

EXPLANATORY STATEMENT
FAMILY LAW AMENDMENT RULES 2009 (No. 1)
Select Legislative Instrument 2009 No. 33

**Issued by the authority of the Judges of the Family Court of
Australia**

Section 123 of the *Family Law Act 1975 (the Act)* provides that the Judges of the Family Court of Australia, or a majority of them, may make Rules of Court providing for the practice and procedure to be followed in the Family Court and other courts exercising jurisdiction under the Act. The Judges of the Court made the Family Law Rules 2004, which commenced on 29 March 2004. These amending Rules, the Family Law Amendment Rules 2009, have now been made by the Judges to amend the Family Law Rules 2004.

Section 123(2) of the Act provides that the Legislative Instruments Act 2003 (apart from sections 5-7, 10, 11 and 16) applies to Rules of Court. In this application, references to a legislative instrument in the Act are to be read as references to Rules and references to a Rule maker as references to the Chief Justice.

The Legislative Instruments Act provides for certain consultation obligations when Rules are made. The Chief Justice has authorised the Court's Rules Committee to undertake consultation on Rules matters on her behalf.

In this case, the Court undertook broad consultation with the Family Law Section of the Law Council of Australia, and with the constituent bodies of the Law Council of Australia, in relation to the proposed amendments dealing with case management arrangements. Only minimal consultation took place in connection with the amendments required as a result of the legislation dealing with de facto financial matters. This was because in this regard the amendments are necessary to give effect to that legislation. Finally, with the proposed amendments to cater for the introduction of a new application form to be used to initiate a matter and a new response form, those forms have been trialled by the Court over some time, and feedback has been received from the legal profession generally and the Family Law Section of the Law Council of Australia.

The major changes introduced by the amendments to the Rules are set out below.

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

A new trial and case management pathway and docket system was approved by the Judges of the Court following the recommendations of the Case Management Policy and Procedure Committee. These amendments implement and support that new case management pathway and docket system. There are extensive changes to the rules including as follows;

- The terms ‘resolution phase’ and ‘determination phase’ have been removed. Broadly, the court events are now divided into those managed by Registrars (Chapter 12) and those managed by Judges (Chapter 16).
- There is a new phrase introduced, namely, “the first day before the Judge.” The meaning of this varies depending upon the issues in the case. For parenting matters where Division 12A applies, or where there is consent to property matters being dealt with under Division 12A, it is considered the first day of the trial. For property matters where Division 12A does not apply, it is the first procedural hearing before the Judge. For combined cases, it is the first of either the first day of the trial, or the first procedural hearing before the Judge.
- The trial notice, compliance certificate and pre-trial conference have been removed from the Rules.
- There are new powers delegated to Deputy Registrars including;
 - Power to grant permission under new Rule 11.10(1)(a)(ii) for Applications to be amended to include new causes of action following the procedural hearing at which the case is listed for the first day before the Judge.
 - Power to make an order under Rule 6.05 in relation to a person seeking to intervene in a case to become a party.
 - Power to grant permission under an amended Rule 15.17 to issue a subpoena.
 - Power to make orders for expedition pursuant to the proposed Rule 12.10A.

- Power to make an order in relation to the provision of costs estimates under an amended Rule 19.04.
- There are some existing powers that will now be delegated to Deputy Registrars including;
 - Power under paragraph 65G(2)(b) to make a parenting order by consent in favour of a non-parent without attendance at a conference with a family consultant; and
 - Power under subsection 68M(2) to make an order that a child be made available for an examination for the purposes of preparing a report in connection with the proceedings.
- The first return date of a parenting application is no longer a case assessment conference, but rather a procedural hearing.
- Once a case has been referred to the first day before the Judge, an amended application containing a new cause of action cannot be filed unless permission is granted by the court.
- Introduction of a new event, namely a “compliance check”. Such event will be conducted by a Registrar 21 days before the first day before the Judge, but only if required and usually by telephone.
- Removal of the rule allowing parties to agree to postpone a conciliation conference.
- Change to the court events before which a notification of costs must be given by a lawyer, namely, the conciliation conference, and the first day of the allocated dates mentioned in Rules 16.10 (for parenting cases) and 16.13 (for financial cases).

- Removal of the requirement to lodge a conciliation conference document 7 days before the conciliation conference. Instead, each party to a financial case is required to file a Financial Questionnaire 21 days after the case assessment conference.
- Introduction of a balance sheet. The rules set out the requirements for the preparation and filing of the balance sheet within 63 days (ie. 9 weeks) of the case assessment conference, and prior to the conciliation conference if there is to be one.
- Reference is now made to the Child Responsive Program. All parenting cases except those cases in the Magellan Project will generally proceed through this program after the first directions hearing.
- In parenting cases a case will normally proceed to the first day before the Judge, a continuation of trial and then the final stage of the trial. For financial cases, the case would normally proceed to the first day before the Judge, further days before the Judge and then the trial.
- The following Divisions have been removed from the rules given that they have been rarely used;
 - Division 11.2.3 – Small claims; and
 - Division 13.4.2 – Non-party documents.

De facto relationship amendments

These amendments introduce the machinery provisions necessary to give effect to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*. A minimalist approach has been taken, using

the ordinary scheme of the Rules and with as little change as possible. De facto financial causes therefore will be handled by the Court in the same manner as other financial matters, while allowing proper scope for jurisdictional issues, to be aired as necessary.

