



Australian Capital Territory

## Supreme Court Rules (Amendment)

Subordinate Law No. 35 of 1993

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CORPORATIONS LAW—1993 TRANSITIONAL  
PROVISIONS UNDER ORDER 75B FOR WINDING UP  
PROCEEDINGS





Australian Capital Territory

## **Supreme Court Rules<sup>1</sup> (Amendment)**

**Subordinate Law No. 35 of 1993<sup>2</sup>**

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We, Judges of the Supreme Court, make the following Rules of Court under section 36 of the *Supreme Court Act 1933*.

Dated 31 August 1993.

**JEFFREY MILES**  
Chief Justice

**J F GALLOP**  
Judge

**T J HIGGINS**  
Judge

**A G TOWILL**  
Registrar

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**PART I—PRELIMINARY****Commencement**

1. (1) This rule and Part II commence on the day on which these Rules are notified in the *Gazette*.

(2) The remaining rules shall be taken to have commenced on 23 June 1993.

**Principal Rules**

2. In these Rules, “Principal Rules” means the Supreme Court Rules.

**PART II—REPEAL AND CONSEQUENTIAL PROVISIONS****Repeal**

3. Orders 75 and 75A of, and the Seventh and Ninth Schedules to, the Principal Rules are repealed.

**Consequential amendments**

4. (1) Rule 6 of Order 10 of the Principal Rules is amended by omitting from subrule (1) “Order 75 of”.

(2) Rule 1A of Order 33 and rule 29 of Order 34 of the Principal Rules are repealed.

(3) Rule 3 of Order 61 of the Principal Rules is amended—

(a) by adding at the end of paragraph (a) “and”; and

(b) by omitting paragraph (c).

(4) Rule 1 of Order 61A of the Principal Rules is amended by omitting paragraph (m).

**Savings**

5. (1) Notwithstanding rule 3 and subrule 4 (1)—

(a) subrule 6 (1) of Order 10 and Order 75 of the former Rules continue to apply on and after the repeal day in relation to proceedings referred to in rule 1A of Order 75 of those Rules; and

(b) the forms set out in the Seventh Schedule to the former Rules shall continue to be used on and after the repeal day for the purposes of those proceedings.

(2) Notwithstanding rule 3 and subrules 4 (2), (3) and (4)—

(a) rule 1A of Order 33, rule 29 of Order 34, paragraph 3 (c) of Order 61, paragraph 1 (m) of Order 61A and Order 75A of the former

Rules continue to apply on and after the repeal day in relation to proceedings referred to in rule 3 of Order 75A of those Rules; and

- (b) the forms set out in the Ninth Schedule to the former Rules shall continue to be used on and after the repeal day for the purposes of those proceedings.

(3) In this rule—

“former Rules” means the Principal Rules as in force immediately before the repeal day;

“repeal day” means the day on which this rule commences.

### **PART III—AMENDMENTS**

#### **Alteration of date**

6. Rule 12 of Order 2A of the Principal Rules is amended—

- (a) by omitting from subrule (1) “note” and substituting “notice”; and
- (b) by adding at the end the following subrule:

“(3) This rule does not apply to a proceeding to which Order 75B applies if a public notice or advertisement of the date for hearing of the proceeding is required under Order 75B or by directions made by the Court in that proceeding.”.

#### **May be entire or partial**

7. Rule 1 of Order 30 of the Principal Rules is amended by adding at the end the following subrule:

“(4) An application for a winding up order under section 459P or paragraph 461 (a) of the Corporations Law may not be discontinued without leave of the Court.”.

#### **Interpretation**

8. Rule 2 of Order 75B of the Principal Rules is amended—

- (a) by omitting paragraph (c) from the definition of “prescribed information” in subrule (1) and substituting the following paragraph:

“(c) unless the company to which the proceedings relate is the applicant or has entered an appearance in the proceedings—a statement of the address of the company’s registered office, as determined by a search,

made not earlier than 7 days before the application was filed, of records maintained by the Commission;”;

- (b) by omitting the definition of “liquidator” in subrule (1); and
- (c) by inserting in subrule (1) the following definitions:

“ ‘ASC Law’ has the meaning provided for by section 1D of the *Australian Securities Commission Act 1989* of the Commonwealth;

‘controller’ means a controller of property of a company;

‘Corporations Law’ has the meaning provided for by section 14 of the *Corporations Act 1989* of the Commonwealth;

‘Corporations Regulations’ has the meaning provided for by section 14 of the *Corporations Act 1989* of the Commonwealth;”.

#### **Form of documents**

**9.** Rule 4 of Order 75B of the Principal Rules is amended by omitting subrule (4) and substituting the following subrule:

“(4) If applicable, the words ‘(in liquidation)’, ‘(receiver appointed)’, ‘(receiver and manager appointed)’, ‘(under official management)’ or ‘(administrator appointed)’ shall be added to the name of a corporation that is a party to proceedings.”.

#### **Commencement of proceedings by a person aggrieved—sections 350, 574, 777, 1082, 1140 and 1323**

**10.** Rule 6 of Order 75B of the Principal Rules is amended—

- (a) by inserting after subrule (1) the following subrule:

“(1A) Persons named as respondents to an application under this rule shall include—

- (a) in an application under section 350 or 574—the Commission;
  - (b) in an application under section 777—the relevant securities exchange; and
  - (c) in an application under section 1140—the relevant futures exchange, clearing house for a futures exchange, or futures association, as the case may be.”; and
- (b) by omitting from subrule (3) “filing the application, the applicant must” and substituting “filing, the applicant shall”.

### **Powers of Registrar and Master**

**11.** Rule 7 of Order 75B of the Principal Rules is amended by omitting from paragraph (1) (a) “or” (last occurring) and substituting “and”.

### **Applications under sections 167, 168, 172, 194, 197, 198, 199, 202 and 1074**

**12.** Rule 12 of Order 75B of the Principal Rules is amended—

- (a) by omitting from paragraphs (1) (a) to (g) (inclusive) “and”;
- (b) by omitting from subrule (2) “must” and substituting “shall”;
- (c) by omitting from subrule (2) “or substantially in”;
- (d) by omitting from subrule (3) “must” and substituting “shall”;
- (e) by omitting from paragraph (3) (a) “or substantially in”;
- (f) by omitting from subrule (4) “filing the application, the applicant (if it is not the company to which the proceedings relate) must” and substituting “filing, the applicant (if it is not the company to which the proceedings relate) shall”; and
- (g) by omitting from subrules (5) and (6) “must” and substituting “shall”.

### **Order confirming the issue of shares at a discount—subsection 190 (3)**

**13.** Rule 13 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (2) “must” and substituting “shall”;
- (b) by omitting from subrule (2) “or substantially in”;
- (c) by omitting from subrule (3) “filing the application, the applicant (if it is not the company to which the proceedings relate) must” and substituting “filing, the applicant (if it is not the company to which the proceedings relate) shall”; and
- (d) by omitting from subrules (4), (5) and (7) “must” and substituting “shall”.

### **Application for order confirming reduction of capital—section 195**

**14.** Rule 14 of Order 75B of the Principal Rules is amended—

- (a) by omitting from paragraphs (2) (a) to (d) (inclusive) “and”;
- (b) by omitting from subrules (4) and (5) “must” and substituting “shall”;
- (c) by omitting from paragraph (5) (a) “and” (last occurring);

- (d) by omitting from subrules (6), (7), (8), (9) and (10) “must” (wherever occurring) and substituting “shall”;
- (e) by omitting from paragraph (10) (a) “and”;
- (f) by omitting from subparagraphs (10) (b) (i), (ii) and (iv) “and”;
- (g) by omitting from paragraphs (11) (a) and (b) “or”;
- (h) by omitting from paragraph (11) (c) “or” (last occurring);
- (i) by omitting from paragraph (13) (a) “and” (last occurring);
- (j) by omitting from subrule (15) “must” and substituting “shall”;
- (k) by omitting from subrule (18) all the words from and including “whose” to and including “must” and substituting “who intends to appear at the hearing of the application shall”; and
- (m) by omitting from subrules (19), (20) and (23) “must” and substituting “shall”.

**Application opposing giving of financial assistance—subsection 205 (12)**

15. Rule 16 of Order 75B of the Principal Rules is amended—
- (a) by omitting from subrule (2) “must” and substituting “shall”;
  - (b) by omitting from subrule (3) “or substantially in”; and
  - (c) by omitting from subrule (4) “filing the application, the applicant must” and substituting “filing, the applicant shall”.

**Application by creditor in relation to a proposed buy-back scheme or buy-back—section 206LD**

16. Rule 17 of Order 75B of the Principal Rules is amended—
- (a) by omitting from subrule (2) “must” and substituting “shall”;
  - (b) by omitting from paragraph (2) (a) “or substantially in”; and
  - (c) by omitting from subrule (3) “filing the application, the applicant must” and substituting “filing, the applicant shall”.

**Heading to Division 4**

17. The heading to Division 4 of Order 75B of the Principal Rules is amended by inserting “*Financial benefits to related parties of public companies (Part 3.2A)*,” after “*(Part 3.2)*,”.

**Grant of leave to manage a corporation—section 229**

18. Rule 18 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “229 (3)” and substituting “(3)”;
- (b) by omitting from subrule (2) “must” and substituting “shall”;
- (c) by omitting from paragraph (2) (a) “or substantially in”; and
- (d) by omitting from subrule (3) “filing the application, the applicant must” and substituting “filing, the applicant shall”.

**Order prohibiting a person from managing a corporation—section 230**

19. Rule 19 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (2) “must” and substituting “shall”;
- (b) by omitting from paragraph (2) (a) “or substantially in”;
- (c) by omitting from subrule (3) “filing the application, the applicant must” and substituting “filing, the applicant shall”; and
- (d) by omitting from paragraph (3) (a) “and”.

**Insertion**

20. After Rule 19 of Order 75B of the Principal Rules the following rule is inserted:

**Order sanctioning non-compliance with Part 3.2A—section 243ZD**

“19A. (1) This rule applies to an application for an order under section 243ZD.

“(2) An application shall specify the condition prescribed in Part 3.2A of the Corporations Law in respect of which the applicant seeks a declaration.

“(3) As soon as practicable after filing the application, but in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application—

- (a) on the other parties to the transaction to which the application relates; and
- (b) if the company to which the application relates is not the applicant or a party to the proceeding—on that company.

“(4) The Court may direct that notice of an application under section 243ZD be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.”.

**Application for orders in cases of oppression or injustice—section 260**

21. Rule 20 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (2) “must” and substituting “shall”;

- (b) by omitting from paragraph (2) (a) “or substantially in”;
- (c) by omitting from subrule (3) “must” and substituting “shall”;
- (d) by omitting from subrule (4) “filing the application, the applicant must” and substituting “filing, the applicant shall”;
- (e) by omitting subrule (5) and substituting the following subrule:
  - “(5) If the remedies sought in an application under section 260 include an order that the company be wound up, the applicant—
    - (a) may, at the same time as filing the application and any affidavit in support, lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up is made and, unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator; and
    - (b) shall, within 14 days of filing, serve a copy of any such nomination on the company.”;
- (f) by omitting from subrule (6) “must”, “5 days” and “Order 4” and substituting “shall”, “7 days” and “Order 2A”, respectively; and
- (g) by omitting from subrules (7) and (9) “must” and substituting “shall”.

### **Heading to Division 6**

22. The heading to Division 6 of Order 75B of the Principal Rules is omitted and the following heading substituted:

***“Division 6—Receivers and Other Controllers of Corporation Property  
(Part 5.2)”***.

### **Insertion**

23. Before rule 28 of Order 75B of the Principal Rules the following rule is inserted in Division 6:

#### **Declaration as to validity of controller’s appointment—section 418A**

“27A. (1) A person (other than a controller) who intends to file an application for a declaration concerning the validity of a controller’s appointment under section 418A shall give written notice of the proposed application to the controller, not later than the day before the application is filed—

- (a) by hand delivery; or

(b) by express post addressed to the controller.

“(2) An application for a declaration shall be accompanied by an affidavit annexing a copy of the notice required under subrule (1).

“(3) As soon as practicable after filing an application for a declaration, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on—

(a) if the controller is not the applicant—the controller; and

(b) if the company concerned is not the applicant—that company.

“(4) The Court may direct that notice of an application be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.”.

### **Insertion**

**24.** After rule 28 of Order 75B of the Principal Rules the following rules are inserted:

#### **Application for relief of controller from liability—subsection 419A (7)**

“28A. (1) An application under subsection 419A (7) shall be accompanied by an affidavit setting out the identity of persons to whom the controller is or may be liable for rent or other payments in the absence of an order relieving the controller from liability.

