



Australian Capital Territory

Corporations Rules 2001

Subordinate Law 2001 No 22

We, Judges of the Supreme Court, make the following rules of court under the *Corporations Act 2001* (Cwlth).

Dated 29 June 2001.

JEFFREY MILES

Chief Justice

T J HIGGINS

Judge

K J CRISPIN

Judge

M F GRAY

Judge

R V GYLES

Judge

R N MADGWICK

Judge

A P WHITLAM

Judge

J W VON DOUSSA

Judge

D M RYAN

Judge

J E CIRCOSTA

Registrar



Australian Capital Territory

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Corporations Act 2001 (Cwlth)

Contents

	Page
Part 1	
Preliminary	
1 Name of rules	1
2 Commencement	1
3 Application of these rules and other rules of the court	1
4 Expressions used in the Corporations Act	1
5 Definitions for these rules	2
6 References to rules and forms	3
7 Substantial compliance with forms	3
8 Court's power to give directions	3

Contents

		Page
9	Calculation of time	4
10	Extending and shortening of time	4
Part 2	Proceedings generally	
11	Title of documents in a proceeding—form 1	5
12	Originating process and interlocutory process—forms 2 and 3	5
13	Fixing of hearing	6
14	Supporting affidavits	6
15	Application for order setting aside statutory demand (the Act, s 459G)	6
16	Affidavits made by creditors	7
17	Form of affidavits	7
18	Service of originating process or interlocutory process and supporting affidavit	8
19	Notice of certain applications to be given to commission	8
20	Notice of appearance (the Act, s 465C)—form 4	9
21	Intervention in proceeding by commission (the Act, s 1330)—form 5	10
22	Publication of notices	11
23	Proof of publication	11
24	Leave to creditor, contributory or officer to be heard	11
25	Inquiry in relation to corporation's debts etc	12
26	Meetings ordered by the court	13
Part 3	Compromises and arrangements in relation to Part 5.1 bodies	
27	Application of pt 3	14
28	Nomination of chairperson for meeting	14
29	Order for meetings to identify proposed scheme	15
30	Notice of hearing (the Act, s 411 (4), s 413 (1))—form 6	15
31	Copy of order approving compromise or arrangement to be lodged with commission	16
Part 4	Receivers and other controllers of corporation property (the Act, part 5.2)	
32	Inquiry into conduct of controller (the Act, s 423)	17

	Page
Part 5	
Winding-up proceedings (including oppression proceedings where winding up is sought)	
33	Application of pt 5 18
34	Affidavit accompanying statutory demand (the Act, s 459E (3))—form 7 18
35	Application for leave to apply for winding up in insolvency (the Act, s 459P (2)) 18
36	Affidavit in support of application for winding up (the Act, s 459P, s 462, s 464) 19
37	Consent of liquidator (the Act, s 532 (9))—form 8 19
38	Notice of application for winding up—form 9 20
39	Applicant to make copies of documents available 20
40	Discontinuance of application for winding up 20
41	Appearance before registrar 21
42	Order substituting plaintiff in application for winding up (the Act, s 465B)—form 10 21
43	Notice of winding-up order and appointment of liquidator—form 11 21
Part 6	
Provisional liquidators (the Act, part 5.4B)	
44	Appointment of provisional liquidator (the Act, s 472)—form 8 23
45	Notice of appointment of provisional liquidator—form 12 23
Part 7	
Liquidators	
46	Resignation of liquidator (the Act, s 473 (1)) 25
47	Filling vacancy in office of liquidator (the Act, s 473 (7), s 502) 25
48	Report to liquidator as to company's affairs (the Act, s 475) 25
49	Liquidator to file certificate and copy of settled list of contributories (the Act, s 478) 26
50	Release of liquidator and deregistration of company (the Act, s 480 (c), (d)) 26
51	Objection to release of liquidator—form 13 29
52	Report on accounts of liquidator (the Act, s 481) 29

Contents

	Page	
53	Application for payment of call (the Act, s 483 (3) (b))—form 14	30
54	Distribution of surplus by liquidator with special leave of the court (the Act, s 488 (2))—form 15	30
55	Powers delegated to liquidator by the court (the Act, s 488)	30
56	Inquiry into conduct of liquidator (the Act, s 536 (1), s 536 (2))	31
Part 8	Special managers (the Act, part 5.4B)	
57	Application for appointment of special manager (the Act, s 484)	32
58	Security given by special manager (the Act, s 484)	32
59	Special manager's receipts and payments (the Act, s 484)	33
Part 9	Remuneration of office-holders	
60	Remuneration of receiver (the Act, s 425 (1))—form 16	34
61	Remuneration of administrator (the Act, s 449E (1))—form 16	36
62	Remuneration of provisional liquidator (the Act, s 473 (2))—form 16	38
63	Remuneration of liquidator (the Act, s 473 (3))—form 16	40
64	Remuneration of special manager (the Act, s 484 (2))—form 16	42
Part 10	Winding-up generally	
65	Determination of value of debts or claims (the Act, s 554A (2))	44
66	Disclaimer of contract (the Act, s 568 (1A))	44
67	Winding-up Part 5.7 bodies (the Act s 583, s 585) and registered schemes (the Act, s 601ND)	44
Part 11	Examinations and orders (the Act, part 5.9, divisions 1 and 2)	
68	Meaning of <i>examination summons</i> in pt 11	45
69	Application for examination or investigation under the Act, s 411 (9) (b), s 423 or s 536 (3)	45
70	Application for examination summons (the Act, s 596A, s 596B)—form 17	46
71	Service of examination summons	47
72	Discharge of examination summons	47

	Page
73	47
74	48
75	48
76	48
77	49
78	50
Part 12	Takeovers, acquisitions of shares and other matters (the Act, chapters 6 to 6D) and securities (the Act, chapter 7)
79	51
80	51
81	52
Part 13	The futures industry (the Act, chapter 8)
82	53
83	53
Part 14	Powers of courts (the Act, part 9.5)
84	54
Part 15	Proceedings under the ASIC Act
85	56
86	56

		Page
Schedule 1	Forms	57
Form 1	Document title	57
Form 2	Originating process	58
Form 3	Interlocutory process	61
Form 4	Notice of appearance	63
Form 5	Notice of intervention by the commission	64
Form 6	Notice of hearing to approve compromise or arrangement	65
Form 7	Affidavit accompanying statutory demand	66
Form 8	Consent of liquidator/provisional liquidator	68
Form 9	Notice of application for winding-up order	69
Form 10	Notice of application for winding-up order by substituted plaintiff	70
Form 11	Notice of winding-up order and of appointment of liquidator 71	
Form 12	Notice of appointment of provisional liquidator	72
Form 13	Notice by creditor or contributory of objection to release of liquidator	73
Form 14	Affidavit in support of application for order for payment of call	74
Form 15	Notice of application for leave to distribute a surplus	76
Form 16	Notice of intention to apply for remuneration	77
Form 17	Summons for examination	78
Form 18	Summons for appearance in relation to registration of transfer of interests	79

Part 1 Preliminary

1 Name of rules

These rules are the *Corporations Rules 2001*.

2 Commencement

These rules commence on the day notice of the making of the rules is published in the *Australian Capital Territory Gazette*.

3 Application of these rules and other rules of the court

- (1) Unless the court otherwise orders, these rules apply to a proceeding in the court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these rules.
- (2) The other rules of the court apply, so far as they are relevant and not inconsistent with these rules, to a proceeding in the court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these rules.
- (3) Unless the court otherwise orders, the rules applying to a proceeding in the court under the Corporations Act, or the ASIC Act, as in force immediately before the commencement of these rules, continue to apply to a proceeding under the Corporations Act, or the ASIC Act, that was commenced before the commencement of these rules.

Note Under the Corporations Act, s 9, a reference to the Act includes a reference to the Corporations Regulations.

4 Expressions used in the Corporations Act

Unless the contrary intention appears, an expression used in these rules and in the Corporations Act has the same meaning in these rules as it has in the Corporations Act.

Note Expressions used in these rules (including the notes to these rules) that are defined in the Corporations Act include:

ACN (short for 'Australian Company Number')—see s 9.

ARBN (short for ‘Australian Registered Body Number’)—see s 9.

ASIC Act—see s 9.

body—see s 9.

body corporate—see s 9.

books—see s 9.

company—see s 9.

corporation—see s 57A.

daily newspaper—see s 9.

foreign country—see s 9.

officer, in relation to a body corporate—see s 82A.

official liquidator—see s 9.

Part 5.1 body—see s 9.

Part 5.7 body—see s 9.

register—see s 9.

registered liquidator—see s 9.

statutory demand—see s 9.

