



Federal Magistrates Court Amendment Rules 2009 (No. 1)¹

Select Legislative Instrument 2009 No. 55

We, Federal Magistrates, make the following Rules of Court under the *Federal Magistrates Act 1999*.

Dated 2 April 2009

PASCOE CFM
ALTOBELLI FM
BAKER FM
BAUMANN FM
BENDER FM
BREWSTER FM
BROWN FM
BURCHARDT FM
BURNETT FM
CAMERON FM
CASSIDY FM
COAKES FM
COATES FM
COKER FM
COLE FM
CONNOLLY FM
DEMACK FM
DONALD FM

DRIVER FM
DUNKLEY FM
HALLIGAN FM
HARTNETT FM
HENDERSON FM
HOWARD FM
KELLY FM
KEMP FM
LAPTHORN FM
LINDSAY FM
LLOYD-JONES FM
LUCEV FM
MCGUIRE FM
MEAD FM
MONAHAN FM
NEVILLE FM
NICHOLLS FM
O'DWYER FM
ORCHISTON FM
O'SULLIVAN FM
PHIPPS FM
PURDON-SULLY FM
RAPHAEL FM
RIETHMULLER FM
RILEY FM
ROBERTS FM
SCARLETT FM
SEXTON FM
SLACK FM
SMITH FM
SPELLEKEN FM

TERRY FM
TURNER FM
WALKER FM
WILSON FM

Federal Magistrates

RICHARD FOSTER
Chief Executive Officer

1 Name of Rules

These Rules are the *Federal Magistrates Court Amendment Rules 2009 (No. 1)*.

2 Commencement

These Rules commence on the day after they are registered.

3 Amendment of *Federal Magistrates Court Rules 2001*

Schedule 1 amends the *Federal Magistrates Court Rules 2001*.

Schedule 1 Amendments

(rule 3)

[1] Subrule 2.08 (2)

substitute

(2) For subrule (1):

(a) the parts of the court record that may be searched are:

(i) court documents; and

(ii) with the permission of the Court — any other part of the Court record; and

(b) a permission may include conditions, including a requirement for consent from any person who is mentioned in the record.

(3) In considering whether to give permission under subparagraph (2) (a) (ii), the Court must consider the following matters:

(a) the purpose for which access is sought;

(b) whether the access sought is reasonable for that purpose;

(c) the need for security of court personnel, parties, children and witnesses;

- (d) any limits or conditions that should be imposed on access to, or use of, the record.
- (4) Rule 6 of Order 46 of the Federal Court Rules applies to the searching of records in a proceeding that is not a family law or child support proceeding.
- (5) In this rule:
court document includes a document filed in a case, but does not include correspondence forming part of the court record.
Note 1 Section 121 of the Family Law Act restricts the publication of court proceedings.
Note 2 Access to court records may be affected by the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

[2] After subrule 13.11 (6), before the note

insert

- (7) Unless the Court orders otherwise, an application by a person who is subject to an order under subrule (1) or (3) may be determined by the Court without an oral hearing.

[3] Rule 20.00A, table, item 2, subparagraph (I) (i)

omit

67E or 77

insert

67E, 77 or 90SG

[4] Rule 20.00A, table, item 20

omit

[5] Paragraph 24.07 (1) (b)

after

section 79A

insert

or 90SN

[6] Rule 25B.05

substitute

25B.05 Application of Order 33 of *Family Law Rules 1984*

Order 33 of the *Family Law Rules 1984*, in the modified form set out in Schedule 5, applies to family law and child support proceedings.

[7] Paragraph 44.05 (2) (c)

substitute

- (c) if an extension of time is sought — the evidence explaining the delay and showing why it is necessary in the interests of the administration of justice for the Court to grant an extension.

