

# **Federal Magistrates Court Amendment Rules 2004 (No. 1) 2004 No. 54**

## **Explanatory Statement**

### **Statutory Rules 2004 No 54**

#### **Issued by the authority of the Federal Magistrates of the Federal Magistrates Court of Australia**

#### **Federal Magistrates Court Amendment Rules 2004 (No 1)**

Section 81 of the *Federal Magistrates Act 1999* (the Act) provides that the Federal Magistrates, or a majority of them, may make Rules of Court providing for or in relation to the practice and procedure to be followed in the Federal Magistrates Court.

Subsection 81(3) of the Act provides that Rules of Court are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*

The *Federal Magistrates Court Rules 2001* came into operation on 30 July 2001. This is the third amendment of the Rules since that date. The amendments are as a consequence of the new *Family Law Rules 2004*, which replace *Family Law Rules 1984*.

#### **Rule 1 - Name of Rules**

This rule provides that the Rules are the *Federal Magistrates Court Amendment Rules 2004 (No 1)*.

#### **Rule 2 - Commencement**

This rule provides that the Rules commence on 29 March 2004, the same day as the day on which the *Family Law Rules 2004* commence.

#### **Rule 3 - Amendment of *Federal Magistrates Court Rules 2001***

This rule provides that the *Federal Magistrates Court Rules 2001* are amended as set out in Schedule 1.

#### **SCHEDULE 1**

##### **[1] Subrule 1.05(2)**

This is an amendment consequential on the repeal of the *Family Law Rules 1984* by the *Family Law Rules 2004*. It permits the application of either the *Family Law Rules 1984* or the *Family Law Rules 2004* if, in a particular case, the Federal Magistrates Court Rules are insufficient or inappropriate.

## **[2] Rule 8.03**

This amendment places an obligation on the Registrar when a proceeding is transferred to the Federal Court or the Family Court to send copies of court documents and orders to the proper officer and to retain in the court a copy of all orders made in the proceedings.

## **[3] Subrule 10.06 (2)**

This is an amendment consequential on the repeal of Order 31C of the *Family Law Rules 1984* and its replacement by *Family Law Rules 2004*, rule 6.07. As rule 6.07 of those Rules does not prescribe a form, subrule 10.06 (2) has been amended to omit reference to the Family Law Rules.

## **[4] Rule 15.05**

This is an amendment consequential on the repeal of Order 30 r 2AC of the *Family Law Rules 1984* and its replacement by new rule 15.74 of the *Family Law Rules 2004*. As rule 15.74 of those Rules does not prescribe a form, rule 15.74 has been amended to omit reference to the Family Law Rules.

## **[5] After rule 20.00A**

This amendment inserts into Division 20.1 new Rule 20.00B which ensures the continuing application of Order 36 of the *Family Law Rules 1984* with necessary changes, to family law or child support proceedings. The Order was previously adopted by way of Part 1 of Schedule 3 but the amendment includes it with the other rules relating to the powers of Registrars.

## **[6] Paragraph 21.02(2)(c)**

This is an amendment consequential on the repeal of Order 38 of the *Family Law Rules 1984* and its replacement by Chapter 19 of the *Family Law Rules 2004*.

## **[7] Subrule 21.09(2)**

This is an amendment consequential on the repeal of Order 38 of the *Family Law Rules 1984* and its replacement by Chapter 19 of the *Family Law Rules 2004*.

## **[8] Paragraph 21.11 (2)(a)**

This is an amendment consequential on the repeal of Schedule 2 to the *Family Law Rules 1984* and its replacement by Schedule 3 to the *Family Law Rules 2004*.

## **[9] Division 23.1, heading**

This amendment omits the note following the heading to Division 23.1 because it refers to repealed Order 25 of the *Family Law Rules 1984*.

## **[10] Before rule 23.01**

This amendment inserts a new rule 23.01A before rule 23.01. The new rule replicates rule 15.03 of the *Family Law Rules 2004* with minor necessary modifications.

**[11] Paragraph 24.02(1)(a)**

The amendment substitutes paragraph 24.02(1) (a) and prescribes a new form of financial statement being the form set out in Part 1 of Schedule 2.

**[12] Part 25, heading**

The amendment omits the note following the heading to Part 25.

**[13] Subrule 25.01(1)**

The amendment omits reference to Form 4 and prescribes a new form of application for divorce as set out in Part 1 of Schedule 2.

**[14] Paragraph 25.03(a)**

The amendment omits reference to Form 19 and prescribes the form of acknowledgment of service set out in Part 1 of Schedule 2.

**[15] Subrule 25.05(1)**

The amendment omits reference to Form 20 or 21 and prescribes the form of affidavit of service set out in Part 1 of Schedule 2.

