



New South Wales

# Supreme Court (Corporations) Amendment (No 8) Rules 2008

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 5 May 2008.

Steven Jupp  
Secretary of the Rule Committee

## Explanatory note

The object of these Rules is to amend the *Supreme Court (Corporations) Rules 1999*:

- (a) to give effect to certain amendments made to the *Corporations Act 2001* of the Commonwealth by the *Corporations Amendment (Insolvency) Act 2007* of the Commonwealth, by making further provision in relation to the remuneration of office-holders involved in the external administration of a company and by making provision for applications for the issue of warrants for the arrest of certain persons, and
- (b) to make other minor changes relating to the obligation to give notice of applications to ASIC, the conduct of meetings ordered by the Court and the form of consent of a liquidator or provisional liquidator of a company to act as liquidator or provisional liquidator.

The amendments are in line with changes agreed to be implemented by New South Wales and other jurisdictions to their court rules that apply to proceedings under the *Corporations Act 2001* of the Commonwealth and the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

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Rule 1 Supreme Court (Corporations) Amendment (No 8) Rules 2008

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## **Supreme Court (Corporations) Amendment (No 8) Rules 2008**

under the

Supreme Court Act 1970

### **1 Name of Rules**

These Rules are the *Supreme Court (Corporations) Amendment (No 8) Rules 2008*.

### **2 Amendment of Supreme Court (Corporations) Rules 1999**

The *Supreme Court (Corporations) Rules 1999* are amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Rule 2)

**[1] Rule 1.4 Expressions used in the Corporations Act**

Insert in alphabetical order of expressions in the note:

*ASIC*—see section 9**[2] Rule 1.4, note, definition of “Commission”**

Omit the definition.

**[3] Rules 2.4 (2), 2.4A (3) (a), 2.8, 2.10, 3.5 (b), 6.2 (2) (a), 7.1 (1), 7.2 (2) (a), 7.5 (1) (b) and (3) (e), (g) (i) and (h), 7.7 (2) (c) and (3), 7.11 (2) and (4), 11.2 (1) (a) and (b), 11.3 (6), 11.5 (3) (b), 11.8 (1) (a) and (2), 11.11 (2), note, 12.1 and 15.1 and Schedule 1, Form 5, heading and signature block**

Omit “the Commission” wherever occurring. Insert instead “ASIC”.

**[4] Rule 2.8 Notice of certain applications to be given to ASIC**

Omit “of a compulsory” from item 2 of the Table to rule 2.8 (3).

Insert instead “or termination of a”.

**[5] Rules 2.10, 3.5, 12.1 and 15.1**

Omit “Commission” wherever occurring. Insert instead “ASIC”.

**[6] Rule 2.15 Meetings ordered by the Court**

Omit “regulations 5.6.12”. Insert instead “regulations 5.6.11”.

**[7] Rule 9.1 Remuneration of receiver (Corporations Act s 425 (1))—Form 16**

Omit the note to rule 9.1 (1). Insert instead:

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

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

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### [8] Rule 9.1 (6)

Omit the subrule. Insert instead:

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

### [9] Rules 9.2 and 9.2A

Omit rule 9.2. Insert instead:

#### **9.2 Determination by Court of remuneration of administrator (Corporations Act s 449E (1) (c) and (1A) (c))—Form 16**

- (1) This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under paragraph 449E (1) (c) or (1A) (c) of the Corporations Act determining the administrator's remuneration.
- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the administrator must serve a notice in accordance with Form 16 of the administrator's intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following persons:
  - (a) each creditor who was present, in person or by proxy at any meeting of creditors,
  - (b) each member of any committee of creditors or committee of inspection,
  - (c) if there is no committee of creditors or committee of inspection, and no meeting of creditors has been convened and held, each of the 5 largest (measured by amount of debt) creditors of the company,

