



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

FINANCIAL PROCEEDINGS (FAM-FINANCIAL)

Family Law Practice Direction

1. INTRODUCTION

- 1.1 This Practice Direction sets out the procedure for all family law proceedings seeking orders with respect to property, maintenance, superannuation and financial agreements under Parts VIII, VIIIA, VIIIAB, and VIIB and injunctions pursuant to section 114 of the *Family Law Act 1975* (Cth) (**Family Law Act**) (**financial proceedings**). This Practice Direction does not apply to child support or child maintenance proceedings.¹
- 1.2 It is to be read together with:
 - (a) the Family Law Act;
 - (b) the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (**Family Law Rules**);
 - (c) Family Law Practice Direction: Priority Property Pool cases; and
 - (d) Central Practice Direction: Family Law Case Management.
- 1.3 In the event the proceeding also involves an application for final or interlocutory parenting orders, parties and practitioners are directed to refer to Family Law Practice Direction: Parenting proceedings.
- 1.4 In proceedings where both financial and parenting orders are sought, both Practice Directions apply.
- 1.5 This Practice Direction applies to all proceedings commenced on or after 1 September 2021. This Practice Direction will also apply to all proceedings commenced prior to 1 September 2021, unless unfair or impractical to do so.

¹ See Family Law Practice Direction: Child support and child maintenance proceedings.

1.6 To the extent this Practice Direction is inconsistent with any act, regulation, rule or other legislative provision (whether or not expressly listed above), the act, regulation, rule or other legislative provision shall prevail.

Before a proceeding starts

1.7 Each prospective party to the proceeding must comply with the pre-action procedures in Schedule 1 of the Family Law Rules, unless an exception in rule 4.01(2) applies. Those pre-action procedures require parties to take genuine steps to resolve the dispute before proceedings are instituted.

1.8 A Genuine Steps Certificate must be filed with any Initiating Application (Family Law) or Response to Initiating Application seeking financial orders.

1.9 Where a party applies for a consent order which is expressed to bind the trustee of an eligible superannuation plan, the applicant must notify the trustee of the eligible superannuation plan pursuant to rule 10.06 of the Family Law Rules not less than 28 days before lodging the draft consent order or filing the Application for Consent Orders (unless the trustee provides written consent pursuant to rule 10.06(4)).

2. APPLICATION

Parties to financial proceedings

2.1 An application must include all necessary parties: see Part 3.1 of the Family Law Rules.

Limitation period

2.2 Unless the Court grants leave or both parties consent, financial proceedings (other than applications seeking declarations of existing property interests, or seeking to vary, set aside or revive existing property settlement or maintenance orders) may only be commenced:

- (a) within 12 months of a divorce order taking effect or decree of nullity in relation to a marriage, or
- (b) within two years of the breakdown of a de facto relationship: see section 44 of the Family Law Act.

2.3 In the event that property proceedings are filed out of time, leave must be sought by the applicant in the application as an interlocutory order, together with an affidavit stating the facts relied on in support of the application for leave.

Making an application and documents to file

2.4 A financial proceeding is commenced by filing an *Initiating Application (Family Law)*, unless the proceeding involves an application for consent orders only (which requires an *Application for Consent Orders*: see rule 10.04(4) of the Family Law Rules).

2.5 An *Initiating Application (Family Law)* may include an application for interlocutory orders.

2.6 The following documents must be filed with an *Initiating Application (Family Law)* in financial proceedings:

- (a) a *Genuine Steps Certificate*, confirming the applicant's compliance with the pre-action procedures listed in Schedule 1 of the Family Law Rules;
- (b) a *Financial Statement*;
- (c) unless the Family Law Rules require an affidavit to be filed, a *Financial Questionnaire*;
- (d) a copy of the current family violence order affecting the party in accordance with rule 2.10 of the Family Law Rules;
- (e) an *Undertaking as to Disclosure* in accordance with rule 6.02 of the Family Law Rules;
- (f) if the applicant is aware that the *Financial Statement* will not fully discharge the duty to make full and frank disclosure, an affidavit providing further particulars: see rule 6.06(6) of the Family Law Rules;
- (g) if the application seeks interlocutory orders, an affidavit stating the facts relied on in support of the interlocutory orders sought;
- (h) if the application seeks a search order, an affidavit which includes the required evidence as set out in rule 5.19(3) of the Family Law Rules; and
- (i) if the application seeks a freezing order, an affidavit which includes the required evidence as set out in rule 5.23(3) of the Family Law Rules.

