



Corporations Law Amendment (No 3) Rules 2003

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 11 December 2003.

Steven Jupp

Secretary of the Rule Committee

Explanatory note

The objects of these Rules are:

- (a) to replace references in the *Corporations Law Rules* to the *Corporations Law* and the *ASIC Law* with references to the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* of the Commonwealth respectively (the ***federal corporations legislation***), and
- (b) to rename the *Corporations Law Rules* as the *Supreme Court (Corporations) Rules 1999*, and
- (c) to make other amendments to promote uniformity with the rules of court of the Federal Court and the Supreme Courts of the other States and the Territories concerning the federal corporations legislation.

2003 No 961

Rule 1 Corporations Law Amendment (No 3) Rules 2003

Corporations Law Amendment (No 3) Rules 2003

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Corporations Law Amendment (No 3) Rules 2003*.

2 Commencement

These Rules commence on 1 January 2004.

3 Amendment of Corporations Law Rules

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

Schedule 1 Amendments

(Rule 2)

[1] Rule 1.1

Omit “*Corporations Law Rules*”.

Insert instead “*Supreme Court (Corporations) Rules 1999*”.

[2] Rule 1.3

Omit “*Corporations Law, or the ASIC Law*” wherever occurring.

Insert instead “Corporations Act, or the ASIC Act”.

[3] Rule 1.3

Omit the note to the rule. Insert instead:

Note. By virtue of the definition of *this Act* in section 9 of the Corporations Act, a reference to the Corporations Act includes a reference to the Corporations Regulations.

[4] Rule 1.4

Omit “**Corporations Law**” from the heading to the rule.

Insert instead “**Corporations Act**”.

[5] Rule 1.4

Omit “*Corporations Law*” wherever occurring in the rule and in the note to the rule.

Insert instead “Corporations Act”.

[6] Rule 1.5

Insert after the definition of *applicant*:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

Corporations Regulations means the *Corporations Regulations 2001* of the Commonwealth.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[7] Rule 1.5

Omit “the Law or the *ASIC Law*” wherever occurring in the definitions of *defendant* and *plaintiff*.

Insert instead “the Corporations Act or the ASIC Act”.

[8] Rule 1.5

Omit the definition of *the Law*.

[9] Rule 1.8

Omit “*Corporations Law*, the *ASIC Law*” from rule 1.8 (a).

Insert instead “Corporations Act, the ASIC Act”.

[10] Rule 1.10

Omit “*Corporations Law*, the *ASIC Law*”.

Insert instead “Corporations Act, the ASIC Act”.

[11] Rule 2.2

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[12] Rule 2.2

Omit “*ASIC Law*” wherever occurring. Insert instead “ASIC Act”.

[13] Rule 2.2

Omit “*Corporations Regulations*” wherever occurring.

Insert instead “Corporations Regulations”.

[14] Rule 2.2 (4)

Insert at the end of the subrule:

Note. In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 2 (Notes to these Rules).

[15] Rule 2.4

Insert at the end of rule 2.4 (2):

Note. An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 2 (Notes to these Rules).

[16] Rule 2.4A

Omit the heading to the rule. Insert instead:

**2.4A Application for order setting aside statutory demand
(Corporations Act s 459G)**

[17] Rule 2.4A

Omit “the Law” from rule 2.4A (1). Insert instead “the Corporations Act”.

[18] Rule 2.8

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[19] Rule 2.9

Omit “(s 465C of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 465C)”.

[20] Rule 2.9

Omit “the Law” from the rule and the note to the rule wherever occurring.

Insert instead “the Corporations Act”.

[21] Rule 2.10

Omit “(s 1330 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 1330)”.

[22] Rule 2.11

Omit “the Law” wherever occurring in the note to the rule.

Insert instead “the Corporations Act”.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[23] Rule 2.15

Omit “the Law”. Insert instead “the Corporations Act”.

[24] Rule 2.15

Omit “the *Corporations Regulations*”.

Insert instead “the Corporations Regulations”.

[25] Rule 3.2

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[26] Rule 3.3

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[27] Rule 3.4

Omit “(s 411 (4), s 413 (1) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 411 (4), s 413 (1))”.

[28] Rule 3.4

Omit “the Law” from rule 3.4 (1) wherever occurring.

Insert instead “the Corporations Act”.

[29] Rule 3.5

Omit “the Law”. Insert instead “the Corporations Act”.

[30] Division 4

Omit “(Part 5.2 of the Law)” from the heading to the Division.

Insert instead “(Corporations Act Part 5.2)”.

[31] Rule 4.1

Omit “(s 423 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 423)”.

[32] Rule 4.1

Omit “the Law”. Insert instead “the Corporations Act”.

