



Update to the Profession

Amendments to the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* commencing 28 November 2022

On **Monday, 28 November 2022** a number of amendments to the [Federal Circuit and Family Court of Australia \(Family Law\) Rules 2021](#) will commence.

These changes include amendments that have been made following feedback from, and consultation with, the profession. The Courts consulted with 17 stakeholders, being the State and Territory Bar Associations (aside from in WA), as well as the Australian Bar Association, Law Council of Australia and National Legal Aid.

Notably, the changes include the removal of the requirement to file a Parenting Questionnaire or Financial Questionnaire with every Initiating Application seeking parenting or financial orders respectively. A questionnaire is now only required to be filed where a party has not filed an affidavit with their Initiating Application or Response to Initiating Application. This will make the filing process more efficient and cost effective for parties.

Where a party is required to file an affidavit with their Initiating Application or Response to Initiating Application, such as where interlocutory orders are sought, updated instructions to the affidavit form will be published to provide guidance on the evidentiary topics that should be addressed. This is anticipated to be published in the next fortnight.

The amending instrument, the *Federal Circuit and Family Court of Australia (Family Law) Amendment (Measures No.1 2022) Rules 2022*, will be published on the Federal Register of Legislation on Monday, 28 November 2022.

Rules

The rule amendments are as follows:

- **Rule 1.09:** Amending the form filed to make an application for rescission of a divorce order from an Application for Review to an Application in a Proceeding;
- **Rule 2.01:** requiring that an application must concisely state the orders sought;
- **Part 2.6:** Amending the application of Part 2.6 from service of documents in Australia to service generally;
- **Part 5.6:** Inserting Part 5.6 (rules 5.28 and 5.29) in relation to interlocutory consent orders, similar to the rules already in existence in Part 10.2 for final consent orders. This includes the requirement to attach the Annexure to Proposed Consent Parenting Orders to interim parenting orders that are proposed to be made in Chambers. The same requirement is in rule 10.05 for final parenting orders;
- **Rule 5.28 and rule 10.04:** Allowing the signing of draft consent orders by a party's legal representative;

- **Rule 6.06 and rule 8.09:** Removing the requirement to file a Parenting Questionnaire or Financial Questionnaire with an Initiating Application where an affidavit is filed;
- **Rule 7.35:** Inserting a presumption that where an assessor is directed by the court to prepare a report, whilst the court is not bound by the opinion of the assessor, the court will adopt the opinion or finding of an assessor unless there are exceptional circumstances;
- **Rule 14.07:** Allowing an Application for Review to be considered in Chambers without an oral hearing where the parties consent and the Court considers it appropriate, and allowing further evidence to be filed in support of an Application for Review only with leave of the court;
- **Rule 15.13:** Making provision for a police officer to search the court record with leave of the court; and
- Otherwise correcting some typographical matters, and amending references to 'Queen's Counsel' to 'King's Counsel'.

Delegations schedule

Amendments have also been made to the delegations table in Schedule 4 to the Rules, mostly to close gaps that have been identified in the powers that the Senior Judicial Registrars or Judicial Registrars can currently exercise to efficiently discharge their respective case management roles. The delegations included in the amendment are as follows:

- **Item 2.1A:** To deal with an application for an interlocutory consent order under new part 5.6 of the Rules;
- **Item 3.7:** To make a finding of fact, determine a matter or make an order in relation to an issue before final orders are made pursuant to subsection 69ZR(1) of the Family Law Act, but only on a limited basis for both Senior Judicial Registrars and Judicial Registrars;
- **Item 3.8:** To order a party to undergo a drug or alcohol screen or test without consent;
- **Items 5.1-5.3:** To make various spousal or de facto maintenance orders, to Senior Judicial Registrars, and only on a limited basis to Judicial Registrars, which are existing delegations but have been slightly changed;
- **Item 6.1:** To make an order for child maintenance, including in relation to an adult child, to Senior Judicial Registrars;
- **Item 11.4:** To make an injunction under section 114 of the Family Law Act binding a third party, to Senior Judicial Registrars;
- **Item 12.4:** To make orders in relation to costs, the provision of costs estimates and the assessment of costs, but only in relation to section 117 of the Family Law Act;
- **Items 14.1A:** To grant leave to institute proceedings out of time, to Senior Judicial Registrars;
- **Item 18.2A:** To grant leave to a party to add a party to a proceeding after the first court date;

