

SUPREME COURT RULES (AMENDMENT No. 281) 1993

NEW SOUTH WALES



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1. These rules are made by the Rule Committee on 6 December 1993.
2. That the Supreme Court Rules 1970 are amended as follows:
 - (a) Part 1 rule 3
In the matter relating to Part 81 omit “36” and insert instead “2377.”
 - (b) Part 51A rule 1
Omit “this Division” and insert instead “Part”.
 - (c) Part 51A rule 2
 - (i) Omit “Division” and insert instead “Part”.
 - (ii) Omit the definition of “appeal”.
 - (d) Part 52 rule 21B (b)
Omit “a petition” and insert instead “an application”.
 - (e) Part 52 rule 21C
Omit the rule.
 - (f) Part 61 rule 1 (3A)
Omit “2 (b)” and insert instead “2 (1) (b)”.
 - (g) Part 81 rule 2
 - (i) From paragraph (b) (ii), omit “, appeal”.
 - (ii) From paragraph (d), omit “1952” and insert instead “1990”.
 - (iii) From paragraphs (e) and (f), omit “.” and insert instead “;” wherever appearing.
 - (h) Part 81 rule 2
 - (i) Omit “In” and insert instead “(I) In”.

(ii) After subrule (1) insert:

(2) The rules shall apply to proceedings under the Patents Act as if a reference in the patents Act to an “applicant” were a reference to a “plaintiff” and as if a reference in the patents Act to a “respondent” were a reference to a “defendant”.

(i) Part 81 rule 4

Omit the rule and insert instead:

Assignment of business

4. Intellectual property cases are assigned to the Equity Division.

(j) Part 81 rule 7 (2)

Omit “subject to rule 20 (which relates to an application for extension of a patent),”.

(k) Part 81 rule 9

(i) Omit “21” and insert instead “14”.

(ii) Renumber the rule as “9 (1)”.

(iii) After subrule (1) insert:

(2) Unless the Court otherwise orders, where:

(a) rule 18 or rule 19 or rule 20 or rule 21 applies to proceedings; and

(b) the proceedings are commenced by summons under Part 5 rule 4A,

the proceedings shall not be heard before 14 days after the requirements as to service contained in the applicable rule have been complied with.

(l) Part 81 rule 10

Omit “or appeal” where appearing and “or instituted”.

(m) Part 81 rule 11 (1) (b) (iii)

Omit the subparagraph and insert instead:

(iii) the practice of the Commissioner’s Office in like cases, and, on the day of filing, serve it on the other parties.

(n) Part 81 rules 13, 14 and 17–35

Omit the rules.

(o) Part 81

Before rule 36 insert:

Amendment of patent etc.: s. 105

17. (1) An application for an order under section 105 (1) of the Patents Act may be made only after the applicant gives to the Commissioner a notice of intention to apply accompanied by an advertisement that states:

- (a) the identity of the proceedings in which the application will be made;
- (b) the particulars of the amendment sought;
- (c) the applicant's address for service; and
- (d) that a person intending to oppose the application who is not a party to the proceedings must, not later than 28 days after publication of the advertisement, give written notice of that intention to the Commissioner and to the parties to the proceedings.

(2) The Commissioner must publish the advertisement in the *Official Journal* once, unless the Court otherwise orders.

(3) A person who gives notice under subrule (1) (d) is entitled to be heard in opposition to the application, subject to any direction of the Court as to costs.

(4) The application may be instituted by filing a notice of motion in the relevant proceedings not later than 50 days after the date of publication of the advertisement.

(5) The notice of motion together with a copy of the patent, patent request or complete specification, as appropriate, showing in ink of contrasting colour the amendment sought, must be served on the Commissioner, each party to the proceedings and each person who has given notice under subrule (1) (d).

(6) On the hearing of the motion, the Court may give such directions as it thinks fit for the conduct of proceedings on the motion including a direction:

- (a) requiring the applicant to give, to each party or other person opposing the application, a statement of the grounds relied on for the amendment;
- (b) requiring a party or other person opposing the application to give to the applicant a statement of the grounds relied on in opposition to the amendment;

- (c) determining that the motion will be heard with the relevant proceedings or separately and, if separately, fixing the date for hearing the motion;
- (d) determining the manner in which evidence will be adduced and, in the case of evidence by affidavit, fixing the times within which the affidavits must be served.

cf. Federal Court Rules 0.54B.r. 10.

Infringement proceedings: s. 120 (1)

18. (1) The originating process, by which proceedings under section 120 (1) of the Patents Act are commenced, must be served:

- (a) on the defendant in the proceedings;
- (b) if the plaintiff is an exclusive licensee—on the patentee; and
- (c) on the Commissioner.

(2) Particulars of infringements complained of must give at least one instance of each type of infringement alleged and must specify, in proceedings for infringement of a standard patent, which of the claims of the complete specification of that patent are alleged to be infringed.

(3) A defendant relying on a defence under section 144 (4) of the Patents Act must give particulars of

- (a) the date of, and the parties to, a contract on which the defendant intends to rely for the defence; and
- (b) the provision of the contract that the defendant asserts is void.

Non-infringement declarations: s. 125 (1)

19. The originating process, by which proceedings under section 125 (1) of the Patents Act are commenced, must be served:

- (a) on the nominated person, or the patentee, as the case requires; and
- (b) on the Commissioner.

Relief from unjustified threat: s. 128 (1)

20. The originating process, by which proceedings under section 128 (1) of the Patents Act are commenced, must be served:

- (a) on the person making the threat; and
- (b) on the Commissioner.

Compulsory licences, revocation etc.

21. (1) The originating process, by which proceedings under section 133 (1), section 134 (1) or section 138 (1) of the Patents Act are commenced, must be served:

- (a) on the patentee;
- (b) as a further defendant—on any person who claims an interest in the patent as exclusive licensee; and
- (c) on the Commissioner.

(2) A plaintiff in proceedings to which subrule (1) applies must comply with Chapter 12 of the Patents Regulations of the Commonwealth.

(3) An application for leave under section 137 (4) of the Patents Act may be made by motion in the proceedings pending in the court.

cf. Federal Court Rules 0.54B, r. 14.

Particulars of invalidity

22. (1) A party who disputes the validity of a patent must deliver, with the pleading or other document in which the party disputes the validity of registration, particulars of the grounds of invalidity on which the party relies.

(2) If one of the grounds referred to in subrule (1) is that the invention is not a patentable invention because of information about the invention in a document or through the doing of an act, the particulars must specify:

- (a) in the case of a document—the time when, and the place where, the document is alleged to have become publicly available; and
- (b) in the case of an act:
 - (i) the name of the person alleged to have done the act;
 - (ii) the period in which, and the place where, the act is alleged to have been done publicly;
 - (iii) a description that is sufficient to identify the act; and
 - (iv) if the act relates to apparatus or machinery—whether the apparatus or machinery exists and, if so, where it can be inspected.

(3) If:

- (a) one of the grounds referred to in subrule (1) is that the invention, so far as claimed in any claim of the complete specification of the patent, is not useful; and

- (b) it is intended, in connection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification,

the particulars must identify each such claim and state that fact and must include particulars of each such example, specifying the respect in which it is alleged that it does not work as described.

(4) Except by leave of the Court, evidence is not admissible in proof of a ground of invalidity of which particulars have not been given.

cf. Federal Court Rules 0.54B, r. 15

- (p) Part 81 rule 36
Renumber the rule as 23.
- (q) SCHEDULE F
- (i) Omit Forms 155 and 156.
- (ii) From the Index to the Forms omit the matter relating to Form 155 and the matter relating to Form 156.
3. The Supreme Court Rules 1970 are further amended as follows:
- (a) Part 1 rule 8 (1)
In paragraph (a) (ii) of the definition of “curator”, after “management;” insert “or”.
- (b) Part 1 rule 8 (1)
From paragraph (a) of the definition of “curator” omit subparagraphs (iii) and (iv) and insert instead:
- (iii) in relation to whose property the Protective Commissioner is authorised as mentioned in section 66 (1) (a) of that Act:
- (c) Part 63 rule 5 (1A)
After “5 (5)” insert “or section 5A”.
- (d) Part 75 rule 3
After paragraph (a) insert:
- (b) under the Mental Health (Criminal Procedure) Act 1990.
- (e) Part 76 rule 2 (b)
Omit “or before the Commissioner under the Mental Health Act, 1958, (except Part VIII) or” and insert instead “under”.

