



Federal Court (Bankruptcy) Rules 2016

made under the

Federal Court of Australia Act 1976

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About this compilation

This compilation

This is a compilation of the *Federal Court (Bankruptcy) Rules 2016* that shows the text of the law as amended and in force on 1 September 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1.01 Name.....	1
1.03 Authority.....	1
1.04 Application of these Rules and other Rules of the Court	1
1.05 Interpretation.....	1
1.06 Expressions used in the Bankruptcy Act.....	2
1.07 Forms.....	2
Part 2—General	3
2.01 Originating application and interim application.....	3
2.02 Exercise of powers by Registrars.....	4
2.03 Leave to be heard.....	4
2.04 Appearance at hearing or examination.....	5
2.05 Change of return date of creditor’s petition	5
2.06 Opposition to application, interim application or petition.....	5
Part 3—Bankruptcy notices	6
3.01 Substituted service	6
3.02 Setting aside bankruptcy notice	6
3.03 Extension of time for compliance with bankruptcy notice	7
Part 4—Creditors’ petitions	8
4.01 Application of Part 4.....	8
4.02 Requirements for creditor’s petition and supporting affidavit.....	8
4.03 Creditor’s petition founded on issue of execution against debtor	8
4.04 Creditor’s petition founded on failure to comply with bankruptcy notice etc.	8
4.05 Documents to be served	9
4.06 Additional affidavits to be filed before hearing	9
4.07 Notification and entry of sequestration order.....	10
4.08 Entry of order for dismissal etc. of creditor’s petition	10
4.09 Service of order.....	11
Part 5—Debtors’ petitions	12
5.01 Referral of debtor’s petition.....	12
Part 6—Examinations	13
Division 6.1—Examination of debtor or examinable person under section 50 of the Bankruptcy Act	13
6.01 Application for summons.....	13
6.02 Hearing of application.....	13
6.03 Requirements for summons	13
6.04 Service of summons.....	14
6.05 Application for discharge of summons	14
Division 6.2—Examination of relevant person under section 81 of the Bankruptcy Act	15
6.06 Application for summons.....	15
6.07 Hearing of application.....	15
6.08 Requirements for summons	15
6.09 Service of summons.....	16
6.10 Failure to attend examination.....	16

6.11	Application for discharge of summons	16
Division 6.3—Examination of examinable person under section 81 of the Bankruptcy Act		17
6.12	Application for summons.....	17
6.13	Hearing of application.....	18
6.14	Requirements for summons	18
6.15	Service of summons.....	18
6.16	Application for discharge of summons	18
6.17	Conduct money and witnesses expenses.....	19
Part 7—Annulment or review of bankruptcy		20
Division 7.1—Annulment of bankruptcy		20
7.01	Application of Division 7.1.....	20
7.02	Requirements for application.....	20
7.03	Notice to creditors.....	20
7.04	Entry and service of annulment order	20
Division 7.2—Review of sequestration order		21
7.05	Review of Registrar’s decision	21
Division 7.3—Report by trustee		22
7.06	Report by trustee.....	22
Part 8—Trustees		23
8.01	Applications in relation to the appointment of a trustee.....	23
8.02	Resignation or release of trustee	23
Part 9—Debt agreements		25
9.01	Application of Part 9.....	25
9.02	Requirements for application	25
9.03	Service	25
9.04	Notice to creditors.....	25
9.05	Entry and service of order.....	25
Part 10—Personal insolvency agreements		27
10.01	Application of Part 10.....	27
10.02	Requirements for application.....	27
10.03	Service	27
10.04	Notice to creditors.....	28
10.05	Entry of order.....	28
Part 11—Administration of estates of deceased persons		29
11.01	Creditor’s petition.....	29
11.02	Documents to be served	29
11.03	Additional affidavits to be filed before hearing of creditor’s petition	29
11.04	Administrator’s petition	30
11.05	Documents to be served	30
11.06	Entry of order.....	30
Part 12—Warrants		31
12.01	Arrest of debtor or bankrupt.....	31
12.02	Apprehension of person failing to attend Court	31
12.03	Warrant for seizure of property connected with the bankrupt	31

Part 13—Costs	32
Division 13.1—Orders for costs	32
13.01 Basis for costs	32
Division 13.2—Short form bills of costs	33
13.02 Application of Division 13.2.....	33
13.03 Short form bill of costs	33
13.04 Claim for costs	33
13.05 Attendance at taxation hearing.....	34
Part 14—Proceedings under Cross-Border Insolvency Act	35
14.01 Application of this Part and other rules of the Court.....	35
14.02 Expressions used in the Cross-Border Insolvency Act.....	35
14.03 Application for recognition	36
14.04 Application for provisional relief under article 19 of the Model Law.....	36
14.05 Registered trustee’s consent to act	36
14.06 Notice of filing of application for recognition	37
14.07 Notice of order for recognition, withdrawal etc.	37
14.08 Relief after recognition	38
14.09 Application to modify or terminate an order for recognition or other relief.....	38
Part 15—Transitional provisions	40
Division 15.1—Transitional provisions relating to the Federal Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017	40
15.01 Transitional—release of trustee	40
Schedule 1—Powers of the Court that may be exercised by a Registrar	41
Part 1—Bankruptcy Act	41
Part 2—Federal Court (Bankruptcy) Rules 2016	43
Endnotes	44
Endnote 1—About the endnotes	44
Endnote 2—Abbreviation key	45
Endnote 3—Legislation history	46
Endnote 4—Amendment history	47
Endnote 5—Editorial changes	48

Part 1—Preliminary

1.01 Name

These are the *Federal Court (Bankruptcy) Rules 2016*.

1.03 Authority

These Rules are made under the *Federal Court of Australia Act 1976*.

1.04 Application of these Rules and other Rules of the Court

- (1) Unless the Court otherwise orders:
 - (a) these Rules apply to a proceeding in the Court to which the Bankruptcy Act applies; and
 - (b) Part 14 applies to a proceeding in the Court under the Cross-Border Insolvency Act.

Note: The Federal Circuit Court does not have jurisdiction under the Cross-Border Insolvency Act.

- (2) The other Rules of the Court apply, to the extent that they are relevant and not inconsistent with these Rules:
 - (a) to a proceeding in the Court to which the Bankruptcy Act applies; and
 - (b) to a proceeding in the Court under the Cross-Border Insolvency Act.

1.05 Interpretation

- (1) In these Rules:

Act means the *Federal Court of Australia Act 1976*.

Bankruptcy Act means the *Bankruptcy Act 1966*.

bankruptcy notice means a bankruptcy notice issued by the Official Receiver under section 41 of the Bankruptcy Act.

Bankruptcy Regulations means the *Bankruptcy Regulations 1996*.

Cross-Border Insolvency Act means the *Cross-Border Insolvency Act 2008* including, unless the contrary intention appears, the Model Law.

Model Law means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, the English text of which is set out in Schedule 1 to the Cross-Border Insolvency Act, with the modifications set out in Part 2 of that Act.

- (2) 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 the *Federal Court Rules 2011*.

Rule 1.06

- (3) Subrule (2) has effect subject to rule 1.06.

1.06 Expressions used in the Bankruptcy Act

An expression used in these Rules and in the Bankruptcy Act has the same meaning in these Rules as it has in the Bankruptcy Act.

Note: A number of expressions used in these Rules are defined in the Bankruptcy Act, including the following:

- (a) bankrupt;
- (b) books;
- (c) creditor;
- (d) creditor's petition;
- (e) debt agreement;
- (f) debtor's petition;
- (g) examinable affairs;
- (h) examinable person;
- (i) National Personal Insolvency Index;
- (j) Official Trustee;
- (k) personal insolvency agreement;
- (l) petition;
- (m) proclaimed law;
- (n) property;
- (o) the Official Receiver;
- (p) the trustee.

1.07 Forms

- (1) In these Rules, a reference consisting of the word "Form" followed by the letter "B" and a number is a reference to the form so numbered approved under subrule (2).

- (2) The Chief Justice may approve a form for the purpose of a provision of these Rules.

- (3) A form approved under subrule (2) must be published on the Court's website.

Note: The Court's website is <http://www.fedcourt.gov.au>.