[8] Schedule 1*substitute***Schedule 1 Costs**

(rules 21.10, 21.16 and 44.15)

Note The amounts in this Schedule include GST.**Part 1 Family law and general federal law proceedings**

Work performed	Family law amount (\$)	General federal law amount (\$)
Stage 1: Initiating or opposing application up to completion of first court day		
Lump sum	1 760.00	2 350.00
Plus: Court attendance	Daily hearing fee	Daily hearing fee
Stage 1A: Initiating or opposing application which includes interim orders (other than procedural orders) up to completion of first court day		
Lump sum	2 200.00	2 940.00
Plus: Court attendance	Daily hearing fee	Daily hearing fee
Stage 2: Interim or summary hearing — as a discrete event		
(This stage applies to an interim application, or a summary proceeding of a type not otherwise addressed in this fee structure. It does not include the stage 1 or 1A component.)		
Lump sum	1 465.00	1 465.00
Plus: Court attendance	Daily hearing fee	Daily hearing fee
Stage 3: Up to and including conciliation conference		
Lump sum	1 465.00	Not applicable

Work performed	Family law amount (\$)	General federal law amount (\$)
Stage 4: Dispute resolution litigation intervention		
Lump sum	1 465.00	2 465.00
Stage 5: Preparation for final hearing		
For a 1 day matter:		
Lump sum	3 750.00	5 285.00
For a 2 day matter:		
Lump sum	4 650.00	7 940.00
Preparation each additional hearing day	995.00	1 670.00
Stage 6: Final hearing costs for solicitor		
Attendance at hearing	Daily hearing fee	Daily hearing fee
To take judgement and explain orders	240.00	240.00
Additional events		
Stage 7: Application for family law location, recovery or enforcement of an order		
(This stage applies to an application where there is an existing court order.)		
Lump sum	745.00	Not applicable
Court attendance	Daily hearing fee	
Advocacy loading		
Increase relevant daily hearing fee	50%	50%
Daily hearing fee		
Short mention	240.00	240.00
Half-day hearing	880.00	880.00
Full-day hearing	1 760.00	1 760.00
Disbursements		
Court fees and other fees and payments, to the extent that they have been reasonably incurred		

Work performed	Family law amount (\$)	General federal law amount (\$)
Photocopying per page	0.67	0.67
Agents fees/travelling costs		
Increase lump sum fee by	495.00	495.00
2 hours travel is the benchmark. There is no entitlement to an increase in lump sum for under 2 hours travel time.		

Part 2 Migration proceedings

1 Proceedings that are concluded

For subrule 44.15 (1), the costs are:

- (a) if the proceeding is concluded at or before the first court date for the proceeding — \$1 175; or
- (b) if the proceeding is concluded after the first court date for the proceeding and at or before the hearing under rule 44.12 or other interlocutory hearing — \$2 935; or
- (c) if the proceeding is concluded at a final hearing — \$5 865.

2 Proceedings that are discontinued

For subrule 44.15 (2), the costs are:

- (a) if the notice of discontinuance is filed and served at least 14 days before the first court date for the proceeding — \$585; or
- (b) if the notice of discontinuance is filed and served within the period beginning 14 days before the first court date for the proceeding and ending 15 days before the hearing under rule 44.12 or other interlocutory hearing — \$1 465; or
- (c) if the notice of discontinuance is filed and served within the period beginning 14 days before the hearing under rule 44.12 or other interlocutory hearing and ending 15 days before the final hearing — \$2 935; or
- (d) in any other case — \$4 105.

[9] Schedule 5

substitute

Schedule 5 Family Law Rules 1984, Order 33, modified

(rule 25B.05)

Order 33 Enforcement

1 Definitions

In this Order:

obligation means an obligation to which rule 2 applies.

prescribed personal property, in relation to a person, means:

- (a) clothes, bed, bedding and kitchen furniture (including a stove, oven and refrigerator, but not including a washing machine or automatic dishwasher); and
- (b) ordinary tools of trade, plant and equipment, and professional instruments and reference books, the combined value of which is not more than \$1 000.