[33] Rule 5.1

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[34] Rule 5.2

Omit “(s 459E (3) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 459E (3))”.

[35] Rule 5.2

Omit “the Law”. Insert instead “the Corporations Act”.

[36] Rule 5.3

Omit “(s 459P (2) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 459P (2))”.

[37] Rule 5.4

Omit “(s 459P, s 462, s 464 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 459P, s 462, s 464)”.

[38] Rule 5.4 (2)

Insert at the end of the subrule:

Note. An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 2 (Notes to these Rules).

[39] Rule 5.4

Omit “the Law” from rule 5.4 (3).

Insert instead “the Corporations Act”.

[40] Rule 5.5

Omit “(s 532 (9) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 532 (9))”.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[41] Rule 5.5

Omit “the Law” from rule 5.5 (2).

Insert instead “the Corporations Act”.

[42] Rule 5.6

Omit rule 5.6 (2) (b). Insert instead:

(b) published:

(i) in accordance with rule 2.11 at least 7 days before the date fixed for the hearing of the application, or

(ii) as otherwise directed by the Court.

[43] Rule 5.9

Omit “the Law” from rule 5.9 (b). Insert instead “the Corporations Act”.

[44] Rule 5.10

Omit “(s 465B of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 465B)”.

[45] Rule 5.10

Omit “the Law” from rule 5.10 (1).

Insert instead “the Corporations Act”.

[46] Division 6

Omit “(Part 5.4B of the Law)” from the heading to the Division.

Insert instead “(Corporations Act Part 5.4B)”.

[47] Rule 6.1

Omit “(s 472 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 472)”.

[48] Rule 6.1

Omit “the Law” from rule 6.1 (1).

Insert instead “the Corporations Act”.

[49] Rule 7.1

Omit “(s 473 (1) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 473 (1))”.

[50] Rule 7.2

Omit “(s 473 (7), s 502 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 473 (7), s 502)”.

[51] Rule 7.3

Omit “(s 475 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 475)”.

[52] Rule 7.3

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[53] Rule 7.4

Omit “(s 478 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 478)”.

[54] Rule 7.5

Omit “(s 480 (c) and (d) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 480 (c) and (d))”.

[55] Rule 7.5

Omit “the Law” from the rule and the note to rule 7.5 (2) wherever occurring.

Insert instead “the Corporations Act”.

[56] Rule 7.7

Omit “(s 481 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 481)”.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[57] Rule 7.7

Omit “the Law” from rule 7.7 (1).

Insert instead “the Corporations Act”.

[58] Rule 7.7

Omit “*Corporations Law*” from rule 7.7 (2) (a).

Insert instead “*Corporations Act 2001*”.

[59] Rule 7.8

Omit “(s 483 (3) (b) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 483 (3) (b))”.

[60] Rule 7.8

Omit “the Law”. Insert instead “the Corporations Act”.

[61] Rule 7.9

Omit “(s 488 (2) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 488 (2))”.

[62] Rule 7.10

Omit “(s 488 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 488)”.

[63] Rule 7.10

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[64] Rule 7.10

Omit “*Corporations Regulations*”.

Insert instead “Corporations Regulations”.

[65] Rule 7.10

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[66] Rule 7.11

Omit “(s 536 (1) and (2) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 536 (1) and (2))”.

[67] Rule 7.11

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[68] Division 8

Omit “(Part 5.4B of the Law)” from the heading to the Division.

Insert instead “(Corporations Act Part 5.4B)”.

[69] Rule 8.1

Omit “(s 484 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 484)”.

[70] Rule 8.2

Omit “(s 484 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 484)”.

[71] Rule 8.3

Omit “(s 484 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 484)”.

[72] Rule 9.1

Omit “(s 425 (1) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 425 (1))”.

[73] Rule 9.1

Omit “the Law” from rule 9.1 (1) and the note to the subrule.

Insert instead “the Corporations Act”.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[74] Rule 9.2

Omit “(s 449E (1) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 449E (1))”.

[75] Rule 9.2

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[76] Rule 9.3

Omit “(s 473 (2) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 473 (2))”.

[77] Rule 9.3

Omit “the Law” from rule 9.3 (1).

Insert instead “the Corporations Act”.

[78] Rule 9.4

Omit “(s 473 (3) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 473 (3))”.

[79] Rule 9.4

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[80] Rule 9.5

Omit “(s 484 (2) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 484 (2))”.

[81] Rule 9.5

Omit “the Law” from rule 9.5 (1).

Insert instead “the Corporations Act”.

[82] Rule 10.1

Omit “(s 554A (2) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 554A (2))”.

[83] Rule 10.1

Omit “the Law”. Insert instead “the Corporations Act”.

[84] Rule 10.2

Omit “(s 568 (1A) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 568 (1A))”.

