

Interim Hearings in Family Law

PRESENTED BY SENIOR JUDICIAL REGISTRAR
HILES, GAVIN HOWARD SC & MERRILYN DAVIS

2026 FAMILY LAW CONFERENCE - 19 AUGUST

Interim Hearings in the Federal Circuit and Family Court of Australia (Divisions 1 & 2)

SENIOR JUDICIAL REGISTRAR HILES

GAVIN HOWARD SC

MERRILYN DAVIS



STYLE FIRST

- Organised
- Calm
- Eye contact
- Not too quick
- Don't read

Fake it 'til you make it.



RULES

FCFCOA (Family Law) Rules

1.31 – Court may dispense with compliance or full compliance with rules

5.06 affidavit in reply

Matthews & Norris [2017] FamCA 69 [on rule 9.07]. Interim parenting orders in place. Father filed to enforce orders, Mother responded to alter orders, father filed affidavit in reply. Court acknowledged Mother's response raised fresh issue (alteration of parenting orders, not just enforcement). Father allowed to rely on second affidavit.

5.08 25 pages + 10 annexures

5.09 Hearing limited to 2 hours, cross examination only in exceptional circumstances.

RULES

FCFCOA (Div 2) (Family Law) Rules

2.02 modification of the Family Law Rules – 10 pages and 5 annexures

5.04 Affidavit in support. Content – overarching purpose – proportionate costs

Focus – do not go over page limit

PREPARATION

Some primary points - feel free to prep notes but don't read a script.

Personal preference as to how to address but be organised – should be clear when moving from one topic/point to another

Mostly should not need to refer to cases/legislation as they'll be in your case outline.

What do I want and why can I have it. Focus.

Questions from the bench are everything. Don't leave them unanswered or say – “*that's covered in my prepared remarks, I'll get there, just wait*”

SUBSTANCE

What do I want and why do I get it.

Distil from material the essential issues

Be able to identify the orders you are seeking. Is it an interim issue?

Does the SJR have delegated jurisdiction?

litigation funding & existence of de facto relationship

USEFUL TOOLS

No interim property matter without a balance sheet.

Aide memoir is not evidence but to assist in understanding evidence.

Eg: Comparison of parties 'reasonable expenses' in a spouse maintenance matter.

Partial property - what is effect of each party's orders sought in final applications.

Focus.

EVIDENCE ACT 1995 - SECT 50

Proof of voluminous or complex documents

(1) The court may, on the application of a party, direct that the party may adduce evidence of the contents of 2 or more documents in question in the form of a summary if the court is satisfied that it would not otherwise be possible conveniently to examine the evidence because of the volume or complexity of the documents in question.

(2) The court may only make such a direction if the party seeking to adduce the evidence in the form of a summary has:

(a) Served on each other party a copy of the summary that discloses the name and address of the person who prepared the summary; and

(b) given each other party a **reasonable opportunity** to examine or copy the documents in question.

Bank accounts - highlighter

FINDINGS ON INTERIMS

Never say never

Conflict of facts doesn't mean ignore issue – *Walshe & Walshe* [2025] FedCFamC1A 231 and *Franklyn* [2019] FamCAFC 256 [73]

Tender bundle can be useful but focus focus focus

Relying on other party evidence can be fantastic

INTERIMS THAT AREN'T INTERIMS

Robing Rules – counsel and solicitor advocates do not robe for interims unless taking evidence or the interim is part of a final hearing

Section 65DAAA – robe

Contravention Hearing – robe

Section 44 out of time ??