- (f) Part 76 rule 2 (c)
- (i) From subparagraph (ii) omit “136” and insert instead “281” and omit “1983” and insert instead “1990”.
 - (ii) From subparagraph (iii) omit “139” and insert instead “285”.
 - (iii) From subparagraph (iv) omit “158” and insert instead “174”.
 - (iv) From subparagraph (v) omit “4 (1) of that Act, or a patient, within the meaning give to that expression by section 4 (1) or section 146 (1) of that Act” and insert instead “3 of that Act, or a patient, within either of the meanings given to that word by that section”.
- (g) Part 76
After rule 14 insert:
DIVISION 2A—*Directions and Security*
- (h) Part 76 rule 15
- (i) Omit “31 (2)” wherever appearing and insert instead “31 (1)”.
 - (ii) Omit “by the Court”.
- (i) Part 76 rule 17 (1)
Omit the subrule and insert instead:
17. (1) The party having the carriage of proceedings on the application under section 13 or under section 17A of the subject Act shall, not later than 14 days after the making of:
- (a) any declaration and order under section 13 of the subject Act; or
 - (b) any order under section 17A of the subject Act,
move the Court for a hearing for directions.
- (j) Part 76 rule 30
After “13” insert “or section 17A”.
- (k) Part 76 rule 34
- (i) Amend the heading to the rule by adding, after “35”, “or section 35A”.
 - (ii) After “13” insert “or section 17A”.

4. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 1 rule 3

(i) In the matter relating to Part 15 Division 2, omit “3” and insert instead “2A”.

(ii) Under the matter relating to Part 16 insert:

PART 16A—DEFAULT PROCEEDINGS

(b) Part 15 Division 2

Before rule 3 insert:

Default statement of claim

2A. (1) Where proceedings are commenced in the Common Law Division by statement of claim:

(a) naming Sydney as the place of trial; and

(b) which contains no claim other than a claim or claims for one or more of the following:

(i) a liquidated demand;

(ii) possession of land;

(iii) an order for interest under section 94 of the Act, the statement of claim shall bear the description “Default Statement of Claim”.

(2) The description required by subrule (1) is for the assistance of the Court only and no proceedings shall be open to objection by a party on the grounds that the requirement has not been complied with.

(c) Part 16A

After Part 16 insert:

PART 16A

DEFAULT PROCEEDINGS

Interpretation

1. In this Division:

(a) proceedings to which Part 15 rule 2A applies are referred to as “default proceedings”, and

(b) “directions hearing” includes a directions hearing which is referred to as a Status Conference.

Inactive classification

2. Where:

(a) 60 sitting days have elapsed since commencement of default proceedings;

(b) no defence or cross-claim has been filed in the proceedings; and

(c) the proceedings have not been wholly disposed of by judgment or otherwise,

the proceedings shall be classified as “Inactive”.

Restrictions on steps to be taken in Inactive proceedings

3. Where proceedings are classified as Inactive, no document shall be filed or other step taken in the proceedings by the party who filed the statement of claim, other than the making of a motion on notice, unless any prescribed fee is paid.

Reclassification as Inactive

4. Proceedings shall cease to be classified as Inactive when a document is filed or another step is taken in the proceedings but, unless within 60 sitting days after the proceedings cease to be so classified:

(a) a directions hearing is appointed; or

(b) the proceedings have been wholly disposed of by judgment or otherwise,

the proceedings will again be classified as Inactive.

Dismissal

5. (1) If proceedings are classified as Inactive and if no affidavit of service of the statement of claim has been filed within 2 years after the commencement of default proceedings, the Court may give to each party who has an address for service in the proceedings notice that the proceedings will be dismissed unless, within the time limited by the notice:

(a) an affidavit of service of the statement of claim is filed;

(b) a defence or cross-claim is filed; or

(c) on motion, a party satisfies the Court that the proceedings should not be dismissed.

(2) If notice is given under subrule (1), unless a step referred to in subrule (1) (a) or subrule (1) (b) or subrule (1) (c) is taken before the expiration of the time limited by the notice, the proceedings shall stand dismissed upon expiration of that time.

5. The amendments contained in paragraph 4 shall commence on 31 January 1994.

6. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 1 rule 3

Omit “PART 22—BRINGING MONEY INTO COURT” and insert instead:

PART 22—OFFER OF COMPROMISE

DIVISION 1—*Offer to compromise non-costs claim—rr: 1–9*

DIVISION 2—*Offer to compromise costs claim—r: 10, 11*

(b) PART 22

(i) Renumber rule 1 as “1A”.

(ii) Before rule 1A insert:

DIVISION 1—*Offer to compromise non-costs claim*

General

1. Subject to Division 2:

(a) this Division does not apply to an offer to compromise a party’s entitlement, under the rules or an order, to costs; and

(b) if an offer of compromise made under this Division contains a term which purports to negative or limit the operation of Part 52 rule 17 (1), that offer shall be of no effect for any purpose under this Division or Part 52 rule 17.

(iii) After rule 9 insert:

DIVISION 2—*Offer to compromise costs claim*

Costs offer before bill served

10. Where:

(a) the defendant makes an offer to the plaintiff under rule 2 (a “principal offer”) to compromise a claim by the plaintiff;

(b) at:

(i) the same time; or

(ii) any subsequent time prior to service on the defendant of the plaintiff’s bill of costs in respect of the claim

the defendant makes to the plaintiff an offer to compromise the plaintiff’s entitlement to costs in respect of the claim (a “costs offer”);

(c) the costs offer includes a statement that it is made in accordance with this rule;

- (d) the principal offer is accepted and the costs offer is not accepted;
 - (e) the plaintiff's costs in respect of the claim are taxed; and
 - (f) the taxing officer is of the opinion that the costs offer was in an amount not less than the amount of costs allowable to the plaintiff in respect of the claim, other than the costs relating to the taxation,
- the costs offer shall, for the purposes of Part 52 rule 40 (2), be a successful costs offer.

Costs offer after bill served

11. (1) After service of a bill of costs in proceedings, the party entitled to the costs or the party liable to pay them may serve on the other an offer of compromise under rule 2 in respect of the amount of the costs to be taxed and Division 1 and Part 52 rule 17 shall, with any necessary modification, apply as if the decision of the taxing officer were the decision of a Judge.

(2) The operation of this rule is subject to the exercise of the taxing officer's discretion under Part 52 rule 40 (2).

- (c) Part 22 rules 1A, 3 (7) and (6)

Omit "Part" wherever appearing and insert instead "Division".

- (d) Part 52 rule 40 (1) and (2)

Omit the subrules and insert instead:

- (1) Subject to subrule (2) and to Part 22 rule 11, costs to be taxed under the rules or an order shall, unless the rules or the order otherwise provide, include the costs of the taxation.
- (2) Where, under Part 17 rule 10, a successful costs offer has been made for the purposes of this rule in respect of costs the subject of a taxation, the taxing officer may award the costs, or any part of the costs, of the taxation to the defendant.

- (e) Part 52 rule 40 (3A)

Omit the subrule.

- (f) Part 52 rule 40 (4)

Omit ", (2)".

7. The amendments contained in paragraph 6 shall take effect on 1 January 1994.

8. The Supreme Court Rules 1970 are further amended as follows:

Part 37 rule 7

After subrule (6) insert:

(6A) Subject to subrule (6B), service of a subpoena for production which requires production on a specified date, being a date not later than 21 days before the trial or hearing of the proceedings in which the subpoena is issued, may be effected by sending it by pre-paid post addressed to the person to be served at that person's usual or last known place of business or of abode.