“(2) As soon as practicable after filing the application and affidavit, and in any event not later than 7 days after the date of filing, the controller shall serve a copy of the application and affidavit on each of the persons identified in the affidavit as a person to whom the controller is or may be liable.

#### **Court’s power to authorise managing controller to dispose of property despite prior charge—section 420B**

“28B. (1) An application under section 420B shall be accompanied by an affidavit setting out—

- (a) the nature of the property that the controller seeks authority to dispose of;
- (b) a summary of the terms of the proposed sale or disposition;
- (c) the identity of the proposed purchaser or disponent;
- (d) the identity of the person who holds a prior charge over the property and the nature of that charge;
- (e) the steps taken by the managing controller to obtain the consent of the holder of the prior charge to the sale or disposal; and

- (f) the identity of any other persons who, to the knowledge of the applicant, hold an interest in the property.

“(2) As soon as practicable after filing the application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

- (a) the person identified in that affidavit as the holder of the prior charge;
- (b) any other person identified in that affidavit as holding an interest in the property; and
- (c) the company concerned.

#### **Receiver’s power to carry on a corporation’s business during a winding up—section 420C**

“28C. As soon as practicable after filing an application under section 420C, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on the liquidator of the corporation.”.

#### **Inquiry as to conduct of a controller—section 423**

**25.** Rule 29 of Order 75B of the Principal Rules is amended—

- (a) by omitting from paragraphs (1) (a) and (b) “receiver” (wherever occurring) and substituting “controller”;
- (b) by omitting from subrule (2) “must” and substituting “shall”;
- (c) by omitting from subrule (3) “receiver of property of a corporation may seek an order that the receiver” and substituting “controller may seek an order that the controller”; and
- (d) by omitting from paragraphs (3) (a) and (b) “receiver” (wherever occurring) and substituting “controller”.

#### **Application by controller for directions—section 424**

**26.** Rule 30 of Order 75B of the Principal Rules is amended—

- (a) by omitting subrule (1) and substituting the following subrule:

“(1) An application to the Court by a controller under section 424 shall indicate the matter in respect of which the controller seeks the directions of the Court.”; and
- (b) by omitting from subrule (2) “or classes of persons”.

### **Insertion**

27. After rule 30 of Order 75B of the Principal Rules the following rules are inserted in Division 6:

#### **Court's power to fix receiver's remuneration—section 425**

“30A. As soon as practicable after filing an application under section 425, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on—

- (a) if a liquidator of the corporation is not the applicant—that liquidator;
- (b) if an administrator of the corporation is not the applicant—that administrator;
- (c) if an administrator of a deed of company arrangement executed by the corporation is not the applicant—that administrator;
- (d) if the receiver concerned is not the applicant—the receiver; and
- (e) the Commission.

#### **Court's power to remove controller for misconduct—section 434A**

“30B. (1) Evidence brought by an applicant in support of an application for the removal of a controller under section 434A shall include an affidavit—

- (a) stating any material facts relied upon by the applicant in support of the application; and
- (b) identifying the grounds on which it is said that the controller should be removed.

“(2) As soon as practicable after filing the application and affidavit in support, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

- (a) the controller; and
- (b) the corporation concerned.

#### **Removal of redundant controller—section 434B**

“30C. (1) An application for the removal of a redundant controller under section 434B shall be accompanied by an affidavit setting out—

- (a) the nature of the property in relation to which the controller is appointed;
- (b) the identity of the holder of the charge under which the controller is appointed; and

- (c) the grounds on which the applicant relies to allege that the controller is redundant.

“(2) As soon as practicable after filing the application, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on—

- (a) the person specified in that affidavit as the holder of the charge under which the controller was appointed; and
- (b) the controller.”.

**Stay of proceedings where company is under official management—section 444**

**28.** Rule 31 of Order 75B of the Principal Rules is amended by adding at the end the following subrule:

“(4) This rule applies only to companies placed in official management before 23 June 1993.”.

**Inquiry as to conduct of official manager—subsection 452 (4)**

**29.** Rule 32 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (3) “must” and substituting “shall”; and
- (b) by adding at the end the following subrule:

“(6) This rule applies only to companies placed in official management before 23 June 1993.”.

**Application for variation or cancellation of resolution to place company under official management—section 454**

**30.** Rule 33 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (3) “must” and substituting “shall”;
- (b) by omitting from paragraph (3) (a) “or substantially in”;
- (c) by omitting from subparagraph (3) (b) (i) “454 (1) (b) or 454 (1) (c)” and substituting “(b) or (c)”;
- (d) by omitting from subrules (4), (5), (6) and (7) “must” (wherever occurring) and substituting “shall”; and
- (e) by adding at the end the following subrule:

“(8) This rule applies only to companies placed in official management before 23 June 1993.”.

**Release of official manager—section 456**

**31.** Rule 34 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “must” and substituting “shall”; and
- (b) by adding at the end the following subrule:

“(2) This rule applies only to companies placed in official management before 23 June 1993.”.

### **Insertion**

**32.** After Division 7 of Order 75B of the Principal Rules the following Division is inserted:

*“Division 7A—Administration of a Company’s Affairs  
(Part 5.3A)”*

### **Applications under Part 5.3A**

“34A. (1) An application under Part 5.3A of the Corporations Law shall be made in accordance with Form 5.

“(2) Without limiting the generality of Order 75B, rule 9, the Court may direct that notice of an application within the scope of Part 5.3A of the Corporations Law be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.

“(3) As soon as practicable after filing an application that relates to a matter specified in Column 1 of the following table, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on the person or persons specified opposite that kind of application in Column 2 of the table.

Column 1	Column 2
Nature of application	Persons to be served copy
Application for leave to enforce a charge if an administrator has been appointed (section 440B)	The administrator of the company concerned
Application for leave to take possession of property (section 440C)	The administrator of the company concerned

Column 1 Nature of application	Column 2 Persons to be served copy
Application for leave to begin, or proceed with, a proceeding in a court against a company which is in administration, or in relation to any of its property (section 440D)	The administrator of the company concerned
Application for leave to begin, or proceed with, enforcement process in relation to the property of a company (section 440F)	The administrator of the company concerned
Application to permit a court officer to take action, or to make a payment, which would be prohibited under subsection 440G (2)	The administrator of the company concerned
Application for leave to take enforcement action under a guarantee (section 440J)	(a) The person who gave the guarantee concerned; and (b) the administrator of the company concerned.
Application to limit powers of chargee in relation to charged property (section 441D)	The chargee, receiver or other person, to which the application properly relates
Application to limit powers of receiver etc. in relation to property used by company (section 441H)	The person who has entered into possession or assumed control of property or who exercises any other power in relation to the property, in respect of whom the application is made

Column 1 Nature of application	Column 2 Persons to be served copy
Application for leave to dispose of— (a) property of a company in administration which is subject to a charge; or (b) property that is used or occupied by, or is in the possession of, a company in administration but of which someone else is the owner or lessor. (section 442C)	The chargee, owner or lessor of the property concerned
Application for relief of administrator from personal liability for rent (section 443B)	The owner or lessor of the property concerned
Application for extension of time for execution of deed of company arrangement (subsection 444B (2))	(a) The company concerned (if it is not the applicant); and (b) the administrator of the company (if he or she is not the applicant).
Application for leave to act inconsistently with deed of company arrangement (section 444C)	The administrator concerned
Application by a person bound by a deed of company arrangement to begin, or proceed with— (a) a proceeding against the company or in relation to any of its property; or (b) enforcement process in relation to the property of the company. (section 444E)	The administrator of the company concerned

Column 1 Nature of application	Column 2 Persons to be served copy
Application for an order cancelling a variation of a deed of company arrangement (section 445B)	The administrator concerned
Application for an order terminating a deed of company arrangement (section 445D)	(a) The administrator of the deed of company arrangement (if he or she is not the applicant); and (b) the company concerned (if it is not the applicant).
Application for an order as to the application of Part 5.3A in respect of a particular company (section 447A)	(a) If the company is in administration—the administrator of the company (if he or she is not the applicant); and (b) if the company has executed a deed of company arrangement—the deed’s administrator (if he or she is not the applicant).
Application for an order to protect interests of a company’s creditors during an administration (section 447B)	(a) The administrator of the company (if he or she is not the applicant); or (b) the administrator of the deed of company arrangement concerned (if he or she is not the applicant).

Column 1 Nature of application	Column 2 Persons to be served copy
Application for declaration as to whether administrator is validly appointed (section 447C)	(a) The person who holds a purported appointment as administrator of the company, or the administrator of the deed of company arrangement (if he or she is not the applicant); and (b) the company (if it is not the applicant).
Application for the determination, or review, of the remuneration of an administrator (section 449E)	The administrator of the company concerned or of the deed of arrangement of the company concerned, as the case may be (if he or she is not the applicant)

**Court’s power to limit rights of secured creditor or owner or lessor of property—subsection 444F (1)**

“34B. (1) An application for an order under subsection 444F (1) shall be accompanied by an affidavit that—

- (a) annexes a copy of the proposed deed of company arrangement or of the executed deed of company arrangement, as the case may be;
- (b) sets out the identity of the secured creditor or owner or lessor, as the case may be, of property to which the application relates;
- (c) sets out the nature of the security or the interest in the property; and
- (d) specifies the grounds (if any) on which it is said that the interests of the creditor, owner or lessor will be adequately protected by the terms of the deed.

“(2) As soon as practicable after filing the application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on any creditor, owner or lessor of property to which the application relates.

**Application to avoid or validate a deed of company arrangement—  
section 445G**

“34C. (1) A person (other than the administrator of a deed of company arrangement) who intends to file an application under section 445G for an order avoiding the deed of company arrangement, shall give written notice of the proposed application to the administrator not later than the day before the application is filed—

- (a) by hand delivery; or
- (b) by express post addressed to the administrator.

“(2) An application for an order under subsection 445G (1) shall be accompanied by an affidavit—

- (a) stating any material facts relied on by the applicant in support of the application;
- (b) identifying the grounds on which it is said that the Court should make an order under subsection 445G (2); and
- (c) if the application is for an order avoiding the deed—annexing a copy of the notice required under subrule (1).

“(3) As soon as practicable after filing an application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

- (a) if the administrator of the deed of company arrangement is not the applicant—the administrator; and
- (b) the Commission.

**Application by administrator for directions—section 447D**

“34D. (1) An application to the Court under section 447D shall indicate the matter in respect of which the administrator seeks directions from the Court.

“(2) An application shall be accompanied by an affidavit setting out any matters known to the applicant and material to the application.

**Supervision of administrator of company or deed of company  
arrangement—section 447E**

“34E. (1) An application for an order under subsection 447E (1) shall be accompanied by an affidavit—

- (a) stating any material facts relied upon by the applicant in support of the application; and

- (b) identifying the grounds on which it is said that the Court should make an order under section 447E.

“(2) As soon as practicable after filing an application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

- (a) the administrator of the company or of the deed of company arrangement, as the case may be; and
- (b) the Commission.

**Removal of administrator—section 449B**

“34F. (1) An application for an order under subsection 449B shall be accompanied by an affidavit—

- (a) stating any material facts relied upon by the applicant in support of the application; and
- (b) identifying the grounds on which it is said that the Court should make an order under section 449B.

“(2) As soon as practicable after filing an application and affidavit, and in any event within 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

- (a) the administrator of the company or of the deed of company arrangement concerned; and
- (b) the Commission.

**Vacancy in office of administrator of a company or of administrator of a deed of company arrangement—sections 449C and 449D**

“34G. (1) This rule applies to an application—

- (a) under section 449C—for an order that a person be appointed as administrator of a company; or
- (b) under section 449D—for an order that a person be appointed as administrator of a deed of company arrangement.

“(2) At the same time as filing an application, the applicant shall lodge a nomination in accordance with Form 92A of a person who (unless the Court is satisfied that some other person should be appointed) will be appointed—

- (a) as administrator of the company, if an order under section 449C is made; or
- (b) as administrator of the deed of company arrangement, if an order under section 449D is made.

“(3) Within 14 days of filing the application, the applicant shall file a written acknowledgment in accordance with Form 92B, signed by the person nominated under subrule (2).

“(4) The applicant shall publish a notice of the application in accordance with Form 92C, in the manner prescribed by rule 104, not later than 7 days before the date on which the application is to be heard.”.

#### **Address for service in winding up applications**

**33.** Rule 35 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “460 or 461” and substituting “459P or 462”; and
- (b) by omitting from subrule (2) “must” and substituting “shall”.

#### **Substitution**

**34.** Rules 36, 37 and 38 of Order 75B of the Principal Rules are repealed and the following rules substituted:

#### **Application for a winding up order—section 462**

“36. (1) This rule applies to an application for a winding up order under section 462, on or after 23 June 1993.

