



# Appeals process in the Federal Circuit and Family Court of Australia

**Date: Monday November 8, 2021**

With the commencement of the [Federal Circuit and Family Court of Australia \(FCFCOA\)](#) on 1 September 2021 came a new appeals process for matters within the family law court system.

## Initiating an Appeal in the FCFCOA

An appeal, or an application for leave to appeal (that is, seeking permission of the court to appeal a judgment), must be filed in the FCFCOA at the National Appeal Registry.

This includes appeals and applications for leave to appeal from a judgment of:

a Judge of the FCFCOA exercising the original jurisdiction of the Court; or

a single Judge of a Supreme Court of a State or Territory exercising the original jurisdiction of the Court; or

a family law Magistrate of Western Australia.

## Who can appeal a court decision?

An appeal, or application for leave to appeal, may be commenced by a party to the original judgement, or by a third party affected by the original judgment (such as a third-party creditor).

# What documents must be filed with the court?

A Notice of Appeal must be filed where an appeal, or application for leave to appeal, is made. The Notice of Appeal must be filed within 28 days of the original Court Orders which are being appealed. A copy of the appealed orders must be filed with the Notice of Appeal. The Notice of Appeal must be served on each party to the proceedings within 14 days after it is filed.

Once the Notice of Appeal is filed, the appellant (the person who has initiated the appeal) must file a Draft Index to the Appeal Book within 28 days. An Appeal Book is the set of documents the court will rely on during the appeal, to decide questions of fact and law).

If the Draft Index to the Appeal Book is not filed within the applicable time frame, the appeal is deemed to be abandoned and will not progress.

Each person who is directly affected by the orders sought in the Notice of Appeal, or is likely to be interested in maintaining the orders being appealed, must be made a respondent to the appeal or application for leave to appeal. This includes an [Independent Children's Lawyer](#) ("ICL") in [parenting proceedings](#).

## Who hears Appeals?

Appeals and applications for leave to appeal may be heard before a Full Court or by a single judge of the FCFCOA.

Appeals from an order of a judge of the FCFCOA (Division 1), the Family Court of a state, or a single Judge of a Supreme Court of a State or Territory must be heard by a Full Court.

Appeals from an order of the FCFCOA (Division 2) or a family law Magistrate of Western Australia will be heard by a single judge, or by a Full Court if the Chief Justice of the FCFCOA (Division 1) considers it appropriate.

## Grounds of Appeal in family law matters

For orders to be appealable, there must be a valid ground for appeal. Decisions cannot be appealed simply because you are not happy with the outcome of the orders made.

A valid ground for appeal is that there has been a significant error of law or fact.

New evidence cannot be introduced in an appeal.

An appellant must briefly and precisely set out in the Notice of Appeal, the legal, factual and/or discretionary errors alleged.

## Get help from a family lawyer

You should always seek legal advice before considering an appeal, as the circumstances in which parties can appeal are limited,

and costs are often awarded against an unsuccessful applicant.

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*The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*