- (4) It is sufficient compliance with these Rules in relation to a document that is required to be in accordance with an approved form if the document:

- (a) is substantially in accordance with the approved form and the Court's requirements; or
- (b) has only such variations as the nature of the case requires.

Note: The Court's requirements in relation to preparing and lodging documents are set out in practice notes issued by the Chief Justice.

- (5) If these Rules do not prescribe a form for a particular purpose, a form prescribed in other rules of the Court for that purpose may be used, but the document must have a title in accordance with Form B1.

Part 2—General

2.01 Originating application and interim application

- (1) Unless these Rules otherwise provide, a person must make an application required or permitted by the Bankruptcy Act to be made to the Court:
 - (a) if the application is not made in a proceeding already commenced in the Court—by filing an application in accordance with Form B2; or
 - (b) in any other case—by filing an interim application in accordance with Form B3.

Note: For applications in proceedings under the Cross-Border Insolvency Act, see Part 14.

- (2) If final relief has been granted in relation to a proceeding under the Bankruptcy Act or the Cross-Border Insolvency Act, a person may make an application to the Court in relation to the proceeding by filing an interim application in accordance with Form B3 unless the Court otherwise directs.
- (3) An application filed in accordance with Form B2 must state:
 - (a) each section of the Bankruptcy Act, each regulation of the Bankruptcy Regulations or each section of the Cross-Border Insolvency Act under which the proceeding is brought; and
 - (b) the relief sought.
- (4) An interim application filed in accordance with Form B3 must state:
 - (a) if appropriate, each section of the Bankruptcy Act, each regulation of the Bankruptcy Regulations or each section of the Cross-Border Insolvency Act, or each rule of Court under which the application is made; and
 - (b) the relief sought.

Note 1: The following are examples of applications that must be made by filing an application in accordance with Form B2:

- (a) an application for an order for substituted service of a bankruptcy notice;
- (b) an application, under section 50 of the Bankruptcy Act, for the issue of a summons to a debtor, or an examinable person in relation to the debtor, for examination about the debtor and the debtor's examinable affairs;
- (c) an application, under section 78 of the Bankruptcy Act, for the issue of a warrant for the arrest of a debtor or bankrupt;
- (d) an application for an appeal, under subsection 82(5) of the Bankruptcy Act, against an estimate by the trustee of the value of a debt or liability provable in a bankruptcy;
- (e) an application, under section 153B of the Bankruptcy Act, for the annulment of a bankruptcy;
- (h) an application, under section 180 of the Bankruptcy Act, for acceptance of a registered trustee's resignation from the office of trustee of an estate;
- (i) an application, under section 183 of the Bankruptcy Act, for release of a trustee from the trusteeship of an estate;
- (j) an application, under section 185Q of the Bankruptcy Act, for an order terminating a debt agreement;
- (k) an application, under section 185T of the Bankruptcy Act, for an order declaring that all, or a specified part, of a debt agreement is void;

Rule 2.02

- (l) an application, under section 222 of the Bankruptcy Act, for an order setting aside a personal insolvency agreement;
- (m) an application, under section 222 of the Bankruptcy Act (as applied by section 76B of that Act), for an order setting aside a composition or scheme of arrangement;
- (n) an application, under section 222C of the Bankruptcy Act, for an order terminating a personal insolvency agreement;
- (o) an application, under section 222C of the Bankruptcy Act (as applied by section 76B of that Act), for an order terminating a composition or scheme of arrangement;
- (p) an application, under section 252B of the Bankruptcy Act, for the annulment of the administration of the estate of a deceased person.

Note 2: The following are examples of interim applications that must be made by filing an interim application in accordance with Form B3:

- (a) an application for an order for substituted service of a creditor's petition;
- (b) an application for an order for substituted service of any other application or appeal under the Bankruptcy Act made in a proceeding already commenced in the Court (including each application referred to in Note 1 to this rule, other than an application referred to in paragraph (a) of that note);
- (c) an application, under subsection 35A(5) of the Act, for review of the exercise of a power by a Registrar in a proceeding under the Bankruptcy Act.

2.02 Exercise of powers by Registrars

- (1) For the purposes of paragraph 35A(1)(h) of the Act, the following powers of the Court are prescribed:
 - (a) a power of the Court under a provision of the Bankruptcy Act referred to in Part 1 of Schedule 1;
 - (b) a power of the Court under a provision of these Rules referred to in Part 2 of Schedule 1.
- (2) An application under paragraph 35A(7)(b) of the Act may be made orally to a Registrar at the time that that Registrar is hearing the application for the exercise of a power referred to in subsection 35A(1) of the Act.
- (3) 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 must be made by filing an interim application in accordance with Form B3 within 21 days after the day on which the power was exercised.

Note: For additional rules relating to the review of a decision by a Registrar to make a sequestration order, see rule 7.05.

2.03 Leave to be heard

- (1) The Court may grant leave to be heard in a proceeding to a person who is not a party to the proceeding.
- (2) The Court may grant the leave on conditions, and may revoke the leave at any time.
- (3) The Court may order the person to pay costs if:
 - (a) the granting of leave to the person causes additional costs for a party to the proceeding; and

- (b) the Court considers that the costs should be paid by the person.
- (4) The Court may also order that the person is not to be further heard in the proceeding until the costs are paid or secured to the Court's satisfaction.
- (5) The Court may grant leave or make an order under this rule:
 - (a) on the Court's own initiative; or
 - (b) on the application of a party, or a person who has an interest in the proceeding.
- (6) An application for leave or for an order must be made by filing an interim application in accordance with Form B3.

2.04 Appearance at hearing or examination

A person who intends to appear at the hearing of an application or petition, or take part in an examination, must file a notice of appearance in accordance with Form B4.

2.05 Change of return date of creditor's petition

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.

2.06 Opposition to application, interim application or petition

A person who intends to oppose an application (including an interim application) or a petition must, at least 3 days before the date fixed for the hearing of the application or petition or, with the leave of the Court, at the hearing:

- (a) file a notice of appearance in accordance with Form B4; and
- (b) file a notice in accordance with Form B5 stating the grounds of opposition; and
- (c) file an affidavit in support of the grounds of opposition; and
- (d) serve the notices and supporting affidavit on the applicant.

Part 3—Bankruptcy notices

3.01 Substituted service

- (1) An application under subsection 309(2) of the Bankruptcy Act for substituted service of a bankruptcy notice must be accompanied by an affidavit stating the grounds in support of the application.
- (2) A copy of the bankruptcy notice must be attached to the affidavit.

3.02 Setting aside bankruptcy notice

- (1) An application to set aside a bankruptcy notice under the Bankruptcy Act must be accompanied by an affidavit stating:
 - (a) the grounds in support of the application; and
 - (b) the date when the bankruptcy notice was served on the applicant.
- (2) A copy of the bankruptcy notice must be attached to the affidavit.
- (3) If the application is based on the ground that the debtor has a counter-claim, set-off or cross demand referred to in paragraph 40(1)(g) of the Bankruptcy Act, the affidavit must also state:
 - (a) the full details of the counter-claim, set-off or cross demand; and
 - (b) the amount of the counter-claim, set-off or cross demand and the amount by which it exceeds the amount claimed in the bankruptcy notice; and
 - (c) why the counter-claim, set-off or cross demand was not raised in the proceedings that resulted in the judgments or orders to which the bankruptcy notice relates.
- (4) If the application is based on the ground that the debtor has instituted proceedings to set aside a judgment or order in relation to which the bankruptcy notice was issued, a copy of the application to set aside the judgment or order and any material in support of that application must also be attached to the affidavit.
- (5) The application and supporting affidavit must be served on the respondent creditor within 3 days after the application is filed.

Note 1: For extensions of time for compliance with a bankruptcy notice where an application has been made to set aside a judgment or order in respect of which the bankruptcy notice was issued, see paragraph 41(6A)(a) and subsection 41(6C) of the Bankruptcy Act and rule 3.03.

Note 2: For extensions of time for compliance with a bankruptcy notice where an application has been made to the Court to set aside the bankruptcy notice, see paragraph 41(6A)(b) of the Bankruptcy Act and rule 3.03.

Note 3: For the deemed extension of time for compliance with a bankruptcy notice where a counter-claim, set-off or cross demand is raised under paragraph 40(1)(g) of the Bankruptcy Act, see subsection 41(7) of that Act.

3.03 Extension of time for compliance with bankruptcy notice

- (1) An application for an extension of time, under subsection 41(6A) of the Bankruptcy Act, for compliance with a bankruptcy notice must be accompanied by an affidavit stating:
 - (a) the grounds in support of the application; and
 - (b) the date when the bankruptcy notice was served on the applicant.

Note: See also subsection 41(6C) of the Bankruptcy Act.

- (2) The following must be attached to the affidavit:
 - (a) a copy of the bankruptcy notice;
 - (b) a copy of any application to set aside a judgment or order in relation to which the bankruptcy notice was issued and any material in support of that application.
- (3) The application may be made in the absence of a party.
- (4) The application need be heard in open court only if it is for an extension of time to a date after the first directions hearing.
- (5) If, on application, the Court extends the time for compliance with the bankruptcy notice, the following documents must be served on the respondent creditor within 3 days after the order is made:
 - (a) the application;
 - (b) the supporting affidavit;
 - (c) the order.

Part 4—Creditors' petitions

4.01 Application of Part 4

This Part applies in relation to a creditor's petition seeking a sequestration order against the estate of a debtor.

4.02 Requirements for creditor's petition and supporting affidavit

- (1) For subsection 47(1A) of the Bankruptcy Act, a creditor's petition must be in accordance with Form B6.
- (2) The affidavit (the *verifying affidavit*) verifying the petition required by subsection 47(1) of the Bankruptcy Act must:
 - (a) be included in the petition in accordance with Form B6; or
 - (b) accompany the petition.
- (3) The petition must also be accompanied by any affidavits relating to the petition required by rule 4.04.
- (4) Unless the petition is faxed, or sent by electronic communication, to a Registry for filing, the petition must also be accompanied by sufficient copies of the petition for service and proof of service.
- (5) If the petition is accompanied by the verifying affidavit in accordance with paragraph (2)(b), a copy of the petition must be attached to the verifying affidavit.

4.03 Creditor's petition founded on issue of execution against debtor

- (1) If a creditor's petition is founded on an act of bankruptcy specified in paragraph 40(1)(d) of the Bankruptcy Act, the affidavit verifying the petition required by subsection 47(1) of the Bankruptcy Act must state:
 - (a) that, in consequence of the issue of execution against the debtor, property of the debtor has been sold by the sheriff or held by the sheriff for 21 days; or
 - (b) that the writ or warrant of execution relating to the act of bankruptcy has been returned unsatisfied.
- (2) If paragraph (1)(b) applies, the affidavit must have attached to it a sealed or certified copy of the writ or warrant of execution returned unsatisfied.

4.04 Creditor's petition founded on failure to comply with bankruptcy notice etc.

- (1) If a creditor's petition is founded on an act of bankruptcy specified in paragraph 40(1)(g) of the Bankruptcy Act, the petition must also be accompanied by:

- (a) an affidavit stating:
 - (i) that the records of the Court and the records of the Federal Circuit 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 Court or in the Federal Circuit Court (as the case may be) 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 Court or in the Federal Circuit Court (as the case may be) for an order extending the time for compliance with the bankruptcy notice and the application has been finally decided; and
 - (b) an affidavit of service of the relevant bankruptcy notice.
- (2) If an affidavit required by paragraph (1)(a) states the matters referred to in subparagraph (1)(a)(i), a copy of the search must be attached to the affidavit.
 - (3) If an affidavit required by paragraph (1)(a) states that an application referred to in subparagraph (1)(a)(ii) or (iii) was made, a copy of the order finally deciding the application must be attached to the affidavit.
 - (4) A copy of the bankruptcy notice must be attached to the affidavit required by paragraph (1)(b).

4.05 Documents to be served

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of a creditor's petition, the applicant creditor must serve on the respondent debtor:

- (a) the creditor's petition; and
- (b) a copy of the affidavit, or affidavits, verifying the petition required by subsection 47(1) of the Bankruptcy Act; and
- (c) if applicable, a copy of the affidavits relating to the petition required by rule 4.04; and
- (d) a copy of any consent to act as trustee of the debtor's estate filed under section 156A of the Bankruptcy Act.

4.06 Additional affidavits to be filed before hearing

- (1) Before the hearing of a creditor's petition, the applicant creditor must comply with this rule.
- (2) The applicant creditor must file an affidavit that:
 - (a) states that the documents required to be served under rule 4.05 have been served, and when and how they were served; and
 - (b) has attached to it a copy of the documents that were served and proof of service in relation to the documents.

Rule 4.07

- (3) The applicant creditor must file an affidavit, of a person who has, no earlier than the day before the hearing date for the petition, searched, or caused a search to be made, in the National Personal Insolvency Index, that:
 - (a) sets out the details of any references in the Index to the debtor; and
 - (b) states that there were no details of a debt agreement, about the debt on which the applicant creditor relies, in the Index:
 - (i) on the day when the petition was presented; and
 - (ii) on the day when the search was made; and
 - (c) has attached to it a copy of the relevant extract of the Index.
- (4) The applicant creditor must file an affidavit of a person who knows the relevant facts that:
 - (a) was sworn as soon as practicable before the hearing date for the petition; and
 - (b) states that each debt on which the applicant creditor relies is still owing.
- (5) If a debt stated in the petition is an amount payable to the applicant creditor under a judgment of a court that ordered the amount to be paid into the court, the applicant creditor must file an affidavit:
 - (a) of a person who has, not earlier than the day before the hearing date for the petition, searched in the proper office of the court; and
 - (b) that states whether the amount of the debt (or part of that amount) has been paid as ordered.

4.07 Notification and entry of sequestration order

- (1) A sequestration order must be in accordance with Form B7.
- (2) If the Court makes a sequestration order against the estate of a debtor, the applicant creditor must:
 - (a) on the day 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, in accordance with section 156A of the Bankruptcy Act, consented to act as the trustee of the debtor's estate.

Note: The applicant creditor must also 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: see subsection 52(1A) of the Bankruptcy Act.

- (3) If the order is not entered in accordance with Division 39.4 of the *Federal Court Rules 2011* at the time the order is made, the applicant creditor must, as soon as practicable, request entry of the order in accordance with that Division.

4.08 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) If the order is not entered in accordance with Division 39.4 of the *Federal Court Rules 2011* at the time the order is made, the applicant creditor must, as soon as practicable, request entry of the order in accordance with that Division.

4.09 Service of order

Within 2 days after an order referred to in rule 4.07 or 4.08 is entered in accordance with Division 39.4 of the *Federal Court Rules 2011*, the applicant creditor must give a copy of the entered order to:

- (a) any person who has, in accordance with section 156A of the Bankruptcy Act, consented to act as the trustee of the debtor's estate; and
- (b) the Official Receiver.

Part 5—Debtors' petitions

5.01 Referral of debtor's petition

- (1) A referral of a debtor's petition to the Court by the Official Receiver under subsection 55(3B), 56C(1) or 57(3B) of the Bankruptcy Act must be in accordance with Form B8.
- (2) On receiving a referral, a Registrar must fix a time, date and place for the hearing of the referral.
- (3) At least 3 days before the date fixed for the hearing, the Official Receiver must serve a sealed copy of the referral, and notice of the time, date and place fixed for the hearing, on:
 - (a) each debtor who presented the debtor's petition; and
 - (b) for each creditor's petition of the kind referred to in subsection 55(3B), 56C(1) or 57(3B) of the Bankruptcy Act:
 - (i) each debtor against whom the creditor's petition was made; and
 - (ii) each creditor who presented the creditor's petition; and
 - (c) if subsection 56C(4) of the Bankruptcy Act applies to the debtor's petition—the person administering the relevant proclaimed law.
- (4) The notice required by subrule (3) must be in accordance with the notice set out in Form B8.

Part 6—Examinations

Division 6.1—Examination of debtor or examinable person under section 50 of the Bankruptcy Act

6.01 Application for summons

- (1) An application under section 50 of the Bankruptcy Act for a debtor, or an examinable person in relation to a debtor, to be summoned for examination must be in accordance with Form B2.

