FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

FAMILY LAW CASE MANAGEMENT

Central Practice Direction

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1. PURPOSES

1.1 The purposes of this Central Practice Direction are to outline the core principles applicable to family law proceedings and to establish a consistent national case management system in the Federal Circuit and Family Court of Australia (**the Court**) that:

(a) reduces unnecessary cost and delay in family litigation and facilitates proceedings being conducted with the least possible acrimony in order to minimise harm to children and families;

(b) ensures the safety of families and children; and

(c) achieves the overarching purpose of the family law practice and procedure provisions of the *Federal Circuit and Family Court of Australia Act 2021* (Cth) (**FCFCOA Act**), being to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.

1.2 All other Family Law Practice Directions are to be read within the framework established by this Central Practice Direction. Parties should not commence or take steps in proceedings without first considering the principles set out in this Practice Direction.

1.3 The Court takes the overarching purpose enshrined in the FCFCOA Act seriously. Parties and their lawyers are expected to fully comply with that statutory obligation in all cases without exception, regardless of the complexity of the case or the issues in dispute, subject only to ensuring the safety of parties and children. This co-operation requires (and the Court expects) that the parties and their lawyers think about the best way to conduct their cases in accordance with the overarching purpose. The parties and their lawyers can expect that the Court will engage with them in a dialogue to achieve the overarching purpose.

1.4 The Court expects parties and their lawyers to have in mind, at all times, the cost of each step in the proceedings and whether it is necessary, and to avoid unnecessary process-driven costs and unjustified use of court resources. In everything they do, parties and lawyers are expected to approach proceedings

in a manner directed towards identifying the issues in dispute and ascertaining the most efficient, including cost efficient, method of resolution or determination. This includes giving proper consideration to identifying the issues in dispute, complying with their obligation to provide full and frank disclosure in a timely manner (see Part 6.1 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) (**the Family Law Rules**)), engaging in productive and resolution-focused communication with other parties, making appropriate admissions and pressing only issues of genuine significance. Ambit claims should be avoided and aggressive and unnecessarily adversarial conduct will not be tolerated. At all stages in the proceedings, parties must avoid filing evidence that is unnecessarily lengthy or only of limited relevance to the issues genuinely in dispute. Parties should limit the number of witnesses they rely on to those necessary to prove or disprove those issues truly requiring determination.

1.5 Any failure to comply with these requirements may attract costs orders against parties and/or practitioners and other consequences including, in appropriate cases, the drawing of adverse inferences, the making of a summary decree pursuant to section 45A of the *Family Law Act 1975* (Cth) (**Family Law Act**), or orders providing that a matter be heard on an undefended basis.

1.6 The Court recognises that parties to family law proceedings and their children are often under significant stress and that litigation can add to that stress in addition to being costly. This Central Practice Direction aims to minimise the impact of litigation on families and children by encouraging the early and focussed resolution of family law disputes.

1.7 The safety of parties and children and protection from the consequences of abuse and violence remains a priority for the Court. No obligation or requirement in this Central Practice Direction should be taken to require parties to put themselves or their children at risk or to compromise or attempt to do so in circumstances that are unsafe or where concerns about abuse or violence compromise their ability to negotiate fair or reasonable outcomes. No part of this Central Practice Direction should be read or interpreted in a manner that is inconsistent with the prioritisation of the best interests of children and safe and sustainable outcomes for families.

1.8 Lawyers representing parties in family law proceedings must provide a copy of this Central Practice Direction to their clients prior to filing an *Initiating Application* or *Response to Initiating Application* and are requested to provide a copy to any unrepresented parties to the proceedings at the earliest possible opportunity.

2. APPLICATION OF THIS PRACTICE DIRECTION

2.1 Subject to the following paragraph, this Central Practice Direction applies to all family law applications filed in or transferred to the Court. The obligations outlined in this Central Practice Direction apply to the parties to such proceedings and to their legal representatives.

2.2 Other than Part 3: Core Principles, this Central Practice Direction does not apply to:

(a) appeals (see Family Law Practice Direction – Appeals);

(b) matters arising from arbitration (see Family Law Practice Direction – Arbitration);

(c) *Applications for Divorce* (see Family Law Practice Direction – Divorce proceedings); and

(d) Applications for Consent Orders.

2.3 This Practice Direction is to be read in conjunction with the Family Law Act, the FCFCOA Act and the Family Law Rules. In the event of a conflict between the contents of this Practice Direction and the provisions of the Family Law Act, the FCFCOA Act or the Family Law Rules, the legislation or Family Law Rules, as applicable, shall apply to the extent of the inconsistency.

2.4 Unless otherwise expressly stated, and save for obligations as to costs disclosure, all obligations imposed on parties by this Central Practice Direction apply to Independent Children's Lawyers.

3. CORE PRINCIPLES

3.1 The following 10 core principles underpin the exercise of the family law jurisdiction of the Court and are designed to facilitate the resolution of family

law proceedings. All steps taken in proceedings before the Court, including commencement of proceedings, should follow these principles.

CORE PRINCIPLE 1 – Risk

3.2 The prioritisation of the safety of children, vulnerable parties and litigants, as well as the early and ongoing identification and appropriate handling of issues of risk, including allegations of family violence, are essential elements of all case management.

CORE PRINCIPLE 2 – Parties', lawyers' and the Court's obligations and overarching purpose

3.3 The overarching purpose to be achieved is to facilitate the just resolution of disputes:

(a) according to law; and

(b) as quickly, inexpensively and efficiently as possible.