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

The use of the Initiating Application (Family Law) has for some time been trialled in the Family Court as an alternative to the Application for Final Orders and the separate Application in a Case when filed at the same time, as well as in the Federal Magistrates Court. The Initiating Application (Family Law) allows an application for interim or procedural orders to be made in the same form as is used to seek final orders and at the same time. A separate Application in a Case is not required for such applications if made at the start of a case. As the trial of the Initiating Application (Family Law) has given rise to no significant problems and has simplified the process of commencing a case, the form is now to be used in both Courts. Consequential changes to the forms of response have also been adopted. These forms have been approved by the Chief Justice. The Rules amendments make the necessary machinery and drafting provisions.

DETAILS OF AMENDMENTS

Rule 1 Name of Rules

The name of the rules is the *Family Law Amendment Rules 2009 (No. 1)*

Rule 2 Commencement

The rules amendments commence in two stages. The formal provisions and Schedules 1 and 2 commence on 1 March 2009. Schedules 3 and 4 commence immediately after the commencement of Schedules 1 and 2.

Rule 3 Amendment of Family Law Rules 2004

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

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

[1] Chapter 4, summary

It is necessary to remove this reference in the summary to Chapter 4. The flow chart has been omitted given the changes that have been made to the case management pathway.

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

The amendments address the court events that parenting, financial or combined cases will be listed to upon the filing of an application. Parenting cases will be listed to a procedural hearing. Property cases and combined cases will still be listed to case assessment conferences.

[3] Rule 5.09, notes 1 and 2

This amendment is consequential on the removal of some of the provisions referred to in these notes.

[4] Rule 7.11, note

This amendment is consequential on a change to Rule 15.17, namely some numbering changes and an additional paragraph.

[5] Paragraph 10.06 (2) (a)

This amendment is consequential upon the addition of a subparagraph and is of a grammatical nature.

[6] Paragraph 10.06 (2) (b)

This amendment covers that circumstance where a conciliation conference has not been held, but an offer to settle is still required. The time for the making of that offer is 28 days after the procedural hearing at which the case was allocated the first day before the Judge.

[7] Rule 10.13

The amendment removes the phrase “after the resolution event” given that there will no longer be a resolution phase.

[8] Chapter 11, summary

This amendment is consequential upon the removal of one of the dot points in the summary and is of a grammatical nature.

[9] Chapter 11, summary

This amendment is consequential on the removal from the rules of Division 11.2.3 – Small claims.

[10] Table 11.1, item 1

This amendment removes the reference to an information session as these sessions are no longer conducted by the court.

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

This amendment replaces the paragraph which provided that a particular case or part of a case could be referred to a judicial officer for special management, with a new important step in the preparation of a case, namely, the finalisation of a balance sheet.

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

This amendment is consequential upon a further subparagraph being inserted at (h) and is of a grammatical nature.

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

This amendment provides that orders can be made for a party to produce any relevant document in a financial case to the court or to any other party for the purpose of developing and finalising the balance sheet.

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

This amendment is consequential upon a further subparagraph being inserted at (l) and is of a grammatical nature.

[15] Rule 11.01, table 11.1, item 3, column 3, after paragraph (k)

Two new subparagraphs are inserted by this amendment. The first addresses where the rules require that permission be obtained for an action to be undertaken under the rules. The second addresses the ordering of a relevant fee to be paid.

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

This amendment was necessary as the current rule included a reference to the “final resolution event”, a phrase which no longer exists as a consequence of these amendments. The amendment provides that an application may only be amended up to the procedural hearing at which the case is allocated to the first day before the Judge, or, if the court gives permission, at a later time.

[17] Rule 11.12

This amendment is consequential upon the addition of a new paragraph 11.12(2).

[18] Rule 11.12, before the example

This amendment is inserted to avoid any doubt that where permission is granted for a party to amend a document, the permission is taken to be given by court order.

[19] Division 11.2.3

This amendment removes the entire division dealing with Small claims. It was considered unnecessary for this Division to remain as it is rarely used.

[20] Chapter 12, heading

This amendment incorporates a new heading for Chapter 12. The events covered by Chapter 12 will be conducted or managed by Registrars.

[21] Chapter 12, summary

This amendment provides an outline of those events that are now covered in the Chapter. Some of those events remain the same, but there are new events, for example the initial procedural hearing, the Child Responsive Program and the procedural hearing where the case is set down for the first day before the Judge.

[22] Chapter 12, flow chart

This amendment removes the flow chart which previously set out those events in the ‘resolution phase’ and those in the ‘determination phase’. These phases will no longer exist in the rules.

[23] Rule 12.01, paragraph (e)

This amendment is consequential upon the removal of Division 11.2.3 – Small Claims, and is grammatical in nature.

[24] Rule 12.01, paragraph (f)

This amendment is consequential upon the removal of Division 11.2.3 – Small Claims.

[25] Part 12.2, heading, including the notes

This amendment changes the heading to the Part, consequent upon the removal of the phrase ‘resolution phase’ throughout the rules. It also removes the notes that were under the heading as there are new rules which provide for the appropriate listing of matters.

[26] Subrule 12.03 (1)

This amendment removes the reference to a case assessment conference being conducted in the presence of a Family Consultant. There are no longer case assessment conferences conducted by Family Consultants. These events only take place before a Registrar.

[27] Paragraph 12.03 (2) (b)

This amendment is consequential upon a new subparagraph 12.03(2)(b) being inserted and is only a matter of form.

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

This amendment adds a new purpose to the case assessment conference, namely, to consider whether there should be a transfer of the case to another court exercising jurisdiction under the Act.

