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Federal Magistrates Court Amendment Rules 2004 (No. 1)¹

Statutory Rules 2004 No. $\frac{1}{2}$

54

We, Federal Magistrates, make the following Rules of Court
under the *Federal Magistrates Act 1999*.

Dated $\frac{1}{2}$ 2004

24 March

BRYANT CFM
BAUMANN FM
BREWSTER FM
BROWN FM
COAKES FM
COKER FM
CONNOLLY FM
DONALD FM
DRIVER FM
HARTNETT FM
JARRETT FM
LINDSAY FM
MEAD FM
PHIPPS FM
RIMMER FM

ROBERTS FM
RYAN FM
SCARLETT FM
Federal Magistrates

PETER MAY
Chief Executive Officer

1 Name of Rules

These Rules are the *Federal Magistrates Court Amendment Rules 2004 (No. 1)*.

2 Commencement

These Rules commence on 29 March 2004.

3 Amendment of *Federal Magistrates Court Rules 2001*

Schedule 1 amends the *Federal Magistrates Court Rules 2001*.

Schedule 1 Amendments

(rule 3)

[1] Subrule 1.05 (2)

omit

the Family Law Rules,

insert

the *Family Law Rules 2004* or the *Family Law Rules 1984*,

[2] Rule 8.03

substitute

8.03 Proceeding transferred to Federal Court or Family Court

If a proceeding is transferred to the Federal Court or the Family Court, the Registrar must:

- (a) send to the proper officer of that court all documents filed and orders made in the proceeding; and
- (b) retain in the Court a copy of all orders made in the proceeding.

[3] Subrule 10.06 (2)*omit*

or the Family Law Rules

[4] Rule 15.05*omit*

the Family Law Rules or

[5] After rule 20.00A*insert in Division 20.1***20.00B Application of Order 36 of *Family Law Rules 1984***Order 36 of the *Family Law Rules 1984* applies, with necessary changes, to family law or child support proceedings.**[6] Paragraph 21.02 (2) (c)***omit*

Order 38

insert

Chapter 19

[7] Subrule 21.09 (2)*omit*

Order 38

insert

Chapter 19

[8] Paragraph 21.11 (2) (a)

omit

Schedule 2

insert

Schedule 3

[9] Division 23.1, heading

omit the note

[10] Before rule 23.01

insert

23.01A Family reports

- (1) A party to an application for final orders may apply for an order that a family report be prepared.
- (2) The Court may take the following matters into consideration when deciding whether to order a family report:
 - (a) whether the proceeding involves:
 - (i) an intractable or complex parenting proceeding; or
 - (ii) if a child is mature enough for the child's wishes to be significant in determining the proceeding — a dispute about the child's wishes; or
 - (iii) a dispute about the existence or quality of the relationship between a parent, or other significant person, and a child; or
 - (iv) allegations that a child is at risk of abuse; or
 - (v) family violence;
 - (b) whether there is any other relevant independent expert evidence available.
- (3) An application for a family report (whether made orally or in writing), and any order made, must identify the issues to be addressed by the report.

- (4) When ordering a family report, the Court may order a party or a child to attend for the purposes of preparing the report.
- (5) If a family report is prepared in accordance with an order made under this rule, the Court may:
 - (a) give copies of the report to each party, or the party's lawyer, and to any child representative; and
 - (b) receive the report in evidence; and
 - (c) permit oral examination of the person making the report; and
 - (d) order that the report not be released to a person or that access to the report be restricted.

[11] Paragraph 24.02 (1) (a)

substitute

- (a) a financial statement in accordance with the form of financial statement set out in Part 1 of Schedule 2; or

[12] Part 25, heading

omit the note

[13] Subrule 25.01 (1)

omit

Form 4.

insert

the form of application for divorce set out in Part 1 of Schedule 2.

[14] Paragraph 25.03 (a)

omit

Form 19;

insert

the form of acknowledgment of service set out in Part 1 of Schedule 2;

[15] Subrule 25.05 (1)

omit

Form 20 or 21, as appropriate.

insert

the appropriate form of affidavit of service set out in Part 1 of Schedule 2.

[16] Subrule 25.06 (1)

omit

Form 23.

insert

the form of affidavit of proof of signature set out in Part 1 of Schedule 2.

[17] Subrule 25.07 (1)

omit

Form 13.

insert

the form of response to an application for divorce set out in Part 1 of Schedule 2.

[18] Subrule 25.08 (1)

omit

Form 14.

insert

the form of response objecting to jurisdiction set out in Part 1 of Schedule 2.

- [19] After Part 25**
insert in Chapter 2

Part 25A Child support

25A.01 Application of Part 25A

This Part applies to:

- (a) an application under the Assessment Act, other than an application for leave to appeal from an order of a court exercising jurisdiction under the Assessment Act; and
- (b) an appeal under the Assessment Act or Registration Act, other than an appeal from a court.

Note The Assessment Act provides that the parties to a child support application or appeal should be the liable parent and the eligible carer. The Child Support Registrar does not need to be joined as a party but, after being served with a copy of the application, may intervene in the proceeding.

25A.02 Documents to be filed with applications and appeals

- (1) A person must file with a child support application or appeal mentioned in an item of Table 25A.1, the documents mentioned in the item.

Table 25A.1 Documents to file with applications and appeals

Item	Application or appeal	Documents to be filed with application or appeal
1	All applications and appeals to which this Part applies (other than an application under section 116 of the Assessment Act)	an affidavit setting out the facts relied on in support of the application or appeal, attaching: <ol style="list-style-type: none"> (a) a schedule setting out: <ol style="list-style-type: none"> (i) the section of the Assessment Act or Registration Act under which the application or appeal is made; and (ii) the grounds of the application or appeal; and

Item	Application or appeal	Documents to be filed with application or appeal
		<ul style="list-style-type: none"> (iii) the issues to be determined in the proceeding; and (b) a copy of any decision, notice of decision or assessment made by the Child Support Registrar relevant to the application or appeal; and (c) a copy of any document lodged by a party with the Child Support Registrar, or received by a party from the Child Support Registrar, relevant to the decision or assessment
2	Application under section 98, 123 or 129 of the Assessment Act	<ul style="list-style-type: none"> (a) the documents mentioned in this column in item 1; and (b) a completed financial statement in accordance with the form of financial statement set out in Part 1 of Schedule 2; and (c) a copy of any relevant order or agreement
3	Application under section 116 of the Assessment Act	<ul style="list-style-type: none"> (a) an application in accordance with the form of child support application for departure order set out in Part 1 of Schedule 2; and (b) the documents mentioned in this column in item 1; and (c) a completed financial statement in accordance with the form of financial statement set out in Part 1 of Schedule 2

- (2) For paragraph (c) of item 1 of Table 25A.1, if the applicant does not have a copy of a document lodged by the other party with the Child Support Agency, the applicant may file the summary of the document prepared by the Child Support Agency.

25A.03 Application under Assessment Act s 95 (6)

A person who makes an application under subsection 95 (6) of the Assessment Act in relation to a child support agreement must register a copy of the agreement with the Court.

25A.04 Time limits for appeals and applications under Assessment Act

A person must file an application or appeal under subsection 106 (1), 106A (1), 107 (1) or 110 (1) or section 132 of the Assessment Act within 28 days after receiving:

- (a) for an application under subsection 106 (1), 106A (1) or 107 (1) of the Assessment Act — a notice given under section 34 or subsection 98ZC (2) of that Act; and
- (b) for an appeal under subsection 110 (1) or section 132 of the Assessment Act — a notice given under subsection 98ZC (2) of that Act.

25A.05 Time limit for appeal under Registration Act s 88

A person served with a notice under subsection 87 (2) of the Registration Act must file an appeal under section 88 of that Act within 28 days after the day when the notice was served.

25A.06 Service of application or appeal

- (1) The persons to be served with a child support application or appeal include:
 - (a) a parent or eligible carer of the child in relation to whom the application or appeal is made; and
 - (b) the Child Support Registrar.
- (2) An applicant in a child support application made under section 98, 116, 123 or 129 of the Assessment Act must serve on the respondent, with the application, a brochure called *Child Support Applications* approved by the Chief Federal Magistrate.

25A.07 Service by Child Support Registrar

For rules 25A.04 and 25A.05, if the Child Support Registrar serves a document on a person under the Assessment Act or Registration Act, the document is taken to have been served on the person:

- (a) on the date when service is acknowledged; or
- (b) if served by post to an address in Australia — on the third day after it was posted; or
- (c) if served by airmail to an address outside Australia — on the fourteenth day after it was posted; or
- (d) if served by electronic communication — on the day when it was sent; or
- (e) if served by delivery to a document exchange — on the next working day after the day when it was delivered; or
- (f) on a date fixed by the Court.

25A.08 Evidence to be provided

- (1) This rule applies to a child support application under section 98, 116, 123 or 129 of the Assessment Act.
- (2) On the first court date and the hearing date of the application, each party must bring to the Court any of the following documents that are relevant to an issue in the proceeding:
 - (a) a copy of the party's taxation return for the most recent financial year;
 - (b) the party's taxation assessment for the most recent financial year;
 - (c) the party's bank records for the period of 12 months ending on the date when the application was filed;
 - (d) if the party receives wage or salary payments — the party's 3 most recent pay slips;
 - (e) if the party owns or controls a business — the business activity statements for the business for the previous 12 months;
 - (f) any other document relevant to determining the income, needs and financial resources of the party.

Note 1 Documents that may need to be produced under paragraph (f) include documents setting out the details mentioned in rule 24.03.

Note 2 For variation of a maintenance order, see subsection 66S (3) and section 83 of the Family Law Act.

Part 25B Enforcement

Division 25B.1 Applications for contravention of orders

25B.01 Application of Division 25B.1

This Division applies to an application for an order:

- (a) under Division 13A of Part VII of the Family Law Act, because it is alleged that a person has contravened an order affecting children; or
- (b) under Part XIII A of the Family Law Act, because it is alleged that a person has contravened an order not affecting children.

Note 1 Subsection 69C (2) of the Family Law Act specifies who may apply for an order in relation to a child.

Note 2 If a maintenance order is complied with before an application for contravention (Form 18) is heard by the Court, the failure to comply with the order that led to the application being filed does not constitute a contravention of the maintenance order (see subsection 112AP (1A) of the Family Law Act).

Note 3 The Court:

- (a) must not impose a sentence of imprisonment:
 - (i) for non-compliance with a maintenance order unless it is satisfied that the contravention was intentional or fraudulent (see subsections 70NJ (6) and 112AD (2A) of the Family Law Act); or
 - (ii) if it considers that another consequence is more appropriate (see subsections 70NO (2) and 112AE (2) of the Family Law Act); and
- (b) cannot enforce an order of another court unless the order is registered in the first-mentioned court (see section 105 of the Family Law Act and regulation 17 of the Family Law Regulations).

Note 4 Part 19 sets out the rules relating to contempt.

25B.02 How to apply for an order

- (1) An application must be in accordance with Form 18 set out in Part 2 of Schedule 2.
- (2) The applicant must file with the application an affidavit that:
 - (a) states the facts necessary to enable the Court to make the orders sought in the application; and
 - (b) has attached to it a copy of any order, agreement or undertaking that the Court is asked to enforce or that is alleged to have been contravened.

25B.03 Failure of respondent to attend

If a respondent fails to attend the hearing of the application in person or by a lawyer, the Court may:

- (a) determine the proceeding; or
- (b) issue a warrant for the respondent's arrest to bring the respondent before a court; or
- (c) adjourn the application.

25B.04 Procedure at hearing

At the hearing of the application, the Court must:

- (a) inform the respondent of the allegation; and
- (b) ask the respondent whether the respondent wishes to admit or deny the allegation; and
- (c) hear any evidence supporting the allegation; and
- (d) ask the respondent to state the response to the allegation; and
- (e) hear any evidence for the respondent; and
- (f) determine the proceeding.

Note For the penalties that may be imposed by the Court, see sections 67X, 70NG, 70NJ and 112AD of the Family Law Act.

Division 25B.2 Enforcement of obligations

25B.05 Application of Order 33 of *Family Law Rules 1984*

- (1) Order 33 (other than rule 10) of the *Family Law Rules 1984* applies, with necessary changes, to family law or child support proceedings.

Note The text of Order 33 (other than rule 10) of the *Family Law Rules 1984* is set out in Note 1 in Schedule 5 (Notes to these Rules).

- (2) A reference in Order 33 of the *Family Law Rules 1984*, as applied by subrule (1), to Form 45, 45A, 45B or 46 is a reference to the Form identified by that number, or by that number and letter, set out in Part 2 of Schedule 2.

Division 25B.3 Location and recovery orders

25B.06 Application of Division 25B.3

This Division applies to the following orders:

- (a) a location order;
- (b) a Commonwealth information order;
- (c) a recovery order.

Note See sections 67H to 67Q of the Family Law Act.

25B.07 Application for order under Division 25B.3

An application for an order to which this Division applies must be in accordance with the form of application set out in Part 1 of Schedule 2.

Note For the requirements for making a Commonwealth information order, see subsection 67N (3) of the Family Law Act.

25B.08 Service of recovery order

- (1) This rule applies to a person who is ordered or authorised by a recovery order to take the action mentioned in paragraph 67Q (b), (c) or (d) of the Family Law Act.

-
- (2) If the person:
 - (a) is ordered to find and recover a child; and
 - (b) finds and recovers the child;the person must serve the recovery order on the person from whom the child is recovered at the time the child is recovered.
 - (3) For the enforcement of a recovery order:
 - (a) the original recovery order is not necessary; and
 - (b) a copy of the sealed recovery order is sufficient.