3.4 The overarching purpose includes the following objectives:

(a) the just determination of all proceedings before the Court;

(b) the efficient use of the judicial and administrative resources available for the purposes of the Court;

(c) the efficient disposal of the Court's overall caseload;

(d) the disposal of all proceedings in a timely manner;

(e) the resolution of disputes at a cost and by a process that is proportionate to the importance and complexity of the issues in dispute.

3.5 This Central Practice Direction and the Family Law Rules must be interpreted and applied in the way that best promotes the Court's overarching purpose and prioritises the best interests of children.

CORE PRINCIPLE 3 – Efficient and effective use of resources

3.6 The Court's judicial, registrar and Court Child Expert resources are to be allocated and used efficiently to achieve the overarching purpose in the context of ensuring the appropriate handling of risks wherever they are identified as issues in proceedings.

CORE PRINCIPLE 4 – Approach to case management

3.7 Effective case management of all cases relies on:

(a) a consistent approach to the case management of like cases;

(b) early triaging of matters to an appropriate case pathway, including assessment of risk; and

(c) the prioritisation of both internal and external Dispute Resolution, including private mediation, Family Dispute Resolution (**FDR**), Conciliation Conferences and arbitration in property disputes for as many appropriate cases as possible.

CORE PRINCIPLE 5 – Importance of Dispute Resolution

3.8 The Court encourages the use of Dispute Resolution procedures. Before commencing an action, unless it is unsafe to do so, parties are expected to make a genuine attempt to resolve their dispute, including by complying with the requirements and obligations of section 60I of the Family Law Act and the pre-action procedures as set out in Schedule 1 to the Family Law Rules. Subject to an exception applying, the Court must not hear an application for parenting orders unless a section 60I certificate has been filed.

3.9 After the commencement of an action, parties are expected to:

(a) be proactive in identifying the appropriate time, and the appropriate way, in which they can participate in Dispute Resolution, either by agreement or by court order; and

(b) be prepared to make and consider reasonable offers of settlement at any stage of the proceedings. Failure to do so may have costs consequences.

CORE PRINCIPLE 6 – Non-compliance

3.10 Non-compliance with orders, Practice Directions, the Family Law Rules or the obligations imposed on parties and their lawyers to conduct proceedings in a manner consistent with the overarching purpose will be taken seriously by the Court. Non-compliance may lead to serious consequences for parties and for their lawyers including, if relevant, liberty being granted to the compliant party

to proceed on an undefended basis, and/or costs orders being awarded against parties and/or their lawyers.

3.11 If, at any time during the course of proceedings, the Court considers that a party or their legal representatives have pursued or defended an Application, Response or Reply without legal foundation and/or other than in good faith or without making a reasonable and genuine attempt to resolve the issue(s) in dispute where safe to do so, the Court may:

(a) refer the Application, Response or Reply to a judicial officer for consideration of dismissal or determination on an undefended basis;

(b) dismiss the Application, Response or Reply;

(c) dismiss all or part of the case;

(d) set aside a step taken or an order made;

(e) prohibit a party from taking a further step in the case until the occurrence of a specified event;

(f) determine the Application, Response and/or Reply on an undefended basis;

(g) adjourn the Application, Response and/or Reply to allow a party to file affidavit evidence; and/or

(h) make such other orders as are appropriate, including orders for costs, which may include an order for costs against a party's legal representatives.

CORE PRINCIPLE 7 – Lawyers' obligations about costs

3.12 Parties and their lawyers are expected to take a sensible and pragmatic approach to litigation, and to incur only such costs as are fair, reasonable and proportionate to the issues that are genuinely in dispute. Lawyers are expected to act consistently with costs estimates provided to their clients, and regularly inform their clients and the Court of the actual costs they have incurred and are likely to incur (see Part 12.3 of the Family Law Rules).

CORE PRINCIPLE 8 – Identifying and narrowing issues in dispute

3.13 Issues in the case are to be narrowed to those issues genuinely in dispute. In particular:

(a) all parties are required to make full and frank disclosure to assist the Court in the determination of the dispute or the parties in the resolution of the dispute;

(b) applications should only be brought before the Court if they are reasonably justified on the material available;

(c) it is expected that parties will negotiate both prior to, and at Court, in order to reach agreement about as many of the issues in dispute as possible and procedural directions required before having the matter heard;

(d) when appropriate, a single expert or an assessor should be engaged to assist the parties and the Court to resolve disputes; and

(e) costs consequences may flow if parties unreasonably seek to reopen issues already resolved or unreasonably agitate issues.

CORE PRINCIPLE 9 – Preparation for hearings

3.14 Parties and their lawyers are to be familiar with the specific issues in the case and be fully prepared for court events and the final hearing in a timely manner. Parties must provide the Court with a considered and informed estimate of the expected hearing time, the number of witnesses and the specific issues to be decided.

CORE PRINCIPLE 10 – Efficient and timely disposition of cases

3.15 The Court will act effectively and efficiently in achieving the prompt and fair disposition of pending cases, with judgments being delivered as soon as reasonably practicable after the receipt of final submissions. Where permitted by legislation, short form reasons may be utilised in appropriate cases to facilitate the expeditious delivery of judgments.

4. CASE MANAGEMENT

Pre-action requirements

4.1 Prior to commencing proceedings, parties are required to:

(a) comply with the pre-action procedures for both financial and parenting proceedings (see Schedule 1 of the Family Law Rules and section 60I of the Family Law Act); and

(b) take genuine steps to attempt to resolve their issues prior to commencing proceedings, unless it is unsafe to do so or a relevant exemption applies.

4.2 A *Genuine Steps Certificate* in the approved form must be filed with an *Initiating Application* or *Response to Initiating Application*, outlining:

(a) the filing party's compliance with the pre-action procedures; and

(b) the genuine steps taken to resolve the dispute; or

(c) the basis of any claim for an exemption from compliance with either or both of these requirements.

