



Structural reform of the federal courts

Fact Sheet 1 – Overview of reforms

30 May 2018

On 1 January 2019, a new Federal Circuit and Family Court of Australia (FCFCA) will be established through the amalgamation of the Family Court of Australia (Family Court) and the Federal Circuit Court of Australia (FCC). A new Family Law Appeal Division (FLAD) in the Federal Court of Australia (Federal Court) will also be established to hear all appeals in family law matters from the FCFCA (and some appeals from the Family Court of Western Australia).

The current court structure and overlapping family law jurisdiction between the Family Court and FCC leads to significant inefficiencies, confusion, delays, additional costs and unequal experiences for many families. This results in poor outcomes for some children and families. The reforms will address these inefficiencies.

The establishment of a single new court will create a consistent pathway for Australian families in having their family law disputes dealt with in the first instance. The reforms are designed to maximise the use of highly skilled and trained judicial officers, and court resources, to significantly improve access to justice for Australian families; improve the efficiency of the family law system; reduce the backlog of matters in the family law courts; and drive faster, cheaper and more consistent resolution of disputes for Australian families.

Structure of the FCFCA

The FCFCA will be divided into two divisions. Division 1 will comprise the existing judges of the Family Court, and Division 2 will comprise the existing judges of the FCC.

Division 1 of the FCFCA will deal only with family law matters, while Division 2 will deal with both family law and general federal law matters. The FCC's existing general federal law jurisdiction and fair work jurisdiction will not be impacted by the establishment of the FCFCA, with no changes to the existing appeal pathway. The current Fair Work Division of the FCC will be retained in Division 2 of the FCFCA.

There will be no changes to jurisdiction or operation of the High Court of Australia, the Family Court of Western Australia, or other state and territory courts that deal with family law cases.

Operation of the FCFCA in family law matters

The FCFCA will have a single federal point of entry for all Australian family law matters. Urgent and high risk cases will continue to be prioritised, and each case will be allocated at the earliest possible point to the relevant judge and division with the right expertise and capacity.

Additionally, the FCFCA will operate under the leadership of one Chief Justice with the support of one Deputy Chief Justice, who will each hold a dual commission to both Divisions of the FCFCA. The appointment of a single Chief Justice and Deputy Chief Justice allows for more effective allocation of cases between the two Divisions and enables the FCFCA to operate under a common case management process, resulting in a more efficient and consistent handling of family law matters.

By adopting a common case management approach across both divisions, families will know that their disputes will be dealt with by the FCFCFA as a whole, enabling information to be readily available about what to expect and when, thereby standardising the experience of litigants, and providing an early sense of the likely cost implications of lodging a family law application upfront.

Handling of appeals

A fundamental change in establishing the FCFCFA will be the removal of a substantial part of the appellate jurisdiction of the Family Court, allowing considerable judicial resources currently used to hear appeals to focus on hearing first instance family law matters. This will contribute to the new court being able to hear more matters each year, reduce the backlog in first instance family law matters and contribute to reducing median case waiting times.

The FCFCFA will retain jurisdiction to hear appeals on family law matters from State and Territory courts of summary jurisdiction. This appellate jurisdiction will be extended to both divisions of the FCFCFA.

All family law appeals from the FCFCFA and the Family Court of Western Australia will be heard by the new FLAD of the Federal Court. There will be no changes to the rights to appeal as currently provided for under the *Family Law Act 1975*.

Timing of reforms

The Government expects to introduce legislation in the Spring Parliamentary sittings. Subject to passage of legislation, the FCFCFA and the FLAD will commence operation on 1 January 2019.

