

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)
(BANKRUPTCY) AMENDMENT (2025 MEASURES NO. 1) RULES 2025
EXPLANATORY STATEMENT

Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Amendment (2025 Measures No. 1) Rules 2025

EXPLANATORY STATEMENT

Issued by the authority of the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2)

The Federal Circuit and Family Court of Australia (Division 2) (**FCFCOA (Division 2)**) has broad federal law jurisdiction, including in migration, fair work, bankruptcy, administrative law, human rights, intellectual property, consumer law and admiralty proceedings (these jurisdictions being referred to broadly as general federal law), as well as family law and child support proceedings.

The *Federal Circuit and Family Court of Australia Act 2021* (the **FCFCOA Act**) commenced operation on 1 September 2021.

Section 8 of the Federal Circuit and Family Court Act provides that from the commencement day of the Federal Circuit and Family Court Act, the Family Court of Australia is continued in existence as the Federal Circuit and Family Court of Australia (Division 1). The Federal Circuit Court is continued in existence as the Federal Circuit and Family Court of Australia (Division 2). General federal law proceedings are heard only in the FCFCOA (Division 2). The general federal law jurisdiction in the FCFCOA (Division 2) is largely concurrent with the jurisdiction of the Federal Court of Australia (the **Federal Court**).

Authority for the Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Amendment (2025 Measures No. 1) Rules 2025

Subsection 217(1) of the Federal Circuit and Family Court Act provides that Judges, or a majority of them, may make Rules of Court providing for the practice and procedure to be followed in the Federal Circuit and Family Court of Australia (Division 2).

Subsection 217(3) of the Federal Circuit and Family Court Act provides that the *Legislation Act 2003* (Cth) (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3) applies to Rules of Court made by Judges under this Chapter or another Act as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of the *Legislation Act 2003*) were a reference to a rule of court.).

The *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021* (the **Rules**) were made on 26 August 2021. These were based largely on the *Federal Circuit Court (Bankruptcy) Rules 2016*. These **Rule Amendments**, the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Amendment (2025 Measures No. 1) Rules 2025*, make minor changes to update consequential references to other Rules of Court, and update the schedule of powers delegated to registrars.

Development of the Rule Amendments

The FCFCOA (Division 2), with the assistance of the Office of Parliamentary Counsel, has developed the Rule Amendments to apply to all bankruptcy proceedings. The amendments have been made to:

- update references from the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* to *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025*, and

- update Schedule 1 to the Rules.

Given the concurrent jurisdiction of the FCFCOA (Division 2) and the Federal Court, the Rule Amendments seek to align as far as possible with the *Federal Court (Bankruptcy) Rules 2016* (Cth) (the **Federal Court Bankruptcy Rules**). As such, the updates in Schedule 1 align with amendments made to the Federal Court Bankruptcy Rules through the *Federal Court Legislation Amendment Rules 2024*.

This allows for:

- greater consistency for practitioners and Registrars across the two courts; and
- greater jurisprudential certainty when procedural matters are resolved in court.

Consultation

The *Legislation Act 2003* (Cth) provides for certain consultation obligations when Rules are made.

The Court undertook both internal and external consultation on the amendments. Internally, consultation took place with Judges, Registrars and some members of the Court's administration in June 2025. Externally, consultation took place with the Attorney-General's Department, Australian Bar Association, Law Council of Australia and National Legal Aid in June and July 2025.

Statement of Compatibility with Human Rights

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Legislative Instrument

The instrument primarily updates references to other Rules of Court. It otherwise provides for additional delegations to registrars of the Court which are consistent with those of the Federal Court.

Human rights implications

The impact of the Rules on the following human rights has been considered:

- the rights of equality and non-discrimination,
- the right to a fair trial

Right to equality and non-discrimination

Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) states that '[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

The Rules address procedural matters relevant to all bankruptcy proceedings. They are harmonised with the Federal Court Bankruptcy Rules to achieve consistency in bankruptcy proceedings in the two jurisdictions, thereby promoting equality and non-discrimination before the law.

Right to a fair trial and fair hearing rights

Article 14(1) of the ICCPR provides that all persons shall be equal before the courts and that where their rights or obligations are to be determined in legal proceedings they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Rule Amendments aid in achieving the right to a fair and timely hearing. They extend, consolidate and clarify the powers that registrars may exercise pursuant to a direction of the Chief Judge or a Judge of the Court, which aids in the efficient and timely disposition of bankruptcy cases. They are harmonised with the Federal Court Bankruptcy Rules.

