

Federal Magistrates Court Rules 2001 2001 No. 195

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 195

Federal Magistrates Court Rules 2001

Issued by Authority of the Federal Magistrates Court

These Rules are drafted to provide procedural and operational effect to the conduct of proceedings in the Federal Magistrates Court.

Section 43 of the *Federal Magistrates Act 1999* provides that the practice and procedure of the Federal Magistrates Court is to be in accordance with Rules of Court made under the Act.

The Rules are to cover all proceedings in the Federal Magistrates Court and are grouped as follows:

<u>Chapter 1</u>	All proceedings
<u>Chapter 2</u>	Family law proceedings
<u>Chapter 3</u>	Proceedings other than family law
<u>Chapter 4</u>	Bankruptcy proceedings
<u>Chapter 5</u>	Human rights proceedings
<u>Chapter 6</u>	Judicial review proceedings and administrative appeals
<u>Schedule 1</u>	Costs
<u>Schedule 2</u>	Forms
<u>Schedule 3</u>	Family Law Rules and Federal Court Rules applied

Dictionary

The Rules are written in plain English. This Explanatory Statement follows that standard in explaining the effect of the Rules.

A copy of the Index to the Rules follows to assist in locating particular Rules.

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Federal Magistrates Court Rules 2001

Chapter 1 All proceedings

Part 1 Introduction

Name of Rules

1.02 Commencement

These rules provide that the Rules are known as the Federal Magistrates Court Rules 2001 and commence on 30 July 2001.

1.03 Objects

This rule establishes as the objects of the Rules, to:

- assist just, efficient and economical resolution.
- help the Court operate as informally as possible, use streamlined processes and encourage use of appropriate primary dispute resolution (PDR) procedures.
- apply the Rules in accordance with these objects.
- require the parties to avoid undue delay, expense technicality and consider PDR options.
- help to implement appropriate PDR.

1.04 Dictionary

This rule refers to the dictionary in Schedule 3 which defines the terms used in the Rules.

1.05 Application

This significant rule provides that these Rules will govern principally the practice and procedure of the Court. If the Rules are insufficient or inappropriate the Federal Court Rules or Family Law Rules may be applied either in whole or in part and modified or dispensed with as necessary.

There is a general outline setting out the Chapters and proceedings to which they relate.

1.06 Court may dispense with Rules

This rule provides that the Court may, at any time, dispense with compliance or full compliance with the Rules in the interests of justice.

Part 2 Documents

Division 2.1 General

2.01 Requirements for Documents

This rule specifies the requirements for documents including that they be either typed or hand-printed.

2.02 Document must have distinctive number

2.03 Document to be signed

These rules require each document to bear a distinctive file number and be signed by a party or a lawyer for a party.

2.04 Forms

This rule states that substantial compliance with forms is sufficient unless the Court otherwise orders. A document prepared for a similar purpose in the Federal Court or the Family Court may be substantial compliance where no form is provided in the Rules but a document is to carry the heading FEDERAL MAGISTRATES COURT OF AUSTRALIA AT and then state the registry.

Division 2.2 Filing documents

2.05 How documents may be filed

This rule specifies that a document may be filed by delivery, post or, if fax or e-mail needs no fee. A document is deemed to be filed when accepted and sealed or stamped.

2.06 Registrar may refuse to accept document

This rule empowers a Registrar to refuse to accept a document if it is deemed to be an abuse of process or frivolous, scandalous or vexatious or is filed in an inappropriate registry.

This decision may be the subject of a review to be filed within 7 days in accordance with Part 20.

2.07 Filing by Fax or e-mail

This rule prescribes the requirements for filing by fax or e-mail. An authorised Registrar may approve a fax or an e-mail address for each Registry.

The sender must retain the original if the document is faxed or retain a paper copy if e-mailed as required. Such documents are to be produced endorsed with a statement that the document is the original (if faxed) or a true copy (if e-mailed) and the date it was sent.

Division 2.3 Searching Records

2.08 Searching Records

This rule provides for searching the records of the Court by the Attorney-General in Family Law proceeding, a party, a lawyer for a party, a child representative or a person granted leave by the Court or a Registrar. Leave may be granted if a proper interest is shown and may be subject to conditions.

Part 3 Sittings, Registry hours and time.

Division 3.1 Sittings, holidays and registry hours

3.01 Sittings

This rule provides that the Chief Federal Magistrate directs the time when and places where the Court sits. Saturday, Sundays and public holidays are excluded unless a Federal Magistrate otherwise directs.

3.02 Registry hours

This rule recognises that a registry will be open when the shared registry facilities are open. A Federal Magistrate or a Registrar may direct that a Registry be open at other times for urgent business.

Division 3.2 Time

3.03 Meaning of month

This rule defines month as a calendar month.

3.04 Calculating time

This rule provides that in calculating time for taking an action if the period is more than 1 day then the day of the event must not be counted. If the Registry is closed for a day in a period specified of 5 days or less, that day is not counted. If the Registry is closed on the last day for taking an action, it may be taken on the day when the Registry is next open.

3.05 Extension or shortening of time fixed

This rule provides that the Court or a Registrar may extend or shorten time. Time may be extended by consent without an order.

Part 4 Starting Proceedings

4.01 Application

4.02 Content of application

These rules provide for the starting application to be an application in the prescribed form (Part 1 Sch. 2) for final orders. Interim or procedural orders may be included only if final orders are sought or a final order has been made.

The application must state precisely and briefly the orders sought and (for general federal law) the basis on which the orders are sought.

4.03 Response to application

4.04 Content of response

These rules provide that a response be filed and served within 14 days of service of the related application or cross-claim and may

- indicate consent to any order sought in the application
- ask for another order or dismissal of the application

- seek an order in a matter other than in the application
- make a cross-claim against the applicant or another party.

4.05 Affidavit to be filed with application or response

This rule provides that an applicant or a respondent must file an affidavit in support of an application or response whether seeking final, interim or procedural orders unless the evidence relied on is in affidavits already filed in pending proceedings.

4.06 Information sheet to be filed with certain applications

This rule provides that an information sheet must be filed with an application for final orders under the Family Law Act or where unlawful discrimination is alleged under the Human Rights Act. There are exceptions, mainly discrete family law applications which are set out in sub rule (2).

4.07 Reply in certain circumstances

This rule provides that a reply to a response may be filed where orders other than those set out in the application are sought in a response or a cross application. A reply is to be filed within 14 days of service of the related response.

Part 5 Urgent Applications

5.01 Urgent applications

5.02 Form of application

These rules provide that the Court may make an order until a specified time or further order in an urgent case where service is not possible. An application in the prescribed form (Part 1 Sch. 2) is to be used accompanied by a draft of the order sought.

5.03 Evidence

This rule sets out what the applicant must establish by affidavit or orally (with leave of the Court).

These include:

- Details of previous proceedings, current orders and proceedings
- Any steps taken to tell the respondent or legal representative of the application or why no steps were taken
- Damage and harm if the order is not made
- Why the making of an order is urgent
- Capacity to give an undertaking as to damages.

Part 6 Service

Division 6.1 General

6.01 Address for service

6.02 Change of address for Service

These rules provide that each party must provide an address for service being an address in Australia by filing a document that includes such address or by filing a notice of address for service (Part 1. Sch. 2).

If there is a change of address for service then a notice of address for service is to be filed within 7 days and served on each other party.

6.03 Service of Documents

This general rule provides that each document served must be filed and sealed. Applications and accompanying documents must be served on each party as soon as practicable. Other documents must be similarly served on each other party with an address for service and on any child representative.

6.04 Court's discretion in relation to service

This rule maintains the power of the Court to authorise service other than as provided in the Rules, and to find a document has been served and nominate a particular day that it was served.

6.05 Affidavit of Service

This rule provides that service is to be proved by affidavit unless the Court orders otherwise.

Division 6.2 Service by hand in particular cases

6.06 When is service by hand required

This rule provides that an initiating application or a subpoena requiring attendance must be served by hand unless there is a notice of address for service in current proceedings, the Court directs service otherwise, a lawyer accepts service and files an address of service or a lawyer accepts service for a person other than a party.

6.07 Service by hand

This rule provides that to serve by hand the document is to be given to the person served. If not taken, then the document may be put down and described to the person to be served.

The server in a family law proceeding must not be the person on whose behalf the document is served.

6.08 Service by hand on a corporation, unincorporated association or organisation.

This rule stipulates the requirements for service by hand on various bodies. The document is to be left with an apparent officer:-

- (a) for a corporation at its registered office, principal place of business or principal office.
- (b) for an unincorporated association at the principal place of business or principal office or on an office holder.
- (c) for an organisation at the office shown in the Industrial Registry (under S268 Workplace Relations Act 1996).

Despite these provisions, service by hand may be affected on a company as defined under Corporations Law of the Commonwealth, State or Territory, a liquidator or an administrator of a company under S109X of the Corporations Law.

6.09 Service of application on unregistered business

This rule provides that if proceedings are commenced against a person in the name of a business not registered under a state or territory law the, service may be made by leaving a copy document with a person appearing to have control or management at the place of business.

6.10 Service of application on partnership

This rule provides that service of an application against a partnership is made by serving a copy on one or more of the partners or on a person appearing to have control or management at the principal place of business or at the registered office of the partnership. If service is so made, it is deemed to be service on each existing partner but if a person who is not a partner at the time of filing is sought to be made liable then that person must also be served.