2 Enforcement of obligations

- (1) This rule applies to:
 - (a) the recovery of a debt due to the Commonwealth under section 30 or 67 of the *Child Support (Registration and Collection) Act 1988*; and
 - (b) an order that a party pay maintenance or other money for the benefit of the other party, or of a child, made under:
 - (i) the Family Law Act; or
 - (ii) the *Child Support (Registration and Collection) Act 1988*; and
- (ba) a parenting plan registered under section 63E of the Family Law Act that has not been set aside or otherwise ceased to have effect; and

-
- (bc) an order made under section 67D of the Family Law Act; and
 - (c) a maintenance agreement registered under subsection 86 (1) of the Family Law Act that has not been set aside or has not otherwise ceased to have effect; and
 - (d) a maintenance agreement approved under section 87 of the Family Law Act in respect of which there is in force an order under paragraph 87 (11) (c) of the Family Law Act; and
 - (da) an agreement varying or revoking an original agreement dealing with the maintenance of a child under section 66SA of the Family Law Act; and
 - (e) an overseas maintenance order or agreement that, under the Family Law Regulations, is enforceable in Australia; and
 - (f) an order under the Family Law Act or the *Matrimonial Causes Act 1959* for the payment of costs; and
 - (g) an order made in the exercise of jurisdiction conferred by the Family Law Act, the Family Law Regulations or the Family Law Rules that a person pay a fine or forfeit a bond; and
 - (h) an order under subsection 82 (7) or 90SJ (4) of the Family Law Act for the recovery of moneys; and
 - (ha) a financial agreement under Part VIIIA of the Family Law Act in respect of which an order is in force under paragraph 90KA (c) of the Family Law Act; and
 - (hb) a financial agreement under Part VIIIB of the Family Law Act in respect of which an order is in force under paragraph 90UN (c) of the Family Law Act; and
 - (i) an order under section 117A of the Family Law Act for the payment of reparations; and
 - (j) a liability to pay child support under an assessment or order made under the *Child Support (Assessment) Act 1989*;

and this rule (except subrule (4)) applies in relation to an agreement referred to in paragraph (ba), (c), (d), (da) or (e) as if it were an order of the court in which it is registered or taken to be registered.

-
- (1A) A reference in paragraph (1) (d) to a maintenance agreement shall, where an order under paragraph 87 (11) (c) of the Family Law Act is in force in respect of a part of the agreement, be read as a reference to that part of the agreement.
- (2) Where a court by an order referred to in paragraph (1) (g) imposes a fine, the fine shall, unless the court otherwise orders, be payable forthwith into the filing registry.
- (3) Where in or in relation to proceedings a court orders the forfeiture of a bond, the money forfeited shall, unless the court otherwise orders, be payable forthwith into the filing registry.
- (4) Subject to subrule (4A), if an obligation arises under an order and the person under the obligation was not present, or represented by a lawyer, in court when the order was made, a sealed copy of the order must be served on the person in accordance with rule 6.03 by:
- (a) in case of a fine imposed by a court — the Sheriff, an officer of the court, or a person appointed by the Registrar; and
- (b) in any other case — by a representative or agent of the person for whose benefit the order was made.
- (4A) If, by an order to which this rule applies:
- (a) a person:
- (i) is liable to pay a registrable maintenance liability under the *Child Support (Registration and Collection) Act 1988*; or
- (ii) is ordered to pay a debt due to the Commonwealth under that Act; and
- (b) that person is not present or represented by a lawyer in the Court when the order is made;
- the Child Support Registrar shall cause a sealed copy of the order to be served on that person in accordance with Division 6.2.
- (4B) If a person seeks to enforce an obligation that is not an order of the court, or is not deemed by the court to be an order of the court, the person may apply to the court for:
- (a) an order declaring the amount of the obligation; and

- (b) a second order that the obligation be paid.
- (5) An obligation may be enforced by one or more of the following means:
- (a) garnishment;
 - (b) seizure and sale of personal property;
 - (c) sequestration of estate;
 - (d) sale of real property.
- (6) Where a person ordered to pay maintenance or other money for the benefit of a party or child fails or refuses to make the payment, proceedings for the enforcement of the payment may be taken by the party or child for whose benefit the order was made or on behalf of that party or child by a person entitled to do so under the Family Law Act or Family Law Regulations.
- (7) Where proceedings for the enforcement of the payment of maintenance or other money payable under an order for the benefit of a party or child are taken on behalf of that party or child by a person entitled to do so under the Family Law Act or Family Law Regulations, that maintenance or other money may, unless the court otherwise orders, be paid to that person, and the receipt of that person for any maintenance or other money so paid shall be sufficient discharge of the liability of the person required under the order to pay that maintenance or other money.
- (8) If a person ordered to pay a fine under an obligation fails to do so, proceedings for the enforcement of the payment of that fine may be taken by a Registrar, the Sheriff or an officer of the Attorney-General's Department, but not by a party.
- (9) Where a court has ordered that a bond be forfeited, proceedings for the enforcement of that forfeiture may be taken by the Sheriff, an officer of a police force, or by an officer of the Attorney-General's Department designated by the Secretary to that Department, but not by a party.

