



Family Law Amendment (2016 Measures No. 1) Rules 2016

We, Judges of the Family Court of Australia, make the following Rules of Court.

Dated 2 December 2016

D Bryant CJ
M May J
A Ainslie-Wallace J
J Ryan J
P Murphy J
M Aldridge J
M Kent J
J Stevenson J
G Watts J
R Benjamin J
V Bennett J
P Cronin J
S Austin J
S Moncrieff J
M Cleary J
W Johnston J
I Loughnan J
C Forrest J
K Macmillan J
J Rees J
S Duncanson J
P Tree J
D Berman J
S Johns J

G Foster J
C Thornton J
R McClelland J
R O'Brien J
C Carew J
S Gill J

Judges of the Family Court
of Australia

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Main amendments		2
Part 1—Amendments relating to subpoenas		2
<i>Family Law Rules 2004</i>		2
Part 2—Amendments relating to Judge managed court events		4
<i>Family Law Rules 2004</i>		4
Schedule 2—Amendments relating to the Courts Administration Legislation Amendment Act 2016		6
<i>Family Law Rules 2004</i>		6
Schedule 3—Amendments relating to cases to which the Trans-Tasman Proceedings Act 2010 applies		7
<i>Family Law Rules 2004</i>		7
Schedule 4—Costs		8
<i>Family Law Rules 2004</i>		8

1 Name

These Rules are the *Family Law Amendment (2016 Measures No. 1) Rules 2016*.

2 Commencement

- (1) Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in these Rules not elsewhere covered by this table	The day after these Rules are registered.	6 December 2016
2. Schedule 1	1 January 2017.	1 January 2017
3. Schedule 2	At the same time as Part 2 of Schedule 2 to the <i>Courts Administration Legislation Amendment Act 2016</i> commences.	1 January 2018
4. Schedules 3 and 4	1 January 2017.	1 January 2017

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

3 Authority

These Rules are made under the *Family Law Act 1975*.

4 Schedules

Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.

Schedule 1—Main amendments

Part 1—Amendments relating to subpoenas

Family Law Rules 2004

1 Rule 7.03 (table 7.1, item 5)

Repeal the item, substitute:

- | | | |
|---|---|---|
| 5 | A subpoena, or a copy of a subpoena, required to be served under rule 15.22 or 26B.17 | The manner of service required by that rule |
|---|---|---|

2 Rule 7.03 (table 7.1, item 9, column headed “Document”)

Omit “15.22(1) and 20.11(3)”, substitute “15.22(1), 20.11(3) and 26B.17(1)”.

3 Subrule 15.22(1)

Omit “by hand”, substitute “in accordance with subrule (1A)”.

4 After subrule 15.22(1)

Insert:

- (1A) A document required to be served under subrule (1) must be served:
- (a) in relation to a subpoena for production—either:
 - (i) by ordinary service; or
 - (ii) by a manner of service agreed between the issuing party and the named person; and
 - (b) in relation to a subpoena to give evidence, or a subpoena for production and to give evidence—by hand.

5 Subrule 15.22(2)

Omit “by ordinary service”, substitute “in accordance with subrule (2A)”.

6 After subrule 15.22(2)

Insert:

- (2A) A document required to be served under subrule (2) must be served:
- (a) by ordinary service; or
 - (b) by a manner of service agreed between the issuing party and the person to be served.

7 Subrule 15.22(4) (note)

Repeal the note, substitute:

Note: Chapter 7 also contains other requirements relating to service.

8 Paragraph 15.30(1)(e)

Repeal the paragraph, substitute:

- (e) on or after the production day, the issuing party files a notice of request to inspect in an approved form.

9 Subrule 26B.17(1)

Omit “by hand”, substitute “in accordance with subrule (1A)”.

10 After subrule 26B.17(1)

Insert:

- (1A) A document required to be served under subrule (1) must be served:
- (a) in relation to a subpoena for production—either:
 - (i) by ordinary service; or
 - (ii) by a manner of service agreed between the issuing party and the named person; and
 - (b) in relation to a subpoena to give evidence, or a subpoena for production and to give evidence—by hand.

11 Subrule 26B.17(2)

Omit “by ordinary service”, substitute “in accordance with subrule (2A)”.

12 After subrule 26B.17(2)

Insert:

- (2A) A document required to be served under subrule (2) must be served:
- (a) by ordinary service; or
 - (b) by a manner of service agreed between the issuing party and the person to be served.

13 Subrule 26B.17(4) (note)

Repeal the note, substitute:

Note: Chapter 7 also contains other requirements relating to service.

14 Paragraph 26B.24(1)(e)

Repeal the paragraph, substitute:

- (e) on or after the production day, the issuing party files a notice of request to inspect in an approved form.

15 Part 27.1

Repeal the Part, substitute:

Part 27.1—Transitional provisions relating to the Family Law Amendment (2016 Measures No. 1) Rules 2016

27.01 Application of amendments relating to subpoenas

- (1) The amendments made by Part 1 of Schedule 1 to the *Family Law Amendment (2016 Measures No. 1) Rules 2016* apply in relation to subpoenas issued on or after the commencement of that Schedule.
- (2) This rule is repealed at the start of the day after the end of the period of 1 month beginning on the day this rule commences.

Part 2—Amendments relating to Judge managed court events

Family Law Rules 2004

16 Paragraph 5.06(3)(c)

Omit “16.08(3)”, substitute “16.05(3)”.

17 Rule 8.01 (note 2)

Omit “16.08”, substitute “16.05”.

18 Rule 15.01 (paragraph (a) of the definition of *relevant date*)

Omit “the final stage of”.

19 Rule 15.35 (note)

Omit “16.10(4)”, substitute “24.14(4)”.

20 Rule 15.73 (note)

Omit “16.08”, substitute “16.05”.

21 Subrule 16.04(1)

Omit “(1) For rules 16.08 to 16.13”, substitute “For Part 16.3”.

22 Paragraph 16.04(1)(c)

Omit “continuation of”.

23 Subrule 16.04(2)

Repeal the subrule.

24 Parts 16.3 to 16.5

Repeal the Parts, substitute:

Part 16.3—Proceedings before the Judge—parenting and financial cases

16.08 Trial management hearing

- (1) The purpose of the trial management hearing is:
 - (a) for the presiding Judge, with the assistance of the parties and their legal representatives, to discuss and identify the orders sought and issues in dispute between the parties arising from the applications before the court; and
 - (b) in the ordinary course, to hear and determine any interlocutory issues or interim applications that are outstanding on the day of the trial management hearing, or to make appropriate arrangements for the determination of those applications; and
 - (c) in a parenting case—to receive evidence, including from the family consultant in the case; and

- (d) in a financial case—to consider the balance sheet; and
- (e) to consider and determine a plan for the trial.

- (2) If evidence is taken at the trial management hearing, the presiding Judge must preside at the trial.

Note: Subrule (2) applies unless the court orders otherwise (see rule 1.12). If evidence is not taken at the trial management hearing, the presiding Judge will usually preside at the trial.

16.09 Further days before the Judge

The purpose of any further days before the Judge is:

- (a) to further identify the issues for which evidence is required; and
- (b) to make procedural orders about filing and exchange of all remaining evidence; and
- (c) to allocate dates for any further days before the Judge and the trial.

16.10 The trial

- (1) The trial takes place on the day or dates allocated.
- (2) At the trial the Judge will hear the evidence and receive submissions.

25 Paragraph 19.04(1)(b)

Omit “rules 16.10 and 16.13”, substitute “rule 16.10”.

26 Subrule 19.04(4)

Omit “the final stage of”.

27 Paragraph 6.04(1)(b) of Schedule 6

Omit “rules 16.10 and 16.13”, substitute “rule 16.10”.

28 Subclause 6.04(4) of Schedule 6

Omit “the final stage of”.

29 Dictionary (note at the end of the definition of *attend*)

Omit “16.08”, substitute “16.05”.

30 Dictionary (definition of *first day before the Judge*)

Repeal the definition, substitute:

first day before the Judge means the trial management hearing referred to in rule 16.08.

31 Dictionary (definition of *trial*)

Omit “, 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”.

Schedule 2—Amendments relating to the Courts Administration Legislation Amendment Act 2016

Family Law Rules 2004

1 Rule 18.01A (definition of *Registrar*)

Omit “Principal Registrar of the Family Court of Australia”, substitute “Chief Executive Officer”.

2 Dictionary (definition of *Registrar*)

Omit “Principal Registrar and Deputy Registrar”, substitute “the Chief Executive Officer and a Deputy Registrar”.

3 Explanatory Guide (definition of *Principal Registrar*)

Repeal the definition.

4 Amendments of listed provisions—Chief Executive Officer

Omit “Principal Registrar” and substitute “Chief Executive Officer” in the following provisions:

- (a) subrule 2.02(1) (table 2.2, item 2A, column headed “Documents to be filed with application”, paragraphs (b) and (c));
- (b) subrule 2.02(1) (table 2.2, item 10A, column headed “Documents to be filed with application”, subparagraph (b)(ii));
- (c) rule 3.01 (note 2);
- (d) subrule 12.06(1);
- (e) paragraph 12.06(2)(a);
- (f) paragraph 15.22(1)(b);
- (g) subrule 15.77(3);
- (h) rule 16A.01 (definition of *the prescribed form*);
- (i) rule 18.04 (note);
- (j) subrule 18.06(2) (note);
- (k) paragraph 19.41(2)(c);
- (l) paragraph 20.11(3)(b);
- (m) paragraph 20.33(b);
- (n) paragraph 24.01(1)(g);
- (o) rule 26A.03;
- (p) paragraph 26B.17(1)(b);
- (q) Schedule 6, paragraph 6.42(2)(c);
- (r) Dictionary (definition of *conciliation conference document*);
- (s) Dictionary (definition of *costs notice*);
- (t) Dictionary (definition of *superannuation information form*).

Schedule 3—Amendments relating to cases to which the Trans-Tasman Proceedings Act 2010 applies

Family Law Rules 2004

1 Subrule 18.06(1) (table 18.4, at the end of the table)

Add:

Trans-Tasman Proceedings Act 2010

38	subsection 31(1)
39	paragraph 32(1)(b)
40	subsections 36(1), (4) and (6)
41	subsection 37(4)
42	section 38

2 Subrule 18.06(2) (table 18.5, item 44)

Repeal the item.

3 Paragraph 26A.02(1)(a)

Omit “Initiating Application”, substitute “Initiating Application (Family Law)”.

4 Paragraph 26A.02(1)(c)

Omit “application or”, substitute “application, a certificate of non-compliance or a”.

5 Subrule 26A.02(2) (table 26A.1, before item 1)

Insert:

1A	Paragraph 34.62(b)	other of these Rules	provisions of the <i>Family Law Rules 2004</i>
----	--------------------	----------------------	---

6 Subrule 26A.02(2) (table 26A.1, item 1, column headed “Substitute”)

Omit “rule 2.01”, substitute “rule 2.01 of the *Family Law Rules 2004*”.

7 Subrule 26A.02(2) (table 26A.1, item 2, column headed “Substitute”)

Omit “rule 5.01”, substitute “rule 5.01 of the *Family Law Rules 2004*”.

Schedule 4—Costs

Family Law Rules 2004

1 Schedule 3

Repeal the Schedule, substitute:

Schedule 3—Itemised scale of costs

Note 1: See rule 19.18 and clause 6.19 of Schedule 6.

Note 2: This Schedule applies generally to work done on or after 1 January 2017 (see rule 27.02). Different amounts, set out in superseded versions of this Schedule, may continue to apply to work done before that date.

Part 1—Costs allowable for lawyer’s work done and services performed

Costs—lawyer’s work		
Item	Matter for which charge may be made	Amount (including GST)
101	Drafting a document (other than a letter)	\$20.60 per 100 words
102	Producing a document (other than a letter) in printed form	\$7.03 per 100 words
103	Drafting and producing a letter (including a fax or an email)	\$23.66 per 100 words
104	Reading a document	\$9.64 per 100 words
105	Scanning a document (where reading is not necessary)	\$3.78 per 100 words
106	For a document or letter mentioned in item 101, 102, 103, 104 or 105 containing more than 3,000 words	The amount allowed by the Registrar
107	Photocopy or other reproduction of a document	81 cents per page
108	Time reasonably spent by a lawyer on work requiring the skill of a lawyer (except work to which any other item in this Part applies)	\$241.74 per hour
109	Time reasonably spent by a lawyer, or by a clerk of a lawyer, on work (except work to which any other item in this Part applies)	\$156.72 per hour

Note: See rule 19.43 in relation to item 104.

Part 2—Costs allowable for counsel’s work done and services performed

Costs—counsel’s work			
Item	Matter for which charge may be made	Amount (including GST)—senior counsel	Amount (including GST)—junior counsel
201	Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee (if allowed))	\$464.92– \$797.02 per hour	\$277.56– \$395.86 per hour
202	Attendance at a conference (including a	\$464.92–	\$277.56–

Costs—counsel’s work			
Item	Matter for which charge may be made	Amount (including GST)—senior counsel	Amount (including GST)—junior counsel
	court-appointed conference), if necessary	\$797.02 per hour	\$395.86 per hour
203	Attendance of less than 3 hours (for example, a procedural hearing or a summary hearing)	\$464.92– \$3,320.76	\$248.32– \$1,163.59
204	A hearing or trial taking at least 3 hours but not more than 1 day	\$863.40– \$6,642.16	\$823.25– \$1,902.99
205	Other hearings or trials	\$2,191.80– \$6,642.16 per day	\$1,961.98– \$2,883.83 per day
206	Reserved judgment	\$464.92– \$797.02 per hour	\$277.56– \$395.86 per hour

Part 3—Basic composite amount for undefended divorce

Costs—undefended divorce		
Item	Matter for which charge may be made	Amount (including GST)
301	If the lawyer employed another lawyer to attend at court for the applicant and there is a child of the marriage under 18	\$1,021.04
302	If the lawyer employed another lawyer to attend at court for the applicant and there is no child of the marriage under 18	\$759.65
303	If the lawyer did not employ another lawyer to attend at court for the applicant and there is a child of the marriage under 18	\$958.58
304	If the lawyer did not employ another lawyer to attend at court for the applicant and there is no child of the marriage under 18	\$717.29
305	If the lawyer did not attend at court for the hearing under section 98A of the Act	\$617.16

Part 4—Basic composite amount for request for Enforcement Warrant or Third Party Debt Notice

Costs—Enforcement Warrant or Third Party Debt Notice		
Item	Matter for which charge may be made	Amount (including GST)
401	An Enforcement Warrant under rule 20.16	\$617.16
402	A Third Party Debt Notice under rule 20.32	\$617.16

2 In the appropriate position in Part 27.1

Insert:

27.02 Application of Schedule 3 (itemised scale of costs)

Schedule 3, as substituted by the *Family Law Amendment (2016 Measures No. 1) Rules 2016*, applies to work done on or after 1 January 2017.