Note: More than one application may be included in the same Form B2.

- (2) The application must be accompanied by an affidavit complying with this rule.
- (3) The affidavit must:
 - (a) identify:
 - (i) the person sought to be examined; and
 - (ii) if that person is an examinable person in relation to a debtor—the debtor; and
 - (b) if the person sought to be examined is an examinable person—state the facts relied on by the applicant to establish that the person to be summoned is an examinable person; and
 - (c) if the summons is to require the person sought to be examined to produce books at the examination:
 - (i) identify the books that are to be produced; and
 - (ii) give details of any inquiry by the applicant about the books to be produced and any refusal by the person to cooperate with the inquiry.

6.02 Hearing of application

An application referred to in rule 6.01 may be heard in the absence of a party or in closed court.

6.03 Requirements for summons

- (1) A summons to a person under subsection 50(2) of the Bankruptcy Act for examination must be in accordance with Form B9.
- (2) A Registrar must:
 - (a) sign, and affix the seal of the Court or the stamp of a District Registry to, the summons; and
 - (b) give the summons to the person who applied for the summons for service on the person to be examined.
- (3) If the summons requires the person to be examined to produce books at the examination, the summons must identify the books that are to be produced.

Rule 6.04

6.04 Service of summons

If the Court summons a person under subsection 50(2) of the Bankruptcy Act for examination, the applicant for the summons must, at least 8 days before the date fixed for the examination:

- (a) serve the summons on the person to be examined personally, or in another way directed by the Court or a Registrar; and
- (b) give written notice of the date, time and place fixed for the examination to each person known to the applicant to be a creditor of the debtor.

6.05 Application for discharge of summons

- (1) If a person is served with a summons under subsection 50(2) of the Bankruptcy Act for examination, the person may apply for an order to discharge the summons by filing:
 - (a) an interim application, in accordance with Form B3, in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) The interim application and supporting affidavit must be filed at least 3 days before the date fixed for the examination.
- (3) As soon as possible after filing the interim application and supporting affidavit, the person must serve a copy of each document:
 - (a) on the person who applied for the summons; and
 - (b) if the person who applied for the summons is not the Official Receiver—on the Official Receiver.

Division 6.2—Examination of relevant person under section 81 of the Bankruptcy Act

6.06 Application for summons

- (1) An application under section 81 of the Bankruptcy Act for a relevant person to be summoned for examination in relation to the person's bankruptcy must be in accordance with Form B10.

Note: More than one application under section 81 of the Bankruptcy Act (including an application referred to in rule 6.12) may be included in the same Form B10.

- (2) The application must be accompanied by:
 - (a) a draft of the summons applied for; and
 - (b) an affidavit that complies with subrule (3).
- (3) The affidavit must:
 - (a) state whether the applicant is:
 - (i) a creditor who has a debt provable in the bankruptcy; or
 - (ii) the trustee of the relevant person's estate; or
 - (iii) the Official Receiver; and
 - (b) if the summons is to require the relevant person to produce books at the examination:
 - (i) identify the books that are to be produced; and
 - (ii) give details of any inquiry by the applicant about the books to be produced and any refusal by the relevant person to cooperate with the inquiry.

6.07 Hearing of application

An application referred to in rule 6.06 may be heard in the absence of a party or in closed court.

6.08 Requirements for summons

- (1) A summons to a relevant person under subsection 81(1) of the Bankruptcy Act for examination must be in accordance with Form B9.
- (2) A Registrar must:
 - (a) sign, and affix the seal of the Court or the stamp of a District Registry to, the summons; and
 - (b) give the summons to the person who applied for the summons for service on the relevant person.
- (3) If the summons requires the relevant person to produce books at the examination, the summons must identify the books that are to be produced.

Rule 6.09

6.09 Service of summons

If the Court or a Registrar summons a relevant person under subsection 81(1) of the Bankruptcy Act for examination, the applicant for the summons must, at least 8 days before the date fixed for the examination:

- (a) serve the summons on the relevant person personally, or in another way directed by the Court or a Registrar; and
- (b) give written notice of the date, time and place fixed for the examination to each person known to the applicant to be a creditor of the relevant person.

6.10 Failure to attend examination

If the relevant person does not attend an examination in accordance with a summons to the relevant person under subsection 81(1) of the Bankruptcy Act, the Court or a Registrar may:

- (a) adjourn the examination generally or to another day, time or place; or
- (b) discharge the summons.

Note: For the power of the Court or a Registrar to issue a warrant for the arrest of a relevant person who does not attend an examination in accordance with a summons, see section 264B of the Bankruptcy Act.

6.11 Application for discharge of summons

- (1) If a relevant person is served with a summons under subsection 81(1) of the Bankruptcy Act for examination, the person may apply for an order to discharge the summons by filing:
 - (a) an interim application, in accordance with Form B3, in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) The interim application and supporting affidavit must be filed at least 3 days before the date fixed for the examination.
- (3) As soon as possible after filing the interim application and supporting affidavit, the relevant person must serve a copy of each document:
 - (a) on the person who applied for the summons; and
 - (b) if the person who applied for the summons is not the Official Receiver—on the Official Receiver.
- (4) The order to discharge the summons may be made by the Court or a Registrar.

Division 6.3—Examination of examinable person under section 81 of the Bankruptcy Act

6.12 Application for summons

- (1) An application under section 81 of the Bankruptcy Act for an examinable person in relation to a relevant person to be summoned for examination in relation to the relevant person's bankruptcy must be in accordance with Form B10.

Note: More than one application under section 81 of the Bankruptcy Act (including an application referred to in rule 6.06) may be included in the same Form B10.

- (2) The application must be accompanied by:
- (a) a draft of the summons applied for; and
 - (b) an affidavit that complies with subrule (3).
- (3) The affidavit must:
- (a) state whether the applicant is:
 - (i) a creditor who has a debt provable in the bankruptcy; or
 - (ii) the trustee of the relevant person's estate; or
 - (iii) the Official Receiver; and
 - (b) state the facts relied on by the applicant to establish that the person to be summoned is an examinable person; and
 - (c) if the summons is to require an examinable person to produce books at the examination:
 - (i) identify the books that are to be produced; and
 - (ii) give details of any inquiry by the applicant about the books to be produced and any refusal by the examinable person to cooperate with the inquiry.
- (4) If the affidavit is lodged with a Registry for filing (other than by being sent to the Registry by electronic communication), it may be filed in a sealed envelope marked "Affidavit supporting application for summons for examination under subsection 81(1) of the *Bankruptcy Act 1966*".
- (5) If the affidavit is sent by electronic communication to a Registry for filing:
- (a) the affidavit may be marked "Confidential"; and
 - (b) if the affidavit is so marked—the affidavit must be accompanied by a statement that the affidavit is a "confidential affidavit supporting an application for summons for examination under subsection 81(1) of the *Bankruptcy Act 1966*".
- (6) If the affidavit is:
- (a) filed in a sealed envelope in accordance with subrule (4); or
 - (b) marked "Confidential" as permitted by paragraph (5)(a);
- a Registrar must not make it available for public inspection.

Rule 6.13

6.13 Hearing of application

An application referred to in rule 6.12 may be heard in the absence of a party or in closed court.

6.14 Requirements for summons

- (1) A summons to an examinable person under subsection 81(1) of the Bankruptcy Act for examination must be in accordance with Form B9.
- (2) A Registrar must:
 - (a) sign, and affix the seal of the Court or the stamp of a District Registry to, the summons; and
 - (b) give the summons to the person who applied for the summons for service on each examinable person to be examined.
- (3) If the summons requires an examinable person to produce books at the examination, the summons must identify the books that are to be produced.

6.15 Service of summons

If the Court or a Registrar summons an examinable person under subsection 81(1) of the Bankruptcy Act for examination in relation to the bankruptcy of a relevant person, the applicant for the summons must, at least 8 days before the date fixed for the examination:

- (a) serve the summons on each examinable person personally, or in another way directed by the Court or a Registrar; and
- (b) give written notice of the date, time and place fixed for the examination to each person known to the applicant to be a creditor of the relevant person.

