fees**

- (1) A named person is entitled to be paid conduct money by the issuing party at the time of service of the subpoena, of an amount that is —
- (a) sufficient to meet the reasonable expenses of complying with the subpoena; and
  - (b) at least equal to the minimum amount mentioned in Schedule 3 Division 1 item 1.
- (2) A named person served with a subpoena to give evidence, or a subpoena for production and to give evidence, is entitled to be paid a witness fee by the issuing party, in accordance with Schedule 3 Division 2, immediately after attending the arbitration in compliance with the subpoena.
- (3) A named person may apply to the court to be reimbursed if the named person incurs a substantial loss or expense that is greater than the amount of the conduct money or witness fee payable under this rule.

**535. When compliance is not required**

- (1) A named person does not have to comply with a subpoena if —
- (a) the person was not served in accordance with these rules; or
  - (b) conduct money was not tendered to the person —
    - (i) at the time of service; or
    - (ii) at a reasonable time before the day on which attendance or production in accordance with the subpoena is required.
- (2) If a named person is not to be called to give evidence at the arbitration, or to produce a document to the court, in compliance with the subpoena, the issuing party may release the named person from the obligation to comply with the subpoena.

**536.     Duration of subpoena**

A subpoena remains in force until the earliest of the following events —

- (a) the subpoena is complied with;
- (b) the issuing party or the court releases the named person from the obligation to comply with the subpoena;
- (c) the arbitration ends.

**537.     Objection to subpoena**

(1) This rule applies if —

- (a) a subpoena is issued in relation to an arbitration; and
- (b) the named person, or an interested person in relation to the subpoena —
  - (i) seeks an order that the subpoena be set aside in whole or in part; or
  - (ii) seeks any other relief in relation to the subpoena.

(2) The person referred to in subrule (1)(b) must, before the day on which attendance or production in accordance with the subpoena is required, apply to the court, in writing, for the relevant order.

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

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



**Subdivision 2 — Production of documents and access by parties**

**538. Application of Subdivision**

This Subdivision applies to a subpoena for production.

**539. Compliance with subpoena**

(1) In this rule —

copy includes —

(a) a photocopy; and

(b) a copy in an electronic format that is —

(i) approved by the Registry Manager; and

(ii) capable of being printed in the form in which it  
was created without any loss of content.

(2) A named person may comply with a subpoena for production by  
providing to the court, at the place specified in the subpoena, on  
or before the day on which production in accordance with the  
subpoena is required —

(a) a copy of the subpoena; and

(b) either —

(i) the documents identified in the subpoena; or

(ii) copies of those documents, accompanied by a  
verification by the named person that they are  
accurate copies of the originals.

(3) The named person, when complying with the subpoena for  
production, must inform the Registry Manager in writing  
whether —

(a) the documents referred to in the subpoena are to be  
returned to the named person; or

(b) the Registry Manager is authorised to destroy the  
documents when they are no longer required by the  
court.

**540.      Right to inspect and copy documents**

(1) This rule applies if —

(a) the court issues a subpoena for production; and

(b) at least 10 days before the day (the *production day*) on which production in accordance with the subpoena is required, the issuing party —

(i) serves the named person with the subpoena and the brochure in accordance with rule 533(1); and

(ii) serves each person mentioned in rule 533(3) with a copy of the subpoena in accordance with that subrule;

and

(c) no objection under rule 541 to production of a document required in accordance with the subpoena is made by the production day; and

(d) the named person complies with the subpoena; and

(e) on or after the production day, the issuing party files a notice of request to inspect in an approved form.

(2) Each party to the proceedings may —

(a) inspect a document produced in accordance with the subpoena; and

(b) take copies of a document (other than a child welfare record, criminal record, medical record or police record) produced in accordance with the subpoena.

(3) Subrule (2) has effect subject to rule 541(4)(c).

(4) Unless the court orders otherwise, an inspection under subrule (2)(a) —

(a) must be by appointment; and

(b) may be made without an order of the court.

