



Family Law Amendment Rules 2009 (No. 1)¹

Select Legislative Instrument 2009 No. 33

We, Judges within the meaning of the *Family Law Act 1975*,
make the following Rules of Court under that Act.

Dated 23 February 2009

D. BRYANT CJ
J. FAULKS DCJ
M. MAY J
J. M. BOLAND J
S. R. O'RYAN J
J. BARRY J
N. MUSHIN J
S. BROWN J
R. K. BURR J
L. WADDY J
P. ROSE J
D. COLLIER J
S. STRICKLAND J
A. MONTEITH J
J. STEVENSON J
P. YOUNG J
G. A. WATTS J
R. BENJAMIN J

J. RYAN J
P. J. MURPHY J
P. CRONIN J
S. FOWLER J

Judges of the Family Court
of Australia

A. M. FILIPPELLO
Principal Registrar
Family Court of Australia

C. E. MARTIN J
J. PENNY J
J. CRISFORD J
S. D. CROOKS J

Judges of the Family Court
of Western Australia

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1 Name of Rules

These Rules are the *Family Law Amendment Rules 2009 (No. 1)*.

2 Commencement

These Rules commence as follows:

- (a) on 1 March 2009 — rules 1 to 3 and Schedules 1 and 2;
- (b) immediately after the commencement of Schedules 1 and 2 — Schedules 3 and 4.

3 Amendment of *Family Law Rules 2004*

Schedules 1 to 4 amend the *Family Law Rules 2004*.

Schedule 1 Amendments to support the trial and case management pathway and docket system

(rule 3)

[1] Chapter 4, summary

omit

The flow chart at the beginning of Chapter 12 sets out the procedure that applies to an Application for Final Orders, other than applications mentioned in Part 4.2.

[2] Paragraphs 4.03 (a) and (b)

substitute

- (a) in a parenting case — for a procedural hearing that is as near as practicable to 28 days after the application was filed;
- (b) in a financial case — for a case assessment conference that is as near as practicable to 28 days after the application was filed;
- (c) if the application includes both a financial case and a parenting case — for a case assessment conference that is as near as practicable to 28 days after the application was filed; or
- (d) if an earlier date is fixed for the hearing of that or another application so far as it concerns an interim, procedural or other ancillary order in the case — for a procedural hearing on the same day.

[3] Rule 5.09, notes 1 and 2

omit

[4] Rule 7.11, note

omit

subrule 15.17 (3)

insert

subrule 15.17 (4)

[5] Paragraph 10.06 (2) (a)

omit

conference; or

insert

conference;

[6] Paragraph 10.06 (2) (b)

substitute

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

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

[7] Rule 10.13

omit

After the final resolution event, a

insert

A

[8] Chapter 11, summary

omit

clarify the issues in dispute;

insert

clarify the issues in dispute; and

[9] Chapter 11, summary

omit

- using simplified procedures for small claims; and

[10] Table 11.1, item 1

omit

- (i) an information session;

[11] Table 11.1, item 2, column 3, paragraph (e)

substitute

- (e) finalise the balance sheet setting out all assets, liabilities and financial resources that either party asserts are relevant to the determination of the case;

[12] Table 11.1, item 2, column 3, paragraph (g)

omit

that party

insert

that party;

[13] Table 11.1, item 2, column 3, after paragraph (g)

insert

- (h) order a party to produce any relevant document in a financial case to the court or to any other party for the purpose of developing and finalising the balance sheet

[14] Table 11.1, item 3, column 3, paragraph (k)

omit

order

insert

order;

[15] Table 11.1, item 3, column 3, after paragraph (k)

insert

- (l) make an order granting permission for a party to perform an action if a provision of the Rules requires a party to obtain that permission;
- (m) for a fee that is required by law to be paid — order that the fee must be paid by a specified date

[16] Subparagraphs 11.10 (1) (a) (i) and (ii)

substitute

- (i) at any time before the procedural hearing at which the case is allocated the first day before the Judge; or
- (ii) if the court gives permission — at a later time;

[17] Rule 11.12

omit

A party

insert

- (1) A party

[18] Rule 11.12, before the example

insert

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

[19] Division 11.2.3

omit

[20] Chapter 12, heading

substitute

Chapter 12 Court events — Registrar managed

[21] Chapter 12, summary

substitute

Summary of Chapter 12

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

- (a) a case assessment conference;
- (b) an initial procedural hearing;
- (c) the Child Responsive Program;
- (d) a conciliation conference; and
- (e) a procedural hearing where the case is set down for the first day before the Judge

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

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

[22] Chapter 12, flow chart

omit

[23] Rule 12.01, paragraph (e)

omit

Division 4.2.7); and

insert

Division 4.2.7).

[24] Rule 12.01, paragraph (f)

omit

[25] Part 12.2, heading, including the notes

substitute

Part 12.2 Specific court events

[26] Subrule 12.03 (1)

substitute

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

[27] Paragraph 12.03 (2) (b)

omit

agreement.

insert

agreement; and

[28] After paragraph 12.03 (2) (b)

insert

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

[29] Subrule 12.03 (3), including the notes

substitute

- (3) At a case assessment conference, each party must, as far as practicable, identify each of the following:
- (a) any procedural orders sought;
 - (b) the agreed issues;
 - (c) the items to be included on the balance sheet;
 - (d) any areas of controversy about the assets, liabilities, superannuation and financial resources of the parties;
 - (e) any person who may be entitled to become a party to the case;
 - (f) any other relevant matter related to the main purpose of these Rules (see rule 1.04).
- (4) If the case is not settled by the end of the conference, the court will make procedural orders for the future conduct of the matter, including:
- (a) if appropriate — an order that the parties attend a conciliation conference; or
 - (b) if the case is suitable to be allocated the first day before the Judge — procedural orders under rule 12.08.
- (5) If the proceedings also involve parenting issues and the case is not settled by the end of the conference, the parties may be ordered to attend the Child Responsive Program.

Note 1 A party and a party's lawyer must attend a case assessment conference (see subrule 1.08 (3) and rule 12.11).

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

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

[30] Rules 12.04, 12.05 and 12.06

substitute

12.04 Initial procedural hearing in a parenting case

- (1) The purpose of an initial procedural hearing in a parenting case is:
 - (a) to enable the person conducting the hearing:
 - (i) to assess the case;
 - (ii) to make recommendations about the future conduct of the case; and
 - (iii) to determine whether the case is suitable to remain in the Family Court or should be transferred to another court exercising jurisdiction under the Act; and
 - (b) to enable the parties to attempt to resolve the case, or any part of the case, by agreement.
- (2) If the case is not settled at the end of the hearing, the person conducting the hearing:
 - (a) must make procedural orders for the future conduct of the case; and
 - (b) may order the parties to attend the Child Responsive Program.