4.3 Other than in urgent circumstances, and subject to any safety concerns, no application for final or interim orders should be filed without appropriate notice being given to the respondent of the intended contents of the application and without genuine steps being taken to avoid the need for the application to be filed.

4.4 Failure to comply with the relevant pre-action procedures may result in the application being adjourned or stayed until the failure to comply is rectified (see Part 4.1 of the Family Law Rules).

Filing and service

4.5 An *Initiating Application* and any other document filed in family law proceedings must be served on each other party to the proceedings as soon as reasonably practicable after filing and no later than the time (if any) specified in the Family Law Rules.

Urgency

4.6 In the case of urgent issues, an application may be made to the Court for an urgent Interim Hearing. Such applications will be assessed by a Judicial Registrar at the time of filing. 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.

4.7 Following an urgent hearing, such matters will be referred to FDR where appropriate, and will otherwise be listed in accordance with the Case Management pathway outlined in this Practice Direction.

Triage and assessment

4.8 A case filed in the Court may, at any time, be reviewed by the National Assessment Team for consideration of:

(a) whether the matter is one of a small number of cases of a specialist type which may be appropriate for immediate allocation to Division 1 of the Court (such as matters suitable for the Magellan List or applications within the exclusive jurisdiction of Division 1 of the Court);

(b) the suitability of the matter for inclusion in a specialist list;

(c) any special procedures required as a result of risk associated with family violence;

(d) whether all pre-action procedures have been complied with; and

(e) whether, in a parenting proceeding, the requirements of section 60I of the Family Law Act have been complied with, noting that if an *Initiating Application* or a *Response to Initiating Application* which introduces parenting issues is filed without either a certificate issued pursuant to subsection 60I(8) or an affidavit setting out the factual basis of the exception claimed under subsection 60I(9), the Court must stay the application until such time as the applicant complies with the requirements of section 60I: see subsections 60I(7) and 60I(10).

Allocation between divisions

4.9 The appropriate Division of the Court for the hearing of a matter will be considered:

(a) as part of the initial triage and assessment process at the First Court Event, at which a small number of specialist cases which necessitate immediate transfer to Division 1 may be transferred;

(b) at the Compliance and Readiness Hearing, at which the most appropriate Division for final determination of the matter will be considered, having regard to the issues remaining in dispute; and

(c) at such other time as may be considered appropriate by the Court.

4.10 Any matter in relation to which Division 1 of the Court holds exclusive jurisdiction shall be transferred to that Division upon filing without the need for an application seeking transfer to be filed by any party to the proceedings. This includes matters involving:

(a) an exercise of jurisdiction pursuant to section 1337C of the *Corporations Act 2001* (Cth); or

(b) an application pursuant to the *Family Law (Child Abduction Convention) Regulations 1986* (Cth).

4.11 Determination of the appropriate Division for the hearing of a matter will be made at the Court's discretion, having regard to:

(a) the Family Law Act and the Family Law Rules;

(b) any assessment made by the Court's National Assessment Team; and

(c) any submissions made by or on behalf of one or more of the parties.

4.12 The factors relevant to the assessment of the appropriate Division for the hearing of a matter shall include:

(a) the complexity of the legal, factual or jurisdictional issues involved;

(b) whether the case involves international issues;

(c) whether the case involves multiple parties;

(d) whether the case involves multiple expert witnesses;

(e) whether the case is likely to involve questions of general importance to the development of family law jurisprudence;

(f) the likely length of the case;

(g) the respective workload of each Division;

(h) the impact on litigants of the matter being transferred;

(i) any circumstances that require the matter to be referred to a specialist list;

(j) in relation to a parenting proceeding, whether the case involves serious criminal conduct;

(k) in relation to a financial proceeding, whether the case involves:

(i) complex asset structures;

(ii) complex valuation issues;

(iii) complex taxation or like issues;

(iv) bankruptcy or insolvency; and/or

(v) the interests of an estate.

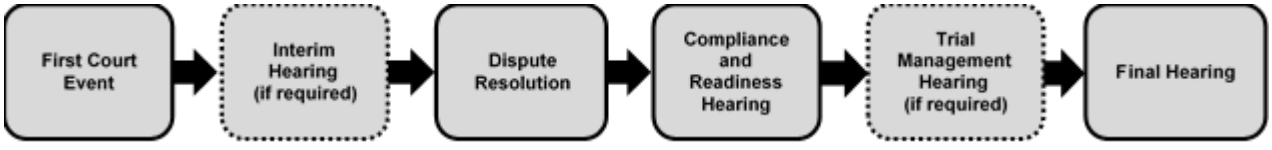
4.13 Unless otherwise ordered, a matter transferred between Divisions will retain the same priority as it had in the Division from which it was transferred.

5. COURT EVENTS

Overview

5.1 In accordance with the overarching purpose, and having regard to the potential harmful consequences of litigation for families and children, the Court will always strive to find the most efficient and effective way to assist parties to resolve or finalise their family law cases. In most cases, this will be achieved by adherence to the case management pathway outlined below. The Court will however, retain discretion and flexibility to depart from or alter this pathway in individual cases in the interests of promoting the overarching purpose.

