



Federal Circuit and Family Court of Australia (Family Law) Amendment (2022 Measures No. 1) Rules 2022

I, The Honourable William Alstergren, Chief Justice of the Federal Circuit and Family Court of Australia (Division 1), make the following Rules of Court.

Dated 24 November 2022

The Honourable William Alstergren
Chief Justice of the Federal Circuit and Family Court of Australia (Division 1)

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1 Name

These Rules are the *Federal Circuit and Family Court of Australia (Family Law) Amendment (2022 Measures No. 1) Rules 2022*.

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. Rules 1 to 4 and anything in these Rules not elsewhere covered by this table	The day after these Rules are registered.	28 November 2022
2. Schedule 1	The day after these Rules are registered.	28 November 2022
3. Schedule 2	1 January 2023.	1 January 2023
4. Schedule 3	The day after these Rules are registered.	28 November 2022

Note: This table relates only to the provisions of these Rules as originally made.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 Chapter 3 of the *Federal Circuit and Family Court of Australia Act 2021*.

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Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.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

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

1 Subparagraph 1.09(a)(i)

Omit “for Review”, substitute “in a Proceeding”.

2 After subrule 2.01(5)

Insert:

(5A) An application must concisely state the orders sought.

3 Subrule 2.04(3) (note)

Repeal the note, substitute:

Note: For additional obligations when an application is made for an interlocutory parenting order by consent, see rule 5.29, and when an application is made for a final parenting order by consent, see rule 10.05.

4 Part 2.6 (heading)

Omit “**documents in Australia**”, substitute “**documents—general**”.

5 Subrule 3.13(2) (note 3)

Omit “Rule 10.04(3) requires”, substitute “Subrules 5.28(3) and 10.04(3) require”.

6 Subrule 4.09(3) (notes 1 and 2)

Repeal the notes, substitute:

Note 1: The draft consent order should set out the orders agreed to by the parties and must be signed by each party or the party’s legal representative (see subrules 5.28(2) and 10.04(2)).

Note 2: If a litigation guardian seeks a consent order (other than an order relating to practice or procedure), the litigation guardian must file an affidavit setting out the facts relied on to satisfy the court that the order is in the party’s best interests (see subrules 5.28(3) and 10.04(3)).

7 At the end of Chapter 5

Add:

Part 5.6—Consent orders

5.28 Application for order by consent

- (1) The parties to a proceeding may apply for an order in terms of an agreement reached about a matter in dispute in the proceeding:
 - (a) by lodging a draft consent order; or
 - (b) by tendering a draft consent order to a judicial officer during a court event;
or
 - (c) orally, during a court hearing or trial.

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- (2) A draft consent order must state that it is made by consent and must be signed by each party or the party's legal representative.
 - (3) If the litigation guardian of a party seeks a consent order (other than an order relating to practice or procedure), the litigation guardian must file an affidavit setting out the facts relied on to satisfy the court that the order is in the party's best interests.

5.29 Consent parenting orders and allegations of child abuse, family violence or other risks of harm to children

- (1) This rule applies if an application is made to the court for an interlocutory parenting order by consent, unless the order is procedural only.
- (2) The parties to the application must comply with Division 2.2.1.
- (3) The parties must advise the court whether or not any allegations have been made in the proceeding of child abuse, family violence, or any risk of harm to a child in relation to whom the order is sought.
- (4) Each party must also advise the court, apart from any allegation made in the proceeding:
 - (a) whether the party considers that the child concerned has been, or is at risk of being, subjected or exposed to abuse, neglect or family violence; and
 - (b) whether the party considers that the party, or another party to the proceedings, has been, or is at risk of being, subjected to family violence.
- (5) If an allegation referred to in subrule (3) has been made, or a party advises the court of any concerns referred to in subrule (4), the parties must explain to the court how the proposed parenting order attempts to deal with the allegation or concern.
- (6) The parties may comply with subrules (3) to (5):
 - (a) if a draft parenting order is lodged or is tendered to a judicial officer during a court event—by attaching to the draft parenting order the approved form for the purposes of this paragraph signed by each party or their legal representative; or
 - (b) if the application is made orally during a court event—by each party or the party's legal representative advising the court of the required matters orally; or
 - (c) if the application for the parenting order is to be considered in chambers—by each party attaching to the draft parenting order the approved form for the purposes of this paragraph signed by each party or the party's legal representative.

8 Paragraph 6.06(5)(b)

Repeal the paragraph, substitute:

- (b) unless the party is required by these Rules to file an affidavit—a financial questionnaire in accordance with the approved form.

9 Paragraph 7.01(1)(d)

After “employed”, insert “or engaged”.