(6B) Service pursuant to subrule (6A) shall not be effective unless and until the subpoena is actually received by the person to be served.

9. The Supreme Court Rules 1970 are further amended as follows:

Part 75 rule 3 (1) (a) (ii)

Omit "475" and insert instead "474E".

10. The Criminal appeal rules are amended as follows:

(a) Rule 47

Omit "of" and insert instead "or".

(b) Rule 78

Omit the rule and insert instead:

Petitions under section 474C (1) of the Crimes Act 1900

78. When the Minister of Justice, on a petition for a review of a conviction or the exercise of the pardoning power, refers the whole case to the Court, the person convicted shall be deemed an appellant who has obtained the leave of the Court to appeal.

References and applications under sections 474H (2) and 474S of the Crimes Act 1980

78A. These rules shall apply, making such changes as it is necessary to make, to:

(a) a reference under s. 474H (2); and

(b) an application under s. 474S,

of the Crimes Act 1900 as if:

(c) any reference to an appeal were a reference to proceedings on such a reference or application;

(d) any reference to an applicant were a reference to the convicted person; and

(e) leave to appeal has been given.

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11. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 1 rule 3

After the matter relating to Part 80, insert:

PART 80A—CORPORATIONS LAW AND ASC LAW

DIVISION 1—*Preliminary rr. 1–4*

DIVISION 2—*Proceedings generally rr. 5–9*

DIVISION 3—*Advertisement r. 10*

DIVISION 4—*Notice to the Commission r. 11*

DIVISION 5—*Issue of shares at a discount r. 12*

DIVISION 6—*Reduction of capital r. 13*

DIVISION 7—*Winding up rr. 14–35*

DIVISION 8—*Examinations rr. 36, 37*

(b) Part 61 rule 3 (6) (a)

Omit “(which relates” and insert instead “or Part 80A rule 18 (1) (which relate”.

(c) Part 80 rule 1A

After “Court” insert “and subject to Part 80A rule 2”.

(d) After Part 80 insert:

PART 80A

CORPORATIONS LAW AND ASC LAW

DIVISION 1—*Preliminary*

Interpretation

1. In this Part, unless the contrary intention appears:

(a) “**subject Act**” means the Corporations (New South Wales) Act 1990;

“**advertised**” means published in the Commonwealth of Australia Gazette and in a prescribed newspaper;

“**ASCLaw**” has the meaning given by section 65 of the subject Act;

“**Commission**” means the Australian Securities Commission;

“**CorporationsLaw**” has the meaning given by section 13 of the subject Act;

“prescribed newspaper” means:

- (i) where the registered office of the subject corporation is within 100 kilometres of the General Post Office, Sydney—a daily newspaper circulating generally in Sydney;
- (ii) where the subject corporation does not have a registered office, and its principal place of business or last known principal place of business is or was within 100 kilometres of the General Post Office, Sydney—a daily newspaper circulating generally in Sydney; or
- (iii) in any other case—a newspaper circulating generally in the district in which the registered office of the subject corporation is situated or, if it does not have a registered office, in which its principal place of business or last known principal place of business is or was situated;

“subject corporation” means corporation to which the application relates;

- (b) subject to this rule, a word or expression defined in the Corporations Law (other than for the purposes of limited parts thereof) has the meaning as so defined;
- (c) a reference to a section is a reference to a section of the Corporations Law.

Application

2. Subject to any order of the Court, this Part applies to:

- (a) proceedings under the Corporations Law or the ASC Law commenced in the Court after 30 January 1994; and
- (b) applications made under the Corporations Law or the ASC Law after 30 January 1994 in proceedings in the Court, whenever commenced.

Commencement of proceedings

3. (1) Subject to Part 19 rule 1 (which relates to applications by motion) and to subrules (2), (4) and (5), proceedings in the Court for relief under the Corporations Law or the ASC Law must be commenced by summons under Part 5 rule 4B.

(2) Proceedings in the Court on an application:

- (a) for an order for the winding up of a corporation shall be commenced by summons under Part 5 rule 4A;

- (b) for other relief under the Corporations Law where:
- (i) it is necessary to obtain an early appointment for hearing; and
 - (ii) the plaintiff intends to be ready to proceed at the time appointed,

whether for final or interlocutory relief or directions, may be commenced by summons under Part 5 rule 4A.

- (3) The summons must state above the title:
- (a) the name of the subject corporation followed, where appropriate, by the words “(in liquidation)”, “(provisional liquidator appointed)”, “(receiver appointed)”, “(receiver and manager appointed)”, “(under official management)” or “(administrator appointed)” ;
 - (b) (if applicable) the registered number of the subject corporation preceded by the words “Australian Company Number” (which may be abbreviated to “ACN”) or “Australian Registered Body Number” (which may be abbreviated to “ARBN”) as the case may be; and
 - (c) the words “and the Corporations Law” or “and the ASC Law”, as the case may be.

(4) Without limiting the generality of Part 19 rule 1, application of the following kinds must be made by motion in the relevant winding up proceedings, namely:

- (a) an application for an order under section 467 (7) (which relates to staying existing proceedings);
- (b) an application for an order under section 468 (which relates to avoidance of dispositions of property);
- (c) an application for an order under section 472 (which relates to provisional liquidators); and
- (d) any application in the winding up of the subject corporation.

(5) An application for an order under section 471B or section 500 (2) in respect of existing proceedings in the Court in a Division may be made by motion in those proceedings.

(6) Notwithstanding subrule (4) and Part 19 rule 1, an application for the issue of an Examination Summons under section 596A or section 596B must be made by summons.

Registration of transfer of shares etc. (s. 1092 (3))

4. (1) An application to the Court for an order for the issue of a summons, under section 1092 (3) may be made, without serving the summons by which the application is made on any person.

(2) A summons under section 1092 (3) may be in Form 154BA.

DIVISION 2—Proceedings Generally**Additional powers of the Court**

5. Without limiting its other powers, the Court may at any time in proceedings, on application by a party or of its own motion:

- (a) direct that notice of any matter be given by advertisement or otherwise to any person or class of persons;
- (b) direct that a document be served on any person;
- (c) grant to any person who is or claims to be a creditor, contributory or officer of a subject corporation, or an officer of such a creditor or contributory, leave to be heard without becoming a party;
- (d) revoke, or vary the terms and conditions of, any such leave;
- (e) order that any person who is or claims to be a creditor, contributory or officer of a subject corporation be added as a defendant;
- (f) appoint any creditor or contributory of a subject corporation to represent, at the expense of that corporation, all or any class of creditors or contributories of that Corporation for the purpose of the proceedings or any part of them; and
- (g) revoke, or vary the terms and conditions of, any such appointment.

Minute of judgment or order

6. Notwithstanding Part 41 rule 13 (3), the registrar may, in proceedings under the Corporations Law, file or seal a minute of a judgment or order without a direction of the Court or request of a party.

Inquiry as to creditors etc.

7. (1) The Court may direct an inquiry as to any debts, claims or liabilities of any class of debts, claims or liabilities of a subject corporation.

(2) Where the Court directs an inquiry under subrule 2 subject to any further direction of the Court, rule 13 applies with such modifications as may be necessary as though settlement of a list of creditors was required.

Registrar furnishing copy of summons etc.

8. The registrar shall, upon payment of the fee (if any) fixed under the Act, furnish to any person claiming to be a contributory, creditor or officer of the subject corporation, an office copy of the summons and affidavits which are in the custody of the registrar and are filed by the plaintiff in support of an application for the winding up of the subject corporation.

Notice of intention to appear

9. (1) Any person who intends to appear on the hearing of an application, notice of which has been advertised under this Part, who is not already a party, must, not later than 2 days before the date appointed for the hearing:

- (a) file a notice of appearance which must include:
 - (i) a statement of the relationship of the person to the subject Corporation; and
 - (ii) a statement that the person intends to support or oppose the application, as the case may be; and
- (b) serve the notice of appearance on the plaintiff and on each other party of whose address for service the person has notice.