5 Definitions for these rules

In these rules:

applicant means a person claiming interlocutory relief in a proceeding.

commission means the Australian Securities and Investments Commission.

court means the Supreme Court.

defendant means a person against whom relief (except interlocutory relief) is claimed under the Act or the ASIC Act, whether in the originating process or not.

interlocutory process means an interlocutory process in accordance with form 3.

judge means a resident judge, additional judge or acting judge of the court.

originating process means an originating process in accordance with form 2.

plaintiff means a person claiming relief (except interlocutory relief) under the Act or the ASIC Act, whether in the originating process or not.

registrar means the Registrar of the court.

respondent means a person against whom interlocutory relief is claimed in a proceeding.

the Act means the Corporations Act 2001 (Cwlth).

6 References to rules and forms

In these rules—

- (a) a reference to a rule is a reference to a rule in these rules; and
- (b) a reference to a form followed by a number is a reference to the form so numbered in schedule 1.

7 Substantial compliance with forms

- (1) It is sufficient compliance with these rules in relation to a document that is required to be in accordance with a form in schedule 1 if the document is substantially in accordance with the form required or has only such variations as the nature of the case requires.
- (2) Without limiting subrule (1), the registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in these rules.

8 Court's power to give directions

The court may give directions in relation to the practice and procedure to be followed in a proceeding if satisfied, in the circumstances of the proceeding, that—

- (a) the provisions of the Corporations Act, the ASIC Act, or the rules of the court do not adequately provide for the practice and procedure to be followed in the proceeding; or
- (b) a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in the proceeding.

9 Calculation of time

- (1) If, for any purpose, these rules—
 - (a) prohibit, permit or require anything to be done within, by, or before the end of; or
 - (b) otherwise prescribe, allow or provide for;
a period of time before or after a particular day, act or event, the period is to be calculated without counting that day, or the day of the act or event.
- (2) Without limiting subrule (1), in calculating how many days a particular day, act or event is before or after another day, act or event, only the first day, or the day of the first act or event, is to be counted.
- (3) If the last day of a period prescribed or allowed by these rules for anything to be done falls on a day that is not a business day where it is to be or may be done, it is to be or may be done on the first business day at the place after that day.
- (4) In calculating a period of time for these rules, the period beginning on 25 December in a year and ending at the end of 1 January in the next year is not to be counted.

10 Extending and shortening of time

Unless the Corporations Act, the ASIC Act or these rules otherwise provide, the rules of the court that provide for the extending or shortening of a period of time fixed for doing anything in relation to a proceeding apply to a proceeding to which these rules apply.

Part 2 Proceedings generally

11 Title of documents in a proceeding—form 1

The title of a document filed in a proceeding must be in accordance with form 1.

12 Originating process and interlocutory process—forms 2 and 3

- (1) Unless these rules otherwise provide, a person must make an application required or permitted by the Act to be made to the court—
 - (a) if the application is not made in a proceeding already commenced in the court—by filing an originating process; and
 - (b) in any other case—by filing an interlocutory process.
- (2) Unless the court otherwise directs, a person may make an application to the court in relation to a proceeding in relation to which final relief has been granted by filing an interlocutory process in the proceeding.
- (3) An originating process must—
 - (a) be in accordance with form 2; and
 - (b) state the following:
 - (i) each section of the Act or the ASIC Act, or each regulation of the Corporations Regulations, under which the proceeding is brought;
 - (ii) the relief sought.
- (4) An interlocutory process must—
 - (a) be in accordance with form 3; and
 - (b) state the following:

- (i) if appropriate, each section of the Act or the ASIC Act, or each regulation of the Corporations Regulations, or each rule of court under which the interlocutory application is made;
- (ii) the relief sought.

13 Fixing of hearing

On receiving an originating process or interlocutory process, the registrar—

- (a) must fix a time, date and place for hearing and endorse those details on the originating process or interlocutory process; and
- (b) may seal a sufficient number of copies for service and proof of service.

14 Supporting affidavits

- (1) Unless the court otherwise directs, an originating or interlocutory process must be supported by an affidavit stating the facts in support of the process.
- (2) An affidavit in support of an originating process must annex a record of a search of the records maintained by the commission, in relation to the company that is the subject of the application to which the originating process relates, carried out no earlier than 7 days before the originating process is filed.
- (3) This rule does not apply to an application by a company under the Act, section 459G for an order setting aside a statutory demand served on the company.

15 Application for order setting aside statutory demand (the Act, s 459G)

- (1) This rule applies to an application by a company under the Act, section 459G for an order setting aside a statutory demand served on the company.

- (2) The plaintiff may file a copy of the statutory demand, and a copy of any affidavit that accompanied the statutory demand, with the originating process seeking the order.
- (3) The plaintiff must—
 - (a) carry out a search of the records maintained by the commission in relation to the plaintiff not earlier than 7 days before the originating process is filed, and not later than the day before the hearing of the application; and
 - (b) either—
 - (i) annex the record of the search to the affidavit in support of the originating process; or
 - (ii) file the record of the search before, or tender it on, the hearing of the application.

16 Affidavits made by creditors

Subject to rule 36 (Affidavit in support of application for winding up), an affidavit that is to be made by a creditor may be made—

- (a) if the creditor is a corporation—by a director, secretary, or other principal officer of the corporation, or by a person employed by the corporation who is authorised to make the affidavit on its behalf; or
- (b) if the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed—by that person; or
- (c) in any other case—by the creditor or a person authorised by the creditor to make the affidavit on behalf of the creditor.

17 Form of affidavits

An affidavit must be in a form that complies with—

- (a) the rules of the court; or

- (b) the rules of the Supreme Court of the State or Territory (if any) where the affidavit was sworn or affirmed.

18 Service of originating process or interlocutory process and supporting affidavit

- (1) As soon as practicable after filing an originating process and, in any case, at least 5 days before the date fixed for hearing, the plaintiff must serve a copy of the originating process and any supporting affidavit on—
 - (a) each defendant (if any) to the proceeding; and
 - (b) if the corporation to which the proceeding relates is not a party to the proceeding—the corporation.
- (2) As soon as practicable after filing an interlocutory process and, in any case, at least 3 days before the date fixed for hearing, the applicant must serve a copy of the interlocutory process and any supporting affidavit on—
 - (a) each respondent (if any) to the interlocutory application; and
 - (b) if the corporation to which the interlocutory application relates is not a party to the interlocutory application—the corporation.

19 Notice of certain applications to be given to commission

- (1) This rule has effect in addition to the requirements of the Act that, in relation to a proceeding, particular documents are to be served on the commission or notice of particular matters is to be given to the commission.
- (2) This rule does not apply to a person making an application if the person is the commission or a person authorised by the commission.
- (3) Unless the court otherwise orders, if a person makes an application under a provision of the Act mentioned in the following table, column 2, the person must serve on the commission, a reasonable time before the hearing of the application, a copy of the originating

or interlocutory process and supporting affidavit in relation to the application.

Table of applications of which notice must be given to commission

column 1 item	column 2 provision	column 3 description of application
1	section 480	for the release of a liquidator of a company and the deregistration of the company
2	section 482 (1)	for the stay of a compulsory winding-up
3	section 509 (6)	for the deregistration of a company
4	section 536 (1)	for an inquiry into the conduct of a liquidator
5	section 601AH (2)	to reinstate the registration of a company
6	section 601CC (8)	to restore the name of an Australian body to the register
7	section 601CL (9)	to restore the name of a foreign company to the register
8	chapter 6, 6A, 6B, 6C, 6D or 7	any application under these chapters
9	section 1317S (2) and (4)	for relief from liability for contravention of a civil penalty provision

20 Notice of appearance (the Act, s 465C)—form 4

- (1) A person who intends to appear before the court at the hearing of an application must, before appearing—
- (a) file the following:
 - (i) a notice of appearance in accordance with form 4;
 - (ii) if appropriate, an affidavit stating any facts on which the person intends to rely; and
 - (b) serve on the plaintiff a copy of the notice of appearance and any affidavit not later than—

- (i) if the person is named in an originating process—3 days before the date fixed for hearing; or
 - (ii) if the person is named in an interlocutory process—1 day before the date fixed for hearing.
- (2) If the person intends to appear before the court to oppose an application for winding up, the person may include in the notice of appearance the notice of the grounds on which the person opposes the application required by the Act, section 465C.
- (3) The period prescribed for filing and serving the notice and affidavit required by the Act, section 465C is the period mentioned in subrule (1) (b) (i).

Note Under the Act, section 465C, a person may not, without the leave of the court, oppose an application for winding up unless, within the period prescribed by the rules (see r (3) of this rule), the person has filed, and served on the plaintiff, notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

21 Intervention in proceeding by commission (the Act, s 1330)—form 5

- (1) If the commission intends to intervene in a proceeding, the commission must file a notice of intervention in accordance with form 5.
- (2) Not later than 3 days before the date fixed for the hearing at which the commission intends to appear in the proceeding, the commission must serve a copy of the notice, and any affidavit on which it intends to rely, on the plaintiff and on any other party to the proceeding.