25B.09 Application for directions for execution of recovery order

- (1) The following people may, by written request to the Court, seek procedural orders in relation to a recovery order:
 - (a) a party;
 - (b) a person who is ordered or authorised by a recovery order to take the action mentioned in paragraph 67Q (b), (c) or (d) of the Family Law Act.
- (2) A request under subrule (1) must:
 - (a) comply with rules 2.01 to 2.03; and
 - (b) set out the procedural orders sought; and
 - (c) be accompanied by an affidavit setting out the facts relied on and the reason for the orders.
- (3) The Court may determine the request in chambers.

Division 25B.4 Warrants for arrest

25B.10 Application for warrant

- (1) A party may apply, without notice, for a warrant to be issued for the arrest of a respondent if:
 - (a) the respondent is required to attend court on being served with:
 - (i) an application for an enforcement hearing; or
 - (ii) a subpoena or order directing the respondent to attend court; or

- (iii) an application for an order that a person be punished for contempt of court; and
 - (b) the respondent does not attend at court on the date fixed for attendance.
- (2) If a warrant is issued, it must have attached to it a copy of the application, subpoena or order mentioned in paragraph (1) (a).

Note The Court may issue a warrant on an oral application.

25B.11 Execution of warrant

- (1) A warrant may authorise:
 - (a) a member of the Australian Federal Police; or
 - (b) a member of the police service of a State or Territory; or
 - (c) the Marshal; or
 - (d) any other person appointed by the Court; to proceed to enforce the warrant.
- (2) A person authorised to enforce a warrant may act on the original warrant or a sealed copy.
- (3) When the warrant is enforced, the person arrested must be served with a copy.

25B.12 Duration of warrant

A warrant (except a warrant issued under subsection 65Q (2) of the Family Law Act) ceases to be in force 12 months after the date when it is issued.

25B.13 Procedure after arrest

- (1) If the Court issues a warrant for a person's arrest, it may order that the person arrested:
 - (a) be held in custody until the hearing of the proceeding; or
 - (b) be released from custody on compliance with a condition, including a condition that the person enter into a bond.

-
- (2) A person who arrests another person under a warrant must:
- (a) arrange for the person to be brought before the court that issued the warrant or another court having jurisdiction under the Family Law Act, before the end of the holding period; and
 - (b) take all reasonable steps to ensure that, before the person is brought before a court, the person on whose application the warrant was issued is advised about:
 - (i) the arrest; and
 - (ii) the court before which the person arrested will be brought; and
 - (iii) the date and time when the person arrested will be brought before the court.
- (3) When a person arrested under a warrant is brought before a court, the Court may:
- (a) if the Court issued the warrant:
 - (i) make any of the orders mentioned in subrule (1); or
 - (ii) adjourn the proceeding and direct an appropriate officer of the Court to take all reasonable steps to ensure that the person on whose application the warrant was issued is advised about the arrest and the date and time when the person must attend before the Court if the person wishes to bring or continue an application; or
 - (iii) if the application for which the warrant was issued is before the Court or the Court allows another application — hear and determine the application; or
 - (iv) if there is no application before the Court — order the person's release from custody; and
 - (b) if the Court did not issue the warrant:
 - (i) order that the person be held in custody until the person is brought before the court specified in the warrant; and
 - (ii) make any of the orders mentioned in subrule (1); and
 - (iii) make inquiries of the court that issued the warrant, (for example, inquiries about current applications and hearing dates).

- (4) A person arrested under this rule who is still in custody at the end of the holding period must be released from custody unless otherwise ordered.
- (5) This rule does not apply to a person who is arrested:
 - (a) under a warrant issued under subsection 65Q (2) of the Family Law Act; or
 - (b) without a warrant, under a recovery order; or
 - (c) without a warrant, under sections 68C and 114AA of the Family Law Act.

Note The provisions mentioned in subrule (5) are excluded because the procedure on arrest is set out in the Family Law Act.

- (6) In this rule:
holding period, for a person arrested in accordance with a warrant, has the meaning given by subsection 65S (4) of the Family Law Act.

25B.14 Application for release or setting aside warrant

A person arrested in accordance with a warrant may apply:

- (a) for the warrant to be set aside; or
- (b) to be released from custody.

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

insert



Acknowledgment of service

Fill in boxes A and C (see original application)	
A File number	
B Filed at (court use only)	
Filed on	
C Hearing date	/ /

◆ Type or print clearly ◆ Cross boxes where applicable

1 Party on whose behalf documents were served	family name (surname)	given names
2 Name of person served with documents	family name (surname)	given names
3 Date documents were served	/ /	
4 What documents were served?	(a) Copy of Application for Divorce stamped with the Court seal <input type="checkbox"/> (b) Brochure <i>Marriage, Families and Separation</i> <input type="checkbox"/> (c) Copy of affidavit of sworn/affirmed on / / <input type="checkbox"/> (d) Copy of application for stamped with the Court seal <input type="checkbox"/> (e) Other <input type="checkbox"/> (give details):	

Signature

I acknowledge service of documents as specified above.
 Signature of person served: Date:

Or
 I am the lawyer for the person served. On behalf of my client I acknowledge service of the documents specified above.
 Signature of lawyer: Date: Lawyer's name (please print): code:

Lawyer's address: postcode:

ANNEXURE NOTE	Witness to complete only if Acknowledgment is attached to an affidavit	
	This is the Acknowledgment of Service referred to in the Affidavit of	
	Sworn/affirmed	Before me (signature of witness)
	place	date
	Justice of the Peace <input type="checkbox"/>	Other authorised person <input type="checkbox"/> specify



Affidavit by applicant for service by post (divorce)

Fill in boxes A and C (see original application)	
A File number	
B Filed at (court use only) Filed on	
C Hearing date	/ /

Type or print clearly. Cross boxes where applicable

1 Name and address of person serving documents (applicant)	family name (surname) <input type="text"/>	given names <input type="text"/>
	postcode <input type="text"/>	
2 Person served	family name (surname) <input type="text"/>	given names <input type="text"/>
3 What documents were served?	(a) Copy of Application for Divorce stamped with the Court seal <input type="checkbox"/>	
	(b) Brochure <i>Marriage, Families and Separation</i> <input type="checkbox"/>	
	(c) Copy of affidavit of sworn/affirmed on / / <input type="checkbox"/>	
	(d) Copy of application for stamped with the Court seal <input type="checkbox"/>	
	(e) Other <input type="checkbox"/> (give details):	
4 How were they served on the person?	I posted them by pre-paid post in an envelope addressed to the person served at (give address): <input type="text"/>	
	postcode <input type="text"/>	
5 Date of posting	<input type="text"/> / <input type="text"/> /20	
6 Acknowledgment	The Acknowledgment of Service is signed by the person named in (2) above. It is attached to this affidavit. <input type="checkbox"/>	

I swear/affirm that:

- (a) I am the person applying for the divorce
- (b) The person served is my spouse
- (c) The facts set out are true, and
- (d) I recognise the signature on the Acknowledgment of Service as that of my spouse as I have seen it signed on other occasions.

Signature	Sworn/affirmed
<input type="text"/>	Place: <input type="text"/> Date: / /20

Before me (signature of witness)	Full name of witness (please print)
<input type="text"/>	<input type="text"/>

Justice of the Peace Other specify

The witness must also complete and sign the item headed Annexure Note on the Acknowledgment of Service attached



Affidavit of proof of signature

Fill in boxes A and C (use original application)	
A File number	
B Filed at (court use only) Filed on	
C Hearing date	/ /

◆ Type or print clearly ◆ Cross boxes where applicable

1 Party on whose behalf this document is filed	family name (surname)	given names
	family name (surname)	given names
2 Name, occupation and address of person signing this affidavit	occupation	
	tel ()	
	postcode	

I swear/affirm that:

- (1) The attached completed Acknowledgment of Service is signed by (give full name of the person served):
- (2) I recognise the signature on the Acknowledgment of Service because I have seen the person sign that way on other occasions.

Signature

Signature	Sworn/affirmed
	Place: Date: / /20
Before me (signature of witness)	Full name of witness (please print)
Justice of the Peace <input type="checkbox"/>	Other authorised person <input type="checkbox"/> specify

The witness must also complete and sign the item headed Annexure Note on the Acknowledgment of Service



Affidavit of service (divorce)

fill in boxes A and C (see original application)

A File number	
B Filed at (court use only) Filed on	
C Hearing date	/ /

◆ Type or print clearly ◆ Cross boxes where applicable

1 Name, address and occupation of person serving documents	family name (surname)	given names
	postcode	
	occupation	
2 Person served	family name (surname)	given names
3 Date documents served	/ /	
4 What documents were served? <i>cross box if applicable</i>	(a) Copy of Application for Divorce stamped with the Court seal	<input type="checkbox"/>
	(b) Brochure <i>Marriage, Families and Separation</i>	<input type="checkbox"/>
	(c) Copy of affidavit of sworn/affirmed on / /	<input type="checkbox"/>
	(d) Copy of application for stamped with the Court seal	<input type="checkbox"/>
	(e) Other <input type="checkbox"/> (give details):	
5 How were they served on the person? <i>cross box if applicable</i>	I handed them to the person at: (give address) <input type="checkbox"/>	
	I attempted to hand them to the person at: (give address) <input type="checkbox"/>	
	The person refused to accept them. I put them down and left them in the presence of the person and said to the person <input type="checkbox"/>	
	I posted them by pre-paid post in an envelope addressed to the person at: (give address) <input type="checkbox"/>	

How was the person served identified?
 Note – do not complete if service was by post
 I know the person
 The person is shown in the attached photograph
 I saw the person sign the Acknowledgment of Service attached
 I had the following conversation with the person on (give date) / / (set out conversation relating to the person's identity)

I swear/affirm that the facts set out above are true.

Signature	Sworn/affirmed
	Place: Date: / /

Before me (signature of witness)	Full name of witness (please print)

Justice of the Peace Other authorised person specify

The witness must also complete and sign the item headed Annexure Note on the Acknowledgment of Service or photograph if applicable

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

insert

APPLICATION FOR DIVORCE

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any questions.

FILED IN:

Federal Magistrates Court of Australia

Family Court of Western Australia

Family Court of Australia

COURT USE ONLY

Client ID _____

File number _____

Filed at _____

Filed on _____

Court location _____

Court date _____

Time _____

PART A ABOUT THE APPLICANT/S

1 WHO IS MAKING THIS APPLICATION?

Both of us together The husband alone The wife alone

PART B ABOUT COURT ATTENDANCE

- IF YOU ARE THE SOLE APPLICANT AND THERE ARE CHILDREN OF THE MARRIAGE UNDER 18 YEARS YOU MUST ATTEND AT COURT.
- IF THERE ARE NO CHILDREN OF THE MARRIAGE UNDER 18 YEARS OR YOU ARE MAKING A JOINT APPLICATION, WITH OR WITHOUT CHILDREN, YOU MAY APPLY TO HAVE THE APPLICATION HEARD IN YOUR ABSENCE.

2 DO YOU WANT TO ATTEND THE COURT WHEN IT DECIDES YOUR APPLICATION?

HUSBAND Yes No WIFE Yes No

Please note:

- If you do not mark any box, you must attend Court.
- Even if you mark the 'No' box, if the Court requires more information you may still be required to attend Court and the application may be adjourned to enable your attendance.

PART C ABOUT THE HUSBAND AND WIFE

- A sole applicant – complete your column and as much of the other column as you can
- Joint applicants – complete both columns

<p>3 HUSBAND</p> <p>Family name as used now _____</p> <p>Given names _____</p> <p>4 FULL NAME AS IT APPEARS ON THE MARRIAGE CERTIFICATE</p> <p>Family name _____</p> <p>Given names _____</p>	<p style="text-align: center;">WIFE</p> <p>Family name as used now _____</p> <p>Given names _____</p> <p>FULL NAME AS IT APPEARS ON THE MARRIAGE CERTIFICATE</p> <p>Family name _____</p> <p>Given names _____</p>
---	---

HUSBAND

6 WHEN AND IN WHAT COUNTRY WERE YOU BORN?
 Day /Month /Year Country
 / /

7 ARE YOU OF ABORIGINAL AND/OR OF TORRES STRAIT ISLANDER ORIGIN?
 No
 Yes Aboriginal
 Yes Torres Strait Islander
 Yes Aboriginal and Torres Strait Islander

7 IN WHICH COUNTRY WAS YOUR MOTHER BORN?

8 IN WHICH COUNTRY WAS YOUR FATHER BORN?

9 DO YOU NEED AN INTERPRETER?
 Yes No

10 IF AN INTERPRETER IS NEEDED, IN WHAT LANGUAGE AND WHAT DIALECT?

NOTE: If you require an interpreter, you must advise Court staff in advance of the divorce hearing.

11 WHAT IS YOUR USUAL OCCUPATION?

12 WHICH OF THE FOLLOWING APPLIES TO YOU AND YOUR SPOUSE?

MARK [X] EVERY BOX THAT APPLIES TO THE HUSBAND AND EVERY BOX THAT APPLIES TO THE WIFE.

