



Federal Court (Bankruptcy) Rules 2005¹

Select Legislative Instrument 2005 No. 341

We, Judges of the Federal Court of Australia, make the following Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 16 December 2005

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Judges of the Federal
Court of Australia

W.G. SODEN
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Part 1 Preliminary

1.01 Name of Rules

These Rules are the *Federal Court (Bankruptcy) Rules 2005*.

1.02 Commencement

These Rules commence on 6 February 2006.

1.03 Application of these Rules and other rules of the Court

- (1) These Rules apply to a proceeding to which the Bankruptcy Act applies.
- (2) The other rules of the Court apply, so far as they are not inconsistent with these Rules, to a proceeding to which the Bankruptcy Act applies.

1.04 Interpretation

- (1) In these Rules, unless the contrary intention appears:
 - Act* means the *Federal Court of Australia Act 1976*.
 - 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*.
- (2) Unless the contrary intention appears, an expression used in these Rules and in Order 1, rule 4 of the Federal Court Rules has the same meaning in these Rules as it has in that rule.
- (3) Subrule (2) has effect subject to rule 1.05.

1.05 Expressions used in the Bankruptcy Act

Unless the contrary intention appears, 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 The following expressions are defined in subsection 5 (1) of the Bankruptcy Act:

- bankrupt
- books
- creditor
- creditor's petition
- debt agreement
- debtor's petition
- District
- examinable affairs
- examinable person
- National Personal Insolvency Index
- Official Receiver
- Official Trustee
- personal insolvency agreement

- petition
- proclaimed law
- property
- the trustee.

1.06 Forms

- (1) In these Rules, a reference to a form followed by a number is a reference to the form so numbered in Schedule 1 to these Rules.
- (2) It is sufficient compliance with these Rules in relation to a document that is required to be in accordance with a form in Schedule 1 if the document is substantially in accordance with the form required or has only such variations as the nature of the case requires.
- (3) 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 1.

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 2; and
 - (b) in any other case — by filing an interim application in accordance with Form 3.
- (2) If final relief has been granted in relation to a proceeding, a person may make an application to the Court in relation to the proceeding by filing an interim application in accordance with Form 3 unless the Court otherwise directs.
- (3) An application 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 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 Each application and appeal mentioned below must be commenced by filing an application in accordance with Form 2. The list is not exhaustive.

- (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, 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 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 appeal from a decision of a taxing officer, appointed under subsection 167 (8) of the Bankruptcy Act, allowing or disallowing a bill of costs or charges, or an item in such a bill.
- (h) an application, under section 180 of the Bankruptcy Act, for acceptance of a 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;
- (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.

2.02 Exercise of powers by Registrars

For the purposes of paragraph 35A (1) (h) of the Act, if the Court or a Judge so directs, a Registrar may exercise a power of the Court under a provision of the Bankruptcy Act mentioned in Schedule 2.

2.03 Review of exercise of powers by Registrars

- (1) Subject to any direction by the Court or a Judge to the contrary, an application under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar under subsection 35A (1) of the Act must be made by motion on notice within 21 days after the day on which the power was exercised.
- (2) An application under paragraph 35A (7) (b) of the Act may be made orally to the Registrar at the time that the Registrar is hearing the application for the exercise of a power mentioned in subsection 35A (1) of the Act.

2.04 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 on the Court's own initiative or on the application of a party or another person having 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 3.

2.05 Appearance at application or examination

- (1) 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 4.
- (2) Rules 12 and 13 of Order 4 of the Federal Court Rules (alteration of hearing date) do not apply to the hearing date fixed for a creditor's petition.

2.06 Opposition to application, interim application or petition

- (1) In this rule:

application includes an interim application.

- (2) A person who intends to oppose an application or 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 4; and
 - (b) file a notice in accordance with Form 5 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

An application for an order for substituted service of a bankruptcy notice must be accompanied by:

- (a) a copy of the bankruptcy notice; and
- (b) an affidavit stating the grounds in support of the application.

3.02 Setting aside bankruptcy notice (Bankruptcy Act s 41 (6A), (6C) and (7))

- (1) An application to set aside a bankruptcy notice must be accompanied by:
 - (a) a copy of the bankruptcy notice; and
 - (b) an affidavit stating:
 - (i) the grounds in support of the application; and
 - (ii) the date when the bankruptcy notice was served on the applicant; and
 - (c) a copy of any application to set aside the judgment or order in relation to which the bankruptcy notice was issued and any material in support of that application.
- (2) If the application is based on the ground that the debtor has a counter-claim, set-off or cross demand mentioned 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 proceeding that resulted in the judgment or order in relation to which the bankruptcy notice was issued.
- (3) The application and supporting documents must be served on the respondent creditor within 3 days after the application is filed.

3.03 Extension of time for compliance with bankruptcy notice (Bankruptcy Act s 41 (6A) and (6C))

- (1) An application for an extension of time for compliance with a bankruptcy notice must be accompanied by:
 - (a) a copy of the bankruptcy notice; and
 - (b) an affidavit stating:
 - (i) the grounds in support of the application; and
 - (ii) the date when the bankruptcy notice was served on the applicant; and
 - (c) a copy of any application to set aside the judgment or order in relation to which the bankruptcy notice was issued and any material in support of that application.
- (2) The application may be made in the absence of a party.
- (3) If an order extending the time for compliance with a bankruptcy notice is made, the following documents must be served on the respondent creditor within 3 days after the order is made:
 - (a) the application;
 - (b) the order;

- (c) the supporting documents.
- (4) The application need be heard in open court only if it is for an extension of time to a date after the first directions hearing.

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 (Bankruptcy Act s 47)

- (1) A creditor's petition must be in accordance with Form 6.
- (2) The affidavit verifying the petition required by subsection 47 (1) of the Bankruptcy Act may be in accordance with the affidavit set out in Part 2 of Form 6.
- (3) The petition must be accompanied by:
 - (a) sufficient copies of the petition for service and proof of service; and
 - (b) if the affidavit verifying the petition is not included in the petition in accordance with Part 2 of Form 6 — an affidavit of a person who knows the relevant facts verifying the petition; and
 - (c) if appropriate, the affidavits required by rule 4.04.
- (4) If the petition is accompanied by an affidavit of a person who knows the relevant facts verifying the petition in accordance with paragraph (3) (b), a copy of the petition must be attached to the affidavit.

