



Law Council
OF AUSTRALIA

Business Law Section

The Hon Justice Andrew Greenwood
Chairman
Harmonised Bankruptcy Monitoring Committee
Federal Court of Australia
Harry Gibbs Building
Commonwealth Law Courts
119 North Quay
Brisbane Qld 4000
Via email: justice.greenwood@fedcourt.gov.au
c.c. melanie.faithfull@fedcourt.gov.au

28 August 2014

Dear Judge,

Proposed Amendments to the Federal Court (Bankruptcy) Rules 2005 and Federal Circuit Court (Bankruptcy) Rules 2006

1. This submission is made by the Insolvency and Reconstruction Law Committee of the Business Law Section of the Law Council of Australia ('Committee').
2. It is made in response to the invitation of the Harmonised Bankruptcy Monitoring Committee dated 12 August 2014 to provide feedback in relation to proposed amendments to the *Federal Court (Bankruptcy) Rules 2005*. The proposed amendments, if adopted, are also to be mirrored in the *Federal Circuit Court (Bankruptcy) Rules 2006* ('FCC Rules'). In addition feedback has been invited in relation to a further proposed amendment to the FCC Rules concerning the powers of the Court that may be exercised by a Registrar.

Key Point

3. The Committee supports each of the proposed amendments to the *Federal Court (Bankruptcy) Rules 2005* and the FCC Rules.

Submission

4. The introduction of an electronic court file is a positive step. The proposed amendment permitting the filing of affidavits in support of an application for a summons under section 81 of the *Bankruptcy Act 1966* ('Act') to be identified as "confidential" will ensure that the investigations of the trustee in bankruptcy can be protected. The proposed amendment is not considered controversial. It is a

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practical response in support of the maintenance of the electronic court file environment.

5. The proposed amendment to Schedule 2 of the FCC Rules to permit the delegation of the power under section 55(3B) of the Act is also supported. This power is consistent with powers presently delegated to Registrars and is not seen as controversial. It is noted that Schedule 2 to the current *Federal Court (Bankruptcy) Rules 2005* does not include this delegation. While the referral under section 55(3B) might be expected, in most cases, to be made to the Federal Circuit Court the Committee notes that for consistency consideration might also be given to extending the power of delegation within the Federal Court.

Conclusion and further contact

6. The Committee would be pleased to discuss any aspect of this submission.
7. If you would like to do so, in the first instance, please contact the Committee Chair, Michael Lhuede, on 03-8665 5506 or via email: mlhuede@piperalderman.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Teresa Dyson', written in a cursive style.

Teresa Dyson
Acting Chair, Business Law Section