



Australian Capital Territory

Court Procedures Amendment Rules 2008 (No 1)

Subordinate Law SL2008-25

We, members of the rule-making committee, make the following rules under the *Court Procedures Act 2004*, section 7.

Dated 18 June 2008.

T J HIGGINS

Chief Justice

M F GRAY

President of the Court of Appeal

R REFSHAUGE

Judge

R CAHILL

Chief Magistrate

J BURNS

Magistrate



Australian Capital Territory

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Subordinate Law SL2008-25

made under the

Court Procedures Act 2004

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2008 (No 1)*.

2 Commencement

- (1) These rules (other than rules 11, 12 and 17) commence on 1 July 2008.
- (2) Rules 11, 12 and 17 commence on the commencement of the *Justice and Community Safety Legislation Amendment Act 2008*.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 New rule 75 (2A)

insert

- (2A) For subrule (2), the filing in the court of a notice of intention to proceed in relation to a proceeding is taken to be a step in the proceeding.

Note See approved form 2.84 (Notice of intention to proceed).

5 Rule 513

substitute

513 Amendment—costs

(SCR o 32 r 13; MC(CJ)R s 137; Qld r 386)

- (1) This rule applies to the following costs:
 - (a) costs of an amendment under this part;
 - (b) costs thrown away because of the amendment.
- (2) Unless the court otherwise orders, the costs are payable by the party making the amendment.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

6 Rule 1617 (1) and note

substitute

- (1) Unless the court otherwise orders, interest is payable on the amount of a judgment debt (other than costs) that is unpaid at any time at the rate of interest applying at that time under schedule 2, part 2.2 (Interest after judgment).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

7 Rule 1617 (4)

substitute

- (4) Unless the court otherwise orders, interest is payable on an amount awarded for costs that is unpaid at any time—
- (a) at the rate of interest applying at that time under schedule 2, part 2.2 (Interest after judgment); and
 - (b) from the day the costs were assessed or another date decided by the court.

8 Rule 1700, definition of costs of proceeding, note 1

substitute

Note 1 The costs of the proceeding include the costs of an application in the proceeding, unless the court otherwise orders (see r 1721 (2) (Costs—general rule)).

9 Rule 1721

substitute

1721 Costs—general rule

(SCR o 65 r 1; MC(CJ)R s 246; Qld r 689 and r 693)

- (1) The costs of a proceeding or of an application in a proceeding are in the discretion of the court.

- (2) The costs of the proceeding include the costs of an application in the proceeding, unless the court otherwise orders.

Note 1 **Application** in a proceeding is defined in r 6006.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

10 New rule 1722 (2A)

insert

- (2A) However, the costs payable to a party are reduced by the amount of any input tax credit for GST to which the party is entitled in relation to the party's costs.

11 Rule 2016 heading

substitute

2016 Enforcement—enforcement of payment directed by Energy and Water Consumer Council

(MC(CJ)R s 380A)

12 Rule 2016 (2), definition of *council*

substitute

council means the Energy and Water Consumer Council.

13 Rule 2210

substitute

2210 Seizure and sale order—seizure of real property

(Qld r 828 (2)-(4))

- (1) This rule applies if an enforcement creditor asks an enforcement officer to seize real property under a seizure and sale order.
- (2) The enforcement officer is taken to have seized the real property for these rules if the enforcement officer gives the enforcement debtor—
- (a) a sealed copy of the seizure and sale order; and

- (b) a copy of a notice that the enforcement officer is instructed to seize and sell the real property.
- (2) Actual seizure is not necessary to authorise the sale of real property under a seizure and sale order.

14 Rule 2218 (2) and (3)

substitute

- (2) An enforcement officer may appoint a real estate agent to market the land and conduct the sale.
- (3) The agent's costs in marketing and selling the land are costs of enforcing the seizure and sale order.

15 New rule 2218A

insert

2218A Seizure and sale order—appointment of real estate agent

- (1) For rule 2218 (2), an enforcement officer may appoint a real estate agent
 - (a) after—
 - (i) seeking expressions of interest from real estate agents to market the land and conduct the sale; and
 - (ii) considering any expressions of interest received, and the qualifications and experience of an agent who expresses an interest; or
 - (b) from a panel established under subrule (2).
- (2) The sheriff may establish a panel of real estate agents with appropriate qualifications and experience to market and sell land under a seizure and sale order.
- (3) For subrule (2), the sheriff must—
 - (a) call for expressions of interest from real estate agents who wish to be included on the panel; and

- (b) may arrange for enforcement officers to appoint agents from the panel—
 - (i) on rotation; or
 - (ii) because the agent’s business is concentrated in the area where land to be sold is situated; or
 - (iii) for any other reason the sheriff considers relevant.
- (4) An expression of interest from a real estate agent must include the agent’s fees or other remuneration, and the agent’s proposed arrangements, for the marketing and sale of land under this rule.