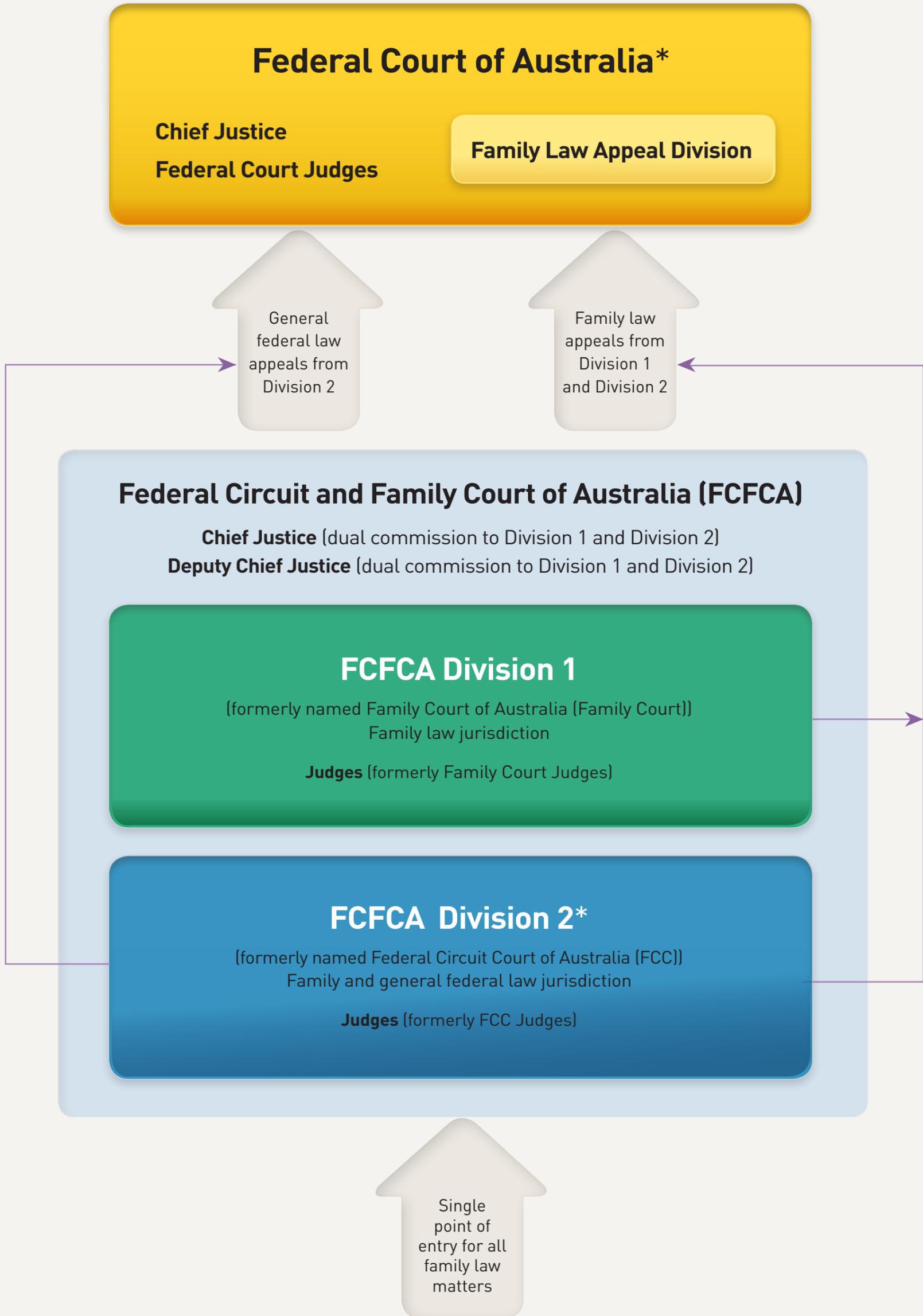
Initially, the Federal Court and both divisions of the FCFCFA will maintain their existing court rules. Following consultation with the judiciary, legal profession and other stakeholders, the new court will update its rules with a view to achieving consistency in forms, procedures, administrative matters and practice directions.

Transitional arrangements will be put in place for proceedings before the courts at the time of the commencement of the reforms to ensure that matters before the courts at that time are dealt with as effectively and efficiently as possible, and with the minimum of inconvenience and delay.

Further information about the reforms is available on the Attorney-General's Department website (www.ag.gov.au).