- I regard Australia as my home and I intend to live indefinitely in Australia
- I have lived my whole life in Australia
- I am an Australian citizen
- I ordinarily live in Australia and have done so for 12 months immediately before filing this application

WIFE

6 WHEN AND IN WHAT COUNTRY WERE YOU BORN?
 Day /Month /Year Country
 / /

7 ARE YOU OF ABORIGINAL AND/OR OF TORRES STRAIT ISLANDER ORIGIN?
 No
 Yes Aboriginal
 Yes Torres Strait Islander
 Yes Aboriginal and Torres Strait Islander

7 IN WHICH COUNTRY WAS YOUR MOTHER BORN?

8 IN WHICH COUNTRY WAS YOUR FATHER BORN?

9 DO YOU NEED AN INTERPRETER?
 Yes No

10 IF AN INTERPRETER IS NEEDED, IN WHAT LANGUAGE AND WHAT DIALECT?

11 WHAT IS YOUR USUAL OCCUPATION?

- I regard Australia as my home and I intend to live indefinitely in Australia
- I have lived my whole life in Australia
- I am an Australian citizen
- I ordinarily live in Australia and have done so for 12 months immediately before filing this application

* If the 'Australian citizen' box is the only one you have marked and you were not born in Australia, bring your passport or citizenship certificate with you when you file this form.
 * If you are an Australian citizen by birth but have not resided in Australia for 12 months immediately before filing this application, bring your passport or a copy of your birth certificate when you file this form.
 * You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.

HUSBAND

13 IF YOU WERE BORN IN ANOTHER COUNTRY, WHEN DID YOU START TO LIVE IN AUSTRALIA AND HOW LONG HAVE YOU LIVED IN AUSTRALIA?

Date arrived	Total time
/ /	Years Months

14 WHAT IS YOUR CONTACT ADDRESS (ADDRESS FOR SERVICE) IN AUSTRALIA?

You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents.

State	Postcode
Phone	Fax*
DX	
Lawyer's code	
Email *	

WIFE

13 IF YOU WERE BORN IN ANOTHER COUNTRY, WHEN DID YOU START TO LIVE IN AUSTRALIA AND HOW LONG HAVE YOU LIVED IN AUSTRALIA?

Date arrived	Total time
/ /	Years Months

14 WHAT IS YOUR CONTACT ADDRESS (ADDRESS FOR SERVICE) IN AUSTRALIA?

You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents.

State	Postcode
Phone	Fax*
DX	
Lawyer's code	
Email *	

* Please do not include email or fax addresses unless you are willing to receive documents from the Court and other parties in that way.

PART D ABOUT THE MARRIAGE

Provide the following information directly from your marriage certificate.

15 ON WHAT DATE, IN WHAT TOWN/CITY AND IN WHICH COUNTRY DID YOU GET MARRIED?

Day/Month/Year	Town/City	Country
/ /		

If it has been less than two years since you married and you want to apply for a divorce, there are specific requirements you must meet before making this application. See Part F for details.

[3]

PART E ABOUT THE SEPARATION

Before completing items 16 to 20 please carefully read the following information about separation.

You must have been separated from your spouse for not less than 12 months before you sign this application and file it with the Court.

- It is possible to live under the one roof and still be separated (this is called 'separation under the one roof'). This can happen if you and your spouse had decided the marriage was over and were living independently from each other. For example, if you no longer shared the usual activities of marriage such as sex, eating meals together, performing domestic services for each other, sharing finances and going out together.

If this is your situation, the Court will require evidence to support your claims that you and your spouse were separated under the one roof. This may include evidence from another person such as a neighbour, friend or relative who is familiar with the circumstances. You and the person who gives supporting evidence should each put your evidence into an affidavit which should be filed with your application.

- It is possible to live physically separate and to be 'separated' – for example, if a spouse works away from home, is in hospital or in jail. In these situations, the date you separated will usually be the date on which one of you decided the marriage was over and told the other spouse.
- The minimum period for separation is one year. However, if you have lived together as husband and wife for 1 period of up to 3 months after separating then you can use the periods of separation before and after living together again as husband and wife to calculate the required 12 months separation for divorce.

<p>Example 1</p> <p>First separation for 6 months Together again for 3 months Final separation for 6 months</p>	OR	<p>Example 2</p> <p>First separation for 3 months Together again for 2 months Final separation for 9 months</p>
---	----	---

In both examples the total periods of separation equal 12 months and a divorce can be applied for.

If necessary add an extra page to the application to explain the circumstances, numbering it the same as the question to which it relates.

16 WHEN DID YOU SEPARATE?
Day /Month /Year

...../...../.....

17 WAS THE DATE YOU WROTE AT ITEM 16 THE DATE ON WHICH YOU REGARDED THE MARRIAGE AS OVER?

Yes GO TO ITEM 18

No On what date did you regard the marriage as over?
If you are applying alone, you should not refer to the intention of your spouse unless you can provide further information as to how you know what your spouse's intention was.

HUSBAND	WIFE
Day /Month /Year	Day /Month /Year
...../...../...../...../.....

If you are applying alone, you should not refer to the intention of your spouse unless you can provide further information as to how you know what your spouse's intention was.

You should be prepared to provide the Court with information about what happened or what was said on that date to show that one or both of you intended to end the marriage.

18 SINCE YOU AND YOUR SPOUSE SEPARATED, HAVE YOU LIVED UNDER THE ONE ROOF BUT NOT AS HUSBAND AND WIFE?

Yes GO TO ITEM 18

No Provide the following details

Day /Month /Year	Day /Month /Year	Length
From/...../.....	to/...../.....
From/...../.....	to/...../.....

[4]

19. AT ANY TIME AFTER YOU SEPARATED, HAVE YOU AND YOUR SPOUSE LIVED TOGETHER AS HUSBAND AND WIFE?

No GO TO ITEM 20

Yes Provide the following details

Day /Month /Year Day /Month /Year Length

From / / to / /

From / / to / /

20. DO YOU THINK IT LIKELY THAT YOU WILL LIVE TOGETHER AGAIN AS HUSBAND AND WIFE?

No

Yes

PART F. COUNSELLING CERTIFICATE FOR APPLICANTS MARRIED LESS THAN 2 YEARS

21. IS IT LESS THAN TWO YEARS SINCE YOU MARRIED?

No GO TO PART G

Yes Before filing the application, EITHER:

- You and your spouse attend counselling with an approved family and child counsellor to discuss the possibility of reconciliation. You should have the counsellor complete and sign a certificate which is available from the registry which verifies you have undertaken this counselling. You then attach the certificate to the back of this application when you file it.

OR

- If you have not obtained a counselling certificate before filing the application the applicant/s must write to the Court requesting permission to file an Application for Divorce. You must file an affidavit setting out the facts upon which you rely to satisfy the court that there are special circumstances why you should be allowed to seek a divorce within 2 years of your marriage.

PLEASE NOTE: To proceed there still needs to be at least 12 months since the date you separated.

PART G. ABOUT OTHER COURT CASES AND ORDERS

Before the Court can decide your Application for Divorce, it needs to know:

22. ARE THERE ANY ONGOING CASES IN THIS OR ANY OTHER COURT ABOUT FAMILY LAW, CHILD SUPPORT, DOMESTIC VIOLENCE OR CHILD WELFARE THAT INVOLVE ANY OF THE PARTIES OR ANY OF THE CHILDREN LISTED ON THIS FORM?

No GO TO ITEM 23

Yes Provide the following details

Court name and place

Next Court date

/ /

Names of the parties to the order/agreement/parenting plan/undertaking

Orders sought

IF THERE IS MORE THAN ONE CASE, PLEASE ATTACH AN EXTRA PAGE, NUMBERING THE NEXT CASE ITEM 22, PAGE 2 AND SO ON.

{ 5 }

23 ARE THERE ANY EXISTING ORDERS, AGREEMENTS, PARENTING PLANS OR UNDERTAKINGS TO A COURT ABOUT FAMILY LAW, CHILD SUPPORT, DOMESTIC VIOLENCE OR CHILD WELFARE CONCERNING ANY OF THE PARTIES OR CHILDREN LISTED ON THIS FORM?

No GO TO ITEM 23

Yes Either attach a full copy of the order, parenting plan, agreement or undertaking or set out details below (attach an extra page if you need more space, numbering the page/s Item 23 page 2 and so on).

Attached is a copy/copies of the following (mark [X] all the boxes that apply):

order undertaking
 parenting plan agreement

OR

GIVE THE FOLLOWING DETAILS:

Court name and place

Next Court date

/ /

Names of the parties to the order/agreement/parenting plan/undertaking

Details of the order/agreement/parenting plan/undertaking

PART H ABOUT CHILDREN UNDER 18

The information you need to provide in this part is only used by the Court to decide about your application for divorce. Any application to the Court for orders about the children must be made by a separate application.

The Court can only grant a divorce if it is satisfied that there are proper arrangements for all children aged under 18 years at the time of the application, or that there are special reasons why the divorce should be granted. This means that you need to provide detailed information about housing, supervision, contact, financial support, health and education for all children who are under 18 years of age at the time of the application, including for:

- any children of you and your spouse born before the marriage or after separation;
- children adopted by you and your spouse;
- any other child (including a child of neither of you) who was treated as a member of your family immediately before your final separation.

You must provide the information individually for each child (eg for Child 1, Child 2, Child 3 and so on). If you cannot provide that information yourself, you should request that the person with whom the children are living complete an affidavit containing the information and file it in the Court. If you can not provide enough information then you should be prepared to inform the Court of the reasons and the attempts you have made to obtain that information. Otherwise the Court may adjourn your application until you do so.

24 HOW MANY CHILDREN ARE THERE OF YOUR MARRIAGE CURRENTLY UNDER 18 (INCLUDE CHILDREN TREATED AS MEMBERS OF YOUR FAMILY WHEN YOU LAST SEPARATED)?

If none, go to Part I, on page 11, and remove pages 7 - 10.

[6]

25 GIVE THE FOLLOWING DETAILS FOR EACH CHILD

	Family name	Given names	Date of birth	M/F
Child 1:			/ /	
Child 2:			/ /	
Child 3:			/ /	
Child 4:			/ /	

CHILD 1

CHILD 2

26 CHILD'S ADDRESS

If the child lives at more than one address then include both addresses (you may need to attach an extra page). If you do not want to give the address because you fear violence from your spouse, you do not need to include it but you may be asked to give your reasons in Court.

.....

 State Postcode

.....

 State Postcode

27 WHO ELSE LIVES IN THE CHILD'S HOME WHEN THE CHILD IS LIVING WITH THE HUSBAND AND WHEN THE CHILD IS LIVING WITH THE WIFE? DO NOT INCLUDE THE OTHER CHILDREN LISTED IN ITEM 25.

Husband
 Other person Age

Male Female
 Name and relationship to the child

Husband
 Other person Age

Male Female
 Name and relationship to the child

Wife
 Other person Age

Male Female
 Name and relationship to the child

Wife
 Other person Age

Male Female
 Name and relationship to the child

28 CURRENT DETAILS CONCERNING THE CHILD.

WHERE DETAILS FOR CHILD 2 ARE THE SAME AS CHILD 1 WRITE 'AS FOR CHILD 1'

Housing (for example, 3 bedroom house - child has own room)

Supervision (who looks after the child? For example, if the parent who lives with the child is working outside the home who looks after the child during parents absence).

[7]

Child 1 continued

Child 2 continued

WHERE DETAILS FOR CHILD 2 ARE THE SAME AS CHILD 1 WRITE 'AS FOR CHILD 1'

Contact (the arrangements for the child to have contact with the other spouse, if they are not living with them, eg. how often contact occurs and what type. Contact can be face to face, or by phone, email or letters. If a natural parent is not a party to the marriage identify him or her, state the contact and state the reasons if the child has limited or no contact with that person).

.....
.....
.....

.....
.....
.....

Financial support (details about maintenance and child support, including details of maintenance orders or child support assessments and what is actually being paid or proposed to be paid by any person who does not live with the child).

.....
.....
.....

.....
.....
.....

Health (details of the health of the child and any treatment or ongoing medication needs).

.....
.....
.....

.....
.....
.....

Education (details about what school the child attends, what year he/she is in and what progress is being made).

.....
.....
.....

.....
.....
.....

Do you propose any changes to these arrangements?

- No GO TO PART 1
- Yes

- No GO TO PART 1
- Yes

If yes, please provide details of any significant changes that are planned – for example, changing residence, schooling arrangements or supervision.

.....
.....
.....

.....
.....
.....

{ 8 }

WHERE DETAILS FOR CHILD 3 & 4 ARE THE SAME AS CHILD 1 WRITE 'AS FOR CHILD 1'

CHILD 3

CHILD 4

28 CHILD'S ADDRESS

If the child lives at more than one address then include both addresses (you may need to attach an extra page). If you do not want to give the address because you fear violence from your spouse, you do not need to include it but you may be asked to give your reasons in Court.

State _____	Postcode _____	State _____	Postcode _____
-------------	----------------	-------------	----------------

30 WHO ELSE LIVES IN THE CHILD'S HOME WHEN THE CHILD IS LIVING WITH THE HUSBAND AND WHEN THE CHILD IS LIVING WITH THE WIFE? DO NOT INCLUDE THE OTHER CHILDREN LISTED IN ITEM 26.

Husband

Other person Age _____

Male Female

Name and relationship to the child _____

Husband

Other person Age _____

Male Female

Name and relationship to the child _____

Wife

Other person Age _____

Male Female

Name and relationship to the child _____

Wife

Other person Age _____

Male Female

Name and relationship to the child _____

31 CURRENT DETAILS CONCERNING THE CHILD WHERE DETAILS FOR CHILD 3 & 4 ARE THE SAME AS CHILD 1 WRITE 'AS FOR CHILD 1'

Housing (for example, 3 bedroom house - child has own room)

Supervision (who looks after the child? For example, if the parent who lives with the child is working outside the home who looks after the child during parents absence).