This instrument otherwise has limited human rights implications and is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Explanation and commencement of the Rule Amendments

Details of the Rule Amendments are set out below. References to the Court are references to the Federal Circuit and Family Court of Australia (Division 2).

The Rule Amendments commence on 1 September 2025.

Structure

Schedule 1 contains the amendment to the Rules, which include:

- updating references from the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* to *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* including updating specific rule references; and updating Schedule 1 to the Rules.
- Repeal of Schedule 1 to the Rules and its replacement with a new Schedule which contains updated delegations.

Details of the Rule Amendments

Item 1 to Item 14 of the Rule Amendments primarily updates the references in existing Rules of Court to the new general federal law rules, which have recently been remade as the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025*.

Item 1 Rule 1.04 (note) - omits the reference to “*Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*”, and substitutes “*Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025*”

Item 2 Rule 1.05(1) – provides a definition of the Insolvency Practice Schedule (Bankruptcy)

Item 3 Rule 1.05(2) and (note) - omits all references to “*Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*”, and substitutes “*Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025*”

Item 4 Rule 2.02(1)(2) inserts a new prescribed power as subparagraph (aa), namely a power of the Court under a provision of the Insolvency Practice Schedule (Bankruptcy) referred to in Part 1A of Schedule 1.

Item 5 Rule 2.02(2) – inserts a reference to Part 1A of Schedule 1

Item 6 Rule 2.05 - Repeals the rule, substitutes with a rule referencing Rule 8.06 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that Rule 8.06 does not apply to the hearing date fixed for a creditor’s petition.

Item 7 Subrule 4.07(3) - Repeals the subrule, substitutes with a rule referencing Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that if the order is not entered in accordance with Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* 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.

Item 8 Subrule 4.08(2) - Repeals the subrule, substitutes with a subrule referencing to Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that if the order is not entered in accordance with Division 24.2 of the *Federal Circuit and Family Court*

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of Australia (Division 2) (General Federal Law) Rules 2025 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.

Item 9 Rule 4.09 - omits the reference to “rule 17.08 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*”, and substitutes “Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025*”

Item 10 Subrule 7.04(2) - Repeals the subrule, substitutes with a subrule referencing to Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that if the order is not entered in accordance with Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* 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.

Item 11 Subrule 8.02(5) - Repeals the subrule, substitutes with a subrule referencing to Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that if the order is not entered in accordance with Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* at the time the order is made, the trustee must, within 1 day after the order is made, request entry of the order in accordance with that Division.

Item 12 Subrule 9.05(1) - Repeals the subrule, substitutes with a subrule referencing to Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that if the Court makes an order under section 185Q or 185U of the Bankruptcy Act and the order is not entered in accordance with Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* 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.

Item 13 Rule 10.05 - Repeals the rule, substitutes with a rule referencing Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that if the Court makes an order under subsection 222(1), (2) or (5) or subsection 222C(1) of the Bankruptcy Act and the order is not entered in accordance with Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* at the time the order is made, the applicant must, as soon as practicable, request entry of the order in accordance with that Division.

Item 14 Rule 11.06 - Repeals the rule, substitutes with a rule referencing Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (changing first court date). This amendment provides that if the Court makes an order under section 244 or 247 of the Bankruptcy Act and the order is not entered in accordance with Division 24.2 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* at the time the order is made, the applicant must, as soon as practicable, request entry of the order in accordance with that Division.

Item 15 – Repeals Part 1 of Schedule 1, substitutes with a new Part – This updates the powers a Registrar of the Court may exercise under the *Bankruptcy Act 1966* (Cth). The

additional powers delegated are those in sections 50(1), 58(3)(b), 133, 190, 222 and 222C of the *Bankruptcy Act 1966* (Cth) and under the Insolvency Practice Schedule (Bankruptcy).

Item 16 – inserts a new Part 1A of Schedule 1 which outlines the powers a Registrar of the Court may exercise under the Insolvency Practice Schedule (Bankruptcy)

Item 17 – Repeals Part 2 of Schedule 1, substitutes with a new Part – This updates the powers a Registrar of the Court may exercise under the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*. The additional power delegated is under Rule 10.03 of the Rules.