



Federal Circuit Court (Bankruptcy) Rules 2016

We, Judges of the Federal Circuit Court of Australia, make the following Rules.

Dated 21 March 2016

Chief Judge Pascoe
Judge Altobelli
Judge Baker
Judge Barnes
Judge Baumann
Judge Bender
Judge Brown
Judge Burchardt
Judge Cameron
Judge Coker
Judge Cole
Judge Demack
Judge Driver
Judge Dunkley
Judge Harland
Judge Hartnett
Judge Heffernan
Judge Henderson
Judge Hughes
Judge Jarrett
Judge Jones
Judge Kelly
Judge Lucev
Judge McGuire
Judge Manousaridis
Judge Mead
Judge Neville
Judge Nicholls
Judge O'Sullivan

Judge Phipps
Judge Riethmuller
Judge Riley
Judge Smith
Judge Spelleken
Judge Stewart
Judge Street
Judge Turner
Judge Vasta
Judge Williams
Judge Wilson
Judge Young

Judges of the Federal Circuit
Court of Australia

Richard Foster Chief Executive Officer

Contents

Part 1—Preliminary	1
1.01 Name.....	1
1.02 Commencement	1
1.03 Authority.....	1
1.04 Application of these Rules and other rules of the Court.....	1
1.05 Interpretation.....	1
1.06 Expressions used in the Bankruptcy Act.....	2
1.07 Forms.....	2
Part 2—General	3
2.01 Originating application and interim application.....	3
2.02 Exercise of powers by Registrars	4
2.03 Leave to be heard.....	4
2.04 Appearance at hearing or examination.....	5
2.05 Adjournment of first court date for creditor’s petition	5
2.06 Opposition to application, interim application or petition.....	5
Part 3—Bankruptcy notices	6
3.01 Substituted service	6
3.02 Setting aside bankruptcy notice	6
3.03 Extension of time for compliance with bankruptcy notice.....	7
Part 4—Creditors’ petitions	8
4.01 Application of Part 4.....	8
4.02 Requirements for creditor’s petition and supporting affidavit.....	8
4.03 Creditor’s petition founded on issue of execution against debtor	8
4.04 Creditor’s petition founded on failure to comply with bankruptcy notice etc.	8
4.05 Documents to be served.....	9
4.06 Additional affidavits to be filed before hearing	9
4.07 Notification and entry of sequestration order.....	10
4.08 Entry of order for dismissal etc. of creditor’s petition	10
4.09 Service of order.....	11
Part 5—Debtors’ petitions	12
5.01 Referral of debtor’s petition.....	12
Part 6—Examinations	13
Division 6.1—Examination of debtor or examinable person under section 50 of the Bankruptcy Act	13
6.01 Application for summons.....	13
6.02 Hearing of application.....	13
6.03 Requirements for summons	13
6.04 Service of summons.....	14
6.05 Application for discharge of summons	14
Division 6.2—Examination of relevant person under section 81 of the Bankruptcy Act	15
6.06 Application for summons.....	15
6.07 Hearing of application.....	15
6.08 Requirements for summons	15
6.09 Service of summons.....	15
6.10 Failure to attend examination.....	16
6.11 Application for discharge of summons	16

Division 6.3—Examination of examinable person under section 81 of the Bankruptcy Act	17
6.12 Application for summons	17
6.13 Hearing of application	18
6.14 Requirements for summons	18
6.15 Service of summons	18
6.16 Application for discharge of summons	18
6.17 Conduct money and witnesses expenses	19
Part 7—Annulment or review of bankruptcy	20
Division 7.1—Annulment of bankruptcy	20
7.01 Application of Division 7.1	20
7.02 Requirements for application	20
7.03 Notice to creditors	20
7.04 Entry and service of annulment order	20
Division 7.2—Review of sequestration order	21
7.05 Review of Registrar’s decision	21
Division 7.3—Report by trustee	22
7.06 Report by trustee	22
Part 8—Trustees	23
8.01 Objection to appointment of trustee	23
8.02 Resignation or release of trustee	23
Part 9—Debt agreements	24
9.01 Application of Part 9	24
9.02 Requirements for application	24
9.03 Service	24
9.04 Notice to creditors	24
9.05 Entry and service of order	24
Part 10—Personal insolvency agreements	26
10.01 Application of Part 10	26
10.02 Requirements for application	26
10.03 Service	26
10.04 Notice to creditors	27
10.05 Entry of order	27
Part 11—Administration of estates of deceased persons	28
11.01 Creditor’s petition	28
11.02 Documents to be served	28
11.03 Additional affidavits to be filed before hearing of creditor’s petition	28
11.04 Administrator’s petition	29
11.05 Documents to be served	29
11.06 Entry of order	29
Part 12—Warrants	30
12.01 Arrest of debtor or bankrupt	30
12.02 Apprehension of person failing to attend Court	30
12.03 Warrant for seizure of property connected with the bankrupt	30
Part 13—Costs	31
Division 13.1—Orders for costs	31
13.01 Basis for costs	31

Division 13.2—Short form bills of costs	32
13.02 Application of Division 13.2.....	32
13.03 Short form bill of costs	32
13.04 Claim for costs.....	32
13.05 Attendance at taxation hearing.....	33
Schedule 1—Powers of the Court that may be exercised by a Registrar	34

Part 1—Preliminary

1.01 Name

These are the *Federal Circuit Court (Bankruptcy) Rules 2016*.

1.02 Commencement

- (1) Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of these Rules	1 April 2016.	1 April 2016

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

1.03 Authority

These Rules are made under the *Federal Circuit Court of Australia Act 1999*.

1.04 Application of these Rules and other Rules of the Court

- (1) Unless the Court otherwise orders, these Rules apply to a proceeding in the Court to which the Bankruptcy Act applies.
- (2) The other Rules of the Court apply, to the extent that they are relevant and not inconsistent with these Rules, to a proceeding in the Court to which the Bankruptcy Act applies.

1.05 Interpretation

- (1) In these Rules:

Act means the *Federal Circuit Court of Australia Act 1999*.

Bankruptcy Act means the *Bankruptcy Act 1966*.

bankruptcy notice means a bankruptcy notice issued by the Official Receiver under section 41 of the Bankruptcy Act.

Bankruptcy Regulations means the *Bankruptcy Regulations 1996*.

Section 1.06

- (2) An expression used in these Rules and in the Dictionary to the *Federal Circuit Court Rules 2001* has the same meaning in these Rules as it has in the *Federal Circuit Court Rules 2001*.
- (3) Subrule (2) has effect subject to rule 1.06.

1.06 Expressions used in the Bankruptcy Act

An expression used in these Rules and in the Bankruptcy Act has the same meaning in these Rules as it has in the Bankruptcy Act.