[29] Subrule 12.03 (3), including notes

This amendment expands the existing rule dealing with case assessment conferences. At subparagraph (3), it requires the parties to identify relevant matters to be considered at the case assessment conference. At subparagraph (4), it deals with the future conduct and progress of the matter following the case assessment conference if it is not settled at the

case assessment conference. At subparagraph (5), the amendment addresses those cases which also involve parenting matters, and their referral to the Child Responsive Program. A new note has also been added to the rule to make clear that evidence of a communication made at a case assessment conference may be excluded under S.131 of the Evidence Act 1995.

[30] Rule 12.04, 12.05 and 12.06

12.04

This is a new rule providing for the initial procedural hearing in a parenting case. The rule sets out the purpose of the initial procedural hearing and the conduct and progress of the matter following the hearing.

12.05

The current Rule 12.05 has been amended and paragraphs 12.05(2)(b) and (c) are removed such that the Registrar will now be responsible for directing the relevant documents to be exchanged before the conciliation conference. Further, the time frame within which the documents are to be exchanged will change from 7 days before the conciliation conference, to within 28 days after the case assessment conference. The amendment also removes the requirement for a conciliation conference document to be lodged. As a result, subrule 12.05(4) is no longer required. The financial questionnaire will replace the conciliation conference document.

12.06

This new rule requires each party to file a financial questionnaire within 21 days after the case assessment conference and provides for the

preparation and filing of a balance sheet within 9 weeks after the case assessment conference.

A new note has also been added which provides that S.131(1) of the *Evidence Act 1995* does not apply to the balance sheet and financial questionnaires.

12.07

This amendment replaces the existing Rule 12.06. The changes to the rule are the removal of the reference to a Family Consultant assisting with the conciliation conference (as this no longer occurs) and the deletion of subrule (3).

12.08

This new rule provides for the procedural hearing in a financial case. Such procedural hearing would generally take place immediately after a conciliation conference (if the case has not been settled), but where a conciliation conference is not ordered, it would take place immediately after the case assessment conference. The rule sets out the purpose of this procedural hearing namely to make procedural orders for the conduct of the case including allocating the first day before the Judge.

12.09

This new rule provides for the procedural hearing after the Child Responsive Program. It sets out the purpose of this procedural hearing including, namely to make procedural orders for the conduct of the case including the appointment of an independent children's lawyer, the completion of parenting questionnaires and allocating the first day before the Judge.

12.10

This new rule provides for the procedural hearing where the application includes both a financial case and a parenting case. It provides that the procedural hearing should take place as soon as practicable after either the completion of the Child Responsive Program, or the conciliation conference, whichever occurs last. The rule sets out the purpose of the procedural hearing and adopts the actions mentioned in subrules 12.08(2) and 12.09(2).

12.10A

This rule provides for expedition and repositions the existing Rule 16.01 into Chapter 12. The rule mirrors the existing Rule 16.01, except for the following:

- a) a new paragraph (c) has been added to subrule 12.10A(2) so that prejudice to the respondent is a matter taken into account when considering expedition;
- b) subrule (3) has been altered so that if the court is satisfied that an expedited trial is necessary, the court will set an early first day before the Judge and make procedural orders for the further conduct of the case;
- c) in subrule (4) the words “exceptional circumstance” are replaced with “relevant circumstance”; and
- d) in subrule (4)(b) the words, “or any child the subject of, or affected by, the case” have been added.

[31] Part 12.3

This amendment removes the entire Part 12.3 – Court events – Determination Phase comprising of the existing Rules 12.07A-12.10. The Rules will no longer provide for a determination phase and with the

new case management pathway, there is no longer a trial notice, compliance certificate or pre-trial conference.

[32] Subrule 12.11 (1)

The amendment removes the reference to the pre-trial conference, which event will no longer exist. It provides that the parties and their lawyers must attend each procedural hearing, as well as the case assessment conference and conciliation conference (a requirement that has always existed).

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

This amendment inserts a new note which refers parties to Rule 16.02, which provides for a compliance check.

[34] Rule 12.12, note

This amendment caters for a numbering change.

[35] Subrule 12.13 (3)

This amendment removes the reference to the pre-trial conference as this event no longer exists in the new case management pathway.

[36] Subrule 12.14 (1)

This amendment removes the reference to a conciliation conference such that parties can no longer agree to postpone a conciliation conference.

[37] Paragraph 12.14 (2) (e)

This amendment is consequential upon the removal of the reference to the conciliation conference in subrule 12.14(1).

[38] Subrule 12.14 (4)

This amendment is proposed because the rules now provide for more than one type of procedural hearing. The effect is that **any** of the procedural hearings can only be postponed up to 2 times.

[39] Rules 12.15 and 12.16

This amendment removes rule 12.15, which provided for the adjournment of a case assessment conference and Rule 12.16, which provided for adjournments or postponement of a pre-trial conference.

[40] Rule 13.06

This amendment removes any requirement for a financial statement to be amended to be linked with a conciliation conference or pre-trial conference and provides a time frame for filing a new financial statement or affidavit. Where a party's financial circumstances have changed significantly, no matter at which stage the case is at, a new financial statement or an affidavit of less than 300 words containing details about the changed financial circumstances must be filed within 21 days of the change. Further, the amendments will no longer have to be marked.

[41] Rule 13.16

This amendment changes the date for the filing of an undertaking as to disclosure under Rule 13.15 to 28 days before the first day before the Judge.

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

This amendment removes the existing subparagraph (f), ‘a small claim’ (as this division has been removed from the rules) and (i), ‘a case listed for trial without a pre-trial conference’ (because the rules no longer provide for such an event).

[43] Paragraphs 13.19 (1) (b)

This amendment is consequential upon the removal of some subparagraphs in the rule and is a matter of form, rather than substance.