COURT REFORM STRUCTURE



*Existing General and Fair Work Divisions of the Federal Court and FCC will remain unchanged



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Fact Sheet 2 – Facts and figures

30 May 2018

In 2016, there were 46,604 divorces granted in Australia. This represents a decrease of 3.9 per cent from the 48,517 divorces granted in 2015, and a decrease of 11.2 per cent from the 52,466 divorces in 1996.

In 2016, divorces involving children represented 46.9 per cent of all divorces granted. The number of children involved in divorces totalled 40,202.

This does not take into account the many other separating defacto couples, who may have children or other significant property matters to be settled.

Seventy per cent of separating couples will resolve their family law parenting and property matters between themselves outside of court, often with the assistance of government-funded support services, such as those offered by Family Relationship Centres.

Those separating families that require court assistance currently rely primarily on the two courts responsible for family law at the federal level – the Family Court of Australia (Family Court) and the Federal Circuit Court of Australia (FCC).

In 2016-17, around 106,000 family law applications were made to the two courts. This includes:

- almost 44,000 applications for divorce in the FCC
- around 14,200 consent order applications in the Family Court
- 25,600 interim order applications across both courts
- almost 20,500 final order applications across both courts.

Although divorce applications, consent orders and interim orders make up the majority of applications across the two courts, final orders are the key driver of family law caseload. Final orders require determination and therefore require significant court time and judicial effort.

In practice, the FCC finalises over 85 per cent of final order family law matters in the federal court system and 90 per cent of the FCC's caseload consists of family law matters.

Current court structures are contributing to delays for Australian families

The number of family law final order applications filed in the Family Court and the FCC per year has remained relatively constant over a number of years.

The number of applications for final orders in family law matters over the past five years has remained close to 22,000 each year.

Over the past five years, however, the number of family law matters pending in the Family Court and the FCC has grown from 17,200 to 21,000. Since 2012-13, the age of pending cases has also increased, with approximately 29 per cent of FCC and 42 per cent of Family Court pending final order cases now older than 12 months.

The national median time to trial has also increased from 10.8 months to 15.2 months in the FCC, and from 11.5 months to 17 months in the Family Court.

On average, approximately 350 appeals have been filed in the Appeal Division of the Family Court each year in the past five years.

Appeals from the FCC to the Family Court can be heard by a single judge. In 2016-17, however, 75 per cent of appeals from the FCC were heard by a Full Bench of three Family Court judges.

This is in contrast to the Federal Court, where approximately 88 per cent of appeals from the FCC in general federal law matters are heard by a single judge.

Current court structures and overlapping family law jurisdiction cause confusion and unequal experiences for many families

The family law application process varies significantly between the Family Court and the FCC. This is the result of variations in the courts' legislative frameworks (including their respective Acts, Regulations and Rules) and operational and cultural practices that have evolved over time. As a result:

- Costs for families are estimated to be up to four times more in the Family Court than the FCC
- Matters in the Family Court require 45 per cent more attendances by litigants than in the FCC
- Days per trial in the Family Court are double that in the FCC.

In 2016-17, almost 1,200 families had their disputes transferred between the Family Court and the FCC.

The waiting time to have a case transferred averaged 11.1 months in the FCC and 4.6 months in the Family Court. In both cases, litigants had to restart their proceedings using the procedures of the alternate court.

Structural reforms will enable more family law matters to be dealt with each and every year

It is estimated that structural reforms will improve the efficiency of the federal family law system by up to a third, with the potential in time to allow up to an extra 8,000 cases to be resolved each and every year.

- It is estimated that consolidating first instance family law jurisdiction into a single court entity with a single point of entry could result in finalising up to an additional 3,500 family law matters each and every year.
- It is estimated that a common structured initial case management process and managed case listing could result in up to 3,000 additional family law matters being finalised every year.
- It is estimated that better management of appeals could result in up to 1,500 additional family law matters being finalised every year.

As a result the proposed reforms will enable the courts to clear more cases than they receive in applications each year – reducing the currently growing backlog of pending cases on hand, and reducing the average time it takes to deal with family law matters.