-
- (10) Where, immediately before the date of commencement of the Family Law Act, an order that a party to a marriage pay maintenance or other money for the benefit of the other party to the marriage or of a child of the marriage was registered in a court that has jurisdiction under the Family Law Act, that order may be enforced in accordance with this order.
- (11) An application for the enforcement of an obligation shall state whether any other decree is in force for the enforcement of the obligation and whether any other proceedings for the enforcement of the obligation are pending and, if any such proceedings are pending (being proceedings taken by a person referred to in subrule (7)), the name of that person.
- (12) Where an application for the enforcement of an obligation names a person referred to in subrule (7) as the person who has taken other proceedings that are pending for the enforcement of the obligation, the Registrar shall enquire of the person so named as to the present position with regard to those proceedings and shall file with the court papers relating to the application a memorandum containing any information ascertained as a result of that enquiry.

3 Summary procedures on failure to comply with obligation

- (1) If a person fails to satisfy an obligation, a person seeking to enforce the obligation may file an affidavit requesting the issue of:
- (a) in relation to a debt due to the Commonwealth:
 - (i) a notice in accordance with Form 45A; or
 - (ii) a summons in accordance with Form 45B; or
 - (b) in any other case:
 - (i) a notice in accordance with Form 45; or
 - (ii) a summons in accordance with Form 46.

Note A reference to Form 45, 45A, 45B or 46 is a reference to that Form as approved under rule 2.04 of the *Federal Magistrates Court Rules 2001*.

- (1A) An affidavit filed under subrule (1) must:
- (a) contain evidence in support of the request made in the affidavit; and

-
- (b) state whether any other order is in force for the enforcement of the obligation; and
 - (c) state whether any other proceedings for the enforcement of the obligation are pending; and
 - (d) if proceedings taken by a person referred in subrule 2 (7) are pending — state the name of the person who has taken the proceedings; and
 - (e) be accompanied by the appropriate form of notice or summons under subrule (1).
- (1B) If:
- (a) a person has taken proceedings to enforce an obligation; and
 - (b) before those proceedings are completed, the person is named in an affidavit filed under subrule (1) as the person who has taken proceedings to enforce the obligation;
- the Registrar must:
- (c) ask the person for details in relation to progress of the proceedings; and
 - (d) attach a memorandum containing those details to the affidavit.
- (2) On receipt of an affidavit filed under subrule (1) and an appropriate form of notice, the Registrar may issue a notice in accordance with Form 45 or 45A.
- (3) On receipt of an affidavit filed under subrule (1) and an appropriate form of summons, the Registrar may issue a summons in accordance with Form 45B or 46 if:
- (a) in the case of an obligation, other than an obligation to which paragraph (b) of this subrule applies — the Registrar is satisfied that the person under the obligation has failed to make a payment for a period of at least 2 weeks; and
 - (b) in the case of an order mentioned in paragraph 2 (1) (f), (g), (h) or (i) — the Registrar is satisfied that the person against whom the order was made has failed to comply with the order.

- (4) A summons under this rule for the enforcement of an order of a kind referred to in paragraph 2 (1) (g) may be issued by the Registrar of the court that imposed the relevant fine or ordered the forfeiture of the relevant bond and not otherwise.
- (5) A summons under this rule, shall be served on the person to whom it is addressed in a manner referred to in Division 6.2.
- (6) A person served with a summons under this rule shall not, without reasonable excuse:
 - (a) fail to attend as required by the summons and then on such days and at such times as the court may direct;
 - (b) refuse or fail to be sworn;
 - (c) refuse or fail to answer a question on any matter relating to the failure to satisfy the obligation sought to be enforced; or
 - (d) refuse or fail to produce a document that is required to be produced by the summons.

Penalty: 50 penalty units.

