

Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020

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

Dated 10 August 2020

W Alstergren CJ

R McClelland DCJ

G Watts J

S Austin J

P Tree J

R Benjamin J

V Bennett J

M Cleary J

C Forrest J

K Macmillan J

G Foster J

S Gill J

M Baumann J

L Henderson J

J Williams J

J Wilson J

R Harper J

C Mead J

N Hartnett J

T McEvoy J

Judges of the Family Court  
of Australia

Contents

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Amendments 2

Part 1—Main amendments 2

Family Law Rules 2004 2

Part 2—Prescribed form 6

Family Law Rules 2004 6

1 Name

These Rules are the *Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020*.

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. The whole of these Rules | The day after these Rules are registered. | 31 October 2020 |

Note: This table relates only to the provisions of these Rules as originally made.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Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.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—Amendments

Part 1—Main amendments

Family Law Rules 2004

1 Subrule 2.02(1) (table 2.2, item 2A, column headed “Documents to be filed with application”, paragraph (a))

Before “a certificate”, insert “unless paragraph (b) applies—”.

2 Subrule 2.02(1) (table 2.2, item 2A, column headed “Documents to be filed with application”, paragraph (a))

Omit “or”.

3 Subrule 2.02(1) (table 2.2, item 2A, column headed “Documents to be filed with application”, after paragraph (c))

Insert:

; (d) a Notice of Child Abuse, Family Violence or Risk

4 Subrule 2.02(1) (table 2.2, after item 2B)

Insert:

|  |  |  |
| --- | --- | --- |
| 2C | Response to Initiating Application (Family Law) in which an order is sought under Part VII of the Act, for example, a parenting order | a Notice of Child Abuse, Family Violence or Risk |

5 Subrule 2.02(1) (table 2.2, at the end of the cell at item 9, column headed “Documents to be filed with application”)

Add:

; (c) if an order is sought under Part VII of the Act—a Notice of Child Abuse, Family Violence or Risk

6 Rule 2.04

Insert:

***interested person***:

(a) in a proceeding to which section 67Z of the Act applies—has the meaning given by subsection (4) of that section; and

(b) in a proceeding to which section 67ZBA of the Act applies—has the meaning given by subsection (4) of that section.

7 After rule 2.04A

Insert:

2.04B Amendment of Notice of Child Abuse, Family Violence or Risk

If:

(a) a person who is a party to a proceeding, or an interested person in a proceeding, has filed a Notice of Child Abuse, Family Violence or Risk in the proceeding; and

(b) after filing the notice, the person becomes aware of new facts or circumstances that would require the person to file a Notice of Child Abuse, Family Violence or Risk for the purposes of subsection 67Z(2) or 67ZBA(2) of the Act in relation to those new facts or circumstances;

the person must file:

(c) a Notice of Child Abuse, Family Violence or Risk setting out those new facts or circumstances; and

(d) an affidavit stating the evidence relied on to support each allegation set out in the notice.

Note 1: A true copy of a Notice of Child Abuse, Family Violence or Risk that is filed for the purposes of subsection 67Z(2) or 67ZBA(2) of the Act must be served on the person to whom the allegations relate: see subsections 67Z(2) and 67ZBA(2) of the Act.

Note 2: If a Notice of Child Abuse, Family Violence or Risk alleges that a child has been abused or is at risk of being abused, the Registry Manager must notify a prescribed child welfare authority: see subsection 67Z(3) and paragraph 67ZBA(3)(b) of the Act.

8 Subrules 2.04D(1) and (2)

Repeal the subrules, substitute:

(1) The prescribed form for a notice mentioned in subsection 67Z(2) or 67ZBA(2) of the Act is the Notice of Child Abuse, Family Violence or Risk.

Note: The Notice of Child Abuse, Family Violence or Risk is set out in Schedule 2.

(2) A person who files a Notice of Child Abuse, Family Violence or Risk that includes one or more allegations of child abuse, family violence or risk of harm to a child must file an affidavit stating the evidence on which each allegation set out in the notice is based, no later than the time the notice is filed.

