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Guide to the Family Law Rules amendments

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A new financial year, major amendments to the Family Law Act ... and more rules amendments. Jacqueline Campbell, partner at Forte Family Lawyers and CCH consultant author provides a guide to the new family law rules.

Many of the changes made by the Family Law Amendment Rules 2006, which commenced on 1 July, are changes in terminology due to the simultaneous commencement of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. The new versions of Forms 1, 2, 4, 14 and 18 must be used from 1 July 2006. There is a two-month grace period for Forms 10, 11, 12 and 20.

The other main changes deal with:

- (1) case guardians
- (2) annexures to affidavits
- (3) the requirements for consent to the application of Div 12A of Pt VII of the Act and the additional procedures for certain trials to which Div 12A applies
- (4) updated scale, for example time reasonably spent by a lawyer on work requiring the skill of a lawyer that has increased from \$182 per hour to \$192.90 per hour – this is the first increase since 17 December 2004
- (5) allegations of abuse or family violence in relation to a child
- (6) dictionary definitions to coincide with changes to the Family Law Act.

Case guardians

If a manager of the affairs of a party has been appointed, that person will be taken to be appointed as the case guardian if the person has filed a Notice of Address for Service and an affidavit confirming that the person consents to being appointed (r 6.10(2)). A manager of the affairs of a party is defined in r 6.08A as a person who has been appointed in respect of a party, a trustee or guardian under a commonwealth, state or territory law.

It will usually be preferable that any person already appointed as the manager of the affairs of a party takes on the role of case guardian. This person has an advantage over another potential case guardian because they directly control the assets of the person with a disability and can give a receipt or a discharge.

Annexure to affidavits

There are new requirements for annexure to affidavits. These vary depending upon the thickness of the document or the combination of the affidavit and the documents (r 15.12).

In all cases:

- the pages of the document(s) to be used in conjunction with the affidavit must be consecutively numbered commencing with the numeral "1".
- the witness before whom the affidavit is made must sign a statement identifying it as the document used in conjunction with the affidavit.

A document to be used in conjunction with an affidavit:

- if not more than 2.5 cm in thickness, but all the documents to be attached and the affidavit together are more than 2.5 cm, must not be attached to the affidavit
- in all other cases, the document must be attached to the affidavit
- if the document(s) are more than 2.5 cm thick, they must be made into a separate volume or volumes of no more than 2.5 cm thick for each volume.

An index of contents must be included at the beginning:

- of the documents attached to the affidavit, if more than one document is attached
- of each volume, if there is more than one volume.

Consent to Div 12A Pt VII applying

Division 12A of the Family Law Act covers the principles for conducting child-related proceedings (s 69ZN) and the duties and powers related to giving effect to the principles (s 69ZQ and 69ZR) and evidence in trials (s 67ZT-69ZX).

The amendments in Div 12A apply to:

- (a) proceedings commenced on or after 1 July 2006, and
- (b) proceedings commenced before 1 July 2006, if the parties to the proceedings consent and the court grants leave.

The court's permission may be sought in accordance with r 12.04.

If a party to a case seeks to consent to the application of Div 12A to the case, or part of the case, the party must:

- (a) give consent in accordance with the prescribed form, and
- (b) file a copy of the form (r 16A.03).

Certain procedures for trials caught by Div 12A. These are set out in r 16A.05 and 16A.10. These rules do not apply to a trial involving one or more of the following applications only:

- (a) a Medical Procedure Application referred to in Div 4.2.3
- (b) a Maintenance Application referred to in Div 4.2.4
- (c) a child support application referred to in Div 4.2.5
- (d) an application relating to a passport referred to in Div 4.2.7.

These Rules also do not apply to trials conducted under the Children's Cases Program described in Practices Directions No 2 or No 3 of 2005.

If the Rules apply:

- each party must file a completed questionnaire at least 28 days before the commencement of the trial.
- if a trial date has been fixed, a party cannot, without the permission of the court:
 - (a) issue a subpoena in the case
 - (b) file or serve an application or affidavit in the case.
- on the first day of a trial all parties and any mediator must be administered on oath or affirmation. It is unclear how the reference to "mediator" relates to the new family dispute practitioners, etc.

Allegations of abuse or family violence

There is now a definition of "allegation of abuse or family violence." This is an allegation:

- (a) that a child has been abused or that there is a risk of a child being abused, or
- (b) that there has been family violence involving a child or a member of the child's family or that

there is a risk of family violence involving a child or a member of the child's family.

The Form 4 *Notice of Child Abuse or Family Violence* must be served on each party to the case, any independent children's lawyer or a person seeking to intervene in the case.

The requirement in the Rules for service of the Form 4 on the person alleged to have abused the child is removed. Section 69Z(2) of the Family Law Act requires service on this person in any event. Although the doubling up of the Rules and the Act has been removed to avoid confusion, a note to r 2.04B refers to s 69Z(2) to ensure that the service requirement is still met. However, s 69Z(2) Family Law Act requires service on this person in any event. Although the doubling up has been removed to avoid confusion, a note to r 2.04B refers to s 69Z(2) to ensure that the service requirement is still met.

No later than the time the Form 4 is filed, an affidavit or affidavits setting out the evidence on which the allegations in the Form 4 are based must also be filed. The requirement for the allegations to be on affidavit appear to relate to s 117AB of the Act, which makes it mandatory for a costs order to be made for part or all of the costs against a party who brings proceedings and the court is satisfied that the party knowingly made a false statement or allegation in the proceedings.

Definitions

The Dictionary and Explanatory Guide have been expanded to include the new definitions of new terms and changed terms in accordance with the Act.

Throughout the Rules, "primary dispute resolution" has been re-named "dispute resolution".

The Rules, Act and Regulations amendments will be consolidated in a forthcoming update of CCH's *Australian Family Law Handbook* and the 25th Edition of the paperback book *Family Law Act with Rules and Regulations*.

The "Procedure" chapter in *Australian Family Law & Practice* will be fully updated by Jacqueline Campbell to reflect the rules changes, and a chapter on children proceedings under the new regime by Anne-Marie Rice, partner at Carter Naughton Rice will also be included.

[Business Builder: How does the new family law regime affect you?](#) CCH Business Builders explain the detail of the family law changes in language your customers will understand.

Related CCH titles:

- [Australian Family Law Handbook \(incl Aust Child Support Handbook\)](#)
- [Australian Family Law & Practice](#)
- [Australian Family Law Act 1975 with Regulations and Rules, 25th edition](#)
- [Business Builder: How does the new family law regime affect you?](#)
- [Business Builder: Family violence under the new family law regime](#)

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