10 Subrule 7.07(3)

After “the court,”, insert “unless otherwise ordered.”.

11 Subrule 7.22(2)

Omit “export’s”, substitute “expert’s”.

12 At the end of subrule 7.35(4)

Add “, but there is a presumption that the court will adopt an opinion or finding of the assessor unless there are exceptional circumstances”.

13 Rule 8.09

Omit “Each party to a parenting proceeding”, substitute “Unless a party to a parenting proceeding is required by these Rules to file an affidavit, the party”.

14 Paragraph 8.15(3)(e)

Before “tendered”, insert “separately”.

15 At the end of subrule 10.04(2)

Add “or the party’s legal representative”.

16 Paragraph 10.05(6)(a)

Omit “an approved form signed by each party or their legal representative”, substitute “the approved form for the purposes of this paragraph signed by each party or the party’s legal representative”.

17 At the end of subrule 10.05(6)

Add:

- ; or (d) if the application for the parenting order is to be considered in chambers—
by each party attaching to the draft parenting order the approved form for the purposes of this paragraph signed by each party or the party’s legal representative.

18 Rule 12.28

Omit “Queen’s”, substitute “King’s”.

19 Subrule 12.30(2)

Omit “Queen’s”, substitute “King’s”.

20 Paragraph 14.07(2)(b)

Omit “any”, substitute “with the leave of the court, any”.

21 At the end of rule 14.07

Add:

- (3) The court may determine an application for review in the absence of the parties without an oral hearing if:
 - (a) the parties to the application consent to the making of the decision in their absence without an oral hearing; and

- (b) the court considers it appropriate to make the decision in the absence of the parties without an oral hearing.

22 Paragraph 15.13(1)(c)

Repeal the paragraph, substitute:

- (c) if the proceeding affects, or may affect, the welfare of a child:
 - (i) a child welfare officer of a State or Territory; or
 - (ii) with the leave of the court, a police officer of a State or Territory;

Schedule 2—Scale of costs

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

1 Schedule 3

Repeal the Schedule, substitute:

Schedule 3—Scale of costs in family law and child support matters

Note: See rules 12.17, 12.18, 12.20 to 12.26, 12.30, 12.47 and 12.48.

Part 1A—Application of this Schedule

1 Application of this Schedule

This Schedule, as substituted by the *Federal Circuit and Family Court of Australia (Family Law) Amendment (2022 Measures No. 1) Rules 2022*, applies to work done or services performed on or after 1 January 2023.

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)	\$23.55 per 100 words
102	Producing a document (other than a letter) in printed form	\$8.03 per 100 words
103	Drafting and producing a letter (including a fax or an email)	\$27.03 per 100 words
104	Reading a document	\$11.01 per 100 words
105	Scanning a document (if reading is not necessary)	\$4.32 per 100 words
106	For a document or letter referred to 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	92 cents per page
108	Time reasonably spent by a lawyer on work requiring the skill of a lawyer (other than work to which any other item in this Part applies)	\$276.33 per hour
109	Time reasonably spent by a lawyer, or by a clerk of a lawyer, on work (other than work to which any other item in this Part applies)	\$179.14 per hour

Note: See rule 12.23 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)	Amount (including GST)
		Senior counsel	Junior counsel
201	Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee (if allowed))	\$531.44–\$911.08 per hour	\$317.26–\$452.51 per hour
202	Attendance at a conference (including a court-appointed conference), if necessary	\$531.44–\$911.08 per hour	\$317.26–\$452.51 per hour
203	Attendance of less than 3 hours (for example, a procedural hearing or a summary hearing)	\$531.44–\$3,796.00	\$283.84–\$1,330.09
204	A hearing or trial taking at least 3 hours but not more than 1 day	\$986.96–\$7,592.73	\$941.05–\$2,175.32
205	Other hearings or trials	\$2,505.47–\$7,592.73 per day	\$2,242.76–\$3,296.54 per day
206	Reserved judgment	\$531.44–\$911.08 per hour	\$317.26–\$452.51 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	\$1,167.14
302	If the lawyer employed another lawyer to attend at court for the applicant and there is no child of the marriage under 18	\$868.35
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	\$1,095.76
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	\$819.92
305	If the lawyer did not attend at court for the hearing under section 98A of the Act	\$705.47

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

Schedule 2 Scale of costs

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 11.15	\$705.47
402	A Third Party Debt Notice under rule 11.34	\$705.47

Schedule 3—Delegated powers

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

1 Clause 2 of Schedule 4 (after table item 2.1)

Insert:

2.1A	Part 5.6 FCFCOA Rules	To deal with an application for a consent order	✓	✓
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2 Clause 2 of Schedule 4 (table item 3.7)