(2) Part 11 rule 5 does not apply to a notice of appearance under this rule.

DIVISION 3—Advertisement

Advertisement and inspection of certain applications

10. (1) This rule applies to an application for an order under any of the provisions of the Corporations Law referred to in column 1 of Table 1 below.

Table 1

Column 1 Provision	Column 2 Description
s. 167 (7)	Change of status
s. 168 (4)	Change from public to proprietary company or vice versa
s. 172 (10)	Alteration of memorandum
s. 190 (3)	Confirm issue of shares at discount
s. 194 (1)	Validation of shares improperly issued
s. 195 (5)	Confirm reduction of share capital
s. 197 (6)	Rights of holders of classes of shares
s. 198 (6)	Rights of holders of shares
s. 199 (6)	Rights of classes of members
s. 411 (4) (b) and (6)	Compromises and arrangements
s. 413 (1)	Reconstruction and amalgamation of Part 5.1 bodies
s. 459A	s. 459A Winding up (insolvency)
s. 461	Winding up (general grounds)
s. 1074 (5)	Winding up of schemes

(2) The descriptions in column 2 of Table 1 are inserted for convenience of reference only, and do not affect the operation of this rule.

(3) Subject to subrule (4), notice of an application to which this rule applies must be advertised not later than 7 days before the date appointed for the hearing.

(4) Notice of an application for an order under section 459A or section 461 must not be advertised earlier than 3 days after the date of service of the summons on the subject corporation.

(5) The notice shall be in Form 154B.

(6) Where an application to which this rule relates is made otherwise than by the subject corporation, the applicant shall, as soon as practicable after filing the document by which proceedings in the application is commenced, and in any event not

later than 14 days after that document is filed, serve that document and the affidavit in support of the application on the subject corporation.

(7) Any creditor, contributory or officer of a subject corporation shall at any time before the date appointed for the hearing be entitled to inspect at the address specified in the notice copies of the summons and supporting affidavits in respect of any application, notice of which has been advertised under this rule.

DIVISION 4—*Notice to the Commission*

Service of certain applications

11. (1) This rule applies to an application for an order under any of the provisions of the Corporations Law referred to in column 1 of Table 2 below.

Table 2

Column 1 Provision	Column 2 Description
s. 342 (8)	Restoration of name to the register
s. 350 (9)	Restoration of name to the register (foreign company)
s. 411 (1) or (1A)	Administration of compromises
s. 480	Release of liquidator
s. 536 (1)	Supervision of liquidators
s. 571 (1)	Declare dissolution void
s. 574 (3)	Reinstate defunct company
s. 737	Prohibited acquisition
s. 739	Protection of rights under a takeover scheme
s. 740	Unfair agreements
s. 741	Defaulting substantial share holder
s. 742	Undisclosed beneficial shareholder

(2) The descriptions in column 2 of Table 2 are inserted for convenience of reference only, and do not affect the operation of this rule.

(3) Subject to section 411 (2), copies of the summons and supporting affidavits in respect of an application to which this rule applies must be served on the Commission a reasonable time before the date appointed for the hearing of the application.

DIVISION 5—*Issue of Shares at a Discount*

Lodgement of office copy of order

12. Unless the Court otherwise orders, an office copy of an order confirming the issue of shares at a discount must be lodged with the Commission within 14 days after the order is made, or within such other time as may be specified by the Court in the order, and the order will not take effect until the lodgement of that office copy.

DIVISION 6—*Reduction of Capital*

Settlement of list of creditors (s. 195 (3))

13. (1) This rule applies where settlement of a list of creditors is required under section 195 (3).

(2) Within 7 days after the date fixed by the Court under section 195 (3) (a), the subject corporation must make out a list of its creditors within the scope of the inquiry as at that date.

(3) The list of creditors must contain:

- (a) so far as practicable, the names and addresses of the creditors within the scope of the inquiry;
- (b) the amount due to each creditor for any debt, claim or liability within the scope of the inquiry; and
- (c) if a debt is payable on a contingency or is not ascertained, or if a claim or liability is not ascertained, an estimate of its value.

(4) A copy of the list of the creditors must be kept at the subject corporation's registered office and be available for inspection there at all times when the office is required to be open and accessible to the public.

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(5) Within 7 days of making out the list of creditors the subject corporation must:

- (a) cause to be advertised a notice in Form 154C;
- (b) serve on each creditor whose name is contained in the list a notice in Form 154D.

(6) The notices referred to in subrule (5) must specify the date fixed by the Court under section 195 (3) (b) on or before which creditors whose names are not entered on the list may claim to be so entered.

(7) Within 7 days after the date fixed by the Court under section 195 (3) (b), the subject corporation must file an affidavit in Form 154E.

(8) Where the subject corporation contends that any persons claiming to be entered on the list for particular amounts are not entitled to be so entered, the subject corporation may apply by motion for the contested claims to be adjudicated.

(9) The Court may adjudicate any such claim in such manner as it thinks fit and may allow the claim in whole or in part or disallow the claim.

(10) The allowance or disallowance of any claim under subrule (9) shall not be binding as between the subject corporation and any claimant except for the purposes of the application under section 195.

DIVISION 7—*Winding Up***Index: search**

14. Any person may, upon payment of the fee (if any) fixed under the Act, search in the index kept in the registry against the name of a subject corporation.

Affidavit (s. 459E (3))

15. (1) Subject to subrule (2), an affidavit referred to in section 459E (3) must:

- (a) be made:
 - (i) by the creditor;
 - (ii) where there is more than one creditor—by one of them;

- (iii) where the, or a, creditor is a corporation—by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation; or
- (iv) where the creditor is the Crown—by an officer of the Crown having knowledge of the facts so far as they are known to the Crown;
- (b) set out the facts entitling the deponent under paragraph (a) to make the affidavit;
- (c) state the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts;
- (d) state that the deponent believes those matters to be true; and
- (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

(2) For the purposes of section 459E, an affidavit in respect of a statutory demand that complies with the rules of the Federal Court of Australia or of the Supreme Court of another State or Territory is taken to be an affidavit that complies with these rules.

Affidavit (s. 459Q (c))

16. An affidavit referred to in section 4594 (c) must:
- (a) be made:
 - (i) by the plaintiff;
 - (ii) where there is more than one plaintiff—by one of them;
 - (iii) where the, or a, plaintiff is a corporation—by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation; or
 - (iv) where the plaintiff is the Crown—by an officer of the Crown having knowledge of the facts so far as they are known to the Crown;
 - (b) set out the facts entitling the deponent under paragraph (a) to make the affidavit;
 - (c) state the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts;
 - (d) state that the deponent believes those matters to be true; and

- (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

Time prescribed (s. 465C)

17. The period prescribed for the purposes of section 465C is a period terminating 2 days before the date appointed for the hearing.

Evidence in support of winding up application

18. The evidence in support of an application for the winding up of a corporation shall include:

- (a) an affidavit stating:
 - (i) unless the plaintiff is the subject corporation, the capacity in which the plaintiff makes the application under section 459P or section 462 (2);
 - (ii) the grounds of the application and a reference to the provision or provisions of the Corporations Law on which the plaintiff relies;
 - (iii) the statute under which the subject corporation was incorporated;
 - (iv) the date of its incorporation;
 - (v) whether or not an administrator has been appointed to the subject corporation and, if so, details of that appointment, as ascertained by a search of the records maintained by the Commission made not earlier than seven days before the summons was filed;
 - (vi) whether or not a winding up application was pending or a winding up order had been made against the subject corporation and, if so, details of that application or order, as ascertained by a search of the records maintained by the Commission made not earlier than seven days before the summons was filed; and
- (b) unless the subject corporation is the plaintiff or has entered an appearance, proof of the address of its registered office as ascertained by a search of the records maintained by the Commission made not earlier than 7 days before the summons was filed, supported by a copy of the last or only notice of the address, or change in the situation, of its registered office lodged with the Commission or with any predecessor of the Commission.