**541. Objections relating to production of documents**

- (1) Subrule (2) applies if a subpoena for production is issued in relation to an arbitration and —
- (a) the named person objects to producing a document in accordance with the subpoena; or
  - (b) the named person or an interested person in relation to the subpoena, or another party to the arbitration, objects to the inspection or copying of a document identified in the subpoena.
- (2) The person or party (the *objector*) must, before the day on which production in accordance with the subpoena is required, give written notice of the objection and the grounds for the objection, to —
- (a) the Registry Manager; and
  - (b) if the objector is not the named person, the named person; and
  - (c) each party, or other party, to the arbitration; and
  - (d) the arbitrator.
- (3) If a subpoena for production requires the production of a person's medical records, the person may, before the day (the *production day*) on which production under the subpoena is required, notify the Registry Manager in writing that the person wishes to inspect the medical records for the purpose of determining whether to object to the inspection or copying of the records.
- (4) If a person (the *potential objector*) gives notice under subrule (3) —
- (a) the potential objector may inspect the medical records; and
  - (b) if the potential objector wishes to object to the inspection or copying of the records, the potential objector must, within 7 days of the production day, give

written notice of the objection and the grounds for the objection, to the Registry Manager; and

(c) unless the court orders otherwise, no other person may inspect the medical records until the later of —

(i) 7 days after the production day; and

(ii) if the potential objector makes an objection under paragraph (b), the end of the hearing and determination of the objection.

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

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

**542. Court permission to inspect documents**

A person may not inspect or copy a document produced in compliance with a subpoena for production unless —

(a) rule 540 applies; or

(b) the court gives permission.

**543. Production of document in possession of a court**

(1) A party to an arbitration who seeks to produce to the court a document in the possession of the court or another court must give the Registry Manager a written notice setting out the following —

(a) the name and address of the court having possession of the document;

(b) a description of the document to be produced;

(c) the date when the document is to be produced;

(d) the reason for seeking production of the document.

(2) On receiving a notice under subrule (1) in relation to a document in the possession of another court, a registrar may ask the other court, in writing, to send the document to the Registry Manager of the filing registry by a specified date.

(3) A party may apply for permission to inspect and copy a document produced to the court under this rule.

**544. Return or destruction of document produced**

(1) The Registry Manager must return a document produced in compliance with a subpoena to a named person at least 28 days, and no later than 42 days, after the end of the arbitration if —

(a) the named person has informed the Registry Manager under rule 539(3)(a) that a document produced by the person in compliance with a subpoena is to be returned to the named person; and

(b) the document is in the possession of the Registry Manager at the end of the arbitration.

(2) The Registry Manager may destroy a document, in an appropriate way, not earlier than 42 days after the end of the arbitration if —

(a) a named person has informed the Registry Manager under rule 539(3)(b) that a document produced by the person in compliance with a subpoena may be destroyed; and

(b) the document is in the possession of the Registry Manager at the end of the arbitration.

**Subdivision 3 — Non-compliance with subpoena**

**545. Non-compliance with subpoena**

(1) This rule applies if —

(a) a named person does not comply with a subpoena; and

(b) the court is satisfied that the named person was served and given conduct money in accordance with these rules.

(2) The court may issue a warrant for the named person's arrest and order the person to pay any costs caused by the non-compliance.

### **Division 3 — Other rules relating to arbitration**

#### **546. Referral of question of law by arbitrator**

(1) A referral of a question of law by an arbitrator under section 65O of the Act or the Family Law Act section 13G must be made by application in accordance with the approved form.

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

#### **547. Referral of other matters to court by arbitrator**

(1) A referral by an arbitrator of a matter to the court under the *Family Law Regulations 1984 (Commonwealth)* regulation 67H(3)(b), 67K(b) or 67L(1)(b) must be made by written notice to the Registry Manager.

(2) A referral by an arbitrator of a matter to the court under the *Family Law Regulations 1984 (Commonwealth)* regulation 67L(1)(b) must be made within 7 days after the arbitration is terminated.

#### **548. Informing court about awards made in arbitration**

An arbitrator must inform the court of the matters referred to in the *Family Law Regulations 1984 (Commonwealth)* regulation 67P(4)(b), by written notice to the Registry Manager, within 7 days after the award is made.