2.7 The applicant must also pay the filing fee set by regulation, unless an exemption applies. A Judge or Judicial Registrar may require a party to give an undertaking to pay a filing fee before accepting a document for filing.

When an affidavit is required

2.8 An affidavit is not required to be filed with an *Initiating Application (Family Law)* seeking final orders only.

2.9 An affidavit must be filed in the proper form as outlined in rules 2.14 (Formal requirements for documents) and 5.08 (Limit on number and length of affidavits) of the Family Law Rules.

Urgent applications

2.10 If an application is urgent (**urgent application**), the applicant need not file all of the documents set out at 2.6 above (although they may be required to do so at a future date) but they must file the following:

(a) an *Initiating Application* (if there are no current proceedings) or an *Application in a Proceeding* (if proceedings have already commenced) which includes an order that the proceedings be listed urgently; and

(b) an affidavit stating the facts relied on in support of the urgent application.

2.11 An urgent application must be accompanied by a letter as to urgency, outlining the nature of the application and the basis upon which an urgent listing is required. The cover letter should refer to specific paragraphs of the affidavit relied upon in support of the urgent application.

2.12 If no application for final orders has been made, the urgent application should be included in the interlocutory orders sought in the *Initiating Application (Family Law)*. If an application for final orders has already been made, an urgent application should be made by filing an *Application in a Proceeding*.

Notifying the other party/parties

2.13 The applicant must serve the following documents on all other parties in accordance with Part 2.6 or Part 2.7 (as appropriate) of the Family Law Rules:

- (a) *Initiating Application (Family Law)*;
- (b) any affidavit filed;
- (c) *Financial Statement*;
- (d) any *Financial Questionnaire* filed;
- (e) *Genuine Steps Certificate*; and
- (f) the [Marriage, Families and Separation brochure](#).

2.14 Prior to the first Court event, the applicant must serve certain documents on each other party as listed in rules 6.06(8) and (9) (as applicable) of the Family Law Rules.

2.15 Written notice of an application for financial proceedings including the information set out in rule 1.12(4) of the Family Law Rules, must also be served on persons listed in section 79(10) or section 90SM(10) of the Family Law Act if applicable.

2.16 If an interlocutory order is sought without notice being given to the respondent (**application without notice**), the applicant must satisfy the Court of the requirements set out in rule 5.11 of the Family Law Rules.

What the Court will do next

2.17 Upon filing the *Initiating Application (Family Law)* and supporting documents, the Court will fix a date as soon as practicable for the first Court event.

2.18 Any application made by a party for an urgent listing will be determined by a Registrar on the papers.

2.19 If a matter is accepted as urgent, an Interim Hearing date will be provided at the earliest available time, having regard to the issues in dispute, including the extent of the urgency and considerations of procedural fairness. Directions may also be made in Chambers in relation to service or the filing of additional documents prior to the Interim Hearing.

- 2.20 If a matter is not accepted as urgent, it will be listed in accordance with the Case Management pathway outlined in this Practice Direction. Directions may be made in Chambers in relation to service or the filing of additional documents prior to the next court date.
- 2.21 If an *Initiating Application (Family Law)* or *Response to Initiating Application* is filed without a *Genuine Steps Certificate*, or before pre-action procedures have been complied with, and no exemption is applicable, the Court may stay the application until such time as the parties comply with the pre-action procedures: see rule 4.04 of the Family Law Rules.
- 2.22 An Applicant must also, throughout the proceedings, provide the Court with the most current family violence orders, including if the family violence order is changed in any way.

