

practicable to bring the person before the Court or a Registrar on the day the person is apprehended, see **Part 14** of the **Bankruptcy Regulations**.

12.03 Warrant for seizure of property connected with the bankrupt

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

Part 13—Costs

Division 13.1—Orders for costs

13.01 Basis for costs

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

Division 13.2—Short form bills of costs

13.02 Application of Division 13.2

- (1) This Division makes provision in relation to the costs that may be charged by a legal practitioner for a creditor for work done in relation to a petition against the estate of a debtor on the basis of an act of bankruptcy specified in paragraph 40(1)(g) of the **Bankruptcy Act**.
- (2) This Division does not apply if the Court fixes the amount of the costs.
Note: A debtor commits an act of bankruptcy under paragraph 40(1)(g) of the **Bankruptcy Act** if the debtor does not:
 - (a) comply with a bankruptcy notice issued on the application of a creditor who has obtained a final judgment or final order against the debtor; or
 - (b) satisfy the Court that he or she has a counter-claim, set-off or cross demand equal to or more than the amount of the judgment debt that he or she could not have set up in the action or proceeding in which the judgment or order was obtained.

13.03 Short form bill of costs

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

13.04 Claim for costs

- (1) A legal practitioner who wishes to claim costs must serve the documents referred to in subrule (2) on:
 - (a) if the Court makes a sequestration order—the trustee; or
 - (b) if the petition is dismissed—the debtor.
- (2) For subrule (1), the documents are:
 - (a) a bill of costs and disbursements; and
 - (b) a copy of any receipts, vouchers or journals in support of the disbursements claimed.
- (3) The bill need not include an itemised account of the work or services performed.

- (i) to attend or make arrangements for a proper representative to attend a hearing; or
- (ii) to file a relevant document; or
- (iii) to provide the Court or another party with a relevant document; or
- (iv) to be prepared for a hearing; or
- (v) to comply with these rules or an order of the Court; or
- (b) the lawyer:
 - (i) incurs costs improperly or without reasonable cause; or
 - (ii) incurs costs that are unnecessary or wasteful; or
 - (iii) is guilty of undue delay.

Note 1: **Lawyer** is defined in the Dictionary.

Note 2: For the duty of a party's lawyer to assist the party to conduct proceedings in accordance with the overarching purpose of the Act, see section 37N(2) of the Act.

Note 3: For the power of the Court to order a lawyer to pay costs if the lawyer fails to comply with the duty under section 37N(2) of the Act, see section 37N(4) of the Act.

40.08 Reduction in costs otherwise payable

A party other than in a proceeding under the *Admiralty Act 1988* may apply to the Court for an order that any costs and disbursements payable to another party in the proceeding be reduced by an amount to be specified by the Court if:

- (a) the applicant has claimed a money sum or damages and has been awarded a sum of less than \$100 000; or
- (b) the proceeding (including a cross-claim) could more suitably have been brought in another court or tribunal.

Rules 40.09 – 40.11 left blank

Division 40.2—Taxation of costs

40.12 Application of Division 40.2 and 40.3

If an order is made in favour of a party for payment of the party's costs, the costs must be taxed in accordance with this Part, unless the amount of costs is agreed between the parties to the order.

40.13 Taxation of costs awarded on an interlocutory application

If an order for costs is made on an interlocutory application, the party in whose favour the order is made must not tax those costs until the proceeding in which the order is made is finished.

Note: The Court may order that costs of an interlocutory application be taxed immediately.

40.14 Order for taxation not required

If these Rules or an order of the Court entitle a party to costs, the party may have those costs taxed without an order directing taxation.

40.15 Failure to file bill of costs

- (1) If a party entitled to costs does not file a bill in accordance with this Division within a reasonable time of being entitled to do so, any party who is liable to pay those costs and is prejudiced as a result, may apply to the taxing officer:
 - (a) to certify the costs; or
 - (b) to allow a nominal or other sum by way of costs.

Note: **Taxing officer** is defined in the Dictionary.

- (2) An application under subrule (1) must be accompanied by an affidavit stating the prejudice said to be suffered.

Note: **Bill** is defined in the Dictionary.

40.16 Unnecessary expense in proceeding before taxing officer

If, in a proceeding before a taxing officer, a party has engaged in conduct that puts another party to any unnecessary expense, the taxing officer may exercise the powers in rule 40.15(1).

Amended to: 3 January 2014

- (a) these Rules; or
- (b) section 7(1)(a) or (b) of the *Foreign Evidence Act 1994*.

expert means a person who has specialised knowledge based on the person's training, study or experience.

expert evidence means the evidence of an expert that is based wholly or substantially on the expert's specialised knowledge.

Note: For the admissibility of the evidence of the opinion of an expert, see section 79 of the Evidence Act.

expert report means a written report that contains the opinion of any expert on any question in issue in the proceeding based wholly or substantially on that expert's specialised knowledge, including any report in which an expert comments on the report of any other expert.

file means file and serve.

genuine steps statement—see section 5 of the Civil Dispute Resolution Act.

guardian, of a mentally disabled person or the estate of a mentally disabled person, includes a person entrusted under a law of the Commonwealth, or of a State or Territory, with the care or management of the person or the estate.

hearing means any hearing before the Court, whether final or interlocutory.

hearing date, for an application or a proceeding, means the date fixed by the Registrar for a hearing for the application or proceeding.

High Court means the High Court of Australia.

image means a picture that has been created, copied, stored or sent in electronic form.

interested person means a person affected:

- (a) by an order of the Court; or
- (b) any act or thing done by another person.

interested person, for a person under a legal incapacity, means:

- (a) for a minor—the person's parent or guardian; and
- (b) for a mentally disabled person—the person's guardian.

interlocutory application means an application, other than a cross-claim, in a proceeding already started.

issuing officer, for a subpoena to give evidence or produce documents—see subrule 24.11(1).

issuing party:

- (a) for a subpoena to give evidence, or produce documents, mentioned in Division 24.2—see subrule 24.11(1); and
- (b) for a subpoena to attend for examination or produce documents in arbitral proceedings under subsection 23(3) of the International Arbitration Act—see subrule 28.46(1).

Judge—see section 4 of the Act.

judgment—see section 4 of the Act.

lawyer has the meaning given by section 4 of the Act.

litigation representative means a person who has been appointed for a proceeding, as a litigation representative for a person under a legal incapacity.

Litigants Fund means the Federal Court of Australia Litigants' Fund established under Division 2.5 of these Rules.

mediation means mediation conducted under a mediation order.

mediation order means an order referring a matter to a mediator as mentioned in rule 28.01.

mediator means a person to whom a matter is referred under a mediation order.