FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

The Family Court and Federal Circuit Court merger- what does it mean for you?

On 17 February 2021, the Federal Circuit and Family Court of Australia Bill 2019 was passed into law.

The major provision of the Bill will see the merging of the Family Court and Federal Circuit Court into one court, the Federal Circuit and Family Court of Australia (FCFCOA). This new court will commence operation on 1 September 2021 under the Federal Circuit and Family Court of Australia Act 2021 (Cth).

With such major changes about to happen, our clients understandably have a lot of questions about what the merger will look like to them and how it will affect them if they are in the Court system already or looking to issue proceedings shortly.

Within the FCFCOA, there will be two divisions. Division One (the old Family Court) will hear more complex matters and appeals, and Division Two (the old Federal Circuit Court) hearing the majority of new matters. Division Two will also continue to hear general federal law matters, although the bulk of its work will remain with Family Law matters.

The merger has certainly not been without controversy, with many groups advocating against the merger. Now that the legislation has been passed and the merger about to happen we are intently looking at the proposed changes and the effects they will have on our clients.

With the FCFCOA's commencement rapidly approaching, we attempt to address some of the many questions both the public and profession have about the practical effects of the new court system.

What is the reason for the Family Court and Federal Circuit Court Merger?

The Australian Federal Government (the government) has agreed with the majority of stakeholders that the current system "does not serve families as it should." There are presently two sets of Rules, one for each Court and under the new system there will be just one set of Rules. Many in the profession have, for some time, called for one set of Rules and so it is pleasing to see this occurring as we hope it will make the system less complex to navigate.
The government's view on the changes is that the uniform rules will "improve user experience" and reduce wait times and delays.

The FCFCOA's objectives mirror this position, which are to:

1. Ensure justice is delivered effectively and efficiently;
2. Provide for just outcomes, in particular, for family law or child support proceedings;
3. Provide a framework to facilitate cooperation between the two divisions of the Federal Circuit and Family Court of Australia, with the aim of ensuring;

- Common rules of court and forms;
- Common practices and procedures; and
- Common approaches to case management.

However, many stakeholders, such as the Law Council of Australia, have questioned this statement, given the Federal Circuit Court was originally created to reduce the workload of the Family Court.

How many judges will sit in the new FCFCOA?

At present, the government has made a guarantee of no fewer than 25 judges sitting in Division One. The government has also previously represented that there will be 35 judges sitting in Division One and 43 judges in Division Two at the time of the merger. However, that number currently sits at 33 and 40 judges respectively. The extremely high caseload of our Judges was and is a concern to us. Under the deal done to pass the Legislation, South Australia was to receive three additional Judges. We are yet to see those appointed but hope that this will come imminently. There have already been a number of Senior Judicial and Judicial Registrars hired in South Australia to help with the workload.

Where do I file my application for Family Law

matter?

All initiating Applications for new Family Law matters, such as property settlements and children's issues, will be filed in an FCFCOA registry, with most matters continuing to be heard by Division Two.

However, under the new harmonised rules, the Chief Justice of the FCFCOA can direct that a matter be transferred from Division Two to Division One. The new rules are set to provide statutory guidance to the Chief Justice when making these determinations.

Where do I file an appeal?

The current Appellate division of the Family Court will cease (Family Court Judges who only hear Appeals). As mentioned above, Division One, and all judges who hold office in that division will be tasked with hearing appeals. Those appeals will now only be heard by a single Judge. Division One has jurisdiction to hear and determine appeals from:

- A judgment from Division One, exercising its original or appellate jurisdiction; or
- A judgment from Division Two; or
- A judgment of a State Supreme Court or State Family Court exercising jurisdiction under the Family Law Act 1975, Child Support (Assessment) Act 1989 or Child Support (Registration and Collection) Act 1988.

The High Court will consider any further appeals from the FCFCOA.

I have an existing matter in the Federal Circuit/Family Court – what's going to happen?

The Chief Justice will be required to consider whether proceedings in a matter that are pending in Division One, will stay there or be transferred to Division two. This will be based on whether the resources of Division One are sufficient to hear and determine the proceedings, as well as the interests of the administration of justice. A party cannot appeal a decision of the Chief Justice to transfer (or not transfer) matters.

Unfortunately, we are yet to see a copy of the new rules, so the statutory guidance to be given to the Chief Justice is somewhat unclear. However, there is no guarantee that matters before the Family Court will remain there or be transferred at present.

Conversely, there seems to be some discretion that complex matters can be moved into the more specialised Division One as required. While it appears that each matter will be dealt with on a case-by-case basis, it would be logical to presume that matters part-heard in a certain Court will not be changed without good reason.

Much of the changes to come with the merger will need to be explored over the months or even, years after the FCFCOA's introduction. What is not readily apparent is whether the merger will alleviate the longstanding issues of cost and delay that so many parties experience under the current system.

We will be providing regular updates on the Court merger in particular once the new Rules are released and shortly after the merger.

If you have any questions or concerns about the upcoming merger, including how the same may affect your matter, please **contact us**.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.