

**FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (CONSEQUENTIAL  
AMENDMENTS AND TRANSITIONAL PROVISIONS) RULES 2021**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

under item 38 of Schedule 5 to the *Federal Circuit and Family Court of Australia (Consequential  
Amendments and Transitional Provisions) Act 2021*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

Item 38 of Schedule 5 to the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (FCFC Consequentials Act) provides that the Attorney-General may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to amendments or repeals made by the FCFC Consequentials Act or the enactment of the *Federal Circuit and Family Court of Australia Act 2021* (FCFC Act).

The purpose of the instrument is to provide transitional rules in respect of amendments to the *Federal Court and Federal Circuit Court Regulation 2012* and the *Family Law (Fees) Regulation 2012* (together, the fee regulations) made by the *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021* (the FCFC Regulations).

The fee regulations set out court fees for proceedings, including in the Family Court of Australia (Family Court) and the Federal Circuit Court (FCC), and provisions relating to the payment of court fees, including deferral and refund of payment. This instrument provides transitional rules to apply the existing fee regulations to a fee for service requested under the existing fee regulations before 1 September 2021 (with the amended fee regulations to apply to a fee for service requested on or after 1 September 2021).

This instrument also provides for the continuation of proceedings before the Family Court and the FCC as proceedings before the FCFC (Division 1) and FCFC (Division 2) from 1 September 2021. The purpose of this provision is to avoid any doubt about whether (on commencement of the FCFC) a court user who has paid the relevant court fee in respect of the Family Court or FCC has met the requirement to pay a fee in respect of their proceeding in the FCFC (Division 1) or the FCFC (Division 2).

**CONSULTATION**

The Attorney-General's Department consulted with the Family Court and the FCC on this instrument.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation has agreed that a Regulation Impact Statement is not necessary for this instrument as it is unlikely to have a more than minor regulatory impact (OBPR reference 44249).

Details of the instrument are set out in **Attachment A**.

A Statement of Compatibility with Human Rights is at **Attachment B**.

## **NOTES ON SECTIONS**

### **PART 1 – Preliminary**

#### **Section 1 – Name**

1. Section 1 provides that the title of the instrument is the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Rules 2021*.

#### **Section 2 – Commencement**

2. The instrument commences at the same time as the commencement of the *Federal Circuit and Family Court of Australia Act 2021* (FCFC Act). The FCFC Act will commence on 1 September 2021, unless an earlier date is fixed by Proclamation.

#### **Section 3 – Authority**

3. Section 3 provides that the instrument is made under item 38 of Schedule 5 to the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (FCFC Consequentials Act). Item 38 of Schedule 5 to the FCFC Consequentials Act provides for the making of rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to amendments or repeals made by the FCFC Consequentials Act or the enactment of the FCFC Act.

#### **Section 4 – Definitions**

4. Section 4 defines the following terms in this instrument:
- The *FCFCA Act* means the *Federal Circuit and Family Court of Australia Act 2021*, and includes any instruments made under that Act.
  - The *FCFCA CA and TP Act* means the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021*.

**PART 2 – Saving of regulations in relation to services requested before 1 September 2021**

**Section 5 – Saving of the *Federal Court and Federal Circuit Court Regulation 2012***

5. Section 5 saves the *Federal Court and Federal Circuit Court Regulation 2012* (FCFCC Regulation) as in force immediately before 1 September 2021, despite the repeal of one of its authorising Acts—the *Federal Circuit Court of Australia Act 1999* by the FCFC Consequentials Act (Item 1 of Schedule 3)—so that it continues to apply in relation to a fee for a service requested under that regulation before 1 September 2021.

6. This ensures that if there are any issues relating to a fee for a service requested under the FCFCC Regulation before 1 September 2021 that are not resolved by 1 September 2021 (for example, relating to the deferral or refund of fees), these issues can be resolved in accordance with the FCFCC Regulations as in force before 1 September 2021.