WHERE DETAILS FOR CHILD 3 & 4 ARE THE SAME AS CHILD 1 WRITE "AS FOR CHILD 1"

Child 3 continued

Child 4 continued

Contact (the arrangements for the child to have contact with the other spouse, if they are not living with them, eg. how often contact occurs and what type. Contact can be face to face, or by phone, email or letters. If a natural parent is not a party to the marriage identify him or her, state the contact and state the reasons if the child has limited or no contact with that person).

Financial support (details about maintenance and child support, including details of maintenance orders or child support assessments and what is actually being paid or proposed to be paid by any person who does not live with the child).

Health (details of the health of the child and any treatment or ongoing medication needs).

Education (details about what school the child attends, what year he/she is in and what progress is being made).

Do you propose any changes to these arrangements?

- No GO TO PART 1
- Yes

- No GO TO PART 1
- Yes

If yes, please provide details of any significant changes that are planned – for example, changing residence, schooling arrangements or supervision.

If you have more than four children, please attach extra pages, and provide the details for each extra child, Child 5, Child 6, etc.

[10]

PART 1 AFFIDAVIT OF APPLICANT(S)

PLEASE DO NOT COMPLETE THIS PART OF THE FORM UNTIL YOU ARE WITH A PERSON WHO IS LEGALLY ABLE TO WITNESS YOUR SIGNATURE - PLEASE DO NOT SIGN UNLESS IT IS AT LEAST 12 MONTHS SINCE THE DATE YOU SEPARATED

You must complete the following affidavit. You must sign it in the presence of a Justice of the Peace, notary public, or lawyer. The person witnessing the affidavit will fill in the place and date.

Both the husband and wife are to sign the affidavit ONLY if you are applying together. You may do so before different persons and at different times or before the same witness on the same occasion. If only one of you is applying for the divorce, only you are to sign the affidavit. You do not have to ask your spouse.

HUSBAND

I swear*/affirm* that:

- I am the applicant
- I have read this application
- The facts of which I have personal knowledge are true
- All other facts are true to the best of my knowledge, information and belief

Signature of husband

____/____/____

Place

Date

Before me (signature of witness)

Full name of witness (please print)

- Justice of the Peace
- Notary public
- Lawyer

WIFE

I swear*/affirm* that:

- I am the applicant
- I have read this application
- The facts of which I have personal knowledge are true
- All other facts are true to the best of my knowledge, information and belief

Signature of wife

____/____/____

Place

Date

Before me (signature of witness)

Full name of witness (please print)

- Justice of the Peace
- Notary public
- Lawyer

* Delete whichever is not applicable

PART J YOUR LAWYER'S DECLARATION

If you are filing the application yourself then you do not need to complete this part. However make sure you receive a copy of the information brochure Marriage, Families and Separation. Registry staff will give you this brochure when you file your application. If a lawyer is filing the application for you then the lawyer must give you a copy of the brochure and complete and sign the declaration that follows.

I gave the applicant(s) a copy of the brochure Marriage, Families and Separation.

_____/_____/_____
Signature of lawyer Print full name Date

This application was prepared by applicant/s lawyer

PRINT NAME AND LAWYER'S CODE

Please complete the attached Notice of Application – Divorce

[12]

NOTICE OF APPLICATION - DIVORCE

COMPLETE THIS NOTICE IF YOU ARE APPLYING ON YOUR OWN. THEN PIN THE NOTICE TO THE FRONT OF THE COPY OF THE APPLICATION FOR DIVORCE TO BE SERVED ON YOUR SPOUSE.

To (name of spouse) _____

Contact address (address for service) in Australia _____

In the attached application your spouse is applying for divorce. The Court has set down the hearing of this application at the time and place shown on page 1 of the Application for Divorce.

WHAT STEPS YOU NEED TO TAKE AS THE RECIPIENT OF THIS NOTICE

- 1 You should check the details given by your spouse in the attached application to make sure that they are correct to the best of your knowledge. You should also carefully read the enclosed brochure *Marriage, Families and Separation*. It sets out the legal and possible social effects of this case and the mediation and welfare facilities available in Australia.
- 2 You should sign, date and return the Acknowledgment of Service to the person who served the Application for Divorce.
- 3 If you want the divorce to be granted, you do not have to attend at Court or do anything else. The Court will send you a Certificate of Divorce when your divorce is finalised.
- 4 If you want the divorce to be granted, but you disagree with facts contained in the application, you may file a Response and appear in person on the hearing date.
- 5 If you do not want the divorce to be granted you must complete a Response asking for the application to be dismissed. You will need to set out grounds on which you seek the dismissal. You will need to file the Response with the Court:
 - if it was served in Australia, within 28 days of the application being served; or
 - if it was served overseas, within 42 days of the application being served.

After filing the Response with the Court you must also serve a copy of it on your spouse in accordance with the rules of court. You can obtain a copy of the Response form and instructions on how to serve it from the registry.

You must come to the hearing. If you do not attend, the Court may determine the Application for Divorce in your absence. If it is difficult for you to attend in person, you may ask the Court to allow you to attend by telephone or video link. To do so, you must make a request in writing to the Court where your divorce is filed at least 7 days before the hearing. You may be required to pay the cost of the video link.

PROPERTY AND MAINTENANCE

If you want to apply to the Court about property or your own maintenance, you must do so by a separate application within 12 months of the date the divorce becomes final. After that time you must obtain the permission of the Court to apply.

Signature of registry officer

Date

[3]

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

insert



File number	
Filed on	
Place of hearing	
Hearing date	
Hearing time	AM PM

- ◆ Type or print clearly and mark boxes where applicable.
- ◆ This application should be filed with an affidavit and financial statement
- ◆ Attach copies of all relevant Child Support Agency decisions.

Notice to Respondent(s):
 If you wish to oppose this application **OR** want the court to make other orders, **you must**:

- File a response and affidavit in the court, and
- Attend the hearing (if you do not attend the hearing orders may be made in your absence)

You must also deliver a copy of the response to either the applicant or the applicant's solicitor within 14 days of service of the Application.

	Applicant 1	Respondent 1
Full name	family name (surname) given names	family name (surname) given names
Address	tel () postcode	tel () postcode
Give details for each applicant and respondent - attach extra page if you need more space	Applicant 2	Respondent 2
	family name (surname) given names tel () postcode	family name (surname) given names tel () postcode
Postal Address for Service of documents on applicant(s)	tel () fax () email postcode	
Lawyers for Applicant(s)	Lawyer's OR Postal Address tel () email postcode	

DETAILS OF CHILD SUPPORT DECISION AND REVIEW

Note: an application cannot be made to the court unless the Child Support Registrar has disallowed, or allowed in part, an objection made under section 98X of the Child Support (Assessment) Act 1988, or the court is satisfied in the circumstances of the case that it should hear the application with other pending proceedings.

Date of Child Support Registrar's Decision	
Date of review of Child Support Registrar's Decision	

INFORMATION ABOUT THE APPLICATION

Attach extra page if you need more space

The names of the child(ren) named in the decision is(are):

- Child 1:
- Child 2:
- Child 3:
- Child 4:

GROUND OF APPLICATION FOR DEPARTURE

Note: Section 117 of the Child Support (Assessment) Act 1989 provides the only grounds on which an application for departure may be made.

The application is made on the following grounds:

Tick one or more boxes, as appropriate

- That, in the special circumstances of the case, the capacity of either parent to provide financial support for the child is significantly reduced because of:
 - (i) the duty of the parent to maintain any other child or another person; or
 - (ii) special needs of any other child or another person that the parent has a duty to maintain; or
 - (iii) commitments of the parent necessary to enable the parent to support:
 - (A) himself or herself; or
 - (B) any other child or another person that the parent has a duty to maintain; or
 - (iv) high costs involved in enabling a parent to have contact with any other child or another person that the parent has a duty to maintain
- That, in the special circumstances of the case, the costs of maintaining the child are significantly affected:
 - (i) because of:
 - (A) high costs involved in enabling a parent to have contact with the child; or
 - (B) special needs of the child; or
 - (C) high child care costs in relation to the child; or
 - (ii) because the child is being cared for, educated or trained in the manner that was expected by his or her parents
- That, in the special circumstances of the case, application in relation to the child of the provisions of this Act relating to administrative assessment of child support would result in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child:
 - (i) because of the income, earning capacity, property and financial resources of either parent or the child; or
 - (ii) because of any payments, and any transfer or settlement of property, made or to be made (whether under this Act, the *Family Law Act 1975* or otherwise) by the liable parent to the child, to the carer entitled to child support or to any other person for the benefit of the child; or
 - (iii) because an amount (the *additional amount*) of a liable parent's child support income amount was earned, derived or received by the liable parent for the benefit of a resident child or resident children of the liable parent; or
 - (iv) because an amount (the *additional amount*) of an entitled carer's child support income amount was earned, derived or received by the entitled carer for the benefit of a resident child or resident children of the entitled carer.

ORDERS SOUGHT

The types of order that the court can make in response to a departure application are listed in section 118 of the Child Support (Assessment) Act 1989.

The applicant seeks the following orders:

Attach extra page if you need more space

- 1.
- 2.
- 3.

SIGNATURE OF APPLICANT OR LAWYER

Signed:

Date:

applicant(s)

lawyer for applicant(s)

Financial Statement

1

FORM 11 - Federal Magistrates Court Rules - RULE 24.03

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any questions.

COURT USE ONLY

Filed in:

- Federal Magistrates Court of Australia
- Family Court of Australia
- Family Court of Western Australia
- Other (specify) _____

Filed on behalf of

- Applicant
- Respondent

Client ID _____

File number _____

Filed at _____

Filed on _____

Location _____

Next Court date (if known) _____

This form is to be used by a party to a financial case, such as property settlement, maintenance, child support or financial enforcement.

Part A About you

What is your family name as used now? Given names?

Affidavit

I swear/affirm* that:

- (a) I have read Rule 24.03 and I am aware that by law I have an obligation to make a full and frank disclosure of my financial circumstances to the Court and each other party. In particular, I have disclosed in this document or in an affidavit filed by me or on my behalf under Rule 24.02(1)(b), all matters I am required to disclose under Rule 24.03.
- (b) The information in the financial statement and any attachments to it which are within my personal knowledge are true. Where I have given an estimate in this financial statement, it is based on my knowledge and is given in good faith. All other information given in this financial statement and any attachments is true to the best of my knowledge, information and belief.
- (c) I have no income, property or financial resources other than as set out in this document or any affidavit filed by me under Rule 24.02(1)(b).

Your signature _____

Place _____ Date / / _____

Before me (signature of witness) _____ Full name of witness (please print) _____

- Justice of the Peace
- Notary public
- Lawyer

- This financial statement was prepared by:
- the applicant
 - the respondent
 - lawyer

PRINT NAME LAWYER'S CODE

* delete whichever is inapplicable

2

Part B Financial summary

IMPORTANT: As you complete the rest of this form you will be asked to transfer the totals for Items D, G, I-L to this summary

- A** Your total average weekly income (THIS IS THE FIGURE AT ITEM 18) \$
- B** Your total personal expenditure (THIS IS THE FIGURE AT ITEM 33) \$
- C** Total value of property owned by you (THIS IS THE FIGURE AT ITEM 44) \$
- D** Total gross value of your superannuation (THIS IS THE FIGURE AT ITEM 45) \$
- E** Total of your liabilities (THIS IS THE FIGURE AT ITEM 55) \$
- F** Total of your financial resources (THIS IS THE FIGURE AT ITEM 58) \$

Part C Your employment details

3 What is your usual occupation?

4 What is the name of your employer?

5 What is the address of your employer?

STATE			POSTCODE			PHONE		

6 How long have you been employed at this place?

YEARS	MONTHS	DAYS

7 Are you employed

- full time permanently on contract
- part time casually

8 Are you self-employed?

- No
- Yes STATE THE NAME OF THE BUSINESS/COMPANY/PARTNERSHIP/TRUST

Part D Your income

NOTE: GIVE WEEKLY AMOUNTS IN WHOLE DOLLARS. IF THE AMOUNT FOR AN ITEM IS NIL, WRITE 'NIL'. IF YOU CAN ONLY GIVE AN ESTIMATE INSERT THE LETTER 'E' BEFORE THE AMOUNT STATED.