Division 6.3 Ordinary Service

6.11 Service other than by hand

This rule provides that where a document is not required to be served by hand and an address for service is provided, the document may be served by delivering or posting, by pre-paid post in a sealed envelope addressed to the person, faxing to a fax receiver addressed to the person or where a lawyer has provided the number of a document exchange box, by delivering the document in a sealed envelope to that box or branch of document exchange. If there is no address for service, the document may be served by delivering or posting by pre paid post to the person's last known address or place of business.

If service is to be effected on a corporation or organisation and a law of the Commonwealth or of a State or Territory makes provision for service, then service may be in accordance with such provision.

6.12 When service is effected by post

This rule provides that service by post is deemed to occur, if in Australia, on the day when delivery would occur in the ordinary course of the post. If outside Australia, service is deemed on the 28th day after posting.

6.13 Special requirements for service by fax

This rule specifies that if service is by fax then a cover page must be included stating the sender's name and address, the name of the person served, the date and time of transmission, the number of pages (including cover page), the telephone number from where transmitted, a contact name and telephone number if there is a problem with transmission and that transmission is for service.

The transmission report must be annexed to the Affidavit of Service to prove successful transmission.

Division 6.4 Substituted Service

6.14 Substituted Service

This general rule provides that the Court may make an order where it is impracticable to serve a document as provided in the Rules and that order may specify the steps to be taken. Service is deemed to be effected after such steps are taken.

6.15 Matters to be taken into account

This rule provides that the Court may consider what reasonable steps to serve have been taken, what might bring the document to the attention of the person to be served, the likely cost of service, the means of the party and the nature of the proceedings.

6.16 Failure to comply with condition

This rule permits the Court to deem that service is effected despite failure to comply with a condition in the order for substituted service.

Division 6.5 Time for service

6.17 General time limit

6.18 Time for service of subpoena

These rules provide specific time limit. A document must be served within 12 month of filing unless the Court orders otherwise. A subpoena is to be served within 3 months of issue.

Part 7 Amendment

Division 7.1 General

7.01 Power to amend

7.02 Who may be required to make amendment

These rules provide that the Court or a Registrar may allow or direct the amendment of any documents other than an affidavit at any stage. The Court may order that a party, a Registrar, Magistrate's Associate or other person make the amendment.

Division 7.2 General federal law proceedings

7.03 Amendment after limitation period.

This rule applies where there is an application in general federal law proceedings to amend although the limitation period has expired. The rule enables the Court to give leave to amend the name of a party if thought appropriate, the result of a genuine mistake and not misleading. The Court may grant leave to change the capacity in which a party seeks orders providing that capacity existed when proceedings were started.

The Court may grant leave to include effectively a new cause of action provided that the facts relied upon are substantially the same as the initial cause of action.

Part 8 Transfer of proceedings

8.01 Change of venue

This rule provides that an applicant or a respondent may apply to have a matter heard in another registry. Regard must be given on the hearing of such application to the convenience of

the parties, the limiting of cost and expertise, whether the matter is listed for final hearing and any other relevant matter.

8.02 Transfer to Federal Court or Family Court

This rule provides that at the request of a party or its own motion, the Court may transfer proceedings to the Federal Court or the Family Court.

Such a transfer should be requested on the first court date and included in a response or an application supported by an affidavit.

As well as the factors set out in S39(3) and S39(4) of the Federal Magistrates Act (contained in Notes 1 and 2 to the rule) the Court is to consider:-

- whether there is a question of general importance desirable to be determined by the Federal Court or Family Court
- whether the hearing would be at less cost and more convenience to the parties
- whether there would be an earlier hearing in the Federal Magistrates Court
- whether particular procedures are available for the class of proceeding

the wishes of the parties.

8.03 Proceeding transferred to Federal Court or Family Court

This rule instructs the Registrar to send to the proper Office of the Federal Court or the Family Court all documents and orders made if a matter is transferred.

8.04 Proceeding transferred from Federal Court or Family Court

This rule provides that if a matter is transferred from the Federal Court, or the Family Court a sealed copy of the order be filed by the party obtaining the order or by the applicant if the order is made by either Court of its own motion.

8.05 Proceeding transferred from Federal Court or Family Court

This rule provides that the Registrar give any matter transferred a distinctive number and allocate a first court date within 14 days unless impractical to do so.

Part 9 Lawyers

9.01 Change between acting in person and by lawyer

9.02 Change of lawyer

These rules provide that if

- a party first acts in person then appoints a lawyer
- a lawyer is acting but the party decides to act in person
- a party appoints a new lawyer in place of the lawyer acting.

then notice of the change is to be filed and served on each other party and the party or former lawyer as the case requires.

The former lawyer remains the lawyer on the record until the notice, which is to contain an address for service is filed and served.

9.03 Withdrawal as lawyer

This rule provides that a lawyer may withdraw from the record by filing and serving a notice of withdrawal.

The lawyer must, unless given leave by the Court, serve a notice of intention to withdraw on the party acted for, stating

- the intention to withdraw
- that unless another lawyer is appointed or a notice of address for service filed, the party may not be served with documents.

The notice of intention to withdraw may be served by posting to the party's last known residential or business address.

Until another lawyer is appointed or a notice of address for service filed, the party's last known residential or business address is the address for service.

9.04 Corporation must be represented

This rule provides that a lawyer must represent a corporation unless otherwise provided in an Act or regulations under an Act or by leave of the Court.

Part 10 How to conduct proceedings

Division 10.1 First Court date

10.01 Directions and orders

This rule covers a significant and extensive area of the work of the Court. It provides that the Court or a Registrar will make directions at the first court date for the conduct of the matter. If appropriate, the Court or Registrar may hear all or part of the proceedings, dismiss or strike out the application if the applicant does not appear or make an order if the respondent does not appear.

Sub-rule 3 lists a number of areas in which procedural or case managing orders or directions may be made. Included are the defining of issues and primary dispute resolution. This sub rule is not restrictive and is clearly intended to promote swift resolution or hearing of the matter.

10.02 Adjournment of first court date

This rule enables the Registrar to adjourn a first court date upon request of the parties because of short service or other special circumstance.

10.03 Fixing date for final hearing

This rule emphasises the Court's determination to provide an early final hearing date. Although there is a general power to fix a hearing date in Rule 10.01 [r], this rule refers specifically to fixing a final hearing date at the first court date.

Division 10.2 Primary dispute resolution

10.04 Agreement reached by primary dispute resolution

10.05 Conciliation conference

These rules relate primarily to conciliation conferences. If a matter is resolved at primary dispute resolution, the parties may discontinue or have orders made by consent.

The notes to rule 10.04 refer to the rules specifically relating to primary dispute resolution in family law and child support matters contained in Part 23 of the Rules. Reference is made to Part 27 which contains similar provisions in matters other than family law.

The conciliation conference is to be held with a Federal Magistrate, a Registrar or person appointed by the Court and, if ordered, a counsellor or welfare officer.

Parties and lawyers must attend and a genuine effort made to reach agreement.

If the issue is unresolved further directions or orders including costs may be made.

Division 10.3 Notice of constitutional matter

10.06 Party to file notice of constitutional matter

This rule requires a party on becoming aware of a matter involving the Constitution or its interpretation to file and serve a notice of a constitutional matter.

Notice may be in Form 53 of Federal Court Rules or Form 41B of Family Court Rules and state the nature of the matters and facts establishing a constitutional matter.

Part 11 Parties and litigation guardians

Division 11.1 Parties

11.01 Necessary parties

11.02 Party may include another person as a party

11.03 Party may apply to be included

11.04 Party may apply to be removed

11.05 Court may order notice to be given.

These rules cover the joining and removal of parties to proceedings.

Rule 11.01 requires that any person whose participation is necessary for the Court to determine all matters be included as a party.

Rule 11.02 permits a party to include such a person by naming that person as a party in an application, a response or a reply. This action can only be done with leave of the Court after the first court date.

Rule 11.03 provides that a person can apply to be included as a party by serving on each party an application with an affidavit stating the person's interest and the orders sought if included.

Any order for inclusion may be on limited terms.

Rule 11.04 allows a party to apply to be removed as a party. An affidavit must be filed and served stating the relationship to each other party and the evidence in support of the application.

Rule 11.05 enables the Court to order that any person be notified of the proceeding and the application to be included.

11.06 Intervention by Attorney General

This rule requires the Attorney-General, if intervening, to file a notice setting out the basis or grounds and orders sought. If the intervention is to seek rescission of a Decree Nisi under section 58 of Family Law Act, an affidavit is to be filed and served setting out facts and matters relied on.

11.07 Child to whom state welfare law applies

This rule provides that, if the Court does not grant leave to intervene on an application under section 92 Family Law Act where the child is subject to a child welfare law, the Court may adjourn the matter and give notice of its refusal to the Attorney-General.

Division 11.2 Litigation guardian

11.08 Person who needs a litigation guardian

This rule provides that if a person in relation to a proceeding is

- incapable of understanding the nature and possible consequences
- incapable of adequately conducting the proceeding or giving adequate instructions
- a minor other than in Family Law proceedings

then a litigation guardian is needed for that person.

