



Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021

I, The Honourable William Alstergren, Chief Judge of the Federal Circuit and Family Court of Australia (Division 2), make the following Rules of Court.

Dated 26 August 2021

The Honourable William Alstergren
Chief Judge of the Federal Circuit and Family Court of Australia (Division 2)

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Part 1—Preliminary

1.01 Name

These Rules are the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021*.

1.02 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	1 September 2021.	1 September 2021

Note: This table relates only to the provisions of these Rules as originally made.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.

Note: The *Federal Circuit Court Rules 2001*, as in force under the *Federal Circuit Court of Australia Act 1999* immediately before 1 September 2021, are repealed as a consequence of the repeal of the *Federal Circuit Court of Australia Act 1999* by Schedule 3 to the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021*.

1.03 Authority

These Rules are made under Chapter 4 of the *Federal Circuit and Family Court of Australia Act 2021*.

1.04 Court may make orders or dispense with these Rules

- (1) The court may, in the interests of justice, dispense with compliance, or full compliance, with any of these Rules at any time.
- (2) If, in a proceeding, the court gives a direction or makes an order that is inconsistent with any of these Rules, the direction or order of the court prevails in that proceeding.

Rule 2.01

Part 2—Application of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021

2.01 Application of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

The *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (other than rules 1.01 to 1.03), as modified in accordance with these Rules, apply to the exercise of the Court’s jurisdiction in family law or child support proceedings as if the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* were provisions of these Rules.

2.02 Modifications of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

For the purposes of rule 2.01 of these Rules, the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* apply as if the modifications in the following table were made.

Table 2.1—Modifications of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

Item	Provision	Omit (wherever occurring)	Substitute
1	Subrule 1.04(1)	section 67	section 190
2	Subrule 1.04(1) (note 1)	subsection 67(3)	subsection 190(3)
3	Subsection 1.04(2) (note)	subsection 68(1)	subsection 191(1)
4	Rule 1.05 (paragraph (a) of the definition of Judicial Registrar)	Division 1	Division 2
5	Subrules 1.07(1) and 1.08(1)	Chief Justice	Chief Judge
6	Subrule 3.08(2)	section 57	section 175
7	Subrule 5.08(2)	25 pages	10 pages
8	Subrule 5.08(3)	10 annexures	5 annexures
9	Rule 9.04	Part 9.2	Part 9.2, or Part 3 of the <i>Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021</i> ,
10	Paragraph 10.21(1)(a)	in the Federal Circuit and Family Court (Division 1)—under an arrangement under section 79	in the Federal Circuit and Family Court (Division 2)—under an arrangement under section 246

Table 2.1—Modifications of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

Item	Provision	Omit (wherever occurring)	Substitute
11	Subrule 10.23(1)	section 102QC of the Family Law Act	section 240 of the Federal Circuit and Family Court Act, or section 102QC of the Family Law Act,
12	Subrule 10.24(1)	subsection 102QE(2) of the Family Law Act	subsection 242(2) of the Federal Circuit and Family Court Act, or subsection 102QE(2) of the Family Law Act,
13	Rule 14.01 (definition of <i>Judicial Registrar</i>)	Division 1	Division 2
14	Rule 14.01 (paragraph (b) of the definition of <i>Senior Judicial Registrar</i>)	Division 1	Division 2
15	Subrule 14.02(2)	Division 1	Division 2
16	Subrule 14.02(2)	subsection 98(1)	subsection 254(1)
17	Subrule 14.02(2)	Chief Justice	Chief Judge
18	Subrule 14.02(2) (note)	section 85	section 251
19	Subrules 14.03(1) and (2)	Division 1	Division 2
20	Subrule 15.21(1)	Chief Justice	Chief Judge
21	Subrule 15.21(1)	Division 1	Division 2
22	Rule 15.22	Division 1	Division 2
23	Rule 15.22	Chief Justice	Chief Judge
24	Schedule 1, Part 1, paragraph 1(4)(f)	section 67	section 190
25	Schedule 1, Part 2 paragraph 1(4)(f)	section 67	section 190
26	Schedule 4, clause 2	Division 1	Division 2
27	Schedule 4, clause 2, table item 2.1	98(2)(q)	254(2)(q)
28	Schedule 4, clause 2, table items 3.1, 3.2 and 3.3	98(3)(d)	254(3)(d)
29	Schedule 4, clause 2, table item 5.2	Paragraph 98(2)(p) (qualified by subsection 98(7))	Paragraph 254(2)(p) (qualified by subsection 254(7))
30	Schedule 4, clause 2, table items 12.1 and 12.2	Paragraph 98(2)(i) and subsection 98(6)	Paragraph 254(2)(i) and subsection 254(6)
31	Schedule 4, clause 2, table item 12.3	Paragraph 98(2)(j)	Paragraph 254(2)(j)