Note: A number of expressions used in these Rules are defined in the Bankruptcy Act, including the following:

- (a) bankrupt;
- (b) books;
- (c) creditor;
- (d) creditor's petition;
- (e) debt agreement;
- (f) debtor's petition;
- (g) examinable affairs;
- (h) examinable person;
- (i) National Personal Insolvency Index;
- (j) Official Trustee;
- (k) personal insolvency agreement;
- (l) petition;
- (m) proclaimed law;
- (n) property;
- (o) the Official Receiver;
- (p) the trustee.

1.07 Forms

- (1) In these Rules, a reference consisting of the word "Form" followed by the letter "B" and a number is a reference to the form so numbered approved under subrule (2).
- (2) The Chief Judge may approve a form for the purpose of a provision of these Rules.
- (3) A form approved under subrule (2) must be published on the Court's website.
Note: The Court's website is <http://www.federalcircuitcourt.gov.au>.
- (4) It is sufficient compliance with these Rules in relation to a document that is required to be in accordance with an approved form if the document:
 - (a) is substantially in accordance with the approved form; or
 - (b) has only such variations as the nature of the case requires.
- (5) If these Rules do not prescribe a form for a particular purpose, a form prescribed in other rules of the Court for that purpose may be used, but the document must have a title in accordance with Form B1.

Part 2—General

2.01 Originating application and interim application

- (1) Unless these Rules otherwise provide, a person must make an application required or permitted by the Bankruptcy Act to be made to the Court:
 - (a) if the application is not made in a proceeding already commenced in the Court—by filing an application in accordance with Form B2; or
 - (b) in any other case—by filing an interim application in accordance with Form B3.
- (2) If final relief has been granted in relation to a proceeding under the Bankruptcy Act, a person may make an application to the Court in relation to the proceeding by filing an interim application in accordance with Form B3 unless the Court otherwise directs.
- (3) An application filed in accordance with Form B2 must state:
 - (a) each section of the Bankruptcy Act, or each regulation of the Bankruptcy Regulations, under which the proceeding is brought; and
 - (b) the relief sought.
- (4) An interim application filed in accordance with Form B3 must state:
 - (a) if appropriate, each section of the Bankruptcy Act, or each regulation of the Bankruptcy Regulations, or each rule of Court under which the application is made; and
 - (b) the relief sought.

Note 1: The following are examples of applications that must be commenced by filing an application in accordance with Form B2:

- (a) an application for an order for substituted service of a bankruptcy notice;
- (b) an application, under section 50 of the Bankruptcy Act, for the issue of a summons to a debtor, or an examinable person in relation to the debtor, for examination about the debtor and the debtor's examinable affairs;
- (c) an application, under section 78 of the Bankruptcy Act, for the issue of a warrant for the arrest of a debtor or bankrupt;
- (d) an application for an appeal, under subsection 82(5) of the Bankruptcy Act, against an estimate by the trustee of the value of a debt or liability provable in a bankruptcy;
- (e) an application, under section 153B of the Bankruptcy Act, for the annulment of a bankruptcy;
- (f) an application, under subsection 157(6) of the Bankruptcy Act, objecting to the appointment of a person as a trustee;
- (g) an application for an appeal, under subsection 167(6) of the Bankruptcy Act, from a decision of the Inspector-General in relation to a review;
- (h) an application, under section 180 of the Bankruptcy Act, for acceptance of a registered trustee's resignation from the office of trustee of an estate;
- (i) an application, under section 183 of the Bankruptcy Act, for release of a trustee from the trusteeship of an estate;
- (j) an application, under section 185Q of the Bankruptcy Act, for an order terminating a debt agreement;
- (k) an application, under section 185T of the Bankruptcy Act, for an order declaring that all, or a specified part, of a debt agreement is void;
- (l) an application, under section 222 of the Bankruptcy Act, for an order setting aside a personal insolvency agreement;

Section 2.02

- (m) an application, under section 222 of the Bankruptcy Act (as applied by section 76B of that Act), for an order setting aside a composition or scheme of arrangement;
- (n) an application, under section 222C of the Bankruptcy Act, for an order terminating a personal insolvency agreement;
- (o) an application, under section 222C of the Bankruptcy Act (as applied by section 76B of that Act), for an order terminating a composition or scheme of arrangement;
- (p) an application, under section 252B of the Bankruptcy Act, for the annulment of the administration of the estate of a deceased person.

Note 2: The following are examples of interim applications that must be made by filing an interim application in accordance with Form B3:

- (a) an application for an order for substituted service of a creditor's petition;
- (b) an application for an order for substituted service of any other application or appeal under the Bankruptcy Act made in a proceeding already commenced in the Court (including each application referred to in Note 1 to this rule, other than an application referred to in paragraph (a) of that note).

2.02 Exercise of powers by Registrars

- (1) For the purposes of paragraph 102(2)(i) of the Act, a power of the Court under a provision of the Bankruptcy Act referred to in Schedule 1 is prescribed.
- (2) An application under paragraph 104(4)(b) of the Act may be made orally to a Registrar at the time that the Registrar is hearing the application for the exercise of a power referred to in subsection 102(2), or in a delegation under subsection 103(1), of the Act.
- (3) Subject to any direction by the Court or a Judge to the contrary, an application under subsection 104(2) of the Act for review of the exercise of a power of the Court by a Registrar must be made by filing an application in accordance with Form B3A within 21 days after the day on which the power was exercised.

Note: For additional rules relating to the review of a decision by a Registrar to make a sequestration order, see rule 7.05.

2.03 Leave to be heard

- (1) The Court may grant leave to be heard in a proceeding to a person who is not a party to the proceeding.
- (2) The Court may grant the leave on conditions, and may revoke the leave at any time.
- (3) The Court may order the person to pay costs if:
 - (a) the granting of leave to the person causes additional costs for a party to the proceeding; and
 - (b) the Court considers that the costs should be paid by the person.
- (4) The Court may also order that the person is not to be further heard in the proceeding until the costs are paid or secured to the Court's satisfaction.
- (5) The Court may grant leave or make an order under this rule:
 - (a) on the Court's own initiative; or
 - (b) on the application of a party, or a person who has an interest in the proceeding.

- (6) An application for leave or for an order must be made by filing an interim application in accordance with Form B3.

2.04 Appearance at hearing or examination

A person who intends to appear at the hearing of an application or petition, or take part in an examination, must file a notice of appearance in accordance with Form B4.

2.05 Adjournment of first court date for creditor's petition

Rule 10.02 of the *Federal Circuit Court Rules 2001* (adjournment of first court date) does not apply to the hearing date fixed for a creditor's petition.