5.2 Other than urgent applications and cases allocated to specialist lists, in the absence of an order or direction from the Court to the contrary, the following listing pathway will apply to family law proceedings commenced in the Court irrespective of Division:



5.3 The listing pathway will involve the following events:

(a) a First Court Event, which will be listed wherever possible on a date between 1 and 2 months from the date of commencement of a proceeding;

(b) an Interim Hearing (where such a hearing is required), which will be listed at an appropriate time having regard to urgency and the need for preparation of any required expert and other evidence;

(c) a Dispute Resolution event (such as mediation, a Conciliation Conference or Family Dispute Resolution, as appropriate), which is to be completed either within the Court or externally, as early as possible and usually no later than 5 months after the date of commencement of a proceeding;

(d) for matters which remain unresolved following Dispute Resolution and are not allocated to the Fast Track Hearing List, a Compliance and Readiness Hearing will be listed following Dispute Resolution and as close as possible to 6 months after commencement of a proceeding;

(e) if determined appropriate by the allocated trial Judge, a Trial Management Hearing will be held prior to the Final Hearing;

(f) subject to the parties complying with relevant orders and directions, a Final Hearing will be listed on a date earlier than 12 months from the date of filing; and

(g) the Court will endeavour to deliver judgment within 3 months of completion of the trial.

5.4 In addition to the pathway outlined above, the Court may, in circumstances of urgency or if at any time it considers that to do so would facilitate the resolution or determination of the proceeding in accordance with the overarching purpose or otherwise promote the interests of justice:

(a) make such directions as the Court considers appropriate;

(b) list a matter for an immediate or further hearing, conference or callover;

(c) determine that one or more of the court events outlined in this Central Practice Direction be dispensed with; or

(d) otherwise depart from the case management practices outlined in this Central Practice Direction.

5.5 Other than where a consent position is being presented to the Court, the parties, and if represented, their lawyers, must attend every court event in person or by any electronic means directed by the presiding judicial officer unless excused by the Court.

First Court Event

5.6 On a date between 1 and 2 months after the date of filing, applications will be listed for a directions hearing before a Judicial Registrar.

5.7 In advance of the First Court Event:

(a) all documents relied upon by either party must be filed and served in accordance with the requirements of the Family Law Rules;

(b) the lawyer for each represented party must provide to the Court and to each other party a notice:

(i) confirming that their client has made a genuine attempt to resolve the issues in dispute unless a relevant exception applies; and

(ii) indicating whether the party is in receipt of legal aid funding, and if not, providing particulars of:

A. the total costs and disbursements incurred by the party in the proceeding to date;

B. an estimate of the anticipated costs expected to be incurred in each stage of the proceeding; and

C. an estimate of the likely duration of the final hearing and the total anticipated costs and disbursements expected to be incurred for the remainder of the proceeding.

5.8 Subject to paragraph 5.9, any party who is not required by the Family Law Rules to file a *Financial Statement* must provide to the Court and to each other party a signed statement indicating whether they are in receipt of legal aid funding, and if not, providing particulars of their income, expenses and any

other circumstance relevant to their ability to contribute to the cost of any necessary expert report(s) and/or private Dispute Resolution event(s).

5.9 Paragraph 5.8 does not apply where the parties have agreed to privately fund the expert report and/or Dispute Resolution event.

5.10 The primary purposes of the First Court Event are:

(a) to ascertain whether any orders or directions can be made by consent;

(b) to ascertain whether the parties have complied with the pre-action procedures and made a genuine attempt to resolve the issues in dispute unless it is unsafe to do so, and if not, to make provision for them to do so prior to the proceeding progressing further;

(c) to identify the issues in dispute between the parties and the steps required to resolve them;

(d) to consider whether an Interim Hearing is required;

(e) to consider whether the matter is suitable for court-based Dispute Resolution, having regard to the means and resources of the parties, or alternatively, whether it is suitable for referral to external dispute resolution (or, with the consent of the parties, arbitration);

(f) to consider whether the matter is one that requires individual case management;

(g) to consider whether any application before the Court is of such urgency or exceptional circumstances that it requires immediate transfer to a Judge or Senior Judicial Registrar; and

(h) to make such orders and directions as are necessary (including but not limited to orders for future listings, the preparation of expert reports, the issuing of subpoenas and the exchange of documents) to facilitate the future progression of the proceeding in a manner consistent with the overarching purpose.

5.11 In parenting cases, the Court will consider whether:

(a) an Independent Children's Lawyer should be appointed; and

(b) a written or oral report from a social scientist, psychologist, psychiatrist or other appropriately qualified expert is necessary and/or likely to promote the resolution or determination of the proceeding in accordance with the overarching purpose.

5.12 In financial cases, the Court will consider:

(a) an appropriate timetable for the exchange of any outstanding documents;

(b) whether a single expert report is necessary and/or likely to promote the resolution or determination of the proceeding in accordance with the overarching purpose; and

(c) subject to the consent of the parties, the suitability of the matter for arbitration.

5.13 Unless an exceptional circumstance exists, orders and directions will be made at the First Court Event to prepare the matter for Dispute Resolution by requiring the parties to identify the issues in dispute, and the evidence bearing on those issues, in sufficient detail to facilitate the conduct of meaningful Dispute Resolution without undue costs.

5.14 Where a matter is referred for external Dispute Resolution, directions will also be made at the First Court Date giving the matter a date for a Compliance and Readiness Hearing and making any necessary associated directions. Where matters resolve prior to the Compliance and Readiness Hearing date, consent orders should be submitted to the Judicial Registrar who presided over the First Court Event for consideration in chambers.

Interim Hearing

5.15 Other than in the case of urgency or exceptional circumstances, an application for interim orders contained within an *Initiating Application* or a *Response to Initiating Application* will be listed on a date before a Senior Judicial Registrar or, where necessary or appropriate in the circumstances of the case, a Judge, after the First Court Event.

5.16 An Interim Hearing will usually be listed prior to Dispute Resolution taking place, however, in the interests of case management, the Court may, where appropriate, defer, until after Dispute Resolution has been completed, any

interlocutory application which appears to the Court to be unnecessary to decide prior to Dispute Resolution. Parties are encouraged to keep interlocutory applications to a minimum.

