
UNCLASSIFIED

Family Law Amendment (2018 Measures No. 1) Rules 2018

The *Family Law Amendment (2018 Measures No. 1) Rules 2018* introduces a number of significant procedural changes that come into effect from 1 March 2018. As a result, there will be a number of new forms as well as amendments to existing forms. The new and updated forms will be published on the Court's website on 1 March 2018.

SUMMARY OF KEY CHANGES

Application for Consent Orders

Orders relating to superannuation interests

- The amendments repeal the requirement to file a completed superannuation information form with an *Application for Consent Orders* if the orders sought relate to a superannuation interest and substitute a requirement to file proof of value of the interest in accordance with section 90MT(2) of the *Family Law Act 1975* (the Act). The requirement to file proof of value will be mandatory.

Risk of abuse or family violence

The amendments provide that in relation to an *Application for Consent Orders* ('the Application') seeking parenting orders:

- The Application must certify whether the child concerned has been abused or is at risk of being abused and whether there has been, or there is a risk of, family violence by one of the parties.
- The Application must explain how the orders deal with any allegations.
- Accordingly the 'Annexure to Proposed Consent Order' now forms part of the amended Application (at q 25) and is no longer filed with the Application.
- If there are any allegations the notice in prescribed form must be filed as required by ss 67Z and 67ZBA of the Act.
- The amendments prescribe a *Notice of Child Abuse, Family Violence or Risk of Family Violence (Application for Consent Orders)* for use in relation to an Application for Consent Orders.
- The amendments prescribe the *Notice of Child Abuse, Family Violence or Risk of Family Violence (Current Case)* for use in current cases.
- Although the 'Annexure to Proposed Consent Order' now forms part of the amended Application (at q 25) and need not be filed with the Application, it remains a requirement where consent parenting orders are sought in on-going parenting proceedings and has been renamed 'Annexure to Proposed Consent Order (Current Case)'.

Filing a copy of a Family Violence Order

- The amendments provide by r 2.05(2A) that the option of filing an undertaking to file a Family Violence Order, if the Family Violence Order is not available, has been removed when an Application for Consent Orders is filed. A copy of the Family Violence Order must be filed.

Submitting notice

- The amendments insert new r 8.07 into the Rules in relation to submitting notices. It provides that a party may file a submitting notice if they:
 - have been served with an *Initiating Application (Family Law)* seeking final orders (Initiating Application), a *Response to an Initiating Application (Family Law)* (Response), a *Reply to a Response to an Initiating Application (Family Law)* (Reply), or a *Notice of Appeal*, and
 - do not want to contest the relief sought.
- The party filing the notice must state that they submit to any order the Court may make, include an address for service, and state whether the party wants to be heard on the question of costs.
- The amendments enable a party to avoid the undue expense of filing documents and remain informed about the proceedings. When the proceedings are finalised an application may be made for an order for costs (r 19.08).
- The amendments harmonise with r 12.01 of the *Federal Court Rules 2011* (the Federal Court Rules) which rule is also applied by the Federal Circuit Court of Australia by pt 2 of sch 3 of the *Federal Circuit Court Rules 2001*.

Notice of contention

- The amendments insert new r 22.08A into the Rules in relation to notices of contention. It enables a respondent in an appeal, who does not want to cross-appeal from any part of the order, to contend that the order should be affirmed on grounds other than those relied on by the court appealed from.
- The amendments harmonise with r 36.24 of the Federal Court Rules.

Child support after the *Tribunals Amalgamation Act 2015*

- Div 4.2.5 of the Rules has been amended because the Family Court no longer has jurisdiction to hear appeals on a question of law under the *Child Support (Registration and Collection) Act 1988* after the *Tribunals Amalgamation Act 2015*.

Transferring a Case — safety concerns

- The amendments add as a factor to be considered when a decision is being made about transferring a case under r 11.18 of the Rules any safety concerns.

Documents to be used in conjunction with affidavits

- The amendments to r 15.08 of the Rules provide that a document that is to be used in conjunction with an affidavit ('a document') and tendered in evidence in a proceeding,

must be identified in the affidavit but **must not** be attached to or annexed to the affidavit, or filed as an exhibit to the affidavit (subject to contrary Rules or orders of the Court).