2.06 Opposition to application, interim application or petition

A person who intends to oppose an application (including an interim application) or a petition must, at least 3 days before the date fixed for the hearing of the application or petition or, with the leave of the Court, at the hearing:

- (a) file a notice of appearance in accordance with Form B4; and
- (b) file a notice in accordance with Form B5 stating the grounds of opposition; and
- (c) file an affidavit in support of the grounds of opposition; and
- (d) serve the notices and supporting affidavit on the applicant.

Part 3—Bankruptcy notices

3.01 Substituted service

- (1) An application under subsection 309(2) of the Bankruptcy Act for substituted service of a bankruptcy notice must be accompanied by an affidavit stating the grounds in support of the application.
- (2) A copy of the bankruptcy notice must be attached to the affidavit.

3.02 Setting aside bankruptcy notice

- (1) An application to set aside a bankruptcy notice under the Bankruptcy Act must be accompanied by an affidavit stating:
 - (a) the grounds in support of the application; and
 - (b) the date when the bankruptcy notice was served on the applicant.
- (2) A copy of the bankruptcy notice must be attached to the affidavit.
- (3) If the application is based on the ground that the debtor has a counter-claim, set-off or cross demand referred to in paragraph 40(1)(g) of the Bankruptcy Act, the affidavit must also state:
 - (a) the full details of the counter-claim, set-off or cross demand; and
 - (b) the amount of the counter-claim, set-off or cross demand and the amount by which it exceeds the amount claimed in the bankruptcy notice; and
 - (c) why the counter-claim, set-off or cross demand was not raised in the proceedings that resulted in the judgments or orders to which the bankruptcy notice relates.
- (4) If the application is based on the ground that the debtor has instituted proceedings to set aside a judgment or order in relation to which the bankruptcy notice was issued, a copy of the application to set aside the judgment or order and any material in support of that application must also be attached to the affidavit.
- (5) The application and supporting affidavit must be served on the respondent creditor within 3 days after the application is filed.

Note 1: For extensions of time for compliance with a bankruptcy notice where an application has been made to set aside a judgment or order in respect of which the bankruptcy notice was issued, see paragraph 41(6A)(a) and subsection 41(6C) of the Bankruptcy Act and rule 3.03.

Note 2: For extensions of time for compliance with a bankruptcy notice where an application has been made to the Court to set aside the bankruptcy notice, see paragraph 41(6A)(b) of the Bankruptcy Act and rule 3.03.

Note 3: For the deemed extension of time for compliance with a bankruptcy notice where a counter-claim, set-off or cross demand is raised under paragraph 40(1)(g) of the Bankruptcy Act, see subsection 41(7) of that Act.

3.03 Extension of time for compliance with bankruptcy notice

- (1) An application for an extension of time, under subsection 41(6A) of the Bankruptcy Act, for compliance with a bankruptcy notice must be accompanied by an affidavit stating:
 - (a) the grounds in support of the application; and
 - (b) the date when the bankruptcy notice was served on the applicant.

Note: See also subsection 41(6C) of the Bankruptcy Act.

- (2) The following must be attached to the affidavit:
 - (a) a copy of the bankruptcy notice;
 - (b) a copy of any application to set aside a judgment or order in relation to which the bankruptcy notice was issued and any material in support of that application.
- (3) The application may be made in the absence of a party.
- (4) The application need be heard in open court only if it is for an extension of time to a date after the first court date.
- (5) If, on application, the Court extends the time for compliance with a bankruptcy notice, the following documents must be served on the respondent creditor within 3 days after the order is made:
 - (a) the application;
 - (b) the supporting affidavit;
 - (c) the order.

Part 4—Creditors' petitions

4.01 Application of Part 4

This Part applies in relation to a creditor's petition seeking a sequestration order against the estate of a debtor.

4.02 Requirements for creditor's petition and supporting affidavit

- (1) For subsection 47(1A) of the Bankruptcy Act, a creditor's petition must be in accordance with Form B6.
- (2) The affidavit (the *verifying affidavit*) verifying the petition required by subsection 47(1) of the Bankruptcy Act must:
 - (a) be included in the petition in accordance with Form B6; or
 - (b) accompany the petition.
- (3) The petition must also be accompanied by any affidavits relating to the petition required by rule 4.04.
- (4) Unless the petition is faxed, or sent by electronic communication, to a Registry for filing, the petition must also be accompanied by sufficient copies of the petition for service and proof of service.
- (5) If the petition is accompanied by the verifying affidavit in accordance with paragraph (2)(b), a copy of the petition must be attached to the verifying affidavit.

4.03 Creditor's petition founded on issue of execution against debtor

- (1) If a creditor's petition is founded on an act of bankruptcy specified in paragraph 40(1)(d) of the Bankruptcy Act, the affidavit verifying the petition required by subsection 47(1) of the Bankruptcy Act must state:
 - (a) that, in consequence of the issue of execution against the debtor, property of the debtor has been sold by the sheriff or held by the sheriff for 21 days; or
 - (b) that the writ or warrant of execution relating to the act of bankruptcy has been returned unsatisfied.
- (2) If paragraph (1)(b) applies, the affidavit must have attached to it a sealed or certified copy of the writ or warrant of execution returned unsatisfied.

4.04 Creditor's petition founded on failure to comply with bankruptcy notice etc.

- (1) If a creditor's petition is founded on an act of bankruptcy specified in paragraph 40(1)(g) of the Bankruptcy Act, the petition must also be accompanied by:
 - (a) an affidavit stating:

-
- (i) that the records of the Court and the records of the Federal Court have been searched and no application in relation to the bankruptcy notice has been made; or
 - (ii) that an application was made in the Court or in the Federal Court (as the case may be) for an order setting aside the relevant bankruptcy notice and the application has been finally decided; or
 - (iii) that an application was made in the Court or in the Federal Court (as the case may be) for an order extending the time for compliance with the bankruptcy notice and the application has been finally decided; and
 - (b) an affidavit of service of the relevant bankruptcy notice.
- (2) If an affidavit required by paragraph (1)(a) states the matters referred to in subparagraph (1)(a)(i), a copy of the search must be attached to the affidavit.
 - (3) If an affidavit required by paragraph (1)(a) states that an application referred to in subparagraph (1)(a)(ii) or (iii) was made, a copy of the order finally deciding the application must be attached to the affidavit.
 - (4) A copy of the bankruptcy notice must be attached to the affidavit required by paragraph (1)(b).

4.05 Documents to be served

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of a creditor's petition, the applicant creditor must serve on the respondent debtor:

- (a) the creditor's petition; and
- (b) a copy of the affidavit, or affidavits, verifying the petition required by subsection 47(1) of the Bankruptcy Act; and
- (c) if applicable, a copy of the affidavits relating to the petition required by rule 4.04; and
- (d) a copy of any consent to act as trustee of the debtor's estate filed under section 156A of the Bankruptcy Act.