22 Publication of notices

If a rule requires a notice in relation to a body to be published in accordance with this rule, the notice must be published once in a daily newspaper circulating generally in the State or Territory where the body has its principal, or last-known, place of business.

Note Under the Act, certain notices may also be required to be published in the Gazette. Nothing in this rule is intended to affect the operation of any provision of the Act that requires publication of a notice in the Gazette.

23 Proof of publication

- (1) This rule applies in relation to any matter published in connection with a proceeding.
- (2) Unless these rules otherwise provide, or the court otherwise orders, the person responsible for the publication of the matter, or the person's legal practitioner, must file the following:
 - (a) an affidavit made by the person, or the person's legal practitioner, that states the date of publication and to which is annexed or exhibited a copy of the published matter;
 - (b) a memorandum signed by the person, or the person's legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.
- (3) The affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

24 Leave to creditor, contributory or officer to be heard

- (1) The court may grant leave to any person who is, or claims to be—
 - (a) a creditor, contributory or officer of a corporation; or
 - (b) an officer of a creditor, or contributory, of a corporation; or
 - (c) any other interested person;

to be heard in a proceeding without becoming a party to the proceeding.

- (2) If the court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party, or the corporation, which should be borne by the person to whom leave was granted, the court may—
 - (a) direct that the person pay the costs; and
 - (b) order that the person not be heard further in the proceeding until the costs are paid or secured to the court's satisfaction.
- (3) The court may order that a person who is, or claims to be, a creditor, contributory or officer of a corporation be added as a defendant to the proceeding.
- (4) The court may grant leave to a person under subrule (1), or order that a person be added as a defendant to a proceeding under subrule (3)—
 - (a) on application by the person or a party to the proceeding; or
 - (b) on the court's own initiative.
- (5) The court may—
 - (a) appoint a creditor or contributory to represent all or any class of the creditors or contributories on any question, or in relation to any proceeding, before the court, at the expense of the corporation; and
 - (b) remove any person so appointed.

25 Inquiry in relation to corporation's debts etc

The court may direct an inquiry in relation to the debts, claims or liabilities, or a class of debts, claims or liabilities, of or affecting a corporation to which a proceeding relates.

26 Meetings ordered by the court

Subject to the Act, these rules and any direction of the court to the contrary, the Corporations Regulations, regulations 5.6.12 to 5.6.36A apply to meetings ordered by the court.

Part 3

Compromises and arrangements in relation to Part 5.1 bodies

27 Application of pt 3

This part applies if an application is made to the court for approval of a compromise or arrangement between a Part 5.1 body and its creditors or members, or any class of its creditors or members.

28 Nomination of chairperson for meeting

Before the hearing of an application under the Act, section 411 (1), (1A) or (1B), the plaintiff must file an affidavit stating—

- (a) the names of the persons who have been nominated to be the chairperson and alternate chairperson of the meeting; and
- (b) that each person nominated—
 - (i) is willing to act as chairperson; and
 - (ii) has had no previous relationship or dealing with the body, or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and
 - (iii) has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson of the meeting, except as disclosed in the affidavit; and
- (c) the name of the person (if any) proposed to be appointed to administer the proposed compromise or arrangement; and
- (d) that the person does not fall within the Act, section 411 (7) (a) to (f), except as disclosed in the affidavit.

29 Order for meetings to identify proposed scheme

- (1) An order under the Act, section 411 (1) or (1A) ordering a meeting or meetings in relation to a proposed compromise or arrangement must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement.
- (2) Unless the court otherwise orders, a meeting of members ordered under the Act, section 411 must be convened, held and conducted in accordance with—
 - (a) the provisions of the Act, part 2G.2 that apply to the members of a company; and
 - (b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with the Act, part 2G.2.
- (3) Unless the court otherwise orders, a meeting of a class of holders of convertible securities ordered under the Act, section 411 must be convened, held and conducted as if—
 - (a) the holders were a separate class of members; and
 - (b) the meeting were a meeting of members convened, held and conducted under subrule (2).
- (4) However, subrule (3) only applies to a meeting of a class of holders of convertible securities to the extent that the subrule is not inconsistent with the applicable provisions of the instrument under which the securities were issued.

30 Notice of hearing (the Act, s 411 (4), s 413 (1))—form 6

- (1) This rule applies to—
 - (a) an application, under the Act, section 411 (4), for an order approving a proposed compromise or arrangement in relation to a Part 5.1 body; and

- (b) an application, under the Act, section 413 (1), for an order in relation to the reconstruction of a Part 5.1 body, or Part 5.1 bodies, or the amalgamation of 2 or more Part 5.1 bodies.
- (2) Unless the court otherwise orders, the plaintiff must publish a notice of the hearing of the application.
- (3) The notice must be—
 - (a) in accordance with form 6; and
 - (b) published in accordance with rule 22 (Publication of notices) at least 5 days before the date fixed for the hearing of the application.

31 Copy of order approving compromise or arrangement to be lodged with commission

If the court makes an order under the Act, section 411 (1), (1A) or (4) or 413 (1), the plaintiff must, as soon as practicable after the order is made—

- (a) have the order sealed; and
- (b) lodge an office copy of the order with the commission; and
- (c) serve an office copy of the order on any person appointed to administer the compromise or arrangement.

Part 4 **Receivers and other
controllers of corporation
property (the Act, part 5.2)**

32 **Inquiry into conduct of controller (the Act, s 423)**

A complaint to the court under the Act, section 423 (1) (b) about an act or omission of a receiver, or a controller appointed by the court, must be made by an originating process seeking an inquiry in relation to the complaint.

Part 5 **Winding-up proceedings (including oppression proceedings where winding up is sought)**

33 **Application of pt 5**

This part applies to the following applications for the winding up of a company:

- (a) an application for an order under the Act, part 2F.1;
- (b) an application under the Act, part 5.4 or 5.4A.

34 **Affidavit accompanying statutory demand (the Act, s 459E (3))—form 7**

For the Act, section 459E (3), the affidavit accompanying a statutory demand relating to a debt, or debts, owed by a company must—

- (a) be in accordance with form 7 and state the matters mentioned in that form; and
- (b) be made by the creditor or by a person with the authority of the creditor or creditors; and
- (c) not state a proceeding number, or refer to a court proceeding, in any heading or title to the affidavit.

35 **Application for leave to apply for winding up in insolvency (the Act, s 459P (2))**

An application for leave to apply to the court for an order that a company be wound up in insolvency may be made at the same time as the application for an order that the company be wound up in insolvency is made.

36 Affidavit in support of application for winding up (the Act, s 459P, s 462, s 464)

- (1) The affidavit in support of an originating process seeking an order that a company be wound up must be made by the plaintiff or by a person with the authority of the plaintiff or plaintiffs.
- (2) If the application is made in reliance on a failure by the company to comply with a statutory demand, the affidavit must—
 - (a) verify service of the demand on the company; and
 - (b) verify the failure of the company to comply with the demand; and
 - (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable by the company at the date when the affidavit is made.
- (3) If the application is made in reliance on the ground mentioned in the Act, section 461 (1) (a), the affidavit must—
 - (a) state whether the company is able to pay all its debts as and when they become due and payable; and
 - (b) refer to the company's most recent balance sheet and profit and loss statement as an annexure or exhibit to the affidavit, or explain their absence.
- (4) The affidavit must be made within 7 days before the originating process is filed.

37 Consent of liquidator (the Act, s 532 (9))—form 8

- (1) For the purposes of the Act, section 532 (9), the consent of an official liquidator to act as liquidator of a company must be in accordance with form 8.
- (2) In an application for an order that a company be wound up, the plaintiff must—

- (a) before the hearing of the application, file the consent mentioned in subrule (1) of an official liquidator who would be entitled to be appointed as liquidator of the company; and
 - (b) serve a copy of the consent on the company at least 1 day before the hearing.
- (3) In this rule:
liquidator does not include a provisional liquidator.

38 Notice of application for winding up—form 9

- (1) Unless the court otherwise orders, the plaintiff must publish a notice of the application for an order that a company be wound up.
- (2) The notice must be—
 - (a) in accordance with form 9; and
 - (b) published in accordance with rule 22 (Publication of notices)—
 - (i) at least 3 days after the originating process is served on the company; and
 - (ii) at least 7 days before the date fixed for hearing of the application.

39 Applicant to make copies of documents available

A copy of any document filed in a proceeding to which this part applies must be available at the plaintiff's address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor or contributory of the company.

40 Discontinuance of application for winding up

An application for an order that a company be wound up may not be discontinued except with the leave of the court.