<p>9</p>	<p>Total salary or wages before tax</p>	<p>AVERAGE WEEKLY AMOUNT</p>	<p>\$</p>
<p>10</p>	<p>Investment income (before tax)</p>	<p>INCOME TYPE (eg. rent, interest, dividend)</p> <p>PAID BY (bank, mortgagor, company, tenant)</p>	<p>\$</p>
		<p>INCOME TYPE (eg. rent, interest, dividend)</p> <p>PAID BY (bank, mortgagor, company, tenant)</p>	<p>\$</p>
<p>11</p>	<p>Income from business/partnership/company/trust</p>	<p>NAME OF BUSINESS/PARTNERSHIP/COMPANY/TRUST</p> <p>TYPE OF BUSINESS</p> <p>ADDRESS OF BUSINESS/PARTNERSHIP/COMPANY/TRUST</p> <p>State Postcode</p>	<p>\$</p>
<p>12</p>	<p>Government benefits</p>	<p>TYPE OF BENEFIT</p> <p>TYPE OF BENEFIT</p>	<p>\$</p> <p>\$</p>
<p>13</p>	<p>Maintenance/child support</p>	<p>PAID BY</p> <p>FOR THE BENEFIT OF</p> <p>\$ REQUIRED TO BE PAID</p> <p>\$</p>	<p>ACTUALLY RECEIVED</p> <p>\$</p>
		<p>PAID BY</p> <p>FOR THE BENEFIT OF</p> <p>\$ REQUIRED TO BE PAID</p> <p>\$</p>	<p>ACTUALLY RECEIVED</p> <p>\$</p>
<p>14</p>	<p>Benefits from employment/business</p>	<p>TYPE OF BENEFIT</p> <p>TYPE OF BENEFIT</p>	<p>\$</p> <p>\$</p>
<p>15</p>	<p>Other income</p>	<p>PAID BY</p> <p>INCOME TYPE</p>	<p>\$</p>
<p>16</p>	<p>TOTAL AVERAGE WEEKLY INCOME</p> <p>WRITE THE ITEM 16 TOTAL AT ITEM 2A ON PAGE 2 OF THIS FORM</p>		<p>\$</p>

4

Part E Other income earners in your household

Give the name, age and relationship to you and gross income of each other occupant of your household

	AGE	RELATIONSHIP TO YOU	AVERAGE WEEKLY AMOUNT
NAME			\$
NAME			\$
NAME			\$

Part F Expenses paid by others for your benefit

PAID BY	TYPE OF EXPENSE	\$
PAID BY	TYPE OF EXPENSE	\$
PAID BY	TYPE OF EXPENSE	\$

Part G Personal expenditure

NOTE: GIVE WEEKLY AMOUNTS IN WHOLE DOLLARS. IF THE AMOUNT FOR AN ITEM IS NIL, WRITE 'NIL'. IF YOU CAN ONLY GIVE AN ESTIMATE INSERT THE LETTER 'E' BEFORE THE AMOUNT STATED

		AVERAGE WEEKLY AMOUNT
17 Total income tax		\$
23 Superannuation	PLAN NAME	\$
24 Mortgage payments/rent	NAME OF LENDER/LANDLORD	\$
25 Rates, unit levies		\$
26 Other mortgage payments	NAME OF LENDER ADDRESS OF PROPERTY	\$
27 Other rates, unit levies		\$
28 Life insurance premiums	TYPE OF POLICY POLICY NO: NAME OF INSURER	\$
	TYPE OF POLICY POLICY NO: NAME OF INSURER	\$

PERSONAL EXPENDITURE - CONTINUED

		AVERAGE WEEKLY AMOUNT
24 Other Insurance premiums	TYPE OF POLICY	\$
	POLICY NO:	
	NAME OF INSURER	
	TYPE OF POLICY	\$
	POLICY NO:	
	NAME OF INSURER	
	TYPE OF POLICY	\$
	POLICY NO:	
	NAME OF INSURER	
27 Motor vehicle registration	REG. NO: VEHICLE MAKE	\$
28 Hire purchase/ lease agreements	DESCRIBE THE PROPERTY	\$
	NAME OF COMPANY/PERSON	
29 Loan repayments	NAME OF LENDER	\$
	TYPE OF LOAN	
30 Minimum credit card payments	CARD TYPE Minimum Payment \$	\$
	NAME OF COMPANY	
	CARD TYPE Minimum Payment \$	\$
	NAME OF COMPANY	
31 Maintenance payments/ child support	PAID FOR THE BENEFIT OF	ACTUAL PAYMENT
		\$
	<input type="checkbox"/> assessment AMOUNT OF ASSESSMENT, <input type="checkbox"/> agreement AGREEMENT OR ORDER <input type="checkbox"/> order \$	
32 Total of all other expenditure		\$
33	TOTAL PERSONAL EXPENDITURE WRITE THIS ITEM 33 TOTAL AT ITEM 2B ON PAGE 2 OF THIS FORM	\$

6

Part H Personal expenses you pay for the benefit of others

34 State which of the expenses in Part G are paid by you for other persons	NAME OF PERSON	\$
	GIVE DETAILS	
	NAME OF PERSON	\$
	GIVE DETAILS	

Part I Property owned by you

		CURRENT VALUE OF YOUR SHARE
35 Home	FULL NAME OF THE REGISTERED OWNERS	\$
	YOUR % SHARE	
36 Other real estate	PROPERTY ADDRESS	\$
	REGISTERED OWNERS	
	YOUR % SHARE	
	PROPERTY ADDRESS	\$
	REGISTERED OWNERS	
	YOUR % SHARE	
37 Funds in banks, building societies, credit unions or other financial institutions	NAME AND BRANCH BSB	\$
	ACCOUNT HOLDER & NUMBER	
	CURRENT BALANCE \$	
	NAME AND BRANCH BSB	\$
	ACCOUNT HOLDER & NUMBER	
	CURRENT BALANCE \$	
38 Investments	NAME AND TYPE OF INVESTMENT	\$
	FULL NAMES OF ALL OWNERS	
	NUMBER OF SHARES HELD YOUR % SHARE	

PROPERTY OWNED BY YOU - CONTINUED

CURRENT VALUE OF YOUR SHARE 7

NAME AND TYPE OF INVESTMENT	\$
FULL NAMES OF ALL OWNERS	
NUMBER OF SHARES HELD YOUR % SHARE	

38 Life insurance policies

POLICY TYPE	POLICY NO.	\$
NAME OF INSURANCE COMPANY		
FULL NAMES OF ALL OWNERS YOUR % SHARE		

40 Motor vehicle

YEAR	MAKE	\$
MODEL	REGISTRATION NO.	
FULL NAME OF REGISTERED OWNER/S YOUR % SHARE		

YEAR	MAKE	\$
MODEL	REGISTRATION NO.	
FULL NAME OF REGISTERED OWNER/S YOUR % SHARE		

41 Interest in a business, including a business operated by you as a sole trader, in a partnership or through a proprietary company or a trust

NAME OF BUSINESS	\$
ADDRESS OF BUSINESS	
YOUR % SHARE	

Business type (Mark [X] which applies)
 Sole trader Partnership Proprietary company/trust

42 Household contents

\$

43 Other personal property

SPECIFY	\$
YOUR % SHARE	

44

TOTAL VALUE OF PROPERTY OWNED BY YOU WRITE THIS ITEM 44 TOTAL AT ITEM 2C ON PAGE 2 OF THIS FORM	\$
---	----

8

Part J Superannuation

You must attach a completed Superannuation Information Form for each superannuation interest if you are seeking an order for property settlement.

46

Interest in superannuation

NAME OF SUPERANNUATION PLAN 1	GROSS VALUE
	\$

- TYPE OF INTEREST
- | | |
|---|---|
| <input type="checkbox"/> Accumulation interest | <input type="checkbox"/> Retirement savings account |
| <input type="checkbox"/> Partially vested accumulation interest | <input type="checkbox"/> Small superannuation account |
| <input type="checkbox"/> Defined benefit interest | <input type="checkbox"/> Percentage only interest |
| <input type="checkbox"/> Self managed fund | <input type="checkbox"/> Approved deposit fund |

NAME OF SUPERANNUATION PLAN 2	GROSS VALUE
	\$

- TYPE OF INTEREST
- | | |
|---|---|
| <input type="checkbox"/> Accumulation interest | <input type="checkbox"/> Retirement savings account |
| <input type="checkbox"/> Partially vested accumulation interest | <input type="checkbox"/> Small superannuation account |
| <input type="checkbox"/> Defined benefit interest | <input type="checkbox"/> Percentage only interest |
| <input type="checkbox"/> Self managed fund | <input type="checkbox"/> Approved deposit fund |

NAME OF SUPERANNUATION PLAN 3	GROSS VALUE
	\$

- TYPE OF INTEREST
- | | |
|---|---|
| <input type="checkbox"/> Accumulation interest | <input type="checkbox"/> Retirement savings account |
| <input type="checkbox"/> Partially vested accumulation interest | <input type="checkbox"/> Small superannuation account |
| <input type="checkbox"/> Defined benefit interest | <input type="checkbox"/> Percentage only interest |
| <input type="checkbox"/> Self managed fund | <input type="checkbox"/> Approved deposit fund |

TOTAL GROSS VALUE OF YOUR SUPERANNUATION WRITE THIS ITEM 45 TOTAL AT ITEM 2D ON PAGE 2 OF THIS FORM	GROSS VALUE
	\$

Part K Your liabilities

46	Home mortgage	FULL NAMES OF ALL BORROWERS	AMOUNT OF YOUR SHARE \$
		YOUR % SHARE	
47	Other mortgages	FULL NAMES OF ALL BORROWERS	AMOUNT OF YOUR SHARE \$
		YOUR % SHARE	
48	Total income tax assessed	Date due: / /	\$
49	Total income tax assessed and unpaid in previous financial years		\$
50	Loans	NAME OF LENDER	AMOUNT OF YOUR SHARE \$
		TYPE OF LOAN <input type="checkbox"/> over draft <input type="checkbox"/> other (specify) _____ <input type="checkbox"/> personal loan	
		FULL NAMES OF ALL BORROWERS	
		YOUR % SHARE	
51	Credit/ charge cards	SPECIFY CARD PROVIDER AND TYPE	\$
		SPECIFY CARD PROVIDER AND TYPE	\$
52	Hire purchase/ lease	NAME OF LENDER	AMOUNT OF YOUR SHARE \$
		Date of final payment / /	
		FULL NAMES OF ALL PERSONS NAMED IN THE AGREEMENT	
		YOUR % SHARE	
		NAME OF LENDER	AMOUNT OF YOUR SHARE \$
		Date of final payment / /	
		FULL NAMES OF ALL PERSONS NAMED IN THE AGREEMENT	
		YOUR % SHARE	

YOUR LIABILITIES CONTINUED

53 Other personal liabilities

SPECIFY	AMOUNT OF YOUR SHARE
	\$
FULL NAME OF ANY OTHER LIABLE PERSON	
YOUR % SHARE	

54 Other personal business liabilities

SPECIFY	AMOUNT OF YOUR SHARE
	\$
FULL NAME OF ANY OTHER LIABLE PERSON	
YOUR % SHARE	

55 **TOTAL LIABILITIES**
WRITE THIS ITEM 55 TOTAL AT ITEM 2E ON PAGE 2 OF THIS FORM

\$

Part L Financial resources

56 Interest in any trust or deceased estate

SPECIFY	\$

57 Other financial resources

SPECIFY	\$

58 **TOTAL FINANCIAL RESOURCES**
WRITE THIS ITEM 58 TOTAL AT ITEM 2F ON PAGE 2 OF THIS FORM

\$

Part M About disposal of property

59 Specify property falling within Rule 24.03 (1)(g) disposed by you or on your behalf in the 12 months before separation and since your separation

Item	How disposed of	Value/amount received

Part N Orders for maintenance, child support, financial enforcement

Complete and attach this page only if the application is for orders for maintenance for yourself or your children or child support or financial enforcement

Average weekly expenses

NOTE: GIVE WEEKLY AMOUNTS IN WHOLE DOLLARS. IF THE AMOUNT FOR AN ITEM IS NIL, WRITE 'NIL'. IF YOU CAN ONLY GIVE AN ESTIMATE INSERT THE LETTER 'E' BEFORE THE AMOUNT STATED

ITEM	TOTAL	FOR YOU	FOR CHILDREN (IF APPLICABLE)	OTHER ADULTS (IF APPLICABLE)
Food	\$	\$	\$	\$
Household supplies	\$	\$	\$	\$
House repairs	\$	\$	\$	\$
Gas	\$	\$	\$	\$
Electricity	\$	\$	\$	\$
Heating fuel	\$	\$	\$	\$
Telephone	\$	\$	\$	\$
Motor vehicle				
- petrol	\$	\$	\$	\$
- maintenance	\$	\$	\$	\$
Fares/car parking	\$	\$	\$	\$
Clothing and shoes	\$	\$	\$	\$
Children's activities	\$	\$	\$	\$
Child minding	\$	\$	\$	\$
Medical, dental and optical (not including health insurance premiums)	\$	\$	\$	\$
Entertainment/hobbies	\$	\$	\$	\$
Holidays	\$	\$	\$	\$
Education expenses, including fees and levies	\$	\$	\$	\$
Chemist/pharmaceutical	\$	\$	\$	\$
Gardening/lawnmowing	\$	\$	\$	\$
Cleaning (house/pool)	\$	\$	\$	\$
Repairs – furnishings and appliances	\$	\$	\$	\$
Dry cleaning	\$	\$	\$	\$
Books and magazines	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Hairdressing, toiletries	\$	\$	\$	\$
Other necessary commitments (specify)	\$	\$	\$	\$
TOTAL	\$	\$	\$	\$

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

insert



Response
(Divorce or other principal relief)

fill in boxes A and C (see original application)	
A File number	
B Filed at (court use only)	
Filed on	
C Hearing date	/ /
Hearing time	

◆ Type or print clearly ◆ Cross boxes where applicable

1 Name of applicant (from application)

family name (surname)	given names
-----------------------	-------------

Details of person making this response (respondent)

2 Name of respondent

family name (surname)	given names
-----------------------	-------------

3 Respondent's lawyer (if applicable)

- firm name
- code
- address
- telephone

tel () fax () DX and suburb/town postcode

4 Respondent's address for service of documents

lawyer above

other give details:

postcode

5 Who prepared this response?

respondent

lawyer above

Orders sought

6 Do you want the Court to dismiss the application?

yes

no

turn to next page →

Details of response

7 Do you disagree with any statement in the application?	no <input type="checkbox"/> yes <input type="checkbox"/>	go to 8 give details (refer to each disputed statement by the same number it has in the application):
8 Set out any other grounds on which you rely		
9 (divorce only) Do you say the arrangements for the children are proper?	no <input type="checkbox"/> yes <input type="checkbox"/>	

Affidavit of respondent

I swear/affirm that:

- 1 I am the respondent;
- 2 I have read this response;
- 3 The facts of which I have personal knowledge are true;
- 4 All other facts are true to the best of my knowledge, information and belief.