4.06 Additional affidavits to be filed before hearing

- (1) Before the hearing of a creditor's petition, the applicant creditor must comply with this rule.
- (2) The applicant creditor must file an affidavit that:
 - (a) states that the documents required to be served under rule 4.05 have been served, and when and how they were served; and
 - (b) has attached to it a copy of the documents that were served and proof of service in relation to the documents.
- (3) The applicant creditor must file an affidavit, of a person who has, no earlier than the day before the hearing date for the petition, searched, or caused a search to be made, in the National Personal Insolvency Index, that:
 - (a) sets out the details of any references in the Index to the debtor; and

Section 4.07

- (b) states that there were no details of a debt agreement, about the debt on which the applicant creditor relies, in the Index:
 - (i) on the day when the petition was presented; and
 - (ii) on the day when the search was made; and
 - (c) has attached to it a copy of the relevant extract of the Index.
- (4) The applicant creditor must file an affidavit of a person who knows the relevant facts that:
- (a) was sworn as soon as practicable before the hearing date for the petition; and
 - (b) states that each debt on which the applicant creditor relies is still owing.
- (5) If a debt stated in the petition is an amount payable to the applicant creditor under a judgment of a court that ordered the amount to be paid into the court, the applicant creditor must file an affidavit:
- (a) of a person who has, not earlier than the day before the hearing date for the petition, searched in the proper office of the court; and
 - (b) that states whether the amount of the debt (or part of that amount) has been paid as ordered.

4.07 Notification and entry of sequestration order

- (1) A sequestration order must be in accordance with Form B7.
- (2) If the Court makes a sequestration order against the estate of a debtor, the applicant creditor must:
 - (a) on the day the order is made, notify the trustee, in writing, of his or her appointment; and
 - (b) within 2 days after the order is made, give a copy of the sequestration order to any person who has, in accordance with section 156A of the Bankruptcy Act, consented to act as the trustee of the debtor's estate.

Note: The applicant creditor must also give a copy of the order to the Official Receiver before the end of the period of 2 days beginning on the day the order was made: see subsection 52(1A) of the Bankruptcy Act.

- (3) If the order is not entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001* at the time the order is made, the applicant creditor must, as soon as practicable, request entry of the order in accordance with that rule.

4.08 Entry of order for dismissal etc. of creditor's petition

- (1) This rule applies if the Court makes an order:
 - (a) dismissing a creditor's petition; or
 - (b) granting leave for a creditor's petition to be withdrawn; or
 - (c) under subsection 52(5) of the Bankruptcy Act.
- (2) If the order is not entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001* at the time the order is made, the applicant creditor must, as soon as practicable, request entry of the order in accordance with that rule.

4.09 Service of order

Within 2 days after an order referred to in rule 4.07 or 4.08 is entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001*, the applicant creditor must give a copy of the entered order to:

- (a) any person who has, in accordance with section 156A of the Bankruptcy Act, consented to act as the trustee of the debtor's estate; and
- (b) the Official Receiver.

Part 5—Debtors' petitions

5.01 Referral of debtor's petition

- (1) A referral of a debtor's petition to the Court by the Official Receiver under subsection 55(3B), 56C(1) or 57(3B) of the Bankruptcy Act must be in accordance with Form B8.
- (2) On receiving a referral, a Registrar must fix a time, date and place for the hearing of the referral.
- (3) At least 3 days before the date fixed for the hearing, the Official Receiver must serve a sealed copy of the referral, and notice of the time, date and place fixed for the hearing, on:
 - (a) each debtor who presented the debtor's petition; and
 - (b) for each creditor's petition of the kind referred to in subsection 55(3B), 56C(1) or 57(3B) of the Bankruptcy Act:
 - (i) each debtor against whom the creditor's petition was made; and
 - (ii) each creditor who presented the creditor's petition; and
 - (c) if subsection 56C(4) of the Bankruptcy Act applies to the debtor's petition—the person administering the relevant proclaimed law.
- (4) The notice required by subrule (3) must be in accordance with the notice set out in Form B8.

Part 6—Examinations

Division 6.1—Examination of debtor or examinable person under section 50 of the Bankruptcy Act

6.01 Application for summons

- (1) An application under section 50 of the Bankruptcy Act for a debtor, or an examinable person in relation to a debtor, to be summoned for examination must be in accordance with Form B2.

Note: More than one application may be included in the same Form B2.

- (2) The application must be accompanied by an affidavit complying with this rule.
- (3) The affidavit must:
 - (a) identify:
 - (i) the person sought to be examined; and
 - (ii) if that person is an examinable person in relation to a debtor—the debtor; and
 - (b) if the person sought to be examined is an examinable person—state the facts relied on by the applicant to establish that the person to be summoned is an examinable person; and
 - (c) if the summons is to require the person sought to be examined to produce books at the examination:
 - (i) identify the books that are to be produced; and
 - (ii) give details of any inquiry by the applicant about the books to be produced and any refusal by the person to cooperate with the inquiry.

6.02 Hearing of application

An application referred to in rule 6.01 may be heard in the absence of a party or in closed court.

6.03 Requirements for summons

- (1) A summons to a person under subsection 50(2) of the Bankruptcy Act for examination must be in accordance with Form B9.
- (2) A Registrar must:
 - (a) sign, and affix the seal or stamp of the Court to, the summons; and
 - (b) give the summons to the person who applied for the summons for service on the person to be examined.
- (3) If the summons requires the person to be examined to produce books at the examination, the summons must identify the books that are to be produced.

Section 6.04

6.04 Service of summons

If the Court summons a person under subsection 50(2) of the Bankruptcy Act for examination, the application for the summons must, at least 8 days before the date fixed for the examination:

- (a) serve the summons on the person to be examined by hand, or in another way directed by the Court or a Registrar; and
- (b) give written notice of the date, time and place fixed for the examination to each person known to the applicant to be a creditor of the debtor.

6.05 Application for discharge of summons

- (1) If a person is served with a summons under subsection 50(2) of the Bankruptcy Act for examination, the person may apply for an order to discharge the summons by filing:
 - (a) an interim application, in accordance with Form B3, in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) The interim application and supporting affidavit must be filed at least 3 days before the date fixed for the examination.
- (3) As soon as possible after filing the interim application and supporting affidavit, the person must serve a copy of each document:
 - (a) on the person who applied for the summons; and
 - (b) if the person who applied for the summons is not the Official Receiver—on the Official Receiver.