4.03 Creditor's petition founded on issue of execution against debtor (Bankruptcy Act s 40 (1) (d))

- (1) If a creditor's petition is founded on an act of bankruptcy mentioned in paragraph 40 (1) (d) of the Bankruptcy Act, the affidavit verifying the petition 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 (Bankruptcy Act s 40 (1) (g))

- (1) If a creditor's petition is founded on an act of bankruptcy mentioned 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 Magistrates 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 Magistrates Court, as applicable, 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 Magistrates Court, as applicable, 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 application mentioned in subparagraph (1) (a) (ii) or (iii) was made, a copy of the order finally deciding the application must be attached to the affidavit required by paragraph (1) (a).

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 affidavit required by paragraph 4.04 (1) (a); and
- (d) if applicable, a copy of the affidavit of service of the bankruptcy notice required by paragraph 4.04 (1) (b); and
- (e) a copy of any consent to act as trustee 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 file the affidavits required by 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 searched, or caused a search to be made, in the National Personal Insolvency Index no earlier than the day before the hearing date for the petition that:
 - (a) sets out the details of any references in the Index to the debtor; and
 - (b) states that there were no details of a debt agreement, in relation to the debt on which the applicant creditor relies, in the Index on the day when the petition was presented; 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) The applicant creditor must file a search affidavit if the 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.
- (6) In subrule (5):
search affidavit, in relation to a petition stating a debt ordered to be paid into a court, means an affidavit of a person who has searched in the proper office of the court, not earlier than the

day before the hearing date for the petition, stating whether the amount of the debt, or part of that amount, has been paid as ordered.

4.07 Fax copy may be filed in certain cases

If it is not practical for the applicant creditor to file the original of an affidavit mentioned in rule 4.06:

- (a) a fax copy of the affidavit may be filed; and
- (b) the original affidavit must be filed within 2 days after the hearing at which the fax copy is used.

4.08 Notification and entry of sequestration order

If the Court makes a sequestration order against the estate of a debtor, the applicant creditor must:

- (a) on the same day as the order is made, notify the trustee, in writing, of his or her appointment; and
- (b) unless the order is entered in the Court at the time it is made, enter the order, within 1 day after it is made, by filing an order in accordance with Form 7.

4.09 Entry of order for dismissal etc of creditor's petition

- (1) This rule applies if the Court makes:
 - (a) an order dismissing a creditor's petition; or
 - (b) an order giving leave for a creditor's petition to be withdrawn; or
 - (c) an order under subsection 52 (5) of the Bankruptcy Act.
- (2) The applicant creditor must, unless the order is entered in the Court at the time it is made, enter the order within 1 day after it is made.

4.10 Service of order

- (1) This rule applies to an order of the Court that is entered under rule 4.08 or 4.09.
- (2) Within 2 days after the entry is stamped, the applicant creditor must give a copy of the order to:
 - (a) any person who has consented to act as the trustee of the debtor's estate under section 156A of the Bankruptcy Act; and
 - (b) the Official Receiver for the District in which the order was made.

Part 5

Debtors' petitions

5.01 Referral of debtor's petition

- (1) A referral to the Court by the Official Receiver of a debtor's petition, for a direction to accept or reject the petition, must be in accordance with Form 8.

Note For the circumstances in which the Official Receiver must refer a debtor's petition to the Court for a direction to accept or reject the petition, see subsection 55 (3B), section 56C and subsection 57 (3B) of the Bankruptcy Act.

- (2) On receiving a referral, the 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 petition; and
 - (b) each debtor listed in any relevant creditor's petition; and
 - (c) each creditor listed in the petition; and
 - (d) if subsection 56C (4) of the Bankruptcy Act applies, 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 8.

Part 6 Examinations

Division 6.1 Interpretation

6.01 Definition for Part 6

In this Part:

relevant person means a relevant person within the meaning of section 81 of the Bankruptcy Act.

Note *Examinable person* is defined in subsection 5 (1) of the Bankruptcy Act.

Division 6.2 Examination of debtor or examinable person

6.02 Application for summons (Bankruptcy Act s 50)

- (1) An application to the Court for a debtor, or an examinable person in relation to the debtor, to be summoned for examination must be accompanied by an affidavit complying with this rule.
- (2) The affidavit must identify:
 - (a) the person sought to be examined; and
 - (b) if that person is an examinable person in relation to a debtor, the debtor in relation to whom the examination is to be conducted.
- (3) If the application is for a person to be summoned to produce books at the examination, the affidavit must:
 - (a) identify the books that are to be produced; and
 - (b) state the grounds on which the person is required to produce the books.
- (4) The affidavit must state whether the applicant has made any inquiries about the issues to be dealt with at the proposed examination and, if so, set out details of the inquiries, including:
 - (a) any request to the person to be examined to provide information about the debtor's affairs or produce books for inspection; and
 - (b) if a request to provide information or produce books has been made and complied with (including partly), details of the compliance; and
 - (c) if a request to provide information or produce books has been made and not complied with, details of the failure to comply; and
 - (d) if no request to provide information or produce books has been made, the reason.

6.03 Hearing of application

The application may be heard in the absence of a party or in closed court.

6.04 Requirements for summons

- (1) A summons must be in accordance with Form 9.
- (2) A Registrar must:
 - (a) sign and affix the stamp of the Court to the summons; and

- (b) give it to the applicant for service on the debtor or examinable person in relation to the debtor.
- (3) If the summons requires the debtor, or examinable person in relation to the debtor, to produce books at the examination, the summons must identify the books that are to be produced.

6.05 Service of summons

At least 8 days before the date fixed for the examination, the applicant must:

- (a) serve the summons on the relevant person personally, 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 creditor of the relevant person of whom the applicant has knowledge.

6.06 Application for discharge of summons

- (1) A debtor or an examinable person who is served with a summons and wishes to apply for an order to discharge the summons may do so by filing:
 - (a) an interim application in accordance with Form 3 in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) As soon as possible after filing the interim application and supporting affidavit, the debtor or 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.

Division 6.3 Examination of relevant person

6.07 Application for summons (Bankruptcy Act s 81)

- (1) An application to the Court or a Registrar for a relevant person to be summoned for examination in relation to the person's bankruptcy must be in accordance with Form 10.
- (2) The application must be accompanied by:
 - (a) a draft of each summons applied for; and
 - (b) an affidavit identifying:
 - (i) each relevant person to be summoned; and
 - (ii) if the summons is to require the relevant person to produce books at the examination, the books that are to be produced.

Note A relevant person may be required to produce books at an examination that are in the possession of the person and relate to the person or to any of the person's examinable affairs — see subsection 81 (1B) of the Bankruptcy Act.

6.08 Hearing of application

The application may be heard in the absence of a party or in closed court.

6.09 Requirements for summons

- (1) A summons must be in accordance with Form 9.
- (2) A Registrar must:
 - (a) sign and affix the stamp of the Court to the summons; and
 - (b) give it to the applicant 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.