5.17 Where practicable and in circumstances where it does not cause undue delay, an Interim Hearing will be listed for a date after receipt of any expert reports, subpoenaed documents and responses from child protection agencies which are likely to assist with the determination of the interlocutory issues in dispute. The applicant (or if applicable, the applicant's lawyer) must ensure that all expert reports which are relevant to the issues to be determined at the Interim Hearing are filed and served no later than 7 days prior to the hearing.

5.18 No less than 2 business days prior to the Interim Hearing, the parties must forward to the Associate of the Judge or Senior Judicial Registrar before whom the matter is listed:

(a) a minute setting out the precise terms of orders sought at the hearing; and

(b) a *Case Outline document* in the approved form setting out the party's major contentions in relation to the issues to be determined at the Interim Hearing and a list of documents to be relied upon at the Interim Hearing (such list to be limited to documents which are relevant to the particular issues to be determined at that hearing).

5.19 Parties and their lawyers must ensure that all interlocutory applications are ready to proceed on the date of the Interim Hearing. It should not be assumed that adjournment applications made on the day of the hearing will be granted or that multiple Interim Hearing dates will be provided. Costs consequences may flow from attendance for Interim Hearings in the absence of proper preparation and readiness to proceed.

5.20 In order to reduce delay and enhance the efficiency of hearings, parties are requested to inform the Court of instances where they do not require the delivery of formal reasons in relation to procedural and/or other interlocutory decisions.

Subsequent interlocutory applications

5.21 After a proceeding has commenced, unless a relevant exemption applies, a party may not file an *Application in a Proceeding* seeking interim orders, without complying with rule 4.03 of the Family Law Rules, which requires the parties to make a reasonable and genuine attempt to settle the issue to which the application relates.

5.22 Other than in urgent circumstances relating to issues of high risk, parties may each file a maximum of two *Applications in a Proceeding* without leave. Leave of the Court must be sought as part of any relevant interlocutory application. A leave application may be determined by a Judicial Registrar in chambers. An application brought by an Independent Children's Lawyer does not require leave.

5.23 Parties to an *Application in a Proceeding* must comply with the requirements of Chapter 5 of the Family Law Rules in respect to the length of affidavits.

5.24 Each party may rely upon one affidavit sworn or affirmed by themselves and one affidavit by each witness, provided the evidence is relevant and cannot be given by a party to the proceeding.

5.25 To ensure procedural fairness, parties may not rely on affidavits filed later than two business days prior to a hearing without leave of the Court.

Dispute Resolution

5.26 Unless exceptional circumstances exist, within 5 months of the date of commencement of a proceeding, the parties will be required to participate in Dispute Resolution.

5.27 For proceedings involving family violence and safety concerns, consideration will be given to whether Dispute Resolution is appropriate and whether measures can be implemented which will facilitate Dispute Resolution occurring as safely as possible. Such measures may include Dispute Resolution being conducted electronically or in separate rooms.

5.28 If the Court is satisfied, having regard to the means and resources of the parties, that it is appropriate for the parties to participate in a privately funded Dispute Resolution event, they will be referred to:

(a) private mediation; and/or

(b) private, legal aid facilitated or community-based FDR; and/or

(c) arbitration with the consent of the parties.

5.29 If the Court is satisfied, having regard to the means and resources of the parties, that it is appropriate for the parties to participate in court-based Dispute Resolution, a matter will be listed on a date within 5 months from the date of filing for:

(a) a Conciliation Conference; or

(b) a Judicial Settlement Conference; and/or

(c) a Family Dispute Resolution Conference pursuant to section 13C(1)(b) of the Family Law Act with a Judicial Registrar (as a Family Dispute Resolution Practitioner (**FDRP**)) and, where appropriate, a Court Child Expert (as a Family Counsellor).

5.30 All forms of Dispute Resolution, including mediation and conferences, whether court-based or external, will be confidential. No evidence of any documents prepared for such events, offers, representations or concessions made at or in preparation for any such events will be admissible in court proceedings, other than in the limited circumstances permitted by section 131 of the *Evidence Act 1995* (Cth). However, judicial officers and FDRPs conducting court-based events will be expected to provide to the parties and place on the court file a *Certificate of Dispute Resolution* in the approved form setting out whether the matter was resolved, partially resolved or not resolved, and whether one or more of the parties failed to attend or to make a genuine effort to resolve the issues in dispute. In the case of external Dispute Resolution events, the applicant will be required to request that the person conducting the Dispute Resolution event provide a *Certificate of Dispute Resolution*, and to file and serve the Certificate upon receipt.

5.31 Parties will be expected to engage in good faith negotiations and make a genuine effort to resolve all issues in dispute at a Dispute Resolution event, and where this is not possible, to utilise Dispute Resolution to limit or reduce the areas of dispute and to record all agreements reached in writing.

5.32 In appropriate cases, the parties will also be encouraged to give consideration to participating in arbitration.

5.33 The Court expects parties to place themselves and each other party in the most informed position possible for any Dispute Resolution event, including by providing sufficient disclosure and obtaining any required valuations, so as to enable such events to be productive and to maximise the prospects of resolution.

5.34 If a Dispute Resolution event does not proceed as a result of a party's non-attendance or non-compliance with orders, directions or the Family Law Rules, costs consequences may follow.

5.35 A second or subsequent Dispute Resolution event may be ordered or listed at any time if it appears to the Court that such event is reasonably likely to assist with the resolution or narrowing of the issues in dispute between the parties.

5.36 A *Confidential Case Outline* is to be provided on a without prejudice basis and will not be placed on the Court file. Such documents are privileged and may not be used in contested hearings or for purposes other than genuine attempts to resolve disputes between the parties.