[85] Rule 10.2

Omit “the Law” from rule 10.2 (1).

Insert instead “the Corporations Act”.

[86] Rule 10.3

Omit the heading to the rule.

Insert instead:

10.3 Winding up Part 5.7 bodies (Corporations Act s 583, s 585) and registered schemes (Corporations Act s 601ND)

[87] Division 11

Omit “(Part 5.9, Divisions 1 and 2 of the Law)” from the heading to the Division.

Insert instead “(Corporations Act Part 5.9, Divisions 1 and 2)”.

[88] Rule 11.1

Omit “the Law” from the definition of *examination summons*.

Insert instead “the Corporations Act”.

[89] Rule 11.2

Omit “Law” from the heading to the rule.

Insert instead “Corporations Act”.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[90] Rule 11.2

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[91] Rule 11.3

Omit “(s 596A, s 596B of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 596A, s 596B)”.

[92] Rule 11.3

Omit “*Corporations Law*” from rule 11.3 (4) wherever occurring.

Insert instead “*Corporations Act 2001*”.

[93] Rule 11.6

Omit “(s 597 (13) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 597 (13))”.

[94] Rule 11.6

Omit “the Law”. Insert instead “the Corporations Act”.

[95] Rule 11.7

Omit “(s 597 (14) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 597 (14))”.

[96] Rule 11.7

Omit “the Law”. Insert instead “the Corporations Act”.

[97] Rule 11.8

Omit “**Law**” from the heading to the rule.

Insert instead “**Corporations Act**”.

[98] Rule 11.9

Omit “the Law” from rule 11.9 (1) (a).

Insert instead “the Corporations Act”.

[99] Rule 11.11

Omit “(s 598 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 598)”.

[100] Rule 11.11

Omit “the Law” from rule 11.11 (1).

Insert instead “the Corporations Act”.

[101] Division 12

Omit the heading to the Division. Insert instead:

**Division 12 Takeovers, acquisitions of shares etc
(Corporations Act Chapters 6 to 6D) and
securities (Corporations Act Chapter 7)**

[102] Rule 12.1

Omit “Law” from the heading to the rule.

Insert instead “Corporations Act”.

[103] Rule 12.1

Omit “the Law”. Insert instead “the Corporations Act”.

[104] Rule 12.2

Omit “(s 1092 (3) of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 1071D (4))”.

[105] Rule 12.2

Omit “subsection 1092 (3) of the Law” from rule 12.2 (1).

Insert instead “subsection 1071D (4) of the Corporations Act”.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[106] Rule 12.3

Omit the rule. Insert instead:

12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act s 1071F)

As soon as practicable after filing an originating process under section 1071F of the Corporations Act, the plaintiff must serve a copy of the originating process and the supporting affidavit on:

- (a) the company, and
- (b) any person against whom an order is sought.

[107] Division 13

Omit the Division.

[108] Division 14

Omit “(Part 9.5 of the Law)” from the heading to the Division.

Insert instead “(Corporations Act Part 9.5)”.

[109] Rule 14.1

Omit “(s 554A, s 1321 of the Law)” from the heading to the rule.

Insert instead “(Corporations Act s 554A, s 1321)”.

[110] Rule 14.1

Omit “the Law” wherever occurring.

Insert instead “the Corporations Act”.

[111] Rule 14.1

Omit “the *Corporations Regulations*” from rule 14.1 (2).

Insert instead “the Corporations Regulations”.

[112] Division 15

Omit “ASIC Law” from the heading to the Division.

Insert instead “ASIC Act”.

[113] Rule 15.1

Omit “(s 61 of the ASIC Law)” from the heading to the rule.

Insert instead “(ASIC Act s 61)”.

[114] Rule 15.1

Omit “ASIC Law”. Insert instead “ASIC Act”.

[115] Rule 15.2

Omit the rule.

[116] Rule 15.3

Omit “(s 70, s 201, s 219 of the ASIC Law)” from the heading to the rule.

Insert instead “(ASIC Act s 70, s 201, s 219)”.

[117] Rule 15.3

Omit “ASIC Law”. Insert instead “ASIC Act”.

[118] Rule 16.1

Omit “Corporations Law” from rule 16.1 (1).

Insert instead “Corporations Act”.

[119] Rule 16.1

Omit “Corporations Law Rules” from rule 16.1 (3) (b).

Insert instead “Supreme Court (Corporations) Rules 1999”.

[120] Schedule 1

Omit “(under administration)” from Form 1.

Insert instead “(administrator appointed)”.

[121] Schedule 1, Form 2

Omit “Corporations Law/*ASIC Law/*Corporations Regulations” from Part A.

Insert instead “Corporations Act/*ASIC Act/*Corporations Regulations”.