“(2) On filing and serving an application, the applicant shall also file and serve—

- (a) an affidavit made not earlier than 7 days before the application is filed, setting out the prescribed information, which may be in accordance with Form 128; and
- (b) an affidavit made not earlier than 7 days before the application is filed, setting out—
  - (i) any other material facts to be relied on by the applicant in support of the application; and
  - (ii) the grounds of the application and a reference to the provision or provisions of section 461 on which the applicant relies.

“(3) If an application is made on a ground provided for by paragraph 461 (a), the affidavit referred to in paragraph (2) (a) shall—

- (a) include a statement whether, at the date of the application, the company is able to pay all its debts as and when they become due and payable; and

- (b) annex the most recent accounts of the company that are lodged with the Commission.

“(4) The affidavit referred to in paragraph (2) (b) shall be made by a person who can depose of his or her own knowledge to at least some of the grounds relied on for the winding up of the company.

“(5) Subject to subrule (6), at the same time as filing the application and any affidavit in support, the applicant may lodge a nomination in accordance with Form 88 of an official liquidator who will be appointed as liquidator (unless the Court is satisfied that some other official liquidator should be appointed) if an order for the winding up of the company is made.

“(6) Subrule (5) applies to a voluntary winding up occurring under Part 5.5 of the Corporations Law, if for the purposes of winding up the affairs and distributing the property of the company, a person has been nominated to be liquidator—

- (a) by the company at its meeting; or
- (b) by the creditors of the company at their meeting.

“(7) As soon as is practicable after filing the application and any affidavit in support, and in any event not later than 14 days after the date of filing, the applicant (unless it is the company) shall serve on the company, in a manner permitted by section 220—

- (a) a signed and sealed copy of the application;
- (b) the affidavits on which it relies; and
- (c) any nomination of a liquidator under subrule (5).

“(8) Unless the Court orders to the contrary, notice of an application in accordance with Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date a copy of the application was served on the company and not later than 7 days before the day appointed for directions under Order 2A, rule 8.

“(9) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8, or a day subsequently appointed for directions in the proceedings.

“(10) If the company to which a winding up application relates intends to appear on the day appointed for directions or on the hearing of a winding up application, and to oppose the application, it shall—

- (a) file a notice of appearance in accordance with Form 79, specifying the grounds of opposition and an affidavit verifying those grounds in accordance with Form 93A; and
- (b) serve a copy of the notice of appearance and affidavit on the applicant, not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

“(11) A person (other than the company to which a winding up application relates) who intends to appear on the day appointed for directions, or on the hearing of a winding up application, shall—

- (a) file—
  - (i) a notice of appearance in accordance with Form 79, specifying any grounds of opposition to the application; and
  - (ii) if he or she opposes the application—an affidavit verifying the grounds of opposition in accordance with Form 93A; and
- (b) serve a copy of the notice of appearance and affidavit on the applicant not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

[See footnote (1) to this Order]

“(12) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

“(13) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member, creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—

- (a) be permitted by the Registrar to inspect an application to wind up the company, and any affidavits in relation to the application that are in the Registrar’s custody; and
- (b) on payment of the prescribed fee—be provided with a copy of those documents.

“(14) Nothing in this rule shall restrict any power of the Court to appoint more than one liquidator and to declare whether anything that is required by the Corporations Law to be done by the liquidator is to be done by all, or by any one or more, of the persons appointed.

“(15) An application to which this rule applies may not be discontinued without the leave of the Court.

**Form of affidavit in support of statutory demand—subsection 459E (3)**

“36A. (1) An affidavit verifying that a debt is due, for the purposes of subsection 459E (3), shall—

- (a) be in accordance with Form 93B;
- (b) contain the statement headed ‘Important Note’ set out in the form; and
- (c) not state a proceedings number.

“(2) An affidavit under this rule shall not be filed with the Court unless winding up proceedings have been commenced in the matter to which the affidavit relates.

“(3) Unless the Court orders to the contrary, an affidavit under this rule shall be made by a person who can depose to his or her own knowledge of the indebtedness of the company.

“(4) For the purposes of subsection 459E (3), an affidavit in support of a statutory demand that complies with the rules of a Supreme Court of a State or Territory is taken to be an affidavit that complies with this rule.

**Application to set aside a statutory demand—section 459G**

“36B. An application under subsection 459G (1) shall be made in accordance with Form 5 and shall be accompanied by an affidavit—

- (a) stating any material facts relied upon by the applicant in support of the application; and
- (b) identifying the grounds on which it is said that the Court should make an order under section 459H setting aside the demand.

[See footnote (2) to this Order]

**Application for leave to bring a winding up application under subsection 459P (2)**

“36C. (1) An application by a person described in subsection 459P (2) for leave to bring a winding up application shall be made in accordance with Form 5.

“(2) An application for leave shall be accompanied by an affidavit—

- (a) setting out the prescribed information; and

- (b) specifying the material facts on which the applicant relies, for the purposes of subsection 459P (3), to establish a *prima facie* case that the company is insolvent.

“(3) As soon as practicable after filing the application and affidavit, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application and the affidavit on the company to which the application relates.

“(4) If the Court grants leave under subsection 459P (2) to an applicant to bring a winding up application—

- (a) an application in accordance with Form 93C may be filed in the proceedings in which leave to bring the winding up application was granted; and
- (b) the winding up proceedings shall otherwise proceed under rule 37.

#### **Winding up of a company in insolvency under section 459P**

“37. (1) This rule applies to an application under section 459P for a winding up order.

“(2) An application that relies on a failure to comply with a statutory demand may be made in accordance with Form 93C and shall set out the matters referred to in paragraph 459Q (a) and have attached the documents referred to in paragraph 459Q (b).

“(3) An application that does not rely on a failure to comply with a statutory demand may be made in accordance with Form 93C and shall specify the grounds on which the applicant relies to allege that the company is insolvent.

[See footnote (3) to this Order]

“(4) On filing and serving an application referred to in subrule (2), the applicant shall also file and serve—

- (a) an affidavit made not earlier than 7 days before the application is filed, setting out the prescribed information, which may be in accordance with Form 128; and
- (b) if the debt is not a judgment debt—an affidavit in or substantially in accordance with Form 94 setting out—
  - (i) a statement of the debt alleged and details of how and when it was incurred; and
  - (ii) a statement that the debt is due and payable to the applicant.

“(5) On filing and serving an application referred to in subrule (3), the applicant shall also file and serve an affidavit setting out the material facts relied on in support of the application.

“(6) Unless the Court orders to the contrary, an affidavit referred to in paragraph (4) (b) or subrule (5) shall be—

- (a) made by a person who can depose to the indebtedness of the company, or to the facts relied on in support of the application, as the case may be, to his or her own knowledge; and
- (b) served on the company, with the copy of the application.

“(7) At the same time that the application and any affidavit in support is filed, the applicant may lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up of the company is made, and unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator.

“(8) As soon as is practicable after filing the application and any affidavit in support, and in any event not later than 14 days after the date of filing, the applicant (unless it is the company) shall serve on the company concerned a copy of any affidavits on which it relies, and any nomination of a liquidator under subrule (7), in a manner permitted by section 220.

“(9) Unless the Court orders to the contrary, notice of an application in accordance with Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date a copy of the application was served on the company and not later than 7 days before the day appointed for directions under Order 2A, rule 8.

“(10) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8 or a day subsequently appointed for directions in the proceedings.

“(11) If the company to which a winding up application relates intends to appear on the day appointed for directions or on the hearing of a winding up application, and to oppose the application, it shall—

- (a) file a notice of appearance in accordance with Form 79, specifying the grounds of opposition and an affidavit verifying those grounds in accordance with Form 93A; and
- (b) serve a copy of the notice of appearance and affidavit on the applicant, not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

“(12) A person (other than the company to which a winding up application relates) who intends to appear on the day appointed for directions, or on the hearing of a winding up application, shall—

(a) file—

- (i) a notice of appearance in accordance with Form 79, specifying any grounds of opposition to the application; and
- (ii) if he or she opposes the application—an affidavit verifying the grounds of opposition in accordance with Form 93A; and

(b) serve a copy of the notice of appearance and affidavit on the applicant not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

[See footnote (4) to this Order]

“(13) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

“(14) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member, creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—

- (a) be permitted by the Registrar to inspect an application to wind up the company and any affidavits in relation to the application that are in the Registrar’s custody; and
- (b) on payment of the prescribed fee—be provided with a copy of those documents.

“(15) An application may not be discontinued without the leave of the Court.

“(16) Nothing in this rule shall restrict any power of the Court to appoint more than one liquidator and to declare whether anything that is required by the Corporations Law to be done by the liquidator is to be done by all, or by any one or more, of the persons appointed.

**Filing in Court of documents in support of an application under section 459P or 462**

“38. (1) Subject to subrule (2), the applicant shall file either before or at the hearing of an application under section 459P or 462—

- (a) an affidavit—
  - (i) if the company is not the applicant—proving service on the company of the application and any affidavits in support of the application;
  - (ii) stating that a notice of the making of the winding up application was lodged with the Commission in compliance with paragraph 470 (1) (a), and annexing a copy of that notice as lodged; and
  - (iii) proving publication of notice of the application in compliance with subrule 36 (8) or 37 (9), as the case may be, and annexing a copy of that notice as published;
- (b) an affidavit, made not earlier than 3 days before the day of the final hearing of the application, stating that a search of the company records maintained by the Commission was undertaken not earlier than 3 days before the date on which that affidavit is made, and stating whether or not the search disclosed—
  - (i) that an administrator had been appointed to the company, and, if so, stating details of that appointment; and
  - (ii) that a winding up application was pending or a winding up order had been made against the company, and, if so, stating details of that application or order; and
- (c) if the application relies on a failure to comply with a statutory demand—an affidavit in accordance with Form 95, made not earlier than 3 days before the date of the final hearing of the application.

“(2) If the applicant seeks the determination of the application at a directions hearing, he or she shall file the documents referred to in subrule (1) either before or at the directions hearing.”.

**Insertion**

**35.** After rule 39 of Order 75B of the Principal Rules the following rule is inserted:

**Court's power to extend time within which application for a company to be wound up in insolvency is to be determined—section 459R**

“39A. (1) An application under section 459R for an extension of time for determination of a winding up application shall be made by notice of motion in the winding up proceedings.

“(2) An application shall be supported by an affidavit setting out the material facts on which the applicant relies.

“(3) As soon as practicable after filing the application and affidavit in support, and in any event within 14 days of the date of filing, the applicant shall serve a copy of the application and affidavit in support on the company to which the winding up application relates.”.

**Substitution**

**36.** Rule 41 of Order 75B of the Principal Rules is repealed and the following rule substituted:

**Substituted applicant in winding up application—section 465B**

“41. (1) An order under section 465B may—

- (a) include an order in accordance with Form 97 substituting the person who applied for the order for the person who was formerly the applicant in the proceedings; and
- (b) if the Court sees fit—include an order requiring publication of a notice in accordance with Form 98 in the manner prescribed by rule 104 or in such other manner as the Court directs.

“(2) This rule does not limit the powers of the Court under Order 19.”.

**Notice of appointment of liquidator**

**37.** Rule 42 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “(unless it is the Commission) must” and substituting “shall”;
- (b) by omitting from paragraphs (1) (a) and (b) “and”; and
- (c) by inserting in paragraph (1) (c) “delivering that notice to the registered office of the company or” after “company by”.

**Substitution**

**38.** Rules 46 and 47 of Order 75B of the Principal Rules are repealed and the following rules substituted:

**Application for leave to commence or continue proceedings against a company—section 471B**

“46. (1) This rule applies to a proceeding in the Court—

- (a) against a company that is being wound up in insolvency or by the Court;
- (b) in respect of which a provisional liquidator has been appointed; or
- (c) in relation to property of a company that is being wound up in insolvency or by the Court.

“(2) If the proceeding was commenced before—

- (a) the making of a winding up order; or
- (b) the appointment of a provisional liquidator;

an application under section 471B for leave to proceed with the proceeding may be made by notice of motion in the proceeding or in the winding up proceedings.

“(3) If a person seeks leave under section 471B to begin a proceeding, the application for leave may be made by notice of motion in the winding up proceedings.

**Transitional provisions for winding up applications**

“47. Rules 36, 37 and 41 set out in Schedule 13A to these Rules apply to an application for a winding up order under section 460 or 461 that is made before 23 June 1993 and to proceedings in relation to such an application.”.

