



New South Wales

Supreme Court (Corporations) Amendment (No 14) Rules 2019

under the

Supreme Court Act 1970

The Supreme Court Rule Committee has made the following rules of court under the *Supreme Court Act 1970*.

Rebel Kenna
Secretary of the Rule Committee

Explanatory note

The objects of these Rules are:

- (a) to give effect to procedural changes to insolvency administration made by the *Insolvency Law Reform Act 2016* of the Commonwealth, and
- (b) to update references to repealed sections of the *Corporations Act 2001* of the Commonwealth with references to equivalent replacement provisions in the *Insolvency Practice Schedule (Corporations)*, and
- (c) to make other minor changes.

These Rules make amendments to the *Supreme Court (Corporations) Rules 1999* that are consistent with those made to the *Federal Court (Corporations) Rules 2000* by the *Federal Court (Corporations) Amendment (Insolvency Law Reform) Rules 2017* of the Commonwealth.

Supreme Court (Corporations) Amendment (No 14) Rules 2019

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Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court (Corporations) Amendment (No 14) Rules 2019*.

2 Commencement

These Rules commence on the day on which they are published on the NSW legislation website.

Schedule 1 Amendment of Supreme Court (Corporations) Rules 1999

[1] Rule 1.4 Expressions used in the Corporations Act

Omit “*official liquidator*—see section 9” from the note.

[2] Rule 1.4 (2)

Insert at the end of rule 1.4:

- (2) Unless the contrary intention appears, an expression used in these Rules and in the Insolvency Practice Schedule (Corporations) has the same meaning in these Rules as it has in that Schedule.

Note. Definitions of expressions used in the Insolvency Practice Schedule (Corporations) are set out in Division 5 of that Schedule.

[3] Rule 1.5 Definitions for these Rules

Insert in alphabetical order:

Insolvency Practice Schedule (Corporations) means Schedule 2 to the Corporations Act.

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

Omit “Subsection 509 (6)” from item 3 of the table to rule 2.8 (3).

Insert instead “Subsection 509 (2)”.

[5] Rule 2.8 (3), table

Omit item 4.

[6] Rule 2.8 (3), table

Insert in appropriate order:

10	Subsection 45–1 (3) of the Insolvency Practice Schedule (Corporations)	For an order under subsection 45–1 (1) of the Insolvency Practice Schedule (Corporations) in relation to a registered liquidator
11	Subsection 90–10 (1) of the Insolvency Practice Schedule (Corporations)	For an inquiry into the external administration of a company
12	Section 90–20 of the Insolvency Practice Schedule (Corporations)	For an order under section 90–15 of the Insolvency Practice Schedule (Corporations) in relation to the external administration of a company

[7] Division 4, heading

Omit the heading. Insert instead:

Division 4 Process for seeking an inquiry or order in relation to controller, registered liquidator or external administration

[8] Rule 4.1 Inquiry into conduct of controller (Corporations Act s 423)

Insert “The complaint may be made by a person mentioned in any of paragraphs 11.2 (1) (a) to (d).” after “complaint.”.

[9] Rule 4.2

Insert after rule 4.1:

4.2 Order or inquiry in relation to registered liquidator or external administration of a company

An application to the Court:

- (a) under section 45–1 of the Insolvency Practice Schedule (Corporations) for an order in relation to a registered liquidator, or
- (b) under section 90–10 of that Schedule for an inquiry into the external administration of a company, or
- (c) under section 90–20 of that Schedule for an order in relation to the external administration of a company,

must be made:

- (d) in the case of a winding up by the Court—by an interlocutory process seeking the inquiry or order, or
- (e) in any other case—by an originating process seeking the inquiry or order.

Note. An application for an order or inquiry in relation to the external administration of a company ordered to be wound up by a Court is normally made to the Court that made the winding up order.

[10] Rules 5.5 (2) and (3) (a), 5.11 (1), 6.1 (1) and 6.2 (1)

Omit “an official liquidator” wherever occurring. Insert instead “a registered liquidator”.

[11] Rule 5.6

Omit the rule. Insert instead:

5.6 Notice of application for winding up

- (1) If a person applies for a company to be wound up and the application is not made under section 459P, 462 or 464 of the Corporations Act, the person must, unless the Court otherwise orders, cause a notice of the application to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 9.

Note. If a person applies under section 459P, 462 or 464 of the Corporations Act for a company to be wound up, the person must cause a notice, setting out the information prescribed by regulation 5.4.01A of the Corporations Regulations, to be published in the manner provided by section 1367A of the Corporations Act and regulation 5.6.75 of the Corporations Regulations: see subsection 465A (1) of the Corporations Act.