Rule 2.02

Table 2.1—Modifications of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

Item	Provision	Omit (wherever occurring)	Substitute
32	Schedule 4, clause 2, table item 14.1	Subsection 68(3)	Subsection 191(3)
33	Schedule 4, clause 2, table item 14.2	Section 69	Section 192
34	Schedule 4, clause 2, table item 14.5	Paragraph 98(2)(k)	Paragraph 254(2)(k)
35	Schedule 4, clause 2, table item 15.1	Section 63	Section 182
36	Schedule 4, clause 2, table item 16.1	Paragraph 98(2)(d)	Paragraph 254(2)(d)
37	Schedule 4, clause 2, table item 16.2	Paragraph 98(2)(e)	Paragraph 254(2)(e)
38	Schedule 4, clause 2, table items 21.2, 21.3 and 21.7	Paragraph 98(2)(n)	Paragraph 254(2)(n)
39	Schedule 4, clause 2, table item 23.5	Subsection 66(2)	Subsection 189(2)
40	Schedule 4, clause 2, table item 23.6	Paragraph 98(2)(h)	Paragraph 254(2)(h)
41	Schedule 4, clause 2, table item 24.2	Paragraph 98(2)(g)	Paragraph 254(2)(g)
42	Schedule 4, clause 2, table item 27.5	Rule 8.04 FCFCOA Rules	Subsection 199(2) FCFCOA Act and rule 8.04 FCFCOA Rules
43	Schedule 4, clause 2, table item 27.6	Section 102C FLA	Section 201 FCFCOA Act and section 102C FLA
44	Schedule 4, clause 2, table item 27.7	Section 102D FLA	Section 202 FCFCOA Act and section 102D FLA
45	Schedule 4, clause 2, table item 27.8	Section 102E FLA	Section 203 FCFCOA Act and section 102E FLA
46	Schedule 4, clause 2, table item 27.9	Section 102K FLA	Section 204 FCFCOA Act and section 102K FLA
47	Schedule 4, clause 2, table items 28.1 and 28.2	Paragraph 98(2)(n)	Paragraph 254(2)(n)
48	Schedule 4, clause 2, table item 28.3	Paragraph 98(2)(o)	Paragraph 254(2)(o)
49	Schedule 4, clause 2, table item 29.3	Section 65	Section 184

Part 3—Transferring proceedings

3.01 Transfer to Federal Circuit and Family Court (Division 1)

- (1) The Federal Circuit and Family Court (Division 2) may, on the application of a party or on its own initiative, transfer a family law or child support proceeding pending in the Court to the Federal Circuit and Family Court (Division 1) under section 149 of the Federal Circuit and Family Court Act.
- (2) Unless the Federal Circuit and Family Court (Division 2) otherwise orders, an application under this rule must be made by application supported by an affidavit or included in a response supported by an affidavit.
- (3) In addition to the factors to which the Federal Circuit and Family Court (Division 2) must have regard under subsection 149(3) of the Federal Circuit and Family Court Act in deciding whether to transfer a proceeding to the Federal Circuit and Family Court (Division 1), the Federal Circuit and Family Court (Division 2) must have regard to the following matters:
 - (a) whether the proceeding is likely to involve questions of general importance, such that it would be desirable for there to be a decision of the Federal Circuit and Family Court (Division 1) on one or more of the points in issue;
 - (b) the financial value of the claim;
 - (c) the complexity of the facts, legal issues, remedies and procedures involved;
 - (d) whether the proceeding, if transferred, is likely to be dealt with:
 - (i) at less cost to the parties; or
 - (ii) at more convenience to the parties; or
 - (iii) earlier;
 - (e) the availability of a judicial officer specialising in the type of proceeding to which the application relates;
 - (f) the availability of particular procedures appropriate for the class of proceeding;
 - (g) the adequacy of the available facilities, having regard to any disability of a party or witness, and any safety concerns;
 - (h) the wishes of the parties.

3.02 Proceeding transferred to Federal Circuit and Family Court (Division 1)— transfer of documents

If a proceeding is transferred to the Federal Circuit and Family Court (Division 1), the Registry Manager of the Federal Circuit and Family Court (Division 2) must:

- (a) send to the Registry Manager of the Federal Circuit and Family Court (Division 1) all documents filed and orders made in the proceeding; and
- (b) retain in the Federal Circuit and Family Court (Division 2) a copy of all orders made in the proceeding.

Part 4—Costs

4.01 Costs in family law and child support matters

- (1) In applying Chapter 12 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* in relation to family law or child support proceedings, the Court may apply the scale of costs in Schedule 3 to those Rules or the scale of costs in Schedule 1 to these Rules.
- (2) In item 12 of the table in Schedule 1 to these Rules:
 - (a) the reference to rule 11.15 is a reference to rule 11.15 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* as that rule applies because of rule 2.01 of these Rules; and
 - (b) the reference to rule 11.34 is a reference to rule 11.34 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* as that rule applies because of rule 2.01 of these Rules.