**Appointment of provisional liquidator—section 472**

**39.** Rule 48 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (2) “must” and substituting “shall”;
- (b) by omitting from paragraph (2) (a) “and”;
- (c) by omitting paragraph (2) (b) and substituting the following paragraph:
  - “(b) a nomination in accordance with Form 88 of an official liquidator for appointment as a provisional liquidator;”;
- (d) by omitting paragraph (2) (d) and substituting the following paragraph:
  - “(d) a draft order for appointment of the provisional liquidator, including a short description of the property

of which the provisional liquidator is to take possession.”; and

- (e) by omitting from subrule (3) “must” and substituting “shall”.

#### **Notice of appointment of provisional liquidator**

**40.** Rule 49 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “(unless it is the Commission) must” and substituting “shall”;
- (b) by omitting from paragraphs (1) (a) and (b) “and”; and
- (c) by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) if the company is not the applicant—serve a copy of the notice on the company by delivering it to the registered office of the company or by posting it by prepaid post not later than the day after the order was made;”.

#### **Service of order appointing a provisional liquidator**

**41.** Rule 50 of Order 75B of the Principal Rules is amended by omitting “(unless it is the Commission) must” and substituting “shall”.

#### **Power of provisional liquidator—section 472**

**42.** Rule 51 of Order 75B of the Principal Rules is amended by omitting subrules (2) and (3) and substituting the following subrules:

“(2) For the purpose of enabling the provisional liquidator to take out letters of administration of the estate of a deceased contributory or debtor or otherwise to obtain payment of money due from a contributory or debtor or his or her estate under paragraph 477 (2) (h), money due to the company is deemed to be due to the provisional liquidator.

“(3) An application under subsection 472 (6) in relation to the exercise or proposed exercise of the powers of a provisional liquidator may be made by notice of motion in the proceedings for the winding up order.”.

#### **Remuneration of provisional liquidator—subsection 473 (2)**

**43.** Rule 52 of Order 75B of the Principal Rules is amended by adding at the end the following subrule:

“(3) The Court may direct that notice of an application under subsection 473 (2) be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.”.

**Report as to company's affairs—section 475**

44. Rule 55 of Order 75B of the Principal Rules is amended by omitting subrule (6) and substituting the following subrule:

“(6) In this rule—

‘liquidator’ includes a provisional liquidator.”.

**Repeal**

45. Rule 56 of Order 75B of the Principal Rules is repealed.

**Substitution**

46. Rule 60 of Order 75B of the Principal Rules is repealed and the following rule substituted:

**Liquidator's power to require payment of money or transfer of property—section 483**

“60. An application by a liquidator for an order under paragraph 483 (3) (b) may be made by notice of motion filed in the winding up proceedings.”.

**Repeal**

47. Rules 61 and 62 of Order 75B of the Principal Rules are repealed.

**Powers delegated to liquidator by the Court—section 488**

48. Rule 64 of Order 75B of the Principal Rules is amended—

- (a) by omitting from paragraph (1) (a) “and”;
- (b) by omitting from subrule (1) “5.4” and substituting “5.4B”;
- (c) by omitting from paragraph (1) (d) “and” (last occurring);
- (d) by omitting from paragraph (1) (e) “and”;
- (e) by omitting from paragraph (1) (f) “the making of calls and”; and
- (f) by omitting from paragraph (1) (g) “must” and substituting “are required to”.

**Insertion**

49. After rule 64 of Order 75B of the Principal Rules the following rule is inserted:

**Distribution of surplus—subsection 488 (2)**

“64A. (1) This rule applies to an application for leave to distribute a surplus under subsection 488 (2).

“(2) An application under this rule shall be supported by an affidavit specifying the manner in which the liquidator proposes that the surplus be distributed, including the names and addresses of each person to whom any part of the surplus would be distributed.

“(3) Notice of the application shall be given by publication of a notice in accordance with Form 116A in the manner prescribed by rule 104 not later than 14 days before the date set for hearing of the application.

“(4) A person who intends to appear at the hearing of the application shall—

- (a) file a notice of appearance in accordance with Form 79, together with any affidavit on which he or she intends to rely; and
- (b) serve the notice of appearance on the liquidator, not later than 2 days before the date appointed for the hearing.

“(5) At the first directions hearing or any subsequent directions hearing, the Court may direct the liquidator, or his or her solicitors, to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.”.

### **Supervision of liquidators by the Court—section 536**

**50.** Rule 73 of Order 75B of the Principal Rules is amended by adding at the end the following subrule:

“(6) In this rule—

‘liquidator’ includes a provisional liquidator.”.

### **Repeal**

**51.** Rule 74 of Order 75B of the Principal Rules is repealed.

### **Substitution**

**52.** Rule 77 of Order 75B of the Principal Rules is repealed and the following rules are substituted:

### **Determination of value of debts and claims of uncertain value in liquidation—section 554A**

“76A. (1) An application by a liquidator under subsection 554A (2) may be made by notice of motion in the winding up proceedings.

“(2) An appeal to the Court under subsection 554A (3) against a liquidator’s estimate of the value of a debt or claim—

- (a) shall be made in accordance with Form 5; and

- (b) shall be supported by an affidavit specifying the value that it is said should be attributed to the debt or claim and the means by which that value is derived.

“(3) An appeal to the Court under subsection 554A (6) against the way in which a method determined by the Court was applied by a liquidator—

- (a) may be made by notice of motion in the proceedings in which that method was determined; and
- (b) shall be supported by an affidavit specifying—
  - (i) the nature of any error that the liquidator is said to have made in applying the method determined by the Court;
  - (ii) the way in which the applicant says the liquidator should have applied the method determined by the Court; and
  - (iii) the result of the application of the method determined by the Court, in the way in which the applicant says that method should have been applied.

“(4) As soon as practicable after filing an application under subrule (2) or a motion under subrule (3), and in any event within 14 days of the date of filing, the applicant shall serve that application or motion and the affidavit in support on the liquidator.

**Amendment of valuation of security in proof of debt by secured creditor—section 554G**

“76B. (1) An application under section 554G for permission to amend a proof of debt by altering the estimated value of the security shall be made in accordance with Form 5.

“(2) An application shall be supported by an affidavit setting out the basis on which the amendment of the value of the security is sought and stating the value which the applicant seeks to attribute to that security.

“(3) As soon as practicable after filing the application and affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and affidavit in support on the liquidator.

**Disclaimer of contract—section 568**

“77. (1) An application under subsection 568 (1A) for leave to disclaim a contract (other than an unprofitable contract or a lease of land) may be made by notice of motion in the proceedings for the winding up order.

“(2) A liquidator who has been required to apply to the Court for leave to disclaim a contract under subsection 568 (1A) shall file an affidavit—

- (a) setting out the parties to the contract and any persons who, to the liquidator’s knowledge, are interested in the contract; and
- (b) stating the reasons why it is said to be just to grant leave to disclaim.

“(3) An affidavit filed under subrule (2) shall be served on the parties to the contract and any person interested in the contract.

**Application to set aside disclaimer before it takes effect—section 568B**

“77A. (1) An application under section 568B to set aside a disclaimer before it takes effect shall be made in accordance with Form 5.

“(2) An application under this rule shall be supported by an affidavit stating—

- (a) the nature of the applicant’s interest in the disclaimed property; and
- (b) the grounds on which it is said that the disclaimer should be set aside.

“(3) As soon as practicable after filing the application and the affidavit in support, and in any event within the period specified in paragraph 568B (1) (a), (b) or (c), as the case may be, the applicant shall serve a copy of the application on the liquidator.

**Application to set aside disclaimer after it has taken effect—section 568E**

“77B. (1) An application under section 568E to set aside a disclaimer which has taken effect shall be made in accordance with Form 5.

“(2) An application under this rule shall be supported by an affidavit stating—

- (a) the nature of the applicant’s interest in the disclaimed property; and
- (b) the reasons why it is said to be just to grant leave to set aside the disclaimer after it has taken effect.

“(3) As soon as practicable after filing the application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application on the liquidator.

**Vesting of disclaimed property by Court order—section 568F**

“77C. (1) An application under section 568F shall be made in accordance with Form 5.

“(2) The Court may direct that notice of an application be given by advertisement or otherwise to such persons or classes of persons as the Court determines, and may adjourn the application for that purpose.”.

**Substitution**

**53.** Rule 81 of Order 75B of the Principal Rules is repealed and the following rules are substituted:

**Issue of summons for examination—sections 596A and 596B**

“81. (1) An application for the issue of a summons under section 596A or 596B shall—

- (a) be made in accordance with Form 5; and
- (b) be accompanied by—
  - (i) a draft of the summons in accordance with Form 122; and
  - (ii) an affidavit in support of the issue of the summons.

“(2) An affidavit in support of the issue of a summons shall set out the material facts on which the applicant relies, to establish—

- (a) that the applicant is an eligible applicant for the purposes of paragraph 596A (a) or 596B (a), as the case may be; and
- (b) that the person to whom the summons is to be issued—
  - (i) if the application is under section 596A—is or was an examinable officer of the corporation for the purposes of paragraph 596A (b); or
  - (ii) if the application is under section 596B—
    - (A) has taken part, or been concerned in, examinable affairs of the corporation, and has been, or may have been, guilty of misconduct in relation to the corporation; or
    - (B) may be able to give information about the examinable affairs of the corporation.

“(3) An application for the issue of a summons and affidavit in support of that application may, at the option of the applicant, be filed in a sealed envelope marked, as appropriate—

- (a) ‘Application for issue of summons for examination under section 596A of the Corporations Law’; or
- (b) ‘Application for issue of summons for examination under section 596B of the Corporations Law’.

“(4) The Court may issue a summons for examination in, or substantially in, accordance with Form 122.

“(5) At least 8 days before the date set for the examination, a summons issued under this rule shall be personally served on the person who is to be examined or served in such other manner as the Court may direct.

“(6) A person served with a summons may apply to discharge the summons by filing, within 3 days of service of the summons—

- (a) a notice of motion in the proceedings in which the summons was issued, seeking an order that the summons be discharged; and
- (b) an affidavit setting out the material facts and matters relied on by the person seeking to discharge the summons.

“(7) A copy of a notice of motion and affidavit filed under subrule (6) shall forthwith be served on—

- (a) the person who applied for the examination; and
- (b) unless a person authorised by the Commission applied for the examination—the Commission.

### **Conduct of examination under Division 1 of Part 5.9**

“81A. (1) An application under subsection 597 (4) for a direction that an examination be held in private may be made at the commencement of, or in the course of, the examination.

“(2) If the Court orders under subsection 597 (13) that a written record be kept of the questions put to a person and of his or her answers at an examination—

- (a) the applicant shall file the written record in the Registry; and
- (b) if the Court requires that written record be signed by the person who was examined—the person shall sign the record at such time as the Court directs.

“(3) A person who is examined may apply in writing to the Registrar to be provided with a copy of the written record of the examination, and shall be given a copy on payment of the prescribed fee.

“(4) For the purposes of subsection 597 (14), a transcript of an examination may be authenticated by a certificate, in accordance with Form 124, that the transcript is a correct record of the examination, signed by—

- (a) the person who made the transcript; or
- (b) a responsible officer of the organisation that is authorised to provide transcription services at the examination.”.

**Default in relation to an examination under Division 1 of Part 5.9**

**54.** Rule 82 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “section 597” and substituting “Division 1 of Part 5.9 of the Corporations Law”;
- (b) by omitting paragraphs (1) (a) to (e) (inclusive) and substituting the following paragraphs:
  - “(a) in contravention of subsection 597 (6)—to attend the examination as required by a summons under section 596A or 596B, or to attend from day to day until the conclusion of the examination;
  - (b) in contravention of subsection 597 (7)—to take the oath or make an affirmation or to answer a question which he or she is directed by the Registrar to answer;
  - (c) in contravention of subsection 597 (7) or (10A)—to produce books; or
  - (d) in contravention of a direction made by the Court under subsection 597 (13)—to sign the written record of the examination;”;
- (c) by omitting from subrule (1) “must” and substituting “shall”;
- (d) by omitting from subrule (2) “section 597” and substituting “Division 1 of Part 5.9 of the Corporations Law”;
- (e) by omitting from subrule (3) “must” and substituting “shall”; and
- (f) by omitting from subrule (4) “section 597” and “the Court” (last occurring) and substituting “Division 1 of Part 5.9 of the Corporations Law” and “a Judge”, respectively.

**Orders under section 598 or 599**

**55.** Rule 83 of Order 75B of the Principal Rules is amended by omitting from subrule (3) “date of filing the application,” and substituting “date of filing.”.

**Proceedings under Chapter 6 or 7 of the Corporations Law**

**56.** Rule 84 of Order 75B of the Principal Rules is amended—

- (a) by omitting “must” and substituting “shall”; and
- (b) by omitting “filing the application,” and substituting “filing,”.