**[16] Subrule 25.06(1)**

The amendment omits reference to Form 23 and prescribes the form of affidavit of proof of signature set out in Part 1 of Schedule 2.

**[17] Subrule 25.07(1)**

The amendment omits reference to Form 13 and prescribes the form of response to an application for divorce set out in Part 1 of Schedule 2.

**[18] Subrule 25.08(1)**

The amendment omits reference to Form 14 and prescribes the form of response objecting to jurisdiction set out in Part 1 of Schedule 2.

**[19] After Part 25**

This amendment inserts in Chapter 2, after Part 25, new Parts 25A and 25B

Part 25A largely replicates, with modifications, the child support rules found in Division 4.2.5 of the *Family Law Rules 2004*. Of significance is the different documents requirements as set out in new Table 25A.1. Unlike the comparable Table prescribed in the *Family Law Rules*

2004, Table 25A.1 item 3 prescribes a new form for an Application for proceedings under section 116 of the Assessment Act. New subrule 25A.06 (2) differs from the comparable rule contained in the *Family Law Rules 2004* by requiring the service of a brochure approved by the Chief Federal Magistrate.

Part 25B includes new rules for enforcement and contravention. While some of the comparable rules contained in Part 21.1 *Family Law Rules 2004* are replicated, with modification, there have also been some departures from these rules. Significantly, the amendment rules do not include in Table 25B.1 and accompanying rules, provision for the filing of an Application for enforcement of parenting order. In addition, there is no rule requiring the affidavit required in subrule 25B.02(2) to state whether a court has previously found that the respondent contravened the primary order without reasonable excuse and other details of any previous contravention.

The amendment also includes new Divisions 25B.2, 25B.3 and 25B.4.

Division 25B.2 amends the Rules to ensure the continued application of Order 33 of the *Family Law Rules 1984* (other than rule 10) with necessary changes to the enforcement of obligations to family law or child support proceedings. As noted after subrule 25B.05(1) the text of Order 33 (other than rule 10) is set out in Note 1 in Schedule 5 (Notes to these Rules).

Division 25B.3 substantially replicates the rules relating to location and recovery orders contained in Part 21.3 of the *Family Law Rules 2004*

Division 25B.4 substantially replicates the warrant for arrest rules contained in Part 21.4 of the *Family Law Rules 2004*.

The contempt rules prescribed in the *Family Law Rules 2004* are not applied as the current rules contained in Part 19 are considered adequate.

#### **[20] Schedule 2, Part 1, before the form of Application**

This amendment relocates the following forms, as modified, for the purpose of Part 25, from Part [2], to Schedule 2 Part [1]

Acknowledgment of service

Affidavit by applicant for service by post (divorce)

Affidavit of proof of signature

Affidavit of service (divorce)

#### **[21] Schedule 2 Part 1 after the form of Application**

This amendment prescribes a new form for the purpose of Part 25:-

Application for divorce

**[22] Schedule 2 Part 1, after the form of Application for Review**

This amendment prescribes a new form for the purposes of Table 25.A.1 item 3:-

Child Support- Application for Departure Order, and

A new form for paragraph 24.02(1)(a):-

Financial Statement

**[23] Schedule 2, Part 1, after the form of Response**

This amendment relocates the following forms, as modified, previously prescribed in Schedule 2 Part 2:-

Response (divorce or other principal relief)

Response objecting to jurisdiction

**[24] Schedule 2, Part 2**

This amendment prescribes the following form:-

Form 18 - Application - Contravention and, with modifications

Form 45 - Notice requiring financial information

Form 45A - Notice requiring financial information - Child support

Form 45B Summons- Child Support

Form 46 Enforcement summons

**[25] Schedule 3, Part 1**

The amendment substitutes a new Part 1 in Schedule 3. New Part 1 applies a number of the *Family Law Rules 2004*. This amendment should be read in conjunction with new rule 20.00B and new rule 25B.05.

**[26] After Schedule 4**

The amendment inserts a new Schedule 5 - Notes to these Rules - which sets out by way of notation and with necessary modifications Order 33 of the *Family Law Rules 1984* as applied by new rule 25B.05.

**[27] Dictionary, after definition of *child representative***

The amendment inserts definitions of *Child Support Agency*, *child support agreement*, *child support application or appeal*, in the Dictionary

**[28] Dictionary, after definition of *child support proceeding***

The amendment inserts a definition of *Child Support Registrar* in the Dictionary.

**[29] Dictionary, after definition of *discovery***

This amendment inserts a definition of *eligible carer* in the Dictionary.

**[30] Dictionary, definition of *Family Law Rules***

This amendment substitutes new definitions in the Dictionary for *Family Law Regulations*, *Family Law Rules*, *Family Law Rules 1984*.