



Federal Circuit Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017

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

Dated 22 August 2017

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 Hartnett
Judge Heffernan
Judge Hughes
Judge Jarrett
Judge Jones
Judge A Kelly
Judge C Kelly
Judge Lucev
Judge Manousaridis
Judge McGuire
Judge McNab
Judge Mead
Judge Neville

Judge Nicholls
Judge Obradovic
Judge Purdon-Sully
Judge Riethmuller
Judge Riley
Judge Small
Judge Smith
Judge Stewart
Judge Street
Judge Terry
Judge Tonkin
Judge Vasta
Judge Williams
Judge Wilson
Judge Young

Judges of the Federal Circuit
Court of Australia

Dr Stewart Fenwick Chief Executive Officer

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1 Name

These Rules are the *Federal Circuit Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017*.

2 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 September 2017.	1 September 2017

Note: This table relates only to the provisions of these Rules as originally made.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.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.

Schedule 1—Amendments

Federal Circuit Court (Bankruptcy) Rules 2016

1 Rule 2.01 (paragraphs (f) and (g) of note 1)

Repeal the paragraphs.

2 Subrule 2.02(1)

Repeal the subrule, substitute:

- (1) For the purposes of paragraph 102(2)(i) of the Act, the following powers of the Court are prescribed:
 - (a) a power of the Court under a provision of the Bankruptcy Act referred to in Part 1 of Schedule 1;
 - (b) a power of the Court under a provision of these Rules referred to in Part 2 of Schedule 1.

3 Rule 8.01

Repeal the rule, substitute:

8.01 Applications in relation to the appointment of a trustee

- (1) This rule applies to an application under section 90-20 of Schedule 2 to the Bankruptcy Act for either of the following orders:
 - (a) an order that a person cease to be the trustee of an estate;
 - (b) an order that another person be appointed as the trustee of an estate.
- (2) The application must be accompanied by an affidavit stating the grounds in support of the application.
- (3) At least 28 days before the date fixed for the hearing of the application, the applicant must serve the application and supporting affidavit on the trustee and any petitioning creditor.
- (4) At least 14 days before the date fixed for the hearing of the application, the applicant must serve the application and supporting affidavit on each person known to the applicant to be a creditor of the estate.
- (5) If the Court makes the order sought, the applicant must, as soon as practicable, serve a copy of the order on the Official Receiver.

4 Paragraph 8.02(3)(b)

Omit “the most recent account required under subsection 173(1) of the Bankruptcy Act”, substitute “the books referred to in section 70-10 of Schedule 2 to the Bankruptcy Act in relation to the estate”.

5 After Part 13

Insert:

Part 14—Transitional provisions

Division 14.1—Transitional provisions relating to the Federal Circuit Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017

14.01 Transitional—release of trustee

- (1) This rule applies if:
- (a) an application referred to in paragraph 8.02(1)(b) is made after 1 September 2017 for the release of a trustee from the trusteeship of an estate; and
 - (b) because of item 143 of Schedule 1 to the *Insolvency Law Reform Act 2016*, the trustee is required to keep accounts and records (the *old accounts*) in relation to the estate in accordance with section 173 of the Bankruptcy Act (as that section was in force immediately before it was repealed by Schedule 1 to the *Insolvency Law Reform Act 2016*).
- (2) In addition to the books referred to in paragraph 8.02(3)(b), a copy of the old accounts must be attached to the affidavit accompanying the application.

6 Schedule 1 (after the note to Schedule heading)

Insert:

Part 1—Bankruptcy Act

7 At the end of Schedule 1

Add:

Part 2—Federal Circuit Court (Bankruptcy) Rules 2016

Item	Provision of the Federal Circuit Court (Bankruptcy) Rules 2016	Description (for information only)
1	rule 1.04	Power to make an order about the application of these Rules
2	rule 2.03	Power to grant leave to be heard in a proceeding, including the following powers: (a) to impose conditions on the granting of the leave; (b) to revoke the leave; (c) to order the payment of costs; (d) to order that a person not be further heard until costs are paid or secured
3	rule 2.06	Power to grant leave to oppose an application or a petition
4	subrule 3.03(5)	Extension of time for compliance with a bankruptcy notice

Schedule 1 Amendments

Item	Provision of the Federal Circuit Court (Bankruptcy) Rules 2016	Description (for information only)
5	rule 4.05	Power to make orders as to service of a creditor's petition
6	rule 6.02	Power to order that an application under section 50 of the Bankruptcy Act for a person to be summoned for examination be heard in the absence of a party or in closed court
7	rule 6.07	Power to order that an application under section 81 of the Bankruptcy Act for a relevant person to be summoned for examination be heard in the absence of a party or in closed court
8	rule 6.13	Power to order that an application under section 81 of the Bankruptcy Act for an examinable person to be summoned for examination be heard in the absence of a party or in closed court
9	paragraph 8.02(4)(c)	Power to make orders as to service of an application under section 180 or subsection 183(1) of the Bankruptcy Act
10	rule 11.02	Power to make orders as to service of a creditor's petition presented under section 244 of the Bankruptcy Act
11	rule 11.05	Power to make orders as to service of a creditor's petition presented under section 247 of the Bankruptcy Act
12	rule 13.01	Power to order costs, including for a fixed amount