Signature	Sworn/affirmed Place: _____ Date: ____ / ____ /20
Before me (signature of witness)	Full name of witness (please print)
Justice of the Peace <input type="checkbox"/> Other authorised person <input type="checkbox"/> specify _____	

Page 2



Response objecting to jurisdiction

Fill in boxes A, B and C (see original application)	
A File number	
B Filed at (court use only)	
Filed on	
C Hearing date	

◆ Type or print clearly ◆ Cross boxes where applicable

1 Name of first applicant (from application)

family name (surname)	given names
-----------------------	-------------

A Details of person(s) making this response – respondent(s)

2 Name(s) of respondent(s)
give details for each – attach an extra page if you need more space

family name (surname)	given names
family name (surname)	given names

3 Postal address for service of documents on respondent(s)

sent to lawyer in 4 other Give details

	postcode
tel ()	

4 Lawyer for respondent(s)

- name
- firm name
- address
- phone/fax/DX

	code
	postcode
tel () fax () DX and suburb/town	

5 Who prepared this response?

respondent lawyer above

B Facts relied on

6 What are the facts you rely on to say the court has no jurisdiction to hear the application?
attach an extra page if you need more space

Set out each fact in a short paragraph. Number each paragraph.

C Affidavit of respondent(s)

- Each respondent must swear/affirm this affidavit – attach a further Part C if you need more space.
- If only one person is responding, only that person should sign.

I swear/affirm that:

- 1 I am the respondent
- 2 I have read this response objecting to jurisdiction
- 3 The facts of which I have personal knowledge are true
- 4 All other facts are true to the best of my knowledge, information and belief
- 5 I submit the court has no jurisdiction to hear the application and I ask that the application be dismissed.

signature of respondent 1

Signature	Sworn/affirmed
	Place: _____ Date: / /
Before me (signature of witness)	Full name of witness (please print)
Justice of the Peace <input type="checkbox"/> Other authorised person <input type="checkbox"/> specify	

signature of respondent 2

Signature	Sworn/affirmed
	Place: _____ Date: / /
Before me (signature of witness)	Full name of witness (please print)
Justice of the Peace <input type="checkbox"/> Other authorised person <input type="checkbox"/> specify	

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

Part 2 Family law and child support

Form 18 Application — Contravention

①

Application – Contravention

Form 18 Family Law Act 1975 (No. 1)

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any questions.

Tried at:

Family Court of Australia
 Family Court of Western Australia
 Federal Magistrates Court of Australia
 Other (specify) _____

Filed on behalf of:

Father/husband
 Mother/wife
 Child (specify) _____

Client ID _____
 File number _____
 Filed at _____
 Filed on _____
 Location _____
 Court date _____
 Time _____

IMPORTANT INFORMATION FOR THE RESPONDENT IS ON PAGE 5.

Part A About this application

This application:

alleges that an order affecting children has been contravened and seeks that the respondent be dealt with under Division 13A of Part VII of the Family Law Act, or

alleges that an order **not** affecting children has been contravened and seeks that the respondent be dealt with under Part XIIA of the Family Law Act.

Part B About the parties to this application

APPLICANT	RESPONDENT
Family name as used now	Family name as used now
Given names	Given names
<p>Contact address (address for service) in Australia. You do not have to give your residential address. You may give another address at which you are visited that you will receive documents.</p>	
State	State
Postcode	Postcode
Phone	Phone
Fax *	Fax *
DX	DX
Lawyer's code	Lawyer's code
Email *	Email *

* Please do not include email or fax addresses unless you are willing to receive documents from the Court and other parties in that way.

Part C About the child representative (if appointed)

2

Child representative's family name Given names

--	--

The contact address (address for service) in Australia for the child representative is:

		State	Postcode
Phone	Fax *		
DX	Email *		
Lawyer's code			

* Please do not include email or fax addresses unless you are willing to receive documents from the Court and other parties in that way.

Part D Details of the alleged contravention

- You must attach a copy of the order, agreement, parenting plan or undertaking that you allege has been contravened.
- At items 6 and 7, you must set out the details of the act or omission which you allege contravened the order, agreement, parenting plan or undertaking.
- If you allege that there is more than one contravention, you must set out the details for each contravention separately on an additional sheet, in accordance with items 8 and 9 of this form.

State the paragraph number of the attached order, agreement, parenting plan or undertaking that you allege has been contravened (eg. 2, 6, 7).

--

State precisely what the respondent did or did not do which you allege amounts to a contravention, including the date, time and place, if applicable. See the examples below. Do not set out the evidence upon which you rely to prove the alleged contravention. This must be set out in an affidavit filed with this form (see Rule 21.02(2)).

Date	Time	Place
/ /		

Statement of the alleged contravention:

--

Example of an order affecting children

Date	Time	Place
29/03/04	9 am	18 Main St, Mainville

Statement of the alleged contravention:

The respondent without reasonable excuse refused to allow the applicant to have contact with the child John Citizen.
--

Example of an order NOT affecting children

Date	Time	Place
29/03/04	9 am	18 Main St, Mainville

Statement of the alleged contravention:

The respondent without reasonable excuse sold the Holden motor vehicle, registration number ABC123.

3

Part D Details of the alleged contravention (continued)

- Only complete these paragraphs if you allege more than one contravention.
- Photocopy this page for each additional contravention that you allege.

State the paragraph number of the attached order, agreement, parenting plan or undertaking that you allege has been contravened.

--

State precisely what the respondent did or did not do which you allege amounts to a contravention, including the date, time and place, if applicable. See the examples on page 2. Do not set out the evidence upon which you rely to prove the alleged contravention. This must be set out in an affidavit filed with this form.

Date	Time	Place
/ /		

Statement of the alleged contravention

--

Example of an order NOT affecting children

Date	Time	Place
27/03/04	9 am	18 Main Street, Marriwale

Statement of the alleged contravention

The respondent without reasonable excuse sold the Holden motor vehicle, registration number ABC123
--

5

Important Notices to the Respondent/s

You should seek legal advice about this application.

FOR AN APPLICATION ALLEGING CONTRAVENTION OF AN ORDER AFFECTING CHILDREN

You **must attend** the hearing on the Court date on page 1. If you do not attend:

- a warrant may issue for your arrest, **or**
- the hearing may proceed, **and**
- an order may be made in your absence.

If the allegations are proved and you do not provide a reasonable excuse, the Court may:

- order you to attend a post-separation parenting program,
- in the case of a residence order or contact order, make a compensatory order,
- require you to enter into a bond,
- fine you,
- imprison you for a maximum of 12 months.

FOR AN APPLICATION ALLEGING CONTRAVENTION OF AN ORDER NOT AFFECTING CHILDREN

You **must attend** the hearing on the Court date on page 1. If you do not attend:

- a warrant may issue for your arrest, **or**
- the hearing may proceed, **and**
- an order may be made in your absence.

If the allegations are proved and you do not provide a reasonable excuse, the Court may:

- require you to enter into a bond,
- fine you,
- imprison you.

29/03/04 VI

Form 45 Notice requiring financial information

Form No. [45]
 Name of document [**Notice requiring financial information**]
 *Sworn by []
 *On [/ /]

Fill in boxes A and C (if details known)	
A File number	
B Filed at/ Filed on	
C Place of hearing	
Hearing date Hearing time	/ / am/pm

◆ Type or print clearly ◆ Cross boxes where applicable

Details	
1 Name(s) of applicant(s) <i>give details for each</i>	family name (surname) given names
	family name (surname) given names
2 Name(s) of respondent(s) <i>give details for each</i>	family name (surname) given names
	family name (surname) given names
3 Name(s) of other party/parties <i>give details for each</i>	family name (surname) given names
	family name (surname) given names
4 Name of child's representative (if applicable)	name of representative
5 Describe proceedings	eg residence, contact, specific issues, divorce, property settlement, maintenance, child support, injunction, etc
6 Name(s) of person(s) on whose behalf this document is filed	family name (surname) given names
	family name (surname) given names
7 Address for service of documents for person(s) in 6 as already provided to the Court	lawyer in 8 <input type="checkbox"/> other <input type="checkbox"/> give details
	tel () fax () postcode
8 Lawyer for person in 6 - name - firm name - address - phone/fax/DX	code
	tel () fax () DX and suburb/town postcode

*do not complete if document is not an affidavit

FAMILY LAW ACT 1975

Notice requiring financial information

Form 45

1 *Full name and address* TCJ

2 *Date* 1 An order was made (or a maintenance agreement was registered) on ' / /

3 *Amount and period* requiring that you pay ' for the benefit of '

4 *Name* 2 It is alleged that you are in default or in arrears in the amount of \$
 3 An application may be made for the issue of a summons for you to attend court to be orally examined concerning your failure to comply with the order or agreement. However, if you give complete answers to the questions set out below and return this form to the address set out in paragraph 4 within 10 days, the issue of a summons may be avoided.
 3 The completed form should be signed and returned to '

5 *Full name and address* Dated / / 20
 Registrar

Questions:

(1) What is your present address?

(2) What is your occupation?

6 *Give details, including the address* (3) Who is your employer '?

(4) What are your gross weekly earnings?

7 *Give details* (5) What deductions are made from your earnings by your employer (including income tax) '?

8 *Give details* (6) What other sources of income do you have '?

9 *Give details* (7) Does any person owe you money '?

10 *Give details, including balances and, where possible, give account numbers* (8) Have you any bank accounts or other savings '?

11 *Give details* (9) Do you own or are you purchasing any land '?

12 *Give details* (10) Do you own or are you purchasing a motor vehicle '?

13 *Give details* (11) Apart from clothing, tools, household furniture and effects, what other property do you own '?

(12) What arrangements are you prepared to make to satisfy the arrears under the abovementioned order or agreement?

Dated / / 20
 (Signature)

Form 45A Notice requiring financial information — Child support

FAMILY LAW ACT 1975

Notice requiring financial information – Child support Form 45A

TO:

1 Under section 113 of the *Child Support (Registration and Collection) Act 1988* the Child Support Registrar may recover debts due to the Commonwealth under the Act.

2 *Amount* 2 You are indebted to the Commonwealth under section 30 of the *Child Support (Registration and Collection) Act 1988* for:

3 It is alleged that you have refused or failed to pay the debt.

4 An application may be made for the issue of a summons for you to attend court to be orally examined concerning your failure to comply with the order or agreement. However, if you give complete answers to the questions set out below and return this form to the address set out in paragraph 5 within 10 days, the issue of a summons may be avoided.

3 *Full address* 5 The completed form should be signed and returned to the Child Support Registrar at:

Dated / / 20

Registrar

Questions:

(1) What is your present address?

(2) What is your occupation?

4 *Give details, including the address* (3) Who is your employer *?

(4) What are your gross weekly earnings?

5 *Give details* (5) What deductions are made from your earnings by your employer (including income tax) *?

6 *Give details* (6) What other sources of income do you have *?

7 *Give details* (7) Does any person owe you money *?

8 *Give details, including balances and, where possible, give account numbers* (8) Have you any bank accounts or other savings *?

9 *Give details* (9) Do you own or are you purchasing any land *?

10 *Give details* (10) Do you own or are you purchasing a motor vehicle *?

11 *Give details* (11) Apart from clothing, tools, household furniture and effects, what other property do you own *?

(12) What arrangements are you prepared to make to pay the abovementioned debt?

Dated / / 20

(Signature)

Form 45B Summons — Child Support

FAMILY LAW ACT 1975

Summons — Child Support

Form 45B

1 Full name and address

TO:

1 Under section 113 of the *Child Support (Registration and Collection) Act 1988* the Child Support Registrar may sue for and recover debts due to the Commonwealth under that Act.

2 Amount

2 You are indebted to the Commonwealth under section 30 of the *Child Support (Registration and Collection) Act 1988* for:

3 It is alleged that you have refused or failed to pay the debt.

3 Date place

4 You are hereby summoned to attend at this court at
on / / at *am/*pm to be orally examined on all matters relating to your failure to pay the debt and to produce any book, document or thing in your possession, custody or control described in the Schedule to this summons.

4 Date and time

5 Court if not applicable

5 The court, on hearing this summons and on being satisfied that you have failed to pay, or to make arrangements to pay, the debt, may order payment of the debt and may enforce the order by making any of the following orders:
(a) a garnishment order in respect of money owing to you, including any wages or salary;
(b) an order for the seizure and sale of personal property belonging to you;
(c) an order that your estate be sequestrated;
(d) an order for the sale of any interest in land belonging to you;
(e) any other order it considers necessary to ensure payment of the debt or to prevent the dissipation of property or the wasting of assets.

Dated / /

Registrar

SCHEDULE

- NOTES: 1 Subrule 3(6) of Order 33 of the Family Law Rules provides that a person, who without reasonable excuse, fails to attend before the court as required by a summons commits an offence punishable by a fine not exceeding 50 penalty units.
- 2 Further, subrule 3(7) of Order 33 of the Family Law Rules provides that, where a person fails to attend before a court as required by a summons, the court may issue a warrant directing that the person be taken into custody and brought before the court.
- 3 If you intend to apply to vary the order or assessment on which the debt is based, you should do so before the date specified in paragraph 4 above.