Part 5—Delegation

5.01 Delegation of additional powers to Senior Judicial Registrars and Judicial Registrars

Schedule 4 to the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* applies as if that Schedule included the items in the table in Schedule 2 to these Rules.

Schedule 1—Scale of costs in family law and child support matters

Note: See rule 4.01.

Scale of costs in family law and child support matters		
Item	Column 1 Description	Column 2 Amount (including GST)
1	Initiating or opposing an application up to the completion of the first court date	Both: (a) \$2,357; and (b) the daily hearing fee specified in item 13 that applies to the hearing
2	Initiating or opposing an application that includes interim orders (other than procedural orders) up to the completion of the first court date	Both: (a) \$2,947 and (b) the daily hearing fee specified in item 13 that applies to the hearing
3	Initiating or opposing an application for interlocutory orders (including an interim hearing) that is not otherwise described in item 1 or 2	Both: (a) \$1,964; and (b) the daily hearing fee specified in item 13 that applies to the hearing
4	Procedural or summary hearing—as a discrete event	\$1,964
5	Conciliation conference (including preparation)	\$1,964
6	Other dispute resolution (including preparation)	\$1,964
7	Preparation for final hearing—1 day matter	\$5,022
8	Preparation for final hearing—2 day matter	\$6,227
9	Preparation for final hearing—each additional hearing day after the second hearing day	\$1,334
10	Attendance at hearing to take judgment and explain orders	Both: (a) \$321; and (b) the daily hearing fee specified in item 13 that applies to the hearing
11	Application location, recovery or enforcement of an order (other than an application for enforcement by a Registrar under item 12)	Both: (a) \$997; and (b) the daily hearing fee specified in item 13 that applies to the hearing
12	Application for enforcement by a Registrar of: (a) a warrant under rule 11.15; or (b) a third party debt notice under rule 11.34	\$659
13	Daily hearing fee	(a) for a short mention—\$321; or

Scale of costs in family law and child support matters		
Item	Column 1 Description	Column 2 Amount (including GST)
		(b) for a half day hearing—\$1,178; or (c) for a full day hearing—\$2,357
14	Advocacy loading	50% of the daily hearing fee specified in item 13 that applies to the hearing
15	Drafting, conferences and chamber work (not otherwise covered by other items in the table)	(a) Senior Counsel—\$677 per hour; (b) Junior Counsel—\$361 per hour; (c) Solicitor—\$260 per hour
16	Disbursements—Court fees and other fees and payments to the extent that they have been reasonably incurred	The amount of the fees and payments
17	Disbursements—photocopying for each page	\$0.81
18	Agents fees and travelling costs	\$663
	Note: For 2 or more hours travel.	

Schedule 2—Additional delegated powers

Note: See rule 5.01.

Additional delegations to Senior Judicial Registrars and Judicial Registrars				
Item	Column 1 Provision	Column 2 Description of power	Column 3 Senior Judicial Registrar	Column 4 Judicial Registrar
14.2A	Subsection 174(2) FCFCOA Act	To give directions about the practice and procedure to be followed in relation to a proceeding or a part of a proceeding in the Federal Circuit and Family Court (Division 2)	✓	✓
14.6A	Rule 1.04 of these Rules	On application, or on own initiative, to dispense with compliance with any of these Rules	✓	✓
27.4A	Section 187 FCFCOA Act but only for a proceeding that is being heard by a Senior Judicial Registrar or Judicial Registrar, or with the consent of the parties	To give directions about limiting the time for oral argument in a proceeding in the Federal Circuit and Family Court (Division 2)	✓	✓
27.4B	Section 188 FCFCOA Act but only for a proceeding that is being heard by a Senior Judicial Registrar or Judicial Registrar, or with the consent of the parties	To give directions about the use of, or length of, written submissions in a proceeding in the Federal Circuit and Family Court (Division 2)	✓	✓
27.4C	Section 197 FCFCOA Act but only for a proceeding that is being heard by a Senior Judicial Registrar or Judicial Registrar, or with	To give directions about limiting the time for giving testimony in a proceeding in the Federal Circuit and Family Court (Division 2)	✓	✓

Additional delegations to Senior Judicial Registrars and Judicial Registrars				
Item	Column 1 Provision	Column 2 Description of power	Column 3 Senior Judicial Registrar	Column 4 Judicial Registrar
	the consent of the parties			
29.2A	Section 149 FCFCOA Act	To transfer a proceeding from the Federal Circuit and Family Court (Division 2) to the Federal Circuit and Family Court (Division 1)	✓	✓
29.5	Part 3 of these Rules	To transfer a proceeding from the Federal Circuit and Family Court (Division 2) to the Federal Circuit and Family Court (Division 1) and documents filed in the proceeding	✓	✓