6.10 Service of summons

At least 8 days before the date fixed for the examination, the applicant must:

- (a) serve the summons on the relevant person personally, 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 creditor of the relevant person of whom the applicant has knowledge.

6.11 Failure to attend examination

If the relevant person does not attend the examination in accordance with the summons, 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.

6.12 Application for discharge of summons

- (1) A relevant person who is served with a summons and wishes to apply for an order to discharge the summons may do so by filing:
 - (a) an interim application in accordance with Form 3 in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) 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.

Division 6.4 Examination of examinable person

6.13 Application for summons (Bankruptcy Act s 81)

- (1) An application to the Court or a Registrar for an examinable person to be summoned for examination in relation to the bankruptcy of a relevant person must be in accordance with Form 10.
- (2) A single application may be made for the summons of 2 or more examinable persons in relation to a relevant person's bankruptcy.

- (3) The application must be accompanied by:
 - (a) a draft of each summons applied for; and
 - (b) an affidavit that complies with subrule (4).
 - (4) The supporting 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 each 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:
 - (A) any inquiry by the applicant about the books to be produced; and
 - (B) any refusal by the examinable person to cooperate with the inquiry.
- Note* An examinable person may be required to produce books at an examination that are in the possession of the person and relate to the relevant person or to any of the relevant person's examinable affairs — see subsection 81 (1B) of the Bankruptcy Act.
- (5) The supporting affidavit may be filed in a sealed envelope marked 'Affidavit supporting application for summons for examination under subsection 81 (1) of the *Bankruptcy Act 1966*'.
 - (6) If the supporting affidavit is filed in a sealed envelope in accordance with subrule (5), the Registrar must not make it available for public inspection.

6.14 Hearing of application

The application may be heard in the absence of a party or in closed court.

6.15 Requirements for summons

- (1) A summons must be in accordance with Form 9.
- (2) A Registrar must:
 - (a) sign and affix the stamp of the Court to the summons; and
 - (b) send it to the applicant for service on each examinable person to be summoned for examination.
- (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.

6.16 Service of summons

At least 8 days before the date fixed for the examination, the applicant must:

- (a) serve the summons on each examinable person personally, 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 creditor of the relevant person of whom the applicant has knowledge.

6.17 Application for discharge of summons

- (1) An examinable person who is served with a summons and wishes to apply for an order to discharge the summons may do so by filing:
 - (a) an interim application in accordance with Form 3 in the proceeding in which the summons was issued; and
 - (b) an affidavit setting out the grounds in support of the application.
- (2) 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.

6.18 Conduct money and witnesses expenses

- (1) A person (other than a relevant person) who, in accordance with a summons, 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 mentioned in paragraph (1) (a) must be paid 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) The application must set out the grounds on which the annulment is sought.
- (2) The application must be served on the trustee at least 28 days before the hearing date fixed for 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 11.
- (3) The applicant must serve the notice on each creditor at least 14 days before the hearing date fixed for the application.

7.04 Report by trustee

- (1) The trustee must prepare a report for the periods before and after the bankruptcy or the administration of the estate of the deceased person.
- (2) 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.
- (3) 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.
- (4) The report must:
 - (a) be in the form of an affidavit; and
 - (b) be filed at least 5 days before the hearing date fixed for the application.

7.05 Entry and service of annulment order

If the Court orders an annulment, the applicant must:

- (a) unless the order is entered in the Court at the time it is made, enter the order within 1 day after it is made; and

- (b) within 2 days after the entry is stamped, give a copy of the order to the trustee and to the Official Receiver for the District in which the order was made.

Division 7.2 Review of sequestration order

7.06 Review of Registrar's decision

- (1) This rule applies in relation to an application for review of a decision by a Registrar to make a sequestration order against the estate of a debtor (the *bankrupt*).
- (2) The application must be served on the trustee at least 28 days before the hearing date fixed for 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 12.
- (5) The applicant must serve the notice on each creditor at least 14 days before the hearing date fixed for the application.
- (6) If directed by the Court, the trustee must prepare a report in relation to the bankrupt in accordance with rule 7.04.

Part 8 Trustees

8.01 Objection to appointment of trustee (Bankruptcy Act s 157 (6))

- (1) An application objecting to the appointment of a person as a trustee must be accompanied by an affidavit stating the grounds in support of the application.
- (2) At least 28 days before the hearing date fixed for the application, the application and supporting affidavit must be served on the trustee and any petitioning creditor.
- (3) At least 14 days before the hearing date fixed for the application, the application and supporting affidavit must be served on each other person known to the applicant to be a creditor of the bankrupt or a creditor of the estate of the deceased person.

Note Subsection 157 (7A) of the Bankruptcy Act provides that, 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.

8.02 Resignation or release of trustee (Bankruptcy Act ss 180, 183)

- (1) An application for acceptance of a trustee's resignation from the office of trustee of an estate, or release of a trustee from the trusteeship of an estate, must be accompanied by:
 - (a) an affidavit stating the grounds in support of the application; and
 - (b) if the application is for release of a trustee from the trusteeship of an estate:
 - (i) a statement giving details of the realisation of the bankrupt's property and the distribution of the estate by the trustee; and
 - (ii) a copy of the most recent account required under subsection 173 (1) of the Bankruptcy Act.
- (2) The application and supporting documents must be served on:
 - (a) the Official Receiver; and
 - (b) the bankrupt; and
 - (c) anyone else (including a creditor) as ordered by the Court.
- (3) If the Court makes the order sought, the trustee must:
 - (a) unless the order is entered in the Court at the time it is made, enter the order within 1 day after it is made; and
 - (b) within 2 days after the entry is stamped, give a copy of the order to the Official Receiver for the District in which the order was made.

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) If the application is made by a creditor who also seeks a sequestration order, that must be stated in the application.
- (2) The application must be accompanied by:
 - (a) a copy of the debt agreement; and
 - (b) if the application is for an order terminating a debt agreement — an affidavit stating the facts relied on to satisfy the relevant prerequisite for making the order; and
 - (c) if the application is for an order declaring that all, or a specified part, of a debt agreement is void — an affidavit stating the facts relied on to establish the relevant ground for applying for the order.

Note for paragraph (b) The prerequisites for making an order of the kind mentioned in paragraph (b) are set out in subsection 185Q (4) of the Bankruptcy Act.

Note for paragraph (c) The grounds for applying for an order of the kind mentioned in paragraph (c) are stated in subsection 185T (2) of the Bankruptcy Act.

9.03 Service

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

- (a) the debtor; and
- (b) if the applicant is not the Official Trustee, the Official Receiver for the District in which the application is made.

9.04 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 known to the applicant.
- (2) The notice must be in accordance with Form 13.