11.09 Starting, continuing, defending or inclusion in proceeding

This rule states that a person referred to in Rule 11.07 may participate in proceedings only by a litigation guardian who will have the same rights as the party under the Rules.

11.10 Who may be a litigation guardian

11.11 Appointment of litigation guardian

These rules provide that a litigation guardian must be an adult with no interest adverse to the subject party. The litigation guardian must file an affidavit of consent to the appointment. The Court may, at request of a party or its own motion appoint, remove or substitute a litigation guardian.

11.12 Authorised persons

This rule enables a person authorised by legislation to conduct legal proceedings for a person to be the litigation guardian. Such a person may be authorised generally or for a particular person by the Attorney General. The authorised person is to file an affidavit of consent in the proceedings.

11.13 Notice of becoming litigation guardian

This rule requires the litigation guardian to give notice of the appointment to each party and any child representative.

11.14 Costs and expenses of litigation guardian

This rule enables the Court to order that the costs and expenses of a litigation guardian be paid by a party or from the income and assets of the subject person.

11.15 Service

This rule provides that personal service on a subject person be made on a litigation guardian, or if none is appointed on an authorised person (see Rule 11.12) or if neither of these on an adult who has care of the person.

A superintendent or person in charge is deemed to be such an adult if the person is a patient in a hospital or nursing home.

Part 12 Referral by Court for legal assistance

12.01 Object of Part

12.02 Pro bono panel

These rules establish a legal assistance scheme operated through a pro bono panel of lawyers directed by the Court. The scheme is not to be a substitute for legal aid.

12.03 Referral to a lawyer

12.04 Kind of assistance

12.05 Provision of assistance by lawyer

These rules provide for the operation of the legal assistance scheme. If the Court refers a party after considering factors such as means and capacity of that party and nature and complexity of proceedings, then the Registrar must try and arrange legal assistance from the pro bono panel. Such referral to a lawyer must be with the agreement of the lawyer.

The referral may be for assistance at any stage through to final hearing. An appointed lawyer may cease to act if circumstances arise relating to practice rules relating to professional conduct or by written agreement of the party or with leave of the Registrar. If the lawyer ceases to act, the Registrar must be informed within 7 days.

If legal assistance is unavailable despite a referral, the Court may hear the matter.

12.06 Application for leave

This rule provides that a lawyer seeking to cease providing legal assistance may apply to the Registrar for leave and must serve the application on the party.

The rule sets out factors to be considered by the Registrar.

This application for leave is confidential and related correspondence does not form part of the file or the proceeding.

12.07 Professional fees and disbursements

This rule provides that appointed lawyer must not seek or recover professional fees from the party. If an order for costs is made in favour of the party, the lawyer is entitled to those costs.

The lawyer may request payment of reasonable disbursements.

Part 13 Ending a proceeding early

Division 13.1 Discontinuance and default

13.01 Discontinuance

This rule provides that an application or response may be discontinued by filing and then serving as soon as practicable, a notice in the prescribed form (Part 1 Schedule 2). This notice is to be filed 14 days before the final hearing date or at a later time by leave of the Court or a Registrar.

No notice is to be filed in a Family Law property matter or where one of the parties dies or in relation to a creditor's petition in Bankruptcy proceedings without leave of the Court or a Registrar.

13.02 Costs

This rule enables a party to apply for costs when another party discontinues an application or part of an application. The application for costs is to be made within 28 days of service of the notice of discontinuance.

If costs are outstanding under an order, the Court may stay further proceedings brought on the same or substantially the same matter by the defaulting party until the costs are paid.

13.03 Default

This rule empowers the Court to deal with a situation where a party fails to take a step required by the Rules or comply with an order without limiting the Court's power in relation to contempt or sanctions for non compliance. The Court may hear any application by another party or of its own motion and extend time for compliance or end the proceeding.

Division 13.2 Consent Orders

13.04 Application for order by consent

13.05 Additional information

These rules provide that parties may file draft consent orders in terms agreed upon about a matter in dispute signed by each party and stating that orders are to be made by consent.

The Court may then make such orders as appropriate.

If the Registrar has the power, the Registrar may make the orders by consent. The Registrar may refer the matter to the Court. Before making a consent order, the Court or a Registrar may require additional information.

Division 13.3 Summary disposal and stay

13.06 Application

This Division applies only to general federal law proceedings.

13.07 Summary disposal

This rule provides that if there is either evidence that there is no defence to the claim or part of it or the respondent's defence discloses no answer to the claim or part of it then the Court may give judgment on that claim or part and make any appropriate orders or directions.

If judgment is given, the Court may stay execution or other enforcement of that judgment until determination of the claim.

13.08 Residue of proceeding

13.09 Application

These rules refer to previous rule 13.07 and enable the continuation of any claim or part of a claim not disposed of by judgment, dismissal and not stayed. The Court may give directions for future conduct of the matter. Applications for judgment or an order staying or dismissing an action must be by application in the prescribed form (Part 1 Sch. 2).

13.10 Frivolous proceedings

This rule deals with the staying or dismissal of a proceeding or claim for relief if that proceeding or claim

- (a) discloses no reasonable cause of action
- (b) is frivolous or vexatious or
- (c) is an abuse of process.

13.11 Vexatious litigants

This rule provides that if the Court is satisfied that a person has habitually, persistently and without reasonable grounds instituted vexatious proceedings in the Court or any other Australian Court, the Court may order that the proceeding not be continued or that person not institute proceedings without leave of the Court.

This order may be made on the Court's own motion or an application of the Attorney-General a Solicitor-General of the Commonwealth or of a State or Territory or of a Registrar.

A person aggrieved by vexatious proceedings may make application for an order that any such proceeding not continue or not be instituted without leave of the Court.

The Court must not grant leave unless satisfied the proceedings are not an abuse of process and there is prima facie grounds for the proceeding.

Part 14 Disclosure

Division 14.1 Answers to specific questions

14.01 Declaration to allow specific questions

The rule empowers the Court to make a declaration under subsection 45(1) to allow interrogatories. The Court or a Registrar may then make orders for answers to specific

questions. Reference is to be made to Family Law Rules (Order 19) or Federal Court Rules (Order 16).

Division 14.2 Obligation to disclose

14.02 Declaration to allow discovery

The rule empowers the Court to make a declaration under subsection 45(1) to allow discovery either on a party's application or on the Court's own motion.

An order for disclosure may be a general one or limited to particular classes of documents or issues and to be completed by a specified date.

14.03 Affidavit of documents

14.04 Production of documents to Court

These rules require a party ordered to disclose documents to file an affidavit of documents and provide that the Court may order production of a document.

14.05 Claim for privilege

14.06 Order for particular disclosure

This rule enables the Court at any stage of a matter to order a party to file and serve an affidavit where the possession of a document is in question.

14.07 Inspection of documents

14.08 Copies of documents inspected

These rules provide for inspection of documents produced under an order and the making of copies.

14.09 Documents not disclosed or produced

A document is not to be produced in evidence unless the Court gives leave if that document has not been referred to in any affidavit of documents filed under an order or not produced after a subpoena to produce has been served.

14.10 Documents referred to in document or affidavit

This rule provides that, if a document or an affidavit refers to another document, a party may request in writing a copy or production for inspection. The party receiving the request must within 4 days either:-

- provide a copy of the document, or
- appoint a time and place for inspection, or
- claim privilege and state the grounds or
- state that document is not in their possession and its whereabouts.

14.11 Use of documents

This rule states that any order or undertaking not to use a document other than for the proceeding in which it is disclosed does not apply if the document has been read or referred to in open court and its terms disclosed.

This rule does not apply to family law matters and is subject to any Court order.

Part 15 Evidence

Division 15.1 General

15.01 Court may give directions

This rule is a very general rule providing that the Court may direct as to order of evidence, addresses and general conduct of the hearing.

The note refers to a number of sections in Division 4 of the Act which relate to evidence.

15.02 Evidence if there is a child representative

This rule establishes the order of evidence and addresses in a hearing where a child representative adduces evidence.

15.03 Decisions without oral hearing

This rule enables the Court or a Federal Magistrate, if the parties consent, to make a decision without an oral hearing.

15.04 Court may call evidence

This rule provides that the Court may call a witness of its own motion. The Court may order that a party pay the expenses of such a witness.

15.05 Hearing evidence - notice under section 67 Evidence Act 1995

This rule provides that Form 38B of the Family Law Rules, Form 144 of the Federal Court Rules or a form complying with the Evidence Regulations may be used to give notice of previous representation pursuant to S67 Evidence Act relating to exceptions to the hearsay rule.

15.06 Transcript receivable in evidence

This rule permits a transcript of proceedings to be received in evidence as a true record.

Division 15.2 Expert evidence

15.07 Duty to Court and Form of expert evidence

This rule establishes the Federal Court practice directions guidelines as the Court's expert witness guidelines.

The notes set out the key points stressing the primary duty to the Court.

15.08 Expert evidence for 2 or more parties

This rule outlines the matters to be considered by the Court in giving directions when expert witnesses are called for more than one party.

These include preparation of a joint statement as to how they agree and differ or an oral or written statement by each expert witness as to their opinion, their opinion on the other expert opinion and whether the evidence given alters or modifies those opinions.

The Court will also determine the order of calling of expert witnesses and their position in the courtroom.