- (7) Where a person fails to attend before a court as required by a summons under this rule duly served on that person, or on such days and at such times as the court directs, the court may issue a warrant directing that the person be taken into custody and brought before the court.
- (8) The Registrar of the court that issues a warrant under subrule (7) shall cause to be attached to the warrant:
 - (a) a sealed copy of the order in relation to which the warrant is issued; or
 - (b) a copy of that order certified by the Registrar to be a true copy of the sealed copy in the custody of the Registrar.
- (9) If a court is satisfied that a person appearing before it, whether in person or represented by a lawyer, has failed to satisfy an obligation, the court may:
 - (a) order the payment of the amount found to be owing under the obligation; and
 - (b) enforce the obligation by any of the following means:
 - (i) a garnishment order under rule 4;

- (ii) an order under rule 5 for the seizure and sale of personal property belonging to the person;
- (iii) an order under rule 6 that the estate of the person be sequestered;
- (iv) an order under rule 7 for the sale of an interest in real property belonging to the person;
- (v) any order it considers necessary to enable enforcement of the obligation or to prevent the dissipation of property or the wasting of assets.

4 Garnishment

- (1) In this rule, unless the contrary intention appears:

applicant means a person or authority instituting proceedings under subrule (2).

garnishee means a person (including a corporation, the Commonwealth, a State or Territory or an authority or institution constituted by or under a law of the Commonwealth, or of a State or Territory) from whom the applicant claims that money is due or accruing to the respondent.

respondent means the person who has failed to satisfy an obligation.

- (2) If a person fails to satisfy an obligation, a person entitled to take proceedings to enforce the obligation may apply to the court for a garnishment order to enforce the obligation.
- (3) An application for a garnishment order may be made *ex parte*.
- (4) The following moneys may be the subject of a garnishment order:
- (a) a sum standing to the credit of the respondent in a bank, building society, co-operative housing society or similar society, credit union, credit society or investment fund or corporation, that is payable to the respondent on call or on notice;

- (b) the earnings of the respondent (being wages or salary and fees, bonus, commission, overtime pay or other emoluments payable in addition to or in lieu of wages or salary), a pension, annuity, moneys payable in lieu of leave, or retirement benefit due or accruing to the respondent;
 - (c) any debt or other sum of money due or accruing to the respondent.
- (5) Where the application for a garnishment order is made by a person other than the Registrar, it shall be verified by affidavit.
- (6) An affidavit in support of an application for a garnishment order shall state:
 - (a) particulars of the moneys payable by the respondent;
 - (b) efforts made by the applicant or any other person to obtain payment of those moneys;
 - (c) details of any relevant information furnished by the respondent in response to a notice under paragraph 3 (1) (a) or obtained in an examination pursuant to a summons issued under paragraph 3 (1) (b);
 - (d) particulars of the moneys referred to in subrule (4) in respect of which application is made for garnishment; and
 - (e) the order sought against the garnishee.
- (7) The court shall, in respect of an application for a garnishment order:
 - (a) make the order sought or such other appropriate order on the application as it thinks fit; or
 - (b) dismiss the application.
- (8) Prior to the making of an order under subrule (7), the court may, in proceedings on an application for a garnishment order:
 - (a) adjourn the proceedings and require the garnishee and the respondent or either of them to be served with a copy of the application;
 - (b) give directions as to service and the further hearing of the proceedings; and

-
- (c) make such other order as it thinks necessary to prevent the moneys that are the subject of the application from disappearing or being dissipated.
- (9) Where the court makes a garnishment order attaching the earnings of the respondent, it shall:
- (a) specify the periodic amount to be deducted from the respondent's earnings in satisfaction of the moneys payable, that is to say, the ***normal deduction rate***;
 - (b) specify an amount fixed by the court as the amount below which the respondent's earnings shall not be reduced by compliance with the order, that is to say, the ***protected earnings rate***;
 - (c) specify the person to whom, the place at which and the manner in which payment of amounts to be paid by the garnishee under the order is to be made;
 - (d) specify the amount that the garnishee may deduct from the normal deduction rate referred to in paragraph (a) for administrative expenses; and
 - (e) specify the date from which the payments shall commence.
- (10) A sealed copy of an order under subrule (7) shall be served on the garnishee and on the respondent in accordance with Division 6.2.
- (11) A garnishee who has been served with a garnishment order:
- (a) may apply to the court disputing his liability to make payments under the order; or
 - (b) shall comply with the order.
- (12) If the garnishee applies to the court disputing the order, the garnishee shall file an affidavit setting out the facts and circumstances upon which the order is disputed, and serve a copy of the affidavit on the applicant and the respondent in accordance with Division 6.2.

