

***FAMILY LAW AMENDMENT (POWERS DELEGATED TO REGISTRARS) RULES
2020***

EXPLANATORY STATEMENT

FAMILY LAW AMENDMENT (POWERS DELEGATED TO REGISTRARS) RULES 2020

EXPLANATORY STATEMENT

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

Section 123 of the *Family Law Act 1975* (Cth) ('the Act') provides that the Judges of the Family Court of Australia ('the Family Court'), or a majority of them, may make Rules of Court providing for the practice and procedure to be followed in the Family Court and some other courts exercising jurisdiction under the Act. The Judges of the Family Court made the *Family Law Rules 2004* ('the Rules') which commenced on 29 March 2004. These amending Rules, the *Family Law Amendment (Powers Delegated to Registrars) Rules 2020* ('the amendments'), have now been made by the Judges to amend the Rules.

Subsection 123(2) of the Act provides that the *Legislation Act 2003* (Cth) (other than sections 8, 9, 10, 16 and Part 4 of Chapter 3) 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 acting on behalf of the Judges.

Paragraph 8(8)(d) of the *Legislation Act 2003* (Cth) provides that the Rules of Court made for the Family Court are not legislative instruments for the purposes of that Act. As a result the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in this Explanatory Statement.

1. General Outline

Schedule 1 – Amendments

The amendments delegate additional powers to Registrars and Deputy Registrars of the Family Court of Australia.

The amendments delegate additional powers to Registrars, including:

- to make a property order or declaration where the order or declaration is an order or declaration until further order, or made in an undefended case;
- to make a contravention order where the order is an order until further order, or is made in an undefended case, or is made with the consent of all the parties to the case; (excluding the power to impose a sentence of imprisonment);
- to make certain limited orders in relation to an application for summary orders.

The amendments delegate additional powers to Deputy Registrars, including:

- to make a parenting order where the order is made in an undefended case and the order is to come into effect at least 21 days after the order is served on the non-appearing party;
- to make a property order or declaration where the order or declaration is made in an undefended case and the order or declaration is to come into effect at least 21 days after the order is served on the non-appearing party;
- to make an urgent or interim spousal or de facto maintenance order; and vary or discharge a maintenance order, where the order is made in an undefended case and the order is to come into effect at least 21 days after the order is served on the non-appearing party;
- to make certain specified procedural orders in relation to cases on appeal;
- to make limited enforcement orders relating to a Third Party Debt Notice, the sequestration of property; the appointment of a receiver, the enforcement of an obligation, or the warrant for arrest, but only in relation to a case within a Registrar's power.

The amendments, in conjunction with concurrent amendments to the *Federal Circuit Court Rules 2001*, have the effect of harmonising the delegation of powers to family law Registrars in the Family Court of Australia and the Federal Circuit Court of Australia.

2. Consultation

The *Legislation Act 2003* (Cth) provides for certain consultation obligations when Rules are made. The issue of an increased role for Registrars and Deputy Registrars has been discussed broadly with peak bodies of the legal profession.

3. Summary of major changes

The major changes introduced by the amendments to the Rules are set out below in relation to Schedule 1.

- 1) To amend tables 18.2 and 18.3 of rule 18.05 to delegate additional powers to Registrars in the Court.
- 2) To amend tables 18.4 and 18.5 of rule 18.06 to delegate additional powers to Deputy Registrars in the Court.
- 3) To insert Part 27.5 in relation to transitional provisions.

4. Details of Amendments

Rule 1 Name of Rules

The name of the rules is the *Family Law Amendment (Powers Delegated to Registrars) Rules 2020*.

Rule 2 Commencement

The whole of the Rules commence the day after the Rules are registered.

Rule 3 Authority

The Rules are made under the *Family Law Act 1975* (Cth).

Rule 4 Schedules

Schedule 1 amends the *Family Law Rules 2004*.

Schedule 1 – Amendments

[1] Subrule 18.05(1) (table 18.2, before item 1)

The amendment inserts a new item 1AA into table 18.2, which delegates to Registrars the powers listed in subparagraph 37A(1)(e)(iv) and paragraph 37A(1)(f) of the Act, that have not separately been delegated to Deputy Registrars in table 18.4 of subrule 18.06.

[2] Subrule 18.05(1) (table 18.2, after item 15)

The amendment inserts new items 15A and 15B into table 18.2 and delegates to Registrars the Court's powers in Division 13A of Part VII of the Act (except paragraph 70NFB(2)(e)). The delegation of the powers in item 15A is qualified to only if (a) the order made is an order until further order; or (b) the power is exercised in an undefended case; or (c) the power is exercised with the consent of all the parties to the case.