15.09 Court expert

This rule enables the Court at the request of a party or of its own motion to appoint a court expert (other than a Family and Child Counsellor or Welfare Officer) to inquire into and report on a question in a proceeding. The expert should be agreed upon by the parties. The Court may give directions about an experiment or test (other than a parentage testing procedure under section 69W Family Law Act).

15.10 Report of court expert

This rule provides that the court expert give the report to the Registrar who must send it to each party. The Court may receive the report in evidence, allow examination or give other directions. A party wishing to cross examine the expert must arrange attendance of the expert by subpoena or otherwise and pay the expenses unless the Court orders otherwise.

15.11 Remuneration and expenses of court expert

This rule makes the parties jointly liable to pay the remuneration and expenses of the expert unless the Court otherwise directs.

15.12 Further expert evidence

This rule allows a party with leave of the Court to adduce evidence of another expert where a court expert has made a report.

Division 15.3 Subpoenas and notices to produce

15.13 Issue of subpoena

This rule provides for the issue of subpoenas for production, the giving of evidence or both. Subpoenas are to be in the prescribed form (Part 1 Sch.2) and must specify the name, office or position of the person subpoenaed and adequately describe a document or thing to be produced.

A subpoena should not be sought to be issued to give evidence if production is sufficient.

15.14 Time limits

This rule provides that subpoenas for production only be made returnable when made so by the Court. Subpoena requiring attendance is to be returnable on a hearing date.

A subpoena must not be served less than 7 days before attendance or production is required unless the Court directs otherwise.

15.15 Limit on number of subpoenas

This rule limits the issue of subpoenas to not more than 5 in a whole proceeding unless the Court orders otherwise.

15.16 Service

This rule requires a subpoena to give evidence to be served by hand and a subpoena to produce be served by ordinary service (see Division 6.3).

A copy of subpoena must be given to each other party and any child representative within a reasonable time before compliance.

15.17 Conduct Money

This rule provides that conduct money for return travel must be tendered on service of a subpoena.

15.18 Setting aside subpoena

15.19 Order for cost of complying with subpoena.

These rules provide that on application the Court may set aside all or part of a subpoena and make an order for payment of any loss or expense complying with a subpoena.

15.20 Cost of complying with subpoena if not a party

The rule provides that if a person served with a subpoena who is not a party gives notice that a substantial loss or expense is required in complying then if the Court is satisfied that the amount sought is reasonable, then that amount is payable by the party on whose behalf the subpoena was issued.

The amount payable is to be fixed with regard to the scale applicable to witnesses in the Supreme Court of the State or Territory. If costs are recoverable by the party liable to pay the amount, the Court may allow that amount to be included in the costs recoverable.

15.21 Production by person not a party

This rule enables a person not a party to produce the document or thing at the Registrar on the day before attendance is required. If there is not objection the production may occur at another location by agreement. If production is at the Registry, the Registrar must issue to the person a receipt and produce the document and thing as the court directs. An agent of the person named may satisfy a subpoena for production but the rule does not apply to subpoena to give evidence.

15.22 Order for inspection

This rule provides that the Court or a Registrar may make an order to allow inspection by parties and any child representative of a document produced under a subpoena.

The Court or Registrar must be satisfied that a copy of the subpoena has been previously given [see subrule 15.15(2)].

This order may be made in chambers and provide for inspection other than at Court.

15.23 Compliance with subpoena

This rule gives the Court or a Registrar the power to issue a warrant for the arrest of a person who fails to comply with a subpoena served within a reasonable time. That person may be ordered to pay any costs of the failure to comply.

15.24 Notice to produce

This rule provides that a party may require production of a specified document by giving notice in writing. The document must be produced by the party who has been given notice.

Division 15.4 Affidavits

15.25 Form of affidavit

This rule says that an affidavit is to be in the prescribed form (Part 1 Sch. 2) and divided into distinctive paragraphs numbered consecutively.

15.26 Making an affidavit

This rule sets down that each page of an affidavit is to be signed by the deponent. The jurat is to contain details of the deponent and the person before whom it is made. Each alteration is to be initialled by both.

15.27 Affidavit of illiterate or blind person etc.

This rule provides that if a person making an affidavit is illiterate, blind or physically incapable of signing, the person taking the affidavit must certify that

- The affidavit was read over.
- It appeared to be understood.
- The person if incapable of signing indicated that the contents were true.

If a person making the affidavit does not have adequate command of English, the affidavit and the oath or affirmation must be translated either orally or in writing in a language understood by that person. The translator must certify as to this in the jurat.

If there is no certificate that the person making the affidavit cannot read it or sign it, then the affidavit cannot be used unless the Court or a Registrar is satisfied as to the special requirements.

15.28 Documents annexed or exhibited

This rule provides that if a document is to be used with an affidavit it is to be annexed to the affidavit or, if impractical, made an exhibit.

The annexure or the exhibit is to be paginated and identified in a statement by the person before whom the affidavit is made. The exhibit must be marked with the number and name of proceedings.

15.29 Objectionable material may be struck out

Material may be ordered struck out of an affidavit by the Court or a Registrar if it is inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative or contains opinions of persons not qualified to give them.

Costs caused by the material struck out must be paid by the party who filed the affidavit unless there is an order otherwise.

Division 15.5 Admissions

15.30 Admission

This rule enables the Court, on application of a party, to make an order to the extent of any admission made by the other party.

15.31 Notice to admit facts or documents

This rule provides for a party to ask another party by giving notice in the prescribed form (Part 1 Sch. 2) to admit facts or documents specified. If the other party does not, within 14 days, dispute the fact or document by serving a notice then that party is taken to admit the fact or the document.

Any admission may be withdrawn with the Court's leave.

If the other party serves a notice disputing a fact or document which is later proved in the proceeding, then that party must pay the costs of the proof unless the Court otherwise orders.

Part 16 Judgments and Orders

16.01 Court may make any judgment or order

16.02 Date of effect

These rules provide that Court may, at any stage, give any judgment or make an order to take effect the day it is given or made unless the Court orders otherwise.

16.03 Time for compliance

This rule requires a person to do an act under an order (other than a parenting order) within 14 days after service unless the Court orders otherwise. This rule does not apply to any part of an order for payment of money unless it is to pay money into Court.

16.04 Fines

This rule provides that the Court must specify the time within which a person must pay a fine to the Registrar who must pay all monies paid as a fine to Consolidated Revenue Fund.

16.05 Setting aside

This rule provides that the Court may vary or set aside a judgment or order if it was

- made when a party was absent
- obtained by fraud
- interlocutory
- an injunction or for appointment of a receiver
- not a reflection of the intention of the Court.

The party in whose favour the order is made may consent to the setting aside.

The Court always has the power to vary or terminate an order until further order.

16.06 Undertaking

This rule gives an undertaking to the Court the same force and effect as an order unless the Court orders otherwise.

16.07 When must an order be entered

This rule requires an order be entered if it comes effective on signing, is to be served, enforced or the subject of appeal proceedings. It need not be entered if it involves a procedural order such as intending or abridging time or amending a document.

16.08 Authentication of orders

This rule provides that an order may be authenticated by officers of another Australian Court under section 90 of the Act or under seal signed by a Federal Magistrate, Registrar or authorised Officer of the Court.

Part 17 Separate decision on question

17.01 Definition

This rule defines "question" in Part 17 as a question or issue whether of fact or law or partly of fact and of law.

17.02 Order for decision

17.03 Separate question

17.04 Orders, directions on decision

17.05 Disposal of proceeding

These rules provide for the Court to make an order for a decision on a question at any stage. The separate question is to be set out in numbered paragraphs.

Upon deciding the question, the Court may dismiss the proceeding or any part, give judgment including a declaratory judgment or any other order and directions.

Part 18 Referral of matter to officer of court

18.01 Court may refer matter

The Court may refer to an Officer of the Court for investigation, report and recommendation any claim or application including assessment of damages or taking accounts. The Officer may take evidence on oath, receive a report from a family and child counsellor and summon witnesses to give evidence or produce documents.

Part 19 Contempt

19.01 Contempt in the face or hearing of Court

This rule provides that the Court may, if it appears that a person is guilty of contempt in the face of a hearing of the Court, direct that the person attend or issue a warrant for the person's arrest. The Court, or the party attending, must specify the contempt with which the person is charged and allow the person to state any defence, then determine the charge and make an order for punishment or discharge.

The Court may direct a person to remain in custody until the charge is determined or direct that security be given for the person's attendance.

19.02 Contempt other than in the face or hearing of Court

These rules provide that an application in the prescribed form (Part 1 Sch. 2) may be made to the Court for a party to be dealt with for contempt (other than in the face or hearing of the Court) stating the alleged contempt and supported by an affidavit stating the facts relied on. The application may be made by a party if in relation to a proceeding, the Marshal who may be directed to do so by the Court or an Officer of Australian Federal Police or of the police force of a State or Territory.

If the Court considers the person charged is likely to leave the jurisdiction, the Court may issue a warrant for arrest and detention until that party attends to answer the charge or gives security as directed for attendance.

The Court must, when the person attends, tell the person of the allegation, ask whether the allegation is admitted or denied and hear any evidence in support of the allegation.

After hearing that evidence, the Court may dismiss the application if there is no prima facie case established or, if there is a case established, invite the stating of a defence and after hearing any defence, determine the charge. If the Court then finds the charge provided, make an order for punishment of the person.

