



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

PARENTING PROCEEDINGS (FAM-PARENTING)

Family Law Practice Direction

1. INTRODUCTION

- 1.1 This Practice Direction sets out the procedure for all family law proceedings seeking parenting orders or any other order under Part VII of the *Family Law Act 1975* (Cth) (**Family Law Act**), save and except for surrogacy proceedings¹, passport proceedings², medical procedure proceedings³ or child maintenance proceedings⁴ (**parenting proceedings**).
- 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**); and
 - (c) Central Practice Direction – Family Law Case Management.
- 1.3 The parties are directed to refer to Family Law Practice Direction – Financial proceedings in the event the proceeding also involves an application for financial orders. In proceedings where both parenting and financial orders are sought, both Practice Directions apply to the proceeding.

¹ For applications seeking a parenting order in relation to a child born under a surrogacy arrangement, see Family Law Practice Direction – Surrogacy proceedings.

² For applications seeking orders related to a passport only, see Family Law Practice Direction – Passport proceedings.

³ For applications seeking orders for major medical procedures for a child, see Family Law Practice Direction – Medical procedures proceedings.

⁴ For applications seeking orders for child maintenance, see Family Law Practice Direction – Child support and child maintenance proceedings.

- 1.4 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.
- 1.5 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

- 1.6 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.
- 1.7 A *Genuine Steps Certificate* must be filed with any *Initiating Application (Family Law)* or *Response to Initiating Application* seeking parenting orders.

2. APPLICATION

Parties to parenting proceedings

- 2.1 A parenting proceeding may only be commenced by a person listed in section 65C of the Family Law Act.
- 2.2 An application must include all necessary parties: see Part 3.1 of the Family Law Rules.

Making an application and documents to file

- 2.3 A parenting 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).
- 2.4 An *Initiating Application (Family Law)* may include an application for interlocutory orders.
- 2.5 The following documents must be filed with an *Initiating Application (Family Law)* in parenting proceedings:
- (a) a certificate given to the applicant by a family dispute resolution practitioner under section 60I(8) of the Family Law Act, unless a party

submits that an exemption applies under section 60I(9) of the Family Law Act, in which case an affidavit or an *Affidavit – Non-Filing of Family Dispute Resolution Certificate* setting out the factual basis of the exception claimed under section 60I(9) is required: see rule 4.02 of the Family Law Rules;

- (b) a *Genuine Steps Certificate*, confirming the applicant's compliance with the pre-action procedures listed in Schedule 1 of the Family Law Rules;
- (c) a *Notice of Child Abuse, Family Violence or Risk*;
- (d) a *Parenting Questionnaire*;
- (e) an *Undertaking as to Disclosure* in accordance with rule 6.02 of the Family Law Rules;
- (f) a copy of any family violence order affecting the child or a member of the child's family in accordance with rule 2.10 of the Family Law Rules; and
- (g) if the application seeks interlocutory orders, an affidavit stating the facts relied on in support of the interlocutory orders sought.

2.6 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

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

2.8 Any affidavit filed must be 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

2.9 If an application is urgent, the applicant must seek an order that the proceedings be given an urgent listing (**urgent application**). An urgent application must be accompanied by:

- (a) an affidavit stating the facts relied on in support of the urgent application; and

- (b) a cover 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.

2.10 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

2.11 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) *Notice of Child Abuse, Family Violence or Risk*;
- (d) *Parenting Questionnaire*;
- (e) *Genuine Steps Certificate*; and
- (f) the [Marriage, Families and Separation brochure](#).

2.12 If an interlocutory order is sought to be made by the Court 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

2.13 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.

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

2.15 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.

2.16 If an *Initiating Application (Family Law)* is filed without:

- (a) a certificate issued pursuant to section 60I(8) of the Family Law Act;
- (b) an affidavit setting out the factual basis of the exception claimed under section 60I(9) of the Family Law Act; or
- (c) an *Affidavit – Non-Filing of Family Dispute Resolution Certificate*,

the Court must stay the application until such time as the applicant complies with the requirements of section 60I: see section 60I(7) of the Family Law Act.

2.17 Prior to the first Court event, each party must disclose documents which may contain information relevant to a parenting proceeding. This includes documents listed in rule 6.05(2) of the Family Law Rules.

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 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) if the respondent opposes any of the interlocutory orders sought by the applicant or seeks interlocutory orders in their *Response to Initiating Application*, an affidavit;
- (c) a *Parenting Questionnaire*; and
- (d) a *Notice of Child Abuse, Family Violence or Risk*.

- 3.4 A *Response to Initiating Application* must be filed and served within 28 days of service of the application to which it relates: see rule 2.18(2) of the Family Law Rules.

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

- 3.5 In the event a *Response to Initiating Application* raises financial 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 – Financial proceedings or such other relevant Practice Direction. In such cases, both Practice Directions apply to the proceeding.
- 3.6 Where a respondent raises financial 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. FURTHER INFORMATION

- 4.1 For information on how family law proceedings are conducted in the FCFCOA, please refer to Division 12A of Part VII of the Family Law Act and Central Practice Direction – Family Law Case Management.
- 4.2 Parties should also consult the FCFCOA website at www.fcfcga.gov.au for further information about parenting 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