Private Mediation and External Family Dispute Resolution

5.37 If the parties participate in private mediation or external FDR, the parties must, unless the Court otherwise directs or the mediator/FDRP and the parties otherwise agree:

(a) provide (via their lawyers where applicable) to the mediator/FDRP and to each other party, no less than 7 days prior to the mediation/FDR:

(i) all relevant Applications, Responses, Affidavits and Financial Statements filed in the proceedings;

(ii) any relevant expert reports;

(iii) any document exchanged between the parties which is directly relevant to an issue remaining in dispute (with relevant passages highlighted);

(iv) a minute setting out the precise terms of orders required to give effect to their settlement proposal;

(v) a confidential case outline document in the approved form;

(vi) in a financial case:

A. particulars of any financial resource;

B. a valuation or market appraisal of any real estate or other asset the value of which is in dispute;

C. the most recent statement for, and where applicable, valuations of any superannuation interests;

D. written confirmation that the superannuation trustee of any fund that may be the subject of a splitting order has been afforded procedural fairness;

(vii) any current or previous family violence orders between the parties;

(viii) a *Certificate of Dispute Resolution* for completion by the mediator/FDRP; and

(ix) any other documents reasonably requested by the mediator/FDRP;

(b) ensure that all documents required to be disclosed pursuant to Chapter 6 of the Family Law Rules have been exchanged no later than 14 days prior to the mediation/FDR;

(c) comply with all reasonable requests made by the mediator/FDRP; and

(d) personally attend the mediation/FDR (if applicable, by electronic means) and make a genuine attempt to resolve issues in dispute.

5.38 In advance of an external Dispute Resolution event, the lawyer for each represented party must provide to his or her client and to each other party a notice indicating whether the party is in receipt of legal aid funding, and if not, providing particulars of:

(a) the total costs and disbursements incurred by the party in the proceeding to date;

(b) an estimate of the anticipated costs expected to be incurred in each remaining stage of the proceeding; and

(c) an estimate of the likely duration of the final hearing and the total anticipated costs and disbursements expected to be incurred for the remainder of the proceeding.

5.39 If the proceedings are not resolved at an external Dispute Resolution event, within 7 days of the date of the event, the parties are to serve upon one another written notices identifying any changes to:

(a) those issue(s) that remain in dispute;

(b) the expected duration of the final hearing; and

(c) in relation to represented parties, the expected costs of and up to the final hearing.

5.40 The parties must not include in their statements of the issues remaining in dispute any issue that is unmeritorious, has no reasonable prospects of success or is pursued for an improper purpose. The Court may consider a party's conduct in unreasonably pursuing such issues in relation to the question of costs.

Court-Based Dispute Resolution

5.41 If a matter is listed for a court-based Dispute Resolution event, such as a Conciliation Conference, Judicial Settlement Conference or court-based FDR, the parties must, unless the Court otherwise directs, no later than 14 days prior to the event:

(a) ensure that all documents required to be exchanged between the parties pursuant to Chapter 6 of the Family Law Rules have been exchanged;

(b) ensure that any private expert report that is relevant to the proceedings has been filed; and

(c) provide to the Court and each other party a single collated bundle of documents comprising:

(i) a Confidential Case Outline in the approved form;

(ii) a minute setting out the precise terms of orders required to give effect to the entitlement asserted;

(iii) a copy of any document exchanged between the parties which is directly relevant to an issue remaining in dispute (with relevant passages highlighted); and

(iv) in a financial case:

A. particulars of any financial resource and a valuation or market appraisal of any real estate or other asset, the value of which is in dispute;

B. statements for, and where applicable, valuations of any superannuation interests;

C. written confirmation that the superannuation trustee of any fund that may be the subject of a splitting order has been afforded procedural fairness.

5.42 In advance of a court-based Dispute Resolution event, the lawyer for each represented party must provide to the Court and to each other party a notice indicating whether or not the party is in receipt of legal aid funding, and if not, providing particulars of:

(a) the total costs and disbursements incurred by the party in the proceeding to date;

(b) an estimate of the anticipated costs expected to be incurred in each remaining stage of the proceeding; and

(c) an estimate of the total anticipated costs and disbursements expected to be incurred for the remainder of the proceeding.

5.43 If appropriate and consistent with the overarching purpose, directions may be made for a court-based Dispute Resolution event to take place by electronic means.

5.44 Orders excusing a party or legal representative from personal attendance at court-based Dispute Resolution should ordinarily be sought at the First Court

Event, but may also be sought from a Judicial Registrar in chambers, on written request, no later than 7 days prior to the date of the Dispute Resolution event.

5.45 At court-based Dispute Resolution, the Judicial Registrar will assess compliance with previous procedural orders made. Costs consequences may flow from non-compliance. If the requirements of the Family Law Rules or relevant orders have not been properly complied with, or if, for any other reason, realistic negotiations are unable to be held, the Judicial Registrar may:

(a) list the matter in an appropriate list (with or without loss of priority);

(b) list the matter before a Judge or Judicial Registrar for further directions or consideration of dismissal or an undefended hearing;

(c) direct that the parties provide an explanation to the Court as to the lack of compliance; and/or

(d) make an order as to costs.

5.46 In the event that the matter is not resolved at a court-based Dispute Resolution event, the presiding judicial officer shall prepare, provide to the parties and place on the Court file, a *Certificate of Dispute Resolution* indicating:

(a) whether the parties were in attendance (including by electronic means);

(b) any significant issues (including valuations) remaining in dispute;

(c) whether the parties have complied with the costs notification requirements of the Family Law Rules; and

(d) whether the parties have complied with their obligations under the Family Law Rules and any directions of the Court, including making a genuine attempt to resolve the issues in dispute.