9.05 Entry and service of order

If the Court makes an order under this Part, the applicant must:

- (a) unless the order is entered in the Court at the time it is made, enter the order within 1 day after it is made; and
- (b) within 2 days after the entry is stamped, give a copy of the order to the Official Receiver

for the District in which the order was made.

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) If the application is made by a trustee or creditor who also seeks a sequestration order, that must be stated in the application.
- (2) The application must be accompanied by an affidavit stating:
 - (a) the facts relied on to establish the relevant ground for making the order; and
 - (b) if the application is for an order under subsection 222 (2) or (5) — the facts relied on to satisfy the relevant prerequisite for making the order.

Note for paragraph (a) The grounds for making an order to which this Part applies are stated in subsections 222 (1), (2) and (5) and section 222C of the Bankruptcy Act.

Note for paragraph (b) The prerequisites for making an order of the kind mentioned in paragraph (2) (b) are stated in subsections 222 (4) and (7) of the Bankruptcy Act.

10.03 Service

Unless the Court otherwise orders, at least 5 days before the date fixed for the hearing of the 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 for the District in which the application is made.

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 13.

10.05 Entry and service of order

If the Court makes an order under this Part, the applicant must:

- (a) unless the order is entered in the Court at the time it is made, enter the order within 1 day after it is made; and
- (b) within 2 days after the entry is stamped, give a copy of the order to the Official Receiver for the District in which the order was made.

Part 11

Administration of estates of deceased persons

11.01 Creditor's petition (Bankruptcy Act s 244)

A creditor's petition for the making of an order for the administration of a deceased person's estate must be:

- (a) in accordance with Form 14; and
- (b) accompanied by the affidavit verifying the petition required by subsection 244 (5) of the Bankruptcy Act.

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

- (1) Before the hearing of a creditor's petition, the applicant creditor must file the affidavits required by this rule.
- (2) The applicant must file an affidavit stating:
 - (a) that the petition, the affidavit verifying the petition, and any consent to act as trustee filed under section 156A of the Bankruptcy Act, have been served on the legal personal representative of the deceased person or on someone else directed by the Court; and
 - (b) how the documents were served.
- (3) The applicant must file an affidavit of a person who knows the relevant facts that:
 - (a) was sworn not earlier than the day before the hearing date for the petition; and
 - (b) states that each debt on which the applicant creditor relies is still owing.
- (4) The applicant must file an affidavit of a person who has searched in the National Personal Insolvency Index no earlier than the day before the hearing date for the petition 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, in relation to the debt on which the applicant relies, in the Index on the day on which the petition was presented; and
 - (c) has attached to it a copy of the relevant extract of the Index.
- (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.

11.03 Administrator's petition (Bankruptcy Act s 247)

A petition by a person administering the estate of a deceased person for an order for the administration of the estate must be in accordance with Form 15.

Note Subsection 247 (1) of the Bankruptcy Act provides that the petition must 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. Regulation 11.01 of the Bankruptcy Regulations sets out the particulars that must be included in the statement.

11.04 Entry and service of order

If the Court makes an order under this Part, the applicant must:

- (a) unless the order is entered in the Court at the time it is made, enter the order within 1 day

after it is made; and

- (b) within 2 days after the entry is stamped, give a copy of the order to the Official Receiver for the District in which the order was made.

Part 12

Warrants

12.01 Arrest of debtor or bankrupt (Bankruptcy Act s 78)

- (1) An application for the issue of a warrant 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 16.
- (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.

Note See also subsection 130 (2) of the Bankruptcy Act, which provides for the issue of a warrant for the seizure of property connected with a debtor or bankrupt. A suggested form for such a warrant is shown in Schedule 3 (Notes to these Rules).

12.02 Apprehension of person failing to attend Court (Bankruptcy Act s 264B (1))

- (1) A warrant for the apprehension of a person who fails to comply with a summons must be in accordance with Form 17.
- (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 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.

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.

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 Order 62 of the Federal Court Rules 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, Order 62 of the Federal Court Rules 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 mentioned 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 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 43B of Schedule 2 to the Federal Court Rules.
- (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 43C of Schedule 2 to the Federal Court Rules.
- (3) The legal practitioner may also charge:
 - (a) if adjournment costs were reserved or awarded on a day — the appropriate amount stated in item 36 or 37 of Schedule 2 to the Federal Court Rules; and
 - (b) proper disbursements incurred for the petition.
- (4) If the legal practitioner charges an amount for costs under subrule (1) or (2), Order 62 of the Federal Court Rules 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 mentioned 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 to 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 Forms

Form 1 Title
(subrule 1.06 (3))

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of *year*

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

Form 2 Application
(rule 2.01)

APPLICATION[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

NOTICE TO RESPONDENT

Complete this section if there is a respondent

TO the respondent of *address*:

This application has been set down for the time and place stated below. If you or your legal representative do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interim orders may be heard.

Before any attendance at Court, you must file a notice of appearance in the Registry.

Time and date for hearing: *to be entered by Registry unless fixed by Court*

Place: *address of Court*

Date:

signed, District Registrar/Deputy District Registrar/Authorised Officer

**Registrar/*Deputy District Registrar/*Authorised Officer*

A. FINAL ORDERS SOUGHT BY APPLICANT

On the grounds stated in the supporting affidavit or statement of claim, the applicant seeks the following orders:

Specify in numbered paragraphs all the final orders sought

- 1.
- 2.
- 3.

B. INTERIM ORDERS SOUGHT BY APPLICANT

Complete this section if you also seek interim orders

The applicant seeks the following interim orders:

Specify in numbered paragraphs all the interim orders sought

- 1.
- 2.
- 3.

Date:

signed, applicant or applicant's lawyer

**Applicant/*Applicant's lawyer*

C. ABRIDGMENT OF SERVICE

Complete this section if the time for service has been abridged

The time by which this application is to be served has been abridged by order made on *date to time and date*.

D. SERVICE

It is not intended to serve this application on any person.

OR

It is intended to serve this application on each person listed below:

name of each person on whom application is to be served

** Omit if inapplicable*

Form 3 Interim application
(rules 2.01, 2.04, 6.06, 6.12, 6.17)

INTERIM APPLICATION[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s) for interim order

Applicant(s) for interim order

name of respondent(s) for interim order

Respondent(s) for interim order

NOTICE

This interim application has been set down for the time and place stated below. If you or your legal representative do not attend the Court at that time, the interim application may be dealt with and an order made in your absence.

Time and date for hearing: *to be entered by Registry unless fixed by Court*

Place: *address of Court*

INTERIM ORDERS SOUGHT BY *APPLICANT/*RESPONDENT

On the grounds stated in the supporting affidavit, the *applicant/*respondent seeks the following interim orders:

Specify in numbered paragraphs all the interim orders sought

- 1.
- 2.
- 3.