41 Appearance before registrar

After filing an originating process seeking an order that a company be wound up, the plaintiff must, if required—

- (a) appear before the registrar on a date to be appointed by the registrar; and
- (b) satisfy the registrar that the plaintiff has complied with the Act and these rules in relation to applications for a winding-up order.

42 Order substituting plaintiff in application for winding up (the Act, s 465B)—form 10

- (1) If the court makes an order under the Act, section 465B, the court may also order that the substituted plaintiff or plaintiffs publish a notice stating that the substituted plaintiff or plaintiffs intend to apply for an order that the company be wound up.
- (2) The notice must be—
 - (a) in accordance with form 10; and
 - (b) published in accordance with rule 22 (Publication of notices) or as otherwise directed by the court.

43 Notice of winding-up order and appointment of liquidator—form 11

- (1) This rule applies if the court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.
- (2) Not later than the day after the order is made, the plaintiff must inform the liquidator of the appointment.
- (3) As soon as practicable after being informed of the appointment, the liquidator must publish a notice of the winding-up order and the liquidator's appointment.
- (4) The notice must be—

Part 5 Winding-up proceedings (including oppression proceedings where winding up is sought)

Rule 43

- (a) in accordance with form 11; and
 - (b) published in accordance with rule 22 (Publication of notices).
- (5) In this rule:
liquidator does not include a provisional liquidator.

Part 6

Provisional liquidators (the Act, part 5.4B)

44 Appointment of provisional liquidator (the Act, s 472)—form 8

- (1) An application by a company, a creditor or contributory of the company, or the commission, under the Act, section 472 (2), for an official liquidator to be appointed as a provisional liquidator of the company must be accompanied by the written consent of the official liquidator.
- (2) The consent must be in accordance with form 8.
- (3) If—
 - (a) an order is made appointing a provisional liquidator; and
 - (b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the company's property;the order must include a short description of the part of the company's property that the provisional liquidator may take into custody.
- (4) The court may require the plaintiff to give an undertaking as to damages.

45 Notice of appointment of provisional liquidator—form 12

- (1) This rule applies if the court orders that an official liquidator be appointed as a provisional liquidator of a company.
- (2) Not later than the day after the order is made, the plaintiff must—
 - (a) except if the plaintiff is the commission—lodge an office copy of the order with the commission; and

- (b) serve an office copy of the order on the company (except if the plaintiff is the company) and on any other person as directed by the court; and
 - (c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).
- (3) As soon as practicable after the order is made, the provisional liquidator must publish a notice of the provisional liquidator's appointment.
- (4) The notice must be—
- (a) in accordance with form 12; and
 - (b) published in accordance with rule 22 (Publication of notices).

Part 7 Liquidators

46 Resignation of liquidator (the Act, s 473 (1))

- (1) A liquidator appointed by the court who wishes to resign office must file with the registrar, and give to the commission, a memorandum of resignation.
- (2) The resignation takes effect on the filing and giving of the memorandum.

47 Filling vacancy in office of liquidator (the Act, s 473 (7), s 502)

- (1) If, for any reason, there is no liquidator acting in a winding-up, the court may—
 - (a) for a winding-up by the court—appoint another official liquidator whose written consent in accordance with form 8 has been filed; and
 - (b) for a voluntary winding-up—appoint another registered liquidator whose written consent in accordance with form 8 has been filed.
- (2) The court may make the appointment—
 - (a) in any case—on application by the commission, a creditor or a contributory; or
 - (b) for a winding-up by the court—on its own initiative.

48 Report to liquidator as to company's affairs (the Act, s 475)

- (1) If a person is required under the Act, section 475 to submit and verify a report as to the affairs of a company, the liquidator must give to the person the appropriate forms and instructions for the preparation of the report.

- (2) Except by order of the court, no person is to be allowed out of the property of a company any costs or expenses incurred in relation to the preparation of the report that have not been—
 - (a) sanctioned by the liquidator before being incurred; or
 - (b) taxed or assessed.
- (3) The liquidator must report to the court any default in complying with the requirements of the Act, section 475.
- (4) In this rule:

liquidator includes a provisional liquidator.

49 Liquidator to file certificate and copy of settled list of contributories (the Act, s 478)

If, in a winding-up by the court, a liquidator has settled and certified a list, or supplementary list, of contributories, the liquidator must, within 14 days after doing so, file the certificate and a copy of the list.

50 Release of liquidator and deregistration of company (the Act, s 480 (c), (d))

- (1) This rule applies to an application by the liquidator of a company—
 - (a) for an order that the liquidator be released; or
 - (b) for an order that the liquidator be released and that the commission deregister the company.
- (2) The interlocutory process seeking the order must include—
 - (a) a notice stating that any objection to the release of the liquidator must be made by filing and serving a notice of objection, in the prescribed form, within 21 days after the date of service of the interlocutory process; and

- (b) a statement setting out the terms of the Act, section 481 (3).

Note The Act, s 481 (3) provides that an order of the court releasing a liquidator discharges the liquidator from all liability in relation to any act done or default made by the liquidator in the administration of the affairs of the company, or otherwise in relation to the liquidator's conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or by concealment of any material fact.

- (3) The supporting affidavit must include details of the following matters:
- (a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding-up;
 - (b) any calls made on contributories in the course of the winding-up;
 - (c) any dividends paid in the course of the winding-up;
 - (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;
 - (e) whether the commission has appointed an auditor to report on an account or statement of the position in the winding-up under the Act, section 539 (2);
 - (f) whether the court has ordered a report on the accounts of the liquidator to be prepared;
 - (g) whether any objection to the release of the liquidator has been received by the liquidator from—
 - (i) an auditor appointed by the commission or by the court;
or
 - (ii) any creditor, contributory or other interested person;
 - (h) whether any report has been submitted by the liquidator to the commission under the Act, section 533;

- (i) whether the liquidator considers it necessary to report on the affairs of the company or any of its officers;
 - (j) any property disclaimed in the course of the winding-up;
 - (k) any remuneration paid or payable to the liquidator and how such remuneration was determined;
 - (l) any costs, charges or expenses payable by the liquidator if the court grants the liquidator's release;
 - (m) if the application is made under the Act, section 480 (c)—the facts and circumstances by reason of which it is submitted that the company should not be deregistered.
- (4) The liquidator must include in the supporting affidavit the following statements, including, if appropriate, the words in brackets:
- (a) 'To the best of my belief, there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator which is likely to give rise to any liability to the subject corporation or any creditor or contributory [except as disclosed in this affidavit]';
 - (b) 'I am not aware of any claim made by any person that there has been any such act or default [except as disclosed in this affidavit]'.
- (5) The liquidator must file with, or annex to, the supporting affidavit—
- (a) a statement of the financial position of the company at the date when the interlocutory process seeking release was filed; and
 - (b) a summary of the liquidator's receipts and payments in winding up the company.
- (6) Unless the court otherwise orders, the liquidator must serve by prepaid post, on each creditor who has proved a debt in the course of the winding-up, and on each contributory, a copy of the interlocutory process accompanied by—

- (a) a copy of the summary of the liquidator's receipts and payments in winding up the company; and
- (b) a copy of the statement of the financial position of the company at the date when the interlocutory process seeking release was filed.

51 Objection to release of liquidator—form 13

- (1) A creditor or contributory of a company who wishes to object to the release of the liquidator of the company must, within 21 days after the date of service of the interlocutory process seeking release—
 - (a) file—
 - (i) a notice of objection in accordance with form 13; and
 - (ii) if appropriate, an affidavit stating any facts relied on; and
 - (b) serve a copy of the notice and the affidavit (if any) on the liquidator.
- (2) If the liquidator is served with a notice of objection by a creditor or contributory, the liquidator must, within 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory process.

52 Report on accounts of liquidator (the Act, s 481)

- (1) If the court orders that a report on the accounts of a liquidator be prepared under the Act, section 481 (1), the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.
- (2) On completing the report, the auditor must—
 - (a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words 'Auditor's report under the Corporations Act, section 481 (1)'; and
 - (b) serve a copy of the report on the liquidator; and

- (c) give a copy of the report to the commission.
- (3) Except with the leave of the court, a report is not available for inspection by any person except the liquidator or the commission.

53 Application for payment of call (the Act, s 483 (3) (b))—form 14

The affidavit in support of an application by the liquidator of a company, under the Act, section 483 (3) (b), for an order for the payment of a call must be in accordance with form 14.

54 Distribution of surplus by liquidator with special leave of the court (the Act, s 488 (2))—form 15

- (1) The affidavit in support of an application for special leave to distribute a surplus must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator intends to distribute any part of the surplus.
- (2) At least 14 days before the date fixed for the hearing of the application, the liquidator must publish a notice of the application.
- (3) The notice must be—
 - (a) in accordance with form 15; and
 - (b) published in accordance with rule 22 (Publication of notices).