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

This amendment removes the existing subparagraph (d), ‘a small claim’ (as this division has been removed from the rules) and (e), ‘a case listed for trial without a pre-trial conference’ (because the rules no longer provide for such an event).

[45] Subrule 13.20 (1)

This amendment removes the reference to “after the final resolution event” as there is no such event under the new case management pathway. Instead, a request for disclosure by way of a list of documents can now be made after the case has been allocated to a first day before the Judge.

[46] Subrule 13.20 (5), note

This amendment incorporates a new note directing parties to Rule 13.07 which sets out the documents to which the duty of disclosure applies.

[47] Subrule 13.22 (1)

This amendment removes the reference to the final resolution event as there is no such event under the new case management pathway.

[48] Paragraphs 13.25 (b)

This amendment is consequential upon the removal of some subparagraphs in the rule and is a matter of form, rather than substance.

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

This amendment removes the existing subparagraph (d), ‘a small claim’ (as this division has been removed from the rules) and (e), ‘a case listed for trial without a pre-trial conference’ (because the rules no longer provide for such an event).

[50] Subrule 13.26 (1)

This amendment removes the reference to “after the final resolution event” as there is no such event under the new case management pathway. Instead, a request for answers to specific questions can now be made after the case has been allocated to a first day before the Judge.

[51] Subrule 13.28 (1)

This amendment removes the reference to “after the final resolution event” as there is no such event under the new case management pathway.

[52] Division 13.4.2

This amendment removes the Division headed “Non-Party Documents”. It is considered unnecessary for this Division to remain as it is rarely used.

[53] Paragraph 14.06 (1) (b)

This amendment removes the words ‘a trial’ and replaces them with the phrase introduced by the amendments, namely, ‘the first day before the Judge’.

[54] Subrule 14.06 (2)

This amendment removes the words ‘date fixed for the trial’ and replaces them with the phrase introduced by the amendments, namely, ‘the first day before the Judge’.

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

This amendment inserts a definition of “relevant date” which is a term used later in the Chapter.

[56] Rule 15.03

This amendment changes the existing Rule dealing with Family Reports and only leaves in, in part, the existing subrule 15.03(5). The rule will no longer address the matters to be taken into consideration when the court makes an order for a family report. This will be at the discretion of the Judge hearing the case.

[57] Rules 15.05, 15.06 and 15.07

Existing Rule 15.05 is replaced with a new rule which provides that an affidavit may only be filed without leave where a provision of the Rules or an order of the court allows this.

Existing subrules 15.06(1) and 15.06(2) are removed because they are no longer considered necessary. The rule will provide that an affidavit filed with an application may be relied on in evidence only for the purpose of the application for which it was filed.

The amendments result in the removal of rule 15.07 – Filing an affidavit. The affidavits to be filed will be determined by the Judge.

[58] Subrule 15.14 (2)

This amendment replaces the term ‘trial’ with the new defined term of ‘relevant date’. The effect is that a party seeking to cross-examine a witness must give notice of this 14 days before the first day of the final stage of the trial in which the affidavit is to be relied upon in evidence, or the first day when the affidavit is to be relied on in evidence.

[59] Rule 15.17

This amendment provides that subpoenas may only be issued where the party has requested the court for permission and the court has granted permission. Subrule (2) provides that a request for permission may be made orally or in writing, can be made without notice to the other parties and may be determined in chambers in the absence of the other parties. Subrules 15.17(3)-(5) remain unchanged apart from the necessary renumbering to 15.17(4)-(6).

[60] Rule 15.19

This amendment removes the existing Rule 15.19 with the effect that a party may request the issue of a subpoena at any stage of the case, but the court must first grant permission to issue the subpoena.

[61] Rule 15.21

This amendment changes the rule so that it applies only to Applications in a Case. Further, it removes the limitation of issuing only 3 subpoenas in such applications.

[62] Paragraph 15.55 (1) (a)

This amendment removes the reference to the case assessment conference and replaces it with the term; ‘first court event’ given that parenting matters will no longer be listed to case assessment conferences.

[63] Paragraph 15.69 (1) (a)

This amendment removes the reference to the pre-trial conference as there will no longer be such an event. Instead, the conference of experts must take place 28 days before the newly defined 'relevant date'.

[64] After rule 15.76

This amendment is a new rule providing that each party file a parenting questionnaire 28 days before the first day before the Judge. It is to be in the form approved by the Principal Registrar.

[65] Chapter 16

Heading to Chapter 16

This amendment incorporates a new heading for Chapter 16. The events covered by Chapter 16 will be conducted or managed by a Judge (except for the compliance check).

Summary of Chapter 16

References to the trial are removed from the summary of the chapter and replaced with the new phrase introduced by the amendments, namely, 'the first day before the judge'.

16.01

This is a new Rule 16.01 setting out to which applications the Chapter applies and to which applications it does not.

16.02

This is a new rule providing for a compliance check. Where necessary it will take place 21 days before the first day before the Judge and will be conducted by a Registrar usually by electronic communication. The rule sets out the purpose of the compliance check.

16.03

This is an amended version of the existing Rule 16.12. The rule provides that the first day before the Judge or any subsequent date will only be vacated for substantial and significant reason.

Part 16.2

This Part covers general issues in proceedings before the Judge. There is a new note which lists what documents the Judge should have available to read before the first day before the Judge.

16.04

This rule provides for trial management of proceedings before the Judge. It comprises a list of the types of orders the court may make about the conduct of the trial.

16.05

This replaces the existing Rule 16.08. There is very little change to the rule other than to remove references to 'trial' and 'pre-trial conference' and replace them with 'events that are Judge managed'.

16.06

This replaces the existing Rule 16.09. Its substance has not changed.

