

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 113

Issued by the Authority of the Attorney-General

Civil Dispute Resolution Act 2011

Civil Dispute Resolution Regulations 2011

Section 19 of the *Civil Dispute Resolution Act 2011* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act, which received Royal Assent on 12 April 2011, encourages parties to take genuine steps to resolve their dispute, where possible, before commencing proceedings in the Federal Court of Australia or the Federal Magistrates Court.

Subsection 17(1) of the Act provides that proceedings are excluded proceedings if they are prescribed by the regulations for the purpose of that subsection. Excluded proceedings are not subject to the requirements of the Act. In particular, litigants in such proceedings are not obliged to file a genuine steps statement under section 6 or section 7 of the Act with respect to what (if any) genuine steps have been taken to resolve the dispute before court proceedings are commenced.

Subsection 17(2) provides that regulations made for the purposes of subsection 17(1) may specify the proceedings in any way including, but not limited to, the nature of the proceedings, their subject matter or the Act or regulations, or provision of an Act or regulations, under which the proceedings arise.

The purpose of the Regulations is to exclude a number of proceedings in the Federal Court of Australia and the Federal Magistrates Court from the operation of the Act.

Details on the Regulations are set out in the Attachment.

The Regulations commence on 1 August 2011, which coincides with the date of commencement by Proclamation of Parts 2 to 5 of the Act.

The Federal Court of Australia's revised Rules are also proposed to commence on 1 August 2011, which will prevent confusion for litigants and make it easier for the Court to deal with the changed environment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Authority: Section 19 of the *Civil Dispute Resolution Act 2011*

Details of the Civil Dispute Resolution Regulations 2011

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Civil Dispute Resolution Regulations 2011*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 August 2011.

Regulation 3 – Definition

This regulation provides that in the Regulations, ‘Act’ means the *Civil Dispute Resolution Act 2011*.

Regulation 4 – Excluded proceedings

This regulation provides for the Regulations to exclude a number of proceedings from the operation of the Act.

Paragraph (a) – Proceedings for a sequestration order under section 43 of the Bankruptcy Act 1966, if the act of bankruptcy relied on arises under paragraph 40(1)(g) of that Act

This paragraph provides for the exclusion of bankruptcy creditors’ petitions under section 43 of the *Bankruptcy Act 1966*, which are based on an act of bankruptcy arising under paragraph 40(1)(g) of the *Bankruptcy Act 1966*. Under section 43 of the *Bankruptcy Act 1966*, a creditor can petition the court to declare a debtor bankrupt on a number of grounds. The most common ground is a presumption of bankruptcy arising from the failure to comply with a bankruptcy notice (under paragraph 40(1)(g) of the *Bankruptcy Act 1966*).

It is appropriate to exclude these types of proceedings because:

- where a statutory presumption of bankruptcy arises, the proceedings are not *inter-partes* proceedings
- there is an element of public interest in insolvent persons being declared bankrupt, and
- these are usually high volume cases (usually dealt with by registrars exercising delegated judicial power).

Paragraph (b) – Proceedings for an order under section 459A of the Corporations Act 2001 to wind up a company in insolvency, if the application for the order relies on a failure by the company to comply with a statutory demand

This paragraph provides for the exclusion of winding up applications under section 459A of the *Corporations Act 2001*, which are based on the failure to comply with a statutory demand. Under section 459A of the *Corporations Act 2001*, a creditor can apply for a company to be wound up in insolvency on a number of grounds. The most common ground is a failure to comply with a statutory demand.

It is appropriate to exclude these types of proceedings because:

- where a statutory presumption of insolvency arises, the proceedings are not *inter-partes* proceedings
- there is an element of public interest in insolvent companies being wound up, and
- these are usually high volume cases (usually dealt with by registrars exercising delegated judicial power).

Paragraph (c) – Proceedings for review of a decision of a Registrar of an eligible court

This paragraph provides for the exclusion of all proceedings for reviews of Registrars' decisions (administrative and judicial). Reviews of Registrars' decisions exercising delegated judicial power occur under subsection 35A(6) of the *Federal Court of Australia Act 1976* and subsection 104(3) of the *Federal Magistrates Act 1999*. Reviews of Registrars' decisions exercising administrative power occur under the *Administrative Decisions (Judicial Review) Act 1977* and section 39B of the *Judiciary Act 1903*.