- (2) A notice under subrule (1), or under paragraph 465A (1) (c) of the Corporations Act, of an application for a company to be wound up must be published:
 - (a) at least 3 days after the originating process is served on the company, and
 - (b) at least 7 days before the date fixed for the hearing of the application.

[12] Rule 5.11, heading

Omit the heading. Insert instead:

5.11 Notice of winding up order and appointment of liquidator

[13] Rule 5.11

Omit rule 5.11 (3), (4) and (5). Insert instead:

- (3) If the winding up order results from an application other than an application under section 459P, 462 or 464 of the Corporations Act, the liquidator must cause a notice of the winding up order and the liquidator's appointment to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 11.

Note. If the winding up order results from an application under section 459P, 462 or 464 of the Corporations Act, the liquidator must cause a notice, setting out the information prescribed by regulation 5.4.01B of the Corporations Regulations, to be published in the manner provided by section 1367A of the Corporations Act and regulation 5.6.75 of the Corporations Regulations: see subsection 465A (2) of the Corporations Act.

- (4) A notice under subrule (3), or under subsection 465A (2) of the Corporations Act, of a winding up order must be published as soon as practicable after the liquidator is informed of the appointment.

- (5) In this rule:

liquidator does not include a provisional liquidator.

[14] Division 6 Provisional liquidators (Corporations Act Part 5.4B)

Insert before rule 6.1:

Note. See also rule 7.3 (report to provisional liquidator as to company's affairs under section 475 of the Corporations Act).

[15] Rule 6.1 Appointment of provisional liquidator (Corporations Act s 472)—Form 8

Omit "the official liquidator" from rule 6.1 (1). Insert instead "the registered liquidator".

[16] Rule 6.2 Notice of appointment of provisional liquidator

Omit rule 6.2 (3) and (4). Insert instead:

- (3) If the order results from an application other than an application under section 459P, 462 or 464 of the Corporations Act, the provisional liquidator must cause a notice of the provisional liquidator's appointment to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 12.

Note. If the order results from an application under section 459P, 462 or 464 of the Corporations Act, the provisional liquidator must cause a notice, setting out the information prescribed by regulation 5.4.01B of the Corporations Regulations, to be published in the manner provided by section 1367A of the Corporations Act and regulation 5.6.75 of the Corporations Regulations: see subsection 465A (2) of the Corporations Act.

- (4) A notice under subrule (3), or under subsection 465A (2) of the Corporations Act, of a provisional liquidator's appointment must be published as soon as practicable after the relevant order is made.

[17] Rule 7.1 Resignation of liquidator (Corporations Act s 473 (1))

Omit the rule.

[18] Rule 7.2

Omit the rule. Insert instead:

7.2 Vacancy in office of liquidator (Corporations Act s 473A and s 499 (3) and Insolvency Practice Schedule (Corporations) s 90–15)

If, for any reason, there is no liquidator of a company under external administration, the Court may appoint a registered liquidator whose written consent in accordance with Form 8 has been filed.

Note. The Court may make the appointment:

- (a) on its own initiative, during proceedings before the Court, or
- (b) on application under section 90–20 of the Insolvency Practice Schedule (Corporations).

See subsection 90–15 (2) of that Schedule.

[19] Rule 7.3 Report to liquidator as to company's affairs (Corporations Act s 475)

Insert before rule 7.3 (1):

- (1A) In this rule:

liquidator includes a provisional liquidator.

[20] Rule 7.3 (4)

Omit the subrule. Insert instead:

- (4) Unless the Court otherwise orders, a report filed by a liquidator under subsection 475 (7) of the Corporations Act is not available for inspection by any person.

Note. A report filed by a liquidator under subsection 475 (7) of the Corporations Act may include commercial-in-confidence information that may not be inspected: see subsection 1274 (4G) of the Corporations Act.

[21] Rule 7.5 Release of liquidator and deregistration of company (Corporations Act s 480 (c) and (d))

Omit rule 7.5 (3) (e). Insert instead:

- (e) whether ASIC has caused books in relation to the company to be audited under section 70–15 of the Insolvency Practice Schedule (Corporations),

[22] Rule 7.11

Omit the rule. Insert instead:

7.11 Appointment of reviewing liquidator (Insolvency Practice Schedule (Corporations) s 90–23 (8))

- (1) An application to the Court under subsection 90–23 (8) of the Insolvency Practice Schedule (Corporations) to appoint a registered liquidator to carry out a review into a matter relating to the external administration of a company must be made:
 - (a) in the case of a winding up by the Court—by filing an interlocutory process seeking the relevant orders, or
 - (b) in the case of a voluntary winding up—by filing an originating process seeking the relevant orders.
- (2) The application must be accompanied by the written declaration made by the proposed reviewing liquidator under section 90–18 of the *Insolvency Practice Rules (Corporations) 2016* of the Commonwealth.