**Orders in respect of agreement, payment or benefit—section 740**

**57.** Rule 85 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “must” and substituting “shall”;
- (b) by omitting from subrule (2) “filing the application, the applicant must” and substituting “filing, the applicant shall”; and
- (c) by omitting from paragraph (2) (c) “and”.

**Orders in respect of contravention by substantial shareholder—section 741**

**58.** Rule 86 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “must” and substituting “shall”;
- (b) by omitting from paragraph (1) (a) “and”;
- (c) by omitting from subrule (2) “filing the application, the applicant must” and substituting “filing, the applicant shall”; and
- (d) by omitting from paragraph (2) (c) “and”.

**Application for order of Court declaring that an act, document or matter is not invalid—section 743**

**59.** Rule 87 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “must” and substituting “shall”;
- (b) by omitting from paragraphs (1) (a) and (b) “and”; and
- (c) by omitting from subrule (2) “filing the application, the applicant must” and substituting “filing, the applicant shall”.

**Application for order varying an agreement with a non-licensee—section 799A**

**60.** Rule 88 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “must” and substituting “shall”;
- (b) by omitting from paragraph (1) (a) “and” (last occurring);
- (c) by omitting from paragraph (1) (b) “and”; and

- (d) by omitting from subrule (2) “filing that application, the applicant must” and substituting “filing, the applicant shall”.

**Orders relating to refusal to register transfer or transmission—section 1094**

61. Rule 93 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (2) “must” and substituting “shall”; and
- (b) by omitting from subrule (3) “filing the application, the applicant must” and substituting “filing, the applicant shall”.

**Application for order varying agreement with a non-licensee—section 1165A**

62. Rule 95 of Order 75B of the Principal Rules is amended—

- (a) by omitting from subrule (1) “must” and substituting “shall”;
- (b) by omitting from paragraph (1) (a) “and” (last occurring);
- (c) by omitting from paragraph (1) (b) “and”; and
- (d) by omitting from subrule (2) “filing the application, the applicant must” and substituting “filing, the applicant shall”.

**Insertion**

63. After rule 98 of Order 75B of the Principal Rules the following rules are inserted:

**Leave to manage a corporation where a person is subject to a civil penalty disqualification—section 1317EF**

“98A. (1) This rule applies to an application under section 1317EF by a person who is subject to a civil penalty disqualification for leave to manage a corporation.

“(2) The evidence in support of the application shall include an affidavit made not earlier than 7 days before the application is filed, setting out the material facts to be relied on by the applicant in support of the application.

“(3) As soon as practicable after filing the application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application and the affidavit on—

- (a) the corporation concerned; and
- (b) the Commission.

**Relief from liability for contravention of civil penalty provisions—  
section 1317JA**

“98B. (1) An application under section 1317JA for relief from liability for a contravention of a civil penalty provision shall be accompanied by an affidavit setting out any material facts relied on by the applicant in support of the application.

“(2) As soon as practicable after filing an application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application and the affidavit on—

- (a) the corporation concerned; and
- (b) the Commission.”.

**Appeals from decisions of administrator, receiver, official manager,  
liquidator etc.—section 1321**

**64.** Rule 100 of Order 75B of the Principal Rules is amended—

- (a) by omitting from paragraph (1) (b) “or” (last occurring);
- (b) by omitting from subrule (2) “must” and substituting “shall”;
- (c) by omitting from subrule (3) “filing the application the applicant must” and substituting “filing, the applicant shall”; and
- (d) by omitting from subrule (4) “paragraphs (a)-(d) of subrule (1) must” and substituting “paragraph (1) (a), (b), (c) or (d) shall”.

**Meetings ordered by the Court**

**65.** Rule 103 of Order 75B of the Principal Rules is amended by omitting “Part 3 of Chapter 5” and substituting “regulations 5.6.12 to 5.6.36A (inclusive)”.

**Amendment of Schedule 12**

**66.** Schedule 12 to the Principal Rules is amended as set out in Schedule 1.

**Amendment of Schedule 13**

**67.** Schedule 13 to the Principal Rules is amended as set out in Schedule 2.

**Insertion of Schedule 13A**

**68.** After Schedule 13 of the Principal Rules the Schedule set out in Schedule 3 is inserted.

**SCHEDULE 1**

Rule 66

**AMENDMENTS OF SCHEDULE 12**

**Form 75—**

Omit “or ‘(under official management)’ must”, substitute “, ‘(under official management)’ or ‘(under administration)’ shall”.

**Form 76—**

Omit “or ‘(under official management)’ must”, substitute “, ‘(under official management)’ or ‘(under administration)’ shall”.

**Form 78—**

(a) Omit “(No heading or title)”, substitute—

“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.

(b) Omit “In Proceedings No. of 19 commenced on (date), (name of applicant)”, substitute “(Name of applicant)”.

(c) Omit “must comply with Order 75B, subrule 12 (6) (OR subrule 13 (5)) of the Rules of the Supreme Court of the Australian Capital Territory by filing”, substitute “shall file”.

(d) Omit “This notice is inserted by (name of solicitors) of (address), solicitors for the applicant.”.

**Form 79—**

Omit the form, substitute the following form:

FORM 79

NOTICE OF INTENTION TO APPEAR AT HEARING

(and insert if applicable)

AND OF GROUNDS OF OPPOSITION TO A WINDING UP APPLICATION

(Order 75B, subrules 12 (6), 13 (5), 14 (18), 20 (7), 22 (9), 33 (6), 36 (10) and (11), 37 (11) and (12), 64A (4) and 78 (4))

(Heading in Form 75)

NOTICE OF INTENTION TO APPEAR AT HEARING RELATING TO

(Name of company in capitals) (“the company”)

(Insert where the company to which a winding up application under section 459P, 461, 462 or 464 relates, opposes the application)

1. The company intends to appear at the hearing of the winding up application and to oppose that application. The grounds of opposition to the application are (grounds of opposition).

OR

(Insert where the person appearing is not the company to which the application relates)

**SCHEDULE 1—continued**

1. (Name of person who intends to appear at hearing) of (address of person who intends to appear at hearing) (“the person appearing”) intends to appear on the hearing of the application advertised to be heard at (time) on (date) and to  
(if the person appearing intends to support the applicant’s application) support the applicant’s application.

OR

(if the person appearing intends to oppose the applicant’s application) oppose the applicant’s application.

(Insert where the person appearing is not the company to which the application relates and intends to oppose the winding up application)

The grounds of opposition to the application are (grounds of opposition).

(Insert where the person appearing is not the company to which the application relates)

2. The address for service of the person appearing is (address for service).

(Insert where the person appearing is a contributory)

3. The person appearing is a contributory holding (number and class of shares held) shares in the company.

OR

(Insert where the person appearing is a creditor)

3. The company is indebted to the person appearing in the sum of \$ (specify amount).

OR

(Insert where the person appearing has standing to appear on any other ground)

3. The person appearing has standing to appear at the hearing of the application on the ground that (ground).

Date: e.g. 7 May 19

.....  
Signature of person appearing  
or his or her solicitor

Name of person appearing  
or his or her solicitor:

[NOTE: Section 465C of the Corporations Law provides that, on the hearing of an application under section 459P, 462 or 464, a person may not, without the leave of the Court, oppose the application unless, within the period prescribed by the Rules, the person has filed and served on the applicant notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.]

**Form 80—**

Omit “37 (9), 62 (6)”, substitute “37 (13), 64A (5)”.

**Form 82—**

(a) After “(No heading or title)”, insert—

“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.

(b) Omit “Signature of applicant’s solicitor”.

**Form 83—**

After “To: (Name and address of creditor)”, insert—

**SCHEDULE 1—continued**

“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.

**Form 85—**

Omit “commenced on (date)”.

**Form 86—**

- (a) After “(No heading or title)”, insert—  
“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.
- (b) Omit “commenced on (date)”.
- (c) Omit “Subrule 14 (16) of Order 75B of the Rules of the Supreme Court of the Australian Capital Territory provides that any”, substitute “Any”.
- (d) Omit “must comply with Order 75B, subrule 13 (18) of the Rules of the Supreme Court of the Australian Capital Territory by filing”, substitute “shall file”.
- (e) Omit “by serving”, substitute “serve”.
- (f) Omit “This notice is inserted by (name of solicitors) of (address), solicitors for the Company.”.

**Form 87—**

- (a) After “(No heading or title)”, insert—  
“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.
- (b) Omit “This notice is inserted by (name of solicitors) of (address), solicitors for the company.”.

**Form 90—**

- (a) Omit “(No heading or title)”, substitute—  
“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.
- (b) Omit “commenced on (date application was filed)”.
- (c) Omit “an order under section 260 of the Corporations Act in respect of the above company (where”, substitute “orders under section 260 of the Corporations Law in respect of the above company (and insert where”.
- (d) Omit “must comply with Order 75B, subrule 20 (7) of the Rules of the Supreme Court of the Australian Capital Territory by filing”, substitute “shall file”.
- (e) Omit “serving”, substitute “serve”.

**SCHEDULE 1—continued**

- (f) Omit “This notice is inserted by (name of solicitors) of (address), solicitors for the applicant.”.

**Form 91—**

- (a) Omit “(No heading or title)”, substitute—  
“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.
- (b) Omit “must comply with Order 75B, subrule 22 (9) of the Rules of the Supreme Court of the Australian Capital Territory by filing”; substitute “shall file”.
- (c) Omit “by serving”, substitute “serve”.
- (d) Omit “This notice is inserted by (name of solicitors) of (address), solicitors for the applicant.”.

**Form 92—**

- (a) Omit “(No heading or title)”, substitute—  
“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.
- (b) Omit “(name of company)” (wherever occurring), substitute “the Company”.
- (c) Omit—  
“(variation of the resolution) must comply with Order 75B, subrule 33 (6) of the Rules of the Supreme Court of the Australian Capital Territory by filing a notice of appearance in Form 79 together with any affidavit on which he or she intends to rely at the hearing of the application and by serving”,  
substitute—  
“(OR variation of the resolution) shall file a notice of appearance in accordance with Form 79 together with any affidavit on which he or she intends to rely at the hearing of the application and serve”.
- (d) Omit “This notice is inserted by (name of solicitors) of (address), solicitors for the applicant.”.

**Insertion—**

After Form 92 insert the following forms:

FORM 92A  
NOMINATION OF ADMINISTRATOR  
(Order 75B, subrule 34G (2))  
(Heading in Form 75)

To: The Registrar  
Supreme Court of the Australian Capital Territory

**SCHEDULE 1—continued**

(Name of applicant) nominates (name of person nominated for appointment as administrator) of (address of person nominated for appointment as administrator) to act as the administrator of (name of company) (OR the administrator of a deed of company arrangement relating to (name of company)), if appointed by the Court.

This application is filed by (name of solicitors), solicitors for the applicant, whose address for service is (address for service).

Date: e.g. 7 May 19

.....  
Signature of applicant or his or her solicitor

Name of applicant or his or her solicitor:

[NOTE TO APPLICANTS: The Court may determine that an administrator other than the person nominated by the Registrar should be appointed.]

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**NOMINATION OF ADMINISTRATOR**

To: (Name of applicant or his or her solicitor)

Of: (Address for service)

Pursuant to your application for the nomination of an administrator under Order 75B of the Supreme Court Rules, the Registrar has nominated:

Name: (name of administrator) of

Address: (address of administrator)

to act as administrator of (name of company) (OR administrator of a deed of company arrangement relating to (name of company)), if appointed by the Court.

Signed:

Registrar

Date: e.g. 7 May 19

[NOTE TO APPLICANTS: The Court may determine that an administrator other than the person nominated by the Registrar should be appointed.]

[NOTE: The name and address of the nominated administrator is to be completed by the Registry.]

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**SCHEDULE 1—continued**

## FORM 92B

## CONSENT OF ADMINISTRATOR

(Order 75B, subrule 34G (3))

(Heading in Form 75)

1. I, (name of nominated administrator) of (address) acknowledge that I have been nominated by (name of applicant) of the Supreme Court of the Australian Capital Territory to act as the administrator of (name of company) (“the company”) (OR as administrator of a deed of company arrangement relating to (name of company) (“the company”)).
2. To the best of my knowledge, information and belief, neither I nor my firm has any conflict of interest which would make it improper for me to act as administrator of the company (OR as administrator of the deed of company arrangement relating to the company).
3. I undertake to notify the Court without delay if any conflict emerges.