Date:

signed, District Registrar/Deputy District Registrar/Authorised Officer

**Registrar/*Deputy District Registrar/*Authorised Officer*

* *Omit if inapplicable*

Form 4 Notice of appearance

(rules 2.05, 2.06)

NOTICE OF APPEARANCE[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

Name of address, occupation, appears.

Solicitor *name*

Address:

Telephone:

Fax number:

E-mail address:

Solicitor's agent *name*

Address:

Telephone:

Fax number:

E-mail address:

Address for service:

Date:

signed, respondent/respondent's lawyer or supporting creditor/supporting creditor's lawyer

**Respondent/*Respondent's lawyer/*Supporting creditor/*Supporting creditor's lawyer*

* *Omit if inapplicable*

Form 5 Notice stating grounds of opposition to application, interim application or petition

(rule 2.06)

NOTICE STATING GROUNDS OF OPPOSITION TO APPLICATION, INTERIM APPLICATION OR PETITION[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

*Name of opponent, specify capacity of opponent, eg creditor, trustee, intends to oppose the *application/*interim application/*petition on the following grounds:*

- 1. } *set out grounds of opposition*
- 2. }
- 3. }

An affidavit supporting the grounds of opposition is filed with this notice.

This notice is filed by *name of lawyer for opponent* for *name of opponent*.

The opponent's address for service is: *address for service*.

Date:

signed, opponent or opponent's lawyer

**Opponent/*Opponent's lawyer*

* *Omit if inapplicable*

Form 6 Creditor's petition
(rule 4.02)

CREDITOR'S PETITION†

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

NOTICE TO RESPONDENT

TO the respondent of *address*:

This petition has been set down for hearing by the Court at the time, date and place stated below. If you or your legal representative do not attend the Court at that time, the petition may be dealt with in your absence and a sequestration order making you bankrupt may be made.

If you wish to appear at the hearing, you must file and serve a notice of appearance.

If you wish to appear at the hearing and oppose this petition, you must:

- (a) enter an appearance in accordance with Form 4, and file a notice stating grounds of opposition to the petition in accordance with Form 5 and an affidavit supporting the grounds; and
- (b) serve a copy of each document on the creditor at the address for service stated below not less than 3 days before the date for the hearing of this petition stated below; and
- (c) attend at the Court on the date for the hearing stated below.

Time and date for hearing: *to be entered by Registry*

Place: *address of Court*

Date:

signed, Registrar

Registrar

PART 1 PETITION

The applicant creditor *name and address of applicant creditor* applies to the Court for a sequestration order under section 43 of the *Bankruptcy Act 1966* against the estate of *name, address and occupation of respondent debtor*.

1. The respondent debtor owes the applicant creditor the amount of [\$ amount] for *statement of reason for, and details of, the debt, including details of any judgment debt*.
2. The applicant creditor does not hold security over the property of the respondent debtor.

OR

The applicant creditor holds security over the property of the respondent debtor to the value of [\$ amount] and consisting of *statement of particulars of security*, and:

- (a) is willing to surrender this security for the benefit of creditors generally if a sequestration order is made against the respondent debtor;

OR

- (b) the value of the property is [\$ amount], which leaves an unsecured debt of [\$ amount].

Note If there is more than 1 applicant creditor, the form may be appropriately amended.

3. At the time when the act of bankruptcy was committed, the respondent debtor:
- *(a) was personally present in Australia;
 - *(b) was ordinarily resident in Australia;
 - *(c) had a dwelling house or place of business in Australia;
 - *(d) was carrying on business in Australia either personally or by an agent or manager;
 - *(e) was a member of a firm or partnership carrying on business in Australia by means of partners or agent or manager.

4. The following act of bankruptcy was committed by the respondent debtor within 6 months before presentation of this petition:

Include the following paragraph if the act of bankruptcy is failure to comply with a bankruptcy notice

The respondent debtor failed to comply on or before *date of act of bankruptcy* with the requirements of a bankruptcy notice served on *him/*her on *date of service of bankruptcy notice* or to satisfy the Court that *he/*she had a counter-claim, set-off or cross demand equal to or more than the sum claimed in the bankruptcy notice, being a counter-claim, set-off or cross demand that *he/*she could not have set up in the action in which the judgment referred to in the bankruptcy notice was obtained.

If the act of bankruptcy is an act of bankruptcy mentioned in section 40 of the Bankruptcy Act 1966 (other than a failure to comply with a bankruptcy notice), give full details of the act of bankruptcy including details of any judgment.

5. The applicant creditor provides the following information, to the extent it is known to the applicant creditor, for use by the Insolvency and Trustee Service Australia:
- (a) any alias used by the respondent debtor;
 - (b) the date of birth of the respondent debtor;
 - (c) the business name of the respondent debtor;
 - (d) the business address of the respondent debtor.

Note Completion of paragraph 5 is optional.

Date:

signed, applicant or applicant's lawyer

**Applicant/*Applicant's lawyer*

This petition is filed by *name of lawyer for petitioner* for *name of petitioner*.

The petitioner's address for service is: *address for service*.

PART 2 AFFIDAVIT VERIFYING CREDITOR'S PETITION

On *date*, I, *name, address and occupation of deponent*, *say on oath/*affirm:

1. I am the applicant *or* I am a director of the applicant *or* I am a [*occupation* of the applicant and, as such, have access to the books and records of the applicant and am authorised to make this affidavit on the applicant's behalf].
2. The statements made in paragraphs 1, 2 and 3 of the creditor's petition are within my own knowledge true.

3. In respect of the statements made in paragraph 4 of the creditor's petition, I say the respondent failed, within 21 days after service of the bankruptcy notice, to pay the debt or make an arrangement to *my/*the applicant's satisfaction for payment of the debt.

*Sworn/*affirmed at *place*

Before me:

signed, person before whom deponent swears or affirms affidavit

Note 1 If necessary, this affidavit, and any other affidavit verifying the petition, may be filed as a separate document in accordance with Form 20 of the Federal Court Rules with the heading prescribed by subrule 1.06 (3) of these Rules. If this affidavit is filed as a separate document, a copy of the petition must be attached to it.

Note 2 If the petition is founded on an act of bankruptcy mentioned in paragraph 40 (1) (d) of the Bankruptcy Act, the information required by rule 4.03 may be included in this affidavit (or, if an affidavit of the kind mentioned in Note 1 is filed, in that affidavit).

Note 3 If the petition is founded on an act of bankruptcy mentioned in paragraph 40 (1) (g) of the Bankruptcy Act, the information required by rule 4.04 may be included in this affidavit (or, if an affidavit of the kind mentioned in Note 1 is filed, in that affidavit).

