



## FEDERAL MAGISTRATES COURT OF AUSTRALIA

### NOTICE TO LITIGANTS AND PRACTITIONERS

#### Interim Parenting Proceedings – Sydney Registry

##### Part 1 Preliminary

1. This Practice Note sets out arrangements for the management of interim parenting proceedings in the Federal Magistrates Court.
2. The conduct of proceedings in the Court is governed by the *Federal Magistrates Act 1999* and the *Federal Magistrates Court Rules 2001*. Consistent with its legislative mandate, the Court applies the rules of court flexibly and with the objective of simplifying procedures to the greatest possible extent.
3. *It is expected that parties and their representatives will assist the Court in ensuring proceedings are conducted expeditiously with the objective of early identification of the issues in dispute.*

##### Commencing proceedings

4. Proceedings in the Court are commenced by application supported by an affidavit. If an interim order is sought at the commencement this can be sought by way of the Initiating Application, otherwise an interim order sought after commencement should be by way of an Application in a Case.
5. Rule 4.01 outlines the requirements for commencing a proceeding. The person filing an application whether seeking final, interim or procedural orders must file an affidavit stating the facts relied on.

##### Interim hearing

6. The Court may conduct an interim hearing that deals with all or part of an application and make orders that are effective until the matter can be finally determined. The Court aims to limit the number of interim hearings in preference to giving a matter an early final hearing.
7. An application for final orders may include an application for interim or procedural orders. However a person may not file an application for an interim or procedural order unless an application for a final order has been made in the proceeding.

8. The interim hearing will be circumscribed and *cross examination/oral evidence-in-chief will only be allowed in exceptional circumstances.*
9. The facts relied on by the applicant/respondent must be set out succinctly. Division 15.4 sets out rules in relation to affidavits.
10. Pursuant to section 51 of the *Federal Magistrates Act 1999* the Court directs that unless otherwise directed in the particular proceedings, affidavit material must **be confined to 10 pages.**
11. A party to an **interim application** may rely on
  - one affidavit *by that party* and
  - one affidavit *by each witness* - providing the evidence is relevant
12. The rules provides that the court may order material to be struck out of an affidavit at any stage in a proceeding if the material is inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative or contains opinions of persons not qualified to give them and unless otherwise directed, any costs caused by the material struck out must be paid by the party who filed the affidavit: r 15.29.
13. The respondent to an Application should file a response to an application together with an affidavit in reply.
14. The affidavit in response is not a pleading nor a submission. Like the applicant's affidavit the respondent should confine his or her supporting affidavit to facts relevant to his/her case.
15. Where **the respondent** seeks interim orders other than those sought by the applicant and the applicant opposes these orders, the applicant may file a second affidavit setting out the facts relied on.
16. This notice can be found on the Court's website: [www.fmc.gov.au](http://www.fmc.gov.au).



J PASCOE

Chief Federal Magistrate