

EXPLANATORY STATEMENT

Issued by the authority of the Chief Justice of the Federal Court of Australia on behalf of Judges of the Court

Federal Court (Bankruptcy) Repeal Rules 2016

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Federal Court of Australia (Federal 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*, the *Legislation Act 2003* (other than sections 8, 9, 10 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Court of Australia Act 1976* 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 of Australia Act 1976*.

The Federal Court has jurisdiction under the *Bankruptcy Act 1966* to deal with a range of proceedings and matters which is concurrent with that of the Federal Circuit Court of Australia (Federal Circuit Court) in bankruptcy. In addition the Federal Court has jurisdiction under the *Cross-Border Insolvency Act 2008* to deal with a range of proceedings involving a debtor who is an individual.

The Judges of the Federal Court made the *Federal Court (Bankruptcy) Rules 2005* (existing Bankruptcy Rules) in relation to the practice and procedure to be followed in proceedings in the Federal Court under the Bankruptcy Act. These rules also deal with the practice and procedure to be followed in proceedings in the Federal Court under the Cross-Border Insolvency Act. The existing Bankruptcy Rules operate in conjunction with the *Federal Court Rules 2011* which govern practice and procedure generally in proceedings in the Federal Court.

The existing Bankruptcy Rules are harmonised with rules for proceedings under the Bankruptcy Act in the Federal Circuit Court (save for the Part dealing with proceedings under the Cross-Border Insolvency Act where the Federal Circuit Court has no jurisdiction) and the Part dealing with proceedings under the Cross-Border Insolvency

Act is harmonised with rules for proceedings under the Cross-Border Insolvency Act in the Federal Court by a debtor other than an individual (which are at Part 15A of the *Federal Court (Corporations) Rules 2000*) as well as similar rules for proceedings under that Act involving such a debtor of each of the State and Territory Supreme Courts of Australia.

As a result of the operation of the sunset provisions contained in Part 4 of Chapter 3 of the Legislation Act, the *Federal Court (Bankruptcy) Rules 2005* (as well as the Federal Circuit Court's bankruptcy rules), will be automatically repealed on 1 April 2016.

The Judges of the Federal Court have agreed to adopt the *Federal Court (Bankruptcy) Rules 2016* (new Bankruptcy Rules) to replace the existing Bankruptcy Rules. The new Bankruptcy Rules incorporate the harmonised rules for proceedings under the Cross-Border Insolvency Act. Otherwise these Rules were developed in collaboration with the Federal Circuit Court and are harmonised with new Bankruptcy Rules that that Court proposes to adopt.

To ensure that there is no lacuna between the repeal of the existing Bankruptcy Rules and the commencement of the new Bankruptcy Rules the Judges have also agreed to adopt the *Federal Court (Bankruptcy) Repeal Rules 2016* (the Repeal Rules) to repeal the existing Bankruptcy Rules. The Repeal Rules also make a small number of consequential amendments to the *Federal Court Rules 2011* and some transitional provisions regarding the continued use of forms prescribed under the existing Bankruptcy Rules for a limited period of time.

Subsection 8(8) of the *Legislation Act 2003* provides that Rules of Court made for the Federal Court are not legislative instruments for the purposes of that Act. As a result the *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in this Explanatory Statement.

Details of the Repeal Rules are in the [Attachment](#).

The Repeal Rules commence at the same time as the new Bankruptcy Rules commence.

Federal Court (Bankruptcy) Repeal Rules 2016

RULE 1 Name

This rule provides that the Rules are to be cited as the *Federal Court (Bankruptcy) Repeal Rules 2016*.

RULE 2 Commencement

This rule provides that these Rules commence at the same time as the *Federal Court (Bankruptcy) Rules 2016*.

RULE 3 Authority

This rule provides that these Rules are made under the *Federal Court of Australia Act 1976*.

RULE 4 Repeal of these Rules

This rule provides that these Rules are repealed at the start of the day after the end of the period of 6 months beginning on the day these Rules commence.