Discontinuance (ss. 459 and 461)

19. Notwithstanding Part 21 rule 2, proceedings shall not be discontinued without the leave of the Court, so far as they concern a claim for a winding up order under section 459A or section 461.

Service of notice of appointment of liquidator or provisional liquidator

20. (1) Where the Court appoints a liquidator or a provisional liquidator:

- (a) the plaintiff must:
 - (i) obtain from the Court and serve on the liquidator or provisional liquidator by delivery or by facsimile transmission to his or her office, a sealed copy of a notice in Form 154F not later than 1 day after the appointment is made; and
 - (ii) if the subject Corporation is not the plaintiff—serve a copy of the notice on the subject Corporation by delivery or by facsimile transmission or by pre-paid post to its registered office not later than 1 day after the appointment is made; and
- (b) the liquidator or provisional liquidator must, not later than 7 days after the appointment is made, cause to be advertised a notice in Form 154G or Form 154H, as the case requires.

(2) For the purposes of subrule (1), a sealed or unsealed copy is sufficiently served at an office if the information contained in the copy is transmitted to a facsimile transmission number by a means that reproduces, in that office, the information as it appears in the copy.

Appeal from registrar: winding up order

21. (1) An appeal shall lie to the Court from a winding up order made by a registrar.

(2) Part 60 rules 9 and 11–15A shall apply, making such changes as it is necessary to make, to an appeal under subrule (1) as they apply to an appeal under Part 60 Division 3 (which relates to an appeal from a master to a Judge).

(3) For the purpose of the application of subrule (2), Part 60 rules 9 and 11–4 shall be read as if:

- (a) “registrar” were substituted for “master”; and
- (b) “Part 80A rule 18 (3)” were substituted for “this Division”,

where appearing in those rules.

Remuneration of provisional liquidator (s. 473 (2))

22. (1) An application by a provisional liquidator for determination of his or her remuneration by the Court under section 473 (2) must be made by motion in the winding up proceedings.

(2) Notice of the motion must not be filed until the expiration of 21 days after the applicant has served written notice of intention to apply for such determination in Form 154I together with a copy of the affidavit upon which the applicant intends to rely, on:

- (a) any liquidator of the subject corporation (other than the applicant);
- (b) each member of any committee of inspection, or if there is no committee of inspection, each of the 5 largest creditors of the subject corporation; and
- (c) each member of the subject corporation whose shareholding represents at least 10 per cent of the issued capital.

(3) The liquidator or any creditor or contributory may within 21 days after service of the last of the notices required by subrule (2) deliver to the applicant a notice of objection to the remuneration claimed, stating the grounds of objection.

(4) Where the applicant files with the notice of motion an affidavit made after the expiration of the lastmentioned period of 21 days:

- (a) proving service of the notices required by subrule (2); and
- (b) stating that he has received no notice of objection to the remuneration claimed,

and the notice of motion is endorsed with a request that the application be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of the applicant, the application may be so dealt with by the Court.

(5) The notice of motion must be served on any liquidator, creditor or contributory of the subject corporation who has given notice of objection under subrule (3).

(6) The evidence in support of the application must include an affidavit stating:

- (a) the nature of the work carried out by the applicant together with a summary of receipts and payments for the relevant period; and

- (b) if at the time of the application the applicant remains the provisional liquidator:
 - (i) any reasons known to the applicant why the winding up proceedings have not been determined; and
 - (ii) any reasons why the applicant's remuneration should be determined prior to the determination of the winding up proceedings.

Remuneration of liquidator (s. 473 (3))

23. (1) An application by a liquidator for determination of his or her remuneration by the Court under section 473 (3) must be made by motion in the winding up proceedings.

(2) Notice of the motion must not be filed until the expiration of:

- (a) 28 days after the holding of the meeting of creditors referred to in section 473 (4); and
- (b) 21 days after the applicant has served notice in form 154I of his or her intention to apply for such determination, together with a copy of the affidavit on which the applicant intends to rely, on:
 - (i) each creditor who was present in person or by proxy at the meeting of creditors;
 - (ii) each member of any committee of inspection; and
 - (iii) any member of the subject corporation whose shareholding represents at least 10 per cent of the issued capital.

(3) Any creditor or contributory may within 21 days after service of the last of the notices required by subrule (2) deliver to the applicant a notice of objection to the remuneration claimed, stating the grounds of objection.

(4) Where the applicant files with the notice of motion an affidavit made after the expiration of the lastmentioned period of 21 days:

- (a) proving service of the notices required by subrule (2) (b); and
- (b) stating that he has received no notice of objection to the remuneration claimed,

and the notice of motion is endorsed with a request that the application be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of the applicant, the application may be so dealt with by the Court.

(5) The notice of motion must be served on any creditor or contributory of the subject corporation who has given notice of objection under subrule (3).

(6) The evidence in support of the application must include an affidavit stating:

- (a) the nature of the work carried out by the applicant together with a summary of receipts and payments for the relevant period; and
- (b) if at the time of the application the applicant remains the liquidator, any matters delaying the completion of the winding up.

Copy of a report under s. 475 (7) (a)

24. The copy of the report required to be filed with the Court under section 475 (7) (a) shall be a copy certified in writing by the liquidator of the subject corporation to be a true copy of the original report.

Report by the liquidator to the Court: stay of winding up (s. 482 (2))

25. A report by the liquidator to the Court under section 482 (2) may be furnished to the Court by filing it in Form 1545.

Special manager (s. 484)

26. (1) This rule applies to proceedings in the Court under section 484 (which section relates to a special manager).

(2) The liquidator may file an unverified statement in support of the application, instead of an affidavit.

(3) Security is sufficiently given if it is given for any winding up in which the person giving security is appointed a special manager.

(4) The Court may at any time and from time to time give directions for the giving of security in a different amount to the amount for which security was previously given.

(5) Where security is given to the satisfaction of a master, he shall give a certificate to that effect.

Accounting by special manager (s. 484 (2) (a))

27. (1) Subject to any order of the Court under section 484 (2) (a) the special manager shall furnish his accounts to the liquidator.

(2) The accounts shall be verified by affidavit.

(3) The affidavit may be in Form 154K and subscribed to the accounts.

(4) When the accounts are approved by the liquidator, the totals of the receipts and payments shall be included by the liquidator in his accounts.

Default of special manager

28. (1) Where any special manager is required by the rules or any direction of the Court to do anything and does not carry out the requirement, the liquidator shall apply to the Court for directions in respect of the default and the Court may make such orders and give such directions as the Court thinks fit.

(2) Without limiting subrule (1), where a special manager is required by the rules or by any order or direction of the Court to pay into Court any sum shown by his account as due from him, and he does not comply with the requirement, the Court may charge him with interest at the rate prescribed for payment of interest by a receiver under Part 29 rule 5 (2) on that sum while in his possession as special manager.

(3) This rule does not limit the powers of the Court as to the enforcement of orders or as to the punishment of contempt.

Complaints concerning liquidator or provisional liquidator (s. 536 (1))

29. (1) The complaint to the Court under section 536 (1) shall be filed with the summons claiming an inquiry under the subsection in respect of the matter complained of.

(2) A complaint under section 536 (1) shall not be inspected or used except by leave of the Court.

Report concerning liquidator or provisional liquidator (s. 536 (2))

30. (1) A report to the Court by the Commission under section 536 (2) shall be filed with the summons claiming orders under the subsection in respect of the matter reported.

(2) A report made under section 536 (2) shall not be inspected or used except by leave of the Court.