3. RESPONDING TO AN APPLICATION

- 3.1 A respondent must file a *Response to Initiating Application* if consenting to or opposing any of the orders sought by the applicant, or if seeking any other final orders in accordance with Part 2.4 of the Family Law Rules.
- 3.2 However, if a respondent does not wish to contest any of the orders sought by the applicant and will submit to any order the court may make, a *Submitting Notice* should be filed in accordance with rule 2.22 of the Family Law Rules.
- 3.3 The following documents must be filed with a *Response to Initiating Application*:
- (a) a *Genuine Steps Certificate*, confirming the respondent's compliance with the pre-action procedures listed in Schedule 1 of the Family Law Rules;
 - (b) a *Financial Statement* (unless the respondent is objecting to jurisdiction: see rule 2.19 of the Family Law Rules);
 - (c) unless the Family Law Rules require an affidavit to be filed, a *Financial Questionnaire*;
 - (d) an *Undertaking as to Disclosure* in accordance with rule 6.02 of the Family Law Rules;

- (e) if the respondent:
 - (i) opposes any of the interlocutory orders sought by the applicant, an affidavit;
 - (ii) seeks interlocutory orders where the applicant has not, an *Application in a Proceeding* and an affidavit;
- (f) if the *Response to Initiating Application* seeks a search order, an affidavit which includes the required evidence as set out in rule 5.19(3) of the Family Law Rules; and
- (g) if the *Response to Initiating Application* seeks a freezing order, an affidavit which includes the required evidence as set out in rule 5.23(3) of the Family Law Rules.

3.4 A *Response to Initiating Application* must be filed and served, along with the documents listed at paragraph 3.3, within 28 days of service of the application to which it relates: see rule 2.18(2) of the Family Law Rules.

3.5 Prior to the first Court event, each party must serve certain documents on each other party as listed in rules 6.06(8) and (9) (as applicable) of the Family Law Rules.

3.6 A respondent must also, throughout the proceedings, provide the Court with the most current family violence orders, including if the family violence order is changed in any way.

If the Response to Initiating Application raises a different type of proceedings

3.7 In the event a *Response to Initiating Application* raises parenting proceedings or another type of proceedings not sought by the applicant in the application, the parties are directed to refer to Family Law Practice Direction: Parenting proceedings or such other relevant Practice Direction. In such cases, both Practice Directions apply to the proceeding.

3.8 Where a respondent seeks orders relating to parenting proceedings or another type of proceedings for the first time in the *Response to Initiating Application* and the applicant seeks to oppose those orders or seek different orders, the applicant must file a *Reply* with respect to those orders: see rule 2.21 of the Family Law Rules.

4. SUPERANNUATION

- 4.1 Where a party applies for a flagging or splitting order which is expressed to bind the trustee of an eligible superannuation plan, or applies to set aside such an order under Part VIII B, the party must serve a copy of the application or response on the trustee of the eligible superannuation plan pursuant to rule 1.12(5) of the Family Law Rules.
- 4.2 Where such a flagging or splitting order binding a superannuation trustee is sought and the proceeding has been listed for final hearing, the applicant must notify the trustee of the eligible superannuation plan in writing of the terms of the order sought at the final hearing no less than 28 days prior to the final hearing pursuant to rule 1.12(6) of the Family Law Rules.

5. FURTHER INFORMATION

- 5.1 For information on how family law proceedings are conducted in the FCFCOA, please refer to Central Practice Direction: Family Law Case Management.
- 5.2 Parties should also consult the FCFCOA website at www.fcfcqa.gov.au for further information about financial proceedings.

The Honourable Justice William Alstergren
Chief Justice (Division 1) | Chief Judge (Division 2)
Federal Circuit and Family Court of Australia

Date: 1 September 2021

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