**Section 6 – Saving of the *Family Law (Fees) Regulation 2012***

7. Section 6 saves the *Family Law (Fees) Regulation 2012* (Family Law Fees Regulation) as in force immediately before 1 September 2021, despite the repeal of one of its authorising Acts—the *Federal Circuit Court of Australia Act 1999* by the FCFC Consequentials Act (Item 1 of Schedule 3)—so that it continues to apply in relation to a fee for a service requested under that regulation before 1 September 2021.

8. This ensures that if there are any issues relating to a fee for a service requested under the Family Law Fees Regulation before 1 September 2021 that are not resolved by 1 September 2021 (for example, relating to the deferral or refund of fees), these issues can be resolved in accordance with the FCFCC Regulations as in force before 1 September 2021.

**PART 3 – Transitional provisions for proceedings that are ongoing as at 1 September 2021**

**Section 7 – Proceedings before the Family Court of Australia before 1 September 2021**

9. Section 7 provides for the continuation of proceedings in the Family Court of Australia (Family Court) which are ongoing immediately before 1 September 2021 as proceedings in the FCFC (Division 1) on and after 1 September 2021.

10. This avoids any doubt about whether a court user who has paid court fees in respect of their proceeding in the Family Court before 1 September 2021, is taken not to have paid those fees on and after 1 September 2021 based on a technical reading of the Family Law Fees Regulations which, from 1 September 2021, will refer to court fees in respect of the FCFC (Division 1) rather than the Family Court. A court user who has paid court fees in relation to their proceeding in the Family Court before 1 September 2021 is still taken to have paid those

fees on and from 1 September 2021 as their proceeding continues as a proceeding in the FCFC (Division 1).

### **Section 8 – Proceedings before the Federal Circuit Court of Australia before 1 September 2021**

11. Section 8 provides for the continuation of proceedings in the Federal Circuit Court of Australia (FCC) which are ongoing immediately before 1 September 2021 as proceedings in the FCFC (Division 2) on and after 1 September 2021.

12. This avoids any doubt about whether a court user who has paid court fees in respect of their proceeding in the FCC before 1 September 2021, is taken not to have paid those fees on and after 1 September 2021 based on a technical reading of the FCFCC Regulations and the Family Law Fees Regulations which, from 1 September 2021, will refer to court fees in respect of the FCFC (Division 2) rather than the FCC. A court user who has paid court fees in relation to their proceeding in the FCC before 1 September 2021 is still taken to have paid those fees on and from 1 September 2021 as their proceeding continues as a proceeding in the FCFC (Division 2).

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Rules 2021**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Rules 2021* (the instrument) is to provide transitional rules in respect of amendments to the *Federal Court and Federal Circuit Court Regulation 2012* and the *Family Law (Fees) Regulation 2012* (together, the fee regulations) made by the *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021* (the FCFC Regulations).

The fee regulations set out court fees for proceedings, including in the Family Court of Australia (Family Court) and the Federal Circuit Court (FCC), and provisions relating to the payment of court fees, including deferral and refund of payment. There may be issues that arise under the existing fee regulations that are not resolved before commencement of the amendments to the fee regulations made by the FCFC Regulations on 1 September 2021. For example, a person may seek refund of court fees on 1 August 2021, but this may not be finalised until after 1 September 2021. The instrument provides transitional rules to apply the existing fee regulations to a fee for service requested under the existing fee regulations before 1 September 2021 (with the amended fee regulations to apply to a fee for service requested on or after 1 September 2021).

The instrument also provides for the continuation of proceedings in the Family Court and the FCC as proceedings in the Federal Circuit and Family Court of Australia (Division 1) and Federal Circuit and Family Court of Australia (Division 2) from 1 September 2021. The purpose of this provision is to avoid any doubt about whether (on commencement of the Federal Circuit and Family Court of Australia (FCFC)) a court user who has paid the relevant court fee in respect of the Family Court or FCC has met the requirement to pay a fee in respect of their proceeding in the FCFC (Division 1) or the FCFC (Division 2). This is consistent with the continuation of the Family Court and the FCC as the FCFC (Division 1) and the FCFC (Division 2), respectively, under the *Federal Circuit and Family Court of Australia Act 2021* and the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (the FCFC Acts). The FCFC Acts are due to commence on 1 September 2021 unless an earlier date is fixed by proclamation.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.