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

[122] Schedule 1, Form 2

Omit “*Corporations Law*” wherever occurring in Part C.

Insert instead “*Corporations Act*”.

[123] Schedule 1, Form 2

Insert at the end of Part C:

Note 1. In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 2 (Notes to these Rules).

Note 2. An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 2 (Notes to these Rules).

[124] Schedule 1, Form 3

Omit “*Corporations Law*/**ASIC Law*/**Corporations Regulations*” from Part A.

Insert instead “*Corporations Act*/**ASIC Act*/**Corporations Regulations*”.

[125] Schedule 1, Form 8

Insert before “Date:”:

The hourly rates currently charged in respect of work done as *liquidator/*provisional liquidator by me, and by my partners and employees who may perform work in this administration, are set out below or in the Schedule which is attached to this Consent. I acknowledge that my appointment by the Court does not constitute an express or implied approval by the Court of these hourly rates.

[126] Schedule 1, Form 8

Insert after “* *Omit if not applicable*”:

Schedule
[*Description of hourly rates(s)*]

[127] Schedule 1, Form 10

Omit:

.....

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

Insert instead:

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

[128] Schedule 1, Form 17

Omit "*Corporations Law*" from Part A.

Insert instead "*Corporations Act*".

[129] Schedule 2

Insert after Schedule 1:

Schedule 2 Notes to these Rules

(rules 2.2, 2.4 and 5.4)

Note 1—see rule 2.2 (Form 2 Part C)

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

- 1 The plaintiff relies on failure by the defendant to comply with a statutory demand. A copy of the demand, marked A, is attached to this originating process.
- 2 The demand was [*or* The demand and an accompanying affidavit were] served by X.Y. who delivered it [*or* them] to the registered office of the defendant at [*insert address*] on [*insert date*] [*or, if service was by post, who posted *it/*them by ordinary prepaid post to the registered office of the defendant at [*insert address*] on [*insert date*]. [*If applicable, A copy of the accompanying affidavit, marked B, is attached to this originating process.*]*
- 3 The defendant failed to pay the amount of the debt demanded [*or* the total of the debts demanded] or to secure or compound for that *amount/*total to the plaintiff's reasonable satisfaction within 21 days after the demand was served on the defendant [*or* within 7 days after [*insert date*] when an application by the defendant under section 459G of the Corporations Act was finally determined or otherwise disposed of] [*or if the period for compliance with the demand was extended by order within the period specified in the order of the [*insert name of Court*] on [*insert date of order or, if more than one order, the**

2003 No 961

Corporations Law Amendment (No 3) Rules 2003

Schedule 1 Amendments

date of the last such order] as the period for compliance with the demand. A copy of the order, marked C, is attached to this originating process.]

[If the demand was varied by order under subsection 459H (4) of the Corporations Act]

- 4 The demand was varied by order of the [*insert name of Court*] on [*insert date of order*]. A copy of the order, marked D [*or as the case may be*], is attached to this originating process.

** Omit if not applicable*

Note 2—see rule 2.4 and rule 5.4 (2) (Affidavit in support)

***AFFIDAVIT IN SUPPORT/*AFFIDAVIT IN SUPPORT OF APPLICATION FOR WINDING UP IN INSOLVENCY**

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

- 1 I am the above-named plaintiff [*or if the applicant is a corporation, I am *a/*the director of the above-named plaintiff which is registered or taken to be registered in [specify State or Territory]*]. I am duly authorised to make this affidavit on its behalf]. Now produced and shown to me and marked A is a copy of the originating process to be filed in the proceeding.
- 2 Annexed to this affidavit is a current and historical extract of the records maintained by the Australian Securities and Investments Commission with respect to the defendant.
- 3 [*Where the defendant is registered or taken to be registered in another State or a Territory, state any facts—apart from the defendant's principal place of business—which bear upon jurisdiction being exercised in New South Wales rather than in another State or Territory.*]
- 4 The following facts are within my own personal knowledge save as otherwise stated.
- 5 The defendant was on [*state date of statutory demand or other relevant date*] indebted to the plaintiff in the sum of \$[*amount*] for [*state concisely the consideration, for example, goods sold and delivered etc*] which sum was then due and payable.
- 6 The demand, a copy of which is attached to the originating process, was signed by or on behalf of the plaintiff. I served the demand [*or the demand and the accompanying affidavit*] as referred to in the originating process [*or X.Y. has been instructed to make an affidavit of service of the demand [or the demand and the accompanying affidavit]*].
- 7 The matters stated in the originating process concerning the demand and failure of the defendant to comply with it are true and correct.
- 8 The sum demanded remains due and payable by the defendant to me [*or the plaintiff*].

Sworn, *etc*

** Omit if not applicable*

BY AUTHORITY