The inclusion of item 15B into table 18.2 delegates to Registrars the Court's powers in sections 70NBA and 70NFD. The power to vary or discharge an order in sections 70NBA and 70NFD is only delegated if the order to be varied or discharged (a) was made by a Registrar; or (b) is an order until further order; or (c) was made in an undefended case; or (d) was made with the consent of all the parties to the case.

[3] Subrule 18.05(1) (table 18.2, after item 16)

The amendment inserts new item 16A into table 18.2 and delegates to Registrars the Court's powers in sections 78, 79 and 79A of the Act. The delegation of these powers is qualified to only if the declaration or order made is a declaration or order until further order; or (b) the power is exercised in an undefended case.

[4] Subrule 18.05(1) (table 18.2, after item 18)

The amendment inserts new item 18AA into table 18.2 and delegates to Registrars the Court's powers in subsections 87(8), 90J(3) and 90K(1) of the Act. The delegation of these powers is qualified to only if the order is (a) an order until further order; or (b) made in an undefended case.

[5] Subrule 18.05(1) (table 18.2, items 18C and 18D)

The amendment repeals items 18C and 18D in table 18.2 and inserts new items 18C and 18D into table 18.2. The inclusion of item 18C delegates to Registrars the Court's powers in section 90SL, 90SM and 90SN. The delegation of these powers is qualified to only if (a) the declaration or order made is a declaration or an order until further order; or (b) the power is exercised in an undefended case.

The inclusion of item 18D into table 18.2 delegates to Registrars the Court's powers in subsections 90UL(3) and 90UM(1) of the Act. The delegation of these powers is qualified to only if the order is (a) an order until further order; or (b) made in an undefended case.

[6] Subrule 18.05(1) (table 18.2, item 21A)

The amendment repeals item 21A and inserts new items 21A, 21B and 21C in table 18.2. The inclusion of item 21A into table 18.2 delegates to Registrars, subject to item 21B, the Court's powers in Part XIII A of the Act (except paragraph 112AD(2)(d)). The delegation of these powers is qualified to only if (a) the order made is an order until further order; or (b) the power is exercised in an undefended case; or (c) the power is exercised with the consent of all the parties to the case.

The inclusion of item 21B into table 18.2 delegates to Registrars the Court's powers in subsection 112AK(1). The power to vary or discharge an order in subsection 112AK(1) is qualified to only if the order to be varied or discharged (a) was made by a Registrar; or (b) is an order until further order; or (c) was made in an undefended case; or (d) was made with the consent of all the parties to the case.

The inclusion of item 21C in table 18.2 delegates to Registrars the Court's powers in subsection 114(3) of the Act.

[7] Subrule 18.05(1) (table 18.2, before item 22)

The amendment inserts new item 22AA into table 18.2 and delegates to Registrars the Court's powers in Divisions 4 and 5 of Part 7 of the *Child Support (Assessment) Act 1989* (Cth).

[8] Subrule 18.05(1) (at the end of table 18.2)

The amendment inserts new items 23A and 23B in table 18.2 and delegates to Registrars the Court's powers in subsection 111B(1) and section 113 of the *Child Support (Registration and Collection) Act 1988* (Cth).

[9] Subrule 18.05(2) (table 18.3, after item 3)

The amendment inserts new items 3A and 3B in table 18.3 and delegates to Registrars the Court's powers in paragraphs 10.12(c) and (d) and paragraphs 10.14(d) and (e) of the Rules.

[10] Subrule 18.05(2) (table 18.3, after item 6)

The amendment inserts new item 7 in table 18.3 and delegates to Registrars the Court's powers in paragraphs 17.02(1)(a) to (d) and (f) of the Rules.

[11] Subrule 18.06(1) (table 18.4, item 9)

The amendment repeals item 9 and substitutes new item 9 in table 18.4. The amendment delegates to Deputy Registrars the Court's powers in subsection 37A(1) of the Act (except subparagraph 37A(1)(e)(iv) and the reference in subparagraph 37A(1)(f)(i) to an order under section 66Q or 67E). The delegation is subject to items 21, 21A, 21F and 21G in table 18.4.

[12] Subrule 18.06(1) (table 18.4, after item 18)

The amendment inserts new item 18AAA in table 18.4. The amendment delegates to Deputy Registrars the Court's powers in section 65D of the Act. The delegation of the power in section 65D of the Act is qualified to only if (a) both of the following apply (i) the order is made in an undefended case; (ii) the order is to come into effect at least 21 days after the order is served on the non-appearing party; or (b) the order is made with the consent of all the parties to the case.

[13] Subrule 18.06(1) (table 18.4, item 21)

The amendment repeals item 21 and substitutes new items 21, 21A to 21L in table 18.4. The inclusion of item 21 in table 18.4 delegates to Deputy Registrars the Court's power in section 74 of the Act. The delegation of the power in section 74 of the Act is qualified to only if (a) all of the following apply: (i) the order is an order until further order; (ii) the order is made in an undefended case; (iii) the order is to come into effect at least 21 days after the order is served on the other party; or (b) the order is made with the consent of all the parties to the case.