16.07

This is an amended version of the existing Rule 16.11. The new rule states that parties must attend the first day before the Judge.

Part 16.3

This is a new Part dealing with parenting cases that will be dealt with under Division 12A. Where there is consent to a property case being dealt with under Division 12A, this Part will also apply (see Rule 16.04(2)).

16.08

The rule provides that where evidence is taken at the first day of trial, the Judge conducting the first day of trial will preside at the entire trial.

Even where evidence is not taken, the Judge conducting the first day of trial will usually preside at the entire trial. The rule also provides that the trial is taken to have started on the first day, whether or not any evidence is taken or submitted at the trial, and it sets out the purpose of the first day of the trial.

16.09

This rule provides that a parenting trial will continue on the day or dates allocated. It also sets out the purpose of the continuation of the trial.

16.10

This rule provides that at the final stage of the parenting trial, the judge will hear the remainder of the evidence and receive submissions.

Part 16.4

This is a new Part dealing with financial cases where there is no consent to the application of Division 12A.

16.11

In a financial case, after the conciliation conference, the case will be referred to the first day before the judge which is defined as the first procedural hearing before the Judge. This rule sets out the purpose of that event.

16.12

This rule provides that in a financial case, there may be further days before the Judge at which the Judge may further identify the issues for which evidence is required, order the filing and exchanging of all

remaining evidence and allocate any further days before the Judge and the trial.

16.13

This rule provides for the trial in a financial case.

Part 16.5

This is a new Part to the Chapter dealing with combined parenting and financial cases.

16.14

This rule provides that with a combined case Rules 16.08-16.10 will apply to the parenting case, and where there is no consent to the financial case being dealt with under Division 12A, rules 16.11-16.13 apply to the financial case.

[66] Rule 16A.04

This amendment removes the reference to Rule 12.04 as the rules have changed with respect to procedural hearings.

[67] Subrule 16A.06 (3)

This subrule was removed as it no longer applies. There are no longer cases conducted under the Children's Cases Program.

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

These subrules were omitted as other parts of the rules have replaced them. The filing of the parenting questionnaire is now covered by Rule 15.77, the issuing of a subpoena is covered by 15.17 and the commencement of the trial is replaced by Rules 16.08-16.10.

[69] Subrule 16A.10 (1)

The word “must” is replaced with “may” to allow for those matters where evidence is not taken at the first day of trial. This is in line with Subrule 16.08(2).

[70] Subrule 16A .10 (2)

This amendment is a minor change to the rule to replace the word “conclusion” with “end” of the trial.

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

This amendment adds a reference to the Principal Registrar of the Family Court of Australia to the definition of “Registrar”.

[72] Table 18.2, items 4 and 14

These powers under paragraph 65G(2)(b) and subsection 68M(2) of the Act have now been moved to Table 18.4, namely, powers delegated to Deputy Registrars.

[73] Table 18.3, item 1

The power, under rule 6.05, to make an order in relation to a person seeking to intervene in a case to become a party, has been moved to Table 18.5, namely, powers under Rules delegated to Deputy Registrars.

[74] Table 18.3, item 5

This amendment arises due to some renumbering and new Rule 15.01 being inserted.

[75] Table 18.4, after item 18

This amendment results in Deputy Registrars having the power, under paragraph 65G(2)(b) of the Act to make a parenting order by consent in favour of a non-parent without an attendance at conference with a family consultant.

[76] Table 18.4, after item 19

This amendment results in Deputy Registrars having the power under subsection 68M(2) of the Act to make an order that a child be made available for an examination for the purposes of preparing a report in connection with the proceedings.

[77] Table 18.5, after item 6

This amendment results in Deputy Registrars having the power, under rule 6.05 to make an order in relation to a person seeking to intervene in a case to become a party.

[78] Table 18.5, item 17

This amendment arises because of the omission of Division 11.2.3 – Small Claims.

[79] Table 18.5, item 20

The inclusion of a new item 19A results in Deputy Registrars having the power under Rule 12.10A to make an order about the expedition of the first day before the Judge. The only change to item 20 is to insert a reference to paragraph 13.14(b) such that Deputy Registrars do not have power to stay or dismiss all or part of a party's case because of non-disclosure.

[80] Table 18.5, item 22

This amendment arises due to the renumbering of the rule dealing with Family Reports.

[81] Table 18.5, item 23

This amendment removes the power under rule 15.06 as this rule has been changed.

[82] Table 18.5, after item 24

This amendment gives Deputy Registrars power under the amended Rule 15.17 to give permission to issue a subpoena.

[83] Table 18.5, item 26

This amendment removes the power given to Deputy Registrars under rule 15.19(2) because that rule has been omitted.

[84] Table 18.5, item 32

This amendment adds to the description of the power delegated to Deputy Registrars under Chapter 19 and Schedule 6 to include power to make an order in relation to the provision of costs estimates.

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

This amendment affects the requirement for lawyers to give notifications of costs. The rule now lists the events before which the notification of costs must be given. The amendment also changes what must be set out in the notification of costs taking into account the change to the case management pathway.

[86] Paragraph 19.04 (3) (a)

This amendment arises from renumbering.

[87] Subrule 19.04 (4)

This amendment replaces the term ‘trial’ with ‘the first day of the final stage of the trial’.

[88] Subrule 19.04 (5)

This amendment arises from re-numbering.

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

This amendment removes the definition of court event for the purpose of the rule because the change to subrules 19.04(1) and (2) describe which specific events require a notification of costs.

[90] Rule 19.40

This amendment arises from the removal of Division 11.2.3 – Small Claims.