Dated:

Signature of Administrator

Name of Administrator

## FORM 92C

NOTICE OF APPLICATION TO FILL OFFICE OF  
ADMINISTRATOR OF COMPANY UNDER SECTION 449C  
OF THE CORPORATIONS LAW

OR

NOTICE OF APPLICATION TO FILL OFFICE OF  
ADMINISTRATOR OF DEED OF COMPANY ARRANGEMENT  
UNDER SECTION 449D OF THE CORPORATIONS LAW

(Order 75B, subrule 34G (4))

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian company number of the company to which the proceedings relate)

1. (Name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) for an order under section 449C of the Corporations Law that a person be appointed as administrator of the above company (OR for an order under section 449D of the Corporations Law that a person be appointed as administrator of a deed of company arrangement).
2. The applicant’s address for service is (specify address for service).
3. Any person intending to appear at the hearing shall file a notice of appearance in accordance with Form 79 and serve that notice of appearance on the applicant at its address for service shown above, not later than 2 days before the day appointed for the hearing of the application.

**Form 93—**

- (a) Omit “460 (SECTION 461)”, substitute “459P (OR 462)”.
- (b) Omit “36 (5) and 37 (5)”, substitute “36 (8) and 37 (9)”.
- (c) After “(No heading or title)”, insert—

**SCHEDULE 1—continued**

“IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY”.

**(d) Omit—**

“In Proceedings No. of 19 commenced on (date), (name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date appointed for directions under rule 8 of Order 2A) at (address of Court) for an order that (name of company) (‘Company’) be wound up.”,

substitute—

“(Name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date appointed for directions under Order 2A, rule 8) at (address of Court) in Proceedings No. of 19 for an order that (name of company) (‘Company’) be wound up.”.

**(e) Omit—**

“Subject to the Rules, the Registrar of the Court will permit a contributory, member, creditor or officer of the company to inspect the application and any affidavit in relation to the application and will provide a copy of the application and of any affidavit in relation to the application to a contributory, member, creditor or officer of the company on payment of the prescribed fee.

Any person intending to appear at the directions hearing must comply with Order 75B, subrule 36 (8) (OR subrule 37 (8)) of the Rules of the Supreme Court of the Australian Capital Territory by filing a notice of appearance in Form 79 and serving that notice of appearance on the applicant at its address for service shown above not later than 2 days before the date appointed for directions under Order 2A, rule 8.

This notice is inserted by (name of solicitors) of (address), solicitors for the applicant”.

substitute—

“Any person intending to appear at the directions hearing shall file a notice of appearance in accordance with Form 79 and an affidavit verifying any grounds of opposition to the winding up application in accordance with Form 93B and shall serve the notice of appearance and affidavit on the applicant at its address for service shown above, not later than 2 days before the day appointed for the hearing.”.

**Forms 94 and 95—**

Omit the forms, substitute the following forms:

**SCHEDULE 1—continued**

FORM 93A

**AFFIDAVIT VERIFYING GROUNDS OF OPPOSITION  
TO WINDING UP APPLICATION UNDER  
SECTION 459P, 462 or 464**

(Order 75B, subrules 36 (10) and (11) and 37 (11) and (12))  
(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. I refer to the Notice of Intention to Appear at a Hearing and of Grounds of Opposition to a Winding Up Application dated (date) signed by (signatory to notice).
2. I believe that the statements of fact in the notice are true.

SWORN at: )  
before me: )

.....

A Justice of the Peace

FORM 93B

**AFFIDAVIT UNDER SECTION 459E OF  
THE CORPORATIONS LAW**

(Order 75B, rule 36A)

(Name of creditor)  
Creditor  
(Name of company)  
Debtor

**AFFIDAVIT**

On (date), I (name, address and occupation) say on oath:

1. To my knowledge, the amount of \$ (amount or amounts) is due and payable by the debtor to the creditor.
2. (Specify details of how and when the debt was incurred).

SWORN at: )  
before me: )

.....

A Justice of the Peace

**[IMPORTANT NOTE:**

- (1) This affidavit accompanies a statutory demand under section 459E of the Corporations Law.
- (2) No proceedings have been commenced in respect of the debt to which the affidavit relates.
- (3) Any questions relating to this affidavit or the debt to which it relates should be directed either to the person named as applicant or the applicant’s solicitors.]

\_\_\_\_\_

**SCHEDULE 1—continued**

FORM 93C  
APPLICATION TO WIND UP A COMPANY  
UNDER SECTION 459P OF THE CORPORATIONS LAW  
(Order 75B, subrules 37 (2) and (3))  
(Heading in Form 75)

1. The applicant claims:

- (a) an order that (name of company) be wound up.
- (b) (specify any other orders).

(INSERT THE FOLLOWING, ONLY IF THE WINDING UP APPLICATION RELIES ON A FAILURE TO COMPLY WITH A STATUTORY DEMAND)

2. Pursuant to section 459Q of the Corporations Law, the applicant states as follows:

(If service was on directors of the company)

- (a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that (name of director) of (address of director) and (name of second director) of (address of second director) were directors of (name of company) ("the company"). A statutory demand on the form annexed and marked "A" was served on each of (name of first director) on (date) and on (name of second director) on (date).

(OR)

(If notice was served at the registered office of the company and an officer or employee received the notice)

- (a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that the registered office of (name of company) ("the company") was then situated at (address of registered office). On (date) a statutory demand in the form annexed and marked "A" was left at the registered office of the company with (name of person, if known).

(OR)

(If notice was served at the registered office the company and no officer or employee received the notice)

- (a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that the registered office of (name of company) ("the company") was situated at (address of registered office). On (date) a statutory demand in the form annexed and marked "A" was left at the registered office of the company, at which it appeared the company was still carrying on business because (specify reason) (OR with which it appeared the company had the following connection, namely that (specify connection)).

(OR)

(If notice was served by post)

- (a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that the registered office of (name of company) ("the company") was situated at (address of registered office). On (date) a statutory demand in the form annexed and marked "A" was posted by prepaid mail addressed to the company at its registered office. That notice has not been returned to the applicant or its solicitors by Australia Post as unclaimed.

(If the demand has been varied by an Order under subsection 459H (4) of the Corporations Law.)

- (b) Annexed and marked "B" is a copy of an order made by the Supreme Court of the Australian Capital Territory under subsection 459H (4) of the Corporations Law on (date), that varied the statutory demand which is Annexure "A".

**SCHEDULE 1—continued**

- (c) The company did not comply with the requirements of the statutory demand which is Annexure “A” (OR the statutory demand which is Annexure “A”, as varied by the order which is Annexure “B”) within the period for compliance, being the period of 21 days after the demand was served (OR the period specified in an order made by the Supreme Court of the Australian Capital Territory on (date) extending the period for compliance) (OR the period ending 7 days after an application to set aside the statutory demand was finally determined or otherwise disposed of).

(OR, INSERT THE FOLLOWING, ONLY IF THE WINDING UP APPLICATION RELIES ON A FAILURE TO COMPLY WITH A STATUTORY DEMAND)

2. The grounds on which the applicant relies to allege that the company is insolvent are (grounds).

DATED:

Signature of applicant’s solicitor

Name of applicant’s solicitor:

Address for Service:

---

To the Respondent: (address)

If the Court thinks fit, it may hear and determine the application at the time and place specified below, or on a day subsequently appointed for directions in the proceedings. If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified below, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance at that time you must file an appearance in the Registry.

**APPOINTMENT FOR DIRECTIONS HEARING**

Time: (date and time to be entered by Registry unless fixed by Court)

Place: (address of Court)

Date:

.....  
Registrar

The applicant’s address for service is (address for service).

The applicant’s address is (if a natural person—specify residence or place of business; if a body corporate—specify principal place of business).

**SCHEDULE 1—continued**

FORM 94

AFFIDAVIT VERIFYING DEBT UNDER SECTION 459Q  
OF THE CORPORATIONS LAW

(Order 75B, subrule 37 (4))

(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. The amount of \$ (amount) is due and payable by the respondent to the applicant.
2. (Specify details of how and when the debt was incurred).
3. The respondent has failed to pay the amount of \$ (amount) to the applicant or to secure or compound for that amount to the reasonable satisfaction of the applicant.

SWORN at: )

before me: )

.....

A Justice of the Peace

FORM 95

AFFIDAVIT THAT DEBT REMAINS UNPAID

(Order 75B, subrule 38 (1))

(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. I am the (specify) of the applicant herein.  
(If the debt is not a judgment debt)
2. I refer to my earlier affidavit made on (date on which affidavit under paragraph 37 (4) (b) was made) and filed in these proceedings. As at the date of the affidavit, the respondent was indebted to the applicant in the amount of (specify amount).

(OR)

- (If the debt is a judgment debt)
2. On the date on which the application for a winding up order was filed by the applicant in these proceedings, the respondent was indebted to the applicant in the amount of (specify amount) by reason of the judgment of (specify Court) in proceedings number (number) given on (date of judgment). Annexed and marked "A" is a copy of the Court order giving rise to the judgment debt.
3. As at the date of this affidavit, the respondent is indebted to the applicant in the amount of (specify amount). The respondent has failed to pay the amount or to secure or compound for it to the reasonable satisfaction of the applicant.

SWORN at: )

before me: )

.....

A Justice of the Peace

**Form 96—**

- (a) Omit "subrule 38 (1) and".
- (b) Omit from clause 2 "affairs of the said".
- (c) After clause 2, insert the following clause before the note:

**SCHEDULE 1—continued**

“3. The applicant’s costs (including reserved costs) be taxed and reimbursed out of the property of the company in accordance with subsection 466 (2) of the Corporations Law.”.

**Form 97—**

- (a) Omit “subrule 41 (2)”, substitute “subrule 41 (1)”.
- (b) Omit from clause 3 “affidavit”, substitute “further affidavits”.

**Forms 98, 99, 100 and 101—**

Omit the forms, substitute the following forms:

FORM 98  
 NOTICE OF APPLICATION BY SUBSTITUTED APPLICANT  
 UNDER SECTION 459P OR SECTION 462 OF THE  
 CORPORATIONS LAW  
 (Order 75B, subrule 41 (1))

IN THE SUPREME COURT OF  
 THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

1. (Name of substituted applicant), who was, with the leave of the Court, substituted as applicant in respect of Proceedings No.    of 19   , will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) for an order that the company to which this application relates be wound up.
2. The address for service of the substituted applicant is (address for service).
3. Any person intending to appear at the directions hearing shall file a notice of appearance in accordance with Form 79 and serve a copy of the notice on the applicant at its address for service shown above not later than 2 days before the date appointed for the hearing.

Dated:

\_\_\_\_\_

**SCHEDULE 1—continued**

FORM 99  
NOTICE TO LIQUIDATOR (OR PROVISIONAL LIQUIDATOR)  
OF APPOINTMENT  
(Order 75B, subrules 39 (2), 42 (1), 48 (2) and 49 (1))

(Heading in Form 75)

To: (Name and address of liquidator OR provisional liquidator)

(Insert if liquidator was appointed)

(Name of company) of (address of registered office of company) was wound up by order of the Court made on (date) (name and address of liquidator) was appointed as the liquidator of that company.

(OR)

(Insert if provisional liquidator was appointed)

By order of the Court on (date) (name and address of provisional liquidator) was appointed as provisional liquidator of (name of company) of (address of registered office of company).

.....

Registrar

Date: e.g. 7 May 19

[NOTE: Where a liquidator is appointed by the Court, Order 75B, rule 39 of the Supreme Court Rules permits the Court to direct that copies of this notice be sealed forthwith. If this notice is not sealed after the making of the winding up order under rule 39, subrule 42 (1) requires that the applicant attend at the Registry to obtain a sealed copy of a notice in this form not later than the day after the order was made. The requirements for service of that notice are specified in paragraphs 42 (1) (b) and (c).

Where a provisional liquidator is appointed, subrule 49 (1) requires that the applicant attend at the Registry to obtain a sealed copy of a notice in this form not later than the day after the order was made. The requirements for service and lodgment of that notice are specified in paragraphs 49 (1) (b) to (e), inclusive.]

FORM 100  
ADVERTISEMENT OF WINDING UP ORDER AND OF  
APPOINTMENT OF LIQUIDATOR  
(OR PROVISIONAL LIQUIDATOR)  
(Order 75B, subrules 42 (1) and 49 (1))

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY

IN THE MATTER OF (name of the company to which the proceedings relate)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

(Insert if a liquidator was appointed)

On (date), the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 ordered the winding up of (name of company) and appointed (name of liquidator) of (address) as the liquidator of the company.

(OR)

(Insert if a provisional liquidator was appointed)

On (date), the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 appointed (name of provisional liquidator) of (address) as the provisional liquidator of the company.

Dated:

FORM 101

**SCHEDULE 1—continued**

ADVERTISEMENT OF APPOINTMENT OF LIQUIDATOR  
(OR PROVISIONAL LIQUIDATOR) IN PLACE OF PREVIOUS  
LIQUIDATOR (OR PROVISIONAL LIQUIDATOR)

(Order 75B, subrule 53 (5))

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY

IN THE MATTER OF (name of the company to which the proceedings relate)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

On (date), in Proceedings No. of 19 , the Supreme Court of the Australian Capital Territory appointed (name of liquidator/provisional liquidator) of (address) to act as the liquidator (provisional liquidator) of (name of company) in place of the former (liquidator/provisional liquidator).