Division 6.2—Examination of relevant person under section 81 of the Bankruptcy Act

6.06 Application for summons

- (1) An application under section 81 of the Bankruptcy Act for a relevant person to be summoned for examination in relation to the person's bankruptcy must be in accordance with Form B10.

Note: More than one application under section 81 of the Bankruptcy Act (including an application referred to in rule 6.12) may be included in the same Form B10.

- (2) The application must be accompanied by:
 - (a) a draft of the summons applied for; and
 - (b) an affidavit that complies with subrule (3).
- (3) The affidavit must:
 - (a) state whether the applicant is:
 - (i) a creditor who has a debt provable in the bankruptcy; or
 - (ii) the trustee of the relevant person's estate; or
 - (iii) the Official Receiver; and
 - (b) if the summons is to require the relevant person to produce books at the examination:
 - (i) identify the books that are to be produced; and
 - (ii) give details of any inquiry by the applicant about the books to be produced and any refusal by the relevant person to cooperate with the inquiry.

6.07 Hearing of application

An application referred to in rule 6.06 may be heard in the absence of a party or in closed court.

6.08 Requirements for summons

- (1) A summons to a relevant person under subsection 81(1) of the Bankruptcy Act for examination must be in accordance with Form B9.
- (2) A Registrar must:
 - (a) sign, and affix the seal or stamp of the Court to, the summons; and
 - (b) give the summons to the person who applied for the summons for service on the relevant person.
- (3) If the summons requires the relevant person to produce books at the examination, the summons must identify the books that are to be produced.

6.09 Service of summons

If the Court or a Registrar summons a relevant person under subsection 81(1) of the Bankruptcy Act for examination, the applicant for the summons must, at least 8 days before the date fixed for the examination:

Part 6 Examinations

Division 6.2 Examination of relevant person under section 81 of the Bankruptcy Act

Section 6.10

- (a) serve the summons on the relevant person by hand, or in another way directed by the Court or a Registrar; and
- (b) give written notice of the date, time and place fixed for the examination to each person known to the applicant to be a creditor of the relevant person.

6.10 Failure to attend examination

If the relevant person does not attend an examination in accordance with a summons to the relevant person under subsection 81(1) of the Bankruptcy Act, the Court or a Registrar may:

- (a) adjourn the examination generally or to another day, time or place; or
- (b) discharge the summons.

Note: For the power of the Court or a Registrar to issue a warrant for the arrest of a relevant person who does not attend an examination in accordance with a summons, see section 264B of the Bankruptcy Act.

6.11 Application for discharge of summons

- (1) If a relevant person is served with a summons under subsection 81(1) of the Bankruptcy Act for examination, the person may apply for an order to discharge the summons by filing:
 - (a) an interim application, in accordance with Form B3, in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) The interim application and supporting affidavit must be filed at least 3 days before the date fixed for the examination.
- (3) As soon as possible after filing the interim application and supporting affidavit, the relevant person must serve a copy of each document:
 - (a) on the person who applied for the summons; and
 - (b) if the person who applied for the summons is not the Official Receiver—on the Official Receiver.
- (4) The order to discharge the summons may be made by the Court or a Registrar.

Division 6.3—Examination of examinable person under section 81 of the Bankruptcy Act

6.12 Application for summons

- (1) An application under section 81 of the Bankruptcy Act for an examinable person in relation to a relevant person to be summoned for examination in relation to the relevant person's bankruptcy must be in accordance with Form B10.

Note: More than one application under section 81 of the Bankruptcy Act (including an application referred to in rule 6.06) may be included in the same Form B10.

- (2) The application must be accompanied by:
- (a) a draft of the summons applied for; and
 - (b) an affidavit that complies with subrule (3).
- (3) The affidavit must:
- (a) state whether the applicant is:
 - (i) a creditor who has a debt provable in the bankruptcy; or
 - (ii) the trustee of the relevant person's estate; or
 - (iii) the Official Receiver; and
 - (b) state the facts relied on by the applicant to establish that the person to be summoned is an examinable person; and
 - (c) if the summons is to require an examinable person to produce books at the examination:
 - (i) identify the books that are to be produced; and
 - (ii) give details of any inquiry by the applicant about the books to be produced and any refusal by the examinable person to cooperate with the inquiry.
- (4) If the affidavit is lodged with a Registry for filing (other than by being sent to the Registry by electronic communication), it may be filed in a sealed envelope marked "Affidavit supporting application for summons for examination under subsection 81(1) of the *Bankruptcy Act 1966*".
- (5) If the affidavit is sent by electronic communication to a Registry for filing:
- (a) the affidavit may be marked "Confidential"; and
 - (b) if the affidavit is so marked—the accompanying explanation must state that the affidavit is a "confidential affidavit supporting an application for summons for examination under subsection 81(1) of the *Bankruptcy Act 1966*".
- (6) If the affidavit is:
- (a) filed in a sealed envelope in accordance with subrule (4); or
 - (b) marked "Confidential" as permitted by paragraph (5)(a);
- a Registrar must not make it available for public inspection.

Section 6.13

6.13 Hearing of application

An application referred to in rule 6.12 may be heard in the absence of a party or in closed court.

6.14 Requirements for summons

- (1) A summons to an examinable person under subsection 81(1) of the Bankruptcy Act for examination must be in accordance with Form B9.
- (2) A Registrar must:
 - (a) sign, and affix the seal or stamp of the Court to, the summons; and
 - (b) give the summons to the person who applied for the summons for service on each examinable person to be examined.
- (3) If the summons requires an examinable person to produce books at the examination, the summons must identify the books that are to be produced.

6.15 Service of summons

If the Court or a Registrar summons an examinable person under subsection 81(1) of the Bankruptcy Act for examination in relation to the bankruptcy of a relevant person, the applicant for the summons must, at least 8 days before the date fixed for the examination:

- (a) serve the summons on each examinable person by hand, or in another way directed by the Court or a Registrar; and
- (b) give written notice of the date, time and place fixed for the examination to each person known to the applicant to be a creditor of the relevant person.

6.16 Application for discharge of summons

- (1) If an examinable person is served with a summons under subsection 81(1) of the Bankruptcy Act for examination, the person may apply for an order to discharge the summons by filing:
 - (a) an interim application in accordance with Form B3, in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) The interim application and supporting affidavit must be filed at least 3 days before the date fixed for the examination.
- (3) As soon as possible after filing the interim application and supporting affidavit, the examinable person must serve a copy of each document:
 - (a) on the person who applied for the summons; and
 - (b) if the person who applied for the summons is not the Official Receiver—on the Official Receiver.
- (4) The order to discharge the summons may be made by the Court or a Registrar.