16 New subrule 2446 (1) (c)

insert

- (c) the sealed copy of the original order is endorsed with a notice that states that the person served may be liable to imprisonment or seizure and detention of property if—
 - (i) the original order requires the person to do something within a fixed time, and the person fails to do it; or
 - (ii) the original order requires the person not to do something, and the person does it.

17 Table 5800, item 10

substitute

10	energy and water consumer council	judge or master	<i>Utilities Act 2000</i> , section 205
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18 Rule 6609 (4) (a)

substitute

- (a) in accordance with the usual order or otherwise in accordance with this rule; or

19 New rule 6609 (12)

before the note, insert

(12) In this rule:

usual order, in relation to a document or thing, means an order that the party given 1st access to inspect the document or thing has exclusive access to the document or thing for 5 days after the day the order is made, then any other party to the proceeding has access to inspect the document or thing.

20 Schedule 5, part 5.2, items 11 and 12

substitute

11	section 283EC		power to make an order for meeting of debenture holders to direct trustee
12	section 283HA		power to give directions or determine any questions of application of trustee for debenture holders

21 Schedule 5, part 5.2, item 52

substitute

52	section 449E (1) (c) and (1A) (c)	9.2	power to determine administrator's remuneration
52A	section 449E (2)	9.2A	power to review administrator's remuneration

22 Schedule 5, part 5.2, item 54*substitute*

54	sections 459A, 459B (except in relation to applications under part 2F.1), 459C, 459D, 459P, 459R, 459S, 459T, 461, 462, 464, 465B, 465C, 466, 467, 467A and 467B (except in relation to applications under part 2F.1)	pt 6.5	power to make orders in relation to winding-up applications
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23 Schedule 5, part 5.2, new item 55A*insert*

55A	section 468A		power in relation to authorisation of transfer of shares
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24 Schedule 5, part 5.2, item 61*substitute*

61	sections 473 (3)	9.4	power to determine liquidator's remuneration
61A	sections 473 (5) and (6)	9.4A	power to review liquidator's remuneration

25 Schedule 5, part 5.2, new item 70A

insert

70A	section 483 (2)		power to order payment of money
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26 Schedule 5, part 5.2, new item 71A

insert

71A	section 483 (4)		power to order payment of amount due into a bank named in the order
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27 Schedule 5, part 5.2, item 79

omit

28 Schedule 5, part 5.2, item 83

substitute

83	section 504	9.4A	power to review liquidator's remuneration in voluntary winding-up
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29 Schedule 6, rule 1.4, note, new dot point

insert

- ASIC (see s 9)

30 Schedule 6, rule 1.5, definition of *commission*

omit

31 Schedule 6, rule 2.8 heading

substitute

2.8 Notice of certain applications to be given to ASIC

32 Schedule 6, table 2.8, item 2*substitute*

2	section 482 (1)	for the stay or termination of a winding-up
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33 Schedule 6, rule 2.10 heading*substitute***2.10 Intervention in proceeding by ASIC (Corporations Act, s 1330)****34 Schedule 6, rule 2.15***omit*

regulations 5.6.12

substitute

regulations 5.6.11

35 Schedule 6, rule 3.5 heading*substitute***3.5 Copy of order approving compromise or arrangement to be lodged with ASIC****36 Schedule 6, rule 9.1 (1), note***substitute*

Note 1 Under the Corporations Act, s 425 (2) (b), the court may exercise its power to make an order fixing the remuneration of a receiver appointed under an instrument even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

Note 2 The amendment to the Corporations Act, s 425 made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to a receiver appointed on or after 31 December 2007—see Corporations Act, s 1480 (5).

37 Schedule 6, rule 9.1 (6)

substitute

- (6) An affidavit in support of the originating process, or interlocutory process, seeking the order must—
- (a) include evidence of the matters mentioned in the Corporations Act, section 425 (8); and
 - (b) state the nature of the work performed or likely to be performed by the receiver; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the receiver; and
 - (e) state particulars of any objection of which the receiver has received notice; and
 - (f) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

38 Schedule 6, rule 9.2

substitute

9.2 Determination by court of remuneration of administrator (Corporations Act, s 449E (1) (c) and (1A) (c))

- (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 Corporations Act, section 449E (1) (c) or (1A) (c) determining the administrator's remuneration.
- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the administrator must serve a notice 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 people:

- (a) each creditor who was present, in person or by proxy at any meeting of creditors;
- (b) each member of any committee of creditors or committee of inspection;
- (c) if there is no committee of creditors or committee of inspection, and no meeting of creditors has been convened and held, each of the 5 largest (measured by amount of debt) creditors of the company;
- (d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

Note See approved form 16 (Notice of intention to apply for remuneration).

- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the administrator does not receive a notice of objection within the period mentioned in subrule (3)—
 - (a) the administrator may file an affidavit, made after the end of the period, in support of the originating process 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 administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
 - (b) the administrator may endorse the originating process, 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.

- (5) If the administrator receives a notice of objection within the period mentioned in subrule (3), the administrator must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory who has given a notice of objection.
- (6) An affidavit in support of the originating process, or interlocutory process, seeking the order must—
 - (a) include evidence of the matters mentioned in the Corporations Act, section 449E (4); and
 - (b) state the nature of the work performed or likely to be performed by the administrator; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the administrator; and
 - (e) state particulars of any objection of which the administrator has received notice; and
 - (f) if the administration is continuing—give details of any matters delaying the completion of the administration.

**9.2A Review of remuneration of administrator
(Corporations Act, s 449E (2))**

- (1) This rule applies to an application for review of the amount of the remuneration of an administrator under the Corporations Act, section 449E (2).

Note The amendment to the Corporations Act, section 449E made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to an administrator appointed on or after 31 December 2007—see Corporations Act, s 1480 (6).
- (2) The application may be made only after the remuneration has been determined under the Corporations Act, section 449E (1) (a) or (b) or (1A) (a) or (b).

- (3) At least 21 days before filing the originating process or the interlocutory process applying for a review, the plaintiff or applicant must serve a notice of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following people:
- (a) if there is a committee of creditors or a committee of inspection—each member of the committee;
 - (b) if the remuneration of the administrator was determined by the creditors—each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- Note* See approved form 16A (Notice of intention to apply for review of remuneration).
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice—
- (a) stating the person's intention to appear at the hearing of the application for review; and
 - (b) setting out the issues that the person seeks to raise before the court.
- (5) A person mentioned in subrule (3) is entitled to be heard on the application for review, but only (unless the court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).
- (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served the notice.

- (7) The administrator must file an affidavit stating the following matters:
 - (a) the matters mentioned in the Corporations Act, section 449E (4);
 - (b) the nature of the work performed or likely to be performed by the administrator;
 - (c) the amount of remuneration claimed by the administrator if that amount is different from the amount of remuneration that has been determined;
 - (d) a summary of the receipts taken and payments made by the administrator;
 - (e) particulars of any objection to the remuneration as determined, of which the administrator has received notice;
 - (f) if the administration is continuing — details of any matters delaying the completion of the administration.
- (8) The affidavit mentioned in subrule (7) must annex a copy of the report that the administrator was required to prepare before remuneration was determined.
- (9) The plaintiff or applicant must—
 - (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and
 - (b) annex or exhibit to the affidavit a copy of the notice or notices.

39 Schedule 6, rule 9.3 (3) (b)

omit

committee of creditors

substitute

committee of inspection

40 Schedule 6, rule 9.3 (7) (a)

omit

carried out

substitute

performed or likely to be performed

41 Schedule 6, rule 9.3 (7) (c)

omit

for the period for which remuneration is claimed

42 Schedule 6, new rule 9.3 (8)

insert

- (8) The affidavit must also provide evidence of the matters mentioned in the Corporations Act, section 473 (10)—
- (a) to the extent that they may be relevant to a provisional liquidator; and
 - (b) as if a reference in that subsection to *liquidator* were a reference to *provisional liquidator*.

43 Schedule 6, rule 9.4 heading

substitute

9.4 Determination by court of liquidator's remuneration (Corporations Act, s 473 (3) (b) (ii))

44 Schedule 6, rule 9.4 (1)

omit

section 473 (3)

substitute

section 473 (3) (b) (ii)

45 Schedule 6, rule 9.4 (1), new note

insert

Note The amendment to the Corporations Act, s 473 made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to a liquidator appointed on or after 31 December 2007—see the Corporations Act, s 1480 (7).

46 Schedule 6, rule 9.4 (3) (a)

omit

the meeting of creditors

substitute

any meeting of creditors at which the remuneration of the liquidator was considered

47 Schedule 6, rule 9.4 (3) (b)

omit

creditors

substitute

inspection

48 Schedule 6, rule 9.4 (3) (c)

substitute

- (c) if there is no committee of inspection, and no meeting of creditors has been convened and held—each of the 5 largest (measured by amount of debt) creditors of the company;
- (d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

49 Schedule 6, rule 9.4 (7)

substitute

- (7) An affidavit in support of the interlocutory process seeking the order must—
- (a) include evidence of the matters mentioned in the Corporations Act, section 473 (10); and
 - (b) state the nature of the work performed or likely to be performed by the liquidator; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the liquidator; and
 - (e) state particulars of any objection of which the liquidator has received notice; and
 - (f) if the winding up is continuing—give details of any matters delaying the completion of the winding up.