6.16 Application for discharge of summons

- (1) If an examinable person is served with a summons under subsection 81(1) of the Bankruptcy Act for examination, the person may apply for an order to discharge the summons by filing:
 - (a) an interim application in accordance with Form B3, in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) The interim application and supporting affidavit must be filed at least 3 days before the date fixed for the examination.
- (3) As soon as possible after filing the interim application and supporting affidavit, the examinable person must serve a copy of each document:
 - (a) on the person who applied for the summons; and
 - (b) if the person who applied for the summons is not the Official Receiver—on the Official Receiver.
- (4) The order to discharge the summons may be made by the Court or a Registrar.

6.17 Conduct money and witnesses expenses

- (1) An examinable person who, in accordance with a summons under subsection 81(1) of the Bankruptcy Act, attends an examination to give evidence or produce documents is entitled to be paid:
 - (a) enough conduct money to cover the reasonable expenses of travelling from and to the place where the person lives, and any reasonable accommodation expenses; and
 - (b) reasonable expenses for the person's attendance as a witness.
- (2) The expenses must be paid by the applicant for the summons.
- (3) The expenses referred to in paragraph (1)(a) must be paid at a reasonable time before the person is to attend the examination.
- (4) In this rule:

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet a person's reasonable expenses of attending an examination and returning after so attending.

Part 7—Annulment or review of bankruptcy

Division 7.1—Annulment of bankruptcy

7.01 Application of Division 7.1

This Division applies to the following applications:

- (a) an application under section 153B of the Bankruptcy Act for the annulment of a bankruptcy;
- (b) an application under section 252B of the Bankruptcy Act for the annulment of the administration of the estate of a deceased person.

7.02 Requirements for application

- (1) An application must set out the grounds on which the annulment is sought.
- (2) The application must be served on the trustee at least 7 days before the date fixed for the hearing of the application.

7.03 Notice to creditors

- (1) The applicant must give notice of the application to each person known to the applicant to be a creditor of the bankrupt or a creditor of the estate of the deceased person.
- (2) The notice must be in accordance with Form B11.
- (3) The applicant must serve the notice on each creditor at least 7 days before the date fixed for the hearing of the application.

7.04 Entry and service of annulment order

- (1) This rule applies if the Court makes an order:
 - (a) annulling a bankruptcy under section 153B of the Bankruptcy Act; or
 - (b) annulling the administration of an estate under section 252B of the Bankruptcy Act.
- (2) If the order is not entered in accordance with Division 39.4 of the *Federal Court Rules 2011* at the time the order is made, the applicant must, within 1 day after the order is made, request entry of the order in accordance with that Division.
- (3) Within 2 days after the order is entered, the applicant must give a copy of the entered order to:
 - (a) the trustee of the estate of the bankrupt or deceased person; and
 - (b) the Official Receiver.

Division 7.2—Review of sequestration order

7.05 Review of Registrar’s decision

- (1) This rule applies in relation to an application under subsection 35A(5) of the Act for review of a decision by a Registrar to make a sequestration order against the estate of a debtor (the *bankrupt*).

Note: For the form of the application and the time for filing the application, see rule 2.02.

- (2) The application must be served on the trustee at least 7 days before the date fixed for the hearing of the application.
- (3) The applicant must give notice of the application to each person known to the applicant to be a creditor of the bankrupt.
- (4) The notice must be in accordance with Form B12.
- (5) The applicant must serve the notice on each creditor at least 7 days before the date fixed for the hearing of the application.

Division 7.3—Report by trustee

7.06 Report by trustee

- (1) This rule applies if an application referred to in rule 7.01 or 7.05 is made.
- (2) If directed by the Court, the trustee must prepare a report for the periods before and after the bankruptcy or the administration of the estate of the deceased person.
- (3) If the report is in relation to a bankrupt, the report must include information about:
 - (a) the bankrupt's conduct; and
 - (b) the bankrupt's examinable affairs; and
 - (c) the administration of the bankrupt's estate.
- (4) If the report is in relation to the estate of a deceased person, the report must include information about the administration of the deceased person's estate.
- (5) The report must:
 - (a) be in the form of an affidavit; and
 - (b) be filed at least 5 days before the date fixed for the hearing of the application.

Part 8—Trustees

8.01 Applications in relation to the appointment of a trustee

- (1) This rule applies to an application under section 90-20 of Schedule 2 to the Bankruptcy Act for either of the following orders:
 - (a) an order that a person cease to be the trustee of an estate;
 - (b) an order that another person be appointed as the trustee of an estate.
- (2) The application must be accompanied by an affidavit stating the grounds in support of the application.
- (3) At least 28 days before the date fixed for the hearing of the application, the applicant must serve the application and supporting affidavit on the trustee and any petitioning creditor.
- (4) At least 14 days before the date fixed for the hearing of the application, the applicant must serve the application and supporting affidavit on each person known to the applicant to be a creditor of the estate.
- (5) If the Court makes the order sought, the applicant must, as soon as practicable, serve a copy of the order on the Official Receiver.

8.02 Resignation or release of trustee

- (1) This rule applies to the following applications:
 - (a) an application for the acceptance under section 180 of the Bankruptcy Act of a trustee's resignation from the office of trustee of an estate;
 - (b) an application under subsection 183(1) of the Bankruptcy Act for the release of a trustee from the trusteeship of an estate.
- (2) The application must be accompanied by an affidavit stating the grounds in support of the application.
- (3) For an application referred to in paragraph (1)(b), the following must be attached to the affidavit:
 - (a) a statement giving details of the realisation of the bankrupt's property and the distribution of the estate by the trustee;
 - (b) a copy of the books referred to in section 70-10 of Schedule 2 to the Bankruptcy Act in relation to the estate.
- (4) The application and supporting affidavit must be served on:
 - (a) the Official Receiver; and
 - (b) the bankrupt; and
 - (c) anyone else (including a creditor) as ordered by the Court.
- (5) If the Court makes the order sought, and the order is not entered in accordance with Division 39.4 of the *Federal Court Rules 2011* at the time the order is

Rule 8.02

made, the trustee must, within 1 day after the order is made, request entry of the order in accordance with that Division.

- (6) Within 2 days after the order is entered, the trustee must give a copy of the entered order to the Official Receiver.

Part 9—Debt agreements

9.01 Application of Part 9

This Part applies to the following applications:

- (a) an application under section 185Q of the Bankruptcy Act for an order terminating a debt agreement;
- (b) an application under section 185T of the Bankruptcy Act for an order declaring that all, or a specified part, of a debt agreement is void.

9.02 Requirements for application

- (1) An application for an order terminating a debt agreement must be accompanied by an affidavit stating the facts relied on to satisfy the relevant prerequisite in subsection 185Q(4) of the Bankruptcy Act for making the order.
- (2) An application for an order declaring that all, or a specified part, of a debt agreement is void must be accompanied by an affidavit stating the facts relied on to establish the relevant ground in subsection 185T(2) of the Bankruptcy Act for applying for the order.
- (3) A copy of the debt agreement must be attached to the affidavit referred to in subrule (1) or (2).
- (4) If an application is made by a creditor who also seeks a sequestration order in accordance with subsection 185Q(2) or 185T(4) of the Bankruptcy Act, that must be stated in the application.

9.03 Service

At least 5 days before the date fixed for the hearing of an application, the application and supporting affidavit must be served on:

- (a) the debtor (or the debtor's personal representative if the debtor has died);
and
- (b) if the applicant is not the Official Trustee—the Official Receiver.

9.04 Notice to creditors

- (1) At least 5 days before the date fixed for the hearing of an application, the applicant must serve a written notice of the time, date and place fixed for the hearing on each person known to the applicant to be a creditor of the debtor.
- (2) The notice must be in accordance with Form B13.

9.05 Entry and service of order

- (1) If:
-

Rule 9.05

(a) the Court makes an order under section 185Q or 185U of the Bankruptcy Act; and

(b) the order is not entered in accordance with Division 39.4 of the *Federal Court Rules 2011* at the time the order is made;

the applicant must, within 1 day after the order is made, request entry of the order in accordance with that Division.

(2) Within 2 days after the order is entered, the applicant must give a copy of the entered order to the Official Receiver.