The inclusion of item 21A delegates to Deputy Registrars the Court's power in section 77 of the Act. The delegation of the power in section 77 of the Act is qualified to only if (a) both of

the following apply: (i) the order is made in an undefended case; (ii) the order is to come into effect at least 21 days after the order is served on the non-appearing party; or (b) the order is made with the consent of all the parties to the case.

The inclusion of item 21B delegates to Deputy Registrars the Court's powers in sections 78, 79 and 79A of the Act (except paragraph 79(9)(c) of the Act). The delegation of these powers is qualified to only if (a) both of the following apply: (i) the power is exercised in an undefended case; (ii) the declaration or order is to come into effect at least 21 days after the declaration or order is served on the non-appearing party; or (b) the power is exercised with the consent of all the parties to the case.

The inclusion of item 21C delegates to Deputy Registrars the Court's power in paragraph 79(9)(c) of the Act.

The inclusion of item 21D delegates to Deputy Registrars the Court's power in subsection 83(1) of the Act. The delegation of the power in subsection 83(1) is qualified to only if (a) all of the following apply: (i) the order to be discharged, suspended, revived or varied is an order until further order; (ii) the order to discharge, suspend, revive or vary is made in an undefended case; (iii) the order to discharge, suspend, revive or vary is to come into effect at least 21 days after the order is served on the other party; or (b) the order to discharge, suspend, revive or vary is made with the consent of all the parties to the case.

The inclusion of item 21E delegates to Deputy Registrars the Court's powers in subsections 87(8), 90J(3) and 90K(1) of the Act. The delegation of these powers is qualified to only if (a) both of the following apply: (i) the order is made in an undefended case; (ii) the order is to come into effect at least 21 days after the order is served on the non-appearing party; or (b) the order is made with the consent of all the parties to the case.

The inclusion of item 21F delegates to Deputy Registrars the Court's power in section 90SE of the Act. The delegation of the power in section 90SE is qualified to only if (a) all of the following apply: (i) the order is an order until further order; (ii) the order is made in an undefended case; (iii) the order is to come into effect at least 21 days after the order is served on the other party; or (b) the order is made with the consent of all the parties to the case.

The inclusion of item 21G delegates to Deputy Registrars the Court's power in section 90SG of the Act. The delegation of the power in section 90SG is qualified to only if (a) both of the following apply: (i) the order is made in an undefended case; (ii) the order is to come into effect at least 21 days after the order is served on the non-appearing party; or (b) the order is made with the consent of all the parties to the case.

The inclusion of item 21H delegates to Deputy Registrars the Court's power in section 90SI of the Act. The delegation of the power in section 90SI is qualified to only if (a) all of the following apply: (i) the order to be discharged, suspended, revived or varied is an order until further order; (ii) the order to discharge, suspend, revive or vary is made in an undefended case; (iii) the order to discharge, suspend, revive or vary is to come into effect at least 21 days

after the order is served on the other party; or (b) the order to discharge, suspend, revive or vary is made with the consent of all the parties to the case.

The inclusion of item 21J delegates to Deputy Registrars the Court's powers in section 90SL, 90SM and 90SN (except paragraph 90SM(9)(c) of the Act). The delegation of these powers is qualified to only if (a) both of the following apply: (i) the power is exercised in an undefended case; (ii) the declaration or order is to come into effect at least 21 days after the declaration or order is served on the non-appearing party; or (b) the power is exercised with the consent of all the parties to the case.

The inclusion of item 21K delegates to Deputy Registrars the Court's power in paragraph 90SM(9)(c) of the Act.

The inclusion of item 21L into table 18.4 delegates to Deputy Registrars the Court's powers in subsections 90UL(3) and 90UM(1) of the Act. The delegation of these powers is qualified to only if (a) both of the following apply: (i) the power is exercised in an undefended case; (ii) the declaration or order is to come into effect at least 21 days after the declaration or order is served on the non-appearing party; or (b) the power is exercised with the consent of all the parties to the case.

[14] Subrule 18.06(1) (table 18.4, after item 23)

The amendment inserts items 23A to 23D in table 18.4. Item 23A delegates to Deputy Registrars the Court's powers in paragraphs 94(2D)(a), (b), (c), (e), (g), (h), (i) and (j) of the Act.

Item 23B delegates to Deputy Registrars the Court's powers in paragraph 94(2D)(d), but qualified to only if all parties consent to the orders sought.

The inclusion of item 23C delegates to Deputy Registrars the Court's powers in paragraphs 94AAA(10)(a), (b), (c), (e), (g), (h), (i) and (j) of the Act.