- (13) On the hearing of an application by a garnishee disputing the liability of the garnishee to make payments under a garnishment order, the court:
 - (a) may proceed with the hearing and determination of the dispute notwithstanding that the respondent has not been served with the application; and
 - (b) shall hear and determine the matter in dispute and make such order, including an order as to costs, as it thinks fit.
- (14) Where a person complies with an order under paragraph (7) (a), his compliance with the order shall be a valid discharge of the indebtedness of the person to the respondent to the extent of the amount paid under the order.
- (15) The court may, on application or of its own motion, vary or discharge an order under paragraph (7) (a) upon such conditions as it thinks fit.
- (16) Where an order is varied or discharged under subrule (15), the court shall make such orders as to service of the order as varied or the order for discharge on the garnishee and other persons as it thinks fit.
- (17) The provisions of subrule (11) apply, insofar as they are applicable, to an order that has been varied under subrule (15).
- (18) An amount standing to the credit of a respondent in an account in a bank, building society, co-operative housing society or similar society, credit union or credit society, or investment fund or corporation, that is payable to the respondent on call or on notice shall, subject to subrule (19), for the purposes of this rule, be a debt due to the respondent notwithstanding that any condition relating to the account or a demand or notice for payment under the account is unsatisfied.
- (19) Where an amount referred to in subrule (18) is made the subject of an order under this rule then, unless the court otherwise orders, the first-mentioned order only operates to require payment of the said amount when any necessary period of notice has expired, but service on the garnishee of the order for payment of the said amount shall be deemed to be the giving of that notice.

-
- (20) A garnishee shall not, without reasonable excuse:
- (a) fail to comply with an order made under subrule (7), (13) or (15); or
 - (b) dismiss a respondent from or injure a respondent in respect of employment, or alter the respondent's position to the prejudice of the respondent, by reason of an order made under this rule.

Penalty: 50 penalty units.

- (21) A conviction under subrule (20) does not limit, restrict or otherwise affect any obligation that the garnishee may have in relation to the respondent or any right or remedy that the respondent may have against the garnishee under any other law of the Commonwealth or of a State or Territory.
- (22) A pension, annuity or allowance that is protected from garnishment or encumbrance under any law shall not be subject to an order under this rule.
- (23) Where an order under this rule is in force and the respondent ceases to be employed by the garnishee, the respondent and the garnishee shall, within 21 days after the respondent ceases to be so employed, each give notice to the court:
- (a) notifying that the respondent has ceased employment with the garnishee; and
 - (b) specifying the date on which the employment ceased; and, if the respondent has a new employer, the respondent shall, in the notice given under this subrule, specify:
 - (c) the name and address of that employer and the place of the respondent's employment by that employer; and
 - (d) the amount of the respondent's earnings from employment with that employer.

Penalty: 50 penalty units.

- (24) Where the Court receives a notice under subrule (23), it shall notify the applicant in writing and, if no written objection is received from the applicant or the respondent within a reasonable time, it may, of its own motion, issue a fresh order in appropriate terms naming the new employer as garnishee.

5 Seizure and sale of personal property

- (1) If a person fails to satisfy an obligation, a person entitled to take proceedings to enforce the obligation may apply to the court for an order to seize personal property belonging to the first-mentioned person to enforce the obligation.
- (2) An application under subrule (1) may be made *ex parte*.
- (3) An affidavit in support of an application for seizure of property under subrule (1) shall state:
 - (a) particulars of the moneys not paid by the person against whom the order is sought;
 - (b) efforts made by the applicant and any other person to obtain payment of the moneys;
 - (c) details of any relevant information furnished by the respondent in response to a notice under paragraph 3 (1) (a) or obtained in an examination under paragraph 3 (1) (b); and
 - (d) details of personal property owned or believed to be owned by the person against whom the order is sought.
- (4) Where application is made under this rule by a Registrar or other public authority, verification thereof by affidavit is not required.
- (5) Where an application is made under subrule (1), the court may order:
 - (a) the Sheriff; or
 - (b) any other officer of the court or some other person (such officer or person being an officer or person who is willing and able to execute the order);to seize and realize some or all of the personal property, not being prescribed personal property, of the person named in the order.
- (6) An order made under subrule (5) shall specify the amount owing by the person named in the order and may include such further amount to cover the expenses of obtaining and executing the orders as the court thinks fit.