**549. Registration of awards made in arbitration**

- (1) A copy of an application to register an arbitration award required to be served under the *Family Law Regulations 1984* (Commonwealth) regulation 67Q(2) must be served within 14 days of the day on which the application is filed.
- (2) The applicant must file an affidavit of service within 7 days of the day on which a copy of the application is so served.

**550. 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 Part, the *Family Law Regulations 1984* (Commonwealth), or the Act); and
  - (b) a respondent to the application —
    - (i) seeks to oppose the application; or
    - (ii) seeks different orders to those sought in the application.
- (2) The respondent must file —
  - (a) a response in accordance with the approved form; and
  - (b) an affidavit stating the facts relied on in support of the response.
- (3) The response and affidavit must be filed and served within 7 days after the day on which the application was served.

**551. Arbitrator to notify court when certain arbitrations end**

If one or more subpoenas are issued in relation to a relevant property or financial arbitration, the arbitrator must inform the court if the arbitration is suspended or terminated, or otherwise ends.

## **Part 29 — Repeal and transitional provisions**

### **552. Terms used**

In this Part —

*commencement day* means the day on which rule 553 comes into operation;

*former rules* means

- (a) the *Family Court Rules 1998*; and
- (b) the provisions of the *Family Law Rules 2004* (Commonwealth) adopted and applied by the *Family Court Rules 1998*.

### **553. Family Court Rules 1998 repealed**

The *Family Court Rules 1998* are repealed.

### **554. Completion of cases commenced**

If a case commenced under the former rules has not been finally determined by commencement day —

- (a) the case continues and may be progressed, managed, administered and determined under these rules; and
- (b) steps taken in, and things done in relation to, the case under a provision of the former rules are taken to have been taken or done under the corresponding provision of these rules.

### **555. Continuing effect of things done**

If an order made, direction given or subpoena, warrant or other instrument issued under a provision of the former rules is in effect on commencement day, the order, direction, subpoena, warrant or instrument —

- (a) continues in effect; and
- (b) is taken to have been made, given or issued under the corresponding provision of these rules.



## Part 30 — Consequential amendment

### 556. Family Court (Surrogacy) Rules 2009 amended

- (1) This rule amends the *Family Court (Surrogacy) Rules 2009*.
- (2) Delete rules 5 and 6 and insert:

#### 5. Application of *Family Court Rules 2021*

The *Family Court Rules 2021* apply to the exercise by the Court of its jurisdiction under the *Surrogacy Act 2008*.

## Schedule 1 — Pre-action procedures

[r. 22]

### Division 1 — Financial cases (property settlement and maintenance)

#### 1. General

(1) Each prospective party to a case in the Family Court of Western Australia is required to make a genuine effort to resolve the dispute before starting a case by —

(a) participating in dispute resolution, such as negotiation, conciliation, arbitration and counselling; and

(b) exchanging a notice of intention to claim and exploring options for settlement by correspondence; and

(c) complying, as far as practicable, with the duty of disclosure.

(2) Unless there are good reasons for not doing so, all parties are expected to have followed these pre-action procedures before filing an application to start a case.

(3) There may be serious consequences, including costs penalties, for non-compliance with these requirements.

(4) The circumstances in which the court may accept that it was not possible or appropriate for a party to follow the pre-action procedures include cases —

(a) involving urgency; and

(b) involving allegations of family violence; and

(c) involving allegations of fraud; and

(d) in which there is a genuinely intractable dispute; and

(e) in which a person would be unduly prejudiced or adversely affected if notice is given to another person (in the dispute) of an intention to start a case; and

(f) in which a time limitation is close to expiring; and

(g) involving a genuine dispute about the existence of a de facto relationship.

(5) The objects of these pre-action procedures are —

- (a) to encourage early and full disclosure in appropriate cases by the exchange of information and documents about the prospective case; and
- (b) to provide parties with a process to help them avoid legal action by reaching a settlement of the dispute before starting a case; and
- (c) to provide parties with a procedure to resolve the case quickly and limit costs; and
- (d) to help the efficient management of the case, if a case becomes necessary (that is, parties who have followed the pre-action procedure should be able to clearly identify the real issues which should help to reduce the duration and cost of the case); and
- (e) to encourage parties, if a case becomes necessary, to seek only those orders that are reasonably achievable on the evidence.

