



Update to the family law profession: Commencement of the new Federal Circuit and Family Court of Australia

The Family Court of Australia and Federal Circuit Court of Australia released [information](#) last week outlining changes to court operations that will occur on the commencement of the Federal Circuit and Family Court of Australia (FCFCOA) from 1 September 2021.

On the first of September we will see a new Court that is innovative, fair and efficient and focuses on risk, responsiveness and resolution, by:

- ✓ Improving early risk identification and safety of children and vulnerable parties
- ✓ Encouraging smarter ways to separate with less acrimony, less cost and more dispute resolution, where it is safe to do so
- ✓ Expecting compliance with court orders
- ✓ Enhancing national access to justice for vulnerable parties and regional communities through the use of technology, and
- ✓ Resolving up to 90 per cent of cases within 12 months, where possible.

The following details provide an overview of changes to the FCFCOA's harmonised rules, practice directions, forms and website. There is an overview of how appeals will be dealt with in the new structure and changes to Child Dispute Services and registrar roles. Details of the new National Contraventions List is also provided.

The majority of the changes relate to the FCFCOA's family law jurisdiction. This update provides information about those changes, but some, such as the new website and new forms, also relate to the Court's general federal law jurisdiction.

Case management

Details of the new case management pathway was provided in last week's [update](#). In addition to that information, practitioners are advised that as the new system commences, decisions will be made as to which matters in the existing courts are moved into the new pathway. Practitioners can assume that their listings will remain as they are unless otherwise advised.

When matters are being allocated a first return listing, they will be allocated according to whether they are property-only matters.

Harmonised rules

Following extensive consultation with the profession and other stakeholders, the harmonised family law rules developed by the Joint Rules Harmonisation Working Group is close to being finalised and are currently being settled into a formal instrument by the Office of Parliamentary Counsel.

A vote of the Judges of each Court will take place in August, and the rules will commence on 1 September 2021.



Family Law practice directions

A general practice direction, which sets out guidelines for the management of family law proceedings in the FCFCOA, has been drafted and was distributed to stakeholders in the profession for feedback this week.

A suite of 14 new practice directions has also been developed and will be made available from 1 September to accompany the harmonised family law rules. These practice directions provide guidance for litigants and practitioners about the various practice areas within the family law jurisdiction.

Early versions of the practice directions were circulated to a number of stakeholders for review alongside the draft harmonised rules, and have since been updated in light of feedback and the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021*. These practice directions are intended to come into effect on 1 September 2021 and are aligned with, and referred to in, the harmonised family law rules.

Appeals

The FCFCOA Division 1 will retain jurisdiction to hear family law appeals. However, there will be no separate Appeal Division. All Division 1 Judges will be able to hear appeals either as a single Judge or as part of a Full Court. All appeals of FCFCOA (Division 2) and family law Magistrates of Western Australia decisions will be heard by a single Judge, unless the Chief Justice considers it appropriate for the appeal to be heard by a Full Court.

A single national appeals filing registry will also be introduced to provide a centralised and nationally consistent method of filing an appeal.

National Contravention List

A National Contravention List will be introduced on 1 September 2021 to address the expectation that all parties will comply with orders of the Court, and that alleged breaches of court orders will be taken seriously and will be dealt with quickly. The key objectives of the National Contravention List are:

- a. to efficiently deal with Applications on a national basis in a timely, cost effective and safe way for all litigants,
- b. for Applications to be given a first return date within 14 days of filing,
- c. to ensure compliance with court orders by all parties,
- d. to impose appropriate penalties or sanctions where a contravention has been proved and where a party has failed to demonstrate they had a reasonable excuse for non-compliance with court orders,
- e. to proactively facilitate the resolution of underlying issues in disputes that lead to the filing of such applications,
- f. to triage appropriate matters to dispute resolution, and
- g. to be responsive to a party's wishes to resolve matters without recourse to additional litigation.

A Practice Direction for the new Contravention List will accompany the commencement of the list.

Registrar – change of title

As part of the overall changes, registrars will have different titles, which appropriately reflect the nature of the work that they have been, and will be, doing. Senior Registrars will be known as Senior Judicial Registrars, Registrars will be Judicial Registrars, and Assistant Registrars will be Deputy Registrars.



It should be emphasised that these titles, including the “judicial registrar” title, do not change the powers or role of a registrar, noting also that the previous Judicial Registrar position, being a statutory appointment, ceases to exist with the new legislation coming into effect on 1 September, and should not be confused with the new title.

Child Dispute Services and Family Consultants

There will be changes to the work to be undertaken by Child Dispute Services as part of the FCFCOA. In place of the present section 11F assessment process, there will be a slightly more fulsome report known as a Child Impact Report, which will be designed to assist the parties in parenting matters to reach agreement wherever possible, and to provide expert guidance to the Court for interim hearings. For matters that proceed to the trial preparation phase, the current family report model will remain available, with additional options available, including reports in relation to specific issues, and addendum reports building on the original Child Impact Report.

Family Consultants will become known as Court Child Experts, in recognition of the fact that their role and expertise is broader than the legislative Family Consultant role, and Child Dispute Services will become known as the Court Children’s Service.

Forms

A comprehensive review of all existing (family law and general federal law) forms is currently being undertaken to align with the FCFCOA commencing on 1 September 2021. Most form changes will involve updating references to legislation, names and terms where required. In addition, where possible, some forms will undergo more substantive changes to improve functionality and usability.

Practitioners are advised that the name of the form for an *Application in a Case*, will be changing to *Application in a Proceeding*.

Importantly, the Court will provide for transitional arrangements for the use of new forms with a 90 day grace period for old forms. These changes also apply to general federal law

A new website – fcfcoa.gov.au

A new website will be launched for 1 September 2021 which has been designed to provide users with simplified access to, and navigation of, court information. Instead of having two separate websites, the single website will make it easier for the profession, litigants and the public to source specific information about family law, migration and general federal law.

There will also be three videos published on the new website. One is aimed at assisting parties, before they commence litigation, to consider better ways to separate and encourage the use of dispute resolution. The other two videos provide details about the new FCFCOA, and a step-by-step guide on what parties can expect when they come to court.

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