55 Powers delegated to liquidator by the court (the Act, s 488)

Subject to the Corporations Act, these rules and any order of the court, the powers and functions given to the court by the Act, part 5.4B in relation to the matters mentioned in the Act, section 488 (1) may be exercised by a liquidator appointed by the court as an officer of the court and subject to the control of the court.

56 Inquiry into conduct of liquidator (the Act, s 536 (1), s 536 (2))

- (1) A complaint to the court under the Act, section 536 (1) (b) must be made—
 - (a) for a winding-up by the court—by an interlocutory process seeking an inquiry; and
 - (b) for a voluntary winding-up—by an originating process seeking an inquiry.
- (2) A report to the court by the commission under the Act, section 536 (2) must be made—
 - (a) for a winding-up by the court—by filing—
 - (i) an interlocutory process seeking orders under the subsection; and
 - (ii) a written report in a sealed envelope that is marked with the title and number of the proceeding; and
 - (b) for a voluntary winding-up—by filing—
 - (i) an originating process seeking orders under the subsection; and
 - (ii) a written report in a sealed envelope that is marked with the title of the proceeding and provision for its number.
- (3) The contents of a report filed under subrule (2) need not, at the time of filing, be verified by an affidavit.
- (4) Except with the leave of the court, a report made under the Act, section 536 (2) is not available for inspection by anyone except the liquidator or the commission.
- (5) In this rule:
liquidator includes a provisional liquidator.

Part 8 **Special managers (the Act, part 5.4B)**

57 **Application for appointment of special manager (the Act, s 484)**

- (1) An application by a liquidator for the appointment of a special manager in relation to a company must state the powers that, in the liquidator's opinion, should be entrusted by the court to the special manager.
- (2) The supporting affidavit must state—
 - (a) the circumstances making it proper that a special manager be appointed; and
 - (b) details of the remuneration proposed to be paid to the special manager; and
 - (c) whether any committee of inspection in the winding-up, or a meeting of creditors, has approved the appointment of a special manager.

58 **Security given by special manager (the Act, s 484)**

- (1) The court may, from time to time, direct that the amount of security given by a special manager be varied.
- (2) Unless the court otherwise directs, the costs of providing the security given by a special manager in relation to a particular winding-up—
 - (a) are the personal expenses of the special manager; and
 - (b) must not be charged against the property of the company as an expense incurred in the winding-up.

59 Special manager's receipts and payments (the Act, s 484)

- (1) A special manager must give to the liquidator—
 - (a) an account of the special manager's receipts and payments; and
 - (b) a statutory declaration verifying the account.
- (2) If the liquidator approves the account, the liquidator must include the total amounts of the special manager's receipts and payments in the liquidator's accounts.

- (ii) each member of the corporation whose shareholding represents at least 10% of the issued capital of the corporation.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or any person mentioned in subrule (2) (c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3)—
 - (a) the receiver may file an affidavit, made after the end of that period, in support of the originating or interlocutory process seeking the order stating—
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
 - (ii) that the receiver has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
 - (b) the receiver may endorse the originating or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and
 - (c) the application may be so dealt with.
- (5) If the receiver receives a notice of objection within the period mentioned in subrule (3), the receiver must serve a copy of the originating or interlocutory process seeking the order on each creditor or contributory, or other person, who has given a notice of objection.
- (6) An affidavit in support of the originating or interlocutory process seeking the order must—
 - (a) state the nature of the work carried out by the receiver; and

- (b) state the amount of remuneration claimed; and
- (c) include a summary of the receipts taken and payments made by the receiver for the period for which remuneration is claimed; and
- (d) state particulars of any objection of which the receiver has received notice; and
- (e) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

61 Remuneration of administrator (the Act, s 449E (1))—form 16

- (1) This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under the Act, section 449E (1) fixing the administrator's remuneration.
- (2) The administrator must not apply for the order until after the date of the meeting of creditors mentioned in the Act, section 449E (1) (a).
- (3) At least 21 days before filing an originating or interlocutory process seeking the order, the administrator must serve a notice in accordance with form 16 of the administrator's intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following persons:
 - (a) each creditor who was present, in person or by proxy at the meeting of creditors;
 - (b) each member of any committee of creditors;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.

- (5) If the administrator does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the administrator may file an affidavit, made after the end of that period, in support of the originating or interlocutory process seeking the order stating—
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
 - (b) the administrator may endorse the originating or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and
 - (c) the application may be so dealt with.
- (6) If the administrator receives a notice of objection within the period mentioned in subrule (4), the administrator must serve a copy of the originating or interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the originating or interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the administrator; and
 - (b) state the amount of remuneration claimed; and
 - (c) include a summary of the receipts taken and payments made by the administrator for the period for which remuneration is claimed; and
 - (d) state particulars of any objection of which the administrator has received notice; and

- (e) if the administration is continuing—give details of any matters delaying the completion of the administration.

62 Remuneration of provisional liquidator (the Act, s 473 (2))—form 16

- (1) This rule applies to an application by a provisional liquidator of a company for an order under the Act, section 473 (2) determining the provisional liquidator's remuneration.
- (2) The application must be made by interlocutory process in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the provisional liquidator must serve a notice in accordance with form 16 of the provisional liquidator's intention to apply for the order, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following persons:
 - (a) any liquidator (except the provisional liquidator) of the company;
 - (b) each member of any committee of creditors or, if there is no committee of creditors, each of the 5 largest (measured by amount of debt) creditors of the company;
 - (c) each member of the company whose shareholding represents at least 10 % of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4)—
 - (a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—

- (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that the provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
 - (b) the provisional liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and
 - (c) the application may be so dealt with.
- (6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory process seeking the order—
- (a) on each creditor or contributory who has given a notice of objection; and
 - (b) on the liquidator (if any).
- (7) An affidavit in support of the interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the provisional liquidator; and
 - (b) state the amount of remuneration claimed; and
 - (c) include a summary of the receipts taken and payments made by the provisional liquidator for the period for which remuneration is claimed; and
 - (d) state particulars of any objection of which the provisional liquidator has received notice; and
 - (e) if the winding-up proceeding has not been completed—give details of—
 - (i) any reasons known to the provisional liquidator why the winding-up proceeding has not been completed; and

- (ii) any reasons why the provisional liquidator's remuneration should be determined before the completion of the winding-up proceeding.

63 Remuneration of liquidator (the Act, s 473 (3))—form 16

- (1) This rule applies to an application by a liquidator of a company for an order under the Act, section 473 (3) determining the liquidator's remuneration.
- (2) The application—
 - (a) must be made by interlocutory process in the winding-up proceeding; and
 - (b) must not be made until after the date of the meeting of creditors mentioned in the Act, section 473 (4).
- (3) At least 21 days before filing the interlocutory process seeking the order, the liquidator must serve a notice in accordance with form 16 of the liquidator's intention to apply for the order, and a copy of any affidavit on which the liquidator intends to rely, on the following persons:
 - (a) each creditor who was present, in person or by proxy, at the meeting of creditors;
 - (b) each member of any committee of creditors;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the liquidator does not receive a notice of objection within the period mentioned in subrule (4)—

- (a) the liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that the liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
 - (b) the liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and
 - (c) the application may be so dealt with.
- (6) If the liquidator receives a notice of objection within the period mentioned in subrule (4), the liquidator must serve a copy of the interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the liquidator; and
 - (b) state the amount of remuneration claimed; and
 - (c) include a summary of the receipts taken and payments made by the liquidator for the period for which remuneration is claimed; and
 - (d) state particulars of any objection of which the liquidator has received notice; and
 - (e) if the winding-up is continuing—give details of any matters delaying the completion of the winding-up.

64 Remuneration of special manager (the Act, s 484 (2))—form 16

- (1) This rule applies to an application by a special manager of the property or business of a company for an order under the Act, section 484 (2) fixing the special manager's remuneration.
- (2) The application must be made by interlocutory process in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the special manager must serve a notice in accordance with form 16 of the special manager's intention to apply for the order, and a copy of any affidavit on which the special manager intends to rely, on the following persons:
 - (a) the liquidator of the company;
 - (b) each member of any committee of creditors or, if there is no committee of creditors, each of the 5 largest (measured by amount of debt) creditors of the company;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the special manager does not receive a notice of objection within the period mentioned in subrule (4)—
 - (a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

- (ii) that the special manager has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
 - (b) the special manager may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and
 - (c) the application may be so dealt with.
- (6) If the special manager receives a notice of objection within the period mentioned in subrule (4), the special manager must serve a copy of the interlocutory process seeking the order—
 - (a) on each creditor or contributory who has given a notice of objection; and
 - (b) on the liquidator.
- (7) The affidavit in support of the interlocutory process seeking the order must—
 - (a) state the nature of the work carried out by the special manager; and
 - (b) state the amount of remuneration claimed; and
 - (c) include a summary of the receipts taken and payments made by the special manager for the period for which remuneration is claimed; and
 - (d) state particulars of any objection of which the special manager has received notice; and
 - (e) if the special management is continuing—give details of any matters delaying the completion of the special management.

