

# The Family Court Pathway.

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## Family Court Hearings

The Federal Circuit Court and the Family Court had a bit of a renovation in September 2021.

Those Courts are now known as the '**Federal Circuit and Family Court of Australia.**' (FCFCOA).

As a result of this, there are new Family Law Rules and a Central Practice Direction that apply to the running of the FCFCOA.

The Court focuses on a 'Family Law Case Management Pathway' and has a heavier focus on dispute resolution through mediations (etc.) where appropriate.

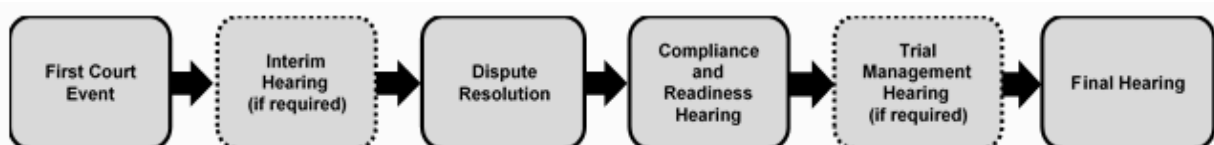
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### Context:

**This pathway will be relevant to you if you are about to embark on Court action.**

People who separate often reach an agreement about parenting and property matters by themselves or with the assistance of a lawyer via negotiation and mediation. If agreement can't be reached, it may be necessary to 'go to Court'. There are many rules that apply here. For example - the parties *must* comply with the Pre-Action Procedures *before* filing an application in Court. (See Article by Jodi Dingwall Family Lawyer: The Pre-Action Procedures).

Once Court proceedings are initiated though, all cases (other than urgent matters and matters allocated to the Court's specialist lists) will generally follow a 6-step pathway. See below:



## Step 1: First Court Event

Once the Initiating Application is filed, the case is listed for a first court event, usually between 1 to 2 months after filing.

The purpose of the first court event is:

- To see whether any Orders or Directions can be agreed to by consent between the parties.
- To make sure the pre-action procedures have been complied with and to ensure that the parties have made a genuine attempt to resolve their dispute prior to coming Court.
- To identify the issues that are in dispute between the parties and to look at what steps need to be taken to resolve the issues.
- To decide if an interim hearing is required, or whether the parties should first attend Dispute Resolution.
- For parenting matters – the Court will consider whether a report will be required by a Court Child Expert to assist in resolving interim care arrangements, or whether the children should be represented in the proceedings by an Independent Children's Lawyer.
- For property matters – if disclosure has not yet been finalised, the court will make directions as to timeframes for this to occur. The Court will also make directions for any valuations that are needed. The Court will also consider directing the parties to mediation if appropriate.

The First Court Event is largely procedural and generally, the Court will only make directions, and orders that have been agreed to between the parties by consent on that day.

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## Step 2: Interim Hearing

If the parties are unable to agree on 'interim' orders, an interim hearing will be listed on a date suitable. If there are 'child impact reports' or other expert reports required, these will generally need to be arranged before the interim hearing.

The interim hearing will usually occur before any dispute resolution takes place. The interim hearing will be before a senior Judicial Registrar, unless the circumstances require it to be heard by a Judge.

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## Step 3: Dispute Resolution

Depending on the party's financial circumstances and where appropriate, the Court will either direct the parties to attend to Private Dispute Resolution (ie. the parties pay for a private Mediator) or a Court funded Dispute Resolution. Ideally, this would occur no later than five (5) months after the Court proceedings have commenced (Step 1).

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## Step 4: Compliance and Readiness for Hearing

In circumstances where parties have not been able to reach agreement through Dispute Resolution, and the matter has not been “Fast Tracked” (see below), the matter will then proceed to a Compliance and Readiness Hearing shortly after the Dispute Resolution Conference.

The purpose of the Compliance and Readiness Hearing is to:

- Make sure the parties have made genuine attempts to resolve the issue.
  - Make sure the parties have provided all required disclosure to one another.
  - Make sure the parties have followed all orders and directions made in the matter and to consider any consequences or costs for non-compliance.
  - Make sure the parties have carried out preparation for the matter to proceed to a trial.
  - For property matters – to ensure that the parties have exchanged compulsory offers to settle per the Rules.
  - Allocate the matter to a Trial Judge and list the matter for a final hearing.
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## Step 5: Trial Management Hearing

Where the Trial Judge requires, the Court will then allocate the matter to a Trial Management Hearing which occurs shortly before the Final Hearing of the matter. At this hearing, the Court will make any other directions required for the efficient conduct of the Final Hearing. It will also consider any costs or consequences due to non-compliance with any Trial Directions that have been made.

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## Step 6: Final Hearing

If the parties are unable to reach an agreement regarding Final Orders then the matter proceeds to a Final Hearing. The Court’s goal is for Final Hearings to occur within twelve (12) months of the Court proceedings being initiated.

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## Fast Tracking

A matter might be "Fast Tracked" (if considered appropriate by the Court) at any stage prior to the allocation of a Trial date, usually following Step 3 - Dispute Resolution. In deciding if a case should be fast tracked, the matter will need to be ready for Hearing. The Court will look at:

- Whether the parties have made a genuine attempt to resolve the issue.
  - Whether the issues are clearly identified.
  - Whether the issues are discrete or limited
  - If all reports have been provided.
  - If the matter can simply be decided on the written evidence.
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