(6) At all stages during the pre-action negotiations and, if a case is started, during the conduct of the case itself, the parties must have regard to —

- (a) the need to protect and safeguard the interests of any child; and
- (b) the continuing relationship between a parent and a child and the benefits that cooperation between parents brings a child (that is, helping to maintain as good a continuing relationship between the parties and the child as is possible in the circumstances); and
- (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; and
- (d) the best way of exploring options for settlement, identifying the issues as soon as possible, and seeking resolution of them; and
- (e) the need to avoid protracted, unnecessary, hostile and inflammatory exchanges; and

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(f) the impact of correspondence on the intended reader (in particular, on the parties); and

(g) the need to seek only those orders that are reasonably achievable on the evidence and that are consistent with the current law; and

(h) the principle of proportionality and the need to control costs because it is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute; and

(i) the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.

(7) Parties must not —

(a) use the pre-action procedures for an improper purpose (for example, to harass the other party or to cause unnecessary cost or delay); or

(b) in correspondence, raise irrelevant issues or issues that may cause the other party to adopt an entrenched, polarised or hostile position.

(8) The court expects parties to take a sensible and responsible approach to the pre-action procedures.

(9) The parties are not expected to continue to follow the pre-action procedures to their detriment if reasonable attempts to follow the pre-action procedures have not achieved a satisfactory solution.

**2. Compliance**

(1) The court regards the requirements set out in these pre-action procedures as the standard and appropriate approach for a person to take before filing an application in a court.

(2) If a case is subsequently started, the court may consider whether these requirements have been met and, if not, what the consequences should be (if any).

(3) The court may take into account compliance and non-compliance with the pre-action procedures when it is making orders about case management and considering orders for costs.

(4) Unreasonable non-compliance may result in the court ordering the non-complying party to pay all or part of the costs of the other party or parties in the case.

(5) In situations of non-compliance, the court may ensure that the complying party is in no worse a position than the party would have been in if the pre-action procedures had been complied with.

### **3. Pre-action procedures**

(1) A person who is considering filing an application to start a case must, before filing the application —

(a) give a copy of these pre-action procedures to the other prospective parties to the case; 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) Subclause (1)(a) does not apply if, within 12 months before filing the application, the person gave to, or received from, a prospective party to the case, a copy of these pre-action procedures.

(3) 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.

(4) If the prospective parties reach agreement, they may arrange to have the agreement made binding by filing an application for a consent order.

(5) Before filing an application, the proposed applicant must give to the other party (the *proposed respondent*) written notice of the applicant's intention to start a case 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.

(6) The notice under subclause (5) must set out —

(a) the issues in dispute; and

(b) the orders to be sought if a case is started; and

(c) a genuine offer to resolve the issues; and

(d) a time (the *nominated time*) that must be at least 14 days after the date of the notice, within which the proposed respondent is required to reply to the notice.

(7) The proposed respondent must, within the nominated time, reply in writing to the notice under subclause (5), 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 case is started; and

(c) a genuine counter-offer to resolve the issues; and

(d) the nominated time that must be at least 14 days after the date of the notice, within which the claimant must reply.

(8) It is expected that a party will not start a case by filing an application in a court unless —

(a) the proposed respondent does not respond to a notice of intention to start a case; or

(b) agreement is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

#### **4. Disclosure and exchange of correspondence**

(1) Parties to a case have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner.

(2) In attempting to resolve their dispute, parties should, as soon as practicable on learning of the dispute and, if appropriate, as a part of the exchange of correspondence under clause 3, exchange —

(a) a schedule of assets, income and liabilities; and

(b) a list of documents in the party's possession or control that are relevant to the dispute; and

- (c) a copy of any document required by the other party, identified by reference to the list of documents.
- (3) Parties are encouraged to refer to the financial statement and rules 67, 190 and 199 as a guide for what information to provide and documents to exchange.
- (4) Parties are not required to exchange documents that are not subject to the duty of disclosure under rule 202 and that would not be ordered to be disclosed by a court.
- (5) The documents that the court would consider appropriate to include in the list of documents and exchange include the following —

