



Federal Court (Bankruptcy) Amendment Rules 2011 (No. 1)¹

Select Legislative Instrument 2011 No. 284

We, Judges of the Federal Court of Australia, make the following Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 14 December 2011

P.A. KEANE CJ
P.R.A. GRAY J
T.J. HIGGINS J
P.D. FINN J
S.R. MARSHALL J
A.M. NORTH J
J.R. MANSFIELD J
A.R. EMMETT J
J.A. DOWSETT J
S.C. KENNY J
M.A. STONE J
P.M. JACOBSON J
A.C. BENNETT J
B.T. LANDER J
A.N. SIOPIS J
A.P. GREENWOOD J

B. COLLIER J
D.A. COWDROY J
A.J. BESANKO J
C.N. JESSUP J
R.R.S. TRACEY J
J.E. MIDDLETON J
R.J. BUCHANAN J
J. GILMOUR J
M.M. GORDON J
J.A. LOGAN J
G.A. FLICK J
N.W. McKERRACHER J
J.E. REEVES J
N. PERRAM J
J.M. JAGOT J
L.G. FOSTER J
M.L. BARKER J
J.V. NICHOLAS J
D.M. YATES J
J. DODDS-STREETON J
A.J. KATZMANN J
A. ROBERTSON J
B.M. MURPHY J

Judges of the Federal
Court of Australia

W.G. Soden
Registrar

1 Name of Rules

These Rules are the *Federal Court (Bankruptcy) Amendment Rules 2011 (No. 1)*.

2 Commencement

These Rules commence on 1 January 2012.

3 Amendment of *Federal Court (Bankruptcy) Rules 2005*

Schedule 1 amends the *Federal Court (Bankruptcy) Rules 2005*.

Schedule 1 Amendments

(rule 3)

[1] Subrule 1.04 (2)

substitute

- (2) Unless the contrary intention appears, an expression used in these Rules and in Schedule 1 to the *Federal Court Rules 2011* has the same meaning in these Rules as it has in that Schedule.

[2] Rule 1.05, note

omit

- District

[3] Rule 2.02

omit

or a Judge

[4] Subrule 2.03 (1)*omit*

or a Judge

[5] Subrule 2.03 (1)*omit*

motion on notice

insert

interlocutory application

[6] Subrule 2.05 (2)*substitute*

- (2) Rule 8.07 of the *Federal Court Rules 2011* (changing a return date) does not apply to the return date fixed for a creditor's petition.

[7] Rules 4.08 and 4.09*substitute***4.08 Notification and entry of sequestration order**

- (1) A sequestration order must be in accordance with Form 7.
- (2) If the Court makes a sequestration order against the estate of a debtor, the applicant creditor must:
- (a) on the same day as the order is made, notify the trustee, in writing, of his or her appointment; and
 - (b) within 2 days after the order is made, give a copy of the sequestration order to any person who has consented to act as a trustee.
- (3) If the order is not entered at the time the order is made, the applicant creditor must, as soon as practicable, request entry of the order in accordance with Division 39.4 of the *Federal Court Rules 2011*.

Note Subsection 52 (1A) of the Bankruptcy Act provides that the creditor who obtained the sequestration order must give a copy of the order to the Official Receiver before the end of the period of 2 days beginning on the day the order was made.

4.09 Entry of order for dismissal etc of creditor's petition

- (1) This rule applies if the Court makes an order:
 - (a) dismissing a creditor's petition; or
 - (b) granting leave for a creditor's petition to be withdrawn; or
 - (c) under subsection 52 (5) of the Bankruptcy Act.
- (2) The applicant creditor must:
 - (a) if the order is not entered at the time the order is made — request entry of the order in accordance with Division 39.4 of the *Federal Court Rules 2011* as soon as practicable; and
 - (b) within 2 days after the order is made, give a copy of the order to the Official Receiver.

[8] Paragraph 7.05 (b)

omit

for the District in which the order was made

[9] Paragraph 8.02 (3) (b)

omit

for the District in which the order was made

[10] Paragraph 9.03 (b)

omit

Trustee, the Official Receiver for the District in which the application is made

insert

Trustee — the Official Receiver

[11] Paragraph 9.05 (b)*omit*

for the District in which the order was made

[12] Paragraph 10.03 (c)*omit*

for the District in which the application is made

[13] Rule 10.05*substitute***10.05 Entry of order**

If:

- (a) the Court makes an order under this Part; and
 - (b) the order is not entered at the time the order is made;
- the applicant must, as soon as practicable, request entry of the order in accordance with Division 39.4 of the *Federal Court Rules 2011*.

[14] Rule 11.04*substitute***11.04 Entry of order**

If:

- (a) the Court makes an order under this Part; and
 - (b) the order is not entered at the time the order is made;
- the applicant must, as soon as practicable, request entry of the order in accordance with Division 39.4 of the *Federal Court Rules 2011*.