- **Item 25.1:** To issue a subpoena, order production and inspection of documents, and hear objections to a subpoena;
- **Item 31.1:** To summarily dismiss an application with no reasonable prospects of success, to Senior Judicial Registrars, and on a limited basis to Judicial Registrars who are approved to exercise the power;
- **Item 31.2:** To make summary orders if a party claims that:
 - (a) an application or response is frivolous, vexatious or an abuse of process; or
 - (b) there is no reasonable likelihood of success
 To Senior Judicial Registrars and on a limited basis to Judicial Registrars;
- **Item 31.3:** To make certain case management orders or directions under rule 10.11 of the Rules, to Senior Judicial Registrars and on a limited basis to Judicial Registrars;
- **Item 32.2:** To make orders varying or setting aside orders under the slip rule, where those orders were made by a Senior Judicial Registrar or Judicial Registrar;
- **Items 37.1A-37.1B:** To make a declaration that a person should, or should not, be assessed in respect of the costs of a child, and to amend an administrative assessment that is more than 18 months old, pursuant to the *Child Support (Assessment) Act 1989* to Senior Judicial Registrars and on a limited basis to Judicial Registrars; and
- **Item 37.4A:** To grant a stay under section 111C of the *Child Support (Registration and Collection) Act 1988*, to Senior Judicial Registrars and on a limited basis to Judicial Registrars.

Approval of Senior Judicial Registrars and Judicial Registrars to exercise powers

There are a limited number of delegated powers that will only be able to be exercised by a Senior Judicial Registrar or Judicial Registrar where they are specifically approved to do so:

- **Items 4.4A and Item 4.6:** To make a property order, and to vary or set aside a property order, but only if the gross value of the property pool, inclusive of superannuation, is less than \$2 million, to Senior Judicial Registrars who are approved to exercise the power;
- **Item 7.2-7.3:** To make orders preserving or adjusting the rights of persons who were parties to a terminated financial agreement, and to set aside a financial agreement, but only if the gross value of the property pool, inclusive of superannuation, is less than \$2 million, and only to Senior Judicial Registrars who are approved to exercise the power;
- **Items 13.2, 13.9 and 13.10:** To make certain orders in relation to applications in an appeal pursuant to subsection 32(3) of the FCFCOA Act, and rules 13.45 and 13.54, but only if the Senior Judicial Registrar or Judicial Registrar is approved to exercise the power;
- **Item 27.9A:** To make an order applying mandatory protections for parties in certain cases under subparagraph 102NA(1)(c)(iv) of the Family Law Act, to Senior Judicial Registrars who are approved to exercise the power;

- **Item 27.9B:** To give a witness a certificate in relation to certain evidence pursuant to section 128 of the *Evidence Act 1995*, but only for Senior Judicial Registrars who are approved to exercise the power and in relation to a hearing before a Senior Judicial Registrar;

The Chief Justice will approve the current Appeal Judicial Registrars to exercise the powers delegated in Part 13 of Schedule 3 to the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Items 13.2, 13.9, 13.10) from 28 November 2022.

As to the other delegations in this amendment requiring specific approval, no further approvals have been made at this time. Notification will be provided when any Senior Judicial Registrar is approved to exercise those powers identified in the delegations table as requiring specific approval before being exercised, such as the power to make final property orders under \$2 million. A decision about this is likely to be made in early 2023, with further notification provided in due course.

Costs schedules

Amendments to the scale of costs, and to the scale of costs to the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* commence **1 January 2023** for work done or services performed on or after that date.

Amendments to Practice Directions

As a result of the changes to the rules regarding the Parenting Questionnaire and Financial Questionnaire, the following [practice directions](#) have been updated where those forms are referenced:

- *Family Law Practice Direction – Child Support and Child Maintenance Proceedings*
- *Family Law Practice Direction – Financial Proceedings*
- *Family Law Practice Direction – Medical Proceedings*
- *Family Law Practice Direction – National COVID-19 List*
- *Family Law Practice Direction – Parenting Proceedings*
- *Family Law Practice Direction – Passport Proceedings*
- *Family Law Practice Direction – PPP500*
- *Family Law Practice Direction – Surrogacy Proceedings*

As referred to in the Updates to the Profession providing information about the Lighthouse model, the amendments to the *Central Practice Direction – Family Law Case Management*, *Family Law Practice Direction – Parenting Proceedings*, and *Family Law Practice Direction – Evatt List* as a result of the commencement of the Lighthouse model and risk screening process are also included in these amendments.

Amendments to the *Central Practice Direction – Family Law Case Management* have also been made to reflect in the case management pathway a Mention hearing after the Dispute Resolution event to make directions for a Compliance and Readiness Hearing. From 28 November 2022, see paragraphs 5.47-5.48.

Forms – instruction pages updated

As a result of the changes to the rules regarding the Parenting Questionnaire and Financial Questionnaire, the following [forms](#) will be updated where the questionnaires are referenced in the instruction pages:

- *Initiating Application*
- *Response to Initiating Application*
- *Questionnaire – Parenting*
- *Questionnaire – Financial*

The *Annexure to Proposed Consent Parenting Orders* will also be updated in the header and instruction text only, to refer to the filing of the Annexure with proposed interim consent parenting orders being considered in Chambers.

A grace period for the use of the old forms will extend until close of filing on **Friday, 30 December 2022**. The amendments will not be applied inflexibly during this time.

The Courts appreciate the cooperation of the profession and court users during this continued period of refinement and improvement of the Courts' processes, practice and procedure.