

Introducing the new Federal Circuit and Family Court of Australia

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On 1 September 2021, The Federal Circuit and Family Court of Australia (FCFCOA) commenced operation. The FCFCOA is a newly merged court which amalgamated the previous Federal Circuit Court of Australia and the Family Court of Australia. In this blog, we explore how the court operates under the new changes and what the changes mean for you if you have a court case currently in the system, or if you have recently separated.

Why the merger of the previously separate family courts?

The new court was created in an attempt to help reduce delays and backlogs in the family law system and previous court structure.

What is the difference between Division 1 and Division 2?

Whilst there is only one court, the new court now comprises two divisions.

Essentially, Division 1 replicates the previous Family Court of Australia, and Division 2 replicates the previous Federal Circuit Court.

Division 1 deals with only family law matters (including appeals), whereas Division 2 hears both family law and general federal law matters.

Division 1 of the FCFCOA

Division 1 of the FCFCOA is a continuation of the previous Family Court of Australia. Division 1 deals only with family law matters and consists of 35 specialist family law judges who are all able to hear both trials and appeals.

This is different from the previous Appeals Division of the Family Court, which consisted of only ten judges who were specifically appointed to deal with family law appeals.

Division 2 of the FCFCOA

Division 2 of the FCFCOA is a continuation of the previous Federal Circuit Court of Australia.

Division 2 deals with family law, migration and other general federal law matters. It consists of 76 judges, 55 of which are specialists in family law and the remainder of judges with expertise in different areas of general federal law and migration.

Commencing proceedings – Division 1 or Division 2?

All family law matters will now begin in Division 2, meaning there is a single-entry point for all family law matters.

After filing your application and at the first hearing of your matter, a Registrar will consider the issues in dispute and then determine if the application should proceed in Division 1 or Division 2.

Most matters will continue on in Division 2, however, those matters that are identified as being more complex in nature will be transferred to Division 1.

Matters that are assessed as being urgent and/or high risk will continue to be prioritised.

What does this new court mean for your family law matter?

A key focus of the new court system is to better improve case management which in turn will assist parties in resolving matters sooner, with minimal court intervention and less expense.

The merger means that there are now harmonised forms and rules between the two divisions. The aim of the new forms is to focus the parties on identifying the issues in dispute with a view that the provision of such information will assist the court in its case management of the matter.

In terms of minimising costs, the new rules include:

- an imposed limit on the length of affidavits;
- keeping interim hearings to under two hours; and
- only allowing cross-examinations in extremely limited circumstances.

Additionally, new consequences will come into play for non-compliance with the rules.

How a family lawyer can help

Despite the recent changes to the court, the team at Smith Family Law continue to focus on resolving matters without the need to issue proceedings. Having said that, we appreciate that there are times when it is necessary to consider taking such steps.

Please contact us if you need advice about commencing an application in the FCFCOA or would like assistance regarding a current application.

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