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- (d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the administrator does not receive a notice of objection within the period mentioned in subrule (3):
- (a) the administrator may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, seeking the order stating:
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served, and
    - (ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3), and
  - (b) the administrator may endorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator, and
  - (c) the application may be so dealt with.
- (5) If the administrator receives a notice of objection within the period mentioned in subrule (3), the administrator must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory who has given a notice of objection.
- (6) An affidavit in support of the originating process, or interlocutory process, seeking the order must:
- (a) include evidence of the matters mentioned in subsection 449E (4) of the Corporations Act, and
  - (b) state the nature of the work performed or likely to be performed by the administrator, and
  - (c) state the amount of remuneration claimed, and
  - (d) include a summary of the receipts taken and payments made by the administrator, and

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- (e) state particulars of any objection of which the administrator has received notice, and
- (f) if the administration is continuing—give details of any matters delaying the completion of the administration.

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

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

**Note.** The amendment to section 449E of the Corporations Act made by the *Corporations Amendment (Insolvency) Act 2007* of the Commonwealth applies in relation to an administrator appointed on or after 31 December 2007—see Corporations Act s 1480 (6).

- (2) The application may be made only after the remuneration has been determined under paragraph 449E (1) (a) or (b) or paragraphs 449E (1A) (a) or (b) of the Corporations Act.
- (3) At least 21 days before filing the originating process or the interlocutory process applying for a review, the plaintiff or applicant must serve a notice, in accordance with Form 16A, of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following persons:
  - (a) if there is a committee of creditors or a committee of inspection—each member of the committee,
  - (b) if the remuneration of the administrator was determined by the creditors—each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined,
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice:
  - (a) stating the person's intention to appear at the hearing of the applicant for review, and
  - (b) setting out the issues that the person seeks to raise before the Court.

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- (5) A person mentioned in subrule (3) is entitled to be heard on the application for review, but only (unless the Court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).
  - (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served such a notice.
  - (7) The administrator must file an affidavit stating the following matters:
    - (a) the matters mentioned in subsection 449E (4) of the Corporations Act,
    - (b) the nature of the work performed or likely to be performed by the administrator,
    - (c) the amount of remuneration claimed by the administrator if that amount is different from the amount of remuneration that has been determined,
    - (d) a summary of the receipts taken and payments made by the administrator,
    - (e) particulars of any objection to the remuneration as determined, of which the administrator has received notice,
    - (f) if the administration is continuing—details of any matters delaying the completion of the administration.
  - (8) The affidavit mentioned in subrule (7) must annex a copy of the report that the administrator was required to prepare before remuneration was determined.
  - (9) The plaintiff or applicant must:
    - (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served, and
    - (b) annex or exhibit to the affidavit a copy of any such notice.

**[10] Rule 9.3 Remuneration of provisional liquidator (Corporations Act s 473 (2))—Form 16**

Omit “committee of creditors” from rule 9.3 (3) (b), wherever occurring.

Insert instead “committee of inspection”.

**[11] Rule 9.3 (7) (a)**

Omit “carried out”. Insert instead “performed or likely to be performed”.

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**[12] Rule 9.3 (7) (c)**

Omit “for the period for which remuneration is claimed”.

**[13] Rule 9.3 (8)**

Insert after rule 9.3 (7):

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

**[14] Rule 9.4 Determination by Court of liquidator’s remuneration (Corporations Act s 473 (3) (b) (ii))**

Omit “subsection 473 (3)” from rule 9.4 (1).

Insert instead “subparagraph 473 (3) (b) (ii)”.

**[15] Rule 9.4 (1), note**

Insert after rule 9.4 (1):

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

**[16] Rule 9.4 (3) (a)**

Omit “the meeting of creditors”.

Insert instead “any meeting of creditors at which the remuneration of the liquidator was considered”.

**[17] Rule 9.4 (3) (b)**

Omit “creditors”. Insert instead “inspection”.