  - (a) for a maintenance case —

    - (i) a copy of the party's tax return for the most recent financial year; and
    - (ii) the party's bank records for the 12 months ending on the date when the maintenance application was filed; and
    - (iii) if the party receives wage or salary payments — the party's 3 most recent pay slips; and
    - (iv) if the party owns or controls a business — the business activity statements for the business for the previous 12 months; and
    - (v) any other document relevant to determining the income, expenses, assets, liabilities and financial resources of the party;
  - (b) for a property settlement case —

    - (i) a copy of the party's 3 most recent tax returns and assessments; and
    - (ii) documents about any superannuation interest of the party, including the following —

      - (I) a completed superannuation information form for the superannuation interest;
      - (II) if the party is a member of a self-managed superannuation fund, a copy of the trust deed and the 3 most recent financial statements for the fund;

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(III) the value of the superannuation interest, including the basis on which the value has been worked out and any documents working out the value;

and

(iii) for a corporation in relation to which a party has a duty of disclosure under rule 199 —

(I) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and tax returns; and

(II) a copy of the corporation's most recent annual return that lists the directors and shareholders; and

(III) a copy of the corporation's constitution and any amendments;

and

(iv) for a trust in relation to which a party has a duty of disclosure under rule 199 —

(I) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and tax returns; and

(II) a copy of the trust deed, including any amendments;

and

(v) for a partnership in relation to which a party has a duty of disclosure under rule 199 —

(I) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and tax returns; and

(II) a copy of the partnership agreement, including any amendments;

and



- (vi) for a person or entity mentioned in subparagraph (i), (iii), (iv) or (v), any business activity statements for the previous 12 months; and
- (vii) unless the value is agreed, a market appraisal of the value of any item of property in which a party has an interest.
- (6) It is reasonable to require a party who is unable to produce a document for inspection to provide a written authority addressed to a third party authorising the third party to provide a copy of the document in question to the other party, if this is practicable.
- (7) Parties 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.
- (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 case 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) Disagreements about disclosure may be better managed by the court within the context of a case.

## **5. Expert witnesses**

- (1) There are strict rules in Part 15 Division 5 about instructing and obtaining reports from an expert witness.
- (2) In summary —
  - (a) an expert witness must be instructed in writing and must be fully informed of their obligations; and
  - (b) if possible, parties should seek to retain an expert witness only on an issue in which the expert witness's evidence is necessary to resolve the dispute; and
  - (c) if practicable, parties should agree to obtain a report from a single expert witness instructed by both parties; and

- (d) if separate experts' reports are to be relied on at a hearing, the court requires the reports to be disclosed.

**6. Lawyers' obligations**

- (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) subject to it being in the best interests of the client and any child, endeavour to reach a solution by settlement rather than start or continue legal action; 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 if, in the lawyer's opinion, the compromise or settlement is reasonable; 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; 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 (if applicable) 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 principle, including recent case law, indicate are not reasonably achievable.

- (2) The court recognises that the pre-action procedures cannot override a lawyer's duty to their client.

(3) It is accepted that it is sometimes impossible to comply with a procedure because a client may refuse to take advice, but a lawyer has a duty as an officer of the court and must not mislead the court.

(4) If a client wishes not to disclose a fact or document that is relevant to the case, a lawyer has an obligation to take the appropriate action, that is, to cease to act for the client.

### **Division 2 — Parenting cases**

#### **7. General**

(1) Each prospective party to a case in the Family Court of Western Australia is required to make a genuine effort to resolve the dispute before starting a case by —

(a) exchanging a notice of intention to claim and exploring options for settlement by correspondence; and

(b) complying, as far as practicable, with the duty of disclosure.

(2) Unless there are good reasons for not doing so, all parties are expected to have followed the pre-action procedures before filing an application to start a case.

(3) There may be serious consequences, including costs penalties, for non-compliance with these requirements.

(4) The circumstances in which the court may accept that it was not possible or appropriate for a party to follow the pre-action procedures include cases —

(a) involving urgency; and

(b) involving allegations of child abuse or risk of child abuse; and

(c) involving allegations of family violence or risk of family violence; and

(d) in which there is a genuinely intractable dispute; and

(e) in which a person would be unduly prejudiced or adversely affected if another person to the dispute is given notice of an intention to start a case.