-
- (7) If the person named in the order pays to the Sheriff, officer of the court or other person specified in the order or into the registry of the court where the order was made the total of the amounts specified under subrule (6), the order shall be deemed to have been complied with and no further steps shall be taken under it.
 - (8) Where it appears to the Sheriff, officer or other person specified in the order that the property ordered to be seized in accordance with subrule (5) is substantially greater in value than the amounts specified under subrule (6), the Sheriff, officer or other person shall first seize and realize so much of the property as appears to be sufficient.
 - (9) The Sheriff, officer or other person specified in the order shall seize or realize the property:
 - (a) in such order as seems to the Sheriff, officer or other person best for the speedy execution of the order without undue expense;
 - (b) subject to paragraph (a), in such order as the person named in the order may request; and
 - (c) subject to paragraphs (a) and (b), in such order as appears to the Sheriff, officer or other person best for minimizing hardship to the person named in the order and any other person affected.
 - (10) The Sheriff, officer or other person specified in the order shall, in relation to all property seized by the Sheriff, officer or other person:
 - (a) put the property up for sale as quickly as is consistent with due regard to the interests of the parties and to the desirability of a beneficial realization of the property;
 - (b) put the property up for sale at the place where it seems best for a beneficial realization of the property;
 - (c) advertise the sale in such manner as appears to be adequate; and
 - (d) sell the property by auction or private treaty.

- (11) The Sheriff, officer or other person specified in the order shall pay the proceeds of sale into the registry of the court where the order was made, whereupon the Registrar shall apply the proceeds so paid:
- (a) firstly, in or towards the discharge of the amount specified under subrule (6) for the expenses of obtaining and executing the order or, if no such amount is so specified or the amount specified is found to have been too great or too small, then in or towards the discharge of such sum as the Registrar may fix as the proper expenses of obtaining and executing the order; and
 - (b) secondly, in or towards the discharge of the amount specified in the order under that subrule as the amount owing by the person named in the order.
- (12) The Registrar shall:
- (a) if the Registrar considers that the person named in the order may have a continuing obligation — retain the balance to be dealt with in accordance with the further order of the court; or
 - (b) in any other case — pay the balance, if any, to the person named in the order.
- (13) Where the Registrar retains money under paragraph (12) (a), the Registrar shall report that fact to the court, whereupon the court, having regard to any continuing obligation the person named in the order may have, may make such orders as to the further disposition of the moneys as it thinks fit.
- (14) Where the court makes an order under subrule (13), it may make such further orders as to service of the order and other matters related thereto as it thinks fit.

6 Sequestration of estate

- (1) If a person fails to satisfy an obligation, a person who is entitled to take proceedings to enforce the obligation may apply to the court for an order that the estate of the first-mentioned person be sequestrated.

-
- (2) The affidavit filed by the applicant with an application under subrule (1) shall set out:
 - (a) particulars of the estate sought to be sequestrated; and
 - (b) the reasons for seeking the order, including any attempts to obtain satisfaction of the obligation by other means.
 - (3) Where an application has been made under subrule (1), the court may make an order:
 - (a) sequestrating the estate in part or in whole;
 - (b) appointing the Sheriff, an officer of the court or other named person as receiver of the estate; and
 - (c) as to the costs and expenses of the sequestration.
 - (4) In urgent cases, the court may hear the application *ex parte* and make an order, but such an order shall be expressed to operate only until the further order of the court.
 - (5) Where the court makes an order under subrule (4), it may give such directions as to service and the further hearing of the application as it thinks fit.
 - (6) A court exercising jurisdiction under the Family Law Act may, on application by a person whose estate has been sequestrated in pursuance of an order made under this rule by the court, discharge the order upon such terms and conditions as the court thinks fit.
 - (7) A Family Court or the Supreme Court of the Northern Territory may, on the application of a person whose interests the Court is satisfied are materially affected by an act or omission of, or decision made by, a person appointed as receiver of an estate under subrule (3), make such order as it thinks just.
 - (8) A Family Court or the Supreme Court of the Northern Territory may, on the application of:
 - (a) a person who applied to the Court for an order under which the estate of another person has been ordered under paragraph (3) (a) to be sequestrated;
 - (b) a person whose estate has been sequestrated in pursuance of such an order;

