



New South Wales

Corporations Law Amendment (No 2) Rules 2001

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 21 May 2001.

STEVEN JUPP

Secretary to the Rule Committee

Explanatory note

The object of these Rules is to amend the *Corporations Law Rules* so as:

- (a) to provide that a plaintiff company seeking the setting aside of a statutory demand under section 459G of the *Corporations Law* (***the Law***) is to obtain a record of a company search in relation to the company from the Australian Securities and Investments Commission and either annex the search record to the affidavit in support of the originating process seeking the order, or file the search record before, or tender it on, the hearing of the application, and
- (b) to allow a plaintiff company seeking the setting aside of a statutory demand under section 459G of the Law to file a copy of the statutory demand and any accompanying affidavit with the originating process seeking the order, and
- (c) to make further provision for the manner in which a meeting of members or of holders of convertible securities ordered under section 411 (Administration of compromises etc) of the Law is to be convened, held and conducted, and
- (d) to make it clear that an affidavit accompanying a statutory demand under section 459E of the Law may be sworn before the proposed statutory demand is signed, and

2001 No 370

Corporations Law Amendment (No 2) Rules 2001

Explanatory note

- (e) to make it clear that an application for the examination or investigation of a person under section 411 (9) (b), 423 or 536 (3) of the Law, or an application for the issue of an examination summons under section 596A or 596B of the Law, may be made without notice to any person.

Corporations Law Amendment (No 2) Rules 2001

1 Name of Rules

These Rules are the *Corporations Law Amendment (No 2) Rules 2001*.

2 Commencement

These Rules commence on 30 June 2001.

3 Amendment of Corporations Law Rules

The *Corporations Law Rules* are amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of these Rules.

2001 No 370

Corporations Law Amendment (No 2) Rules 2001

Schedule 1 Amendments

Schedule 1 Amendments

(Rule 3)

[1] Rule 2.4

Omit “An affidavit” from rule 2.4 (2).

Insert instead “Subject to rule 2.4A, an affidavit”.

[2] Rule 2.4A

Insert after rule 2.4:

2.4A Application for order setting aside statutory demand

- (1) This rule applies, and subrule 2.4 (2) does not apply, to an application by a company under section 459G of the Law for an order setting aside a statutory demand served on the company.
- (2) The plaintiff may file with the originating process seeking the order a copy of the statutory demand and a copy of any affidavit that accompanied the statutory demand.
- (3) The plaintiff must:
 - (a) no earlier than 7 days before the originating process is filed, and not later than the day before the hearing of the application, carry out a search of the records maintained by the Commission in relation to the plaintiff, and
 - (b) either:
 - (i) annex the record of the search to the affidavit in support of the originating process, or
 - (ii) file the record of the search before, or tender it on, the hearing of the application.

[3] Rule 3.3

Insert at the end of rule 3.3:

- (2) Unless the Court otherwise orders, a meeting of members ordered under section 411 of the Law must be convened, held and conducted in accordance with:
 - (a) the provisions of Part 2G.2 of the Law that apply to the members of a company, and
 - (b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with Part 2G.2 of the Law.
- (3) Unless the Court otherwise orders, a meeting of a class of holders of convertible securities ordered under section 411 of the Law must be convened, held and conducted as if:
 - (a) the holders were a separate class of members, and
 - (b) the meeting were a meeting of members convened, held and conducted under subrule (2),but in accordance with, and subject to, the applicable provisions of the instrument under which the securities were issued.

[4] Rule 11.2 (2)

Omit the subrule. Insert instead:

- (2) The application may be made without notice to any person.

[5] Rule 11.3 (2)

Omit the subrule. Insert instead:

- (2) The application may be made without notice to any person.

2001 No 370

Corporations Law Amendment (No 2) Rules 2001

Schedule 1 Amendments

[6] Form 7

Omit paragraph 1 from the form of affidavit. Insert instead:

- 1 I am [*state deponent's relationship to the creditor(s), eg, 'the creditor', '(name), one of the creditors', 'a director of the creditor', 'a director of (name), one of the creditors'*] in respect of * a debt of \$ [*amount*]/ *debts totalling \$ [*amount*] owed by [*name of debtor company*] to *me/ *us/ *it/ *them relating to [*state nature of debt or debts, ensuring that what is stated corresponds with the description of the debt or debts, to be given in the proposed statutory demand, with which this affidavit is to be served on the debtor company*].

[7] Form 7

Omit paragraph 4 from the form of affidavit. Insert instead:

- 4 *The debt/ *The total of the amounts of the debts mentioned in paragraph 1 of this affidavit is due and payable by the debtor company.

BY AUTHORITY