The inclusion of item 23D into table 18.4 delegates to Deputy Registrars the Court's powers in paragraph 94AAA(10)(d), but qualified to only if all parties consent to the orders sought.

[15] Subrule 18.06(1) (table 18.4, item 30)

The amendment omits '(except an order as to security for costs)' from item 30 in table 18.4. In doing so, it delegates to Deputy Registrars the power to make orders as to security for costs.

[16] Subrule 18.06(1) (at the end of table 18.4)

The amendment inserts new items 43 to 47 into table 18.4. Items 43 and 44 delegate to Deputy Registrars the Court's powers in section 139 and Divisions 4 and 5 of Part 7 of the *Child Support (Assessment) Act 1989* (Cth). The delegation of these powers is qualified to only if the order is (a) made in an undefended case; or (b) made with the consent of all the parties to the case.

Items 45, 46 and 47 delegate to Deputy Registrars the Court's powers in subsection 105(2), subsection 111B(1) and section 113 of the *Child Support (Registration and Collection) Act 1988* (Cth).

[17] Subrule 18.06(2) (table 18.5, item 10)

The amendment omits '(except subrule (5))' from item 10 in table 18.5. In doing so, it delegates to Deputy Registrars the Court's power in subrule 10.11(5) of the Rules.

[18] Subrule 18.06(2) (table 18.5, after item 25)

The amendment inserts new item 26 in table 18.5 and delegates to Deputy Registrars the Court's powers in Part 15.4 of the Rules.

[19] Subrule 18.06(2) (table 18.5, item 31B)

The amendment repeals item 31B in table 18.5 and substitutes new item 31B in table 18.5. The inclusion of new item 31B delegates to Deputy Registrars the powers in paragraphs 17.02(1)(e), (g) and (h) of the Rules.

[20] Subrule 18.06(2) (table 18.5, item 32)

The amendment omits 'Parts 19.3 and 19.8' from item 32 in table 18.5 and substitutes 'Part 19.8', delegating to Deputy Registrars the powers in Part 19.3 of Chapter 19 of the Rules.

[21] Subrule 18.06(2) (table 18.5, item 32)

The amendment omits 'Parts 6.2 and 6.8 and clauses 6.17 and 6.18' from item 32 in table 18.5 and substitutes 'Part 6.8', delegating to Deputy Registrars the powers in Parts 6.2 and clauses 6.17 and 6.18 of Schedule 6 to the Rules.

[22] Subrule 18.06(2) (table 18.5, item 33)

The amendment repeals item 33 in table 18.5 and substitutes new items 33 and 34. The inclusion of new item 33 delegates to Deputy Registrars the powers in Chapter 20 of the Rules. The inclusion of new item 34 in table 18.5 delegates to Deputy Registrars the Court's powers in Part 21.4 of the Rules

[23] At the end of rule 18.06 (after the note)

The amendment inserts a new subsection (3) to rule 18.06 of the Rules. New subsection 18.06(3) provides that a power of the Court mentioned in item 34 of table 18.5 may only be exercised by a Deputy Registrar when dealing with a case in relation to which a Deputy Registrar has, or has been delegated, the power to exercise the Court's jurisdiction.

[24] Subrule 18.08(1) (table 18.6, item 2, column headed 'Time within which application must be made')

The amendment omits ‘28 days’ in item 2 of table 18.6 of subrule 18.08(1) of the Rules and substitutes ‘21 days’ in item 2 of subrule 18.08(1). The inclusion of new item 2 of subrule 18.08(1) provides that a party may apply for review of an order made by a Registrar exercising a power delegated under subrule 18.05(1) within 21 days after the Registrar makes the order.

[25] Subrule 18.08(1) (table 18.6, items 3 and 4, column headed ‘Time within which application must be made’)

The amendment omits ‘7 days’ in items 3 and 4 of table 18.6 of subrule 18.08(1) of the Rules and substitutes ‘21 days’ in items 3 and 4 of subrule 18.08(1). The inclusion of new item 3 of subrule 18.08(1) provides that a party may apply for review of an order made by a Judicial Registrar or Registrar exercising a power delegated under subrule 18.05(2) within 21 days after the Judicial Registrar or Registrar makes the order.

The inclusion of new item 4 of subrule 18.08(1) provide that a party may apply for review of an order made by a Judicial Registrar, Registrar or Deputy Registrar exercising a power delegated under rule 18.06 within 21 days after the Judicial Registrar, Registrar or Deputy Registrar makes the order.

[26] In the appropriate position in Chapter 27

The amendment inserts Part 27.5 for transitional provisions relating to the *Family Law Amendment (Powers Delegated to Registrars) Rules 2020*

Rule 27.13 inserts a transitional provision that clarifies that the amended rules 18.05, 18.06 and 18.08 apply to the exercise of a power on or after the commencement day, even if the exercise of the power relates to a proceeding instituted before, on or after the commencement day.