

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 36**

#### **FEDERAL MAGISTRATES COURT (BANKRUPTCY) AMENDMENT RULES 2008** **(No. 1)**

*Issued by the authority of the Federal Magistrates of the Federal Magistrates Court of Australia*

Section 81 of the *Federal Magistrates Act 1999* permits the Federal Magistrates 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 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 81(3) of the Federal Magistrates Act 1999 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 Magistrates Act 1999 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 Federal Magistrate acting on behalf of the Federal Magistrates of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 120 *Federal Magistrates Act 1999*.

The Federal Magistrates have agreed to amend Rules 4 and 7 and Forms 2, 3 and 6 of the *Federal Magistrates Court (Bankruptcy) Rules 2006*.

The amendments have been the subject of consultation with the Insolvency Trustee Service Australia, and the Law Council of Australia and other legal bodies. They have also been discussed with the Federal Court, which will make the same changes to the *Federal Court (Bankruptcy) Rules 2005*.

Details of the Rules are in the **Attachment**.

The Rules commence on 1 April 2008.

## **ATTACHMENT**

### **Federal Magistrates Court (Bankruptcy) Amendment Rules 2008 (No. 1)**

#### **RULE 1      Name of rules**

This rule provides that the Rules are to be cited as the *Federal Magistrates Court (Bankruptcy) Amendment Rules 2008 (No. 1)*.

#### **RULE 2      Commencement**

This rule provides that these Rules commence on 1 April 2008.

#### **RULE 3      Amendment of *Federal Magistrates Court (Bankruptcy) Rules 2006***

This rule provides that the *Federal Magistrates Court (Bankruptcy) Rules 2006* are amended as set out in Schedule 1.

### **SCHEDULE 1**

#### [1]      Paragraph 4.06 (3) (b)

Part 4 deals with creditor's petitions and rule 4.06 with additional affidavits to be filed before a hearing.

This amendment substitutes a new paragraph 4.06 (3) (b), the effect of which is to insert a requirement that the affidavit must include a statement that there were no details of a debt agreement on the day on which the search in the Natural Personal Insolvency Index was made.

The amendment is consistent with the requirements of paragraph 185K(1)(b) of the *Bankruptcy Act 1966* (Cth).

#### [2]      Paragraph 4.07 (b)

Rule 4.07 provides for the filing of a fax copy of the affidavit referred to in rule 6.06 in certain cases. This amendment substitutes a new paragraph (b), which states that where a fax copy of the original affidavit is filed, the original affidavit must be kept and produced as directed by the Court.

The effect of the amendment is to remove the requirement that the original affidavit referred to in rule 6.06 must be filed notwithstanding that a fax copy of it has been filed.

[3] Subrule 7.02 (2)

Part 7 deals with applications for the annulment or review of bankruptcy. Rule 7.02 sets out the requirements of an application for the annulment of a bankruptcy.

Subrule 7.02 (2) is amended to reduce the time within which the application must be served on the trustee from being at least 28 days before the hearing to being at least 7 days.

The amendment is in response to concerns that the 28 day time limit may cause undue delay in the hearing and determination of applications which can lead to unnecessary administration and other costs being incurred.

[4] Subrule 7.03 (3)

Rule 7.03 provides that the applicant for an annulment must give notice of the application to each creditor. Subrule 7.03 (3) states that the applicant must serve the notice on each creditor at least 14 days before the hearing date.

This amendment reduces the time from 14 days to 7 days. The amendment is in response to concerns similar to those described in item [3] above.

[5] Subrule 7.04 (1)

Rule 7.04 provides that, where an application for annulment has been made, a trustee must provide a report for the periods before and after the bankruptcy or the administration of the estate of the deceased person.

This amendment amends subrule 7.04 (1) by inserting the words ‘If directed by the Court’.

The effect of the amendment is to leave to the Court the question of whether a trustee’s report is required in the circumstances of each case.

[6] Subrule 7.04 (4) (b)

As the amendment set out in item [5] means that need for a trustee’s report will be left for determination at the first hearing, paragraph 7.04 (4) (b) is amended to provide that the report must be filed at least five days before the date fixed for the hearing of the application.

[7] Subrule 7.06 (2)

[8] Subrule 7.06 (5)

Rule 7.06 deals with an application for the review of a Registrar’s decision to make a sequestration order. Subrule 7.06 (2) provides that such an application must be served on the trustee at least 28 days before the date fixed for the hearing of the application.

Subrule 7.06 (2) is amended to reduce the time for service to 7 days. These amendments are in response to concerns similar to those described in item [3] above.

Subrule 7.06 (5) provides that the applicant must give notice of the application to each creditor at least 14 days before the date fixed for the hearing of the application.

Subrule 7.06 (5) is amended to reduce the time for service to 7 days.

[9] Schedule 1, Form 2, before \*Omit if inapplicable

Form 2 is the prescribed form for an application to commence a proceeding under the Bankruptcy Act.

This amendment inserts a new note at the foot of the form. The note refers to the requirement under subrules 2.01(2) and (4) respectively that the application must state each section of the Bankruptcy Act or Bankruptcy Regulations under which the application is brought.

[10] Schedule 1, Form 3, before \*Omit if inapplicable

Form 3 is the prescribed form for an interim application in a proceeding under the Bankruptcy Act.

This amendment inserts a new note at the foot of the form. The note refers to the requirement under subrules 2.01(2) and (4) respectively that the interim application must state each section of the Bankruptcy Act or Bankruptcy Regulations under which the application is brought.

[11] Schedule 1, Form 6, after note 3

Form 6 is the prescribed form for a Creditor's Petition.

This amendment inserts a new note at the foot of the form. The note refers to the requirement under regulation 4.05 (1) of the Bankruptcy Regulations that the creditor must give a copy of the petition to the Official Receiver within 3 working days after presentation.

The purpose of the amendment is to help ensure compliance with regulation 4.05 (1).