Part 20 Review of exercise of Registrars' power

20.01 Time for application for review

This rule establishes time limits for review of exercise of a power by a Registrar as

- 21 days if the power exercised is a delegated bankruptcy power under Rule 1.4(1) of the Federal Magistrates Court (Delegation to Registrars) Rules 2000.
- 28 days if the power exercised is a delegated dissolution of marriage power under Rule 1.4(2) of those Rules
- otherwise 7 days
- the time may be extended by a Court or a Registrar or with the consent of the parties.

20.02 Application for review

This rule provides that an application for review be in the prescribed form (Part 1 Sch. 2) and listed, unless impractical, within 14 days of filing. Service must be within 7 days of filing.

The application does not operate as a stay unless a Court or Registrar orders otherwise.

20.03 Procedure for review

This rule establishes that a review of a Registrar be a hearing de novo and may receive as evidence

- any affidavit or exhibit tendered before the Registrar
- further evidence with leave

- a transcript of the proceeding before the Registrar or, if no transcript, an affidavit of a person present at the hearing.

Part 21 Costs

Division 21.1 Security for costs

21.01 Security for costs

This rule provides that a respondent (which includes an applicant when a cross-claim is filed) may apply for an order that an applicant gives appropriate security for costs.

Application must be in the prescribed form (Part 1 Sch.2) and supported by an affidavit stating the facts relied upon.

Division 21.2 Orders for Costs

21.02 Order for costs

This rule enables an application for a costs order to be made at any stage, within 28 days of a final decree or order or as allowed by the Court.

The Court may when making a costs order set the amount, or the method of calculation or order taxation. The Court may order immediate payment even if the proceeding is not concluded.

21.03 Determination of maximum costs

This rule provides that the Court may specify by order the maximum costs recoverable on a party and party basis by order at first court date either of its own motion or application by a party. The amount specified does not include costs related to non compliance, amendment or any unnecessary incurring of costs. The maximum costs may be varied if there are specific reasons and it is just to do so.

21.04 Costs reserved

This rule provides that if costs are reserved, then those costs reserved follow the event unless otherwise ordered.

21.05 Costs if proceedings transferred

This rule enables the Court to make an order for costs before the transfer of a matter from the Family Court or Federal Court if no order had been made in the court transferring. Costs are governed by these rules.

21.06 Lawyer to repay costs due to delay or misconduct

This rule enables the Court to order that a lawyer repay client costs if costs are awarded against the client because of delay or misconduct of the lawyer.

21.07 Order for costs against lawyer

This rule provides that the Court may make a costs order against a lawyer if the lawyer, an employee or agent has caused costs to be incurred by a person or another person or be thrown away. The order may be made either on the Court's own motion or on application of person who has incurred costs or had costs thrown away.

A lawyer may be in default if a hearing does not proceed because of failure to attend or to file documents or to prepare evidence. The costs order may disallow costs or part costs between a lawyer and a party, or require the lawyer to pay costs or part costs incurred by another party or to pay the costs or part costs ordered to be paid by the client of the lawyer.

The Court or Registrar must give the lawyer and any other person affected a reasonable opportunity to be heard. The Court or Registrar may order that notice of the costs order against a lawyer be given to the client or any other persons.

21.08 Interest on outstanding costs

This rule establishes, as the interest rate payable on outstanding costs, the interest

rate for family law which refers to rule 22.01 which in turn prescribes the rate in the Family Law Rules as the rate applicable in subsection 117 B(1) Family Law Act.

Division 21.3 Costs and disbursements

Subdivision 21.31 General

21.09 Application

This rule applies this subdivision to costs payable or to be taxed under the Act, these rules or an order of the Court but specifies that Order 38 of the Family Law Rules does not apply to family law matters. The Rules do not, unless specifically provided, regulate fees between lawyer and client. The lawyer is governed by professional conduct rules applying where the lawyer is practising.

21.10 Costs and disbursements

This rule provides that a party entitled to costs is entitled to costs as per Schedule 1 and disbursements.

21.11 Cost of taxation

This rule provides that if costs are taxed and the amount does not exceed costs worked out in Schedule 1 by at least 20% the taxing party is liable for costs of the taxation.

21.12 Expenses for attendance by witness

21.13 Expenses for preparation of report by expert

These rules establish that amounts payable to a witness or an expert for preparation of a report for a party or a child representative are proper disbursements if the attendance or report are reasonably required and the amounts are found to be reasonable by the Court.

21.14 Solicitor as advocate

This rule establishes that the amount a party is entitled to where a solicitor appears on the hearing alone or instructed by a solicitor of the same firm is limited to 150% of the daily hearing fee for one Solicitor and a fee for preparation but not for preparation of a brief.

21.15 Advocacy certificate

This rule provides that the Court or a Registrar may certify for an advocate or advocates appearing for a party.

21.16 Counsel as advocate

This rule specifies that if use of an advocate is certified as reasonable, the amount payable is the daily fee plus the advocacy loading in Part 1 Schedule 1

Subdivision 21.3.2 Short form bill of costs - certain bankruptcy proceedings

21.17 Application of Subdivision

This rule applies this subdivision to costs charged by a lawyer for a creditor in a petition for bankruptcy in paragraph 40 (1) (g) of its Bankruptcy Act.

21.18 Short form bill of costs

This rule provides that the lawyer may charge:

- If a sequestration order is made, the amount for costs stated in item 43B in the Second Schedule of the Federal Court Rules
- If the petition is dismissed and the creditor obtains an order for costs, the amount stated in item 43C of that schedule
- If adjournment costs were received or awarded on a day, the amount stated in items 36 or 37 of that schedule
- Proper disbursements.

21.19 Claim for costs

This rule requires a lawyer claiming costs to serve a bill of costs and disbursements (which need not be itemised) plus a copy of receipts, vouchers or journals in support of the claim for disbursements if:

- if a sequestration order is made, on the trustee
- if the petition is dismissed on the debtor.

Chapter 2 Family law proceedings

Part 22 General

22.01 Rate of interest

This rule prescribes the rate of interest in the Family Law Rules as the rate applicable for the purposes of subsection 117B (1) Family Law Act.

Part 23 Primary dispute resolution

The accompanying notes refer to the duties of the Court and lawyers contained in Sections 14F, 14G, 16C and 19BA Family Law Act which relate to primary dispute resolution and mediation.

Division 23.1 Counselling and Family reports

23.01 Application of Family Law Rules

This rule ensures that Order 25 (Counsellors and Family reports) of the Family Law Rules applies to proceedings in the Court particularly in relation to counselling and preparation of reports.

23.02 Report after counselling

This rule requires the counsellor or welfare officer after a court-ordered conference to report to the Court as to the number of counselling sessions, the outcome and recommended future management.

Division 23.2 Mediation

23.03 Referral for mediation

This rule requires the Court, if making an order for mediation, to refer the matter either directly to a primary dispute resolution provider for assessment and, if appropriate, mediation or a Primary Dispute Resolution Co-ordinator for assessment and, if appropriate, arrange for mediation.

The Court may make any other order to facilitate mediation.

Part 24 Financial matters

24.01 Application of part

This Part relates to financial matters in family law proceedings.

24.02 Financial statement

This rule requires an applicant or a respondent filing a response to file and serve with the application or response a financial statement in accordance with Form 17 Family Law Rules or an affidavit of financial circumstances.

24.03 Full and frank disclosure

This rule provides that a party must make, when required to file a financial statement or affidavit of financial circumstances full and frank disclosures and details various interests and sources of income to be included.

24.04 Production of documents (proceedings other than for maintenance only)

This rule specifies the financial documents which must be served within 14 days after first court date by a party required to file a financial statement or affidavit of financial circumstances other than a respondent in maintenance proceedings.

24.05 Production of documents (proceedings for maintenance only)

This rule provides that if there is a significant change in a party's circumstances a financial statement or affidavit must be amended as soon as practicable by filing and serving an affidavit setting out the amendment. If the change cannot be clearly set out in 300 words or less, an amended financial statement or affidavit must be served.

Part 25 Dissolution of marriage

25.01 Application for dissolution of marriage

This rule provides that an application for dissolution of marriage must be by Form 4. A marriage certificate must be filed unless already filed in the same registry. If a marriage certificate is unable to be filed, the applicant must file an affidavit stating the reasons why or give an undertaking to file.

If a marriage certificate is not in English, there is to be filed a translation and an affidavit verifying the translation and the qualifications of the person who has done the translation.

25.02 Service of application

25.03 Additional requirements for service by post

These rules provide that service of an application for a decree must be served either personally or by post to the respondent's last known address. If served by post, a form of acknowledgment of service (Form 19) is to be included with an envelope addressed to the address for service of the applicant and if sent overseas bear the correct postage for return post.

25.04 Acknowledgment of service

This rule provides that the person served may acknowledge service by an acknowledgment of service (Form 19) signed by either that person or the person's lawyer. If the lawyer signs, the acknowledgment of service is evidence of service on the date service is acknowledged.

25.05 Affidavit of service

This rule establishes that service (other than by acknowledgment of service) must be proved by affidavit (Form 20) which can include evidence as to the identity of the person served. (Form 21)

25.06 Evidence of service

This rule provides that evidence of service may include:

- evidence of signature (Form 23)
- a signed acknowledgment of service
- evidence by the server identifying a photograph as that of the person served together with evidence of the identity of the person in the photograph by another person
- evidence by a person present at the time of service as to the identity of the person served.