- A hard copy of a document identified in an affidavit must be served contemporaneously with the affidavit.
- The document must then be tendered in evidence as required.
- Rule 15.12, which previously dealt with documents to be used in conjunction with an affidavit, has been repealed.

Compliance with subpoenas for production (general and in an arbitration) — Electronic copies

- The amendment of the rr 15.29(4) and 26B.23(3) definitions of “copy” for the purpose of compliance with a subpoena for production electronically provide that a copy in an electronic format must be approved by the Registry Manager and be capable of being printed without loss of content.

Undertakings

- Chapter 17, about orders, is amended to add pt 17.2 in relation to the requirements for the provision of undertakings.
- The amendments regulate the requirements for the provision of oral undertakings, written undertakings and undertakings as to damages.

Additional delegations to Deputy Registrars

The amendments delegate additional powers to Deputy Registrars:

- To grant leave to commence proceedings out of time in certain financial proceedings with the consent of the parties:
 - where the approval under s 87 of an agreement has been revoked (s 44(3A)(d))
 - where a financial agreement has been set aside or found to be invalid (s 44(3B)(d), and
 - after the end of the standard application period (s 44(6)).
- To make location orders other than Commonwealth information orders and to make Commonwealth information orders (ss 67M(2), 67N(2)).
- To make an order directing a person to execute a deed or instrument (s 106A).
- To register an overseas child order received other than from the Secretary of the Attorney-General’s Department (reg 23(6) of the *Family Law Regulations 1984*).
- To dismiss an interim or procedural application or response if no party attends (r 5.11(2)).
- To make orders in relation to case guardians (pt 6.3).
- To dismiss all or part of a case if a party does not comply with the Rules, the Regulations or a procedural order (r 11.02(2)(a)).

- To dismiss a case if a party has not taken a step in a case for one year provided that at least 14 days before making the order the court has given the parties written notice of the date and time when it will consider the application (rr 11.06(1), (2)).

Force and effect of a costs assessment order

- The amendment specifies that when a costs assessment order is made it has the force and effect of an order of the court (rr 19.31, 19.32, 19.37).

For more information see the [Rules and Explanatory Statement](#).

NEW FORMS

Submitting Notice

- A *Submitting Notice* may be filed if a party has been served with an Initiating Application, Response, Reply or a Notice of Appeal, and does not want to contest the relief sought.

Notice of Contention

- A *Notice of Contention* must be filed by a respondent to an appeal if they do not want to cross-appeal from any part of the order, but contend that the order should be affirmed on grounds other than those relied on by the court appealed from.

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

- The *Notice of Child Abuse, Family Violence or Risk of Family Violence (Application for Consent Orders)* is a new form to be used in the Court in conjunction with an *Application for Consent Orders* which includes parenting orders, when required to be filed by ss 67Z or 67ZBA of the Act.

AMENDED FORMS

Application for consent orders – amended form

- The amended form provides:
 - if orders are sought in relation to a superannuation interest by consent, proof of value of the interest in accordance with s 90MT(2) of the Act **must** be filed with an *Application for Consent Orders*
 - for the parties to certify whether a child has been abused or is at risk of being abused, or there has been, or there is a risk of, family violence by one of the parties.
- The *Annexure to Proposed Consent Parenting Orders* has been incorporated into the form at Q25.

Notice of Child Abuse, Family Violence or Risk of Family Violence (Current Case) – amended form including new title

The information sheet and rule and section references have been updated and a new title. From 1 March this should only be used in current cases (i.e. ongoing proceedings for

parenting orders other than consent orders).

Annexure to Proposed Consent Parenting Order (Current Case) – new title

This form has had minor amendments and text updates and a new title. From 1 March it is only to be used when parenting orders are sought by consent in ongoing proceedings for parenting orders.

Note: eFiling from 1 March 2018 will not be available with these changes. There will be an initial three month grace period (until 1 June 2018) in relation to these amendments. You can continue to eFile using the old form until 1 June 2018 or alternatively use the new paper forms available on the Court's website. We will advise you when the electronic form on the Commonwealth Courts Portal has been updated.