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***PART 1: FAMILY AND FEDERAL CIRCUIT COURT REFORM;  
HOW MIGHT THIS IMPACT A TRUSTEE IN  
BANKRUPTCY AND/OR A LIQUIDATOR?***

# STATISTICS

- In 2016-17, around 106,000 family law applications were made to the Federal Circuit Court (“FCC”) and the Family Court of Australia (“the Family Court”).



■ Divorce ■ Consent Orders ■ Interim Order Applications ■ Final Order Applications



- The number of cases that are now dealt with in the Family Court, at first instance, represents a small percentage of all family law cases as the majority of cases are now dealt with in the FCC.
- Over the last 5 years family law matters pending in the Family Court and the FCC has grown from 17,200 to 21,000.



## Provisional annual personal insolvency statistics 2017-2018 \*courtesy of AFSA



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State / territory	Bankruptcies (Parts IV and XI)	Debt agreements (Part IX)	Personal insolvency agreements (Part X)	Total personal insolvency activity
NSW	4,604	4,464	50	9,118
ACT	186	220	2	408
Vic	3,066	2,622	34	5,722
Qld	5,013	4,160	62	9,235
SA	1,138	765	21	1,924
NT	158	191	3	352
WA	2,064	1,918	38	4,020
Tas	464	332	3	799
Other	118	162	1	281
<b>Total</b>	<b>16,811</b>	<b>14,834</b>	<b>214</b>	<b>31,859</b>

# THE EXISTING FAMILY COURTS

- The Family Court was established by Parliament in 1975.
- The FCC was established by the *Federal Circuit Court of Australia Act 1999* (formerly the Federal Magistrates Act)
- The FCC Court was established to provide a simple and accessible alternative to litigation in the Federal Court of Australia (Federal Court) and the Family Court of Australia (Family Court) and to relieve the workload of those Courts.



# *Jurisdiction*

- The Family Court is a superior Court which has original jurisdiction to hear family law matters.
- ***Family Court acts as an appeal Court from decisions of single Judges of the Family Court and the Federal Circuit Court.***



- The jurisdiction of the FCC has grown since its inception and broadly includes:-
  - family law and child support
  - administrative law
  - **bankruptcy**
  - human rights
  - privacy
  - \* industrial law
  - \* admiralty law
  - \* copyright
  - \* migration
  - \* trade practices.



- The jurisdiction conferred on the FCC is **concurrent** with that of the Family Court and the Federal Court of Australia.
- Ie, the FCC has **no exclusive** jurisdiction and in some areas its jurisdiction is less extensive than that of the Federal Court and the Family Court.







In the family law area, the FCC has jurisdiction in the following matters various areas but importantly for Trustees in Bankruptcy:

- **property disputes pursuant to s79 of the Family Law Act**
- enforcement of orders made by either the Federal Circuit Court or the Family Court.

# THE PROBLEMS WITH THE EXISTING STRUCTURE

- Inefficiencies
- Confusion
- Delays
- Additional costs
- Unequal experiences for many families **AND** Trustees.

Result...



poor outcomes for some children and families AND Trustees AND Liquidators.

- The reforms aim to address the inefficiencies.



# The Rules (inconsistency)

	Family Court Rules	Federal Circuit Court Rules
Commencement of Proceedings	Initiating Application	Application
Interim Order	Application in a case	Application in a case
Response	Response to Initiating Application	Response
Reply	Must be filed if different orders sought	May be filed
Address for Service	Address for Service Bankruptcy – Notice of Appearance	Notice of Address for Service
Adding a party	By filling an amended application or response	By filing an application
Removing a party	By filing an Application in a case plus Affidavit	By filing an application in a case
Response to the Interim Application	Must file if seeking different orders	Not provided for in the Rules



# Notice of Address for Service

Family Law Rules ~ RULE 8.05(3)

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any question/s.

Filed in:

- Family Court of Australia  
 Family Court of Western Australia  
 Federal Circuit Court of Australia  
 Other (specify) \_\_\_\_\_

Filed on behalf of:

Full name: \_\_\_\_\_

Client ID \_\_\_\_\_

File number \_\_\_\_\_

Filed at \_\_\_\_\_

Filed on \_\_\_\_\_

Court location \_\_\_\_\_

Next Court date (if known) \_\_\_\_\_

Use this form to inform the Court and the other parties in your case of the address at which Court documents and notices can be served on you, or to inform the Court and the other parties in your case that your contact address (address for service) in Australia has changed.