6.17 Conduct money and witnesses expenses

- (1) An examinable person who, in accordance with a summons under subsection 81(1) of the Bankruptcy Act, attends an examination to give evidence or produce documents is entitled to be paid:
 - (a) enough conduct money to cover the reasonable expenses of travelling from and to the place where the person lives, and any reasonable accommodation expenses; and
 - (b) reasonable expenses for the person's attendance as a witness.
- (2) The expenses must be paid by the applicant for the summons.
- (3) The expenses referred to in paragraph (1)(a) must be paid at a reasonable time before the person is to attend the examination.
- (4) In this rule:

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet a person's reasonable expenses of attending an examination and returning after so attending.

Part 7—Annulment or review of bankruptcy

Division 7.1—Annulment of bankruptcy

7.01 Application of Division 7.1

This Division applies to the following applications:

- (a) an application under section 153B of the Bankruptcy Act for the annulment of a bankruptcy;
- (b) an application under section 252B of the Bankruptcy Act for the annulment of the administration of the estate of a deceased person.

7.02 Requirements for application

- (1) An application must set out the grounds on which the annulment is sought.
- (2) The application must be served on the trustee at least 7 days before the date fixed for the hearing of the application.

7.03 Notice to creditors

- (1) The applicant must give notice of the application to each person known to the applicant to be a creditor of the bankrupt or a creditor of the estate of the deceased person.
- (2) The notice must be in accordance with Form B11.
- (3) The applicant must serve the notice on each creditor at least 7 days before the date fixed for the hearing of the application.

7.04 Entry and service of annulment order

- (1) This rule applies if the Court makes an order:
 - (a) annulling a bankruptcy under section 153B of the Bankruptcy Act; or
 - (b) annulling the administration of an estate under section 252B of the Bankruptcy Act.
- (2) If the order is not entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001* 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 rule.
- (3) Within 2 days after the order is entered, the applicant must give a copy of the entered order to:
 - (a) the trustee of the estate of the bankrupt or deceased person; and
 - (b) the Official Receiver.

Division 7.2—Review of sequestration order

7.05 Review of Registrar’s decision

- (1) This rule applies in relation to an application under subsection 104(2) of the Act for review of a decision by a Registrar to make a sequestration order against the estate of a debtor (the *bankrupt*).

Note: For the form of the application and the time for filing the application, see rule 2.02.

- (2) The application must be served on the trustee at least 7 days before the date fixed for the hearing of the application.
- (3) The applicant must give notice of the application to each person known to the applicant to be a creditor of the bankrupt.
- (4) The notice must be in accordance with Form B12.
- (5) The applicant must serve the notice on each creditor at least 7 days before the date fixed for the hearing of the application.

Division 7.3—Report by trustee

7.06 Report by trustee

- (1) This rule applies if an application referred to in rule 7.01 or 7.05 is made.
- (2) If directed by the Court, the trustee must prepare a report for the periods before and after the bankruptcy or the administration of the estate of the deceased person.
- (3) If the report is in relation to a bankrupt, the report must include information about:
 - (a) the bankrupt's conduct; and
 - (b) the bankrupt's examinable affairs; and
 - (c) the administration of the bankrupt's estate.
- (4) If the report is in relation to the estate of a deceased person, the report must include information about the administration of the deceased person's estate.
- (5) The report must:
 - (a) be in the form of an affidavit; and
 - (b) be filed at least 5 days before the date fixed for the hearing of the application.

Part 8—Trustees

8.01 Objection to appointment of trustee

- (1) An objection to the appointment of a person as a trustee filed under subsection 157(6) of the Bankruptcy Act must be accompanied by an affidavit stating the grounds in support of the objection.
- (2) At least 28 days before the date fixed for the hearing of the objection, the creditor (the **objecting creditor**) who filed the objection must serve the objection and supporting affidavit on the trustee and any petitioning creditor.
- (3) At least 14 days before the date fixed for the hearing of the objection, the objecting creditor must serve the objection and supporting affidavit on each other person known to the objecting creditor to be a creditor of the bankrupt or a creditor of the estate of the deceased person.

Note: If the Court cancels the appointment of a trustee and appoints another trustee, the creditor who filed the objection must give the Official Trustee written notice of the cancellation and appointment as soon as practicable: see subsection 157(7A) of the Bankruptcy Act.

8.02 Resignation or release of trustee

- (1) This rule applies to the following applications:
 - (a) an application for the acceptance under section 180 of the Bankruptcy Act of a trustee's resignation from the office of trustee of an estate;
 - (b) an application under subsection 183(1) of the Bankruptcy Act for the release of a trustee from the trusteeship of an estate.
- (2) The application must be accompanied by an affidavit stating the grounds in support of the application.
- (3) For an application referred to in paragraph (1)(b), the following must be attached to the affidavit:
 - (a) a statement giving details of the realisation of the bankrupt's property and the distribution of the estate by the trustee;
 - (b) a copy of the most recent account required under subsection 173(1) of the Bankruptcy Act.
- (4) The application and supporting affidavit must be served on:
 - (a) the Official Receiver; and
 - (b) the bankrupt; and
 - (c) anyone else (including a creditor) as ordered by the Court.
- (5) If the Court makes the order sought, and the order is not entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001* 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 rule.
- (6) Within 2 days after the order is entered, the trustee must give a copy of the entered order to the Official Receiver.

Part 9—Debt agreements

9.01 Application of Part 9

This Part applies to the following applications:

- (a) an application under section 185Q of the Bankruptcy Act for an order terminating a debt agreement;
- (b) an application under section 185T of the Bankruptcy Act for an order declaring that all, or a specified part, of a debt agreement is void.

9.02 Requirements for application

- (1) An application for an order terminating a debt agreement must be accompanied by an affidavit stating the facts relied on to satisfy the relevant prerequisite in subsection 185Q(4) of the Bankruptcy Act for making the order.
- (2) An application for an order declaring that all, or a specified part, of a debt agreement is void must be accompanied by an affidavit stating the facts relied on to establish the relevant ground in subsection 185T(2) of the Bankruptcy Act for applying for the order.
- (3) A copy of the debt agreement must be attached to the affidavit referred to in subrule (1) or (2).
- (4) If an application is made by a creditor who also seeks a sequestration order in accordance with subsection 185Q(2) or 185T(4) of the Bankruptcy Act, that must be stated in the application.

9.03 Service

At least 5 days before the date fixed for the hearing of an application, the application and supporting affidavit must be served on:

- (a) the debtor (or the debtor's personal representative if the debtor has died);
and
- (b) if the applicant is not the Official Trustee—the Official Receiver.

9.04 Notice to creditors

- (1) At least 5 days before the date fixed for the hearing of an application, the applicant must serve a written notice of the time, date and place fixed for the hearing on each person known to the applicant to be a creditor of the debtor.
- (2) The notice must be in accordance with Form B13.