Part 10 Winding-up generally

65 Determination of value of debts or claims (the Act, s 554A (2))

A reference to the court by a liquidator of a company under the Act, section 554A (2) (b) must be made—

- (a) for a winding-up by the court—by filing an interlocutory process seeking an order estimating, or determining a method for working out, the value of the debt or claim; and
- (b) for a voluntary winding-up—by filing an originating process seeking an order estimating, or determining a method for working out, the value of the debt or claim.

66 Disclaimer of contract (the Act, s 568 (1A))

- (1) The affidavit in support of an application by a liquidator, under the Act, section 568 (1A), for leave to disclaim a contract in relation to a company must—
 - (a) specify the persons interested, and their interests, under the contract; and
 - (b) state the facts on which it is submitted that the contract should be disclaimed.
- (2) The liquidator must serve the affidavit on each party to the contract (except the company) and on any person interested in the contract.

67 Winding-up Part 5.7 bodies (the Act s 583, s 585) and registered schemes (the Act, s 601ND)

These rules apply, with any necessary changes, and in the same way as they apply to a company, in relation to the winding-up of a Part 5.7 body or a registered scheme.

Part 11 Examinations and orders (the Act, part 5.9, divisions 1 and 2)

68 Meaning of *examination summons* in pt 11

In this part:

examination summons means a summons under the Act, section 596A or 596B for the examination of a person about a corporation's examinable affairs.

69 Application for examination or investigation under the Act, s 411 (9) (b), s 423 or s 536 (3)

- (1) An application for an order for the examination or investigation of a person under the Act, section 411 (9) (b), 423 or 536 (3) may be made by—
 - (a) the commission; or
 - (b) a person authorised by the commission; or
 - (c) a creditor or contributory; or
 - (d) anyone else aggrieved by the conduct of—
 - (i) a person appointed to administer a compromise or arrangement; or
 - (ii) a controller; or
 - (iii) a liquidator or provisional liquidator.
- (2) The application may be made without notice to any person.
- (3) The provisions of this part that apply to an examination under the Act, part 5.9, division 1 apply, with any necessary changes, to an examination or an investigation under the Act, section 411 (9) (b), 423 or 536 (3).

70 Application for examination summons (the Act, s 596A, s 596B)—form 17

- (1) An application for the issue of an examination summons must be made by filing an interlocutory or originating process.
- (2) The application may be made without notice to any person.
- (3) The originating or interlocutory process seeking the issue of the examination summons must be—
 - (a) supported by an affidavit stating the facts in support of the process; and
 - (b) accompanied by a draft examination summons.
- (4) The originating or interlocutory process and supporting affidavit must be filed in a sealed envelope marked, as appropriate—
 - (a) ‘Application and supporting affidavit for issue of summons for examination under the Corporations Act, section 596A’; or
 - (b) ‘Application and supporting affidavit for issue of summons for examination under the Corporations Act, section 596B’.
- (5) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with a copy of the originating or interlocutory process and the supporting affidavit.
- (6) If the application is not made by the commission, the commission must be given notice of the application and, if required by the commission, served with a copy of the originating or interlocutory process and the supporting affidavit.
- (7) Unless the court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by anyone.
- (8) An examination summons must be in accordance with form 17.

71 Service of examination summons

An examination summons issued by the court must be personally served, or served in any other manner as the court may direct, on the person who is to be examined at least 8 days before the date fixed for the examination.

72 Discharge of examination summons

- (1) This rule applies if a person is served with an examination summons.
- (2) Within 3 days after the person is served with the examination summons, the person may apply to the court for an order discharging the summons by filing—
 - (a) an interlocutory process seeking an order discharging the summons; and
 - (b) an affidavit stating the facts in support of the interlocutory process.
- (3) As soon as practicable after filing the interlocutory process seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory process and the supporting affidavit on—
 - (a) the person who applied for the examination; and
 - (b) unless that person is the commission or a person authorised by the commission—the commission.

73 Filing of record of examination (the Act, s 597 (13))

If the court makes an order in relation to an examination under the Act, section 597 (13), the court may give directions for the filing of the written record of the examination.

74 Authentication of transcript of examination (the Act, s 597 (14))

For the Act, section 597 (14), a transcript of an examination may be authenticated—

- (a) by the persons who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing signed by them, that the record is a true transcript of the record of examination; or
- (b) by anyone present at the examination, or any part of the examination, signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

75 Inspection of record or transcript of examination or investigation under the Act, s 411, s 423 or s 536

- (1) A written record or transcript of an examination or investigation under the Act, section 411, 423 or 536 is not available for inspection by any person except—
 - (a) with the consent of the liquidator (if any) or the commission; or
 - (b) by leave of the court.
- (2) This rule does not apply to the liquidator, the commission or anyone authorised by the commission.

76 Entitlement to record or transcript of examination held in public

- (1) This rule applies if—
 - (a) an examination under the Act, section 597 is held completely or partly in public; and
 - (b) a written record or transcript of the examination is filed in the court.

- (2) The person examined may apply to the registrar, within 3 years after the completion of the examination, for a copy of the record or transcript of the part of the examination of the person held in public.
- (3) On receiving an application from a person under subrule (2), and any applicable fee, the registrar must give a copy of the record or transcript to the person.

77 Default in relation to examination

- (1) This rule applies if a person is summoned or ordered by the court to attend for examination, and—
 - (a) without reasonable cause, the person fails—
 - (i) to attend at the time and place appointed; or
 - (ii) to attend from day to day until the completion of the examination; or
 - (iii) to take an oath or make an affirmation; or
 - (iv) to answer a question that the court directs the person to answer; or
 - (v) to produce books that the summons requires the person to produce; or
 - (vi) to comply with a requirement by the court to sign a written record of the examination; or
 - (b) before the day fixed for the examination, the person who applied for the summons or order satisfies the court that there is reason to believe that the person summoned or ordered to attend for examination has absconded or is about to abscond.
- (2) The court may—
 - (a) issue a warrant for the arrest of the person summoned or ordered to attend for examination; and
 - (b) make any other orders that the court considers just or necessary.

78 Service of application for order in relation to breaches etc by person concerned with corporation (the Act, s 598)

- (1) This rule applies to a person applying for an order under the Act, section 598.
- (2) In addition to complying with rule 18 (Service of originating process or interlocutory process and supporting affidavit) and rule 19 (Notice of certain applications to be given to commission), the person must serve a copy of the originating or interlocutory process and the supporting affidavit on any liquidator or provisional liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

Note Under r 18, a plaintiff must serve a copy of the originating process, and any supporting affidavit, on a defendant to the proceeding and, if necessary, on the corporation to which the proceeding relates; and an applicant must serve a copy of an interlocutory process, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates. In certain cases, these documents may also be required to be served on the commission—see r 19.

Part 12

Takeovers, acquisitions of shares and other matters (the Act, chapters 6 to 6D) and securities (the Act, chapter 7)

79 Service on commission in relation to proceedings under the Act, ch 6 to 7

If the commission is not a party to an application made under the Act, chapter 6, 6A, 6B, 6C, 6D or 7, the plaintiff must serve a copy of the originating process and the supporting affidavit on the commission as soon as practicable after filing the originating process.

80 Application for summons for appearance of person (the Act, s 1092 (3))—form 18

- (1) An application for the issue of a summons under the Act, section 1092 (3) must be made by filing an originating or interlocutory process.
- (2) The applicant may be the only party to the application.
- (3) The originating or interlocutory process seeking the issue of the summons must be—
 - (a) supported by an affidavit stating the facts in support of the process; and
 - (b) accompanied by a draft summons.
- (4) Unless the court otherwise orders, a summons issued under this rule is to be in accordance with form 18.

81 Application for orders relating to refusal to register transfer or transmission of shares etc (the Act, s 1094)

As soon as practicable after filing an originating process seeking an order under the Act, section 1094, the plaintiff must serve a copy of the originating process and the supporting affidavit on—

- (a) the company; and
- (b) anyone against whom an order is sought.

Part 13 The futures industry (the Act, chapter 8)

82 Appeal against decision of futures exchange or futures association (the Act, s 1135)

For the Act, section 1135 (1), a written notice of appeal against a decision of a futures exchange or futures association must—

- (a) be in the form of an originating process; and
- (b) state whether all or part of the decision is complained of and, if part only, identify that part; and
- (c) state concisely the grounds of appeal.

83 Proceedings against futures organisation to establish claim against fidelity fund (the Act, s 1243)

A person who has been given leave by the court, under the Act, section 1243 (3), to bring a proceeding to establish a claim against the fidelity fund of a futures organisation may bring the claim in the proceeding in which the leave was granted.