Dated:

\_\_\_\_\_

**Form 102—**

- (a) Omit from the heading “CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION”, substitute “CREDITORS OR CONTRIBUTORIES”.
- (b) Omit “OR creditors and contributories OR the committee of inspection”.

**Form 103—**

Omit the form, substitute the following form:

FORM 103  
NOTICE BY LIQUIDATOR OF INTENTION  
TO SEEK RELEASE  
(Order 75B, subrule 58 (3))

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

1. TAKE NOTICE that I (name of liquidator) of (address of liquidator), the liquidator of the above company, intend to apply to the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 for my release as liquidator of the company.
2. If you have any objection to the grant of my release, you must file a notice of objection in accordance with Form 104 and forward a copy of the notice to me at the address shown above, within 21 days of publication of this notice in the *Gazette*.

Dated:

.....  
Signature of liquidator  
Name of liquidator:

\_\_\_\_\_

**Forms 105 to 115 (inclusive)—**

Omit the forms, substitute the following form:

**SCHEDULE 1—continued**

FORM 115  
AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER  
FOR PAYMENT OF CALL  
(Order 75B, subrule 63 (1))  
(Heading in Form 75)

On (date) I (name and address), official liquidator, say on oath:

1. I am the official liquidator of (name of company) (“the company”).
2. On (date) I made a call of \$ (amount) per share on all of the contributories of the company (or specify the class contributories on whom the call was made). Annexed and marked “A” is a copy of the notice of the call. Each of the contributories whose names are shown in the Schedule marked “B” was duly served with notice of the call in the form annexed and marked “A”.
3. Each of the contributories of the company whose name is set out in the second column of the Schedule marked “B” has not paid or caused to be paid to me the sum specified opposite his or her name in the fifth column of the Schedule, which is due from that contributory under the call.
4. The amount set out opposite the name of each of the contributories in the sixth column of the Schedule is an estimate of the amount due by that contributory in respect of the costs of applying for and giving effect to the order for payment of the call. The estimate of the costs of applying for and giving effect to the order for payment of the call has been reached by apportioning those costs equally among contributories who have not paid the call.
5. The amount set out opposite the name of each of the contributories in the seventh column of the Schedule is the total of the amount due by that contributory in respect of the call as set out in the fifth column and the amount due in respect of costs as set out in the sixth column.

SWORN at: )

Before me: )

.....

A Justice of the Peace

“B”

SCHEDULE

Number on list of contributories	Name	Address	Character in which included in list	Amount of call	Proportion of cost	Total amount payable
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**Form 116—**

Omit from clause 1 “, who is a contributory of (name of company) (“Company”) pay to the liquidator of the Company”, substitute “pay to the liquidator of (name of company)”.

**Insertion—**

After Form 116, insert the following form:

**SCHEDULE 1—continued**

FORM 116A

**NOTICE FOR APPLICATION FOR LEAVE  
TO DISTRIBUTE A SURPLUS**

(Order 75B, subrule 64A (3))

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY

Notice of application for leave to distribute a surplus relating to: (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to  
which the proceedings relate)

On (date) at (time) the Supreme Court of the Australian Capital Territory at (address of Court) will hear an application by the liquidator of (name of company) in Proceedings No. of 19 for leave to distribute a surplus in respect of the liquidation of the company. Any person intending to appear at the hearing shall file a notice of appearance in accordance with Form 79 together with any affidavit on which he or she intends to rely and serve a copy of the notice and affidavit on the liquidator at the address shown below not later than 2 days before the date appointed for the hearing of the application.

Name of liquidator:

Address of liquidator:

\_\_\_\_\_

**Form 117—**

Omit “subrules 66 (1) and 66 (3)”, substitute “subrule 66 (2)”.

**Forms 119 to 125 (inclusive)—**

Omit the forms, substitute the following forms:

FORM 120

**NOTICE OF APPLICATION UNDER SECTION 571 OF THE  
CORPORATIONS LAW**

(Order 75B, subrule 78 (3))

(No heading or title)

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to  
which the proceedings relate)

1. (Name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) in Proceedings No. of 19 for an order under section 571 of the Corporations Law declaring the dissolution of the above company to have been void.
2. The applicant’s address for service is (specify address for service).
3. Any person intending to appear at the directions hearing shall file a notice of appearance in accordance with Form 79 and serve a copy of the notice of appearance on the applicant at its address for service shown above not later than 2 days before the date appointed for the hearing.

Dated:

\_\_\_\_\_

FORM 122

**SCHEDULE 1—continued**

SUMMONS TO ATTEND EXAMINATION UNDER  
SECTION 596A (OR SECTION 596B)  
OF THE CORPORATIONS LAW  
(Order 75B, subparagraph 81 (1) (b) (i) and subrule 81 (4))  
(Heading in Form 75)

To: (Name and address of person to be examined)

SUMMONS TO ATTEND EXAMINATION RELATING TO (name of company in capitals)

1. You are required to attend before the Court at the time and place specified below and from day to day until the conclusion of your examination, to be examined on oath or affirmation on any matters relating to the promotion, formation, management, administration or winding up of (name of company)

(Insert if applicable)

and to produce any books in your possession or under your control relevant to those matters.

(Insert if applicable)

You are required to bring with you and produce at the examination all books in your possession, custody or under your control relating to the above company.

2. Subsection 597 (6) of the Corporations Law provides that a person who is summoned to attend before the Court for an examination shall not, without reasonable excuse, fail to attend as required by the summons or fail to attend from day to day until the conclusion of the examination. Subsection 597 (7) of the Corporations Law provides that a person who attends before the Court for an examination shall not—

- (a) without reasonable excuse—refuse or fail to take an oath or make an affirmation;
- (b) without reasonable excuse—refuse or fail to answer a question that the Court directs him or her to answer;
- (c) make a statement that is false or misleading in a material particular; or
- (d) without reasonable excuse—refuse or fail to produce books that the summons requires him or her to produce.

3. Subsection 597 (9) of the Corporations Law provides that the Court may direct a person to produce, at an examination of the person, books that are in his or her possession and are relevant to matters to which the examination relates or will relate. Section 86 of the Corporations Law provides that a thing that is in a person’s custody or is under a person’s control is in that person’s possession. Subsection 597 (9A) of the Corporations Law provides that a person may comply with the direction under subsection 597 (9) by causing the relevant books to be produced at the examination. Subsection 597 (10) of the Corporations Law provides that a person shall not, without reasonable excuse, refuse or fail to comply with a direction under subsection 597 (9).

Date and time of examination: (Date and time to be entered by Registry)

Place: (Address of Court)

Dated:

.....  
Registrar

Name of applicant:

Name of applicant’s solicitors:

Applicant’s address for service:

\_\_\_\_\_

**SCHEDULE 1—continued**

FORM 124

CERTIFICATE AUTHENTICATING A TRANSCRIPT TAKEN  
ON AN EXAMINATION UNDER SECTION 596A  
(OR SECTION 596B) OF THE CORPORATIONS LAW

(Order 75B, subrule 81A (4))

(Heading in Form 75)

I CERTIFY that pages to of the transcript annexed hereto are a correct record of the examination of (name of person examined) which occurred before (name of presiding Judge or Registrar) on (date) at (time).

Dated:

.....

Signature

Name of person who made transcript  
or of responsible officer

FORM 125

CERTIFICATE OF DEFAULT IN RELATION TO AN  
EXAMINATION UNDER SECTION 596A  
(OR SECTION 596B) OF THE CORPORATIONS LAW

(Order 75B, subrule 82 (1))

(Heading in Form 75)

I CERTIFY that, in respect of an examination of (name of person examined) that occurred before me on (date) at (time), (name of person examined) refused or failed to attend the examination as required by a summons under section 596A (OR section 596B).

(OR) to attend from day to day until the conclusion of the examination.

(OR) to take the oath or make an affirmation.

(OR) to answer a question which he or she was directed by me to answer.

(OR) to produce books which the summons required him or her to produce at the examination.

(OR) to produce books which the Court directed him or her to produce at the examination.

(OR) to sign the written record of his or her examination.

Dated:

.....

Signature

Name of presiding Judge or Registrar

**Form 128—**

Omit the form, substitute the following form:

**SCHEDULE 1—continued**

FORM 128

AFFIDAVIT OF PRESCRIBED INFORMATION

(Order 75B, subrules 12 (2) and (3), 13 (2), 14 (20), 16 (3), 17 (2),  
18 (2), 19 (2), 20 (2), 21 (1), 22 (3) and (4), 33 (3), 36 (2), 37 (4),  
72 (2), 78 (2), 83 (2) and 93 (2))

(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. On (specify date, which shall be not earlier than 3 days before the application was filed) I undertook a search at the Australian Securities Commission at (location of ASC office) in respect of (name of company) (“the company”).
2. That search indicates that—
  - (a) the company was incorporated under (specify relevant statute);
  - (b) the date of the company’s incorporation was (date of incorporation);
  - (c) the general nature of the business carried on by the company as disclosed in its last annual return (OR as disclosed in its annual return dated (date)) is (specify); and
  - (d) the address of the registered office of the company is (address).

(Insert the following paragraph only if required for the purposes of—

- (i) an application within the scope of Order 75B, rule 12 of the Supreme Court Rules;
  - (ii) an application under Order 75B, rule 13 for an order confirming a reduction of capital under section 195 of the Corporations Law; or
  - (iii) an application under Order 75B, rule 22 relating to a compromise with members or creditors under section 411 of the Corporations Law.)
3. That search indicated that the amounts of the authorised and issued share capital of the company, and the classes, if any, of the issued shares are (specify).

SWORN at: )  
before me: )

.....

A Justice of the Peace

[NOTE: Order 75B, rule 2 defines “prescribed information”, in relation to a company, as—

- (a) a statement of the statute under which the company was incorporated; the date of the company’s incorporation; and the general nature of any business carried on or previously carried on by the company at any relevant time;
- (b) unless the company to which the proceedings relate is the applicant—a statement of the capacity in which the applicant makes the application; and
- (c) unless the company to which the proceedings relate is the applicant or has entered an appearance in proceedings—a statement of the address of the company’s registered office as determined by a search of records maintained by the Commission made not earlier than 7 days before the application was filed.]

\_\_\_\_\_

**SCHEDULE 2**  
**AMENDMENTS OF SCHEDULE 13**

Rule 67

**Heading—**

Omit—

“POWERS AND FUNCTIONS OF THE COURT THAT MAY BE EXERCISED  
BY THE REGISTRAR”,

substitute—

“POWERS AND FUNCTIONS OF THE COURT THAT MAY BE EXERCISED  
BY THE REGISTRAR AND THE MASTER  
PART I”.

**Insertion—**

After item 21 insert the following item:

“21A	section 243ZD	19A	Order sanctioning non-compliance with Part 3.2A”.
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**Insertion—**

After item 28 insert the following item:

“28A	section 418A	27A	Declaration as to validity of controller’s appointment”.
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**Insertion—**

After item 29 insert the following items:

“29A	section 419A	28A	Relief of controller from liability
29B	section 420B	28B	Power to authorise managing controller to dispose of property despite prior charge
29C	section 420C	28C	Power to authorise receiver to carry on corporation’s business during the winding up”.

**Items 30, 31 and 32—**

Omit the items, substitute the following items:

“30	section 423	29	Inquiry as to conduct of controller
31	section 424	30	Controller’s application to the court for directions
32	section 425	30A	Power to fix amount of remuneration of a controller”.

**SCHEDULE 2**—continued**Item 34**—

Omit the item, substitute the following item:

“34 section 434A 30C Removal of redundant controller”.