Report by the chairman to the Court: meeting of creditors, etc. (s. 547)

31. A report by the chairman to the Court under section 547 may be made by filing a report in Form 154J.

Appeal from liquidator, etc. (s. 1321)

32. A person mentioned in section 1321 (a), (b), (c), (cc) or (d) may, on application in writing made to that person before the expiration of the time limited by Part 51A rule 3 (1) (other than

the time extended by the Court) for instituting an appeal from that person's act, omission or decision, grant, by notice in writing, an extension of that time and where that person does so, he or she shall deliver the notice to the applicant who shall file the notice with the summons instituting the appeal.

Release of Liquidator (s. 480)

33. (1) An application by a liquidator for:

- (a) an order under section 480 (c) that he or she be released; or
- (b) an order under section 480 (d) that he or she be released and that the subject corporation be dissolved,

must be made by motion in the winding up proceedings.

(2) An application by a liquidator for an order under section 480 (c) that he or she be released must state the grounds on which it is contended that the subject corporation should not be dissolved.

(3) Unless the Court otherwise orders, the liquidator must less than 21 days prior to filing notice of the motion:

- (a) send:
 - (i) a notice in form 154L;
 - (ii) a copy of the application for release;
 - (iii) a copy of the summary of receipts and payments; and
 - (iv) a copy of the statement showing the subject corporation's position,

by prepaid post to each creditor who has proved his or her debt and to each contributory; and

- (b) cause notice of the application in form 154M to be published in the Commonwealth of Australia Gazette.

(4) Where a liquidator applies for an order under section 480 (c) or section 480 (d), he or she shall file with notice of the motion:

- (a) a summary of receipts and payments in the winding up;
- (b) a statement showing the position of the subject corporation at the date the application was filed; and
- (c) an affidavit:

- (i) stating whether the whole of the property of the subject corporation has been realised, or whether so much of the property of the subject corporation has been realised as can be realised without needlessly prolonging the liquidation;
- (ii) stating details of any calls made upon contributories in the course of the winding up;
- (iii) stating details of any dividends paid in the course of the winding up;
- (iv) stating whether the committee of inspection, if any, has passed a resolution approving of the liquidator's release;
- (v) stating whether the Commission has appointed an auditor to report on an account or a statement of the position in the winding up under section 539 (2);
- (vi) stating whether the Court has ordered a report on the accounts of the liquidator to be prepared;
- (vii) stating whether any objection has been received by the liquidator to his or her release as liquidator of the subject corporation from any auditor appointed by the Commission or by the Court or from any creditor, contributory or other person interested;
- (viii) stating whether any report has been submitted by the liquidator to the Commission under section 533;
- (ix) stating whether the unsecured creditors of the subject corporation have been paid more than 50 cents in the dollar and whether it is otherwise necessary to report on the affairs of the subject corporation or its officers;
- (x) stating details of any onerous property disclaimed in the course of the winding up;
- (xi) stating details of any costs and expenses payable by the liquidator if the Court grants his or her release;
- (xii) annexing a copy of:
 - (A) the notice sent to each creditor and contributory in compliance with paragraph (a) of subrule (3); and
 - (B) the notice published in the Commonwealth of Australia Gazette in compliance with paragraph (b) of subrule (3); and

(xiii) including statements by the liquidator to the following effect:

(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” and, where applicable, add “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” and, where applicable, add “except as disclosed in this affidavit”.

(5) A creditor or contributory who wishes to object to the grant of release to a liquidator must deliver to the liquidator a notice of objection stating the grounds of objection within 21 days of publication of the notice referred to in subrule (3) (b).

(6) Where the applicant files with the notice of motion an affidavit made after the expiration of the 21 days:

(a) proving compliance with subrule (3); and

(b) stating that he has received no notice of objection to the release,

and the notice of motion is endorsed with a request that the application be determined or dealt with in the absence of the public and without an attendance by or on behalf of the applicant, the application may be so determined or dealt with by the Court.

Exercise of Court’s power by liquidator (s. 488 (1))

34. Subject to the Corporations Law, the Corporations Regulations, this Part, and any order of the Court, the powers and duties conferred on the Court by Part 5.4B of the Corporations Law in respect of the matters referred to in section 488 (1) may be exercised by the liquidator as an officer of the Court and subject to the control of the Court.

Destruction of books (s. 542 (3) (a))

35. (1) An application for an order under section 542 (3) (a) must be made by motion in the winding up proceedings.

(2) Where notice of the motion is endorsed with a request that the application be dealt with by the Court in the absence of the public and without an attendance by or on behalf of the applicant, the application may be so dealt with by the Court.

DIVISION 8—*Examinations*

Examination of persons concerned with corporations (Part 5.9 Division 1)

36. (1) This rule applies to proceedings on an application to the Court for a summons under section 596A or section 596B (in these rules referred to as an Examination Summons).

(2) The summons by which the application is made shall be served:

- (a) where a liquidator has been appointed, unless he is the applicant—on the liquidator; and
- (b) unless the Commission is the applicant—on the Commission,

and need not be served on any other person unless the Court so directs.

(3) The applicant shall, when making the application, lodge in the registry a draft of the Examinations Summons applied for.

(4) An affidavit referred to in section 596C must set out:

- (a) the facts relied on to establish that the applicant is an eligible applicant for the purposes of section 596B;
- (b) the facts relied on to establish the matters referred to in section 596B (1) (b); and
- (c) if production of books is to be required—the deponent's belief that the books, the production of which is sought, are reasonably required for the purposes of the examination and the grounds for that belief.

(5) Notwithstanding Part 65 rule 7, an affidavit or other material filed in support of an application for an Examination Summons shall not, except with the leave of the Court, be open to inspection by any person other than the liquidator or any person authorised by the Commission.

(6) An Examination Summons shall be in form 154N.

(7) The applicant shall cause notice of the time and place appointed for the holding of an examination (but not, unless the Court so orders, for the holding of an adjourned examination) to be advertised.

(8) An Examination Summons shall be served personally on the person who is to be examined.

(9) Where the Court makes an order under section 597 (13), the written record, signed if so required by the Court under that subsection, shall be filed in the registry.

(10) Where:

- (a) the examination of a person under section 597 is held wholly or partly in public; and
- (b) a written record or transcript of the questions put to the person and the answers given by the person at the examination is filed in the registry,

the registrar shall, upon application by the person made within 3 years of the date of the conclusion of the examination and payment of the prescribed fee, furnish to the person a copy of the written record or transcript of such part of the examination as is held in public.

(11) A transcript is authenticated under section 597 (14) if the person who prepared the transcript, or under whose supervision the transcript was prepared, certifies in writing signed by that person that the transcript is a true record of the examination.

(12) In this rule, “liquidator” includes a provisional liquidator.

Default in relation to an examination

37.(1) When a person is summoned under an Examination Summons and the examination is, or is to be, held before the Court constituted by a registrar, and that person (in this rule referred to as the person in default):

- (a) fails to attend as required by the Examination Summons;
- (b) fails to attend from day to day until the conclusion of the examination ;
- (c) refuses or fails to take an oath or make an affirmation;
- (d) refuses or fails to answer a question that the Court directs him or her to answer;
- (e) refuses or fails to produce books that the Examination Summons requires him or her to produce; or
- (f) fails to comply with a requirement by the court to sign a written record of the examination,

and if, in the case of a failure or refusal referred to in paragraphs (a), (b), (c), (d) or (e), it does not appear to the registrar that there was any reasonable excuse, the registrar must, on the request of any person entitled to take part in the examination, give to that person a signed certificate of the failure or refusal

(2) On application by a person to whom such a certificate has been given, the Court, if satisfied that there has been a contravention of section 597 (6), (7) or (13), may order the person in default to do the relevant act and to pay any costs occasioned by the failure or refusal.

(3) On an application under subrule (2), a signed certificate given under subrule (1) constitutes evidence of the matters certified.