Part 10—Personal insolvency agreements

10.01 Application of Part 10

This Part applies to the following applications:

- (a) an application under section 222 of the Bankruptcy Act for an order setting aside a personal insolvency agreement;
- (b) an application under section 222C of the Bankruptcy Act for an order terminating a personal insolvency agreement;
- (c) an application under section 222 of the Bankruptcy Act (as applied by section 76B of that Act) for an order setting aside a composition or scheme of arrangement;
- (d) an application under section 222C of the Bankruptcy Act (as applied by section 76B of that Act) for an order terminating a composition or scheme of arrangement.

10.02 Requirements for application

- (1) An application must be accompanied by an affidavit stating the facts relied on to establish the relevant ground for making the order.

Note: The grounds for making the order are stated in subsections 222(1), (2) and (5) and subsection 222C(1) of the Bankruptcy Act.

- (2) The affidavit accompanying an application for an order under subsection 222(2) of the Bankruptcy Act must also state the facts relied on to satisfy the prerequisite in subsection 222(4) of that Act for making the order.
- (3) The affidavit accompanying an application for an order under subsection 222(5) of the Bankruptcy Act must also state the facts relied on to satisfy the prerequisite in subsection 222(7) of that Act for making the order.
- (4) If an application is made by a trustee or creditor who also seeks a sequestration order in accordance with subsection 222(10) or 222C(5) of the Bankruptcy Act, that must be stated in the application.

10.03 Service

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of an application, the application and supporting affidavit must be served on:

- (a) the debtor; and
- (b) the trustee of the estate; and
- (c) the Official Receiver.

Note: The Court may dispense with service on the debtor of notice of an application: see subsection 222(12) of the Bankruptcy Act.

Rule 10.04

10.04 Notice to creditors

- (1) At least 5 days before the date fixed for the hearing of the application, the applicant must serve a written notice of the time, date and place fixed for the hearing on each creditor named in the debtor's statement of affairs.
- (2) The notice must be in accordance with Form B13.

10.05 Entry of order

If:

- (a) the Court makes an order under subsection 222(1), (2) or (5) or subsection 222C(1) of the Bankruptcy Act; and
- (b) the order is not entered in accordance with Division 39.4 of the *Federal Court Rules 2011* at the time the order is made;

the applicant must, as soon as practicable, request entry of the order in accordance with that Division.

Note: A copy of the order must be given to the Official Receiver within 2 days after the order is made: see subregulations 10.11(3) and (4) of the *Bankruptcy Regulations 1996*.

Part 11—Administration of estates of deceased persons

11.01 Creditor’s petition

A creditor’s petition presented under section 244 of the Bankruptcy Act for an order for the administration of a deceased person’s estate must be:

- (a) in accordance with Form B14; and
- (b) accompanied by the affidavit verifying the petition required by subsection 244(5) of the Bankruptcy Act.

11.02 Documents to be served

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of a creditor’s petition presented under section 244 of the Bankruptcy Act, the applicant creditor must serve on the legal personal representative of the deceased person or such other person as the Court directs:

- (a) the creditor’s petition; and
- (b) a copy of the affidavit, or affidavits, verifying the petition required by subsection 244(5) of the Bankruptcy Act; and
- (c) a copy of any consent to act as trustee of the deceased person’s estate filed under section 156A of the Bankruptcy Act.

11.03 Additional affidavits to be filed before hearing of creditor’s petition

- (1) Before the hearing of a creditor’s petition presented under section 244 of the Bankruptcy Act, the applicant creditor must comply with this rule.
- (2) The applicant creditor must file an affidavit that:
 - (a) states that the documents required to be served under rule 11.02 have been served, and when and how they were served; and
 - (b) has attached to it a copy of the petition and proof of service in relation to the petition.
- (3) The applicant creditor must file an affidavit, of a person who has, no earlier than the day before the hearing date for the petition, searched, or caused a search to be made, in the National Personal Insolvency Index, that:
 - (a) sets out the details of any references in the Index to the deceased person; and
 - (b) states that there were no details of a debt agreement, about the debt on which the applicant creditor relies, in the Index:
 - (i) on the day on which the petition was presented; and
 - (ii) on the day when the search was made; and
 - (c) has attached to it a copy of the relevant extract of the Index.
- (4) The applicant creditor must file an affidavit of a person who knows the relevant facts that:

Rule 11.04

- (a) was sworn as soon as practicable before the hearing date for the petition; and
 - (b) states that each debt on which the applicant creditor relies is still owing.
- (5) If a proceeding has been commenced in a court for the administration of the deceased person's estate under a State or Territory law, the applicant creditor must file an affidavit of a person who knows the relevant facts setting out details of the proceeding.

11.04 Administrator's petition

A petition presented under section 247 of the Bankruptcy Act for an order for the administration of the estate of a deceased person must be:

- (a) in accordance with Form B15; and
- (b) accompanied by an affidavit of a person who knows the relevant facts verifying the petition.

Note: The petition must also be accompanied by a statement, in duplicate, of the deceased person's affairs and of the administrator's administration of the deceased person's estate: see subsection 247(1) of the Bankruptcy Act. Regulation 11.01 of the Bankruptcy Regulations sets out the particulars that must be included in the statement.

11.05 Documents to be served

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of a petition presented under section 247 of the Bankruptcy Act, the applicant must serve on each person known to the applicant to be a creditor of the estate of the deceased person or such other person as the Court directs:

- (a) the petition; and
- (b) a copy of the affidavit, or affidavits, verifying the petition required by rule 11.04; and
- (c) a copy of the statement of the deceased person's affairs and of the administrator's administration of the deceased person's estate required by subsection 247(1) of the Bankruptcy Act.

11.06 Entry of order

If:

- (a) the Court makes an order under section 244 or 247 of the Bankruptcy Act; and
- (b) the order is not entered in accordance with Division 39.4 of the *Federal Court Rules 2011* at the time the order is made;

the applicant must, as soon as practicable, request entry of the order in accordance with that Division.

Note: A copy of the order must be given to the Official Receiver before the end of the period of 2 days beginning on the day the order was made: see subsections 244(14) and 247(3) of the Bankruptcy Act.

Part 12—Warrants

12.01 Arrest of debtor or bankrupt

- (1) An application for the issue of a warrant under section 78 of the Bankruptcy Act for the arrest of a debtor or bankrupt must state the grounds for the issue of the warrant.
- (2) The application must be accompanied by an affidavit stating the facts in support of the application.
- (3) The warrant must be in accordance with Form B16.
- (4) If a debtor or bankrupt is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to a Registrar in the Registry from which the warrant was issued.

12.02 Apprehension of person failing to attend Court

- (1) A warrant issued under subsection 264B(1) of the Bankruptcy Act for the apprehension of a person who fails to comply with a summons must be in accordance with Form B17.
- (2) The Court or a Registrar may order that the warrant be kept in the Registry:
 - (a) for a stated time; and
 - (b) on any conditions that the Court or Registrar considers appropriate.
- (3) If a person is apprehended under the warrant, the person who carried out the apprehension must immediately give notice of the apprehension to a Registrar in the Registry from which the warrant was issued.

Note: For the procedure to be followed if a person is apprehended under a warrant and it is not practicable to bring the person before the Court or a Registrar on the day the person is apprehended, see Part 14 of the Bankruptcy Regulations.

12.03 Warrant for seizure of property connected with the bankrupt

A warrant issued under subsection 130(2) of the Bankruptcy Act may be in accordance with Form B18.

Part 13 Costs

Division 13.1 Orders for costs

Rule 13.01

Part 13—Costs

Division 13.1—Orders for costs

13.01 Basis for costs

- (1) Subject to Division 13.2, a person who is entitled to costs in a proceeding to which the Bankruptcy Act applies is entitled to costs in accordance with Part 40 of the *Federal Court Rules 2011* unless the Court otherwise orders.
- (2) In making an order for costs, the Court may fix the amount of the costs.
- (3) If the Court fixes the amount of the costs, Part 40 of the *Federal Court Rules 2011* does not apply to a bill of costs submitted for the costs, except for the issue of a certificate of taxation.

Division 13.2—Short form bills of costs

13.02 Application of Division 13.2

(1) This Division makes provision in relation to the costs that may be charged by a lawyer for a creditor for work done in relation to a petition against the estate of a debtor on the basis of an act of bankruptcy specified in paragraph 40(1)(g) of the Bankruptcy Act.