**Item 38**—

Omit the item, substitute the following items:

“37A	section 438D		Power to direct administrator to lodge a report
37B	section 440B	34A	Power to grant leave to enforce a charge if an administrator has been appointed
37C	section 440C	34A	Power to grant leave to take possession of property
37D	section 440D	34A	Power to grant leave to begin or proceed with a proceeding in a court against a company which is in administration, or in relation to any of its property
37E	section 440F	34A	Power to grant leave to begin or proceed with enforcement process in relation to the property of a company
37F	subsection 440G (2)	34A	Power to authorise a court officer to take action or to make a payment which would be prohibited
37G	section 440J	34A	Power to grant leave to take enforcement action under a guarantee
37H	section 441D	34A	Power to limit powers of chargee in relation to charged property
37I	section 441H	34A	Power to limit powers of receiver etc. in relation to property used by company
37J	section 442C	34A	Power to grant leave to dispose of property of a company under administration which is subject to a charge, or property that is used or occupied by, or is in the possession of, a company under administration but of which someone else is the owner or lessor
37K	section 443B	34A	Power to grant relief of administrator from personal liability for rent
37L	subsection 444B (2)	34A	Power to extend time for execution of deed of company arrangement

**SCHEDULE 2**—continued

37M	section 444C	34A	Power to grant leave to act inconsistently with deed of company arrangement
37N	section 444E	34A	Power to grant leave to person bound by a deed of company arrangement to begin or proceed with a proceeding against the company or in relation to any of its property; or to begin or proceed with enforcement process in relation to the property of the company
37O	section 444F	34B	Power to order secured creditor or owner or lessor of property not to take certain actions
37P	section 445B	34A	Power to make an order cancelling a variation of a deed of company arrangement
37Q	section 445D	34A	Power to make orders as to the operation of Part 3.2A in respect of a particular company
37R	section 445G	34C	Power to avoid or validate a deed of company arrangement
37S	section 447A	34A	Power to make an order to bring an administration to an end
37T	section 447B	34A	Power to make order to protect interests of company's creditors during an administration
37U	section 447C	34A	Power to declare whether administrator is validly appointed
37V	section 447D	34D	Power to give directions to an administrator
37W	section 447E	34E	Power to make orders as to supervision of administrator of company or deed of company arrangement
37X	section 449B	34F	Power to make orders as to removal of administrator
37Y	sections 449C and 449D	34G	Power to make orders in respect of vacancy in office of administrator of company or in office of administrator of deed of company arrangement
37Z	section 449E	34A	Power to determine or review the remuneration of an administrator
38	sections 459P, 459R, 461, 462, 464 and 465B, subsections 467 (1) and (3) and section 467A	35 to 42 (inclusive)	Winding up applications".

**SCHEDULE 2—continued**

**Item 41—**

Omit the item.

**Item 50—**

Omit the item.

**Items 53 and 54—**

Omit the items, substitute the following items:

“53	subsection 483 (1)	60	Court’s power to require payment of money or transfer of property
54	section 483	63	Court’s power to make order for payment of call
54A	subsection 488 (2)	64A	Power to grant leave to distribute a surplus”.

**Item 68—**

Omit the item.

**Item 82—**

Omit the item.

**Item 86—**

Omit the item, substitute the following items:

“85A	section 554A	76A	Appeals against determination of value of debts and claims of uncertain value in liquidation
85B	section 554G	76B	Power to grant leave to secured creditor to amend valuation of security in proof of debt
86	sections 568 to 568F (inclusive)	77 to 77C (inclusive)	Power to make orders in relation to disclaimer of onerous property”.

**Insertion—**

After item 88 insert the following item:

“88A	Sections 600A to 600D (inclusive)	Powers of Court in relation to creditor’s resolutions”.
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**SCHEDULE 2**—continued**Item 90**—

Omit the item, substitute the following item:

“90	sections 596A, 596B and 597	81, 81A and 82	Powers of Court in relation to examinations”.
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**Addition**—

Add at the end the following Parts:

## PART 2

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
107		Schedule 13A, rules 36, 37 and 41	Winding up applications

## PART 3

Column 1 Item No.	Column 2 Provision of the ASC Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
1	subsection 79 (4)		Power to extend period to give notice of intention to have statements made at examination admitted

**SCHEDULE 3**

Rule 68

**SCHEDULE 13A**

Order 75B, rule 47

**CORPORATIONS LAW—1993 TRANSITIONAL**

**PROVISIONS UNDER ORDER 75B FOR WINDING UP PROCEEDINGS**

**Application for a winding up order—former section 461**

36. (1) This rule applies to an application made before 23 June 1993 for a winding up order under section 461 of the Corporations Law other than an application to which rule 37 in this Schedule applies.

(2) On filing and serving an application under this rule, the applicant shall also file and serve—

- (a) an affidavit made not earlier than 7 days before the application is filed, setting out a statement by a person who has, not earlier than 3 days before the date on which the affidavit is made, undertaken a search of the company records maintained by the Commission, as to whether any winding up application is pending or any winding up order has been made against the company;
- (b) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information (within the meaning of Order 75B), which may be in accordance with Form 128; and
- (c) an affidavit made not earlier than 7 days before the application is filed setting out—
  - (i) any other material facts to be relied upon by the applicant in support of the application; and
  - (ii) the grounds of the application and a reference to the provision or provisions of section 461 on which the applicant relies.

(3) An affidavit made under paragraph (2) (c) shall be made by a person who can depose of his or her own knowledge to at least some of the grounds relied upon for the winding up of the company.

(4) As soon as is practicable after filing the application and any affidavits in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a signed and sealed copy of that application and affidavits on which it relies on—

- (a) the company, in a manner permitted by section 220; and
- (b) if the company is in the course of being wound up in a voluntary winding up—the liquidator of the company.

(5) Unless the Court orders to the contrary, notice of the application in accordance with Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date a copy of the application was served on the company and not later than 7 days before the date appointed for directions under Order 2A, rule 8.

(6) The applicant—

- (a) may, at the same time as filing the application and any affidavit in support, lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up of the company is made and unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator; and
- (b) shall, within 14 days of filing, serve a copy of any such nomination on the persons specified in paragraph (4) (a).

(7) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8 or a day subsequently appointed for directions in the proceedings.

(8) If a person on whom the application has not been served intends to appear on the day appointed for directions under Order 2A, rule 8, he or she shall—

- (a) file a notice of appearance in accordance with Form 79; and

**SCHEDULE 3—continued**

- (b) serve a copy of the notice on the applicant not later than 2 days before the day appointed for directions.

(9) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

(10) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member, creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—

- (a) be permitted by the Registrar to inspect an application to wind up the company, and any affidavits in relation to the application that are in the Registrar's custody; and
- (b) on payment of the prescribed fee—be provided with a copy of those documents.

(11) Form 79, 80, 88, 93 or 128 used in accordance with this rule, and appropriately amended as the circumstances require, is taken to be in compliance with this rule.

**Transitional rule applying to winding up of a company under former section 460 or former paragraph 461 (a)**

37. (1) This rule applies to an application made before 23 June 1993 for a winding up order—

- (a) under section 460—on the ground that a company is unable to pay its debts;
- (b) under paragraph 461 (a) if—
  - (i) a company has, by special resolution, resolved that it be wound up; and
  - (ii) an officer of the company filed an affidavit at the time the application was made, deposing that the company is unable to pay its debts as they become due; or
- (c) under paragraph 460 (2) (a)—on the ground that a company on which demand was served before 23 June 1993 is unable to pay its debts.

(2) On filing and serving an application under this rule, the applicant shall also file and serve—

- (a) an affidavit made not earlier than 7 days before the application is filed setting out a statement by a person who has, not earlier than 3 days before the date on which the affidavit is made, undertaken a search of the company records maintained by the Commission, as to whether any winding up application is pending or any winding up order has been made against the company;
- (b) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information (within the meaning of Order 75B), which may be in accordance with Form 128;
- (c) an affidavit setting out—
  - (i) a statement of the debt alleged and details of how and when it was incurred;
  - (ii) a statement that the company is indebted to the applicant for the amount claimed;
  - (iii) details of any judgment obtained by the applicant against the company;
  - (iv) a statement of the grounds relied upon to show that the company is unable to pay its debts; and
  - (v) a statement of any other material facts to be relied upon by the applicant in support of the application; and
- (d) an affidavit proving service of a notice under subsection 460 (2), if applicable, together with copies of any documents exhibited to that affidavit.

(3) Unless the Court orders to the contrary, an affidavit made under paragraph (2) (c) shall be—

**SCHEDULE 3—continued**

- (a) made by a person who can depose to the indebtedness of the company to his or her own knowledge; and
  - (b) served on the company, with the application.
- (4) As soon as is practicable after filing the application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant (unless it is the company) shall serve a signed and sealed copy of that application and the affidavits on which it relies, on—
- (a) the company, in a manner permitted by section 220; and
  - (b) if the company is in the course of being wound up in a voluntary winding up—the liquidator of the company.
- (5) Unless the Court orders to the contrary, notice of the application in Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date the application was served on the company and not later than 7 days before the date appointed for directions under Order 2A, rule 8.
- (6) The applicant—
- (a) may, at the same time as filing the application and any affidavit in support, lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up of the company is made and unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator; and
  - (b) shall, within 14 days of filing, serve a copy of any such nomination on the persons specified in paragraph (4) (a).
- (7) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8 or a day subsequently appointed for directions in the proceedings.
- (8) If a person on whom the application has not been served intends to appear on the day appointed for directions under Order 2A, rule 8, he or she shall—
- (a) file a notice of appearance in accordance with Form 79; and
  - (b) serve a copy of the notice on the applicant not later than 2 days before the day appointed for directions.
- (9) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.
- (10) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member, creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—
- (a) be permitted by the Registrar to inspect an application to wind up the company, and any affidavits in relation to the application that are in the Registrar's custody; and
  - (b) on payment of the prescribed fee—be provided with a copy of those documents.
- (11) Form 79, 80, 88, 93 or 128 used in accordance with this rule, and appropriately amended as the circumstances require, is taken to be in compliance with this rule.

**Application for substitution of applicant in winding up application—section 460 or 461**

41. (1) If an applicant in proceedings in relation to a winding up order applied for under section 460 or 461 before 23 June 1993—
- (a) fails to take all steps required under Order 75B and this Schedule to be taken preliminary to the hearing;
  - (b) seeks the leave of the Court to discontinue the proceedings;
  - (c) consents to the proceedings being dismissed;
  - (d) does not appear at the hearing of the proceedings; or
  - (e) does not seek or does not obtain a winding up order at the hearing;

**SCHEDULE 3—continued**

the Court may, subject to the Corporations Law, make orders for the further conduct of the proceedings.

(2) Orders made under subrule (1) may—

- (a) be made on application by a person who falls within the classes of person specified in subsection 462 (2), as in force before 23 June 1993;
- (b) be made on such terms and conditions as the Court thinks fit;
- (c) include an order in accordance with Form 97, substituting the person who applied for the orders for the person who was formerly the applicant in the proceedings; and
- (d) if the Court sees fit, include an order requiring publication of a notice in accordance with Form 98 in the manner prescribed by Order 75B, rule 104 or in such other manner as the Court directs.

(3) This rule does not limit the powers of the Court under Order 19.

(4) Form 97 or 98, used in accordance with this rule, and appropriately amended as the circumstances require, is taken to be in compliance with this rule.

**NOTES**

1. Reprinted as at 18 December 1992. See also Subordinate Laws Nos. 4, 11, 20, 22, 23, 28 and 30, 1993.
2. Notified in the ACT Gazette on 7 September 1993.

**FOOTNOTES TO ORDERS**

On the day on which the Supreme Court Rules are amended by these Rules—

- (a) the following note is added at the end of rule 42 of Order 75B of the Principal Rules “[See footnote (5) to this Order]”; and
- (b) the following footnotes are added at the end of Order 75B of the Principal Rules:

“(1) NOTE TO APPLICANTS: Section 465C of the Corporations Law provides that a person may not oppose an application for winding up of a company under section 459P, 462 or 464, without the leave of the Court, unless the person has filed and served on the applicant notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice, within the period prescribed by the Rules.

“(2) NOTE TO APPLICANTS: Subsection 459G (3) of the Corporations Law provides that an application is made in accordance with section 459G only if, within 21 days after a statutory demand is served on the company, an affidavit supporting the application is filed with the Court and a copy of the application and of the supporting affidavit are served on the person who served the demand on the company.

“(3) NOTE TO APPLICANTS: Section 465A of the Corporations Law requires a person who applies for an order

**SCHEDULE 3—continued**

that a company be wound up under section 459P, 462 or 464 to lodge a notice in the prescribed form that the application has been made; to serve a copy of it on the company within 14 days after the application is made; and to advertise the application as prescribed in the Rules.

“(4) NOTE TO APPLICANTS: Section 465C of the Corporations Law provides that a person may not oppose an application for winding up of a company under section 459P, 462 or 464 without the leave of the Court, unless the person has filed and served on the applicant notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice, within the period prescribed by the Rules.

“(5) NOTE TO APPLICANTS: Section 470 of the Corporations Law requires that, within 7 days of the making and entry of an order for the winding up of a company, the applicant shall lodge an office copy of the sealed order of the Court with the Commission, serve an office copy of the sealed order on the company and deliver an office copy of the sealed order of the Court to the liquidator appointed in the winding up order, together with a statement that the order has been served on the company in compliance with paragraph 470 (2) (b) of the Corporations Law.”.