Form 46 Enforcement summons

FAMILY LAW ACT 1975

Enforcement summons

Form 46

Family Law Rules Order 33 rule 3

- 1 *Full name and address* TO:
- 2 *Date* 1 An order was made (or a maintenance agreement was registered) or the parties entered into a financial agreement or a debt for an amount of child support has been found, under a notice of assessment given to you under section 76 of the Child Support (Assessment) Act 1989, to be payable by you to (name of carer entitled to child support) on ' / / requiring that you pay ' for the benefit of '
- 3 *Amount and period*
- 4 *Name* 2 Payments under the order or agreement are in default or in arrears in the amount of \$ at this date.
- * *Child of not applicable* 3 You are hereby summoned to attend at this court on / / at ' requiring that you pay a' \$am/pm to be orally examined on all matters relating to your refusal or failure to comply with the order or agreement and to produce any book, document or thing in your possession, custody or control described in the Schedule to this summons.
- 4 The court, on hearing this summons and on being satisfied that you have failed to comply with an obligation mentioned in clause 1, may make such of the following orders as it thinks fit:
- (a) an order for the payment of the amount of money owing under the obligation mentioned in clause 1;
 - (b) a garnishment order in respect of money owing to you, including any wages or salary;
 - (c) an order for seizure and sale of personal property belonging to you;
 - (d) an order that your estate be sequestered;
 - (e) an order for seizure and sale of any interest in land belonging to you;
 - (f) such other orders as it thinks necessary to enable enforcement of its orders or the agreement or to prevent the dissipation of property or the wasting of assets.

Dated / / 20

Registrar

SCHEDULE

- NOTES: 1 Subrule 3(6) of Order 33 of the Family Law Rules provides that a person, who without reasonable excuse, fails to attend before the court as required by a summons commits an offence punishable by a fine not exceeding 50 penalty units.
- 2 Further, subrule 3(7) of Order 33 of the Family Law Rules provides that, where a person fails to attend before a court as required by a summons, the court may issue a warrant directing that the person be taken into custody and brought before the court.
- 3 If you intend to apply to vary the order or agreement on which the payments are based, you should do so before the date specified in paragraph 3 above.

[25] Schedule 3, Part 1

substitute

Part 1 Family Law Rules 2004

- rules 1.19 and 1.20
- Part 2.2
- Part 2.3
- rule 3.13
- rules 4.08 to 4.10
- rule 16.10
- Part 21.2
- Part 23.1
- rule 24.11.

[26] After Schedule 4

insert

Schedule 5 Notes to these Rules

(rule 25B.05)

Note 1 Family Law Rules 1984, Order 33

Order 33 Enforcement

1 Definitions

In this Order:

obligation means an obligation to which rule 2 applies.

prescribed personal property, in relation to a person, means:

- (a) clothes, bed, bedding and kitchen furniture (including a stove, oven and refrigerator, but not including a washing machine or automatic dishwasher); and

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- (b) ordinary tools of trade, plant and equipment, and professional instruments and reference books, the combined value of which is not more than \$1 000.

2 Enforcement of obligations

- (1) This rule applies to:
 - (a) the recovery of a debt due to the Commonwealth under section 30 or 67 of the *Child Support (Registration and Collection) Act 1988*; and
 - (b) an order that a party pay maintenance or other money for the benefit of the other party, or of a child, made under:
 - (i) the Act; or
 - (ii) the *Child Support (Registration and Collection) Act 1988*; and
 - (ba) a parenting plan registered under section 63E of the Act that has not been set aside or otherwise ceased to have effect; and
 - (bc) an order made under section 67D of the Act; and
 - (c) a maintenance agreement registered under subsection 86 (1) of the Act that has not been set aside or has not otherwise ceased to have effect; and
 - (d) a maintenance agreement approved under section 87 of the Act in respect of which there is in force an order under paragraph 87 (11) (c) of the Act; and
 - (da) an agreement varying or revoking an original agreement dealing with the maintenance of a child under section 66SA of the Act; and
 - (e) an overseas maintenance order or agreement that, under the Regulations, is enforceable in Australia; and
 - (f) an order under the Act or the repealed Act for the payment of costs; and
 - (g) an order made in the exercise of jurisdiction conferred by the Act, the Regulations or these Rules that a person pay a fine or forfeit a bond; and
 - (h) an order under subsection 82 (7) of the Act for the recovery of moneys; and

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- (ha) a financial agreement under Part VIIIA of the Act in respect of which an order is in force under paragraph 90KA (c) of the Act; and
 - (i) an order under section 117A of the Act for the payment of reparations; and
 - (j) a liability to pay child support under an assessment or order made under the *Child Support (Assessment) Act 1989*;

and this rule (except subrule (4)) applies in relation to an agreement referred to in paragraph (ba), (c), (d), (da) or (e) as if it were an order of the court in which it is registered or taken to be registered.

- (1A) A reference in paragraph (1) (d) to a maintenance agreement shall, where an order under paragraph 87 (11) (c) of the Act is in force in respect of a part of the agreement, be read as a reference to that part of the agreement.
- (2) Where a court by an order referred to in paragraph (1) (g) imposes a fine, the fine shall, unless the court otherwise orders, be payable forthwith into the filing registry.
- (3) Where in or in relation to proceedings a court orders the forfeiture of a bond, the money forfeited shall, unless the court otherwise orders, be payable forthwith into the filing registry.
- (4) Subject to subrule (4A), if an obligation arises under an order and the person under the obligation was not present, or represented by a lawyer, in court when the order was made, a sealed copy of the order must be served on the person in accordance with Order 18 by:
 - (a) in case of a fine imposed by a court — the Marshal, an officer of the court, or a person appointed by the Registrar; and
 - (b) in any other case — by a representative or agent of the person for whose benefit the order was made.

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- (4A) If, by an order to which this rule applies:
- (a) a person:
 - (i) is liable to pay a registrable maintenance liability under the *Child Support (Registration and Collection) Act 1988*; or
 - (ii) is ordered to pay a debt due to the Commonwealth under that Act; and
 - (b) that person is not present or represented by a lawyer in the Court when the order is made;
the Child Support Registrar shall cause a sealed copy of the order to be served on that person in accordance with Order 18, paragraph 5 (1) (a).
- (4B) If a person seeks to enforce an obligation that is not an order of the court, or is not deemed by the court to be an order of the court, the person may apply to the court for:
- (a) an order declaring the amount of the obligation; and
 - (b) a second order that the obligation be paid.
- (5) An obligation may be enforced by one or more of the following means:
- (a) garnishment;
 - (b) seizure and sale of personal property;
 - (c) sequestration of estate;
 - (d) sale of real property.
- (6) Where a person ordered to pay maintenance or other money for the benefit of a party or child fails or refuses to make the payment, proceedings for the enforcement of the payment may be taken by the party or child for whose benefit the order was made or on behalf of that party or child by a person entitled to do so under the Act or Regulations.

- (7) Where proceedings for the enforcement of the payment of maintenance or other money payable under an order for the benefit of a party or child are taken on behalf of that party or child by a person entitled to do so under the Act or Regulations, that maintenance or other money may, unless the court otherwise orders, be paid to that person, and the receipt of that person for any maintenance or other money so paid shall be sufficient discharge of the liability of the person required under the order to pay that maintenance or other money.
- (8) If a person ordered to pay a fine under an obligation fails to do so, proceedings for the enforcement of the payment of that fine may be taken by a Registrar, the Marshal or an officer of the Attorney-General's Department, but not by a party.
- (9) Where a court has ordered that a bond be forfeited, proceedings for the enforcement of that forfeiture may be taken by the Marshal, an officer of a police force, or by an officer of the Attorney-General's Department designated by the Secretary to that Department, but not by a party.
- (10) Where, immediately before the date of commencement of the Act, an order that a party to a marriage pay maintenance or other money for the benefit of the other party to the marriage or of a child of the marriage was registered in a court that has jurisdiction under the Act, that order may be enforced in accordance with this order.
- (11) An application for the enforcement of an obligation shall state whether any other decree is in force for the enforcement of the obligation and whether any other proceedings for the enforcement of the obligation are pending and, if any such proceedings are pending (being proceedings taken by a person referred to in subrule (7)), the name of that person.

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- (12) Where an application for the enforcement of an obligation names a person referred to in subrule (7) as the person who has taken other proceedings that are pending for the enforcement of the obligation, the Registrar shall enquire of the person so named as to the present position with regard to those proceedings and shall file with the court papers relating to the application a memorandum containing any information ascertained as a result of that enquiry.

3 Summary procedures on failure to comply with obligation

- (1) If a person fails to satisfy an obligation, a person seeking to enforce the obligation may file an affidavit requesting the issue of:
- (a) in relation to a debt due to the Commonwealth:
 - (i) a notice in accordance with Form 45A; or
 - (ii) a summons in accordance with Form 45B; or
 - (b) in any other case:
 - (i) a notice in accordance with Form 45; or
 - (ii) a summons in accordance with Form 46.

Note A reference to Form 45, 45A, 45B or 46 is a reference to that Form set out in Part 2 of Schedule 2.

- (1A) An affidavit filed under subrule (1) must:
- (a) contain evidence in support of the request made in the affidavit; and
 - (b) state whether any other order is in force for the enforcement of the obligation; and
 - (c) state whether any other proceedings for the enforcement of the obligation are pending; and
 - (d) if proceedings taken by a person referred in subrule 2 (7) are pending — state the name of the person who has taken the proceedings; and
 - (e) be accompanied by the appropriate form of notice or summons under subrule (1).

- (1B) If:
- (a) a person has taken proceedings to enforce an obligation; and
 - (b) before those proceedings are completed, the person is named in an affidavit filed under subrule (1) as the person who has taken proceedings to enforce the obligation;
- the Registrar must:
- (c) ask the person for details in relation to progress of the proceedings; and
 - (d) attach a memorandum containing those details to the affidavit.
- (2) On receipt of an affidavit filed under subrule (1) and an appropriate form of notice, the Registrar may issue a notice in accordance with Form 45 or 45A.
- (3) On receipt of an affidavit filed under subrule (1) and an appropriate form of summons, the Registrar may issue a summons in accordance with Form 45B or 46 if:
- (a) in the case of an obligation, other than an obligation to which paragraph (b) of this subrule applies — the Registrar is satisfied that the person under the obligation has failed to make a payment for a period of at least 2 weeks; and
 - (b) in the case of an order mentioned in paragraph 2 (1) (f), (g), (h) or (i) — the Registrar is satisfied that the person against whom the order was made has failed to comply with the order.
- (4) A summons under this rule for the enforcement of an order of a kind referred to in paragraph 2 (1) (g) may be issued by the Registrar of the court that imposed the relevant fine or ordered the forfeiture of the relevant bond and not otherwise.
- (5) A summons under this rule, shall be served on the person to whom it is addressed in a manner referred to in Order 18.
- (6) A person served with a summons under this rule shall not, without reasonable excuse:
- (a) fail to attend as required by the summons and then on such days and at such times as the court may direct;

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- (b) refuse or fail to be sworn;
 - (c) refuse or fail to answer a question on any matter relating to the failure to satisfy the obligation sought to be enforced; or
 - (d) refuse or fail to produce a document that is required to be produced by the summons.

Penalty: 50 penalty units.

- (7) Where a person fails to attend before a court as required by a summons under this rule duly served on that person, or on such days and at such times as the court directs, the court may issue a warrant directing that the person be taken into custody and brought before the court.
- (8) The Registrar of the court that issues a warrant under subrule (7) shall cause to be attached to the warrant:
 - (a) a sealed copy of the order in relation to which the warrant is issued; or
 - (b) a copy of that order certified by the Registrar to be a true copy of the sealed copy in the custody of the Registrar.
- (9) If a court is satisfied that a person appearing before it, whether in person or represented by a lawyer, has failed to satisfy an obligation, the court may:
 - (a) order the payment of the amount found to be owing under the obligation; and
 - (b) enforce the obligation by any of the following means:
 - (i) a garnishment order under rule 4;
 - (ii) an order under rule 5 for the seizure and sale of personal property belonging to the person;
 - (iii) an order under rule 6 that the estate of the person be sequestered;
 - (iv) an order under rule 7 for the sale of an interest in real property belonging to the person;
 - (v) any order it considers necessary to enable enforcement of the obligation or to prevent the dissipation of property or the wasting of assets.

