



## **Statement from the Federal Circuit and Family Court of Australia (Division 1)**

There has been recent discussion in court proceedings and in the profession concerning the jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) to hear a small, discrete number of cases that were pending in the Family Court of Australia immediately prior to 1 September 2021 when the *Federal Circuit and Family Court of Australia Act 2021* commenced.

Practitioners will have noticed that, in these cases, an order has been made by the Chief Justice pursuant to section 52 of the *Federal Circuit and Family Court of Australia Act 2021* transferring each proceeding to the Federal Circuit and Family Court of Australia (Division 2), and then a subsequent order made, pursuant to section 149 of the *Federal Circuit and Family Court of Australia Act 2021*, transferring the proceeding to the Federal Circuit and Family Court of Australia (Division 1).

This is a pragmatic step which is being taken to ensure, for the avoidance of doubt, that the jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) under the *Family Law Act 1975* is enlivened to hear and determine these cases. Under the *Federal Circuit and Family Court of Australia Act 2021*, the Court's original jurisdiction is set out in section 25 of the *Federal Circuit and Family Court of Australia Act 2021*, and one way that jurisdiction is enlivened is through transfer of a proceeding from the Federal Circuit and Family Court of Australia (Division 2). The purpose of transferring these proceedings is to remove uncertainty and avoid delay in the Court hearing these cases.

The transfer orders are made in the interests of the administration of justice and do not result in any additional cost or delay to the parties and ensure that proceedings can continue to be heard and determined with no loss of priority.

This does not concern new matters filed since 1 September 2021, or proceedings that were pending in the Federal Circuit and Family Court of Australia (Division 2) immediately prior to 1 September 2021 and have been subsequently transferred to the Federal Circuit and Family Court of Australia (Division 1).

Without commenting on any particular proceeding, it is noted that orders of the Federal Circuit and Family Court of Australia (Division 1), as a superior court of record, are valid and enforceable unless and until set aside on appeal or pursuant to prerogative writ. The public is entitled to have confidence that the orders of the Court are valid and the Court expects that orders will be complied with. In the family law jurisdiction, this is of particular importance to ensure the safety of children and vulnerable litigants.

The Court will work with Government to ensure a legislative clarification can be progressed at the earliest opportunity.

31 March 2022