

EXPLANATORY STATEMENT

Select Legislative Instrument 230, 2013

Issued by the authority of the Judges of the Federal Court of Australia

Federal Court (Bankruptcy) Amendment (Federal Circuit Court Name Changes) Rules 2013

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Federal Court of Australia (Federal Court) or a majority of them, to make Rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 59 (4) of the *Federal Court of Australia Act 1976*, the *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Court of Australia Act 1976* or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of the *Federal Court of Australia Act 1976*.

The Judges have agreed to amend the *Federal Court (Bankruptcy) Rules 2005* by

1. in the note to rule 1.03 and sub-paras 4.04(1)(a)(i), (ii) and (iii), replacing “Federal Magistrates Court” with “Federal Circuit Court of Australia”;
2. in rule 1.03 and subrule 4.04(1), inserting a note referring to the definition of “Federal Circuit Court” in the *Federal Court of Australia Act*;
3. in Form 7, omitting “*FEDERAL MAGISTRATE/”; and
4. in Note 1 in Schedule 3, which contains a search warrant, omitting “/*Federal Magistrate”.

The Amendment Rules are of a minor nature, consequential on the commencement on 12 April 2013 of the *Federal Circuit Court of Australia Legislation Amendment Act 2013*. This Amending Act *inter alia* changed the name of the Federal Magistrates Court to the Federal Circuit Court of Australia and its judicial officers to Chief Judge and Judges.

The amendments were considered by the Harmonised Bankruptcy Rules Monitoring Committee (the Committee). The Committee consists of representatives from the three federal courts and the legal profession.

Details of the Rules are in the Attachment.

The Rules commence on the day after they are registered.

**Federal Court (Bankruptcy) Amendment
(Federal Circuit Court Name Changes) Rules 2013)**

RULE 1 Name of rules

This rule provides that the Rules are to be cited as the *Federal Court (Bankruptcy) Amendment (Federal Circuit Court Name Changes) Rules 2013*.

RULE 2 Commencement

This rule provides that these Rules commence on the day after registration.

RULE 3 Authority

This rule provides that these Rules are made under the *Federal Court of Australia Act 1976*.

RULE 4 Schedule(s)

This rule provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms. Accordingly, the *Federal Court (Bankruptcy) Rules 2005* (the Bankruptcy Rules) are amended as set out in Schedule 1.

SCHEDULE 1

The amendments in this schedule are consequential upon the enactment of the *Federal Circuit Court of Australia Legislation Amendment Act 2013*, which, as of 12 April 2013, changed the name of the Federal Magistrates Court to the Federal Circuit Court of Australia.

[1] Subrule 1.03 (1) (note)

Subrule 1.03 (1) states that the Bankruptcy Rules apply to proceedings under the *Bankruptcy Act 1966* and that Part 14 of the Bankruptcy Rules applies to proceedings in the Court under the *Cross-Border Insolvency Act 2008*, including the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law.

The note to subrule 1.03 (1) advised that the Federal Magistrates Court does not have jurisdiction under the Cross-Border Insolvency Act.

This amendment inserts two notes in place of the original note. The first note repeats the original note with the necessary change to the name of the court. The second note is new

and provides a cross-reference for the definition of the Federal Circuit Court in section 4 of the Federal Court of Australia Act.

[2] Subparagraphs 4.04 (1)(a)(i), (ii) and (iii)

[3] At the end of subrule 4.04 (1)

Rule 4.04 sets out the requirements for a creditor's petition founded on a failure to comply with a bankruptcy notice. Subrule 4.04 (1) requires a creditor's petition to be accompanied by two affidavits. The affidavit mentioned in paragraph 4.04 (1)(a) should address one of the following three matters:

- (i) that the records of the Federal Court and of the Federal Magistrates Court have been searched and no application in relation to the bankruptcy notice has been made; or
- (ii) that an application was made in the Federal Court or in the Federal Magistrates Court, as applicable, for an order setting aside the relevant bankruptcy notice and the application has been finally decided; or
- (iii) that an application was made in the Federal Court or in the Federal Magistrates Court, as applicable, for an order extending the time for compliance with the bankruptcy notice and the application has been finally decided.

The amendment in item [2] replaces in these three subparagraphs the name 'Federal Magistrates Court' with its new name, 'Federal Circuit Court'.

The amendment in item [3] inserts a note to the subrule which provides a cross-reference for the definition of the Federal Circuit Court in section 4 of the Federal Court of Australia Act.

[4] Form 7 in Schedule 1

Form 7 is the prescribed form for the sequestration order. At the top of the form, under the heading, the first line appears as:

“*JUDGE/*FEDERAL MAGISTRATE/*REGISTRAR.”

As from 12 April 2013 a Federal Magistrate is referred to as Judge. This amendment omits the symbols and words: ‘/*FEDERAL MAGISTRATE’.

[5] Note 1 in Schedule 3

[6] Note 1 in Schedule 3

Schedule 3 contains Notes to the Bankruptcy Rules.

Note 1 contains the search warrant which is referred to in the note to Rule 12.01, being the suggested form of a warrant for the seizure of property connected with a debtor or bankrupt.

At the bottom of the search warrant the following appears:

“*[signed, *Judge/*Federal Magistrate]*
**Judge/*Federal Magistrate*”

As mentioned in item [4] above, from 12 April 2013 a Federal Magistrate is referred to as Judge.

Consequently, the amendment referred to in item [5] replaces the first line of this text with: ‘*[signed, Judge]*’. The amendment referred to in item [6] replaces the second line of the text with: ‘Judge’.