25.07 Response

This rule provides that a response is to be by Form 13 and is to be served on the applicant as soon as practicable.

25.08 Objection to jurisdiction

This rule provides that an objection to the jurisdiction is to be by Form 14 and is to be served on the applicant as soon as practicable.

25.09 Time for filing response or objection

This rule provides that a response or an objection to jurisdiction must be filed

- within 28 days of service if served in Australia

- within 42 days of service if served outside Australia.

25.10 Application for rescission of decree nisi

This rule provides that an application for rescission of decree nisi must be by application in the prescribed Form (Part 1 Sch. 2) filed and served with an affidavit setting out the reasons why and the evidence in support.

25.11 Discontinuance of application

This rule allows an application to be discontinued by leave of the Court or a Registrar. Conditions may be imposed including as to service.

25.12 Costs in undefended proceedings for dissolution of marriage - basic composite amount.

This rule provides that the costs of the lawyer for an applicant in undefended proceedings, subject to any costs agreement, be the amount in Part 2 of Schedule 1.

Chapter 3 Proceedings other than family law

Part 26 General

26.01 Rate of interest

This rule prescribes the rate of interest in the Federal Court Rules as the rate applicable in paragraph 77 (3) (a) of the Act (being interest on a judgment debt from the date of judgment).

Part 27 Primary dispute resolution

Division 27.1 General

27.01 Proceeding referred to mediator or arbitrator

This rule provides that if the Court orders mediation or, with consent of the parties, arbitration then mediation or arbitration must proceed according to this Part of the Rules although the power of the Court or a Registrar to give directions and make procedural orders under Rule 10.01 is unaffected.

27.02 Adjournment of proceeding

This rule provides that there be an adjournment until the mediator or arbitrator reports to the Court. The adjournment may be to a fixed date by which the mediator or arbitrator is to report.

27.03 Court may end mediation or arbitration

This rule provides that the Court may end a mediation or arbitration at any time, terminate an appointment or appoint a new mediator or arbitrator. If a new arbitrator is appointed, the Court may order that anything previously done must be treated by the new arbitrator as being done by that arbitrator. Any interim award is taken to have been made by the new arbitrator who must adopt and act on any determination made by the previous arbitrator. If the Court appoints a new arbitrator, the arbitration may continue as the Court directs.

Division 27.2 Mediation

27.04 Nomination of mediator

This rule requires the Registrar, if the parties cannot agree on mediation within 14 days of an order, to nominate a person as mediator, provide details of that mediator and other requirements to the parties. In fixing a time and date for a mediation conference, the Registrar must consult the parties and have regard to any time fixed by the Court.

27.05 Mediation conference

This rule provides that a mediation conference is to be conducted as directed by the Court as a structured process with the mediator encouraging and facilitating discussion between the parties so that they may communicate effectively and include in a consent order any agreement reached.

The mediator may report to the Court in terms agreed between the parties if the order is only in relation to part of the proceeding.

27.06 Mediator may end mediation

This rule provides that if the mediator considers that the mediation should not continue, the mediator must end the mediation and advise the Court of the outcome.

Division 27.3 Arbitration

27.07 Appointment of arbitrator

This rule provides that, if an order for arbitration is made, the Court may nominate a person to be arbitrator with consent of the parties. The Court may appoint the arbitrator if that person consents in writing.

Orders may be made by consent as to the conduct of and time for completion of the arbitration and how payment is to be made of the arbitration and expenses of the arbitration. The parties may ask the Court to indicate how the report is to be reported to the Court by the arbitrator.

Part 28 Cross-claims

28.01 Cross-claim against applicant

28.02 Cross-claim after application

These rules provide that a respondent may make a cross-claim instead of a separate proceeding and the cross-claim may be in relation to a matter arising after the start of the proceeding.

28.03 Cross-claim against additional party

This rule allows a respondent to make a cross-claim against a person other than the applicant provided the applicant is also made a party and the respondent either alleges the other person is liable with the applicant or claims relief against the other person in connection with the same subject matter as the application.

Service of the response and cross-claim together with a copy of the application must be served on the other person who is included as a respondent to the cross-claim upon such service

If a respondent makes a cross-claim against another person the Rules apply as if the cross-claim was an application. The respondent making it was an applicant and the party against whom the cross-claim is made was a respondent.

28.04 Cross-claim to be included in response

This rule provides that any cross-claim must be included in the response.

28.05 Response to cross-claim

This rule provides that a cross-respondent file a response to the cross-claim by a response in the prescribed form. (Part 1 Sch. 2)

28.06 Conduct of cross-claim

This rule provides that the rules apply to a cross-claim as if the applicant was the original applicant and the respondent was the original respondent.

The cross-claim must be heard at the same time as the original application.

28.07 Exclusion of cross-claim

28.08 Cross-claim after judgment etc.

These rules provide that the Court may exclude a cross-claim from the proceeding and give appropriate directions for its conduct. The cross-claim may proceed after judgment has been given or the original proceeding has been stayed, dismissed or discontinued.

28.09 Judgment for balance

This rule enables the Court to give judgment for a balance in favour of one of the parties if there is a balance after a cross-claim is established.

28.10 Stay of claim

This rule allows the Court to stay enforcement of a judgment until a cross-claim is heard.

28.11 Cross-claim for contribution or indemnity

This rule prohibits judgment on a cross-claim for contribution or indemnity being entered or enforced by execution until any order against the applicant has been satisfied.

28.12 Offer of contribution

This rule applies if a party (the first party) may be liable to contribute towards any debt or damages recoverable from another party (the second party) and the first party makes an offer, without prejudice to the first party's defence to make a specific contribution to the second party.

This offer must not be brought to the attention of the Court until all issues of the first party's liability or the amount of debt or damages have been decided.

Chapter 4 Bankruptcy proceedings

Part 29 General

29.01 Application of Chapter

29.02 Interpretation

These preliminary rules establish the application of this Chapter to Bankruptcy Act proceedings with the application of Chapters 1 and 3 as far as they are relevant and not inconsistent with Chapter 4.

The expressions used in Chapter 4 have the same meaning as in the Bankruptcy Act. The note lists a number of expressions defined in the Bankruptcy Act.

29.03 Starting a proceeding

This rule provides that an application is to be by Form 5 and must state each section of the Bankruptcy Act relevant to the proceeding.

29.04 Review of decision by Registrar

This rule allows 21 days for an application to review the decision of a Registrar which is defined as a decision, direction or act. The Court must review the decision.

29.05 Leave to be heard

This rule provides that the Court may grant leave to a person not a party to be heard. Leave may be conditional and revoked at any time. The Court may award costs against the person granted leave if the Court thinks it appropriate where the granting of leave has caused additional costs to another party. The Court may order that person be not further heard until the costs are paid or secured.

The granting of leave or an order under this rule can be made on the Court's own motion or on application in the prescribed form (Part 1 Sch.2) by a party or person having an interest in the proceeding.

29.06 Appearance at application or examination

This rule requires a person who intends to appear at a hearing of an application or petition or take part in an examination to file a response in the prescribed form (Part 1 Sch. 2).

29.07 Opposition to application or petition

This rule provides that a person who intends to oppose an application or petition must, at least 3 days before the hearing date or with leave of the Court file a response, a notice being Form 149 of the Federal Court Rules and an affidavit in support of the grounds of opposition and serve the notice and affidavit on the applicant.

Part 30 Bankruptcy Notices

30.01 Substituted service

This rule requires that an application for an order for substituted service of a bankruptcy notice must be made in the prescribed form (Part 1 Sch. 2) accompanied by a copy of the bankruptcy notice and affidavit in support.

30.02 Requirements of application to set aside, or extend time for complying with, notice

This rule requires an application for an order to set aside or extend time to comply with a bankruptcy notice to be accompanied by:

- a copy of the bankruptcy notice
- an affidavit setting out the date on which the notice was served, the grounds in support and a copy of any application to set aside the judgment or order to which the notice relates together with material in support.

If the basis of the application is that the debtor has a counter-claim, set-off or cross demand (see paragraph 40 (1) (g) Bankruptcy Act) the affidavit must state details, the amount by which it exceeds the amount claimed in the notice and why it was not raised in the previous proceeding.

This application and accompanying documents must be served on the respondent creditor within 3 days of filing.

30.03 Making and hearing of application for extension of time

This rule provides that an application for extension of time may be made in the absence of a party and need only be heard in open court if the extension is sought to a date after the first court date.

Part 31 Creditors' petitions

31.01 Application of Part

This rule applies this part to a creditor's petition for a sequestration order against the estate of the debtor.

31.02 Requirements of creditor's petition and supporting affidavits

This rule provides that the petition be by Form 150 of the Federal Court Rules and accompanied by sufficient copies for service and annexure to affidavits of service and an affidavit verifying the petition.

31.03 Petition founded on issue of execution against debtor

This rule provides that if a petition is founded on an act of bankruptcy in paragraph 40 (1) (d) Bankruptcy Act, (where execution has been unsatisfied).

This rule provides that if a petition is founded on an act of bankruptcy in paragraph 40 (1) (d) Bankruptcy Act, (where execution has been unsatisfied) the affidavit must state:

- that, after execution, property of the debtor has been sold or held by the Sheriff for 21 days
- that the writ or warrant of execution has been returned unsatisfied and a copy must be attached to the affidavit.

