



FEDERAL CIRCUIT COURT OF AUSTRALIA

EXPLANATORY STATEMENT

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

Federal Circuit Court (Bankruptcy) Repeal Rules 2016

Section 81 of the *Federal Circuit Court of Australia Act 1999* permits the Judges of the Federal Circuit Court of Australia (Federal Circuit 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 81(3) of the *Federal Circuit Court of Australia Act 1999*, 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 Circuit Court of Australia Act 1999* 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 Judge 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 120 of the *Federal Circuit Court of Australia Act 1999*.

The Federal Circuit 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 Court of Australia (Federal Court) in bankruptcy.

The Judges of the Federal Circuit Court made the *Federal Circuit Court (Bankruptcy) Rules 2006* (existing Bankruptcy Rules) in relation to the practice and procedure to be followed in proceedings in the Federal Circuit Court under the Bankruptcy Act. The existing Bankruptcy Rules operate in conjunction with the *Federal Circuit Court Rules 2001* which govern practice and procedure generally in proceedings in the Federal Circuit Court.

The existing Bankruptcy Rules are harmonised with rules for proceedings under the Bankruptcy Act in the Federal Court save for the Part dealing with proceedings under the *Cross-Border Insolvency Act 2008* for which the Federal Circuit Court does not have jurisdiction.

As a result of the operation of the sunset provisions contained in Part 4 of Chapter 3 of the Legislation Act, the *Federal Circuit Court (Bankruptcy) Rules 2006* (as well as the Federal Court's bankruptcy rules), will be automatically repealed on 1 April 2016.

The Judges of the Federal Circuit Court have agreed to adopt the *Federal Circuit Court (Bankruptcy) Rules 2016* (new Bankruptcy Rules) to replace the existing Bankruptcy Rules. These Rules were developed in collaboration with the Federal 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 Circuit Court (Bankruptcy) Repeal Rules 2016* (the Repeal Rules) to repeal the existing Bankruptcy Rules. The Repeal Rules also makes a consequential amendment to the *Federal Circuit Court Rules 2001* 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 Circuit 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 Circuit Court (Bankruptcy) Repeal Rules 2016

RULE 1 Name

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

RULE 2 Commencement

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

RULE 3 Authority

This rule provides that these Rules are made under the *Federal Circuit Court of Australia Act 1999*.

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 Circuit Court (Bankruptcy) Rules 2006

[1] The whole of the *Federal Circuit Court (Bankruptcy) Rules 2006* is repealed.

SCHEDULE 2 – Consequential Amendment

Federal Circuit Court Rules 2001

[1] Rule 21.10 (note)

Rule 21.10 (note) refers to Part 13 of the *Federal Circuit Court (Bankruptcy) Rules 2006*. This item deletes that reference and substitutes a reference to the *Federal Circuit Court (Bankruptcy) Rules 2016*.

SCHEDULE 3 – Transitional Provisions

[1] Forms

- (1) This item applies for the purposes of the *Federal Circuit 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 Circuit Court (Bankruptcy) Rules 2006* and the *Federal Circuit Court (Bankruptcy) Rules 2016* requires that a form approved under those Rules be used to do that thing.
- (2) The requirement of the *Federal Circuit 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.