**[18] Rule 9.4 (3) (c) and (d)**

Omit rule 9.4 (3) (c). Insert instead:

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



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**[19] Rule 9.4 (7)**

Omit the subrule. Insert instead:

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

**[20] Rule 9.4A**

Insert after rule 9.4:

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

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

**Note.** The amendment to section 504 of the Corporations Act made by the *Corporations Amendment (Insolvency) Act 2007* of the Commonwealth applies in relation to a liquidator appointed on or after 31 December 2007—see Corporations Act s 1480 (7).
- (2) The application may only be made after remuneration has been determined under paragraph 473 (3) (a) or subparagraph 473 (3) (b) (i), or fixed under subsection 495 (1) or subsection 499 (3), of the Corporations Act.
- (3) At least 21 days before filing the originating process or interlocutory process applying for a review, the plaintiff or applicant must serve a notice, in accordance with Form 16A, of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following persons:
  - (a) if there is a committee of inspection—each member of the committee,

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- (b) if the remuneration of the liquidator was determined or fixed by the creditors—each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined or fixed,
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice:
  - (a) stating the person's intention to appear at the hearing of the application for review, and
  - (b) setting out the issues that the person seeks to raise before the Court.
- (5) A person mentioned in subrule (3) is entitled to be heard on the application for review, but only (unless the Court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).
- (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served such a notice.
- (7) The liquidator must file an affidavit stating the following matters:
  - (a) for an application under subsection 473 (5) or (6) of the Corporations Act—the matters mentioned in subsection 473 (10) of the Corporations Act,
  - (b) for an application under subsection 504 (1) of the Corporations Act—the matters mentioned in subsection 504 (2) of the Corporations Act,
  - (c) the nature of the work performed or likely to be performed by the liquidator,
  - (d) the amount of remuneration claimed by the liquidator if the amount is different from the amount of remuneration that has been determined or fixed,
  - (e) a summary of the receipts taken and payments made by the liquidator,
  - (f) particulars of any objection to the remuneration as determined or fixed of which the liquidator has received notice,

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- (g) if the winding up is continuing—details of any matters delaying the completion of the winding up.
  - (8) The affidavit under subrule (7) must annex a copy of the report that the liquidator was required to prepare before remuneration was determined or fixed.  
**Note.** For the requirement to prepare a report, see subsections 473 (11), 473 (12), 495 (5), 499 (6) and 499 (7) of the Corporations Act.
  - (9) The plaintiff or applicant must:
    - (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served, and
    - (b) annex or exhibit to the affidavit a copy of any such notice.

**[21] Rule 9.5 Remuneration of special manager (Corporations Act s 484 (2))—Form 16**

Insert “or committee of inspection” after “committee of creditors” in rule 9.5 (3) (b), wherever occurring.

**[22] Rule 9.5 (7) (a)**

Omit “carried out”. Insert instead “performed or likely to be performed”.

**[23] Rule 9.5 (7) (c)**

Omit “for the period for which remuneration is claimed”.

**[24] Division 11A**

Insert after rule 11.11:

**Division 11A Warrants (Corporations Act s 486B and Part 5.4B, Division 3, Subdivision B)**

**11A.1 Arrest of person (Corporations Act s 486B)—Form 17A**

- (1) An application for the issue of a warrant under subsection 486B (1) of the Corporations Act for the arrest of a person must state the grounds for the issue of the warrant.
- (2) The application must be accompanied by an affidavit stating the facts in support of the application.
- (3) The warrant must be in accordance with Form 17A.

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- (4) If a person is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to the Registrar.

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

### [25] Schedule 1 Forms

Insert after “of the company.” in Form 8:

EITHER

I am not aware of any relevant relationship mentioned in subsection 60 (2) of the *Corporations Act 2001* of the Commonwealth.

OR

I have, or have had within the preceding 24 months, the following relevant relationships mentioned in subsection 60 (2) of the *Corporations Act 2001* of the Commonwealth.

[*Set out all relevant relationships.*]

### [26] Schedule 1, Form 8

Insert after “these hourly rates.”