31.04 Petition founded on failure to comply with bankruptcy notice or set up counter-claim, etc.

This rule provides that if a petition relying on in paragraph 40 (1) (g) Bankruptcy Act (where there is non-compliance with a Bankruptcy Notice) is filed the accompanying affidavit must state:

- that any application to set aside or for an extension of time to comply with a bankruptcy notice has been finally decided and a copy of the order must accompany the affidavit.
- that Court records and those of the Federal Court have been searched and no application has been made in relation to the Bankruptcy notice. The affidavit must be accompanied by an affidavit of service of the bankruptcy notice.

31.05 Service

This rule requires the applicant creditor to serve the respondent debtor at least 5 days before the hearing date with:

- the creditor's petition
- verifying affidavit (subsection 47 (1) Bankruptcy Act)
- affidavit of service of bankruptcy notice (if applicable)
- copy of any relevant order
- copy of any consent to act as trustee (section 156A Bankruptcy Act).

31.06 Additional affidavits to be filed before hearing

This rule provides the applicant creditor must file the following further affidavits before the hearing:-

- affidavit of compliance with filing of document required by Rule 31.05
- affidavit of a search conducted in the National Personal Insolvency Index no earlier than 1 day before the hearing date and setting out any references found to the debtor, that there were no details of a debt agreement and attaching a copy of the extract of index.
- affidavit that each debt relied on is owing.
- affidavit of search of records at a court if the debt is payable under a court order.

If it is not practical to file an original affidavit, a fax copy may be filed and used provided the original is filed within 2 days.

31.07 Summons to debtor or examinable person for examination

This rule applies to an application for a debtor or examinable person to be summoned for examination.

The accompanying affidavit must:-

- identify the person to be examined and the relationship with the debtor
- if books are to be produced, identify those books and the grounds for production
- state if inquiries were made and any requests made for information and the results of those inquiries and requests
- the reason if no inquiries or requests were made.

31.08 Sequestration order to be entered and served

This rule requires the applicant creditor, on the making of a sequestration order to:-

- notify the trustee in writing of the appointment on the day of making of the order
- enter the order within 1 day of the order
- give a copy of the order to the trustees and the Official Receiver within 2 days of the order.

31.09 Order dismissing petition to be entered and served

31.10 Order extending petition

These rules require the applicant creditor on dismissal of the petition, the granting of leave to withdraw the petition or the making of an order extending the petition to:

- enter the order within 1 day of the order
- give a copy of the order to any person who has consented to act as trustee and to the Official Receiver within 2 days of the order.

Part 32 Debtors' petitions

32.01 Application of Part

This rule provides that this Part applies to a referral by the Official Receiver to accept or reject a petition. The note refers to the relevant sections of the Bankruptcy Act [subsection 55 (3B), section 56C and subsection 57 (3B)].

32.02 Form of referral

32.03 Hearing of referral

These rules provide that upon receipt of the referral (Form 153) the registrar fix a hearing date. The Official Receiver, at least 3 days before the hearing date, must serve copies of the referral and notice of the hearing date (Form 153) on

- each debtor who presented the petition
- each debtor listed in any creditor's petition
- each creditor in the petition
- the person administering if subsection 56C (4) of the Bankruptcy Act applies.

Part 33 Discovery of bankrupt's property

33.01 Definition

This rule defines "relevant person" as being within the meaning of S81 Bankruptcy Act (becomes bankrupt)

Division 33.1 Summoning relevant person for examination

33.02 Application for Division

This rule states that the subsequent rules apply to an application for a relevant person to be summoned for examination.

33.03 Application for summons

This rule requires the application to be made by Form 154 and accompanied by an affidavit identifying the person to be summoned as a relevant person and if books are to be produced by that person identify those books.

33.04 Requirements of summons

This rule provides that, if the summons is to be issued, the Registrar must sign and stamp the summons (Form 151) and send it to the applicant for service. The summons must identify any books to be produced.

33.05 Service of summons

This rule requires the applicant to serve the summons on the relevant person by hand at least 8 days before the date fixed or as directed by the Court or Registrar and to give written notice to each creditor of the relevant person.

33.06 Failure by relevant person to attend examination

This rule allows the Court or a Registrar to adjourn the examination or discharge the summons if the relevant person does not attend.

Division 33.2 Summoning of examinable person for examination

33.07 Application of Division

This rule states that the subsequent rules apply to an application for an examinable person to be summoned for examination.

33.08 Application for summons

This rule requires the application which can be made to summons 2 or more persons to be in the prescribed form (Part 1 Sch. 2) if made to the Court or by Form 154 Federal Court Rules if made to a Registrar.

33.09 Affidavit to accompany application

This rule provides that an application must be accompanied by drafts of each Summons and an affidavit which must:

- state whether the applicant is a creditor with a debt provable in the bankruptcy, a trustee of the relevant person's estate or the Official Receiver
- state the facts to establish each person is an examinable person
- identify the books to be produced
- give details of any inquiry about those books and any refusal by the examinable person to co-operate with the inquiry.

This supporting affidavit may be filed in a sealed envelope and marked. The Registrar must not make it available for public inspection.

33.10 Hearing of application

This rule allows the hearing to be in the absence of a party or in closed court.

33.11 Requirements of summons

This rule provides that, if the summons is to be issued, the Registrar must sign and stamp the summons (Form 151 Federal Court Rules) and send it to the applicant for service. The summons must identify any books to be produced.

33.12 Service of summons

This rule requires the applicant to serve the summons on each examinable person at least 8 days before the date fixed or as directed by the Court and to give written notice to each creditor of the relevant person.

33.13 Application for discharge of summons

This rule provides that if an examinable person wishes to apply to discharge the summons that person may file a notice of motion and an affidavit in support. The notice of motion and supporting affidavit must be served as soon as possible on the applicant and on the Official Receiver if not the applicant.

33.14 Conduct money and witnesses expenses

This rule provides that a person (not a relevant person) who attends an examination to give evidence or produce documents is entitled to:

- reasonable conduct money and accommodation expenses.
- reasonable expenses for attendance

These expenses are to be paid by the applicant at a reasonable time before the required attendance.

Part 34 Proof of debts

34.01 Appeal against estimate of value of debt or liability

This rule requires any appeal against an estimate of value of a debt or liability to be by application in the prescribed form (Part 1 Sch. 2).

Part 35 Annulment of Bankruptcy

35.01 Application of Part

This rule applies this Part to an application for annulment of a bankruptcy or of the administration of the estate of a deceased person.

35.02 Requirements of application

35.03 Notice to creditors

These rules require the application to set out the grounds and be served on the trustee at least 28 days before the hearing date.

A notice (Form 155 Federal Court Rules) is to be served on each known creditor at least 14 days before the hearing date.

35.04 Report by trustee

This rule requires the trustee to prepare a report for periods before and after the bankruptcy which

- if for a bankrupt, include the bankrupt's conduct, examinable affairs and the administration of the estate
- if for a deceased person's estate, as to the administration of that estate.

The report must be in the form of an affidavit and filed at least 5 days before the hearing date.

35.05 Order to be entered and served

This rule requires the applicant, if the Court orders an annulment, to enter the order within 1 day and within 2 days give a copy to the trustee and the Official Receiver.

Part 36 Trustees

36.01 Objection to appointment of trustee

This rule requires an application objecting to the appointment of a trustee to be in the prescribed form (Part 1 Sch. 2) accompanied by an affidavit stating the grounds in support.

The documents must be served

- at least 28 days before the hearing date on the trustee and any petitioning creditor
- at least 14 days before the hearing date on each other known creditor.

36.02 Resignation or release of trustee

This rule require any application for acceptance of a trustee's resignation from the office of trustee of an estate or release of a trustee from trusteeship of an estate must be in the prescribed form (Part 1 Sch. 2) accompanied by an affidavit stating the grounds in support.

If the application is for release of a trustee, there must be a statement giving details of the realisation of property and distribution of the estate and a copy of recent account (subsection 175 (1) Bankruptcy Act).

The documents must be served on the Official Receiver, the bankrupt and anyone else that the Court orders.

If order is made, the trustee must enter the order within 1 days and give a copy to the Official Receiver within 2 days.

Part 37 Debt agreements

37.01 Application for order terminating debt agreement

This rule requires an application to terminate a debt agreement must be in the prescribed form (Part 1 Sch. 2) accompanied by a copy debt agreement and an affidavit stating the facts relied on to satisfy prerequisites set out in subsection 185Q (4) of the Bankruptcy Act. It must be stated if the applicant is a creditor also seeking a sequestration order (subsection 185Q (2) Bankruptcy Act).

The documents must be served at least 5 days before the hearing date on the debtor and, if the applicant is not the Official Trustee, the Officer Receiver.

37.02 Application for order declaring debt agreement void

This rule requires an application for a declaration that all or a specified part of a debt agreement is void must be in the prescribed form (Part 1 Sch. 2) accompanied by a copy debt agreement and an affidavit stating facts relied on to establish the ground (see subsection 185T (2) Bankruptcy Act). It must be stated if the applicant is a creditor seeking a sequestration order under subsection 185T (4) of the Bankruptcy Act.

The documents must be served by at least 5 days before the hearing date on the debtor and, if the applicant is not the Official Trustee, the Official Receiver.