Schedules 1 and 2 to these Rules will be automatically repealed by Division 1 of Part 3 of Chapter 3 of the *Legislation Act 2003*. Schedule 3, which contains transitional provisions which will operate for a period of 6 months, will not be automatically repealed by that Division. To avoid the need for separate Rules to be made once the transitional provisions are no longer required, this rule repeals these Rules with effect from the start of the day after that 6 month period has elapsed.

RULE 5 Schedules

This rule provides that each instrument specified in a Schedule to these Rules is amended or repealed as set out in the relevant Schedule and any other item in a Schedule has effect according to its terms.

SCHEDULE 1 - Repeals

Federal Court (Bankruptcy) Rules 2005

[1] The whole of the *Federal Court (Bankruptcy) Rules 2005* is repealed.

SCHEDULE 2 – Consequential Amendments

Federal Court Rules 2011

[1] Rule 1.04 (note 1)

Rule 1.04 provides that the *Federal Court Rules 2011* apply to proceedings which are started in the Federal Court. Notes to the rule alert court users to other rules of the court and regulations which also apply to particular types of proceedings. Note 1 includes a reference to the *Federal Court (Bankruptcy) Rules 2005*. This item deletes that reference and substitutes a reference to the *Federal Court (Bankruptcy) Rules 2016*.

[2] Rule 3.01 (paragraph (2) of note 3)

Rule 3.01 set out the powers of the Court prescribed for the purposes of paragraph 35A(1)(h) of the *Federal Court of Australia Act 1976* that may, if the Court so directs, be exercised under the *Federal Court Rules 2011* by a Registrar. Note 3 to the rule alerts court users to provisions in the *Federal Court of Australia Act 1976* and in other rules of the Court which set out other powers of the Court which may similarly be exercised by a Registrar. Paragraph (c) in that note refers court users to rule 2.02 and Schedule 2 to the “Bankruptcy Rules” (a term defined in the Dictionary [Schedule 1] to the *Federal Court Rule 2011*) which, in the *Federal Court (Bankruptcy) Rules 2005*, set out the relevant powers for proceedings under the *Bankruptcy Act 1966*. The equivalent provision and schedule in the *Federal Court (Bankruptcy) Rules 2016* are rule 2.02 and Schedule 1. This item deletes the reference to “Schedule 2” and substitutes “Schedule 1”.

[3] Schedule 1 (definition of *Bankruptcy Rules*)

Schedule 1 to the *Federal Court Rules 2011* is a Dictionary of terms defined for the purposes of those Rules. The term “Bankruptcy Rules” is defined in the Dictionary to mean the *Federal Court (Bankruptcy) Rules 2005*. This item deletes that reference and substitutes a reference to the *Federal Court (Bankruptcy) Rules 2016*.

[4] Schedule 1 (definition of *short form bill*)

The term “Bankruptcy Rules” is defined in the Dictionary (Schedule 1 to the *Federal Court Rules 2011*) to mean a bill under Division 40.3 of those Rules or Part 13 of the *Federal Court (Bankruptcy) Rules 2005*. Part 13 of the *Federal Court (Bankruptcy) Rules 2005* deals with costs in proceedings under the *Bankruptcy Act 1966*. The equivalent provisions in the *Federal Court (Bankruptcy) Rules 2016* are also in Part 13. This item deletes the reference to the *Federal Court (Bankruptcy) Rules 2005* and substitutes a reference to the *Federal Court (Bankruptcy) Rules 2016*.

SCHEDULE 3 – Transitional Provisions

[1] Forms

- (1) This item applies for the purposes of the *Federal Court (Bankruptcy) Rules 2016* during the 6 months from the commencement of the item where a person does something using a form which was prescribed by the *Federal Court (Bankruptcy) Rules 2005* and the *Federal Court (Bankruptcy) Rules 2016* requires that a form approved under those Rules be used to do that thing.
- (2) The requirement of the *Federal Court (Bankruptcy) Rules 2016* for doing that thing is taken to have been complied with by the person using a document that is substantially in accordance with the prescribed form or has only such variations as the nature of the case requires.