4 Garnishment

- (1) In this rule, unless the contrary intention appears:
- applicant*** means a person or authority instituting proceedings under subrule (2).
- garnishee*** means a person (including a corporation, the Commonwealth, a State or Territory or an authority or institution constituted by or under a law of the Commonwealth, or of a State or Territory) from whom the applicant claims that money is due or accruing to the respondent.
- respondent*** means the person who has failed to satisfy an obligation.
- (2) If a person fails to satisfy an obligation, a person entitled to take proceedings to enforce the obligation may apply to the court for a garnishment order to enforce the obligation.
- (3) An application for a garnishment order may be made *ex parte*.
- (4) The following moneys may be the subject of a garnishment order:
- (a) a sum standing to the credit of the respondent in a bank, building society, co-operative housing society or similar society, credit union, credit society or investment fund or corporation, that is payable to the respondent on call or on notice;
 - (b) the earnings of the respondent (being wages or salary and fees, bonus, commission, overtime pay or other emoluments payable in addition to or in lieu of wages or salary), a pension, annuity, moneys payable in lieu of leave, or retirement benefit due or accruing to the respondent;
 - (c) any debt or other sum of money due or accruing to the respondent.
- (5) Where the application for a garnishment order is made by a person other than the Registrar, it shall be verified by affidavit.
- (6) An affidavit in support of an application for a garnishment order shall state:
- (a) particulars of the moneys payable by the respondent;

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- (b) efforts made by the applicant or any other person to obtain payment of those moneys;
 - (c) details of any relevant information furnished by the respondent in response to a notice under paragraph 3 (1) (a) or obtained in an examination pursuant to a summons issued under paragraph 3 (1) (b);
 - (d) particulars of the moneys referred to in subrule (4) in respect of which application is made for garnishment; and
 - (e) the order sought against the garnishee.
- (7) The court shall, in respect of an application for a garnishment order:
- (a) make the order sought or such other appropriate order on the application as it thinks fit; or
 - (b) dismiss the application.
- (8) Prior to the making of an order under subrule (7), the court may, in proceedings on an application for a garnishment order:
- (a) adjourn the proceedings and require the garnishee and the respondent or either of them to be served with a copy of the application;
 - (b) give directions as to service and the further hearing of the proceedings; and
 - (c) make such other order as it thinks necessary to prevent the moneys that are the subject of the application from disappearing or being dissipated.
- (9) Where the court makes a garnishment order attaching the earnings of the respondent, it shall:
- (a) specify the periodic amount to be deducted from the respondent's earnings in satisfaction of the moneys payable, that is to say, the *normal deduction rate*;
 - (b) specify an amount fixed by the court as the amount below which the respondent's earnings shall not be reduced by compliance with the order, that is to say, the *protected earnings rate*;
 - (c) specify the person to whom, the place at which and the manner in which payment of amounts to be paid by the garnishee under the order is to be made;

- (d) specify the amount that the garnishee may deduct from the normal deduction rate referred to in paragraph (a) for administrative expenses; and
 - (e) specify the date from which the payments shall commence.
- (10) A sealed copy of an order under subrule (7) shall be served on the garnishee and on the respondent in accordance with Order 18.
- (11) A garnishee who has been served with a garnishment order:
- (a) may apply to the court disputing his liability to make payments under the order; or
 - (b) shall comply with the order.
- (12) If the garnishee applies to the court disputing the order, the garnishee shall file an affidavit setting out the facts and circumstances upon which the order is disputed, and serve a copy of the affidavit on the applicant and the respondent in accordance with Order 18.
- (13) On the hearing of an application by a garnishee disputing the liability of the garnishee to make payments under a garnishment order, the court:
- (a) may proceed with the hearing and determination of the dispute notwithstanding that the respondent has not been served with the application; and
 - (b) shall hear and determine the matter in dispute and make such order, including an order as to costs, as it thinks fit.
- (14) Where a person complies with an order under paragraph (7) (a), his compliance with the order shall be a valid discharge of the indebtedness of the person to the respondent to the extent of the amount paid under the order.
- (15) The court may, on application or of its own motion, vary or discharge an order under paragraph (7) (a) upon such conditions as it thinks fit.

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- (16) Where an order is varied or discharged under subrule (15), the court shall make such orders as to service of the order as varied or the order for discharge on the garnishee and other persons as it thinks fit.
- (17) The provisions of subrule (11) apply, insofar as they are applicable, to an order that has been varied under subrule (15).
- (18) An amount standing to the credit of a respondent in an account in a bank, building society, co-operative housing society or similar society, credit union or credit society, or investment fund or corporation, that is payable to the respondent on call or on notice shall, subject to subrule (19), for the purposes of this rule, be a debt due to the respondent notwithstanding that any condition relating to the account or a demand or notice for payment under the account is unsatisfied.
- (19) Where an amount referred to in subrule (18) is made the subject of an order under this rule then, unless the court otherwise orders, the first-mentioned order only operates to require payment of the said amount when any necessary period of notice has expired, but service on the garnishee of the order for payment of the said amount shall be deemed to be the giving of that notice.
- (20) A garnishee shall not, without reasonable excuse:
- (a) fail to comply with an order made under subrule (7), (13) or (15); or
 - (b) dismiss a respondent from or injure a respondent in respect of employment, or alter the respondent's position to the prejudice of the respondent, by reason of an order made under this rule.

Penalty: 50 penalty units.

- (21) A conviction under subrule (20) does not limit, restrict or otherwise affect any obligation that the garnishee may have in relation to the respondent or any right or remedy that the respondent may have against the garnishee under any other law of the Commonwealth or of a State or Territory.

- (22) A pension, annuity or allowance that is protected from garnishment or encumbrance under any law shall not be subject to an order under this rule.
- (23) Where an order under this rule is in force and the respondent ceases to be employed by the garnishee, the respondent and the garnishee shall, within 21 days after the respondent ceases to be so employed, each give notice to the court:
- (a) notifying that the respondent has ceased employment with the garnishee; and
 - (b) specifying the date on which the employment ceased; and, if the respondent has a new employer, the respondent shall, in the notice given under this subrule, specify:
 - (c) the name and address of that employer and the place of the respondent's employment by that employer; and
 - (d) the amount of the respondent's earnings from employment with that employer.

Penalty: 50 penalty units.

- (24) Where the Court receives a notice under subrule (23), it shall notify the applicant in writing and, if no written objection is received from the applicant or the respondent within a reasonable time, it may, of its own motion, issue a fresh order in appropriate terms naming the new employer as garnishee.

5 Seizure and sale of personal property

- (1) If a person fails to satisfy an obligation, a person entitled to take proceedings to enforce the obligation may apply to the court for an order to seize personal property belonging to the first-mentioned person to enforce the obligation.
- (2) An application under subrule (1) may be made *ex parte*.
- (3) An affidavit in support of an application for seizure of property under subrule (1) shall state:
 - (a) particulars of the moneys not paid by the person against whom the order is sought;
 - (b) efforts made by the applicant and any other person to obtain payment of the moneys;

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- (c) details of any relevant information furnished by the respondent in response to a notice under paragraph 3 (1) (a) or obtained in an examination under paragraph 3 (1) (b); and
- (d) details of personal property owned or believed to be owned by the person against whom the order is sought.
- (4) Where application is made under this rule by a Registrar or other public authority, verification thereof by affidavit is not required.
- (5) Where an application is made under subrule (1), the court may order:
- (a) a Marshal of the court; or
- (b) any other officer of the court or some other person (such officer or person being an officer or person who is willing and able to execute the order);
- to seize and realize some or all of the personal property, not being prescribed personal property, of the person named in the order.
- (6) An order made under subrule (5) shall specify the amount owing by the person named in the order and may include such further amount to cover the expenses of obtaining and executing the orders as the court thinks fit.
- (7) If the person named in the order pays to the Marshal, officer of the court or other person specified in the order or into the registry of the court where the order was made the total of the amounts specified under subrule (6), the order shall be deemed to have been complied with and no further steps shall be taken under it.
- (8) Where it appears to the Marshal, officer or other person specified in the order that the property ordered to be seized in accordance with subrule (5) is substantially greater in value than the amounts specified under subrule (6), the Marshal, officer or other person shall first seize and realize so much of the property as appears to be sufficient.

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- (9) The Marshal, officer or other person specified in the order shall seize or realize the property:
- (a) in such order as seems to the Marshal, officer or other person best for the speedy execution of the order without undue expense;
 - (b) subject to paragraph (a), in such order as the person named in the order may request; and
 - (c) subject to paragraphs (a) and (b), in such order as appears to the Marshal, officer or other person best for minimizing hardship to the person named in the order and any other person affected.
- (10) The Marshal, officer or other person specified in the order shall, in relation to all property seized by the Marshal, officer or other person:
- (a) put the property up for sale as quickly as is consistent with due regard to the interests of the parties and to the desirability of a beneficial realization of the property;
 - (b) put the property up for sale at the place where it seems best for a beneficial realization of the property;
 - (c) advertise the sale in such manner as appears to be adequate; and
 - (d) sell the property by auction or private treaty.
- (11) The Marshal, officer or other person specified in the order shall pay the proceeds of sale into the registry of the court where the order was made, whereupon the Registrar shall apply the proceeds so paid:
- (a) firstly, in or towards the discharge of the amount specified under subrule (6) for the expenses of obtaining and executing the order or, if no such amount is so specified or the amount specified is found to have been too great or too small, then in or towards the discharge of such sum as the Registrar may fix as the proper expenses of obtaining and executing the order; and
 - (b) secondly, in or towards the discharge of the amount specified in the order under that subrule as the amount owing by the person named in the order.

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- (12) The Registrar shall:
- (a) if the Registrar considers that the person named in the order may have a continuing obligation — retain the balance to be dealt with in accordance with the further order of the court; or
 - (b) in any other case — pay the balance, if any, to the person named in the order.
- (13) Where the Registrar retains money under paragraph (12) (a), the Registrar shall report that fact to the court, whereupon the court, having regard to any continuing obligation the person named in the order may have, may make such orders as to the further disposition of the moneys as it thinks fit.
- (14) Where the court makes an order under subrule (13), it may make such further orders as to service of the order and other matters related thereto as it thinks fit.

6 Sequestration of estate

- (1) If a person fails to satisfy an obligation, a person who is entitled to take proceedings to enforce the obligation may apply to the court for an order that the estate of the first-mentioned person be sequestered.
- (2) The affidavit filed by the applicant with an application under subrule (1) shall set out:
 - (a) particulars of the estate sought to be sequestered; and
 - (b) the reasons for seeking the order, including any attempts to obtain satisfaction of the obligation by other means.
- (3) Where an application has been made under subrule (1), the court may make an order:
 - (a) sequestrating the estate in part or in whole;
 - (b) appointing the Marshal, an officer of the court or other named person as receiver of the estate; and
 - (c) as to the costs and expenses of the sequestration.
- (4) In urgent cases, the court may hear the application *ex parte* and make an order, but such an order shall be expressed to operate only until the further order of the court.

- (5) Where the court makes an order under subrule (4), it may give such directions as to service and the further hearing of the application as it thinks fit.
- (6) A court exercising jurisdiction under the Act may, on application by a person whose estate has been sequestrated in pursuance of an order made under this rule by the court, discharge the order upon such terms and conditions as the court thinks fit.
- (7) A Family Court or the Supreme Court of the Northern Territory may, on the application of a person whose interests the Court is satisfied are materially affected by an act or omission of, or decision made by, a person appointed as receiver of an estate under subrule (3), make such order as it thinks just.
- (8) A Family Court or the Supreme Court of the Northern Territory may, on the application of:
- (a) a person who applied to the Court for an order under which the estate of another person has been ordered under paragraph (3) (a) to be sequestrated;
 - (b) a person whose estate has been sequestrated in pursuance of such an order;
 - (c) a creditor of a person whose estate has been so sequestrated; or
 - (d) the Principal Registrar or a Registrar of a Family Court; make any one or more of the following orders:
 - (e) an order for the examination before the Court of the receiver or any other person in connection with the sequestration;
 - (f) an order removing the receiver from office;
 - (g) such other orders as it thinks fit.
- (9) In this Rule *estate*, in relation to a person, does not include the prescribed personal property of that person.

7 Power of sale of real property

- (1) If a person fails to satisfy an obligation, a person who is entitled to take proceedings to enforce the obligation may apply to the court for an order that any interest in real property of the first-mentioned person be sold to enforce the obligation.
- (2) On an application under subrule (1), the court may do any of the following:
 - (a) appoint the Marshal or another person (including a party to the proceedings) as trustee for the sale of the interest;
 - (b) order that the interest be transferred or assigned to the trustee, and direct a party to execute a deed or instrument necessary for the transfer or assignment;
 - (c) give any necessary directions for the sale of the interest, including directions about the possession or occupancy of the real property until the sale;
 - (d) give directions about the disposition of the proceeds of the sale of the interest.

8 Certificate as to payments under maintenance order

- (1) Where a Registrar or a public authority is specified in an order of a court as the person to whom maintenance payable under the order is to be paid, that Registrar or authority shall, at the request of a Registrar or of the person who obtained the order, or of the person liable to make payments under the order, give to that Registrar or person a certificate:
 - (a) stating the amount that, according to the records of the court or authority, has been paid under the order or, in the case of a second or subsequent certificate to be given to the same Registrar or person in respect of the same order, the amount that, according to those records, has been paid under the order since the last certificate was given; and
 - (b) the amount that, according to those records, remains unpaid.

- (2) Where, under subrule (1), a certificate is to be given by a Collector of Maintenance or by the Director of the Department for Community Welfare of South Australia, it shall be sufficient if the certificate is given by a subordinate of the Collector or Director.
- (3) When a certificate has been given in accordance with subrule (1) or (2), the Court may receive the certificate in evidence.

9 Certain orders enforceable in South Australia

- (1) This Rule applies to an order or agreement referred to in subrule 2 (1).
- (2) Where an order to which this rule applies is enforceable by a court of the State of South Australia having jurisdiction under the Act, all money to be paid under the order is, unless that court otherwise orders, payable, so long as the person required under the order to pay that money resides in that State, to the Collector of Maintenance of that State, and the receipt of that Collector for any amount so paid shall be sufficient discharge of the liability of the person required under the order to pay that amount.

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

insert

Child Support Agency means the part of the Department of Family and Community Services known by that name that administers the Assessment Act and the Registration Act.

child support agreement has the meaning given by section 81 of the Assessment Act.

child support application or appeal means an application or appeal in which the only orders sought are under the Assessment Act or the Registration Act (see Part 25A).

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

insert

Child Support Registrar means the Child Support Registrar under section 10 of the Registration Act.

[29] Dictionary, after definition of *discovery*

insert

eligible carer has the meaning given by section 7B of the Assessment Act.

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

substitute

Family Law Regulations means the *Family Law Regulations 1984* made under the Family Law Act.

Family Law Rules means the *Family Law Rules 2004* made under the Family Law Act.

Family Law Rules 1984 means the *Family Law Rules 1984* made under the Family Law Act, as in force on 28 March 2004.

Notes

1. These Rules amend Statutory Rules 2001 No. 195, as amended by 2002 No. 80; 2003 No. 272.
2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

26 March