Note Subsection 247 (3) of the Bankruptcy Act provides that the person administering the estate of the deceased person must, before the end of the period of 2 days beginning on the day the order was made, give a copy of the order to the Official Receiver.

[15] Subrule 13.01 (1)

omit

Order 62 of the Federal Court Rules

insert

Part 40 of the *Federal Court Rules 2011*

[16] Subrule 13.01 (3)

omit

Order 62 of the Federal Court Rules

insert

Part 40 of the *Federal Court Rules 2011*

[17] Subrule 13.03 (1)

omit

item 43B of Schedule 2 to the Federal Court Rules.

insert

item 14.1 of Schedule 3 to the *Federal Court Rules 2011*.

[18] Subrule 13.03 (2)

omit

item 43C of Schedule 2 to the Federal Court Rules.

insert

item 14.2 of Schedule 3 to the *Federal Court Rules 2011*.

[19] Paragraph 13.03 (3) (a)

omit

item 36 or 37 of Schedule 2 to the Federal Court Rules;

insert

item 1 of Schedule 3 to the *Federal Court Rules 2011*;

[20] Subrule 13.03 (4)*omit*

Order 62 of the Federal Court Rules

*insert*Part 40 of the *Federal Court Rules 2011***[21] Schedule 1, Form 1***substitute***Form 1 Document Title**

(subrule 1.06 (3))

No. of 20

IN THE [*name of Court*]District Registry: [*State*]

Division: General

IN THE MATTER OF: [*Name of debtor or bankrupt estate*]**[Name of Applicant(s)]**

Applicant[s]

[Name of Respondent(s)]

Respondent[s]

Filed on behalf of (name and role of party)

Prepared by (name of person/lawyer)

Law firm (if applicable)

Tel

Fax

Email

Address for service

(include State and postcode)

[22] Schedule 1, Form 2*omit***Filed by the applicant**

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

insert

Filed on behalf of (name and role of party)

Prepared by (name of person/lawyer)

Law firm (if applicable)

Tel

Fax

Email

Address for service

(include State and postcode)

[23] Schedule 1, Forms 3 to 6*omit***Filed by**

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

insert

Filed on behalf of (name and role of party)

Prepared by (name of person/lawyer)

Law firm (if applicable)

Tel

Fax

Email

Address for service

(include State and postcode)

[24] Schedule 1, Form 6, Part 2, note 1

omit

Form 20 of the Federal Court Rules

insert

Form 59 of the *Federal Court Rules 2011*

[25] Schedule 1, Form 7

omit

Filed by

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

‡Note

Subsection 35A (5) of the Act provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection 35A (1) of the Act may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

Rule 2.03 provides that, subject to any direction by the Court or a Judge to the contrary, an application under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar under subsection 35A (1) of the Act must be made by motion on notice within 21 days after the day on which the power was exercised. An applicant seeking a review can apply to a Judge to waive the requirement that the application for review be made by motion on notice (see Order 1, rule 8 of the Federal Court Rules).

* *Omit if inapplicable*

‡ *Omit this note if the orders have not been made by a Registrar.*

insert

Filed on behalf of (name and role of party) _____
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____

Address for service

(include State and postcode) _____

‡Note

Subsection 35A (5) of the Act provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection 35A (1) of the Act may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

Rule 2.03 provides that, subject to any direction by the Court to the contrary, an application under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar under subsection 35A (1) of the Act must be made by interlocutory application within 21 days after the day on which the power was exercised. An applicant seeking a review can apply to a Judge to waive the requirement that the application for review be made by interlocutory application (see rule 1.34 of the *Federal Court Rules 2011*).

* *Omit if inapplicable*‡ *Omit this note if the orders have not been made by a Registrar.***[26] Schedule 1, Forms 8 to 15***omit***Filed by**

Name: _____

Address for service: _____

Telephone: _____

Fax number: _____

E-mail address: _____

insert

Filed on behalf of (name and role of party) _____

Prepared by (name of person/lawyer) _____

Law firm (if applicable) _____

Tel _____

Fax _____

Email _____

Address for service

(include State and postcode) _____

[27] Further amendments — lawyer

The following provisions are amended by omitting each mention of ‘legal practitioner’ and inserting ‘lawyer’:

- subrule 13.02 (1)
- subrule 13.03 (1)
- subrule 13.03 (2)
- subrule 13.03 (3)
- subrule 13.03 (4)
- subrule 13.04 (1)
- subrule 13.04 (6)
- Rule 13.05
- Schedule 1, Form 19
- Schedule 1, Form 20
- Schedule 1, Form 21
- Schedule 1, Form 22

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.