5.47 At the conclusion of a court-based Dispute Resolution event, the presiding judicial officer may make such further and other directions as may be appropriate to assist with the progress of the proceeding, including listing the matter for a Compliance and Readiness Hearing.

Fast Track Hearing List

5.48 The Court may, in its discretion, refer a matter to the Fast Track Hearing List at any point prior to the allocation of a Final Hearing date. This will ordinarily occur following the parties' participation in Dispute Resolution.

5.49 In determining whether a matter is suitable for the Fast Track Hearing List, the Court will consider whether:

(a) the parties have been unable to resolve the matter despite making a genuine effort to do so;

(b) the parties have clearly identified the issues in dispute between them;

(c) the issue or issues to be determined are discrete or are of limited scope;

(d) reports from experts have been obtained and any relevant requisitions and conferences have been held with those experts;

(e) the parties agree that the matter may be determined:

(i) on the basis of affidavit evidence without the need for cross examination, and

(ii) on the basis of written submissions of no more than 10 pages setting out the relevant contentions as to law and fact or oral submissions not exceeding one hour in respect to each party;

(f) the parties will be in a position to present their case on the provision of 28 days' notice of the hearing date; and

(g) the parties consent to the use of short form reasons for judgment.

5.50 The Court may, in the interests of achieving the overarching purpose, refer all or part of a proceeding or a discrete issue to a Fast Track Hearing.

Compliance and Readiness Hearing

5.51 For cases other than those allocated to the Fast Track Hearing List, on a date as close as possible to 6 months from the date of filing, a matter will be listed for a Compliance and Readiness Hearing (**CRH**) before a Judge or Senior Judicial Registrar.

5.52 Prior to the CRH, parties and their lawyers are expected to have conferred and made a genuine effort to identify and agree on a trial plan, including the timing and duration of the evidence of each witness proposed to be called.

5.53 No later than 7 days prior to the CRH, each party must file and serve:

(a) an Amended Application or Response, as appropriate, setting out the precise orders sought, if the most recently filed Application or Response is not current;

(b) an undertaking as to disclosure in accordance with rule 6.02 of the Family Law Rules; and

(c) a *Certificate of Readiness* in the approved form:

(i) confirming that the party has complied with all relevant orders and directions;

(ii) confirming that all valuations, enquiries and expert reports have been completed;

(iii) confirming that the matter is ready to be listed for a Final Hearing and if not, why not; and

(iv) setting out:

A. the likely duration of the final hearing;

B. whether or not the party is in receipt of legal aid funding, and if not, providing particulars of:

a. the total costs and disbursements incurred by the party in the proceeding to date; and

b. an estimate of the likely duration of the Final Hearing and anticipated costs and disbursements expected to be incurred for the remainder of the proceeding.

5.54 The primary purposes of the CRH are:

(a) to ensure that the parties have made a genuine attempt to attempt to resolve the issues in dispute to the extent that it is safe to do so;

(b) to ensure that the parties have complied with their duty of disclosure and have provided all relevant documents to the other party or parties;

(c) to ensure that the parties have complied with all relevant orders and directions;

(d) to consider the costs and other consequences that are to flow from any non-compliance;

(e) to confirm that the parties have attended to necessary preparations for the matter to be listed for Final Hearing;

(f) to identify the issues which are truly necessary to be determined at trial and the evidence that is truly necessary to be adduced in order for those issues to be determined;

(g) to consider whether determination of a discrete issue would likely facilitate the timely resolution of the overall proceedings;

(h) to ensure that the relevant issues of fact and law and the relief sought by the parties are appropriately defined and particularised including, if appropriate, by way of formal pleadings or short form statements of contention;

(i) in a financial proceeding, to ensure that the parties have exchanged compulsory offers of settlement pursuant to rule 4.11 of the Family Law Rules;

(j) to consider whether the matter is suitable for transfer to Division 1 or Division 2 (as applicable) prior to Final Hearing, having regard to the issues remaining in dispute and the capacity of each Division to hear the proceeding;

(k) to allocate the matter to a Judge for Final Hearing;

(l) to make such orders and directions as will ensure the is resolved in a timely, economical and just manner, including the filing of party and witness affidavits, the service of expert reports and the issuing of subpoenas;

(m) to consider whether any orders pursuant to section 102NA of the Family Law Act must or should be made;

(n) unless the Court is satisfied that it would be inappropriate to do so, to make trial directions which will usually be in accordance with Annexure A;

(o) to make directions as to the consequences of default in compliance with any trial directions made;

(p) to ensure that the matter is otherwise ready to be allocated a Final Hearing date; and

(q) to list the matter for Final Hearing.

5.55 If the CRH does not proceed or the matter is unable to be listed for Final Hearing as a consequence of the non-compliance of one party, consideration will be given to a grant of leave to the complying party or parties to proceed on an undefended basis and to orders for costs.

5.56 If the contents of a *Certificate of Readiness* are found not to be accurate, consideration will be given to a grant of leave to the non-defaulting party or parties to proceed on an undefended basis and to orders for costs.

5.57 At the CRH, the parties or their legal representatives must (in addition to being able to address the relevant matters referred to in the Family Law Rules):

(a) be able to advise the Court of the following matters:

(i) the factual issues requiring determination at a Final Hearing;

(ii) the main legal and factual contentions advanced in relation to each issue in dispute;

(iii) the proposed witnesses (including expert witnesses) and their availability;

(iv) whether interpreters are required;

(v) whether video facilities are required;

(vi) whether expert evidence should be given by video link;

(vii) the estimated length of the Final Hearing and proposed trial plan; and

(viii) whether any other step is required in order for the matter to proceed to a Final Hearing; and

(b) provide a minute setting out, with precision, any procedural directions sought to aid the limiting of issues or time required for the Final Hearing.

