

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 170

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

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

Section 59 of the *Federal Court of Australia Act 1976* (Federal Court Act) 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.

Section 1337S of the *Corporations Act 2001* (Corporations Act) extends the power to make rules of court conferred by section 59 of the Federal Court Act to proceedings and practice and procedure under the Corporations Act and *Australian Securities and Investments Commission Act 2001* (ASIC Act), associated matters and costs (including costs of meetings).

Under sub-section 59 (4) of the Federal Court Act, the *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under the Federal Court Act or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of the Federal Court Act.

The Federal Court (Corporations) Rules 2000 apply to a proceeding in the Court under the Corporations Act or the ASIC Act commenced on or after 1 January 2000.

These Amendment Rules will amend the Federal Court (Corporations) Rules 2000 by:

1. amending rules 12.1A and 15.1 to replace the reference to 'Order 50' with a reference to 'Part 38' being the equivalent in the Federal Court Rules 2011 (FCR 2011); and
2. amending Form 1, Document title, so that it will be in a format similar to the one used in the forms approved under the FCR 2011.

The amendments are necessary as a consequence of the introduction of the FCR 2011 on 1 August 2011. The FCR 2011 were the subject of extensive consultation over a number of years prior to implementation.

Details of the Rules are in the Attachment.

The Rules commence on the day after they are registered.

ATTACHMENT

Federal Court (Corporations) Amendment Rules 2011 (No. 1)**RULE 1 Name of rules**

This rule provides that the Rules are to be cited as the *Federal Court (Corporations) Amendment Rules 2011 (No. 1)*.

RULE 2 Commencement

This rule provides that these Rules commence on the day after they are registered.

RULE 3 Amendment of *Federal Court (Corporations) Rules 2000*

This rule provides that the *Federal Court (Corporations) Rules 2000* are amended as set out in Schedule 1.

SCHEDULE 1[1] Rule 12.1A

Rule 12.1A provides for the reference to the Court of a question of law arising in a proceeding before the Takeovers Panel (Corporations Act s 659A). This rule states that Order 50 applies in this situation.

With the introduction of the Federal Court Rules 2011 on 1 August 2011, Order 50 in the former Rules has been replaced with Part 38, being the equivalent provision in the new Rules.

This amendment is replacing the reference to Order 50 with a reference to Part 38.

[1] Rule 15.1

Rule 15.1 provides for the reference to the Court of a question of law arising at hearing of ASIC (ASIC Act s 61). This rule states that Order 50 applies in this situation.

With the introduction of the Federal Court Rules 2011 on 1 August 2011, Order 50 in the former Rules has been replaced with Part 38, being the equivalent provision in the new Rules.

This amendment is replacing the reference to Order 50 with a reference to Part 38.

[3] Schedule 1, Form 1

Form 1 is the prescribed form of a document title.

This amendment replaces Form 1 with a new Form 1. The effect of the amendment is to make the format of this form similar to that used in the forms approved under the Federal Court Rules 2011.