- (c) a creditor of a person whose estate has been so sequestered; or
 - (d) the Principal Registrar or a Registrar of a Family Court; make any one or more of the following orders:
 - (e) an order for the examination before the Court of the receiver or any other person in connection with the sequestration;
 - (f) an order removing the receiver from office;
 - (g) such other orders as it thinks fit.
- (9) In this Rule *estate*, in relation to a person, does not include the prescribed personal property of that person.

7 Power of sale of real property

- (1) If a person fails to satisfy an obligation, a person who is entitled to take proceedings to enforce the obligation may apply to the court for an order that any interest in real property of the first-mentioned person be sold to enforce the obligation.
- (2) On an application under subrule (1), the court may do any of the following:
 - (a) appoint the Sheriff or another person (including a party to the proceedings) as trustee for the sale of the interest;
 - (b) order that the interest be transferred or assigned to the trustee, and direct a party to execute a deed or instrument necessary for the transfer or assignment;
 - (c) give any necessary directions for the sale of the interest, including directions about the possession or occupancy of the real property until the sale;
 - (d) give directions about the disposition of the proceeds of the sale of the interest.

8 Certificate as to payments under maintenance order

- (1) Where a Registrar or a public authority is specified in an order of a court as the person to whom maintenance payable under the order is to be paid, that Registrar or authority shall, at the request of a Registrar or of the person who obtained the order, or of the person liable to make payments under the order, give to that Registrar or person a certificate:
 - (a) stating the amount that, according to the records of the court or authority, has been paid under the order or, in the case of a second or subsequent certificate to be given to the same Registrar or person in respect of the same order, the amount that, according to those records, has been paid under the order since the last certificate was given; and
 - (b) the amount that, according to those records, remains unpaid.
- (2) Where, under subrule (1), a certificate is to be given by a Collector of Maintenance or by the Director of the Department for Community Welfare of South Australia, it shall be sufficient if the certificate is given by a subordinate of the Collector or Director.
- (3) When a certificate has been given in accordance with subrule (1) or (2), the Court may receive the certificate in evidence.

9 Certain orders enforceable in South Australia

- (1) This Rule applies to an order or agreement referred to in subrule 2 (1).
- (2) Where an order to which this rule applies is enforceable by a court of the State of South Australia having jurisdiction under the Family Law Act, all money to be paid under the order is, unless that court otherwise orders, payable, so long as the person required under the order to pay that money resides in that State, to the Collector of Maintenance of that State, and the receipt of that Collector for any amount so paid shall be sufficient discharge of the liability of the person required under the order to pay that amount.

[10] Dictionary, definition of *child representative**omit***[11] Dictionary, definition of *financial matter****omit*

section 79 or 79A

insert

section 79, 79A or 90SM

[12] Dictionary, after definition of *Human Rights Act**insert*

independent children's lawyer means a child representative approved under section 68L of the Family Law Act.

[13] Further amendments

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Paragraph 6.03 (3) (b)	child representative	independent children's lawyer
Rule 11.13	child representative	independent children's lawyer
Rule 15.02, heading	a child representative	an independent children's lawyer
Paragraph 15.02 (1) (a)	a child representative	an independent children's lawyer
Subrules 15.02 (2), (3), (4) and (5)	a child representative	an independent children's lawyer
Subrule 15.16 (2)	child representative	independent children's lawyer
Subrule 15.22 (1)	child representative	independent children's lawyer
Rule 21.13	a child representative	an independent children's lawyer

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Paragraph 23.01A (5) (a)	child representative	independent children's lawyer

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.