Part 14 Powers of courts (the Act, part 9.5)

84 Appeal from act, omission or decision of administrator, receiver or liquidator etc (the Act, s 554A, s 1321)

- (1) All appeals to the court authorised by the Act must be commenced by an originating or interlocutory process that states—
 - (a) the act, omission or decision complained of; and
 - (b) for an appeal against a decision—whether all or part of the decision is complained of and, if part only, identifying that part; and
 - (c) the grounds on which the complaint is based.
- (2) Unless the Act otherwise provides, the originating or interlocutory process must be filed within—
 - (a) 21 days after the date of the act, omission or decision appealed against; or
 - (b) any further time allowed by the court.
- (3) The court may extend the time for filing the originating or interlocutory process either before or after the time for filing expires and whether or not the application for extension is made before the time expires.
- (4) As soon as practicable after filing the originating or interlocutory process and, in any case, at least 5 days before the date fixed for hearing, the person instituting the appeal must serve a copy of the process, and any supporting affidavit, on each person directly affected by the appeal.
- (5) As soon as practicable after being served with a copy of the originating or interlocutory process and any supporting affidavit, a

person whose act, omission or decision is being appealed against must file an affidavit—

- (a) stating the basis on which the act, omission or decision was done or made; and
- (b) annexing or exhibiting a copy of all relevant documents that have not been put in evidence by the person instituting the appeal.

Part 15 Proceedings under the ASIC Act

85 Reference to court of question of law arising at hearing of commission (ASIC Act, s 61)

The procedures in the *Federal Court Rules*, order 50 apply, with any necessary changes, to a reference of a question of law arising at a hearing by the commission to the court under the ASIC Act, section 61.

86 Application for inquiry (ASIC Act, s 70, s 201, s 219)

An application for an inquiry under ASIC Act, section 70 (3), 201 (3) or 219 (7) must be made by filing an originating process seeking an inquiry and orders under the relevant subsection.

Schedule 1 Forms

(see r 6)

Form 1 Document title

(see r 11)

In the Supreme Court
of the Australian Capital Territory

No of [year]

In the matter of [*full name of corporation to which the proceeding relates and, if applicable, the words ‘(in liquidation)’, ‘(receiver appointed)’, ‘(receiver and manager appointed)’, ‘(controller acting)’, or ‘(under administration)’*]

ACN or ARBN: [*insert ACN or ARBN*]

AB (and others)

Plaintiff(s)

[*list, in a schedule, any further plaintiffs*]

CD (and others)

Defendant(s)

[*list, in a schedule, any further defendants*]

(c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

<i>Note</i>	Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court gives leave.
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**C APPLICATION FOR WINDING UP ON GROUND OF
 INSOLVENCY**

[Complete this section if this originating process is seeking an order that a company be wound up in insolvency on the ground that the company has failed to comply with a statutory demand (see the Corporations Act, section 459Q.)]

[Set out particulars of service of the statutory demand on the company and of the failure to comply with the demand.]

[Attach to this originating process a copy of the statutory demand and, if the demand has been varied by an order made under the Corporations Act, section 459H (4) because of a dispute or offsetting claim, a copy of the order made under that subsection.]

[The affidavit in support of this originating process must:

- (a) verify service of the demand on the company; and*
- (b) verify the failure of the company to comply with the demand; and*
- (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable at the date when the affidavit is made.]*

D FILING

Date of filing: *[date of filing to be entered by Registrar]*

Registrar

Schedule 1	Forms
Form 2	Originating process

This originating process is filed by *[name]* for the plaintiff.

E SERVICE

The plaintiff's address for service is *[address of plaintiff's legal practitioner or of plaintiff]*.

*It is not intended to serve a copy of this originating process on any person.

OR

*It is intended to serve a copy of this originating process on each defendant and on any person listed below:

[name of defendant and any other person on whom a copy of the originating process is to be served]

[Complete the following section if the time for service has been shortened]

The time by which a copy of this originating process is to be served has been shortened by order made by *[name of Judge or other Court officer]* on *[date]* to *[time and date]*.

*Omit if not applicable

Form 3 Interlocutory process

(see r 12)

[*Title*]

A DETAILS OF INTERLOCUTORY APPLICATION

*This interlocutory application is made under *section/*regulation [number] of the *Corporations Act/*ASI Law/*Corporations Regulations.

On the facts stated in the supporting affidavit(s), the applicant, [name], applies for the following interlocutory relief:

1

2

etc

AND

Date:

Signature of applicant making this application
or applicant's legal practitioner

This interlocutory application will be heard by the Supreme Court at Knowles
Place, Canberra City at *am/*pm on

.

B NOTICE TO RESPONDENT(S) (IF ANY)

TO: [*name and address of each respondent to this interlocutory process (if any). If applicable, also state the respondent's address for service.*]

If you or your legal practitioner do not appear before the Court at that time, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

Schedule 1	Forms
Form 3	Interlocutory process

<i>Note</i>	Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.
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C FILING

This interlocutory process is filed by [*name*] for the applicant.

D SERVICE

The applicant's address for service is [*address of applicant's legal practitioner or of applicant*].

*It is not intended to serve a copy of this interlocutory process on any person.

OR

*It is intended to serve a copy of this interlocutory process on each respondent and on any person listed below:

[*name of respondent and any other person on whom a copy of the interlocutory process is to be served*]

[Complete the following section if the time for service has been shortened]

The time by which a copy of this interlocutory process is to be served has been shortened by order made by [*name of Judge or other Court officer*] on [*date*] to [*time and date*].

*Omit if not applicable

Form 4 Notice of appearance

(see r 20)

[Title]

A DETAILS OF PERSON INTENDING TO APPEAR

Notice is given that [*state full name and address*], [*briefly state your interest in the proceeding, eg a creditor for \$ (amount), or a contributory, of the corporation*] intends to appear before the Court at the hearing of the application to be heard on [*date*] and, if applicable, to *oppose/*support the application.

<i>Note</i>	Unless the Court otherwise orders, a defendant or respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.
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B GROUNDS OF OPPOSITION TO WINDING UP

[*Complete this section only if you are opposing an application to wind up a company*]

The grounds on which I oppose the application for winding up are:

1

2

etc

C SERVICE

[*This section must be completed*]

The address for service of the person giving this notice is [*address of person's legal practitioner or of person*].

Signature of person giving notice
or of person's legal practitioner

**Omit if not applicable*

Schedule 1 Forms

Form 5 Notice of intervention by the commission

Form 5 **Notice of intervention by the
commission**

(see r 21)

[*Title*]

The Australian Securities and Investments Commission, whose address for service is [*address*], intervenes in this proceeding.

Date:

Signed on behalf of the Commission

Name of signatory: [*name*].

Capacity of signatory: [*capacity*].

Form 6**Notice of hearing to approve
compromise or arrangement**

(see r 30)

TO all the creditors and members of [*name of company*].

TAKE NOTICE that at 10 am (or as soon after that time as the business of the Court will allow) on _____, the Supreme Court at Knowles Place, Canberra City will hear an application by [*name of plaintiff*] seeking the approval of a compromise or arrangement between the company and its *members/*creditors as proposed by a resolution passed by the meeting of the *members/*creditors of the company held on [*date*].

[Complete this section if applicable]

The proposed compromise or arrangement as passed by the meeting was amended from the form of compromise or arrangement previously sent to you in the following respects:

[Set out the details of any amendment made at the meeting]

If you wish to oppose the approval of the compromise or arrangement, you must file and serve on the plaintiff a notice of appearance, in the prescribed form, together with any affidavit on which you wish to rely at the hearing. The notice of appearance and affidavit must be served on the plaintiff at its address for service at least 1 day before the date fixed for the hearing of the application.

[This section must be completed]

The address for service of the plaintiff is [*address of plaintiff's legal practitioner or of plaintiff*].

Name of person giving notice or of person's legal practitioner [*name*]

**Omit if not applicable*

Form 7 Affidavit accompanying statutory demand

(see r 34)

[Name of creditor(s)]

Creditor(s)

[Name of debtor company]

Debtor company

I, [name] of [address and occupation], *say on oath/*affirm [*or* *make oath and say/*solemnly and sincerely declare and affirm]:

- 1 I am [state deponent's relationship to the creditor(s), eg, 'the creditor', '(name), one of the creditors', 'a director of the creditor', 'a director of (name), one of the creditors'] in relation to *a debt of \$[amount]/*debts totalling \$[amount] owed by [name of debtor company] to *it/*them relating to [state nature of debt, or debts, ensuring that what is stated corresponds with the description of the debt, or debts, to be given in the proposed statutory demand, with which this affidavit is to be served on the debtor company].
- 2 [If the deponent is not the creditor, state the facts entitling the deponent to make the affidavit, eg 'I am authorised by the creditor(s) to make this affidavit on its/their behalf].
- 3 [State the source of the deponent's knowledge of the matters stated in the affidavit in relation to the debt or each of the debts, eg 'I am the person who, on behalf of the creditor(s), had the dealings with the debtor company that gave rise to the debt', 'I have inspected the business records of the creditor in relation to the debtor company's account with the creditor'].
- 4 *The debt/*The total of the amounts of the debts, mentioned in paragraph 1 of this affidavit, is due and payable by the debtor company.

