



20 August 2021

## Update to the profession (No. 4): Commencement of the new Federal Circuit and Family Court of Australia

On 1 September 2021, the Family Court of Australia (FCoA) and Federal Circuit Court of Australia (FCC) will be amalgamated to create the Federal Circuit and Family Court of Australia (FCFCOA). Division 1 of the FCFCOA will deal only with family law matters, while Division 2 will deal with both family law and general federal law matters.

The Courts have released a series of [updates](#) for the legal profession and the public to advise them of changes to court operations. This fourth update provides additional information that primarily relates to the family law jurisdiction of the FCFCOA, specifically in regard to the new harmonised Rules, the Courts' Central Practice Direction, and the new case management pathway in family law proceedings.

### **The family law jurisdiction**

The Courts have been working diligently to build a system that is innovative, focuses on the safety of children and vulnerable litigants, and that changes the culture and conversation around family law.

From 1 September we will see a new structure that is modern, fair and focuses on risk, responsiveness and earlier 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
- ✓ Aiming to resolve up to 90 per cent of cases within 12 months.

### ***Finalisation of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021***

After more than two years of incredibly hard and complex work undertaken by many individual Judges, Registrars and staff of the Courts, together with the Courts' Joint Rules Harmonisation Working Group, the FCoA and FCC can today announce that the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* have been voted on and approved by Judges of the Courts.

These Rules will be made in Division 1 of the FCFCOA under section 76 of the *Federal Circuit and Family Court of Australia Act 2021* with effect from 1 September 2021, and will be adopted by Division 2 under a short rule instrument made under section 217 of the *Federal Circuit and Family Court of Australia Act 2021*. This is necessary to ensure power is delegated by Judges of the FCC/Division 2 to Registrars to exercise the powers in Schedule 4 in Division 2, and also to house certain Rules not applicable to Division 1 (for example, the Rules about transfer from Division 2 to Division 1).

Achieving a unified set of Rules and forms across the two Courts has been a key objective of the Hon Chief Justice Alstergren since his appointment to the Courts in 2017, acknowledging that the family law system had long been criticised as being confusing, inefficient and causing unacceptable delays. The creation of a single set of harmonised Rules, together with a single point of entry, additional resources, and case management reform, go towards addressing those criticisms which have been outlined in the many inquiries, reviews and reports on the family law system. Simply, the Courts are building a system that aims to provide a safer, quicker and less costly way of resolving disputes.



The Courts established the Joint Rules Harmonisation Working Group in April 2019, which was initially Chaired by Hon Dr Chris Jessup QC, later by the Hon Ray Finkelstein QC, and assisted by two barristers to oversee the rules project. It was imperative that an independent Chair was appointed to this position as they provided objectivity, transparency and confidence in the process.

The process of achieving a single set of Rules has involved significant consultation with all Judges of the Courts, as well as key stakeholders and professional bodies. Each of the national, State and Territory Bar Associations, Law Societies, Legal Aid commissions, and child welfare agencies, as well as ATSI legal services, CLCs, women's and men's legal services were provided with the opportunity to provide comments on the draft, which were gratefully received and mostly integrated into the various drafts.

The Courts are extremely grateful to the Judges, members of the Joint Rules Harmonisation Working Group, the profession, and all other stakeholders for their engagement with this important achievement.

### ***Central Practice Direction: Family law case management***

A Central Practice Direction for the family law jurisdiction of the FCFCOA has been developed to consolidate critical elements of family law case management that will be applied in both Divisions of the FCFCOA. The Central Practice Direction confirms the Core Principles applicable to family law proceedings and establishes a consistent national case management system.

A copy of the [Central Practice Direction](#) is available from the website. In summary, it outlines an expected approach to family law litigation in the FCFCOA which is designed to:

- Reduce 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;
- Ensure the safety of families and children; and
- Achieve the overarching purpose of facilitating the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.

A series of supplementary Practice Directions have been developed and are to be read within the framework established by the overarching Central Practice Direction.

The Court takes the overarching purpose enshrined in the FCFCOA Act seriously, and expects parties and lawyers to do likewise. Parties and their lawyers are asked to consider the best way to conduct their cases in accordance with the overarching purpose, but can be assured that the safety of parties and children and protection from the consequences of abuse and violence remains a priority for the Court.

### ***Ten Core Principles***

Fundamental to the Central Practice Direction is the continuation of the 10 Core Principles that underpin the exercise of the family law jurisdiction of the Courts and are designed to facilitate the safe, just and timely resolution of family law matters. Parties and lawyers should familiarise themselves with, and follow, the core principles prior to commencing litigation. The core principles are outlined in detail within the Central Practice Direction, but in brief, they include the following:

- 1) Risk
- 2) Parties', lawyers' and the Court's obligations and overarching purpose
- 3) Efficient and effective use of resources
- 4) Approach to case management
- 5) Importance of Dispute Resolution
- 6) Non-compliance
- 7) Lawyers' obligations about costs



- 8) Identifying and narrowing issues in dispute
- 9) Preparation for hearings
- 10) Efficient and timely disposition of cases

### ***Case management pathway***

Details of the pre-action procedures were outlined in the [Update to the Profession No. 3](#).