(5) The objects of these pre-action procedures are —

(a) to encourage early and full disclosure in appropriate cases by the exchange of information and documents about the prospective case; and

(b) to provide parties with a process to help them avoid legal action by reaching a settlement of the dispute before starting a case; and

(c) to provide parties with a procedure to resolve the case quickly and limit costs; and

(d) to help the efficient management of the case, if a case becomes necessary (that is, parties who have followed the pre-action procedure should be able to clearly identify the real issues which should help to reduce the duration and cost of the case); and

(e) to encourage parties, if a case becomes necessary, to seek only those orders that are reasonably achievable on the evidence.

(6) At all stages during the pre-action negotiations and, if a case is started, during the conduct of the case itself, the parties must have regard to —

(a) the best interests of any child; and

(b) the continuing relationship between a parent and a child and the benefits that cooperation between parents brings a child (that is, helping to maintain as good a continuing relationship between the parties and the child as is possible in the circumstances); and

(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; and

(d) the principle that persons should not seek orders about a child when an application is motivated by intentions other than the best interests of the child; and

(e) the best way of exploring options for settlement, identifying the issues as soon as possible, and seeking resolution of them; and

- (f) the need to avoid protracted, unnecessary, hostile and inflammatory exchanges; and
  - (g) the impact of correspondence on the intended reader (in particular, on the parties); and
  - (h) the need to seek only those orders that are reasonably achievable on the evidence and that are consistent with the current law; and
  - (i) the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.
- (7) Parties must not —
- (a) use the pre-action procedures for an improper purpose (for example, to harass the other party or to cause unnecessary cost or delay); or
  - (b) in correspondence, raise irrelevant issues or issues that may cause the other party to adopt an entrenched, polarised or hostile position.
- (8) The court expects parties to take a sensible and responsible approach to the pre-action procedures.
- (9) The parties are not expected to continue to follow the pre-action procedures to their detriment if reasonable attempts to follow the pre-action procedures have not achieved a satisfactory solution.

## **8. Compliance**

- (1) The court regards the requirements set out in these pre-action procedures as the standard and appropriate approach for a person to take before filing an application in a court.
- (2) If a case is subsequently started, the court may consider whether these requirements have been met and, if not, what the consequences should be (if any).
- (3) The court may take into account compliance and non-compliance with the pre-action procedures when it is making orders about case management and considering orders for costs.

(4) Unreasonable non-compliance may result in the court ordering the non-complying party to pay all or part of the costs of the other party or parties in the case.

(5) In situations of non-compliance, the court may ensure that the complying party is in no worse a position than the party would have been in if the pre-action procedures had been complied with.

**9. Pre-action procedures**

(1) A person who is considering filing an application to start a case must, before filing the application —

(a) give a copy of these pre-action procedures to the other prospective parties to the case; and

(b) comply with the requirements of this Schedule.

(2) Subclause (1)(a) does not apply if, within 12 months before filing the application, the person gave to, or received from, a prospective party to the case, a copy of these pre-action procedures.

(3) If the prospective parties reach agreement, they may arrange to have the agreement made binding by filing an application for a consent order.

(4) Before filing an application, the proposed applicant must give to the other party (the *proposed respondent*) written notice of the applicant's intention to start a case.

(5) The notice under subclause (4) must set out —

(a) the issues in dispute; and

(b) the orders to be sought if a case is started; and

(c) a genuine offer to resolve the issues; and

(d) a time (the *nominated time*) that must be at least 14 days after the date of the letter, within which the proposed respondent is required to reply to the notice.

(6) The proposed respondent must, within the nominated time, reply in writing to the notice under subclause (4), stating whether the offer is accepted and, if not, setting out —

(a) the issues in dispute; and

(b) the orders to be sought if a case is started; and

(c) a genuine counter-offer to resolve the issues; and

(d) the nominated time that must be at least 14 days after the date of the notice, within which the claimant must reply.

(7) It is expected that a party will not start a case by filing an application in a court unless —

(a) the proposed respondent does not respond to a notice of intention to start a case; or

(b) agreement is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

#### **10. Disclosure and exchange of correspondence**

(1) Parties to a case have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner.