(e) SCHEDULE E Part 1

After the matter relating to Part 80 insert:

in Column 1	in Column 2	in Column 3
Part 80A:		
Rule 24	Examination (Corporations Law)

(f) SCHEDULE F

After Form 154A insert:

Form 154BA

P. 80A, r. 4.

SUMMONS UNDER SECTION 1092 (3) OF THE
CORPORATIONS LAW

THE COURT ORDERS that:

(name) of *(address)* shall appear before the Court at *(place)* on *(date)* at a.m. and show cause why the document mentioned in the Schedule below should not be delivered up and produced by bringing the said document into the office of *(name of company)* at *(office of the company)* within *(state the period as ordered)* to have the said document cancelled *(or as the notice required)* and the transfer of the said document registered *(or as ordered)*.

SCHEDULE

*(Description of document)**(Complete as in general form of minute or order; Form 51.)***Form 154B***(Notice of Application under ss. 167 (7), 168 (4), 172 (10), 190 (3), 194 (1), 195 (5), 197 (6), 198 (6), 411 (4) (6) and (6), 413 (1), 459A, or 461)**P. 80A, r. 10 (5).**(No heading or title.)*

NOTICE OF APPLICATION RELATING TO

(Name of Company in capitals)

A.C.N. *(specify Australian Company Number of Company)*
(Name of applicant) will apply to the Supreme Court of New
 South Wales at *(time)* on *(date)* at *(address of Court)* for an order
(describe order using appropriate description hereunder)

for the cancellation of a change of status of *(name of Company)*
 under section 167;

or

for the cancellation of a change of *(name of Company)* from a
 public company to a proprietary company *(or from a proprietary
 company to a public company)* under section 168;

or

for the cancellation of an alteration of the memorandum of *(name
 of Company)* under section 172;

or

confirming the issue of shares in the capital of *(name of
 Company)* at a discount under section 190;

or

validating an issue or allotment of shares *(or confirming the terms
 of an issue or allotment of shares)* in the capital of *(name of
 Company)* under section 194;

or

setting aside a variation or abrogation of rights attached to shares in the capital of (*name of Company*) under section 197 (*or* section 198);

or

setting aside an alteration of the memorandum (*or* the articles) of (*name of Company*) under section 197 (*or* section 198);

or

setting aside a variation of abrogation of rights of members of (*name of Company*) under section 199;

or

setting aside an alteration of the articles of (*name of Company*) under section 199;

or

approving a compromise or arrangement by (*name of Company*) with its creditors or members, or a class of creditors or members, under section 411 (4) and (6);

or

that (*name of Company*) be wound up in insolvency under section 459A;

or

that (*name of Company*) be wound up on the ground of (*specify ground*) under section 461;

or

confirming a resolution that (*specify undertaking, scheme, enterprise or arrangement*) be wound up under section 1074;

or

(*state other order sought*).

Any person intending to appear at the hearing must file a notice of appearance in the prescribed form and serve that notice on the applicant at its address for service shown below not later than (*specify the date by reference to Part 80A rule 7 (I)*).

(*name of applicant's solicitor*)

(*address for service*)

(*no date is required*)

(*Form 4 does not apply*)

Form 154C

(Notice of application for reduction of capital and of list of creditors.)

P. 80A, r. 13 (5) (a).

(No heading or title.)

NOTICE OF APPLICATION RELATING TO

(Name of Company in capitals.)

A.C.N. *(specify Australian Company Number of Company)*

An application has been made to the Supreme Court of New South Wales for an order confirming a resolution of the above Company to reduce its capital from \$ to \$ *(or as the case may be).*

A list of persons admitted to have been creditors of the Company on *(specify date fixed by the Court under section 195 (3)(a))* may be inspected at the office of the Company at *(address)*, or at the address shown below, at any time between the hours of *(specify)*.

A person:

- (a) who claims to have been on the last mentioned date, and still to be, a creditor of the Company, unless belonging to *(set out any excluded class or classes)*;
- (b) who is not entered on the list; and
- (c) who claims to be entered on the list,

must on or before *(specify date fixed by the Court under section 195 (3)(a))* send his or her name and address, the particulars of his or her debt or claim, and the name and address of his or her solicitor, if any, to the address shown below. A claimant who does not do so will be precluded from objecting to the proposed reduction of capital.

Every person, who is admitted to be a creditor of the Company and does not consent to the proposed reduction of capital, is entitled to object to the reduction.

Any creditor, who has not received written notification from the Company that his or her name is entered on the list of creditors,

must send particulars of his or her name and address to the address shown below.

(name of applicant's solicitor)
(address for service)

(no date is required)
(Form 4 is not applicable)

Form 154D

P. 80A, r. 13 (5) (b).

NOTICE TO CREDITORS

To: *(name and address of creditor)*

An application has been made to the Supreme Court of New South Wales for an order confirming a special resolution of the above Company to reduce its capital from \$ to \$. Your name is entered as a creditor for *(nature and amount or estimated value of debt or claim)* in the list of persons admitted by the Company to have been its creditors on *(date)*.

If you claim to have been a creditor on that date in a larger amount than is stated above, you must send the particulars of your claim, your name and address *(and the name and address of your solicitor; if any)* to the address shown below to arrive on or before *(specify date fixed by the Court under section 195 (3) (b))*. Otherwise, the above entry in the list of creditors will be treated as correct in all proceedings relating to the application to reduce the capital of the Company.

Date: *(date)*

(name of applicant's solicitor)
(address for service)

(Form 4 does not apply)

Form 154E

P. 80A, r. 13 (7).

AFFIDAVIT VERIFYING LIST OF CREDITORS

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

1. I am secretary *(or specify other capacity)* of the plaintiff Company ("the Company").

2. The document annexed and marked “A” (*or* produced to me and marked “A’”) contains a list of creditors of, and of persons having claims upon, the Company (*and, where applicable, add* except those of the following class (*or* classes) *and set out any excluded class or classes*) on (*date fixed by the court*) together with their addresses, and the nature and amount of their debts or claims.
3. That list is, to the best of my knowledge and belief, a true and accurate list of persons having claims on that day, and of the nature and amount or estimated value of their debts or claims.
4. To the best of my knowledge and belief there was not, at that date, any debt or claim which, if that date were the commencement of the winding up of the Company, would be admissible in proof against the Company other than the debts and claims set out in that list.
5. I make this statement from facts within my knowledge as the secretary (*or specify other capacity*) of the Company, and from information derived on investigation of the books of the Company.

SWORN at }
before me

“A”

Name and address of creditor or claimant	Nature of debt or claim	Amount of estimated value of debt or claim
--	----------------------------	--

This list of creditors and claimants is the annexure marked “A” referred to in the affidavit of (*name*) sworn before me at (*place*) on (*date*).

or

This list of creditors and claimants marked “A” was produced and shown to (*name*) at the time of swearing his or her affidavit before me on (*date*)

Form 154F

P. 80A, r. 20 (a) (i).

NOTICE TO LIQUIDATOR (*or* PROVISIONAL
LIQUIDATOR) OF APPOINTMENT

To: (*name and address of liquidator or provisional liquidator*)
(*if liquidator was appointed, add:*

(*Name and registered office of Company*) was wound up by order
of the Supreme Court of New South Wales on (*date*) and you
were appointed to be the liquidator. The application for the
winding up was filed on (*date on which the summons was filed*.)

(*if provisional liquidator was appointed, add:*

By order of the Court on (*date*) you were appointed to be
provisional liquidator of (*name and registered office of*
Company.)

Form 154G

P. 80A, r. 20 (1) (b).

(*No heading or title*)

NOTICE OF WINDING UP ORDER AND APPOINTMENT
OF LIQUIDATOR

(*Name of Company in capitals*)

A.C.N. (*specify Australian Company Number of Company*)

On (*date*) the Supreme Court of New South Wales made an order
that the Company be wound up by the Court and appointed me to
be liquidator.

(*name of liquidator*)

(*address*)

(*No date required*)

(*Form 4 does not apply*)

Form 154H

P. 80A, r. 20 (1) (b).

(No heading or title)

NOTICE OF APPOINTMENT OF PROVISIONAL
LIQUIDATOR

(Name of Company in capitals)

A.C.N. *(specify Australian Company Number of Company)*

On *(date)* the Supreme Court of New South Wales appointed me to be provisional liquidator of the Company.