Trial Management Hearing

5.58 Should the allocated trial Judge consider it appropriate and consistent with the overarching purpose, the matter may be listed before the trial Judge for a Trial Management Hearing prior to the Final Hearing.

5.59 Where a party is represented, it is expected that, unless it is not reasonably practicable, the representative who appears at the Trial Management Hearing will be the same representative who will be appearing at the Final Hearing or the solicitor with the conduct of the matter.

5.60 The purposes of the Trial Management Hearing include:

(a) to consider the costs and other consequences that are to flow from any non-compliance with trial directions orders, Family Law Rules or Practice Directions; and

(b) to make any other directions as to the conduct of the Final Hearing in a manner that is consistent with the overarching purpose as the allocated trial Judge considers appropriate.

Final Hearing

5.61 Wherever possible, matters will be listed for Final Hearing on a date earlier than 12 months from the commencement of the proceedings.

5.62 No less than 14 days' notice must be provided to the Court Children's Service in the event that a party seeks to cross-examine a Court Child Expert at the Final Hearing. A party who provides such notice must immediately notify the Court Children's Service if the Court Child Expert is no longer required.

Unreached matters

5.63 In the event that a matter is ready to proceed but is not reached on the date upon which it is listed for Final Hearing:

(a) the parties may be directed to engage in Dispute Resolution on the day upon which the Final Hearing was listed; or

(b) subject to availability and the suitability of the matter for electronic hearing, the matter may be referred to be heard by another Judge, including a Judge sitting in another registry and/or if ordered by the Chief Justice (or a delegate of the Chief Justice), a Judge sitting in the Division of the Court other than that in which the matter was originally listed; and

(c) if the matter cannot be resolved or heard on the date upon which it was listed, it will be referred to the National Assessment Team for relisting before the first available Judge after that time which may, subject to the suitability of the matter for electronic hearing, be a Judge sitting in another registry and/or if ordered by the Chief Justice (or a delegate of the Chief Justice) a Judge sitting in the Division of the Court other than that in which the matter was originally listed.

Judgment

5.64 Judgments will be delivered as soon as reasonably practicable after the receipt of final submissions and usually within 3 months.

5.65 If a party wishes to enquire about the delivery of an overdue judgment, the enquiry should be made:

(a) if the party is represented, in accordance with the protocols in place between the Court and the applicable professional body; or

(b) if the party is unrepresented, by letter to the Chief Justice (Division 1) or Chief Judge (Division 2) in relation to the decision of a Judge, or the Principal Registrar in relation to the decision of a Judicial Registrar or Senior Judicial Registrar.

5.66 Such an enquiry may include a request that the identity of the party making the enquiry not be revealed to the judicial officer concerned, and every endeavour will be made to accommodate such requests.

6. CIRCUITS AND SPECIALIST LISTS

6.1 The Court recognises that for proceedings in regional and rural circuits, which will be individually case managed by the relevant circuit Judge and/or Judicial Registrar, strict application of the case management processes outlined above will not always be possible. In such cases, a flexible, common sense approach is to be applied.

6.2 For cases in specialist lists, the Practice Direction particular to that list may vary the extent to which the case management process outlined in this Practice Direction applies.

ANNEXURE A: STANDARD TRIAL DIRECTIONS

1. No later than 21 days prior to the trial date, the Applicant file and serve:

   (a) any Amended Initiating Application setting out with particularity the precise final orders sought;

   (b) an updated single consolidated trial affidavit;

   (c) other witness affidavits upon which they intend to rely; and

   (d) in property proceedings, an updated Financial Statement.

2. No later than 14 days prior to the trial date, the Respondent file and serve:

   (a) any Amended Response setting out with particularity the precise final orders sought;

   (b) an updated single consolidated trial affidavit;

   (c) other witness affidavits upon which they intend to rely; and

   (d) in property proceedings, an updated Financial Statement.

3. No later than 7 days prior to the trial date:

   (a) the Applicant file and serve any affidavit(s) in reply addressing only the evidence presented in the Respondent(s)' affidavits; and

   (b) the Independent Children's Lawyer file and serve any affidavits relied upon.

4. No later than 2 days prior to the trial date, all parties are to file and serve a case outline document in the approved form which shall not, without leave, exceed 5 pages in respect of parenting issues and 5 pages in respect of financial issues and shall include:

   (a) a list of the material relied upon;

   (b) a brief chronology listing significant events that are relevant to the issues to be determined by the Court;

   (c) in a parenting case, a summary of contentions as to section 60CC factors relied upon to satisfy the Court that it is the best interests of the child(ren) to make the orders sought;

(d) in a property case, a table listing all of the assets, liabilities and financial resources claimed to be relevant to the dispute, with the values contended for by each party and the main contentions on disputes as to:

- the assets and liabilities available for division;
- the value of items where the value is in dispute;
- contributions claimed or contended for and the percentage-based adjustment on contributions contended for;
- relevant s 75(2) / 90SF(3) factors and the percentage-based adjustment contended for; and
- any further factors relevant to determining a 'just and equitable' division of property.

5. Lists of authorities which Counsel intend to cite to the Court during the presentation of any argument, together with copies of any unreported decisions to which it is intended that reference shall be made, should be filed and served not later than two days prior to the hearing.

6. Each party will be permitted to rely on one consolidated trial affidavit and one affidavit in reply (if applicable) only. Reliance on earlier or additional affidavits will not be permitted.

7. All documents required to be filed and all other documents sought to be relied upon (including any court books) must be filed or provided (as applicable) in electronic format to the Court and to each other party.