9.05 Entry and service of order

- (1) If:
 - (a) the Court makes an order under section 185Q or 185U of the Bankruptcy Act; and

- (b) the order is not entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001* 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 rule.
- (2) Within 2 days after the order is entered, the applicant must give a copy of the entered order to the Official Receiver.

Part 10—Personal insolvency agreements

10.01 Application of Part 10

This Part applies to the following applications:

- (a) an application under section 222 of the Bankruptcy Act for an order setting aside a personal insolvency agreement;
- (b) an application under section 222C of the Bankruptcy Act for an order terminating a personal insolvency agreement;
- (c) an application under section 222 of the Bankruptcy Act (as applied by section 76B of that Act) for an order setting aside a composition or scheme of arrangement;
- (d) an application under section 222C of the Bankruptcy Act (as applied by section 76B of that Act) for an order terminating a composition or scheme of arrangement.

10.02 Requirements for application

- (1) An application must be accompanied by an affidavit stating the facts relied on to establish the relevant ground for making the order.

Note: The grounds for making the order are stated in subsections 222(1), (2) and (5) and subsection 222C(1) of the Bankruptcy Act.

- (2) The affidavit accompanying an application for an order under subsection 222(2) of the Bankruptcy Act must also state the facts relied on to satisfy the prerequisite in subsection 222(4) of that Act for making the order.
- (3) The affidavit accompanying an application for an order under subsection 222(5) of the Bankruptcy Act must also state the facts relied on to satisfy the prerequisite in subsection 222(7) of that Act for making the order.
- (4) If an application is made by a trustee or creditor who also seeks a sequestration order in accordance with subsection 222(10) or 222C(5) of the Bankruptcy Act, that must be stated in the application.

10.03 Service

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of an application, the application and supporting affidavit must be served on:

- (a) the debtor; and
- (b) the trustee of the estate; and
- (c) the Official Receiver.

Note: The Court may dispense with service on the debtor of notice of an application: see subsection 222(12) of the Bankruptcy Act.

10.04 Notice to creditors

- (1) At least 5 days before the date fixed for the hearing of the application, the applicant must serve a written notice of the time, date and place fixed for the hearing on each creditor named in the debtor's statement of affairs.
- (2) The notice must be in accordance with Form B13.

10.05 Entry of order

If:

- (a) the Court makes an order under subsection 222(1), (2) or (5) or subsection 222C(1) of the Bankruptcy Act; and
- (b) the order is not entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001* at the time the order is made;

the applicant must, as soon as practicable, request entry of the order in accordance with that rule.

Note: A copy of the order must be given to the Official Receiver within 2 days after the order is made: see subregulations 10.11(3) and (4) of the *Bankruptcy Regulations 1996*.

Part 11—Administration of estates of deceased persons

11.01 Creditor's petition

A creditor's petition presented under section 244 of the Bankruptcy Act for an order for the administration of a deceased person's estate must be:

- (a) in accordance with Form B14; and
- (b) accompanied by the affidavit verifying the petition required by subsection 244(5) of the Bankruptcy Act.

11.02 Documents to be served

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of a creditor's petition presented under section 244 of the Bankruptcy Act, the applicant creditor must serve on the legal personal representative of the deceased person or such other person as the Court directs:

- (a) the creditor's petition; and
- (b) a copy of the affidavit, or affidavits, verifying the petition required by subsection 244(5) of the Bankruptcy Act; and
- (c) a copy of any consent to act as trustee of the deceased person's estate filed under section 156A of the Bankruptcy Act.

11.03 Additional affidavits to be filed before hearing of creditor's petition

- (1) Before the hearing of a creditor's petition presented under section 244 of the Bankruptcy Act, the applicant creditor must comply with this rule.
- (2) The applicant creditor must file an affidavit that:
 - (a) states that the documents required to be served under rule 11.02 have been served, and when and how they were served; and
 - (b) has attached to it a copy of the petition and proof of service in relation to the petition.
- (3) The applicant creditor must file an affidavit, of a person who has, no earlier than the day before the hearing date for the petition, searched, or caused a search to be made, in the National Personal Insolvency Index, that:
 - (a) sets out the details of any references in the Index to the deceased person; and
 - (b) states that there were no details of a debt agreement, about the debt on which the applicant creditor relies, in the Index:
 - (i) on the day on which the petition was presented; and
 - (ii) on the day when the search was made; and
 - (c) has attached to it a copy of the relevant extract of the Index.
- (4) The applicant creditor must file an affidavit of a person who knows the relevant facts that:
 - (a) was sworn as soon as practicable before the hearing date for the petition; and

-
- (b) states that each debt on which the applicant creditor relies is still owing.
- (5) If a proceeding has been commenced in a court for the administration of the deceased person's estate under a State or Territory law, the applicant creditor must file an affidavit of a person who knows the relevant facts setting out details of the proceeding.

11.04 Administrator's petition

A petition presented under section 247 of the Bankruptcy Act for an order for the administration of the estate of a deceased person must be:

- (a) in accordance with Form B15; and
- (b) accompanied by an affidavit of a person who knows the relevant facts verifying the petition.

Note: The petition must also be accompanied by a statement, in duplicate, of the deceased person's affairs and of the administrator's administration of the deceased person's estate: see subsection 247(1) of the Bankruptcy Act. Regulation 11.01 of the Bankruptcy Regulations sets out the particulars that must be included in the statement.

11.05 Documents to be served

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of a petition presented under section 247 of the Bankruptcy Act, the applicant must serve on each person known to the applicant to be a creditor of the estate of the deceased person or such other person as the Court directs:

- (a) the petition; and
- (b) a copy of the affidavit, or affidavits, verifying the petition required by rule 11.04; and
- (c) a copy of the statement of the deceased person's affairs and of the administrator's administration of the deceased person's estate required by subsection 247(1) of the Bankruptcy Act.

11.06 Entry of order

If:

- (a) the Court makes an order under section 244 or 247 of the Bankruptcy Act; and
- (b) the order is not entered in accordance with rule 16.08 of the *Federal Circuit Court Rules 2001* at the time the order is made;

the applicant must, as soon as practicable, request entry of the order in accordance with that rule.

Note: A copy of the order must be given to the Official Receiver before the end of the period of 2 days beginning on the day the order was made: see subsections 244(14) and 247(3) of the Bankruptcy Act.

Part 12—Warrants

12.01 Arrest of debtor or bankrupt

- (1) An application for the issue of a warrant under section 78 of the Bankruptcy Act for the arrest of a debtor or bankrupt must state the grounds for the issue of the warrant.
- (2) The application must be accompanied by an affidavit stating the facts in support of the application.
- (3) The warrant must be in accordance with Form B16.
- (4) If a debtor or bankrupt is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to a Registrar in the Registry from which the warrant was issued.