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

12.05 Property case — exchange of documents before conciliation conference

- (1) This rule applies to a party to a property case in which the parties are required to attend a conciliation conference.
- (2) Within 28 days after the case assessment conference, each party must, as far as practicable, exchange with each other party:
 - (a) if not already exchanged, a copy of all the documents mentioned in rule 12.02; and

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

12.06 Financial questionnaire and balance sheet

- (1) Within 21 days after the case assessment conference, each party must file a financial questionnaire in the form approved by the Principal Registrar.
- (2) Within 28 days after the case assessment conference, the applicant must:
 - (a) prepare a balance sheet in the form approved by the Principal Registrar by completing all items and values asserted by the applicant; and
 - (b) send the balance sheet to the respondent.
- (3) Within 21 days after receiving the balance sheet, the respondent must:
 - (a) add the respondent's estimated values for all items on the balance sheet prepared by the applicant;
 - (b) add any items to the balance sheet the respondent asserts have been omitted from the balance sheet and assert values for those items;
 - (c) complete the notes relating to all disputed items and all disputed values for items; and
 - (d) return the amended balance sheet to the applicant.
- (4) Within 14 days after receiving the amended balance sheet, the applicant must:
 - (a) add the applicant's estimated values for all items added to the balance sheet by the respondent;
 - (b) complete the notes relating to all disputed items and all disputed values for items; and
 - (c) file the balance sheet with the court.

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

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

12.07 Conduct of a conciliation conference

- (1) A conciliation conference must be conducted by a judicial officer.
- (2) Each party at a conciliation conference must make a genuine effort to reach agreement on the matters in issue between them.

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

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

12.08 Procedural hearing in a financial case

- (1) For a financial case:
 - (a) if a conciliation conference has been held — a procedural hearing must take place immediately after the conciliation conference ends; and
 - (b) if a conciliation conference is not scheduled to be held before the first day before the Judge, the procedural hearing must be held at the conclusion of the case assessment conference.
- (2) The purpose of the procedural hearing in a financial case is to enable the person conducting the hearing to make procedural orders for the conduct of the case, including orders for any of the following matters:
 - (a) if a conciliation conference has been held:
 - (i) the clarification of any disputed items in the balance sheet; and
 - (ii) the clarification of any issue arising out of a statement made by a party in a financial questionnaire;
 - (b) payment of the hearing fee;
 - (c) filing of undertakings as to disclosure;
 - (d) allocating a date for a compliance check as close as practicable to 21 days before the first day before the Judge;
 - (e) allocating the first day before the Judge.

12.09 Procedural hearing after the Child Responsive Program

- (1) A procedural hearing must take place as soon as practicable after the parties complete the Child Responsive Program.
- (2) The purpose of the procedural hearing after the Child Responsive Program is to enable the person conducting the hearing to make procedural orders for the conduct of the case, including orders for any of the following matters:
 - (a) referring parties to family counselling, family dispute resolution and other family services;
 - (b) appointment of an independent children's lawyer;
 - (c) payment of the hearing fee;
 - (d) completion by each party of a parenting questionnaire;
 - (e) filing of undertakings as to disclosure;
 - (f) allocating a date for a compliance check as close as practicable to 21 days before the first day before the Judge;
 - (g) allocating the first day before the Judge.

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

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

- (1) This rule applies if:
 - (a) an application includes a financial case and a parenting case;
 - (b) the financial case remains unresolved after the conciliation conference; and
 - (c) the parenting case remains unresolved after the parties complete the Child Responsive Program.
- (2) A procedural hearing must be held as soon as practicable after the later of:
 - (a) completion of the conciliation conference; or
 - (b) completion of the Child Responsive Program.

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

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

12.10A Expedition

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

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

- (2) The court may take into account:
- (a) whether the applicant has acted reasonably and without delay in the conduct of the case;
 - (b) whether the application has been made without delay;
 - (c) any prejudice to the respondent; and
 - (d) whether there is a relevant circumstance in which the case should be given priority to the possible detriment of other cases.
- (3) If the court is satisfied of the matters in subrule (2), the court may:
- (a) set an early first day before the Judge; and
 - (b) make procedural orders for the further conduct of the case.
- (4) For paragraph (2) (d), a *relevant circumstance* includes:
- (a) whether the age, physical or mental health of, or other circumstance (such as an imminent move interstate or overseas) affecting, a party or witness would affect the availability or competence of the party or witness;
 - (b) whether a party has been violent, harassing or intimidating to another party, a witness or any child the subject of, or affected by, the case;
 - (c) whether the applicant is suffering financial hardship that:
 - (i) is not caused by the applicant; and
 - (ii) cannot be rectified by an interim order;
 - (d) whether the continuation of interim orders is causing the applicant or a child hardship;

- (e) whether the purpose of the case will be lost if it is not heard quickly (for example, a job opportunity will be lost if not taken; property will be destroyed; an occasion will have passed);
- (f) whether the case involves allegations of child sexual, or other, abuse; and
- (g) whether an expedited trial would avoid serious emotional or psychological trauma to a party or child who is the subject of, or affected by, the case.

[31] Part 12.3

omit

[32] Subrule 12.11 (1)

substitute

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

[33] Subrule 12.11 (2), at the foot

insert

Note 4 Rule 16.02 deals with compliance checks.

[34] Rule 12.12, note

omit

Rule 16.08

insert

Rule 16.05

[35] Subrule 12.13 (3)

omit

or pre-trial conference

[36] Subrule 12.14 (1)

omit

conference, procedural hearing or conciliation conference

insert

conference or a procedural hearing

[37] Paragraph 12.14 (2) (e)

substitute

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

[38] Subrule 12.14 (4)

omit

a procedural

insert

any procedural

[39] Rules 12.15 and 12.16

omit

[40] Rule 13.06

substitute

13.06 Amendment of Financial Statement

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

(a) a new Financial Statement; or

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

[41] Rule 13.16

substitute

13.16 Time for filing undertaking

A notice under rule 13.15 must be filed at least 28 days before the first day before the Judge.

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

[42] Paragraphs 13.17 (f) to (i)

substitute

- (f) a Contravention Application;
(g) a Contempt Application.

[43] Paragraph 13.19 (1) (b)

omit

Application;

insert

Application; or

[44] Paragraphs 13.19 (1) (c) to (e)

substitute

- (c) a child support application or appeal.