(name of provisional liquidator)

(address)

(No date required)

(Form 4 does not apply)

Form 154I

P. 80A, rr. 22 (2), 23 (2) (b).

(No heading or title)

NOTICE OF INTENTION OF LIQUIDATOR *(or*
PROVISIONAL LIQUIDATOR) TO APPLY FOR
DETERMINATION OF REMUNERATION

(Name of Company in capitals)

A.C.N. *(specify Australian Company Number of Company)*

To: *(name and address of person to whom notice is given)*

I, *(name and address)*, the liquidator *(or* provisional liquidator) of the abovenamed Company, will, not earlier than 21 days after service on you of this notice and the accompanying affidavit, seek a determination by the Court of my remuneration.

If you object to my application, you should, within 21 days after service of this notice, serve on me a notice of objection stating the

grounds of objection to the remuneration claimed. You will then be entitled to receive notice of the time and place of hearing of the application.

Dated (*date*)

(*signature*)

liquidator (*or* provisional liquidator)

(*Form 4 does not apply*)

Form 154J

(*Report*)

P. 80A, rr: 25, 31.

REPORT BY LIQUIDATOR (*or as the case may be*)

1. I, (*name and address*) am the liquidator (*or as the case may be*) of (*name of Company*).

(*Continue in paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject matter: For example, where the liquidator makes a report under section 547 (1) of the Corporations Law :*

2. I was chairman of a meeting of the creditors (*or contributories*) of the Company held on (*date*) at (*place*).

3. The meeting was convened by a notice given on (*date*) and by notice published in the (*name of newspaper*) on (*date*) and in the Commonwealth of Australia Gazette on (*date*).

4. The meeting was attended, either personally or by proxy, by (*number*) creditors whose proofs of debt against the Company were admitted for voting purposes and amounted in all to the value of \$

or

4. The meeting was attended, either personally or by proxy, by (*number*) contributories who held in all (*number*) shares in the Company and were entitled respectively by the regulations of the Company to (*number*) votes.

5. The proposals submitted to the meeting were (*state the proposals*).

6. (*Certify the resolution of the meeting, showing that if the voting was unanimous of, if not, the total number and value of creditors, or the total number in voting power of contributories, voting for and against each proposal.*)

Dated:

(*signature*)
Chairman

Form 154K

(*Affidavit by special manager verifying his accounts.*)

P. 80A, r. 27.

AFFIDAVIT

On 19 I (*name, address and occupation*) say on oath:

1. I am the special manager of the property and business (*or as the case may be*) of the Company.
2. The account of receipts and payments set out above contains a full and true account of my receipts and payments as special manager from (*date*) to (*date*).
3. I have not, nor has any other person by my order or for my use, during the period, received or paid any moneys on account of the Company other than the items mentioned in that account.

SWORN at }
before me

Form 154L

P. 80A, I: 33 (3) (a) (i).

NOTICE OF INTENTION OF LIQUIDATOR TO SEEK RELEASE

To: (*name and address of creditor or contributory*)

I, (*name and address of liquidator*), the liquidator of the above Company, intend to apply to the Supreme Court of New South Wales for a release as liquidator of the Company (*if applicable, add and that the company be dissolved*).

If you object to the grant of my release, you must, within 21 days of publication in the Commonwealth of Australia Gazette of my notice of intention to apply for a grant of release, deliver to me a notice of objection stating the grounds of objection.

(NOTE: Section 481 (3) of the Corporations Law provides that an order of the Court releasing the liquidator discharges him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the Company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.)

Dated: *(date)*

(Form 4 does not apply)

Form 154M

P. 80A, r. 33 (3) (b).

(No heading or title)

NOTICE OF INTENTION OF LIQUIDATOR TO SEEK RELEASE

(Name of Company in capitals)

A.C.N. *(specify Australian Company Number of Company)*

I, *(name and address of liquidator)*, the liquidator of the above company, intend to apply to the Supreme Court of New South Wales for a release as liquidator of the Company *(if applicable, add and that the company be dissolved)*.

Any creditor or contributory who wishes to object to the grant of my release may, within 21 days of publication of this notice, deliver to me a notice of objection stating the grounds of objection.

(NOTE: Section 481 (3) of the Corporations Law provides that an order of the Court releasing the liquidator discharges him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the Company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.)

(No date is required)

(Form 4 does not apply)

Form 154N

P. 80A, r. 36 (6).

SUMMONS TO ATTEND FOR EXAMINATION

UNDER SECTION 596A (or 596B) OF THE
CORPORATIONS LAW

To: *(Name)*

(Address)

1. You are required to attend before the Court at the time and place appointed by the Registrar and specified below, to be examined on oath or affirmation about the examinable affairs (as defined in the Corporations Law) of *(name of corporation)* (“the Corporation”).
2. Section 597 (6) of the Corporations Law provides that a person who is summoned under section 596A or section 596B to attend before the Court shall not, without reasonable excuse:
 - (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day until the conclusion of the examination.
3. *(If applicable)* You are also required to produce at the examination the books (as defined in the Corporations Law) specified in the Schedule below that:
 - (a) are in your possession or custody or under your control; and
 - (b) relate to the Corporation or to any of its examinable affairs.
4. *(If applicable)* Section 597 (7) of the Corporations Law provides that a person who attends before the Court for examination must not:
 - (a) without reasonable excuse, refuse or fail to take an oath or make an affirmation; or
 - (b) without reasonable excuse, refuse or fail to answer a question that the Court directs him or her to answer; or
 - (c) make a statement that is false or misleading in a material particular; or

- (d) without reasonable excuse, refuse or fail to produce books that the summons requires him or her to produce.

SCHEDULE

(if applicable)

(description of books)

Dated: 19

By the Court
Registrar
(or as the case may be)

EXPLANATORY NOTE

(This note does not form part of the rules).

1. The object of the amendments contained in paragraph 2 are to amend the rules to take into account the changes made by the replacement of the Patents Act 1952 of the Commonwealth by the Patents Act 1990 of the Commonwealth.

2. The object of amendments contained in paragraph 3 is to amend the rules to take into account the Disability Services and Guardianship Act 1987, the Protected Estates (Disability Services and Guardianship) Amendment Act 1987, the Protected Estates (Amendment) Act 1989, the Mental Health Act 1990, the Mental Health (Criminal Procedure) Act 1990 and the Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1990.

3. The object of the amendments contained in paragraph 4 is to adopt a procedure for encouraging the prompt disposal of default proceedings and to dismiss proceedings where no action has been taken within 2 years of commencement.

4. The object of the amendments contained in paragraph 6 is to:

- (a) allow a taxing officer to award costs of a taxation to a defendant liable to pay the costs being taxed where:
- (i) an offer by the defendant under Part 22, to compromise a claim by the plaintiff whose bill it is, has been accepted;
 - (ii) a costs offer, made by the defendant to the plaintiff before the bill is served, has not been accepted; and
 - (iii) the offer was in an amount not less than the amount of costs allowable in respect of the claim the subject of the Part 22 offer; and
- (b) relocate Part 52 rule 40 (3A) in Part 22.

5. The object of the amendment contained in paragraph 8 is to allow service by post of subpoenas for production at a date not later than 21 days before the trial or hearing of the proceedings in which the subpoena is issued.

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6. The amendment contained in paragraphs 9 and 10 (b) is to take account of the repeal of s. 475 of the Crimes Act 1990 and its replacement by Part 13A of the Crimes Act 1900.

7. The object of the amendment contained in paragraph 10 (a) is to correct a typographical error.

8. The object of the amendment contained in paragraph 11 is to amend the rules to take into account the Corporations (NSW) Act 1990, the Corporations Law and the ASC Law.

9. Words and figures underlined in the above amendments are intended to be represented in italics when printed.

M. A. Blay, The Secretary of the Rule Committee.