

## **EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General

*Bankruptcy Act 1966*

*Bankruptcy Amendment (Rules of Court) Regulation 2016*

The *Bankruptcy Act 1966* provides for bankruptcy and personal insolvency laws in Australia.

Section 315 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Bankruptcy Regulations 1996* (the Principal Regulations) refer to the procedural rules of the courts that deal with bankruptcy and personal insolvency.

The *Bankruptcy Amendment (Rules of Court) Regulation 2016* (the Regulation) amends the Principal Regulations to remove reference to the current court rules and refer instead to the remade court rules, and corrects inconsistent cross-references to the court rules in Schedule 8 to the Principal Regulations.

The amendments reflect the court rules as remade by the Federal Court and the Federal Circuit Court, which sunset on 1 April 2016.

Details of the Regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is an instrument for the purposes of the *Legislation Act 2003*.

The Office of Best Practice Regulation was consulted and a Regulation Impact Statement is not required. No further consultation was undertaken for the Regulation as it does not alter the operation of the Principal Regulations or the Act, it merely updates references to remade Court Rules.

The Regulation commenced on the later of the day after the instrument is registered and 1 April 2016.

Authority: Section 315 of the  
*Bankruptcy Act 1966*

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Bankruptcy Amendment (Rules of Court) Regulation 2016**

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

Currently, subregulation 1.03(1) of the *Bankruptcy Regulations 1996* defines “*FC (Bankruptcy) Rules*” and “*FCC (Bankruptcy) Rules*” as “*Federal Court (Bankruptcy) Rules 2005*” and the “*Federal Circuit Court (Bankruptcy) Rules 2006*” (respectively).

The Federal Court and the Federal Circuit Court will remake the current Rules and these remade rules will be renamed as the *Federal Court (Bankruptcy) Rules 2016* and the *Federal Circuit Court (Bankruptcy) Rules 2016*.

The Regulation makes consequential amendments to remove reference to the current court rules and refer instead to the remade court rules, and to correct inconsistent cross-references to the court rules in Schedule 8 to the *Bankruptcy Regulations 1996*.

#### **Human rights implications**

The Regulation does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The Regulation is compatible with human rights as it does not raise any human rights issues.

**Details of the Bankruptcy Amendment (Rules of Court) Regulation 2016**

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Bankruptcy Amendment (Rules of Court) Regulation 2016*.

**Section 2 – Commencement**

This section provides for sections 1 to 4 of the Regulation to commence the day after this instrument is registered and for schedule 1 to commence on the later of the day after the instrument is registered and 1 April 2016.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Bankruptcy Act 1966*.

**Section 4 – Schedules**

This section provides that the Principal Regulation specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

***Bankruptcy Regulations 1996***

**Items [1] and [2] - Subregulation 1.03(1)**

Amend the definitions of *FC (Bankruptcy) Rules* and *FCC (Bankruptcy) Rules* in subregulation 1.03(1) to refer to the remade *Federal Court (Bankruptcy) Rules 2016* and the remade *Federal Circuit Court (Bankruptcy) Rules 2016* (the remade Rules).

**Items [3] to [13] – Schedule 8**

Correct inconsistent cross-references to timeframes and rules in the remade Rules.