5 I believe that there is no genuine dispute about the existence or amount of the *debt/*any of the debts.

*Sworn/*affirmed at: [*place of swearing or affirmation*] on [*date*]

OR

*Sworn/*affirmed by the deponent at: [*place of swearing or affirmation*]
this day of [*month*] [*year*]

Signature of deponent

Before me:

Signature and designation of
person before whom deponent
swears or affirms affidavit

**Omit if not applicable*

<i>Note</i>	The form of this affidavit may be changed to comply with the form of affidavit used in a particular State or Territory—see rule 17.
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Schedule 1 Forms

Form 8 Consent of liquidator/provisional liquidator

Form 8 **Consent of liquidator/provisional liquidator**

(see r 37, r 44)

[*Title*]

I, [*name*], of [*address*], an official liquidator, consent to be appointed by the Court and to act as the *liquidator/*provisional liquidator of [*name of company*].

I am not aware of any conflict of interest or duty that would make it improper for me to act as *liquidator/*provisional liquidator of the company.

Date:

Signature of official liquidator

**Omit if not applicable*

Form 9**Notice of application for winding-up order**

(see r 38)

In the Supreme Court
of the Australian Capital Territory

No _____ of [year]

[Name of company]

ACN: [ACN of company to which proceeding relates]

- 1 A proceeding for the winding up of [name of company] was commenced by the plaintiff, [name of plaintiff], on [date of filing of originating process] and will be heard by the Supreme Court at Knowles Place, Canberra City at 10 am (or as soon after that time as the business of the Court will allow) on
Copies of documents filed may be obtained from the plaintiff's address for service.
- 2 The plaintiff's address for service is [address of plaintiff's legal practitioner or of plaintiff].
- 3 Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the plaintiff at the plaintiff's address for service at least 3 days before the date fixed for the hearing.

Date:

Name of plaintiff or plaintiff's legal practitioner: [name].

*Omit if not applicable

Form 10 **Notice of application for winding-up order by substituted plaintiff**

(see r 42)

In the Supreme Court
of the Australian Capital Territory

No _____ of [year]

[Name of company]

ACN: [ACN of company to which proceeding relates]

- 1 [Name of substituted plaintiff], who was, by order of the Supreme Court, substituted as a plaintiff, will apply to the Court at 10 am (or as soon after that time as the business of the Court will allow) on _____ at Knowles Place, Canberra City for an order that the company be wound up.
- 2 The address for service of the substituted plaintiff is [address of substituted plaintiff's legal practitioner or of substituted plaintiff].
- 3 Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the substituted plaintiff at its address for service at least 3 days before the date fixed for the hearing.

Date:

Signature of person giving notice
or of person's legal practitioner

*Omit if not applicable

Form 11**Notice of winding-up order and of
appointment of liquidator**

(see r 43)

In the Supreme Court
of the Australian Capital Territory

No of [year]

In the matter [*name of company to which the proceeding relates*]

ACN: [*ACN of company to which proceeding relates*]

On [date], the Supreme Court in Proceeding No of [year], ordered the winding up of [*name of company*] and I was appointed as liquidator of the company.

Date:

Name and address of liquidator: [*name and address*].

Schedule 1 Forms

Form 12 Notice of appointment of provisional liquidator

Form 12 **Notice of appointment of
provisional liquidator**

(see r 45)

In the Supreme Court
of the Australian Capital Territory

No of [year]

In the matter [*name of company to which the proceeding relates*]

ACN: [*ACN of company to which proceeding relates*]

On [date], in Proceeding No of [year], heard by the Supreme Court, I
was appointed as the provisional liquidator of the company.

Date:

Name and address of provisional liquidator: [*name and address*].

Form 13**Notice by creditor or contributory
of objection to release of liquidator**

(see r 51)

[Title]

[Name of creditor/contributory] of *[address of creditor/contributory]*, a creditor of *[name of company]* for \$ *[amount]*, or a contributory of *[name of company]* holding *[number]* shares in the company, objects to the grant of a release to *[name of liquidator]* of *[address of liquidator]*, who is the liquidator of *[name of company]*, on the following grounds:

[set out the grounds upon which the objection is made]

Date:

Signature of objector or
objector's legal practitioner

Name of objector or objector's legal practitioner: *[name]*.

The objector's address for service is *[address of objector or objector's legal practitioner]*.

Form 14 Affidavit in support of application for order for payment of call

(see r 53)

[Title]

I, [name] of [address], liquidator, *say on oath/*affirm [or *make oath and say/*solemnly and sincerely declare and affirm]:

- 1 I am the liquidator of [name of company] (the company).
- 2 On [date] I made a call of \$ [amount] per share on all the contributories of the company [or specify the class of contributories on whom the call was made]. *Annexed/*Exhibited and marked **A** is a copy of the notice of the call. Each contributory whose name is shown in the schedule marked **B** was duly served with notice of the call in the form annexed or exhibited and marked **A**.
- 3 Each contributory of the company whose name is set out in column 2 of the schedule marked **B** has not paid, or caused to be paid, to me the amount specified opposite the contributory's name in column 5 of the schedule, which is due from that contributory under the call.
- 4 The amount set out opposite the name of each contributory in column 6 of the schedule is an estimate of the amount due by that contributory in relation to the costs of applying for and giving effect to the order for payment of the call. The estimate of the amounts so due by the several contributories has been reached by apportioning the costs among the contributories who have not paid the call according to the liability of the respective contributories to contribute.
- 5 The amount set out opposite the name of each contributory in column 7 of the schedule is the total of the amount due by that contributory in relation to the call as set out in column 5 and the amount due in relation to costs as set out in column 6.

*Sworn/*affirmed at: [place of swearing or affirmation] on [date]

OR

*Sworn/*affirmed by the deponent at: [*place of swearing or affirmation*]
 this day of [*month*] [*year*]

Signature of deponent

Before me:

Signature and designation of
 person before whom deponent
 swears or affirms affidavit

**Omit if not applicable*

<i>Note</i>	The form of this affidavit may be changed to comply with the form of affidavit used in a particular State or Territory—see rule 17.
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Schedule B

number on list of contributories	name	address	character in which included in the list	unpaid amount of call	proportion of costs of application	total amount payable
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Schedule 1 Forms

Form 15 Notice of application for leave to distribute a surplus

Form 15 **Notice of application for leave to distribute a surplus**

(see r 54)

In the Supreme Court
of the Australian Capital Territory

No of [year]

In the matter [*name of company to which the proceeding relates*]

ACN: [*ACN of company to which proceeding relates*]

On at ., the
will hear an application by the liquidator of [*name of company*] in
Proceeding No of [year] for leave to distribute a surplus in relation to the
liquidation of the company.

Any person intending to appear at the hearing must file a notice of
appearance, in accordance with the prescribed form, together with any
affidavit on which the person intends to rely, and serve a copy of the notice
and affidavit on the liquidator at the address shown below at least 3 days
before the date fixed for the hearing.

Name of liquidator: [*name*].

The liquidator's address for service is [*address*].

Signature of liquidator

Form 16**Notice of intention to apply for remuneration**

(see rr 60-64)

IN THE MATTER OF [*company name*]

ACN: [*ACN of company to which proceeding relates*]

TO: [*name and address of person to whom notice is given*]

TAKE NOTICE that, not less than 21 days after this notice is served on you, I, [*name and address*], the *receiver/*administrator/*liquidator/*provisional liquidator/*special manager of the above company, intend to apply to the Court to determine my remuneration.

If you object to my application, you must, within 21 days after being served with this notice, serve on me a notice of objection stating the grounds of objection to the remuneration claimed.

Date:

Signature of *receiver/*administrator/*liquidator/
*provisional liquidator/*special manager

**Omit if not applicable*

Form 18**Summons for appearance in
relation to registration of transfer
of interests**

(see r 80)

[*Title*]

TO: [*name and address*]

You are required to appear before the Supreme Court at Knowles Place,
Canberra City at 10 am on
and show cause why the document(s) specified in the schedule should not
be *delivered up/*produced at the office of [*name of company*] at [*address
of company*] within [*period as ordered*], as required by the attached notice.

The address for service of the person applying for this summons is [*address
of person's legal practitioner or of person*].

Date:

Registrar

**Omit if not applicable*

Schedule

[*description of document(s)*]

Endnote**Notification**

1 Notified in Gazette 2001 No S46 on 16 July 2001.