(2) This Division does not apply if the Court fixes the amount of the costs.

- Note: A debtor commits an act of bankruptcy under paragraph 40(1)(g) of the Act if the debtor does not:
- (a) comply with a bankruptcy notice issued on the application of a creditor who has obtained a final judgment or final order against the debtor; or
 - (b) satisfy the Court that he or she has a counter-claim, set-off or cross demand equal to or more than the amount of the judgment debt that he or she could not have set up in the action or proceeding in which the judgment or order was obtained.

13.03 Short form bill of costs

- (1) If the Court makes a sequestration order against the debtor's estate, the lawyer may charge for costs the amount, applying on the date when the petition was presented, stated in item 14.1 of Schedule 3 to the *Federal Court Rules 2011*.
- (2) If the petition is dismissed, and the creditor obtains an order for costs, the lawyer may charge for costs the amount, applying on the date when the petition was presented, stated in item 14.2 of Schedule 3 to the *Federal Court Rules 2011*.
- (3) The lawyer may also charge:
 - (a) if adjournment costs were reserved or awarded on a day—the appropriate amount stated in item 1 of Schedule 3 to the *Federal Court Rules 2011*; and
 - (b) proper disbursements incurred for the petition.
- (4) If the lawyer charges an amount for costs under subrule (1) or (2), Part 40 of the *Federal Court Rules 2011* does not apply to a bill of costs submitted for the costs, except for the issue of a certificate of taxation.

13.04 Claim for costs

- (1) A lawyer who wishes to claim costs must serve the documents referred to in subrule (2) on:
 - (a) if the Court makes a sequestration order—the trustee; or
 - (b) if the petition is dismissed—the debtor.
- (2) For subrule (1), the documents are:
 - (a) a bill of costs and disbursements; and
 - (b) a copy of any receipts, vouchers or journals in support of the disbursements claimed.

Part 13 Costs

Division 13.2 Short form bills of costs

Rule 13.05

- (3) The bill need not include an itemised account of the work or services performed.
- (4) If the trustee or debtor disputes any of the costs or disbursements, the trustee or debtor must give the creditor a written notice stating the costs or disbursements disputed.
- (5) The notice must be given within 14 days after the bill is served.
- (6) At least 14 days after the lawyer serves the documents on the trustee or debtor, the creditor may file in the Court:
 - (a) a copy of each document; and
 - (b) an affidavit of service of the bill of costs and disbursements on the trustee or debtor; and
 - (c) a copy of any notice given by the trustee or debtor under subrule (4).

13.05 Attendance at taxation hearing

A creditor, the trustee, or a lawyer representing the creditor or the trustee, may attend a taxation of the bill of costs and disbursements only if a taxing officer directs the creditor, trustee or lawyer to attend.

Part 14—Proceedings under Cross-Border Insolvency Act

Note: This Part contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.

14.01 Application of this Part and other rules of the Court

Unless the Court otherwise orders:

- (a) this Part applies to a proceeding in the Court, under the Cross-Border Insolvency Act, involving a debtor who is an individual; and
- (b) the rules in the other Parts of these Rules, and the other rules of the Court, apply to a proceeding in the Court under the Cross-Border Insolvency Act if they are relevant and not inconsistent with this Part.

Note: See rule 1.05 for definitions of *Cross-Border Insolvency Act* and *Model Law*.

14.02 Expressions used in the Cross-Border Insolvency Act

- (1) Unless the contrary intention appears, an expression used in this Part and in the Cross-Border Insolvency Act, whether or not a particular meaning is given to the expression by the Cross-Border Insolvency Act, has the same meaning in this Part as it has in the Cross-Border Insolvency Act.

Note: The following expressions used in this Part (including in the notes to this Part) are defined in the Model Law as having the following meanings:

establishment means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding.

foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests.

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment as defined in the Model Law.

foreign proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

foreign representative means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

- (2) This Part is to be interpreted in a manner that gives effect to the Cross-Border Insolvency Act.

Rule 14.03

14.03 Application for recognition

- (1) An application by a foreign representative for recognition of a foreign proceeding under article 15 of the Model Law must be made by filing an application in accordance with Form B2.
- (2) The application must:
 - (a) be accompanied by the statements mentioned in article 15 of the Model Law and in section 13 of the Cross-Border Insolvency Act; and
 - (b) name the foreign representative as the applicant and the debtor as the respondent; and
 - (c) be accompanied by an affidavit verifying the matters mentioned in paragraphs 2 and 3 of article 15 of the Model Law and in section 13 of the Cross-Border Insolvency Act.
- (3) When filing the application, the foreign representative must file, but need not serve, an interim application seeking directions as to service, and the Court may give any directions about service, and make any incidental orders, that it thinks just.
- (4) The applicant must serve a copy of the application and the other documents mentioned in subrule (2):
 - (a) unless the Court otherwise orders—on each respondent (if any) to the proceeding as soon as practicable after filing an application and, in any case, at least 5 days before the date fixed for hearing; and
 - (b) on any other persons the Court may direct at the hearing of the interim application.
- (5) A person who intends to appear before the Court at the hearing of an application for recognition must file and serve the documents mentioned in rule 2.04.

14.04 Application for provisional relief under article 19 of the Model Law

- (1) Any application by the applicant for provisional relief under article 19 of the Model Law must be made by filing an interim application in accordance with Form B3.
- (2) Unless the Court otherwise orders, the interim application and any supporting affidavit must be served on each respondent at least 3 days before the date fixed for the hearing of the interim application.

14.05 Registered trustee's consent to act

If an application is made for an order:

- (a) under article 19 or 21 of the Model Law to entrust the administration or realisation of all or part of the debtor's assets to a person designated by the Court (other than the foreign representative); or
- (b) under article 21 to entrust the distribution of all or part of the debtor's assets to a person designated by the Court (other than the foreign representative);

then, unless the Court otherwise orders, the person must:

- (c) be a registered trustee; and
- (d) have filed a Consent to Act, in accordance with Form B19, that specifies an address for service for the person within Australia.

Note: **Registered trustee** is defined in subsection 5(1) of the Bankruptcy Act.

14.06 Notice of filing of application for recognition

- (1) Unless the Court otherwise orders, the applicant in a proceeding mentioned in rule 14.03 must:
 - (a) send a notice of the filing of the application in accordance with Form B20 to each person whose claim to be a creditor of the respondent is known to the applicant; and
 - (b) publish a notice of the filing of the application:
 - (i) in accordance with Form B20; and
 - (ii) once in a daily newspaper circulating generally in the State or Territory where the respondent has his or her principal, or last known, place of residence.
- (2) The Court may direct the applicant to publish a notice in accordance with Form B20 in a daily newspaper circulating generally in any State or Territory not described in subparagraph (1)(b)(ii).

14.07 Notice of order for recognition, withdrawal etc.

- (1) If the Court makes an order for recognition of a foreign proceeding under article 17 of the Model Law, or makes any order under article 19 or 21 of the Model Law, the applicant must, as soon as practicable after the order is made, do all of the following:
 - (a) have the order entered;
 - (b) serve a copy of the entered order on the respondent;
 - (c) send a notice of the making of the order in accordance with Form B21 to each person whose claim to be a creditor of the respondent is known to the applicant;
 - (d) publish a notice of the making of the order in accordance with Form B21, in accordance with subparagraph 14.06(1)(b)(ii).
- (2) The Court may direct the applicant to publish the notice in accordance with Form B21 in a daily newspaper circulating generally in any State or Territory not described in subparagraph 14.06(1)(b)(ii).
- (3) If the application for recognition is withdrawn or dismissed, the applicant must, as soon as practicable, do all of the following:
 - (a) for a dismissal—have the order of dismissal entered;
 - (b) serve a copy of the entered order of dismissal or notice of the withdrawal, on the respondent;

Rule 14.08

- (c) send a notice of the dismissal or withdrawal in accordance with Form B22 to each person whose claim to be a creditor of the respondent is known to the applicant;
 - (d) publish a notice of the dismissal or withdrawal in accordance with Form B22, in accordance with subparagraph 14.06(1)(b)(ii).
- (4) The Court may direct the applicant to publish the notice in accordance with Form B22 in a daily newspaper circulating generally in any State or Territory not described in subparagraph 14.06(1)(b)(ii).