**Note.** The requirement to disclose hourly rates should not be taken to imply that remuneration on an hourly basis is the most desirable or appropriate arrangement in every case. The Corporations Act acknowledges that another method of calculating remuneration may be appropriate (see, for example, s 473 (2) and (3)).

### [27] Schedule 1, Form 16A

Insert after Form 16:

#### **Form 16A Notice of intention to apply for review of remuneration**

(rules 9.2A, 9.4A)

IN THE MATTER OF [*company name*]

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

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

TAKE NOTICE that, not less than 21 days after this notice is served on you, I, [*name and address of proposed plaintiff or applicant*], \*[the \*administrator/\*liquidator of the above company,] intend to apply to the Court

to review *\*the remuneration of/\*my remuneration as the \*administrator/\*liquidator of the company.*

The amount of the remuneration that has been determined or fixed is [*state the amount*]. The remuneration was determined or fixed by [*state who determined or fixed the remuneration*] on [*state the date when the remuneration was determined or fixed*].

I intend to apply for an order to *\*confirm/\*increase/\*reduce* the remuneration.

[*Set out the grounds upon which an order or orders will be sought. If an order to increase or reduce the remuneration is sought, set out the amount by which the remuneration is sought to be increased or reduced.*]

If you wish to appear at the hearing of the application, in order to raise any issues before the Court, you must, within 21 days after being served with this notice, serve on me a notice under subrule *\*9.2A (4)/\*9.4A (4)* of the *Supreme Court (Corporations) Rules 1999*, stating your intention to appear at the hearing and setting out the issues that you seek to raise before the Court.

Date:

..... *Signature of proposed plaintiff or applicant*

*\* Omit if not applicable*

**[28] Schedule 1, Form 17A**

Insert after Form 17:

**Form 17A Arrest warrant**

(Corporations Act 2001 (Cth) s 486B and Supreme Court (Corporations) Rules 1999 rule 11A.1)

[*Title*]

TO: All members and special members of the Australian Federal Police and to all officers of the police force of the State or Territory in which [*name of person*] is found, and to the Sheriff of that State or Territory and all of that Sheriff's officers.

WHEREAS:

- \* [*name of company*] (the Company) is being wound up in insolvency\* *or*
- \* [*name of company*] (the Company) is being wound up by the Court\* *or*
- \* an application has been made for [*name of company*] (the Company) to be wound up\*

AND THE COURT IS SATISFIED THAT [*name of person*]:

- (a) is about to leave Australia in order to avoid:
  - (i) paying money to the company\* *or*
  - (ii) being examined about the company's affairs\* *or*

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- (iii) complying with an order of the Court, or some other obligation, under Chapter 5 of the *Corporations Act 2001* (Cth) in connection with the winding up\* *or*
- (b) has concealed or removed property of the Company in order to prevent or delay the taking of the property into the liquidator's custody or control\* *or*
- (c) has destroyed, concealed or removed books of the Company or is about to do so,\*

THIS WARRANT THEREFORE requires and authorises you to take [*name of person*] and to bring \*him/\*her before the Court at [*address of court*] and to keep \*him/\*her there pending the making of a further order by the Court.

THIS WARRANT ALSO requires and authorises you to seize any property or books of the company in the possession of [*name of person*] and to deliver them into the custody of the Registrar of the Court to be kept by that Registrar until the Court makes an order for their disposal.

**Note.** Section 489A of the *Corporations Act 2001* of the Commonwealth provides that if the Court issues a warrant under section 486B for a person to be arrested and brought before the Court, and the person is not in prison, then the person named in the warrant may be arrested by an officer of the police force of the State or Territory in which the person is found, or the Sheriff of that State or Territory or any of the Sheriff's officers, or a member or special member of the Australian Federal Police.

Date:

.....

[*signed*]  
Judge/Registrar

\* *Omit if inapplicable*

BY AUTHORITY

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