[91] Rule 19.40, notes 1 and 2

The affect of this amendment is that the existing note 1, which refers to small claims, is removed given that Division 11.2.3 has been omitted.

[92] Paragraph 22.31 (2) (d)

This amendment is made due to some renumbering.

[93] After rule 24.13

This amendment moves the existing Rule 16.10, to a new Rule 24.14.

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

Given that Schedule 6 applies to certain cases that commenced before 1 July 2008, there may be a circumstance where costs are sought in relation to a small claims case under Division 11.2.3. Accordingly, although Division 11.2.3 is being removed from the rules, it is still necessary to include a reference to it in this schedule.

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

This amendment mirrors the amendments made to Rule 19.04 about notification of costs.

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

This amendment arises from re-numbering.

[97] Schedule 6, subclause 6.04 (4)

This amendment mirrors the amendments made to Rule 19.04(4) and replaces the word ‘trial’ with ‘the first day of the final stage of the trial’.

[98] Schedule 6, subclause 6.04 (5)

This amendment arises from re-numbering.

[99] Dictionary, after definition of *attend*

This amendment inserts a definition of ‘balance sheet’.

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

This amendment inserts a definition of the Child Responsive Program.

[101] Dictionary, definition of *court event*

This amends the definition of court event and includes a reference to the Child Responsive Program.

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

This amendment removes the definitions of expedited trial and final resolution event.

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

This amendment inserts a definition of ‘first day before the Judge’. The phrase has a different meaning depending if the case is a parenting case (see rule 16.08), a financial case (see rule 16.11) or a combined case (see rule 16.14).

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

This amendment inserts a definition of ‘items on the balance sheet’ as ‘assets, liabilities, superannuation, financial resources and add backs’.

[105] Dictionary, definition of *parenting case*

This amendment adds to the definition of a parenting case so that it also includes an application seeking a child related injunction, but excludes any application for child maintenance.

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

The effect of this amendment is that the definition of trial notice is removed. The term ‘trial’ has also been re-defined as ‘the process of determining a case started by an Initiating Application (Family Law), including the court events or hearing days before the presiding judicial officer mentioned in rules 16.08, 16.09, 16.10 and 16.13 that apply to the case’.

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

This amendment removes the reference to ‘court counsellor’ in the explanation of a case assessment conference as no such person will participate in the conference.

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

This amendment removes the reference to the resolution phase in the explanation of a conciliation conference as such phase will no longer exist in the rules.

[109] Explanatory Guide, explanation of *conference*

The effect of this amendment is to remove the reference to a pre-trial conference which is an event that will no longer exist in the rules.

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

This amendment removes the reference to the determination phase as such a phase will no longer exist in the rules.

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

This amendment inserts an explanation of the phrase “expediting the first day before the Judge”.

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

This amendment removes the reference to the information session as such sessions are no longer conducted by the court. It also removes the explanations of opening address and pre-trial conference as these will no longer exist in the Rules. Finally, it removes the reference to the resolution phase as such a phase will no longer exist in the rules.

Schedule 2 – De facto relationship amendments

Item [1] Table 2.2, after item 2A

This Item inserts a new item 2B into Table 2.2. The new Item provides for the documents to be filed with an application for an order relating to a de facto relationship. These reflect other requirements applied by the table to an application of the kind in question as well as the documents needed to meet the jurisdictional requirements of a de facto financial cause, having regard to the nature of the case.

Item [2] Division 2.3.2, heading

This Item provides for a new heading for Division 2.3.2 referring to its application to de facto maintenance cases.

Item [3] Rule 2.06, heading

Rule 2.06 deals with notification of proceeds of crime orders and forfeiture applications. This Item replaces the heading of Rule 2.06 with one referring to section 90VA of the Act, which provides for notification of proceeds of crime orders or forfeiture applications in de facto financial causes.

Item [4] Rule 2.06

This Item inserts in Rule 2.06 an express reference to de facto property settlement or maintenance proceedings.

Item [5] Rule 2.06

Item [6] Rule 2.06 (b)

These Items insert in Rule 2.06 references to subsection 90VA(3) and paragraph 90VA(3)(b).

Item [7] Subrule 2.07 (1)

Rule 2.07 deals with proceeds of crime orders relevant to certain proceedings under the Act. This amendment expands the Rule so it applies also in de facto property and maintenance proceedings.

Item [8] Subrule 2.07 (2)

This Item expands the subrule so it applies to an application to lift a stay in a de facto financial cause as it does in other financial cases.

Item [9] Paragraph 2.07 (2) (b)

This Item inserts a reference to subsection 90VC of the Act.

Item [10] Division 4.2.4, heading, except the note

This Item expands the heading so it refers to de facto maintenance as well as to spousal maintenance.

Item [11] Rules 4.14 and 4.15

This Item expands these Rules so they refer to de facto maintenance as well as to spousal maintenance.

Item [12] Subrule 4.15 (1), note 2

This Item expands the note so that as well as directing the reader to section 83 of the Act for modification of a spousal maintenance order, it also refers to modification of a de facto maintenance order under section 90SI of the Act.

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

This Item inserts into the note a new paragraph (aa) dealing with the operation of subsection 90SM (10) of the Act which authorises certain persons to intervene in a de facto financial cause potentially having an effect on their interests.

Item [14] Subrule 6.15 (3), note 2

Rule 6.15 deals with the conduct of a case after the death of a party to certain proceedings and the note refers to sections of the Act where that issue is addressed. This item inserts in the note references to sections dealing with de facto financial causes.

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

Part 6.5, into which this Rule falls, deals with the progress of a financial case upon bankruptcy or insolvency. This item inserts in the definition of *relevant case* references to the sections dealing with de facto financial causes.