(2) In attempting to resolve their dispute, parties should as soon as practicable on learning of the dispute and, if appropriate, as a part of the exchange of correspondence under clause 9, exchange copies of documents in their possession or control relevant to an issue in the dispute (for example, medical reports, school reports, letters, drawings, or photographs).

(3) Parties must not use a document disclosed by another party for a purpose other than the resolution or determination of the dispute to which the disclosure of the document relates.

(4) Documents produced by a person to another person in compliance with these pre-action procedures are taken to have been produced on the basis of an undertaking from the party receiving the documents that the documents will be used for the purpose of the case only.

#### **11. Expert witnesses**

(1) There are strict rules about instructing and obtaining reports from an expert witness.

(2) In summary —

(a) an expert witness must be instructed in writing and must be fully informed of their obligations; and

- (b) if possible, parties should seek to retain an expert witness only on an issue in which the expert witness's evidence is necessary to resolve the dispute; and
- (c) if practicable, parties should agree to obtain a report from a single expert witness instructed by both parties; and
- (d) if separate experts' reports are obtained, the court requires the reports to be disclosed.

**12. 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) subject to it being in the best interests of the client and any child, endeavour to reach a solution by settlement rather than start or continue legal action; 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 if, in the lawyer's opinion, the compromise or settlement is reasonable; 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; 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 (if applicable) 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 principle,



including recent case law, indicate are not reasonably achievable.

(2) The court recognises that the pre-action procedures cannot override a lawyer's duty to their client.

(3) It is accepted that it is sometimes impossible to comply with a procedure because a client may refuse to take advice, but a lawyer has a duty as an officer of the court and must not mislead the court.

(4) If a client wishes not to disclose a fact or document that is relevant to the case, a lawyer has an obligation to take the appropriate action, that is, to cease to act for the client.

**Schedule 2 — Costs**

[r. 335, 351, 352, 356-362, 366]

**Division 1 — Work done on or after 1 January 2019**

**Subdivision 1 — Preliminary**

**1. Application**

This Division applies in relation to costs for work done on or after 1 January 2019.

**Subdivision 2 — Costs allowable for lawyer’s work done and services performed**

<b><u>Item</u></b>	<b><u>Matter for which charge may be made</u></b>	<b><u>Amount (including GST)</u></b>
<u>1.</u>	<u>Drafting a document (other than a letter)</u>	<u>\$21.43 per 100 words</u>
<u>2.</u>	<u>Producing a document (other than a letter in printed form)</u>	<u>\$7.31 per 100 words</u>
<u>3.</u>	<u>Drafting and producing a letter (including a fax or an email)</u>	<u>\$24.60 per 100 words</u>
<u>4.</u>	<u>Reading a document</u>	<u>\$10.02 per 100 words</u>
<u>5.</u>	<u>Scanning a document (where reading is not necessary)</u>	<u>\$3.93 per 100 words</u>
<u>6.</u>	<u>For a document or letter mentioned in item 1, 2, 3, 4 or 5 containing more than 3 000 words</u>	<u>The amount allowed by the registrar</u>
<u>7.</u>	<u>Photocopy or other reproduction of a document</u>	<u>83 cents per page</u>

<u>Item</u>	<u>Matter for which charge may be made</u>	<u>Amount (including GST)</u>
<u>8.</u>	<u>Time reasonably spent by a lawyer on work requiring the skill of a lawyer (except work to which any other item in this Table applies)</u>	<u>\$251.50 per hour</u>
<u>9.</u>	<u>Time reasonably spent by a lawyer, or by a clerk of a lawyer, on work (except work to which any other item in this Table applies)</u>	<u>\$163.04 per hour</u>

**Subdivision 3 — Costs allowable for counsel’s work done and services performed**

<u>Item</u>	<u>Matter for which charge may be made</u>	<u>Amount (including GST) — senior counsel</u>	<u>Amount (including GST) — junior counsel</u>
<u>1.</u>	<u>Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee (if allowed))</u>	<u>\$483.69 – \$829.21 per hour</u>	<u>\$288.76 – \$411.85 per hour</u>
<u>2.</u>	<u>Attendance at a conference (including a court-appointed conference), if necessary</u>	<u>\$483.69 – \$829.21 per hour</u>	<u>\$288.76 – \$411.85 per hour</u>
<u>3.</u>	<u>Attendance of less than 3 hours (for example, a procedural hearing or a summary hearing)</u>	<u>\$483.69 – \$3 454.91</u>	<u>\$258.34 – \$1 979.86</u>
<u>4.</u>	<u>A hearing or trial taking at least 3 hours but not more than 1 day</u>	<u>\$898.27 – \$6 910.49</u>	<u>\$856.50 – \$1 979.86</u>