## Part A About you

- 1 What is your family name as used now? \_\_\_\_\_ Your given names? \_\_\_\_\_

## Part B Address for service

- 2 What is your contact address (address for service) in Australia?  
You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents. If you give a lawyer's address, include the name of the law firm.

_____	
_____	
_____	State _____ Postcode _____
Phone _____	Fax* _____
DX _____	Email* _____
Lawyer's code _____	

\* Please do not include a fax or email address unless you are willing to receive documents from the Court and other parties in that way.

- 3 Is this your address for service for all applications with the above file number?  
 Yes GO TO PART C  
 No List the application/s for which this address is to be used:  
\_\_\_\_\_



*Daniela Fazio*  
LAWYERS PTY LTD



# Bankruptcy – Notice of Appearance

Family Law Rules ~ RULE 26.06

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any questions.

Filed in:

- Family Court of Australia  
 Family Court of Western Australia

Filed on behalf of:

Full name: \_\_\_\_\_

MARK [X] IN THE BOX THAT APPLIES TO YOU

- Trustee  
 Other (specify) \_\_\_\_\_

This form is used by a person who wishes to oppose the orders sought in an application in a bankruptcy case and/or attend the hearing and/or take part in an examination.

Client ID \_\_\_\_\_

File number \_\_\_\_\_

Name of bankrupt estate  
\_\_\_\_\_

Filed at \_\_\_\_\_

Filed on \_\_\_\_\_

Court location \_\_\_\_\_

Next Court date (if known) \_\_\_\_\_

## Part A About the parties

**1** **APPLICANT 1**  
Family name as used now  
\_\_\_\_\_  
Given names  
\_\_\_\_\_  
 Male  Female

**APPLICANT 2**  
Family name as used now  
\_\_\_\_\_  
Given names  
\_\_\_\_\_  
 Male  Female

**RESPONDENT 1**  
Family name as used now  
\_\_\_\_\_  
Given names  
\_\_\_\_\_  
 Male  Female

**RESPONDENT 2**  
Family name as used now  
\_\_\_\_\_  
Given names  
\_\_\_\_\_  
 Male  Female

**2** What is your contact address (address for service) in Australia?  
You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents. If you give a lawyer's address, include the name of the law firm.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
State \_\_\_\_\_ Postcode \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \* \_\_\_\_\_



**FEDERAL CIRCUIT COURT OF AUSTRALIA**

**REGISTRY:**

<b>File number:</b> .....	<b>COURT USE ONLY</b>
<b>Court Location</b> .....	
<b>Court date</b> .....	
<b>Court time</b> .....	

**NOTICE OF ADDRESS FOR SERVICE**

1. **Name:** Family name (surname) .....  
Given name(s) .....

2. **Name of solicitor:** ..... code .....  
*(if applicable)*

3. **Address for service:** .....  
.....

**Tel:** Tel ( ) ..... **Fax\* ( )** .....

**DX and suburb/town:** .....  
*(if applicable)*

**Email\*:** .....

4. **Is this the address for service of Notices for all proceedings with the above file number?**

Yes  No  only the proceedings concerning (give details)  
|

5. **Is this form giving Notice of a change legal representation?**

Yes  No

I hereby give notice that I have been appointed as the lawyer for the above named party OR

I hereby give notice that I am now acting in person.

\* Please do not include a fax or email address unless you are willing to receive documents from the Court and other parties in that way.

**This form can be signed by the person named in 1 or his or her lawyer**



# *The Procedures*

## The Family Court

### ***Disputes about both parenting and financial issues – Registrar Managed Court events***

- First hearing will be run by the Registrar
- *Case assessment conference*
- *Conciliation conference (if appropriate)*





## ***Judge managed court events***

- The judge will decide which Court events will be held to decide both the parenting and financial aspects of the case.
- Financial issues may be considered by a Judge as part of a less adversarial trial if both parties agree and the judge permits this.
- Federal Circuit Court operates a docket system. This means that the Application will usually be determined by the same Judge from the first Court date to the final hearing.