Once proceedings are commenced, they will generally follow a nationally consistent case management pathway, which is set out in general terms in the following diagram:



#### **1) First Court Event**

**Type of event:** Directions hearing before a Judicial Registrar.

**Timeframe:** Expected to be within 8 weeks from the date of filing.

**Purpose:** To assess and triage the matter and make appropriate court orders to facilitate the timely disposition of the matter. This will include assessing compliance with all pre-filing requirements, ensuring that all required documents have been filed, assessing the need for an interim hearing and any expert evidence, making directions for dispute resolution and identifying matters which are appropriate for transfer to Division 1. Risk issues will also be considered at this hearing, and cases may be allocated to specialist lists including the Magellan List.

#### **2) Interim Hearing (if required)**

**Type of event:** Hearing before a Senior Judicial Registrar, or if necessary, a Judge.

**Timeframe:** At an appropriate time having regard to the urgency of the matter and the need to obtain appropriate evidence.

**Purpose:** Determination of any interim applications brought by the parties.

#### **3) Dispute Resolution**

**Type of event:** Dispute resolution event such as mediation, Conciliation Conference or Family Dispute Resolution, conducted either externally or within the Court.

**Timeframe:** Expected to be within 5 months from date of filing.

**Purpose:** The FCFCOA pathway places significant emphasis on dispute resolution. This is designed to assist parties to resolve their cases and enable them to cease their engagement with the court system whenever this can be done safely.

#### **4) Compliance and Readiness Hearing**

**Type of event:** Compliance hearing before a Judge or Senior Judicial Registrar.

**Timeframe:** Following Dispute Resolution event, and expected to be no later than 6 months from the date of filing.

**Purpose:** If matters remain unresolved after Dispute Resolution the judicial officer presiding over this event, will check to see if parties have complied with court orders and directions to ensure that parties have made a genuine attempt to resolve issues. This event will involve a robust exploration of the reasons for continuation of the matter and options for bringing it to a conclusion prior to



trial. Further consideration as to the appropriate Division for each matter will be undertaken at this hearing. This hearing will be used to allocate a trial date.

**5) Trial Management Hearing** (if required)

**Type of event:** Directions hearing before the allocated trial Judge.

**Timeframe:** Prior to commencement of trial, if considered appropriate by trial Judge.

**Purpose:** The making of any further orders and directions as considered necessary or appropriate by the trial Judge.

**6) Trial**

**Type of event:** Final hearing.

**Timeframe:** The aim is for matters that have not resolved, and require a trial, to be listed within 12 months from the date of filing. This may be subject to the parties complying with relevant orders and directions.

**Purpose:** Determination of outstanding applications.

***Change to Child Dispute Services and Family Consultants***

From 1 September, the Courts' Child Dispute Services will become known as the Court Children's Service (CCS), and the Courts' on-staff psychologists and social workers will be renamed Court Child Experts to reflect the broadening of their duties to those of both family consultant and family counsellor as defined in the Family Law Act.

If input from a Court Child Expert is necessary at an early stage of proceedings, the report prepared will be a Child Impact Report. This new style of report will seek to:

- Focus the parties on the impact the dispute is having on the child/ren
- Give a voice to the child at the early stage of proceedings
- Inform the dispute resolution event
- Provide evidence for an interim hearing where necessary, and
- Assist the Court in identifying what evidence is required for trial.

At the later stage, and if dispute resolution was not appropriate or was unsuccessful, a further report may be ordered and prepared. The types of reports that will be completed at this stage of proceedings will be:

- A Family Report as is currently prepared,
- A Specific Issues Report – if only circumscribed issues remain outstanding, and
- A Child Impact Addendum Report – building on the Child Impact Report where necessary.

These later stage reports will only be ordered and released in preparation for a trial, so that the Court's resources are used as efficiently and effectively as possible. Parties, and their legal representatives, should not expect to receive updated or additional family reports where they are not necessary.

The Court will continue to use the services of Regulation 7 Family Consultants to prepare Family Reports.

***General Federal Law Rules for Division 2***

The *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy Rules) 2021* and the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* are in the process of being finalised. As outlined in the [Update to the Profession No. 3](#), there will not be a great deal of difference in the



new Rules, at this stage for general federal law cases. It is proposed that a more fulsome review and update of the GFL and Bankruptcy Rules be undertaken in the future at a time that will allow for broader consultation.

Note that the FCC's existing general federal law jurisdiction and fair work jurisdiction will not be impacted by the establishment of the FCFCOA, with no changes to the existing case management or appeal pathway.

***Further information***

Practitioners are encouraged to review previous updates which can be accessed from the [FCoA website](#) and [FCC website](#). Practitioners and the public can subscribe to receive updates from the Courts via the [FCoA website](#) or [FCC website](#).

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