14.08 Relief after recognition

- (1) If the Court has made an order for recognition of a foreign proceeding, any application by the applicant for relief under paragraph 1 of article 21 of the Model Law must be made by filing an interim application, and any supporting affidavit, in accordance with Form B3.
- (2) Unless the Court otherwise orders, an interim application under subrule (1) and any supporting affidavit must be served at least 3 days before the date fixed for the hearing of the interim application on the following persons:
 - (a) the respondent;
 - (b) any person that the Court directed be served with the originating process by which the application for recognition was made;
 - (c) any other person that the Court directs.
- (3) A person who intends to appear before the Court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.04.

14.09 Application to modify or terminate an order for recognition or other relief

- (1) This rule applies to:
 - (a) an application under paragraph 4 of article 17 of the Model Law for an order modifying or terminating an order for recognition of a foreign proceeding; and
 - (b) an application under paragraph 3 of article 22 of the Model Law for an order modifying or terminating relief granted under article 19 or 21 of the Model Law.
 - (2) The application must be made by filing an interim application in accordance with Form B3.
 - (3) An interim application and any supporting affidavit must be served on:
 - (a) for an application under paragraph (1)(a)—the respondent and other persons who were served with, or filed a notice of appearance in relation to, the application for recognition; and
 - (b) for an application under paragraph (1)(b)—the respondent and other persons who were served with, or filed a notice of appearance in relation to, the application for relief under article 19 or 21.
 - (4) Unless the Court otherwise orders, the applicant must:
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Rule 14.09

- (a) send a notice of the filing of the application in accordance with Form B23 to each person whose claim to be a creditor of the respondent is known to the applicant; and
 - (b) publish a notice of the filing of the application in accordance with Form B23, in accordance with subparagraph 14.06(1)(b)(ii).
- (5) The Court may direct the applicant to publish the notice in accordance with Form B23 in a daily newspaper circulating generally in any State or Territory not described in subparagraph 14.06(1)(b)(ii).
- (6) A person who intends to appear before the Court at the hearing of the application must file and serve the documents mentioned in rule 2.04.

Part 15 Transitional provisions

Division 15.1 Transitional provisions relating to the Federal Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017

Rule 15.01

Part 15—Transitional provisions

Division 15.1—Transitional provisions relating to the Federal Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017

15.01 Transitional—release of trustee

- (1) This rule applies if:
 - (a) an application referred to in paragraph 8.02(1)(b) is made after 1 September 2017 for the release of a trustee from the trusteeship of an estate; and
 - (b) because of item 143 of Schedule 1 to the *Insolvency Law Reform Act 2016*, the trustee is required to keep accounts and records (the *old accounts*) in relation to the estate in accordance with section 173 of the Bankruptcy Act (as that section was in force immediately before it was repealed by Schedule 1 to the *Insolvency Law Reform Act 2016*).
- (2) In addition to the books referred to in paragraph 8.02(3)(b), a copy of the old accounts must be attached to the affidavit accompanying the application.

Schedule 1—Powers of the Court that may be exercised by a Registrar

Note: See rule 2.02.

Part 1—Bankruptcy Act

Item	Provision of the Bankruptcy Act 1966	Description (for information only)
1	subsection 30(1) (only for an application to set aside a bankruptcy notice)	Power to set aside a bankruptcy notice
2	section 33	Adjournment, amendment of process and extension and abridgment of time
3	paragraph 40(1)(g)	Power to grant leave to serve a bankruptcy notice outside Australia
4	subsection 41(6A)	Extension of time for compliance with a bankruptcy notice
5	subsection 43(1)	Power to make a sequestration order
6	subsection 46(2)	Power to make a sequestration order against 2 or more debtors
7	subsection 47(2)	Power to give leave to withdraw a creditor's petition after presentation
8	section 49	Power to permit the substitution of another creditor as petitioner
9	subsection 52(1)	Power to make a sequestration order against the estate of a debtor
10	subsection 52(2)	Power to dismiss a creditor's petition
11	subsection 52(3)	Power to stay all proceedings under a sequestration order for a period not exceeding 21 days
12	subsection 52(5)	Power to extend a period at the expiration of which a creditor's petition lapses
13	subsection 55(3B)	Power to direct the Official Receiver to accept or reject a debtor's petition
14	section 81	Powers in relation to examinations
15	subsection 206(1)	Power to adjourn a creditor's petition if creditors have passed a resolution for a deed and to subsequently dismiss the petition
16	subsection 244(9)	Power to direct service of a creditor's petition on a person under Part XI
17	subsection 244(10)	Power to dispense with service of a creditor's petition under Part XI
18	subsection 244(11)	Power to make an order for the administration of an estate under Part XI
19	subsection 244(12)	Power to dismiss a creditor's petition under Part XI

Schedule 1 Powers of the Court that may be exercised by a Registrar
Part 1 Bankruptcy Act

Item	Provision of the Bankruptcy Act 1966	Description (for information only)
20	subsection 244(13)	Power to give leave to present a creditor's petition under Part XI
21	subsection 247(1A)	Power to make an order for the administration of the estate of a deceased person on the petition of a person administering the estate
22	section 264B	Power to issue a warrant
23	subsection 309(2)	Power to order substituted service

Part 2—Federal Court (Bankruptcy) Rules 2016

Item	Provision of the Federal Court (Bankruptcy) Rules 2016	Description (for information only)
1	rule 1.04	Power to make an order about the application of these Rules
2	rule 2.03	Power to grant leave to be heard in a proceeding, including the following powers: (a) to impose conditions on the granting of the leave; (b) to revoke the leave; (c) to order the payment of costs; (d) to order that a person not be further heard until costs are paid or secured
3	rule 2.06	Power to grant leave to oppose an application or a petition
4	subrule 3.03(5)	Extension of time for compliance with a bankruptcy notice
5	rule 4.05	Power to make orders as to service of a creditor's petition
6	rule 6.02	Power to order that an application under section 50 of the Bankruptcy Act for a person to be summoned for examination be heard in the absence of a party or in closed court
7	rule 6.07	Power to order that an application under section 81 of the Bankruptcy Act for a relevant person to be summoned for examination be heard in the absence of a party or in closed court
8	rule 6.13	Power to order that an application under section 81 of the Bankruptcy Act for an examinable person to be summoned for examination be heard in the absence of a party or in closed court
9	paragraph 8.02(4)(c)	Power to make orders as to service of an application under section 180 or subsection 183(1) of the Bankruptcy Act
10	rule 11.02	Power to make orders as to service of a creditor's petition presented under section 244 of the Bankruptcy Act
11	rule 11.05	Power to make orders as to service of a creditor's petition presented under section 247 of the Bankruptcy Act
12	rule 13.01	Power to order costs, including for a fixed amount

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Federal Court (Bankruptcy) Rules 2016	24 Mar 2016 (F2016L00386)	1 Apr 2016 (r 1.02(1) item 1)	
Federal Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017	30 Aug 2017 (F2017L01106)	1 Sept 2017 (r 2(1) item 1)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
r 1.02.....	rep LA s 48D
Part 2	
r 2.01.....	am F2017L01106
r 2.02.....	am F2017L01106
Part 6	
Division 6.2	
r 6.11.....	am F2017L01106
Division 6.3	
r 6.16.....	am F2017L01106
Part 8	
r 8.01.....	rs F2017L01106
r 8.02.....	am F2017L01106 ed C1
Part 15	
Part 15	ad F2017L01106
Division 15.1	
r 15.01.....	ad F2017L01106
Schedule 1	
Part 1	
Part 1 heading.....	ad F2017L01106
Part 2	
Part 2	ad F2017L01106

Endnotes

Endnote 5—Editorial changes

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Subrule 8.02(1)

Kind of editorial change

Change to grammar, syntax or the use of conjunctives or disjunctives

Details of editorial change

Subrule 8.02(1) contains the phrase: “This rules applies to the following applications:”.

This compilation was editorially changed to omit the word “rules” and substitute the word “rule” to correct this grammatical error.