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

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

These Items expand the definition to include a party to a de facto relationship who is a party to a relevant case in relation to the relationship.

Item [18] Subrules 6.21 (1) and (3)

Rule 6.21 provides for notice of an application by a bankruptcy trustee to be given in certain circumstances to a Court and to a party to a marriage. This Item will expand the notice provision to include notice to a party to a relevant de facto relationship.

Item [19] Paragraph 10.16A (1) (a)

Rule 10.16A imposes certain requirements on parties who apply for consent orders in cases under section 79 of the Act. This Item extends these requirements to a case under section 90SM of the Act.

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

This item inserts a note referring to the operation of section 90TA of the Act.

Item [21] Subrule 13.02 (2)

Subrule 13.02(2) specifies that Division 13.1.2 does not apply to a party to a property case who is not a party to the relevant marriage. This Item also serves to exclude application to a party to a property case who is not a party to the relevant de facto relationship.

Item [22] Rule 13.18

This Item makes a technical drafting change.

Item [23] Rule 14.07

This Item replaces rule 14.07. The new Rule provides that a person who applies for an order under either Part VIII or Part VIIAB of the Act must serve notice of the application on certain persons whose interests may be affected by an order made in the matter. Formal requirements for such a notice are stated.

Item [24] Paragraph 18.02 (1) (c)

Rule 18.02 delegates to Judicial Registrars the powers of the Court, subject to stated exceptions. One of the exceptions concerns matrimonial property cases where the gross value of the property exceeds \$2,000,000. This item extends this exception to similar de facto property cases.

Item [25] Table 18.2, after item 18

This Item inserts into the Table new Items 18A and 18B delegating to Registrars of the Court the same powers to make, vary or discharge a de facto maintenance order as is delegated to them in respect of spousal maintenance orders.

Item [26] Table 18.4, item 21

This Item extends the delegation to Deputy Registrars of the power to make an order dispensing with a conference to include the power under paragraph 90SM (9) (c) of the Act.

Item [27] After subparagraph 20.01 (2) (a) (vi)

This Item inserts a new subparagraph 20.01 (2) (a) (via). This includes, as an obligation to pay money, a de facto financial agreement or termination agreement.

Item [28] After Rule 23.01A

This Item inserts a new rule 23.01B which provides that a de facto maintenance order may be registered in a court exercising jurisdiction under the Act by filing a sealed copy in a Registry of that Court.

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

and

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

These Items make drafting amendments consequential on the addition of new paragraph 1 (4) (g).

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

This Item adds a new paragraph 1 (4) (g), which specifies a new circumstance in which the Court may accept that it was not possible or appropriate to follow the pre-action procedures. This is where there is a genuine dispute about the existence of a de facto relationship or whether a choice of the new de facto provisions in the Act has been made in a case where they do not apply of their own force.

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

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

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

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

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

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

These Items amend the definition of *financial case* so that in addition to a matrimonial financial case it also covers, as a financial case, a de facto financial case after the breakdown of the de facto relationship.

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

This item amends the definition of *property case* so that it includes references to proceedings concerning the property of the parties to a de facto relationship, or the vested bankruptcy property in relation to such a party, after the breakdown of the relationship.

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

Item [1] Chapter 2, summary

This Item amends the summary to reflect the use of the Initiating Application (Family Law) and Response to Initiating Application

(Family Law). Reference to both is required as orders may be sought in each of them.

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

This Item omits items 1, 2 and 3 in Table 2.1, which specifies the form of application to be used in different circumstances, and substitutes new items 1, 2, 2A, 3 and 3A. The new items make drafting and technical changes to reflect the use of the Initiating Application (Family Law), including to apply for both final and interim and incidental orders when commencing a case. Interim and incidental orders sought after a case has commenced will continue to require the use of the Application in a Case.

Item [3] Table 2.1, notes 1 and 2

A new note is substituted for notes 1 and 2, indicating that a respondent who seeks orders in another cause of action may make the application for those orders in a Response to Initiating Application (Family Law).

Item [4] Table 2.1, notes 3 and 4

This Item renumbers notes 3 and 4 consequential on item 3 above.

Item [5] Table 2.2, item 3, column 2

This Item changes obsolete references to reflect the use of the Initiating Application (Family Law) and Response to Initiating Application (Family Law).

Item [6] Table 2.2, item 4, column 2

Item 4 of table 2.2 deals with the documents to be filed in when property settlement orders are sought. This amendment changes references to forms to references to the Initiating Application (Family Law) and Response to Initiating Application (Family Law).

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

This amendment changes references to forms to references to the Initiating Application (Family Law) and Response to Initiating Application (Family Law).

Item [8] Table 2.2, item 5, column 2

This amendment changes references to forms to references to the Initiating Application (Family Law) and Response to Initiating Application (Family Law).

Item [9] Table 2.2, item 6, column 2

This amendment changes references to forms to references to the Initiating Application (Family Law) and Response to Initiating Application (Family Law).

Item [10] Table 2.2, item 7

Item 10 substitutes item 7 in Table 2.2. The substituted item reflects the use of both the Initiating Application (Family Law) and the Application in a Case as vehicles through which to apply for interim, procedural, ancillary or other incidental orders.

Item [11] Subrule 2.02 (5), note 1

Note 1 deals with the limited circumstances in which a party may file an affidavit with an application seeking final orders. This amendment updates the note to refer to the Initiating Application (Family Law).

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

This Item makes a drafting change to the note to refer to the Initiating Application (Family Law).

Item [13] Rule 4.02, example

This Item updates the example to refer to the Initiating Application (Family Law).