## Federal Circuit Court

- First court date usually before the Judge. On this day, the Court may:
  - give directions
  - approve proposed consent orders
  - conduct an interim hearing
  - finalise the application
  - fix a date for an interim or final hearing.

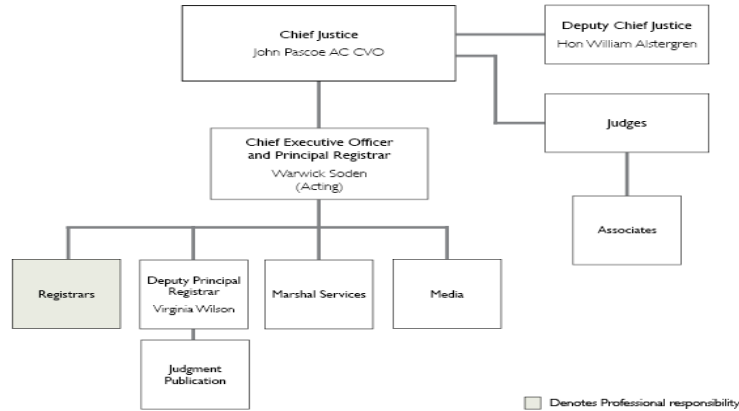
## *The Judicial Officers including Registrars and administrative staff*

- **Family Court**
  - 2 Divisions:-
    - the Appeal Division; and
    - the General Division.
- 1 Chief Justice and 1 Deputy Chief Justice.



# Organisational Structure – Family Court

## Organisational Structure of the Family Court of Australia



## Services provided under MOU arrangements

Federal Court of Australia  
**CORPORATE SERVICES**  
 Executive Director, Corporate  
 Catherine Sullivan

Federal Circuit Court of Australia  
**CHILD DISPUTE SERVICES**  
 Principal, Child Dispute Services  
 Janet Carmichael

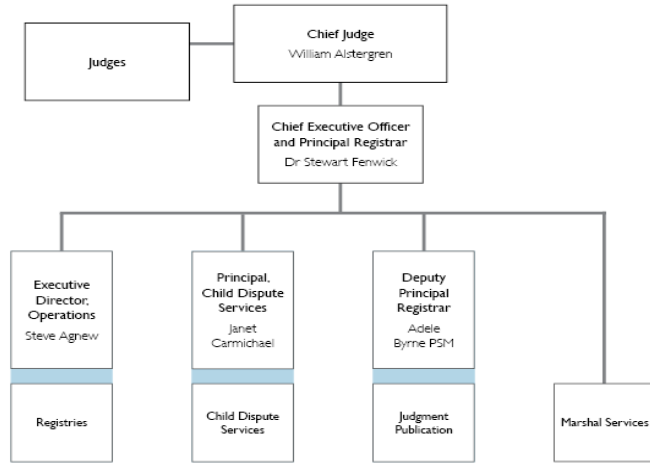
Federal Circuit Court of Australia  
**REGISTRY OPERATIONS**  
 Executive Director, Operations  
 Steve Agnew

## Federal Circuit Court

- There is:-
  - 1 Chief Judge
  - a Chief Executive Officer a Principal Registrar.



# Organisational Structure - FCC



## Services provided under MOU arrangements



# WAR STORIES



# THE PROPOSED CHANGES

- Under the new legislation, a new ***Federal Circuit and Family Court of Australia*** (FCFCA) will be established from 1 January 2019 through the amalgamation of the FCC and the Family Court of Australia.
- A new Family Law Appeal Division in the Federal Court of Australia 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).