* *Omit if inapplicable*

Form 7 Sequestration order
(rule 4.08)

SEQUESTRATION ORDER ‡

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

*JUDGE/*FEDERAL MAGISTRATE/*REGISTRAR:

DATE OF ORDER:

WHERE MADE:

THE COURT ORDERS THAT:

1. A sequestration order be made against the estate of *name of debtor*.
2. The applicant creditor's costs be taxed and paid from the estate of the respondent debtor in accordance with the *Bankruptcy Act 1966*.

The Court notes that the date of the act of bankruptcy is *date*.

Date entry stamped:

signed, Registrar

Registrar

‡Note

Subsection 35A (5) of the Act provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection 35A (1) of the Act may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

Rule 2.03 provides that, subject to any direction by the Court or a Judge to the contrary, an application under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar under subsection 35A (1) of the Act must be made by motion on notice within 21 days after the day on which the power was exercised. An applicant seeking a review can apply to a Judge to waive the requirement that the application for review be made by motion on notice (see Order 1, rule 8 of the Federal Court Rules).

* *Omit if inapplicable*

‡ *Omit this note if the orders have not been made by a Registrar.*

Form 8 Referral of debtor's petition
(rule 5.01)

REFERRAL OF DEBTOR'S PETITION[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

The debtor *name of debtor* has presented a debtor's petition to the Official Receiver.

Creditor's petition No. *number of year* is pending against a number of debtors or a partnership and includes this debtor.

A copy of the debtor's petition and statement of affairs is filed with this referral.

The Court is asked to give a direction to accept or reject the petition.

Date:

signed, Official Receiver
Official Receiver

NOTICE TO OFFICIAL RECEIVER, DEBTORS AND APPLICANT CREDITOR

This referral has been set down for hearing by the Court at:

Time and date: *to be entered by Registry*

Place: *address of Court*

Date:

signed, Registrar
Registrar

Form 9 Summons for examination

(rules 6.04, 6.09, 6.15)

SUMMONS FOR EXAMINATION[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

Time and date for examination: *to be inserted by Registry*

Place: *address of Court*

TO: *name and address of person summoned*

1. You are required to attend before *the Court/*a Registrar/*a magistrate at the time, date and place stated above to be examined on oath under *section 50/*section 81 of the *Bankruptcy Act 1966* and to give evidence in relation to the examinable affairs of *name of bankrupt or debtor*.
2. You are also required to attend at any time, date and place to which the examination is adjourned if you have been given written notice of that time, date and place.
3. You are also required to bring the following books with you and produce them at the examination:
list books required

Date:

signed, Registrar

Registrar

This summons was issued on the application of *name of applicant, specify the capacity of the applicant under subsection 81 (1) of the Bankruptcy Act 1966, eg creditor, trustee, whose address for service is address.*

* *Omit if inapplicable*

Note 1 Subsection 5 (1) of the *Bankruptcy Act 1966* defines **examinable affairs**, in relation to a person, to mean:

- (a) the person's dealings, transactions, property and affairs; and
- (b) the financial affairs of an associated entity of the person, in so far as they are, or appear to be, relevant to the bankrupt or to any of his or her conduct, dealings, transactions, property and affairs.

Use the following note for a summons addressed to the bankrupt. Otherwise omit it.]

Note 2 If you do not comply with this summons, a warrant for your apprehension (arrest) may be issued under section 264B of the *Bankruptcy Act 1966*.

[Use the following notes for a summons addressed to a person who is not the bankrupt. Otherwise omit them.

Note 2 If you do not comply with this summons, a warrant for your apprehension (arrest) may be issued under section 264B of the *Bankruptcy Act 1966*. However, a warrant will not be issued if you were not given a reasonable amount for expenses.

Note 3 You may apply to have this summons discharged by filing an interim application and supporting affidavit.

Form 10 Application for summons to examine relevant person or examinable person

(rules 6.07, 6.13)

APPLICATION FOR SUMMONS TO EXAMINE RELEVANT PERSON OR EXAMINABLE PERSON[†]

Bankruptcy Act 1966, section 81

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

On the grounds set out in the supporting affidavit, the applicant requests the *Court/*Registrar to issue a summons under section 81 of the *Bankruptcy Act 1966* in accordance with the accompanying draft summons(es) to the following:

A. Relevant person(s)

*to give evidence:

OR

*to give evidence and produce documents:

set out the name and address of each relevant person and, if appropriate, the details of the documents to be produced

B. Examinable persons

*to give evidence:

OR

*to give evidence and produce documents:

set out the name and address of each examinable person and, if appropriate, the details of the documents to be produced

Date:

signed, applicant or applicant's lawyer

*Applicant/*Applicant's lawyer

* *Omit if inapplicable*

Form 11 Notice to creditors of annulment application

(rule 7.03)

NOTICE TO CREDITORS OF ANNULMENT APPLICATION[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

I, *name*, *applicant/*applicant's lawyer, give notice that *name of debtor or person administering estate of deceased debtor* will be applying for the annulment of the bankruptcy.

The application is to be heard at:

Time and date: *to be inserted by Registry*

Place: *address of court*

If a creditor wishes to take part in the hearing, the creditor must file and serve a notice of appearance at least 3 days before the hearing date stated above.

* *Omit if inapplicable*

Form 12 Notice to creditors of application for review of Registrar’s decision to make sequestration order

(rule 7.06)

NOTICE TO CREDITORS OF APPLICATION FOR REVIEW OF REGISTRAR’S DECISION TO MAKE SEQUESTRATION ORDER[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

I, *name*, *applicant/*applicant’s lawyer, give notice that *name of debtor or person administering estate of deceased debtor* will be applying for review of the decision by Registrar *name* on *date of decision* to make a sequestration order against the estate of *name of debtor*.

The application is to be heard at:

Time and date: *to be inserted by Registry*

Place: *address of court*

If a creditor wishes to take part in the hearing, the creditor must file and serve a notice of appearance at least 3 days before the hearing date stated above.

* *Omit if inapplicable*

Form 13 Notice to creditors

(rules 9.04, 10.04)

NOTICE TO CREDITORS[†]

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

I, *name*, *applicant/*applicant's lawyer, give notice that an application for *state nature of application, including any application for sequestration order* has been made to the Court by *name of applicant, state the capacity of the applicant, eg creditor, debtor or trustee, and relevant section of the Bankruptcy Act 1966*.

The application is to be heard at:

Time and date: *to be inserted by Registry*

Place: *address of court*

Copies of the application and affidavits in support are available from the applicant at the address stated below.