[45] Subrule 13.20 (1)

substitute

- (1) After a case has been allocated to a first day before the Judge, a party (the *requesting party*) may, by written notice, ask another party (the *disclosing party*) to give the requesting party a list of documents to which the duty of disclosure applies.

[46] Subrule 13.20 (5), note

substitute

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

[47] Subrule 13.22 (1)

omit

At or after the final resolution event, a

insert

A

[48] Paragraph 13.25 (b)

omit

Application;

insert

Application; or

[49] Paragraphs 13.25 (c) to (e)

substitute

- (c) a child support application or appeal.

[50] Subrule 13.26 (1)

substitute

- (1) After a case has been allocated to a first day before a Judge, a party (the *requesting party*) may serve on another party (the *answering party*) a request to answer specific questions.

[51] Subrule 13.28 (1)

omit

After the final resolution event, a

insert

A

[52] Division 13.4.2

omit

[53] Paragraph 14.06 (1) (b)

omit

a trial.

insert

the first day before the Judge.

[54] Subrule 14.06 (2)

omit

date fixed for the trial,

insert

first day before the Judge,

[55] Chapter 15, after the summary and before Part 15.1

insert

15.01A Definition

In this Chapter:

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

- (a) the first day of the final stage of the trial in which the affidavit, report or document is to be relied on in evidence;
or
- (b) the first day when the affidavit, report or document is to be relied on in evidence.

[56] Rule 15.03

substitute

15.04 Family reports

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

- (a) give copies of the report to each party, or the party's lawyer, and to an independent children's lawyer;
- (b) receive the report in evidence;
- (c) permit oral examination of the person making the report;
and
- (d) order that the report not be released to a person or that access to the report be restricted.

[57] Rules 15.05, 15.06 and 15.07

substitute

15.05 No general right to file affidavits

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

15.06 Reliance on affidavits

An affidavit filed with an application may be relied on in evidence only for the purpose of the application for which it was filed.

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

[58] Subrule 15.14 (2)

omit

trial,

insert

relevant date,

[59] Rule 15.17

substitute

15.17 Issuing a subpoena

- (1) Subject to rule 22.34, the court may issue:
 - (a) a subpoena for production;
 - (b) a subpoena to give evidence; or
 - (c) a subpoena for production and to give evidence.
- (2) Subject to rule 15.21, the court will issue a subpoena mentioned in subrule (1) at the request of a party only if:
 - (a) the party has requested permission from the court; and
 - (b) the court has granted permission.

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

-
- (4) A subpoena must identify the person to whom it is directed by name or description of office.
 - (5) A subpoena may be directed to 2 or more persons if:
 - (a) the subpoena is to give evidence only; or
 - (b) the subpoena requires the production of the same documents from each named person.
 - (6) A subpoena for production:
 - (a) must identify the document to be produced and the time and place for production; and
 - (b) may require the named person to produce the document before the date of the trial.

[60] Rule 15.19

omit

[61] Rule 15.21

substitute

15.21 Subpoenas to produce documents

A party or an independent children's lawyer may seek the issue of a subpoena to produce documents for the hearing of an Application in a Case without permission from the court.

[62] Paragraph 15.55 (1) (a)

omit

case assessment conference;

insert

first court event;

[63] Paragraph 15.69 (1) (a)

omit

14 days before the pre-trial conference;

insert

28 days before the relevant date;

[64] After rule 15.76

insert

15.77 Parenting questionnaire

- (1) This rule applies to a parenting case.
- (2) Each party to the case must file a completed questionnaire at least 28 days before the first day before the Judge.
- (3) The questionnaire must be in the form approved by the Principal Registrar.

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

[65] Chapter 16

substitute

Chapter 16 Court events — Judge managed

Summary of Chapter 16

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

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

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

Part 16.1 Preliminary

16.01 Application

This Chapter applies to all Applications for final orders, except:

- (a) a Medical Procedure Application;
- (b) a Maintenance Application;
- (c) a child support application or appeal;
- (d) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment; and
- (e) an application in which the only order sought relates to a passport (see Division 4.2.7).

16.02 Compliance check

- (1) The purpose of a compliance check is:
 - (a) to check that all procedural orders have been complied with;
 - (b) to consider any new issues that may have arisen since the last court event and their effect on the listing of the matter for the first day before the Judge; and
 - (c) in a financial case — to check the completeness of the balance sheet.
- (2) At the compliance check, the court may make orders about the further conduct of the case.

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

16.03 Vacating dates that are Judge managed

- (1) A party seeking to vacate the first day before the Judge, or any subsequent date when the case has been set down before the Judge, must apply to do so at the earliest possible time before the allocated date.
- (2) The first day before the Judge or any subsequent date will only be vacated for substantial and significant reason.

- (3) If final agreement has been reached between the parties, the applicant must:
- (a) immediately tell the court in writing after agreement is reached; and
 - (b) arrange for the case to be finalised by consent order, or discontinuance or dismissal.

Part 16.2 Proceedings before the Judge — general

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

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

16.04 Trial management

- (1) For rules 16.08 to 16.13, the court may make any order about the conduct of the trial, including an order:
 - (a) related to the issues on which the court requires evidence, including:
 - (i) the nature of the evidence (including expert evidence) required to decide the issues;
 - (ii) which witnesses a party may call on a particular issue;
 - (iii) how the evidence is to be adduced;
 - (iv) granting permission to issue subpoenas to produce documents or to attend, or both;
 - (v) preparation by a family consultant of a family report, or requiring the family consultant to undertake other investigations or carry out other tasks having regard to the functions of family consultants set out in section 11A of the Act;
 - (vi) determining any evidentiary questions that arise;
 - (vii) the time to be taken for evidence in chief, cross examination or re-examination of witnesses to give evidence, and submissions; or
 - (viii) the sequence of evidence and addresses;
 - (b) limiting the time for the presentation of a parties case; or

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

- (2) If the parties have both consented to a financial case being dealt with under Division 12A of Part VII of the Act, rules 16.08, 16.09 and 16.10 apply to the financial case.

16.05 Attendance, submissions and evidence by electronic communication

<p><i>Note</i> The issue of whether a party wishes to attend, make a submission, give evidence or adduce evidence from a witness at any court event that is Judge managed by electronic communication will be discussed at the appropriate court event, and any application in that respect will be referred to a Judge without formal application or affidavit material. In other cases, an application should be made under rule 16.05.</p>

- (1) A party may apply for permission to do any of the following things by electronic communication at any court event that is Judge managed:
- (a) attend;
 - (b) make a submission;
 - (c) give evidence;
 - (d) adduce evidence from a witness.