50 Schedule 6, new rule 9.4A

insert

9.4A Review of remuneration of liquidator (Corporations Act, s 473 (5) and (6) and s 504 (1))

- (1) This rule applies to an application for review of the amount of the remuneration of a liquidator under the Corporations Act, section 473 (5) or (6) or section 504 (1).

Note The amendment to the Corporations Act, s 504 made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to a liquidator appointed on or after 31 December 2007—see the Corporations Act, s 1480 (7).

- (2) The application may only be made after remuneration has been determined under the Corporations Act, section 473 (3) (a) or (b) (i), or fixed under section 495 (1) or section 499 (3).

- (3) At least 21 days before filing the originating process or interlocutory process applying for a review, the plaintiff or applicant must serve a notice of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following people:
- (a) if there is a committee of inspection—each member of the committee;
 - (b) if the remuneration of the liquidator was determined or fixed by the creditors—each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined or fixed;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

Note See approved form 16A (Notice of intention to apply for review of remuneration).

- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice—
- (a) stating the person's intention to appear at the hearing of the application for review; and
 - (b) setting out the issues that the person seeks to raise before the court.
- (5) A person mentioned subrule (3) is entitled to be heard on the application for review, but only (unless the court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).
- (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served the notice.

- (7) The liquidator must file an affidavit stating the following matters:
- (a) for an application under the Corporations Act, section 473 (5) or (6)—the matters mentioned in the Corporations Act, section 473 (10);
 - (b) for an application under the Corporations Act, section 504 (1)—the matters mentioned in the Corporations Act, section 504 (2);
 - (c) the nature of the work performed or likely to be performed by the liquidator;
 - (d) the amount of remuneration claimed by the liquidator if that amount is different from the amount of remuneration that has been determined or fixed;
 - (e) a summary of the receipts taken and payments made by the liquidator;
 - (f) particulars of any objection to the remuneration as determined or fixed of which the liquidator has received notice;
 - (g) if the winding up is continuing—details of any matters delaying the completion of the winding up.
- (8) The affidavit under subrule (7) must annex a copy of the report that the liquidator was required to prepare before remuneration was determined or fixed.
- Note* For the requirement to prepare a report, see the Corporations Act, s 473 (11) and (12), s 495 (5), s 499 (6) and (7).
- (9) The plaintiff or applicant must—
- (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and
 - (b) annex or exhibit to the affidavit a copy of the notice or notices.

51 Schedule 6, rule 9.5 (3) (b)

after

committee of creditors

insert

or committee of inspection

52 Schedule 6, rule 9.5 (7) (a)

omit

carried out

substitute

performed or likely to be performed

53 Schedule 6, rule 9.5 (7) (c)

omit

for the period for which remuneration is claimed

54 Schedule 6, new part 6.11A

insert

**Part 6.11A Warrants (Corporations Act,
s 486B and pt 5.4B, div 3,
subdiv B)**

11A.1 Arrest of person (Corporations Act, s 486B)

- (1) An application for the issue of a warrant under the Corporations Act, section 486B (1) for the arrest of a person must state the grounds for the issue of the warrant.
- (2) The application must be accompanied by an affidavit stating the facts in support of the application.

Note See approved form 17A (Arrest warrant).

- (3) If a person is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to a registrar in the registry from which the warrant was issued.

Note The Corporations Act, ss 489A to 489E, inserted by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth), apply in relation to a warrant issued on or after 31 December 2007—see the Corporations Act, s 1481 (3).

55 Schedule 6, rule 12.1 heading

substitute

12.1 Service on ASIC in relation to proceedings under Corporations Act, ch 6, 6A, 6B, 6C, 6D or 7

56 Schedule 6, rule 15.1 heading

substitute

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

57 Further amendments, mentions of *the commission*

omit

the commission

substitute

ASIC

in

- schedule 6, rule 2.4 (2)
- schedule 6, rule 2.4A (3) (a)
- schedule 6, rule 2.8
- schedule 6, rule 2.10
- schedule 6, rule 3.5 (b)
- schedule 6, rule 6.2 (2) (a)
- schedule 6, rule 7.1 (1)
- schedule 6, rule 7.2 (2) (a)

- schedule 6, rule 7.5 (1) and (3)
- schedule 6, rule 7.7 (2) (c) and (3)
- schedule 6, rule 7.11 (2) and (4)
- schedule 6, rule 11.2 (1) (a) and (b)
- schedule 6, rule 11.3 (6)
- schedule 6, rule 11.5 (3) (b)
- schedule 6, rule 11.8
- schedule 6, rule 11.11 (2), note
- schedule 6, rule 12.1
- schedule 6, rule 15.1

Endnotes

1 Notification

Notified under the Legislation Act on 26 June 2008.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