If you wish to take part in the proceeding, a notice of appearance must be filed and served 3 days before the hearing.

* *Omit if inapplicable*

Form 14 Applicant creditor's petition for administration of deceased person's estate

(rule 11.01)

APPLICANT CREDITOR'S PETITION FOR ADMINISTRATION OF DECEASED PERSON'S ESTATE[†]

Bankruptcy Act 1966, section 244

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant creditor(s)

Applicant creditor(s)

name of respondent debtor(s)

Respondent debtor(s)

NOTICE TO RESPONDENT

TO: *legal personal representative of the deceased respondent debtor or other person as directed by the Court under subsection 244 (9) of the Bankruptcy Act 1966*
address

This petition has been set down for hearing by the Court at the time, date and place stated below. If you or your legal representative do not attend the Court at that time, the petition may be dealt with in your absence and an order made for the administration of the estate of the deceased respondent debtor.

If you wish to appear at the hearing, you must file and serve a notice of appearance.

If you wish to appear at the hearing and oppose this petition, you must:

- (a) enter an appearance in accordance with Form 4, and file a notice stating grounds of opposition to the petition in accordance with Form 5 and an affidavit supporting the grounds; and
- (b) serve a copy of each document on the applicant creditor at the address for service stated below not less than 3 days before the date for the hearing of this petition stated below; and
- (c) attend at the Court on the date for the hearing stated below.

Time and date for hearing: *to be entered by Registry*

Place: *address of Court*

Date:

signed, Registrar

Registrar

PETITION

The applicant creditor, *name and address of creditor*, applies to the Court for an order of administration in bankruptcy of the estate of the late *name of deceased respondent debtor* who died on *date of death*.

1. The estate of the deceased respondent debtor owes the applicant creditor the amount of [*\$ amount*] for *statement of reason for the debt*. This debt is a liquidated sum payable immediately or at a certain future

time.

2. The applicant creditor does not hold security over the property of the deceased respondent debtor.

OR

The applicant creditor holds security over the property of the deceased respondent debtor to the value of [\$ *amount*] and consisting of *statement of particulars of security*, and:

- (a) is willing to surrender this security for the benefit of creditors generally if a sequestration order for administration of the estate in bankruptcy is made;

OR

- (b) the value of the property is [\$ *amount*], which leaves an unsecured debt of [\$ *amount*].

Note If there is more than 1 creditor, this form may be appropriately amended.

3. At the time of the respondent debtor's death, the respondent debtor:

*(a) was personally present in Australia;

*(b) was ordinarily resident in Australia;

*(c) had a dwelling house or place of business in Australia;

*(d) was carrying on business in Australia either personally or by an agent or manager;

*(e) was a member of a firm or partnership carrying on business in Australia by means of partners or agent or manager.

4. *Also state any details of the status of any authorisation to administer the deceased person's estate.*

Date:

signed, petitioner or lawyer for petitioner

**Petitioner/*Petitioner's lawyer*

** Omit if inapplicable*

Form 15 Administrator's petition

(rule 11.03)

ADMINISTRATOR'S PETITION[†]

Bankruptcy Act 1966, section 247

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

NOTICE TO RESPONDENT

TO: *legal personal representative of the deceased respondent debtor*
address

This petition has been set down for hearing by the Court at the time, date and place stated below. If you or your legal representative do not attend the Court at that time, the petition may be dealt with in your absence and an order made for the administration of the estate of the deceased respondent debtor.

If you wish to appear at the hearing, you must file and serve a notice of appearance.

If you wish to appear at the hearing and oppose this petition, you must:

- (a) enter an appearance in accordance with Form 4, and file a notice stating grounds of opposition to the petition in accordance with Form 5 and an affidavit supporting the grounds; and
- (b) serve a copy of each document on the applicant creditor at the address for service stated below not less than 3 days before the date for the hearing of this petition stated below; and
- (c) attend at the Court on the date for the hearing stated below.

Time and date for hearing: *to be entered by Registry*

Place: *address of Court*

Date:

signed, Registrar

Registrar

PETITION

The applicant, *name and address of administrator*, applies to the Court for an order of administration in bankruptcy of the estate of the late *name of the deceased person* who died on *date of death*.

1. The applicant is the administrator of the deceased debtor's estate.
2. The affairs of the deceased debtor and of my administration of the estate are set out in the documents accompanying this petition. To the best of my belief, it is a true and complete statement.

Note If there is more than 1 administrator, the form may be appropriately amended.

3. At the time of the debtor's death, the debtor:
- *(a) was personally present in Australia;
 - *(b) was ordinarily resident in Australia;
 - *(c) had a dwelling house or place of business in Australia;
 - *(d) was carrying on business in Australia either personally or by an agent or manager;
 - *(e) was a member of a firm or partnership carrying on business in Australia by means of partners or agent or manager.

Date:

signed, petitioner
Petitioner

Before:

signature, name, address and occupation of witness

* *Omit if inapplicable*

Form 16 Arrest warrant

(rule 12.01)

ARREST WARRANT

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

TO: *name of officer*, a *member/*special member of the Australian Federal Police and to all other members and special members of the Australian Federal Police and to all constables of police throughout the Commonwealth and to the Governor or Keeper of Her Majesty's Gaol at *place* and to the Governor or Keeper of any of Her Majesty's Gaols within the Commonwealth.

BECAUSE of evidence taken on oath, the Court has reason to believe that *name of debtor or bankrupt*, against whom a bankruptcy notice has been issued, has absconded with a view to avoiding payment of *his/*her debts or otherwise as the case may be in accordance with the wording of section 78 of the Bankruptcy Act 1966.

THIS warrant therefore requires and authorises you, *name of officer*, and all other constables to whom this warrant is addressed, to take *name of debtor or bankrupt* and to deliver *him/*her to the Governor or Keeper of Her Majesty's Gaol at *place*, and you the Governor or Keeper are to receive *name of debtor or bankrupt* and keep *him/*her safely in the gaol and in your custody until the Court otherwise orders.

THIS warrant also requires and authorises you, *name of officer*, and all other constables to whom this warrant is addressed, to seize any property, books, documents, papers and writings in the possession of the *debtor/*bankrupt, and to deliver them into the custody of *full name and address of person named in Court's order* to be kept by that person until the Court makes an order for their disposal.

Dated:

signed, Registrar

Registrar

* *Omit if inapplicable*

Form 17 Apprehension warrant

(rule 12.02)

APPREHENSION WARRANT

Bankruptcy Act 1966, section 264B

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of debtor or bankrupt estate*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

TO: *name of officer*, a *member/*special member of the Australian Federal Police and to all other members and special members of the Australian Federal Police and to all constables of police throughout the Commonwealth and to the Governor or Keeper of Her Majesty's Gaol at *place*, and to the Governor or Keeper of any of Her Majesty's Gaols within the Commonwealth.