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

- (2) The application must be:
- (a) filed at least 28 days before the event; and
 - (b) listed before the Judge.

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

- (3) The affidavit filed with the application must set out the facts relied on in support of the application, including the following:
- (a) what the applicant seeks permission to do by electronic communication;
 - (b) the kind of electronic communication to be used;

-
- (c) if the party proposes to give evidence, make a submission or adduce evidence from a witness by electronic communication — the place from which the party proposes to give or adduce the evidence, or make the submission;
 - (d) the facilities at the place mentioned in paragraph (c) that will enable all eligible persons present in that place to see or hear each eligible person in the place where the court is sitting;
 - (e) if the applicant seeks to adduce evidence from a witness by electronic communication:
 - (i) whether an affidavit by the witness has been filed;
 - (ii) whether the applicant seeks permission for the witness to give oral evidence;
 - (iii) the relevance of the evidence to the issues;
 - (iv) whether the witness is an expert witness;
 - (v) the name, address and occupation of any person who is to be present when the evidence is given;
 - (vi) if the applicant proposes to refer the witness to a document, whether:
 - (A) the document has been filed; and
 - (B) the witness will have a copy of the document; and
 - (vii) whether an interpreter is required and, if so, what arrangements are to be made;
 - (f) the expense of using the electronic communication, including any expense to the court, and the applicant's proposals for paying those expenses;
 - (g) whether the other parties object to the use of electronic communication for the purpose specified in the application and, if so, the reason for the objection;
 - (h) if the application relates to evidence to be adduced from a witness in a foreign country — the matters required to be addressed under rule 16.06;

-
- (i) if the application relates to making a submission, giving evidence or adducing evidence from New Zealand — the facilities that enable evidence to be given or a submission to be made, as required by Part 4 of the *Evidence and Procedure (New Zealand) Act 1994*.

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

Subsection 25 (2) of the EP Act sets out the matters of which a court must be satisfied before it may make a direction under subsection 25 (1) of that Act. The EP Act also provides that evidence is not to be given, or a submission made, from New Zealand unless the place where the court is sitting and the place where the evidence is to be given or a submission made are equipped with facilities enabling the persons at each place to see and hear each other in the case of video link (see section 26), or to hear each other in the case of a telephone conference (see section 27).

- (4) The application may be decided in chambers on the documents filed.
- (5) The court may order:
- (a) a party to pay the expenses of the attendance by electronic communication; or
 - (b) that the expenses are to be apportioned between the parties.
- (6) For paragraph (3) (h):
foreign country has the meaning given by subrule 16.06 (2).

16.06 Foreign evidence by electronic communication

- (1) In addition to the requirements of rule 16.05, a party who proposes to adduce evidence by electronic communication from a witness in a foreign country must satisfy the court:
- (a) that the party has read the information published by the Attorney-General's Department about its arrangements with other countries for the taking of evidence, to determine the attitude of the foreign country's government to the taking of evidence by electronic communication;

-
- (b) if the attitude of the foreign country's government to the taking of evidence by electronic communication cannot be ascertained from sources within Australia — that the party has made appropriate inquiries through diplomatic channels, a lawyer or a provider of technical facilities in the foreign country to determine that attitude;
 - (c) whether permission is needed from the foreign country's government to adduce evidence from a witness in that country by electronic communication;
 - (d) if permission is needed, whether permission has been granted or refused;
 - (e) if permission has been refused, the reason for refusal; and
 - (f) whether there are any special requirements for the adducing of evidence, including:
 - (i) the administration of an oath; and
 - (ii) the form of the oath.

(2) In this rule:

foreign country means a country other than Canada, New Zealand, the United Kingdom or the United States of America.

Note 1 A party seeking to adduce evidence from a witness in Canada, New Zealand, the United Kingdom or the United States of America does not have to comply with subrule (1) because these countries do not object to the taking of evidence by electronic communication.

Note 2 The court, instead of granting permission for a party to adduce evidence by electronic communication from a witness in a foreign country, may direct the Registry Manager to send a letter of request to the judicial authorities in the foreign country, requesting the court to take evidence from the witness in accordance with the law of the foreign country. For the requirements for a letter of request to the judicial authorities of a foreign country, see rule 15.73.

16.07 Parties' participation

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

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

- (2) If a party does not attend on the first day before the Judge, the other party may seek the orders sought in that party's application by, if necessary, adducing evidence to establish an entitlement to those orders in a manner ordered by the court.
- (3) If no party attends the first day before the Judge, the court may dismiss all applications before it.

Part 16.3 Proceedings before the Judge — parenting case

16.08 First day of trial

- (1) The first day of trial will be conducted by the Judge who will:
 - (a) if evidence is taken at the first day of trial — preside at the entire trial; and
 - (b) usually preside at the entire trial even if evidence is not taken at the first day of trial.

- (2) For these Rules, the trial is taken to have started on the first day of trial, whether or not any evidence is taken or submitted at the trial.

Note Subrules (1) and (2) apply unless the court orders otherwise (see rule 1.12).

- (3) The purpose of the first day of trial is:
 - (a) for the presiding Judge, with the assistance of the parties and their legal representatives, to discuss and identify the orders sought and issues in dispute between the parties arising from the applications before the court;
 - (b) in the ordinary course, to hear and determine any interlocutory issues or interim applications that are outstanding on the first day of trial, or to make appropriate arrangements for the determination of those applications;
 - (c) in a children's case — to receive evidence, including from the family consultant in the case;
 - (d) if this rule applies because subrule 16.04 (2) applies — to consider the balance sheet; and
 - (e) to consider and determine a plan for the remainder of the trial.

16.09 Continuation of trial

- (1) A trial will continue on the day or dates allocated.

- (2) The purpose of the continuation of trial is:
- (a) to further identify the issues for which evidence is required;
 - (b) to make procedural orders about filing and exchange of all remaining evidence; and
 - (c) to allocate dates for the continuation of the trial and the final stage of the trial.

16.10 Final stage of trial

- (1) The final stage of the trial takes place on the day or dates allocated.
- (2) At the final stage of the trial the Judge will hear the remainder of the evidence and receive submissions.

Part 16.4 Proceedings before the Judge — financial case

Note If the parties have consented to Division 12A of Part VII of the Act applying to the financial case, Part 16.3 applies (see subrule 16.04 (2)).

16.11 The first procedural hearing before the Judge

The purpose of the first procedural hearing before the Judge is:

- (a) for the presiding judicial officer, with the assistance of the parties and their legal representatives, to discuss and identify the orders sought and issues in dispute between the parties arising from the applications before the court;
- (b) in the ordinary course, to hear and determine any interlocutory issues or interim applications that are outstanding on the first day before the Judge, or to make appropriate arrangements for the determination of those applications;
- (c) to consider the balance sheet; and
- (d) to consider and determine a plan for the trial.

16.12 Further days before the Judge

The purpose of any further days before the Judge is:

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

16.13 The trial

- (1) The trial takes place on the day or dates allocated.
- (2) At the trial the Judge will hear the evidence and receive submissions.

Part 16.5 Proceedings before the Judge — combined parenting and financial cases

16.14 Conduct of combined cases

For a combined parenting case and financial case:

- (a) rules 16.08, 16.09 and 16.10 apply to the parenting case;
and
- (b) subject to subrule 16.04 (2), rules 16.11, 16.12 and 16.13
apply to the financial case.

[66] Rule 16A.04

omit

in accordance with rule 12.04

[67] Subrule 16A.06 (3)

omit

[68] Rules 16A.07, 16A.08 and 16A.09

omit

[69] Subrule 16A.10 (1)

omit

must

insert

may

[70] Subrule 16A.10 (2)

omit

conclusion

insert

end

[71] Rule 18.01A, definition of *Registrar*

after

means

insert

the Principal Registrar of the Family Court of Australia or

[72] Table 18.2, items 4 and 14

omit

[73] Table 18.3, item 1

omit

[74] Table 18.3, item 5

omit

rule 15.01

insert

rule 15.02

[75] Table 18.4, after item 18

insert

18A	paragraph 65G (2) (b)	Power to make a parenting order by consent in favour of a non-parent without attendance at conference with a family consultant
-----	-----------------------	--

[76] Table 18.4, after item 19

insert

19A	subsection 68M (2)	Power to make an order that a child be made available for an examination for the purposes of preparing a report in connection with the proceedings
-----	--------------------	--

[77] Table 18.5, after item 6

insert

6A	rule 6.05	Power to make an order in relation to a person seeking to intervene in a case to become a party
----	-----------	---

[78] Table 18.5, item 17

omit

[79] Table 18.5, item 20

substitute

19A	rule 12.10A	Power to make an order about the expedition of the first day before the Judge
20	Chapter 13 (except paragraph 13.14 (b))	Power to make an order in relation to disclosure in a case

[80] Table 18.5, item 22

omit

rule 15.03

insert

rule 15.04

[81] Table 18.5, item 23

omit

[82] Table 18.5, after item 24

insert

24A	rule 15.17	Power to give permission to issue a subpoena
-----	------------	--

[83] Table 18.5, item 26

omit

[84] Table 18.5, item 32

substitute

32	Chapter 19 (except Parts 19.3 and 19.8) and Schedule 6 (except Parts 6.2 and 6.8 and clauses 6.17 and 6.18)	Power to make an order in relation to costs, the provision of costs estimates and the assessment of costs
----	---	---

[85] Subrules 19.04 (1) and (2)

substitute

- (1) This rule applies to the following court events:
 - (a) conciliation conference;
 - (b) the first day of the allocated dates mentioned in rules 16.10 and 16.13;
 - (c) any other court events that the court orders.
- (2) Immediately before each court event, the lawyer for a party must give the party a written notice of:
 - (a) the party's actual costs, both paid and owing, up to and including the court event;
 - (b) the estimated future costs of the party up to and including each future court event; and
 - (c) any expenses paid or payable to an expert witness or, if those expenses are not known, an estimate of the expenses.

[86] Paragraph 19.04 (3) (a)

omit

subrule (1)

insert

subrule (2)

[87] Subrule 19.04 (4)

omit

a trial,

insert

the first day of the final stage of the trial,

[88] Subrule 19.04 (5)

omit

subrule (1)

insert

subrule (2)

[89] Subrule 19.04 (7), definition of *court event*

omit

[90] Rule 19.40

omit

or for a small claim

[91] Rule 19.40, notes 1 and 2

substitute

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

[92] Paragraph 22.31 (2) (d)

omit

subrule 16.08 (3)

insert

subrule 16.05 (3)

[93] After rule 24.13

insert

24.14 Exhibits

- (1) The Registry Manager must take charge of every exhibit.
- (2) The list of exhibits is part of the court record.
- (3) A court may direct that an exhibit be:
 - (a) kept in the court;
 - (b) returned to the person who produced it; or
 - (c) disposed of in an appropriate manner.
- (4) A party who tenders an exhibit into evidence must collect the exhibit from the Registry Manager at least 28 days, and no later than 42 days, after the final determination of the application or appeal (if any).
- (5) Subrule (4) does not apply to a document produced by a person as required by a subpoena for production.

Note For the return of a document produced in compliance with a subpoena, see rule 15.35.

[94] Schedule 6, after subclause 6.01 (4)

insert

- (5) In this Schedule:

small claim means a case that was determined in accordance with Division 11.2.3 as in force immediately before 1 July 2008.

[95] Schedule 6, subclauses 6.04 (1) and (2)

substitute

- (1) This rule applies to the following court events:
 - (a) conciliation conference;
 - (b) the first day of the allocated dates mentioned in rules 16.10 and 16.13;
 - (c) any other court events that the court orders.
- (2) Immediately before each court event, the lawyer for a party must give the party a written notice of:
 - (a) the party's actual costs, both paid and owing, up to and including the court event;
 - (b) the estimated future costs of the party up to and including each future court event; and
 - (c) any expenses paid or payable to an expert witness or, if those expenses are not known, an estimate of the expenses.

[96] Schedule 6, paragraph 6.04 (3) (a)

omit

subclause (1)

insert

subclause (2)

[97] Schedule 6, subclause 6.04 (4)

omit

a trial,

insert

the first day of the final stage of the trial,

[98] Schedule 6, subclause 6.04 (5)

omit

subclause (1)

insert

subclause (2)

[99] Dictionary, after definition of *attend*

insert

balance sheet means a balance sheet prepared in accordance with subrules 12.06 (2), (3) and (4).

[100] Dictionary, after definition of *child-related proceedings*

insert

Child Responsive Program means an early intervention program with a focus on children, feedback to parents about the needs of children and the provision to the court of a Children and Parents Issues Assessment.

[101] Dictionary, definition of *court event*

substitute

court event includes:

- (a) a hearing or part of a hearing;
- (b) a trial or part of a trial;
- (c) a conference; and
- (d) an attendance by the parties with a family consultant as part of the Child Responsive Program.

[102] Dictionary, definitions of *expedited trial* and *final resolution event*

omit

[103] Dictionary, after definition of *financial orders*

insert

first day before the Judge means:

- (a) if Division 12A of Part VII of the Act applies to the whole case — the first day of trial (rule 16.08);
- (b) if that Division does not apply to the whole case — the first procedural hearing before the Judge (rule 16.11); or
- (c) if the case includes applications to which that Division applies and other applications to which it does not — the first of the events for the case mentioned in paragraphs (a) and (b) (rule 16.14).

[104] Dictionary, after definition of *itemised costs account*

insert

items on the balance sheet means assets, liabilities, superannuation, financial resources and add backs.

[105] Dictionary, definition of *parenting case*

substitute

parenting case means a case in which the application seeks a parenting order or a child related injunction under Part VII of the Act, other than an application for child maintenance.

[106] Dictionary, definitions of *trial* and *trial notice*

substitute

trial means the process of determining a case started by an Application for Final Orders, including the court events or hearing days before the presiding judicial officer mentioned in rules 16.08, 16.09, 16.10 and 16.13 that apply to the case.

[107] Explanatory Guide, explanation of *case assessment conference*

omit

court counsellor or

[108] Explanatory Guide, explanation of *conciliation conference*

omit

during the resolution phase of the court process

[109] Explanatory Guide, explanation of *conference*

substitute

conference — includes a case assessment conference and conciliation conference.

[110] Explanatory Guide, explanation of *determination phase*

omit

[111] Explanatory Guide, after explanation of *exhibit*

insert

expediting the first day before the Judge — a process to have a case listed before a Judge sooner than it ordinarily would be (see rule 12.10A).

[112] Explanatory Guide, explanations of *information session, opening address, pre-trial conference and resolution phase*

omit

Schedule 2 De facto relationship amendments

(rule 3)

[1] Table 2.2, after item 2A

insert

2B	Initiating Application (Family Law) in which an order is sought relating to a de facto relationship	<ul style="list-style-type: none"> (a) the documents required by an item in this table that applies to the application (for example items 2 to 6 and 9); and (b) to satisfy the court for section 90SB of the Act that there is a child of the de facto relationship or that the relationship is or was registered under a prescribed law — the birth certificate for the child or certificate of registration; and (c) for an applicant who has made a choice under subitem 86A (1) or 90A (1) of Schedule 1 to the <i>Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008</i> — a document that satisfies the requirements of subitem 86A (5) or 90A (5) of that Act
----	---	---

[2] Division 2.3.2, heading

substitute

Division 2.3.2 Property settlement or spousal or de facto maintenance cases

[3] Rule 2.06, heading

substitute

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

[4] Rule 2.06

omit

case

insert

case, or a de facto property settlement or maintenance proceedings,

[5] Rule 2.06

omit

subsection 79B (3) or 90M (3)

insert

subsection 79B (3), 90M (3) or 90VA (3)

[6] Paragraph 2.06 (b)

omit

paragraph 79B (3) (b) or 90M (3) (b)

insert

paragraph 79B (3) (b), 90M (3) (b) or 90VA (3) (b)

[7] Subrule 2.07 (1)*omit*

section 79C or 90N of the Act to stay a property settlement or spousal maintenance case,

insert

section 79C, 90N or 90VB of the Act to stay a property settlement or spousal maintenance case, or a de facto property settlement or maintenance proceedings,

[8] Subrule 2.07 (2)*omit*

section 79D or 90P of the Act to lift a stay of a property settlement or spousal maintenance case

insert

section 79D, 90P or 90VC of the Act to lift a stay of a property settlement or spousal maintenance case, or a de facto property settlement or maintenance proceedings,

[9] Paragraph 2.07 (2) (b)*omit*

section 79D or 90P

insert

section 79D, 90P or 90VC

[10] Division 4.2.4, heading, except the note*substitute***Division 4.2.4 Spousal or de facto maintenance**

[11] Rules 4.14 and 4.15

omit

Spousal Maintenance

insert

spousal or de facto maintenance

[12] Subrule 4.15 (1), note 2

substitute

Note 2 For modification of a spousal maintenance order, see section 83 of the Act. For modification of a de facto maintenance order, see section 90SI of the Act.

[13] Subrule 6.06 (2), note, after paragraph (a)

insert

(aa) subsection 90SM (10) authorises a creditor of a party to a case who would not be able to recover a debt if an order is made under section 90SM of the Act, a party to a de facto relationship or marriage with a party to a case, a party to certain financial agreements and a person whose interests would be affected by the making of an order to become parties to the case;

[14] Subrule 6.15 (3), note 2

omit

79A (1C) and 105 (3)

insert

79A (1C), 90SM (2), 90SM (8), 90SN (5), 90UM (8) and 105 (3)

[15] Rule 6.16, definition of *relevant case*, paragraph (a)

omit

79A or 83

insert

79A, 83, 90SE, 90SL, 90SM or 90SN

[16] Rule 6.16, definition of *relevant party*, paragraph (a)*omit*

marriage;

insert

marriage or de facto relationship;

[17] Rule 6.16, definition of *relevant party*, paragraph (b)*omit*

marriage.

insert

marriage or de facto relationship.

[18] Subrules 6.21 (1) and (3)*after each occurrence of*

marriage

insert

or de facto relationship

[19] Paragraph 10.16A (1) (a)*after*

section 79

insert

or 90SM

[20] Paragraph 10.16A (1) (a), at the foot*insert*

Note Section 90TA of the Act extends the operation of Part VIIIAA of the Act for orders and injunctions binding third parties made in de facto financial cases.

[21] Subrule 13.02 (2)

after

marriage

insert

or de facto relationship

[22] Rule 13.18

omit

under this Division

insert

to which this Division applies

[23] Rule 14.07

substitute

14.07 Notice about intervention under Part VIII or VIIIAB of Act

- (1) A person who applies for an order under Part VIII of the Act must serve a written notice on each person mentioned in subsection 79 (10) of the Act.
- (2) A person who applies for an order under Part VIIIAB of the Act must serve a written notice on each person mentioned in subsection 90SM (10) of the Act.
- (3) The notice must:
 - (a) state that the person to whom the notice is addressed may be entitled to become a party to the case under the subsection of the Act for which the notice is served;
 - (b) include a copy of the application for the order sought; and
 - (c) state the date of the next relevant court event.

[24] Paragraph 18.02 (1) (c)*substitute*

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

[25] Table 18.2, after item 18*insert*

18A	sections 90SE and 90SG	Power to make an order, including an urgent order, for the maintenance of a party
18B	section 90SM	Power to vary or discharge a maintenance order

[26] Table 18.4, item 21*omit*

paragraph 79 (9) (c)

insert

paragraphs 79 (9) (c) and 90SM (9) (c)

[27] After subparagraph 20.01 (2) (a) (vi)*insert*

- (via) a financial agreement under Part VIIIAB of the Act or a termination agreement under Part VIIIAB of the Act;

[28] After rule 23.01A

insert

23.01B Registration of de facto maintenance orders under section 90SI of the Act

For subsection 90SI (1) of the Act, an order with respect to the maintenance of a party to a de facto relationship may be registered in a court exercising jurisdiction under the Act by filing a sealed copy of the order in a registry of the court.

[29] Schedule 1, paragraph 1 (4) (e)

omit

case; and

insert

case;

[30] Schedule 1, paragraph 1 (4) (f)

omit

expiring.

insert

expiring; and

[31] Schedule 1, after paragraph 1 (4) (f)

insert

- (g) involving a genuine dispute about the existence of a de facto relationship, or whether a choice under item 86A or 90A of Schedule 1 to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* should be set aside.

[32] Dictionary, definition of *financial case*, paragraph (a)*omit*

marriage,

insert

marriage, or of a de facto relationship after the breakdown of the relationship,

[33] Dictionary, definition of *financial case*, paragraph (b)*omit*

marriage

insert

marriage, or of a de facto relationship after the breakdown of the relationship,

[34] Dictionary, definition of *financial case*, subparagraph (b) (ii)*after*

section 79A

insert

or 90SN

[35] Dictionary, definition of *financial case*, subparagraph (b) (iv)*omit*

agreement; and

insert

agreement;

[36] Dictionary, definition of *financial case*, after subparagraph (b) (iv)

insert

- (iva) an application under section 90UM of the Act in relation to a Part VIIIAB financial agreement or a Part VIIIAB termination agreement; and

[37] Dictionary, definition of *financial case*, paragraph (ba)

omit

marriage;

insert

marriage, or of a de facto relationship after the breakdown of the relationship;

[38] Dictionary, definition of *property case*, paragraphs (a) and (b)

substitute

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

Schedule 3 Amendments to introduce the Initiating Application (Family Law) and Response to Initiating Application (Family Law)

(rule 3)

[1] Chapter 2, summary

omit

- the form of application you must file to start a case in a court;
- the documents you must file with an application; and

insert

- the form of application you must file to start a case in a court, respond to an application or seek orders in the course of a case;
- the documents you must file with an application or response; and

[2] Table 2.1, items 1, 2 and 3

substitute

1	Application seeking final orders (other than a consent order or a divorce), for example: <ul style="list-style-type: none"> • property settlement • parenting • maintenance • child support • medical procedures • nullity • declaration as to validity of marriage, divorce or annulment • order relating to passport (see Division 4.2.7) 	Initiating Application (Family Law)
2	Interim order sought at the same time as an application for final orders is made	Initiating Application (Family Law)
2A	Interim order sought after an application for final orders is made	Application in a Case
3	Procedural, ancillary or other incidental order relating to an order or application sought at the same time as an application for final orders is made	Initiating Application (Family Law)
3A	Procedural, ancillary or other incidental order relating to an order or application sought after an application for final orders is made	Application in a Case

[3] Table 2.1, notes 1 and 2

substitute

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

[4] Table 2.1, notes 3 and 4

renumber as notes 2 and 3

[5] Table 2.2, item 3, column 2

omit

Application for Final Orders, or Response to an Application for Final Orders,

insert

Initiating Application (Family Law), or Response to Initiating Application (Family Law),

[6] Table 2.2, item 4, column 2

substitute

Initiating Application (Family Law) or Response to Initiating Application (Family Law) in which property settlement orders are sought, and Reply responding to Response to Initiating Application (Family Law) in which property orders are sought as a new cause of action

[7] Table 2.2, item 4, column 3, paragraph (b)

omit

Application for Final Orders, Response, or Reply to an Application for Final Orders

insert

Initiating Application (Family Law), Response or Reply to an Initiating Application (Family Law)

[8] Table 2.2, item 5, column 2

omit

Application for Final Orders or Response to an Application for Final Orders

insert

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

[9] Table 2.2, item 6, column 2

omit

Application for Final Orders or Response to an Application for Final Orders

insert

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

[10] Table 2.2, item 7

substitute

7	Application for interim, procedural, ancillary or other incidental orders in an Initiating Application (Family Law) or Application in Case (other than an application seeking review of a decision of a Registrar or Judicial Registrar)	(a) an affidavit (see rules 5.02 and 9.02); (b) for an application permitted by subrule 5.04 (3) — one of the documents mentioned in this column in item 1 or 2
---	--	--

[11] Subrule 2.02 (5), note 1

substitute

Note 1 A party must not file an affidavit with an Initiating Application (Family Law) unless an application seeking interim, procedural, ancillary or other incidental orders is included in the Initiating Application (Family Law) or permitted to do so by Chapter 4 or an order (see rules 1.12 and 4.02).

[12] Chapter 4, summary, note, paragraph (b)

substitute

(b) an application for an interim, procedural or other incidental order about an application seeking final orders whether made in an Initiating Application (Family Law) or an Application in a Case (see Chapter 5);

[13] Rule 4.02, example

substitute

Example

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

[14] Rule 4.03, note

omit

an Application in a Case

insert

an application for an interim, procedural, ancillary or other incidental order

[15] Subrule 4.11 (2), note

omit

Application

insert

Initiating Application (Family Law)

[16] Rule 4.20, note 1

after

by filing an

insert

Initiating Application (Family Law) or an

[17] Rule 4.31

omit

Application for Final Orders,

insert

application referred to in rule 4.30,

[18] Chapter 5, heading

substitute

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

[19] Chapter 5, summary

omit

Application for an Order other than an Application for Final Orders or Divorce.

insert

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

[20] Rule 5.01*substitute***5.01 Restrictions in relation to applications**

(1) A party may apply for an interim, procedural, ancillary or other incidental order in relation to a cause of action only if:

- (a) the party has made an application for final orders in that cause of action; and
- (b) final orders have not been made on that application.

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

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

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

- (a) permission to start a case or extend a time limit to start a case;
- (b) to start a case for a child or a person with a disability under rule 6.10; or
- (c) an order for costs.

(4) This rule does not apply to restrict the filing of an Application in a Case by:

- (a) an independent children's lawyer;
- (b) the Director of Public Prosecutions, when making an application under section 79C, 79D, 90N, 90P, 90VB or 90VC of the Act, to stay or lift a stay of a property settlement or spousal or de facto maintenance case;
- (c) a bankruptcy trustee; or
- (d) a trustee of a personal insolvency agreement.

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

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

Note 1 An Application in a Case is used to make:

- (a) an Application for review of a Judicial Registrar's or Registrar's order (see Chapter 18); and
(b) an Application to enforce an obligation to pay money or to enforce a parenting order (see Chapter 20 and rule 21.01).

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

[21] Rule 5.02, heading

substitute

5.02 Evidence in applications to which Chapter 5 applies

[22] Subrule 5.02 (1)

substitute

- (1) A party who applies for an interim, procedural, ancillary or other incidental order in an Initiating Application (Family Law), or who files an Application in a Case, must at the same time file an affidavit stating the facts relied on in support of the orders sought.

[23] Rule 5.02, note

omit

Form

insert

Application

[24] Subrule 5.03 (1)*omit*

Application in a Case,

*insert*application seeking interim, procedural, ancillary or other
incidental orders,**[25] Rule 5.04***omit***[26] Subrule 5.05 (1)***after*

Case,

*insert*or an Initiating Application (Family Law) in which
application is made for interim, procedural, ancillary or
other orders,**[27] Subrule 5.05 (3)***substitute*

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

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

[28] Subrule 5.05 (4)*omit*

Case

insert

Case, or an Initiating Application (Family Law) in which application is made for interim, procedural, ancillary or other incidental orders,

[29] Subrule 5.11 (2)

omit

Application in a Case and the Response to an Application in a Case,

insert

application and response,

[30] Table 7.1, item 2

omit

[31] Table 7.1, item 12, column 2

omit

mentioned in item 2 or 3)

insert

mentioned in item 3)

[32] Chapter 9, summary

omit

- responding to an Application for Final Orders (known as a Response to an Application for Final Orders);

insert

- responding to an Initiating Application (Family Law) (known as a Response to Initiating Application (Family Law));

[33] Chapter 9, summary

omit

replying to a Response to an Application for Final Orders

insert

replying to a Response to Initiating Application (Family Law)

[34] Rule 9.02

substitute

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

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

- (a) responding to interim, procedural, ancillary or other incidental orders sought in the Initiating Application;
- (b) seeking interim, procedural, ancillary or other incidental orders in the Response; or
- (c) required to do so by item 5 or 6 of Table 2.2.

[35] Rule 12.01

omit

Applications for Final Orders,

insert

Initiating Applications (Family Law),

[36] Division 13.2.3, heading

substitute

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

[37] Subrule 13.19 (1)

omit

Applications for Final Orders,

insert

Initiating Applications (Family Law),

[38] Paragraph 13.19 (1) (d)

omit

or

[39] Paragraph 13.19 (1) (e)

omit

conference.

insert

conference; or

[40] After paragraph 13.19 (1) (e)

insert

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

[41] Rule 13.25

omit

Applications for Final Orders,

insert

applications seeking final orders,

[42] Paragraph 13.25 (c)

omit

appeal.

insert

appeal; or

[43] After paragraph 13.25 (c)*insert*

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

[44] Chapter 14, summary*after*

in an

insert

Initiating Application (Family Law) seeking interim, procedural, ancillary or incidental orders, or an

[45] Subrule 14.01 (5), note*omit*

in a case,

insert

for interim, procedural, ancillary or other incidental orders,

[46] Subrule 14.04 (3), note*omit*

in a case,

insert

for interim, procedural, ancillary or other incidental orders,

[47] Subrule 14.05 (2), note*omit*

in a case,

insert

for interim, procedural, ancillary or other incidental orders,

[48] Rule 15.21

omit

Application in a Case

insert

application seeking interim, procedural, ancillary or other incidental orders

[49] Subrule 15.38 (1)

substitute

- (1) A party may apply for the appointment of an assessor by filing:
- (a) an Initiating Application (Family Law) and an affidavit; or
 - (b) after a case has commenced — an Application in a Case and an affidavit.

[50] Subrule 15.38 (2)

after

affidavit

insert

filed with the application

[51] Subrule 16.06 (1), at the foot

insert

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

[52] Subrule 19.05 (1), note

omit

in a case.

insert

for interim, procedural, ancillary or other incidental orders.

[53] Schedule 6, subclause 6.05 (1), note

omit

in a case.

insert

for interim, procedural, ancillary or other incidental orders.

[54] Further amendments — Initiating Application (Family Law)

The following provisions are amended by omitting ‘Application for Final Orders’ and inserting ‘Initiating Application (Family Law)’:

- Table 2.2, item 1, column 2
- Table 2.2, item 2, column 2
- Table 2.2, item 2A, column 2
- Table 2.2, item 3, column 3, paragraph (a)
- Table 2.2, item 5, column 3, paragraph (a)
- Table 2.2, item 6, column 3, paragraph (a)
- rule 2.03
- Chapter 4, summary
- subrule 4.01 (1)
- subrule 4.01 (2), note (2 occurrences)
- rule 4.02
- rule 4.03
- rule 4.04
- subrule 4.06 (1) (2 occurrences)
- subrule 4.08 (2), note 2
- rule 4.10, note
- rule 4.16, note 1
- subrule 4.17 (1)
- rule 4.27, note
- rule 4.30
- rule 7.01, note
- Table 7.1, item 1, column 2

-
- paragraph 8.02 (5) (a)
 - Part 9.1, heading
 - rule 9.01, heading
 - subrule 9.01 (1) (2 occurrences)
 - subrules 9.01 (2), (3) and (4)
 - subrule 9.01, note (2 occurrences)
 - paragraphs 9.03 (1) (a) and (b) (2 occurrences)
 - subrule 9.03 (2)
 - Part 9.2, heading
 - rule 9.04, heading
 - paragraph 9.04 (a)
 - subparagraphs 9.04 (b) (i) and (ii)
 - rule 9.04A, heading
 - subrules 9.04A (1) and (2)
 - subrule 10.15 (4)
 - paragraph 11.10 (1) (a)
 - paragraph 11.10 (2) (a) (2 occurrences)
 - subrule 11.10 (4) (2 occurrences)
 - Dictionary, definition of *application*, paragraphs (a) and (g)
 - Dictionary, definition of *final order*
 - Dictionary, definition of *Maintenance Application*
 - Dictionary, definition of *Medical Procedure Application*
 - Dictionary, definition of *trial*

Schedule 4 Consequential amendments

(rule 3)

[1] Rule 15.01A

renumber as rule 15.01

[2] Rules 15.01 and 15.02

renumber as rules 15.02 and 15.03

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.