Item [14] Rule 4.03, note

This Item updates the note to reflect that an application for interim, procedural or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) and later in an Application in a Case.

Item [15] Subrule 4.11 (2), note

This Item updates the note to reflect that an application for interim, procedural or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) and later in an Application in a Case.

Item [16] Rule 4.20, note 1

This Item updates the note to reflect that an application for extension of time to file may be made, when a case is started, in an Initiating Application (Family Law) and later in an Application in a Case.

Item [17] Rule 4.31

This item makes a drafting change to reflect that the Application for Final Orders form is no longer to be used.

Item [18] Chapter 5, heading

This Item updates the heading to reflect that an application for interim, procedural or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) as well as later in an Application in a Case.

Item [19] Chapter 5, summary

This Item updates the summary to refer to interim, procedural, ancillary or other incidental orders

Item [20] Rule 5.01

This item inserts a new rule 5.01 which combines the effect of former rules 5.01 and 5.04. The new rule reflects that an application for interim, procedural, ancillary or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) and, later, in an Application in a Case.

Item [21] Rule 5.02, heading

This item replaces the heading to rule 5.02.

Item [22] Subrule 5.02 (1)

This Item substitutes subrule 5.02 (1) with a new subrule reflecting the operation of the Initiating Application (Family Law) and requiring an affidavit to be filed with an application for interim, procedural, ancillary or other incidental orders.

Item [23] Rule 5.02, note

This Item makes a technical drafting change.

Item [24] Subrule 5.03 (1)

This Item makes a technical drafting change reflecting the operation of the Initiating Application (Family Law) and referring to application seeking interim, procedural, ancillary or other incidental orders.

Item [25] Rule 5.04

The Rule is omitted.

Item [26] Subrule 5.05 (1)

This Item updates the subrule to reflect that an application for interim, procedural or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) and later in an Application in a Case.

Item [27] Subrule 5.05 (3)

This Item replaces the subrule to cover the situation where an Application in a Case is filed after another related application.

Item [28] Subrule 5.05 (4)

This Item updates the subrule to reflect that an application for interim, procedural or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) and later in an Application in a Case.

Item [29] Subrule 5.11 (2)

This Item updates the subrule to refer generically to an application and response to better reflect the use of the Initiating Application (Family Law) and Response to Initiating Application (Family Law).

Item [30] Table 7.1, item 2

This Item omits an obsolete reference to an Application in a Case filed with an Application for Final Orders.

Item [31] Table 7.1, item 12, column 2

This Item makes a technical drafting change consequential on item 30 above.

Item [32] Chapter 9, summary

Item [33] Chapter 9, summary

These Items makes drafting changes to refer to the Response to Initiating Application (Family Law).

Item [34] Rule 9.02

This Item substitutes rule 9.02 so as to refer to the circumstances in which a party may and must not file an affidavit with a Response to Initiating Application (Family Law).

Item [35] Rule 12.01

This Item replaces a reference to Applications for Final Orders with one to Initiating Applications (Family Law).

Item [36] Division 13.2.3, heading

This Item updates the heading to refer to Initiating Applications (Family Law).

Item [37] Subrule 13.19 (1)

This Item replaces a reference to Applications for Final Orders with one to Initiating Applications (Family Law).

Item [38] Paragraph 13.19 (1) (d)

Item [39] Paragraph 13.19 (1) (e)

These Items make technical drafting changes, consequential on the new paragraph 13.19 (1) (f).

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

This Item inserts a new paragraph 13.19 (1) (f) referring to an Initiating Application (Family Law) in which is sought an interim, procedural, ancillary or other incidental order.

Item [41] Rule 13.25

This Item makes a technical drafting change, consequential on the new form of application.

Item [42] Paragraph 13.25 (c)

This item makes a technical drafting change consequential on the new paragraph 13.25 (d).

Item [43] After paragraph 13.25 (c)

This Item inserts a new paragraph 13.25 (d) referring to an Initiating Application (Family Law) in which is sought an interim, procedural, ancillary or other incidental order.

Item [44] Chapter 14, summary

This Item inserts a reference to an Initiating Application (Family Law) in which is sought an interim, procedural, ancillary or other incidental order.

Item [45] Subrule 14.01 (5), note

Item [46] Subrule 14.04 (3), note

Item [47] Subrule 14.05 (2), note

These Items update these notes to reflect that an application for interim, procedural or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) and later in an Application in a Case.

Item [48] Rule 15.21

This Item updates the rule to reflect that an application for interim, procedural or other incidental orders may be made, when a case is started, in an Initiating Application (Family Law) and later in an Application in a Case.

Item [49] Subrule 15.38 (1)

This Item replaces the subrule which specifies the ways in which a party may apply for the appointment of an assessor.

Item [50] Subrule 15.38 (2)

This Item changes a reference to an affidavit so it refers to one filed with the application in question.

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

This Item inserts a note referring to the operation of Chapter 5.

Item [52] Subrule 19.05 (1), note

This Item replaces a reference to an application in a case with a reference to an application for interim, procedural, ancillary or other incidental orders.

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

This Item replaces a reference to an application in a case with a reference to an application for interim, procedural, ancillary or other incidental orders.

Item [54] Further amendments – Initiating Application (Family Law)

This Item replaces specified references in the Rules to “Application for Final Orders”, where they appear, with references to “Initiating Application (Family Law)”.

Schedule 4 Consequential amendments

[1] Rule 15.01A

This amendment is a re-numbering of the Rules given the introduction of some new rules.

[2] Rules 15.01 and 15.02

This amendment is a re-numbering of the Rules given the introduction of some new rules.