BY summons dated *date*, and directed to *full name and address of person named in summons*, *person named in summons* was required to appear personally before *the Court/*a Registrar/*a Magistrate at *time at address at which examination or other proceeding was to have been held*, AND which summons was, as has been proved on oath, served on *name of person* on *date*.

‡ AND a reasonable amount was tendered to *name of person* for expenses, AND, without reasonable excuse, the person failed to appear as required by the summons.

THIS warrant therefore requires and authorises you, *name of officer*, and all other constables to whom this warrant is addressed, to take *name of person* and bring *him/*her up for examination.

THIS warrant also requires and authorises you, if *name of person* cannot immediately be brought before *the Court/*a Registrar/*a Magistrate, to deliver *him/*her to the Governor or Keeper of Her Majesty's Gaol at *place* and you the Governor or Keeper are to receive *name of person* and keep *him/*her safely in the gaol and in your custody until *the Court/*a Registrar/*a Magistrate otherwise orders, and you are to produce *him/*her before *the Court/*a Registrar/*a Magistrate as *the Court/*a Registrar/*a Magistrate directs.

THIS warrant also informs you, *name of officer*, and all other constables to whom this warrant is addressed, that subsection 264B (4) of the *Bankruptcy Act 1966* empowers you to break and enter any place or building for the purpose of executing this warrant.

Dated:

signed, Registrar

Registrar

* *Omit if inapplicable*

‡ *Omit if the summons is to a relevant person under section 81 of the Bankruptcy Act 1966*

Schedule 2 Powers of the Court that may be exercised by a Registrar

(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	section 81	Powers in relation to examinations
14	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
15	subsection 244 (9)	Power to direct service of a creditor's petition on a person under Part XI
16	subsection 244 (10)	Power to dispense with service of a creditor's petition under Part XI
17	subsection 244 (11)	Power to make an order for the administration of an estate under Part XI
18	subsection 244 (12)	Power to dismiss a creditor's petition under Part XI
19	subsection 244 (13)	Power to give leave to present petition under Part XI
20	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
21	section 264B	Power to issue a warrant
22	subsection 309 (2)	Power to order substituted service

Schedule 3 Notes to these Rules

(rule 12.01)

Note 1 — see rule 12.01

SEARCH WARRANT

Bankruptcy Act 1966, section 130

IN THE *name of Court*

REGISTRY: *name of Registry*

No. of year

IN THE MATTER OF *name of bankrupt*

name of applicant(s)

Applicant(s)

name of respondent(s)

Respondent(s)

TO: *name of officer*, a *member/*special member of the Australian Federal Police and to all other members and special members of the Australian Federal Police and to all constables of police throughout the Commonwealth and to any other person specified in Schedule 1.

ON the basis of:

- (a) an application made by the trustee of the estate of *name of bankrupt* under subsection 130 (1) of the *Bankruptcy Act 1966* for the issue of a warrant under subsection 130 (2) of the Act in relation to premises situated at *address of premises*, including any garage or storage area within the boundaries of the premises; and
- (b) information given to me by affidavit that there are reasonable grounds for suspecting that there is on or in the premises the following property (relevant property):
 - (i) property of the bankrupt (including but not limited to furniture, paintings, prints, collectables, porcelain, silver, gold, jewellery, etchings, keys, safes, computers, message taking machines, the contents of any safe, vehicles, plant and equipment, computer tapes, message banks and electronic storage machines);
 - (ii) property that may be connected with, or related to, the bankrupt's examinable affairs (including but not limited to furniture, painting, prints, collectables, porcelain, silver, gold, jewellery, etchings, keys, safes, computers, message taking machines, the contents of any safe, vehicles, plant and equipment, computer tapes, message banks and electronic storage machines);
 - (iii) books of the bankrupt or an associated entity of the bankrupt relevant to any of the bankrupt's examinable affairs (including but not limited to policies of insurance, storage receipts or other documents or instruments of storage, journals, correspondence and documents); and
- (c) any further information given to me, either orally or by affidavit, about the grounds on which the issue of this warrant has been sought;

I, *full name*, issue this warrant authorising you, *name of officer*, together with any other person to whom this warrant is addressed:

- (d) *at any time of the day or night/*between the hours of *hour* and *hour* to enter on or into the premises, using such force as is necessary for the purpose and is reasonable in the circumstances; and

- (e) to search the premises for relevant property; and
- (f) to break open, and search for relevant property, any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, on or in the premises; and
- (g) to take possession of, or secure against interference, any relevant property found on or in the premises; and
- (h) to deliver to the trustee, or to a person authorised in writing by the trustee for the purpose, any property of which possession is taken under the warrant.

THIS warrant ceases to have effect at the end of *day that is not later than 7 days after the day of issue of the warrant.*

Dated:

*signed, *Judge/*Federal Magistrate*
*Judge/*Federal Magistrate

* *Omit if inapplicable*

Schedule 1

name of any other person to whom the warrant is addressed

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.

† *The following information must appear at the foot of the first page of this application.*

Filed by the applicant

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

† *The following information must appear at the foot of the first page of this application.*

Filed by

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

† *The following information must appear at the foot of the first page of this notice.*

Filed by

Name:

Address for service:

Telephone: Fax number:
E-mail address:

† *The following information must appear at the foot of the first page of this notice.*

Filed by

Name:
Address for service:
Telephone: Fax number:
E-mail address:

† *The following information must appear at the foot of the first page of this petition.*

Filed by

Name:
Address for service:
Telephone: Fax number:
E-mail address:

† *The following information must appear at the foot of the first page of this order.*

Filed by

Name:
Address for service:
Telephone: Fax number:
E-mail address:

† *The following information must appear at the foot of the first page of this referral.*

Filed by

Name:
Address for service:
Telephone: Fax number:
E-mail address:

† *The following information must appear at the foot of the first page of this summons.*

Filed by

Name:
Address for service:
Telephone: Fax number:
E-mail address:

† *The following information must appear at the foot of the first page of this application.*

Filed by

Name:
Address for service:
Telephone: Fax number:
E-mail address:

† *The following information must appear at the foot of the first page of this notice.*

Filed by

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

† *The following information must appear at the foot of the first page of this notice.*

Filed by

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

† *The following information must appear at the foot of the first page of this notice.*

Filed by

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

† *The following information must appear at the foot of the first page of this petition.*

Filed by

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

† *The following information must appear at the foot of the first page of this petition.*

Filed by

Name:

Address for service:

Telephone:

Fax number:

E-mail address: