

# **Federal Court Amendment Rules 1999 (No. 8) 1999 No. 360**

## EXPLANATORY STATEMENT

Statutory Rule 1999 No. 360

Issued by the authority of the Judges of the Federal Court of Australia

Federal Court Amendment Rules 1999 (No. 8)

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court or a majority of them, to make rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 59(4) of the *Federal Court of Australia Act 1976*, sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* which relate to the making of regulations, apply to these Rules of Court as if references to the regulations in those sections were references to Rules of Court.

The present Federal Court Rules came into operation on 1 August 1979. They are reviewed regularly.

### **RULE 1 - Name of rules**

This rule provides that the rules are the Federal Court Amendment Rules 1999 (No. 8).

### **RULE 2 - Commencement**

This rule provides that these Rules commence on 1 January 2000.

### **RULE 3 - Amendment of Federal Court Rules**

This rule provides that the Federal Court rules are amended as set out in Schedule 1.

### **SCHEDULE 1 - Amendments**

The following amendments to the Federal Court Rules are consequential upon the making of the Corporations Law *Rules 2000*.

#### **Definition of "Corporations Law Rules"**

[1] Order 1, rule 4

Order 1 rule 4 defines various words and terms used in the Rules.

This amendment inserts into Order 1 rule 4 the term "Corporations Law Rules" and defines it as meaning the Rules of the Court entitled the Corporations Law *Rules 2000*.

#### **Commencement of proceedings**

[2] & [3] Order 4, subrule 12(3)

An application or notice which is filed in the Court will be endorsed with the date on which the matter will be heard.

Order 4 subrule 12(1) allows the Court or Registrar to alter the date for the hearing of a matter and to authorise the solicitor for a party to make corresponding alterations in any copy of the application or notice. Order 4 subrule 12(3) provides that the rule does not apply to a proceeding to which Order 71 applies if a public notice or advertisement is required by Order 71 or by directions made by the Court. Order 71 set out the Court's Corporations Rules.

These amendments replace the references to Order 71 in Order 4 subrule 12(3) with references to the Corporations Law Rules. This reflects the repeal of Order 71 and the making of the Corporations Law Rules.

### **Service**

[4] Order 7, subrule 2(4)

Order 7 subrule 2(4) provided that, for the purposes of Order 7 1, personal service could be effected on a company, the liquidator of a company, or an official manager of a company, in the manner permitted by section 220 of the Corporations Law.

This amendment replaces this subrule with a new subrule 2(4) which reflects changes to the Corporations Law, the repeal of Order 71 and the making of the Corporations Law Rules. In particular, the new subrule 2(4):

replaces the reference to Order 71 with a reference to the Corporations Law Rules; replaces the references to section 220 of the Corporations Law, which has been repealed, with references to section 109X of the Corporations Law; and replaces the reference to an official manager with a reference to an administrator, in accordance with amendments made to the Corporations Law.

[5] Order 7. subrule 2(5)

Order 7 subrule 2(5) provided that, for the purposes of Order 7 1, a document served by prepaid post to a company, liquidator or official manager would be taken to be served on the seventh day after posting.

The amendment omits this subrule. There is no need for the subrule as section 160 of the *Evidence Act 1995* provides for a presumption that an article sent by prepaid post addressed to a person at a specified address in Australia will have been received at that address on the fourth working day after having been posted.

### **Corporations Rules**

[6] Order 71

Order 71, also known as the Corporations Rules, set out the rules for proceedings in the Court under the Corporations Law and the ASC Law. These rules are to be replaced by those set out in the *Corporations Law Rules 2000*.

This amendment omits Order 7 1, and replaces it with a new heading "Order 71 Corporations Law and ASC Law proceedings" and a note advising that the rules governing these proceedings are contained in the *Corporations Law Rules 2000*.

### **Powers of Registrars**

[7] Order 77, rule 7

Order 77 sets out the rules for proceedings in the Federal Court under the *Bankruptcy Act 1966*. Order 77 rule 7 provided that the Court or a Judge may direct a Registrar to exercise a power of the Court under a provision of the Bankruptcy Act specified in column 2 of an item in Part 3 of the Third Schedule.

This amendment replaces the reference to "Part 3 of the Third Schedule" with a reference to "Schedule Y". The amendment reflects the changes made to the Third Schedule as set out in paragraph [101] below.

### **Amendments to forms in Schedule 1 to the Court's rules**

[8] Schedule 1, Forms 75 to 128 (inclusive)

This amendment omits Forms 75 to 128 (inclusive), all of which related to proceedings in the Federal Court under the Corporations Law or the ASC Law. These forms have been replaced by the forms prescribed by the new Corporations Law Rules.

### **Amendment to the Third Schedule**

[9] Third Schedule, heading

This amendment omits the heading of this schedule and replaces it with the new heading "Schedule 3 Powers and functions of the Court that may be exercised by a Registrar if the Court or a Judge so directs (Order 77, rule 7)".

The amendment reflects the changes to the content of the Third Schedule which are set out in paragraph [10] below.

[10] Third Schedule, Parts 1, 1A and 2

Parts 1, 1A and 2 of the Third Schedule set out the powers and functions that may be exercised by a Registrar under the Corporations Law, ASC Law and ASIC Law respectively.

The amendment omits Parts 1, 1A and 2 as they have been replaced by Schedule 2 of the new Corporations Law Rules.

[10] Third Schedule, Part 3, heading

The amendment omits this heading as it is no longer necessary given the omission of Parts 1, 1A and 2.

[10] Schedule 4

Schedule 4 set out the transitional rules prescribed by Order 71 rule 47 for statutory demands served, and applications for the winding up of a company made, before 23 June 1993. These

rules were inserted in 1993 in response to the transitional provisions of the *Corporations Law Reform Act 1992*.

The amendment omits Schedule 4 as the transitional rules are no longer necessary.