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<u>Item</u>	<u>Matter for which charge may be made</u>	<u>Amount (including GST) — senior counsel</u>	<u>Amount (including GST) — junior counsel</u>
<u>5.</u>	<u>Other hearings or trials</u>	<u>\$2 280.34 – \$6 910.49 per day</u>	<u>\$2 041.23 – \$3 000.33 per day</u>
<u>6.</u>	<u>Reserved judgment</u>	<u>\$483.69 – \$829.21 per hour</u>	<u>\$288.76 – \$411.85 per hour</u>

**Subdivision 4 — Basic composite amount for undefended divorce**

<u>Item</u>	<u>Matter for which charge may be made</u>	<u>Amount (including GST)</u>
<u>1.</u>	<u>If the lawyer employed another lawyer to attend at court for the applicant and there is a child of the marriage under 18 years of age</u>	<u>\$1 062.27</u>
<u>2.</u>	<u>If the lawyer employed another lawyer to attend at court for the applicant and there is no child of the marriage under 18 years of age</u>	<u>\$790.33</u>
<u>3.</u>	<u>If the lawyer did not employ another lawyer to attend at court for the applicant and there is a child of the marriage under 18 years of age</u>	<u>\$997.30</u>
<u>4.</u>	<u>If the lawyer did not employ another lawyer to attend at court for the applicant and there is no child of the marriage under 18 years of age</u>	<u>\$746.25</u>
<u>5.</u>	<u>If the lawyer did not attend at court for the hearing under Family Law Act section 98A</u>	<u>\$642.08</u>



**Schedule 3 — Conduct money and witness fees**

[r. 250, 336, 534]

**Division 1 — Conduct money**

<u>Item</u>	<u>Matter for which allowance is paid</u>	<u>Amount</u>
<u>1.</u>	<u>Minimum amount</u>	<u>The minimum amount for conduct money is \$25</u>
<u>2.</u>	<u>Travel</u>	(a) <u>The amount to be paid for fares on public transport for return travel between the place of employment or residence and the court; or</u>  (b) <u>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</u>
<u>3.</u>	<u>Accommodation and meals</u>	<u>A reasonable allowance for accommodation and meals to be incurred during the estimated time of the hearing or trial</u>

**Division 2 — Witness fees**

<u>Item</u>	<u>Type of witness</u>	<u>Amount of fee</u>
<u>1.</u>	<u>All witnesses</u>	<u>\$75 per day, or part of a day, for necessary absence from the witness's place of employment or residence</u>

<u>Item</u>	<u>Type of witness</u>	<u>Amount of fee</u>
<u>2.</u>	<u>Expert witnesses</u>	<u>Such further amount as the court allows for the preparation of a report and absence from the expert witness's place of employment</u>

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## Notes

This is a compilation of the *Family Court Rules 2021*. For provisions that have come into operation see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

### Compilation table

<b>Citation</b>	<b>Published</b>	<b>Commencement</b>
<i>Family Court Rules 2021</i> <del>Pt. 1 Div. 1</del>	SL 2021/148 18 Aug 2021	<a href="#">Pt. 1 Div. 1</a> : 18 Aug 2021 (see r. 2(a)); <a href="#">Rules other than Pt. 1 Div. 1</a> : <a href="#">23 Aug 2021</a> (see r. 2(b))

### ~~Uncommenced provisions table~~

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made on the WA Legislation website*.~~

<b>Citation</b>	<b>Published</b>	<b>Commencement</b>
<del><i>Family Court Rules 2021</i> (other than Pt. 1 Div. 1)</del>	<del>SL 2021/148 18 Aug 2021</del>	<del>23 Aug 2021 (see r. 2(b))</del>



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