



FEDERAL CIRCUIT
AND FAMILY COURT
OF AUSTRALIA

The New Federal Circuit and Family Court of Australia Two months In

On 1 September 2021 the Family Court of Australia and the Federal Court of Australia merged into the Federal Circuit and Family Court of Australia (FCFCOA). This new Court has now been in operation for approximately 6 weeks and with it a new Court system with new rules and procedures.

We have observed a significant change in the way our clients' family law matters are now dealt with. This is primarily in regards to new Court forms, new timelines and different Court officials at hearings.

The FCFCOA's objectives 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;
 1. Common rules of court and forms;
 2. Common practices and procedures; and
 3. Common approaches to case management.

The new rules and practices are outlined in the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (the 'new rules'). The new rules provide extra steps for parties and solicitors to comply with before issuing proceedings. The new Court has a particular focus on alternative dispute resolution and pre-action procedures to ensure parties have exhausted all avenues to resolve their matters prior to their first court date.

With the new rules, we also have a number of new forms. For example, a party is now required to file a genuine steps certificate with any application stating their compliance with the pre-action procedures, and if they have not complied, their reason for non-compliance. This document will also outline the genuine steps that have been taken to resolve the dispute.

In addition to compliance with the pre-action procedures, when initiating proceedings, parties must file additional documents. A parenting questionnaire or a property questionnaire (depending on the matter type) is required to be filed along with the initiating application, affidavit, genuine steps certificate and an undertaking as to disclosure.

Failure to comply with the relevant pre-action procedures may result in the application being adjourned or stayed until the non-compliance has been rectified.

In parenting matters, an updated version of the Notice of Child Abuse, Family Violence or Risk, with much further detail in comparison to the Federal Circuit Court's Notice of Risk, is required to be filed.

Each of these documents together provide a more comprehensive outline of the matter and can assist in providing the Court with all the relevant information prior to the first Court date..

The aim of these new documents appears to be to 'front end' the work on a matter so that the parties and their lawyers are putting in more work prior to the commencement of a matter rather than simply issuing proceedings. This approach is to define the issues in dispute earlier, resolve the matter where possible, and to put more information before the Court. This should lead to many matters being resolved quicker.

Parties are also required to exchange and file costs notices to the other parties and the Court outlining the current costs to date as well as estimates of costs to various stages of the matter. These costs notices may be used by the Court to assist in case management by taking into account the proportionality of the costs to the issues in dispute.

The FCFCOA has a case management pathway as follows:

1. First Court Event;
2. Interim Hearing (if required);
3. Dispute Resolution;
4. Compliance and Readiness Hearing;
5. Trial Management Hearing (if required);
6. Final Hearing.

One major difference is that now all initial hearings will be heard before Judicial Registrars ('Registrars') in the first instances, rather than Judges as in the previous Court system. Registrars have also been renamed to Senior Judicial Registrars, Judicial Registrars and Deputy Registrars in which each type of Registrar has additional powers that have been delegated to them.

The FCFCOA also claims that it strives to minimise the time that the proceedings remain in Court and, wherever possible, with a timeline as follows:

1. First Court event to occur between 1 and 2 months after filing;

2. Dispute Resolution events to occur within 5 months after filing, unless exceptional circumstances exist;
3. Compulsory Offers of settlement within 28 days of an unsuccessful Conciliation Conference or Mediation with respect to property;
4. Compliance and Readiness hearings as close as possible to 6 months after filing, and following an unsuccessful dispute resolution event;
5. Final Hearing dates earlier than 12 months from the commencement of the proceedings, wherever possible.

There are also new titles for the work undertaken by Child Dispute Services, which is now known as the Court Children's Service as part of the new Court system. Family Consultants have become Court Child Experts and they will produce a Child Impact Report as part of the section 11F assessment process.

At Andersons, we have been keeping up with the Practice Directions and new set of rules to ensure that we deliver the same high quality services that you can expect from the Family Law team.

If you have any questions or concerns about the new Court system, including how the same may affect matters already in Court, please contact our specialised [Family Law team](#) today.