Repeal the item, substitute:

3.7	Subject to item 3.8 of this table, subsection 69ZR(1) FLA	To make a finding of fact, determine a matter or make an order in relation to an issue before final orders are made	✓	✓
			but only if: (a) the proceeding is to be heard by a Senior Judicial Registrar or Judicial Registrar; or (b) the order is made on an undefended basis; or (c) the order is made by consent	but only if: (a) the proceeding is to be heard by a Judicial Registrar; or (b) the order is made by consent

3.8	Paragraph 69ZR(1)(c) FLA	To order a party to undergo a drug or alcohol screen or test without consent	✓	✓
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3 Clause 2 of Schedule 4 (after table item 4.4)

Insert:

4.4A	Section 79 FLA Section 90SM FLA	To make a final property order	✓	but only if a Senior Judicial
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Schedule 3 Delegated powers

but only if the gross value of the property pool, inclusive of superannuation, is less than \$2 million

Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power

4 Clause 2 of Schedule 4 (table item 4.6)

Repeal the item, substitute:

4.6 Section 79A FLA To vary or set aside property orders
Section 90SN FLA
but only if the gross value of the property pool, inclusive of superannuation, is less than \$2 million

✓
but only if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power

5 Clause 2 of Schedule 4 (table items 5.1 to 5.3)

Repeal the items, substitute:

5.1 Section 74 FLA To make an order for the spousal maintenance of a party
Section 90SE FLA To make an order for the maintenance of a party to a de facto relationship

✓ ✓
but only if:
(a) all of the following apply:
(i) the order is an order until further order;
(ii) the order is made in undefended proceedings;
(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 proceedings
5.2	Section 77 FLA Section 90SG FLA Paragraph 98(2)(p) (qualified by subsection 98(7)) FCFCOA Act	To make an urgent order for the spousal maintenance of a party, pending the disposal of the proceedings To make an urgent order for the maintenance of a party to a de facto relationship, pending the disposal of the proceedings	✓	✓ but only if: (a) all of the following apply: (i) the order is an order until further order; (ii) the order is made in undefended proceedings; (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 proceedings
5.3	Subsection 83(1) FLA Section 90SI FLA	To discharge, suspend, revive or vary a spousal maintenance order To discharge, suspend, revive or vary an order with respect to the maintenance of a party to a de facto relationship	✓	✓ but only if: (a) all of the following apply: (i) the order is an

Schedule 3 Delegated powers

				order until further order; (ii) the order is made in undefended proceedings; (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 proceedings
5.4	Section 90F FLA	To make an order in relation to certain provisions in a financial agreement	✓	✓ but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings

6 Clause 2 of Schedule 4 (table item 6.1)

Repeal the item, substitute:

6.1	Sections 66G, 66L, 66M, 66P and 66Q FLA	To make an order for child maintenance, including in relation to an adult child	✓
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7 Clause 2 of Schedule 4 (table items 7.2 and 7.3)

Repeal the items, substitute:

7.2	Subsection 90J(3) FLA Subsection 90UL(3) FLA	To make orders preserving or adjusting the rights of persons who were parties to a terminated financial agreement	✓ but only if: (a) the gross value of the property pool, inclusive of superannuation, is less than \$2 million and the Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power; or (b) the order is an order until further order; or (c) the order is made in undefended proceedings; or (d) the order is made with the consent of all the parties to the proceedings
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7.3	Section 90K FLA Section 90UM FLA	To set aside a financial agreement	✓ but only if: (a) the gross value of the property pool, inclusive of superannuation, is less than \$2 million and the Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power; or (b) the order is made in undefended proceedings;

or
(c) the order is made with the consent of all the parties to the proceedings

8 Clause 2 of Schedule 4 (after table item 11.3)

Insert:

11.4	Section 90AF FLA but only if: (a) the order is an order until further order; or (b) the order is made in undefended proceedings; or (c) the power is exercised with the consent of all the parties to the proceedings	To make an injunction under section 114 FLA binding a third party	✓
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9 Clause 2 of Schedule 4 (table item 12.4)

Repeal the item, substitute:

12.4	Chapter 12 FCFCOA Rules	To make orders in relation to costs, the provision of costs estimates and the assessment of costs, but only in relation to section 117 FLA	✓	✓
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10 Clause 2 of Schedule 4 (table item 13.2)

Repeal the item, substitute:

13.2	Paragraphs 32(3)(a) and (d), by consent, and paragraphs 32(3)(b), (c), (e), (f), (g), (h) and (i) FCFCOA Act	To make orders in relation to the following applications: (a) to join or remove a party to an appeal (by consent of all parties and any person proposed to be joined only);	✓	✓
			if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief	if a Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief

(b) to give summary judgment;	Justice) to exercise the power	Justice) to exercise the power
(c) to make an interlocutory order pending, or after, the determination of an appeal, and to vary or set aside that order;		
(d) to make an order to dismiss an appeal for want of prosecution, and to vary or set aside that order;		
(e) to:		
(i) make an order to dismiss an appeal for failure to comply with a direction of the Court or failure of the appellant to attend a hearing relating to the appeal; and		
(ii) vary or set aside that order;		
(f) to give directions under subsection 69(1) FCFCOA Act about practice and procedure to be followed in the proceeding;		
(g) to give other directions about the conduct of the appeal, including about:		
(i) use of written submissions; and		
(ii) limiting the time for oral argument;		
(h) to make an order by consent disposing of an appeal to the court (including an order for costs)		

11 Clause 2 of Schedule 4 (after table item 13.8)

Insert:

13.9	Rule 13.45 FCFCOA Rules	To dismiss an appeal and applications for non-compliance or delay	✓ but only if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power	✓ but only if a Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power
13.10	Rule 13.54 FCFCOA Rules	To determine an application in an appeal seeking	✓	✓

Schedule 3 Delegated powers

costs, but only after a notice of discontinuance has been filed

12 Clause 2 of Schedule 4 (before table item 14.1)

Insert:

14.1A Subsections 44(3) and 44(6) FLA To grant leave to institute proceedings out of time ✓

13 Clause 2 of Schedule 4 (after table item 18.2)

Insert:

18.2A Subrule 3.03(4) FCFCOA Rules To grant leave to a party to add a party to a proceeding after the first court date ✓ ✓

14 Clause 2 of Schedule 4 (table item 25.1)

Repeal the item, substitute:

25.1 Part 6.5 FCFCOA Rules To issue a subpoena, order production and inspection of documents, and hear objections to a subpoena ✓ ✓

15 Clause 2 of Schedule 4 (after table item 27.9)

Insert:

27.9A Subparagraph 102NA(1)(c)(iv) FLA To make an order applying mandatory protections for parties in certain cases ✓
but only if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power

27.9B Section 128 *Evidence Act 1995* To give a witness a certificate in relation to certain ✓

		evidence		but only in relation to a proceeding to be heard and determined by a Senior Judicial Registrar
16 Clause 2 of Schedule 4 (table items 31.1 and 31.2)				
Repeal the items, substitute:				
31.1	Section 45A FLA	To summarily dismiss an application with no reasonable prospects of success	✓	✓ but only if: (a) the order is made: (i) in undefended proceedings; or (ii) with the consent of all the parties to the proceedings; and (b) a Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power
31.2	Paragraphs 10.09(1)(c) and (d) FCFCOA Rules	To make summary orders if a party claims that: (a) an application or response is frivolous, vexatious or an abuse of process; or (b) there is no reasonable likelihood of success	✓	✓ but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings
31.3	Paragraphs 10.11(1)(a), (d) and (e) and	The following powers:	✓	✓

Schedule 3 Delegated powers

	subrule 10.11(2) FCFCOA Rules	(a) to dismiss any part of a proceeding; (b) to order a hearing about an issue or fact; (c) with the consent of the parties, to order arbitration about a proceeding or part of a proceeding; (d) to stay execution pending determination of claim		but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings
17 Clause 2 of Schedule 4 (table item 32.2)				
Repeal the item, substitute:				
32.2	Paragraphs 10.13(1)(e), (g) and (h) FCFCOA Rules	To make orders varying or setting aside an order if: (a) the order does not reflect the intention of the court; or (b) there is a clerical mistake in the order; or (c) there is an error arising in the order from an accidental slip or omission	✓ but only if the order being varied or set aside was made by a Senior Judicial Registrar or Judicial Registrar	✓ but only if the order being varied or set aside was made by a Judicial Registrar
18 Clause 2 of Schedule 4 (before table item 37.1)				
Insert:				
37.1A	Sections 106A and 107 Assessment Act	To make a declaration that a person should, or should not, be assessed in respect of the costs of a child	✓	✓ but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings
37.1B	Division 3 of Part 7 Assessment Act	To amend an administrative assessment that is more	✓	✓

than 18 months old

but only if:

- (a) the order is made in undefended proceedings; or
- (b) the order is made with the consent of all the parties to the proceedings

19 Clause 2 of Schedule 4 (after table item 37.4)

Insert:

37.4A Section 111C Registration Act

To grant a stay

✓

✓

but only if:

- (a) the order is made in undefended proceedings; or
- (b) the order is made with the consent of all the parties to the proceedings