37.03 Notice to creditors

This rule requires that written notice of the time, date and place of hearing (Form 156 Federal Court Rules) be served on each known creditor at least 5 days before the hearing.

37.04 Entry and service of order

This rule requires the applicant, if the Court make an order under this Part, to enter the order within 1 day and give a copy to the Official Receiver within 2 days.

Part 38 Arrangements with creditors

38.01 Application for order declaring deed or composition void

This rule requires an application to declare a deed or composition or provision of a deed void or not void to be in the prescribed form (Part 1 Sch. 2) accompanied by an affidavit stating the facts to satisfy relevant prerequisites (see subsection 222 (6) Bankruptcy Act) or to establish the relevant ground (see subsection 222 (4) Bankruptcy Act). It must be stated if the applicant is a trustee or creditor seeking a sequestration order under subsection 222 (7) Bankruptcy Act).

38.02 Application for order terminating deed

This rule requires an application seeking termination of a deed to be in the

prescribed form (Part 1 Sch. 2) accompanied by an affidavit stating the facts relied on to establish the relevant ground (see section 236 (1) Bankruptcy Act).

It must be stated if the applicant is a trustee or creditor who seeks a sequestration order under subsection 236 (3) Bankruptcy Act.

38.03 Application for order setting aside composition

This rule requires that an application to set aside a composition be in the prescribed form (Part 1 Sch. 2) accompanied by an affidavit stating these facts relied on to establish the relevant ground subsection 239 (2) Bankruptcy Act.

It must be stated if the applicant is a creditor who seeks a sequestration order under section 239 (1) Bankruptcy Act.

38.04 Service of application and supporting affidavit

This rule provides that documents must be served, at least 5 days before the hearing date, on the debtor, the trustee of the estate and the Official Receiver.

38.05 Notice to Creditors

This rule provides that written notice of the time, date and place of hearing (Form 156 Federal Court Rules) be served on each creditor named in the debtor's statement of affairs.

38.06 Entry and service of order.

This rule requires the applicant, if the Court makes an order under this Part, to enter the order within 1 day and give a copy to the Official Receiver within 2 days.

Part 39 Administration of estates of deceased persons

Division 39.1 Creditors' petitions

39.01 Requirements of petition

This rule requires a creditor's petition for the administration of a deceased person's estate to be by Form 157 (Federal Court Rules) accompanied by an affidavit verifying the petition as required by subsection 244 (5) Bankruptcy Act.

39.02 Additional affidavits to be filed before hearing

This rule provides that the applicant creditor must file the following further affidavits before the hearing

- an affidavit of service of the petition, the verifying affidavit, and any consent to act as trustee (section 156A Bankruptcy Act) on the legal personal representative of the deceased's estate or someone else if directed by the Court.
- an affidavit of a person with knowledge, sworn not earlier than one day before the hearing, stating that each debt relied on is still owing.
- an affidavit of a search conducted in the National Personal Insolvency Index no earlier than one day before the hearing date and setting out any references found to the deceased person, that there were no details of a debt agreement and attaching a copy of the extract of the Index.
- In addition the applicant creditor must file an affidavit setting out details of any proceedings commenced for the administration of the deceased's estate.

39.03 Entry and service of order

This rule requires the applicant, if the Court makes an order under this Division to enter the order within 1 day and give a copy to the Official Receiver within 2 days.

Division 39.2 Administrators' petitions

39.04 Administrator's petitions

This rule requires a petition for an order for the administration by the administrator of the estate of a deceased person to be by Form 158 (Federal Court Rules).

The note refers to the petition being accompanied by a statement in duplicate of the deceased person's affairs and the administration of the estate.

39.05 Entry and service of order

This rule requires the applicant, if the Court makes an order under this Division to enter the order within 1 day and give a copy to the Official Receiver within 2 days.

Part 40 Warrants

40.01 Warrant for arrest of debtor or bankrupt

This rule requires that an application for the issue of a warrant for the arrest of debtor or bankrupt be in the prescribed form (Part 1 Sch. 2) stating the grounds for the issue of the warrant accompanied by an affidavit stating the facts in support. The warrant must be in Form 159 (Federal Court Rules). If a debtor or bankrupt is arrested the person involved in the arrest must immediately give notice to the Registrar.

40.02 Warrant for apprehension of a person failing to attend Court.

This rule requires a warrant for the apprehension of a person failing to attend Court must be by Form 160 (Federal Court Rules). The Court or a Registrar may stay the warrant for a stated time or on conditions considered appropriate.

The note refers to Part 14 of the Bankruptcy Regulations for the procedure.

Chapter 5 Human rights proceedings

Part 41 Proceedings alleging unlawful discrimination

41.01 Application of Chapter

41.02 Interpretation

These rules provide that Chapter 5 applies to proceedings alleging unlawful discrimination but Chapters 1 and 3 of the Rules also apply unless inconsistent with Chapter 5. Expressions used have the same meaning as in the Human Rights Act and Commission means the Human Rights and Equal Opportunity Commission.

41.03 Copy of application to be given to Commission

This rule requires the applicant to give to the Commission at least 5 days before the first court date a sealed copy of the application and copies of the affidavit and information sheet.

41.04 Response to application

This rule provides that a response be in the prescribed form (Part 1 Sch.2) and filed with a supporting affidavit and information sheet.

41.05 Appearance by special purpose Commissioner

This rule requires a special purpose Commissioner, if granted leave to assist the Court, to file a notice of address for service and serve each party with a copy.

Chapter 6 Judicial review proceedings and administrative appeals

Part 42 Proceedings under Administrative Decisions (Judicial

Review) Act

42.01 Application of Part

This rule provides that Part 42 applies to proceedings under the Administrative Decisions (Judicial Review) Act but Chapters 1 and 3 of the Rules also apply unless inconsistent.

42.02 Application for order of review

This rule requires an application for an order for review be by Form 56 (Federal Court Rules) and set out particulars of fraud or bad faith if alleged in the grounds of that application.

42.03 Documents to be filed

This rule provides that the applicant must file with the application or as soon as possible afterwards and serve on each party within 5 days of filing the following documents

- statement of the terms of the subject decision
- statement as to the decision under S13 Administrative Decisions (Judicial Review) Act or under S28 Administrative Appeals Tribunal Act.

- statement given by or on behalf of person who made the decision setting out findings of fact or referring to the evidence the basis of the findings or reasons for the decision.

42.04 Notice of objection to competency

This rule provides that if a respondent objects to the application, a response be filed briefly stating the grounds of objection.

Part 43 Appeals from Administrative Appeals Tribunal

43.01 Application of Part

This rule applies this Part to appeals from Administrative Appeals Tribunal transferred from the Federal Court and Chapters 1 and 3 apply unless inconsistent.

43.02 Stay

This rule provides that an application for an order staying a decision subject to appeal be in the prescribed form (Part 1 Sch. 2) and made returnable on the first court date or other date fixed by the Registrar. In an urgent case, the application may be made in the absence of a party.

43.03 Amendment by supplementary notice

This rule allows amendment of a notice of appeal before the first court date by filing and serving a supplementary notice.

43.04 Notice of cross-appeal and contention

This rule provides that a respondent who wishes to cross-appeal or seek a variation of a subject decision must, within 21 days after service, file a notice of cross appeal by Form 42 Federal Court Rules and serve each other party.

The notice must state

- relevant parts of the subject decision
- each question of law to be raised.
- the relief sought
- the grounds relied on

If the respondent does not want to appeal or seek a variation but contends that there was an error of law, then the respondent must give a notice of contention to the applicant, notice of the relevant record of evidence or documents and request that record be included in the appeal papers.

43.05 Directions

This rule provides that, at the first Court date, directions be given including to:

- determine appeal papers
- determine what was before the Tribunal
- settle the index and number of copies required

- direct joinder of parties
- direct place and time of hearing.

43.06 Preparation of appeal papers

This rule sets out a number of requirements for appeal papers which must be prepared according to the satisfaction of the Registrar. These include the title page, index, pagination, documents necessary on questions of law, and filing the required number of copies.

Schedule 1 Costs

Part 1

This Part of Schedule 1 sets out the costs to be charged in both Family Law and general Federal Law proceedings.

The costs schedule moves progressively through the stages of proceedings to final hearing.

Part 2

This Part relates to costs for undefended divorce proceedings.

Part 3

This Part relates to costs in bankruptcy proceedings.

Schedule 2 Forms

Part 1 General

This Part of Schedule 2 sets out the forms to be used in general proceedings in the Court. There are many references to this Part in the Rules where forms are prescribed.

Part 2 Dissolution of marriage

This Part sets out the forms to be used in divorce proceedings. The forms used in the Family Court have been adapted for consistency and retain the same numbers.

Part 3 - Bankruptcy

This Part sets out the forms to be used in bankruptcy proceedings. The forms used in the Federal Court have been adapted for consistency and retain the same numbers.

Schedule 3 Family Law Rules and Federal Court Rules applied (see Rule 1.05)

Part 1 Family Law Rules

This Part sets out the Family Law Rules which directly apply to family law proceedings in the Court.

Part 2 Federal Court Rules

This Part sets out the Federal Court Rules which directly apply to general federal law proceedings in the Court.

Dictionary

This schedule provides definitions of special terms used throughout the Rules.