# AUSTRALIAN LAW REFORM TIMETABLE\*

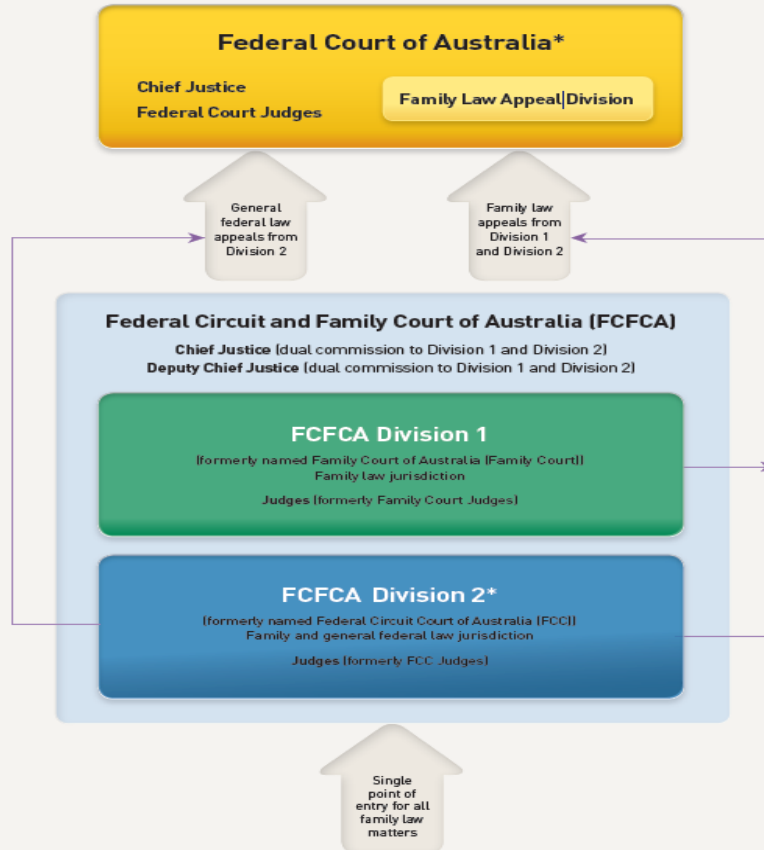
DATE	EVENT
27 Sep 2017	Terms of Reference received
14 March 2018	Issues Paper + call for submissions. Consultations
7 May 2018	Submissions to Issues Paper close
2 October 2018	Discussion Paper + call for submissions. Consultations
13 November 2018	Submissions to Discussion Paper close
31 March 2019	Report delivered to the Attorney-General

*\*Published by ALRC on 10 January 2018. Last modified on 21 May 2018.*





# COURT REFORM STRUCTURE



# Operation of the FCFCA in family law matters

- The FCFCA will have a single Federal point of entry for all Australian family law matters.
- The FCFCA will operate under the leadership of:-
  - 1 Chief Justice supported by 1 Deputy Chief Justice,  
  
who will each hold a dual commission to both Divisions of the FCFCA.



# Appeals

- A fundamental change in establishing the FCFCA will be the removal of a substantial part of the appellate jurisdiction of the Family Court.
- The FCFCA 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 FCFCA.



- All family law appeals from the FCFCA (and some appeals from the Family Court of Western Australia) will be heard by the new FLAD of the Federal Court.
- No changes to the rights to appeal as currently provided for under the *Family Law Act 1975*.



# *The new Rules and the new forms*

- Have not yet been drafted!



# The “New” Rules

- Initially, the Federal Court and both divisions of the FCFCA 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, which we expect to be sometime **after 31 March 2019** (after the Report from the ALRC is delivered to the Attorney-General).



# *The purpose*

- Resolve disputes faster by improving the efficiency of the family law system, reducing the backlog of matters before the family law Courts
- Drive faster, cheaper and more consistent dispute resolution
- Establishment of a single new Court aims to create a consistent pathway for Australian families in having their family law disputes dealt with in the first instance.





- Aim is to standardised procedures so that those families (and hopefully Trustees and Liquidators who may be involved in the process) will know that the dispute will be dealt with by the FCFCA as a whole
  - enabling information to be readily available about what to expect and when
  - by providing an early sense of the likely cost implications of lodging a family law application upfront.



# Practical suggestions now and in future

Challenges a Trustee/ Liquidator may face include:-

- Disputes concerning the children (as between the husband and wife) where the children may be used as pawn
- Allegations of family violence
- Emotional spouses
- Mental health issues of either spouse
- Sick children
- Drugs
- Gambling



- Attempt to negotiate a settlement as soon as practicable with the aim of filing consent orders with the Court.
- Also important to keep expectations realistic and don't forget s75 Family Law Act factors which may weaken a Trustee's position at negotiating stage or at a final hearing.

# Submissions

Please contact Daniela by **1 August 2018** with details of your queries/ questions. Daniela can be contacted as follows:-

**Address:** St James Trust Building  
Suite 1006, Level 10, 185 Elizabeth Street  
SYDNEY NSW 2000

**Ph:** 9713 7482



Thank you to our host:

**Willis Towers Watson** 