12.02 Apprehension of person failing to attend Court

- (1) A warrant issued under subsection 264B(1) of the Bankruptcy Act for the apprehension of a person who fails to comply with a summons must be in accordance with Form B17.
- (2) The Court or a Registrar may order that the warrant be kept in the Registry:
 - (a) for a stated time; and
 - (b) on any conditions that the Court or Registrar considers appropriate.
- (3) If a person is apprehended under the warrant, the person who carried out the apprehension must immediately give notice of the apprehension to a Registrar in the Registry from which the warrant was issued.

Note: For the procedure to be followed if a person is apprehended under a warrant and it is not practicable to bring the person before the Court or a Registrar on the day the person is apprehended, see Part 14 of the Bankruptcy Regulations.

12.03 Warrant for seizure of property connected with the bankrupt

A warrant issued under subsection 130(2) of the Bankruptcy Act may be in accordance with Form B18.

Part 13—Costs

Division 13.1—Orders for costs

13.01 Basis for costs

- (1) Subject to Division 13.2, a person who is entitled to costs in a proceeding to which the Bankruptcy Act applies is entitled to costs in accordance with Part 40 of the *Federal Court Rules 2011* unless the Court otherwise orders.
- (2) In making an order for costs, the Court may fix the amount of the costs.
- (3) If the Court fixes the amount of the costs, Part 40 of the *Federal Court Rules 2011* does not apply to a bill of costs submitted for the costs, except for the issue of a certificate of taxation.

Division 13.2—Short form bills of costs

13.02 Application of Division 13.2

- (1) This Division makes provision in relation to the costs that may be charged by a legal practitioner for a creditor for work done in relation to a petition against the estate of a debtor on the basis of an act of bankruptcy specified in paragraph 40(1)(g) of the Bankruptcy Act.
- (2) This Division does not apply if the Court fixes the amount of the costs.

Note: A debtor commits an act of bankruptcy under paragraph 40(1)(g) of the Bankruptcy Act if the debtor does not:

- (a) comply with a bankruptcy notice issued on the application of a creditor who has obtained a final judgment or final order against the debtor; or
- (b) satisfy the Court that he or she has a counter-claim, set-off or cross demand equal to or more than the amount of the judgment debt that he or she could not have set up in the action or proceeding in which the judgment or order was obtained.

13.03 Short form bill of costs

- (1) If the Court makes a sequestration order against the debtor's estate, the legal practitioner may charge for costs the amount, applying on the date when the petition was presented, stated in item 14.1 of Schedule 3 to the *Federal Court Rules 2011*.
- (2) If the petition is dismissed, and the creditor obtains an order for costs, the legal practitioner may charge for costs the amount, applying on the date when the petition was presented, stated in item 14.2 of Schedule 3 to the *Federal Court Rules 2011*.
- (3) The legal practitioner may also charge:
 - (a) if adjournment costs were reserved or awarded on a day—the appropriate amount stated in item 1 of Schedule 3 to the *Federal Court Rules 2011*; and
 - (b) proper disbursements incurred for the petition.
- (4) If the legal practitioner charges an amount for costs under subrule (1) or (2), Part 40 of the *Federal Court Rules 2011* does not apply to a bill of costs submitted for the costs, except for the issue of a certificate of taxation.

13.04 Claim for costs

- (1) A legal practitioner who wishes to claim costs must serve the documents referred to in subrule (2) on:
 - (a) if the Court makes a sequestration order—the trustee; or
 - (b) if the petition is dismissed—the debtor.
- (2) For subrule (1), the documents are:
 - (a) a bill of costs and disbursements; and
 - (b) a copy of any receipts, vouchers or journals in support of the disbursements claimed.

- (3) The bill need not include an itemised account of the work or services performed.
- (4) If the trustee or debtor disputes any of the costs or disbursements, the trustee or debtor must give the creditor a written notice stating the costs or disbursements disputed.
- (5) The notice must be given within 14 days after the bill is served.
- (6) At least 14 days after the legal practitioner serves the documents on the trustee or debtor, the creditor may file in the Court:
 - (a) a copy of each document; and
 - (b) an affidavit of service of the bill of costs and disbursements on the trustee or debtor; and
 - (c) a copy of any notice given by the trustee or debtor under subrule (4).

13.05 Attendance at taxation hearing

A creditor, the trustee, or a legal practitioner representing the creditor or the trustee, may attend a taxation of the bill of costs and disbursements only if a taxing officer directs the creditor, trustee or legal practitioner to attend.

Schedule 1—Powers of the Court that may be exercised by a Registrar

Note: See rule 2.02.

Item	Provision of the <i>Bankruptcy Act 1966</i>	Description (for information only)
1	subsection 30(1) (only for an application to set aside a bankruptcy notice)	Power to set aside a bankruptcy notice
2	section 33	Adjournment, amendment of process and extension and abridgment of time
3	paragraph 40(1)(g)	Power to grant leave to serve a bankruptcy notice outside Australia
4	subsection 41(6A)	Extension of time for compliance with a bankruptcy notice
5	subsection 43(1)	Power to make a sequestration order
6	subsection 46(2)	Power to make a sequestration order against 2 or more debtors
7	subsection 47(2)	Power to give leave to withdraw a creditor's petition after presentation
8	section 49	Power to permit the substitution of another creditor as petitioner
9	subsection 52(1)	Power to make a sequestration order against the estate of a debtor
10	subsection 52(2)	Power to dismiss a creditor's petition
11	subsection 52(3)	Power to stay all proceedings under a sequestration order for a period not exceeding 21 days
12	subsection 52(5)	Power to extend a period at the expiration of which a creditor's petition lapses
13	subsection 55(3B)	Power to direct the Official Receiver to accept or reject a debtor's petition
14	section 81	Powers in relation to examinations
15	subsection 206(1)	Power to adjourn a creditor's petition if creditors have passed a resolution for a deed and to subsequently dismiss the petition
16	subsection 244(9)	Power to direct service of a creditor's petition on a person under Part XI
17	subsection 244(10)	Power to dispense with service of a creditor's petition under Part XI
18	subsection 244(11)	Power to make an order for the administration of an estate under Part XI
19	subsection 244(12)	Power to dismiss a creditor's petition under Part XI
20	subsection 244(13)	Power to give leave to present a creditor's petition under Part XI
21	subsection 247(1A)	Power to make an order for the administration of the estate of a deceased person on the petition of a person administering the estate
22	section 264B	Power to issue a warrant

Item	Provision of the <i>Bankruptcy Act 1966</i>	Description (for information only)
23	subsection 309(2)	Power to order substituted service