Note 1: If a Notice of Child Abuse, Family Violence or Risk filed in a proceeding alleges that a child to whom the proceeding relates has been abused or is at risk of being abused by a person, or that there has been family violence or that there is a risk of family violence by one of the parties to the proceeding, a true copy of the notice must be served on the person to whom the allegations relate: see subsections 67Z(2) and 67ZBA(2) of the Act. The requirements for service of filed documents are set out in rule 7.04.

Note 2: If a Notice of Child Abuse, Family Violence or Risk filed in a proceeding alleges that a child to whom the proceeding relates has been abused or is at risk of being abused, the Registry Manager must notify a prescribed child welfare authority: see subsection 67Z(3) and paragraph 67ZBA(3)(b) of the Act.

(3) Subrule (2) does not apply to a notice filed with an Application for Consent Orders.

9 Subrules 10.15A(2), (3) and (4) (note)

Repeal the note.

10 Paragraph 19.41(2)(b)

Omit “a form”, substitute “the form”.

11 Paragraph 24.01(1)(g)

Omit “form in Schedule 2”, substitute “Notice of Child Abuse, Family Violence or Risk”.

12 Subrule 24.04(2)

Repeal the subrule, substitute:

(2) A reference in these Rules to a Notice of Child Abuse, Family Violence or Risk is a reference to the form in Schedule 2, with any variations that are necessary or as the Chief Justice directs.

13 Subrule 24.04(3)

Omit “a form”, substitute “the form”.

14 In the appropriate position in Chapter 27

Insert:

Part 27.4—Transitional provisions relating to the Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020

27.09 Definitions

In this Part:

***amending Rules*** means the *Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020*.

***commencement day*** means the day the amending Rules commence.

***old format notice of risk*** means:

(a) a Notice of Child Abuse, Family Violence or Risk of Family Violence (Current Case); or

(b) a Notice of Child Abuse, Family Violence or Risk of Family Violence (Application for Consent Orders);

both within the meaning of these Rules as in force immediately before the commencement day.

27.10 Application—documents to be filed with applications

Rule 2.02, as amended by Schedule 1 to the amending Rules, applies in relation to:

(a) an application that is filed on or after the commencement day; and

(b) a response that is filed on or after the commencement day, even if it is a response to an application that was filed before the commencement day.

27.11 Application—amendment of Notice of Child Abuse, Family Violence or Risk

(1) Rule 2.04B, as inserted by Schedule 1 to the amending Rules, applies in relation to:

(a) a proceeding that is instituted on or after the commencement day; and

(b) a proceeding that was instituted, but not concluded, before the commencement day.

(2) For the purposes of a proceeding that was instituted, but not concluded, before the commencement day, if:

(a) before the commencement day, a person who is a party to the proceeding, or an interested person in the proceeding, had filed an old format notice of risk in the proceeding; and

(b) on or after the commencement day, the person becomes aware of new facts or circumstances as mentioned in paragraph 2.04B(b) as inserted by Schedule 1 to the amending Rules;

then rule 2.04B, as inserted by Schedule 1 to the amending Rules, applies as if the reference in paragraph 2.04B(a) to a Notice of Child Abuse, Family Violence or Risk were a reference to the old format notice of risk.

27.12 Application—prescribed form

Subrule 2.04D(1), as amended by Schedule 1 to the amending Rules, applies in relation to an allegation that is made on or after the commencement day, even if the proceeding in which the allegation is made was instituted before the commencement day.

15 Paragraph 6.42(2)(b) of Schedule 6

Omit “a Form”, substitute “the form”.

16 Dictionary

Insert:

***Notice of Child Abuse, Family Violence or Risk*** means the form set out in Schedule 2, with any variations that are necessary or as the Chief Justice directs.

Part 2—Prescribed form

Family Law Rules 2004

17 Schedule 2

Repeal the Schedule, substitute:

Schedule 2—Notice of Child Abuse, Family Violence or Risk

Note: See Division 2.3.1 and subrule 24.04(2).