[23] Rule 9.2

Omit the rule. Insert instead:

9.2 Determination of remuneration of external administrator (Insolvency Practice Schedule (Corporations) s 60–10 (1) (c) and (2) (b))—Form 16

- (1) This rule applies in relation to an application for a determination under paragraph 60–10 (1) (c) or (2) (b) of the Insolvency Practice Schedule (Corporations) specifying remuneration that an external administrator of a company is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration.

Note. Section 60–10 of the Insolvency Practice Schedule (Corporations) does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under section 489EC of the Corporations Act: see section 60–2 of the Insolvency Practice Schedule (Corporations).

- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the determination, the external administrator must serve a notice in accordance with Form 16 of the external administrator's intention to apply for the determination, and a copy of any affidavit on which the external 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 inspection,
 - (c) if there is no committee of inspection, and no meeting of creditors has been convened and held—each of the 5 largest (measured by amount of debt) creditors of the company,
 - (d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give to the external administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the external administrator does not receive a notice of objection within the period mentioned in subrule (3):
- (a) the external administrator may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, seeking the determination stating:
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served, and
 - (ii) that the external administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3), and
 - (b) the external 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 external administrator, and
 - (c) the application may be so dealt with.
- (5) If the external administrator receives a notice of objection within the period mentioned in subrule (3), the external administrator must serve a copy of the originating process, or interlocutory process, seeking the determination 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 determination must:
- (a) include evidence of the matters mentioned in section 60–12 of the Insolvency Practice Schedule (Corporations), and
 - (b) state the nature of the work performed or likely to be performed by the external administrator, and
 - (c) state the amount of remuneration claimed, and
 - (d) include a summary of the receipts taken and payments made by the external administrator, and
 - (e) state particulars of any objection of which the external administrator has received notice, and
 - (f) if the external administration is continuing—give details of any matters delaying the completion of the external administration.

[24] Rule 9.2A, heading

Omit the heading. Insert instead:

9.2A Review of remuneration determination for external administrator (Insolvency Practice Schedule (Corporations) s 60–11 (1))

[25] Rule 9.2A (1)

Omit rule 9.2A (1) and (2). Insert instead:

- (1) This rule applies in relation to an application under subsection 60–11 (1) of the Insolvency Practice Schedule (Corporations) for a review of a remuneration determination for an external administrator of a company.

Note 1. Section 60–11 of the Insolvency Practice Schedule (Corporations) does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under section 489EC of the Corporations Act: see section 60–2 of the Insolvency Practice Schedule (Corporations).

Note 2. An application may not be made under subsection 60–11 (1) of the Insolvency Practice Schedule (Corporations) for a review of a remuneration determination made by the Court under paragraph 60–10 (1) (c) or (2) (b) of that Schedule: see subsection 60–11 (5) of that Schedule.

[26] Rule 9.2A (3) (a)

Omit “a committee of creditors or”.

[27] Rule 9.2A (3) (b) and (7)

Insert “external” before “administrator” wherever occurring.

[28] Rule 9.2A (7) (a)

Omit “subsection 449E (4) of the Corporations Act”.

Insert instead “section 60–12 of the Insolvency Practice Schedule (Corporations)”.

[29] Rule 9.2A (7) (f) and Schedule 1, Form 8

Insert “external” before “administration” wherever occurring.

[30] Rule 9.2A (8)

Omit the subrule.

[31] Rule 9.3, heading

Omit the heading. Insert instead:

9.3 Remuneration of provisional liquidator (Insolvency Practice Schedule (Corporations) s 60–16)—Form 16

[32] Rule 9.3 (1)

Omit the subrule. Insert instead:

- (1) This rule applies in relation to an application by a provisional liquidator of a company for a determination under subsection 60–16 (1) of the Insolvency Practice Schedule (Corporations) of the remuneration the provisional liquidator is entitled to receive.

[33] Rule 9.3 (3), (5), (6) and (7)

Omit “the order” wherever occurring. Insert instead “the determination”.

[34] Rule 9.3 (8)

Omit “subsection 473 (10) of the Corporations Act”.

Insert instead “section 60–12 of the Insolvency Practice Schedule (Corporations)”.

[35] Rule 9.3 (8) (b)

Omit “that subsection to “liquidator””.

Insert instead “that section to “external administrator””.

[36] Rules 9.4 and 9.4A

Omit the rules.

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

Omit “committee of creditors or” wherever occurring in rule 9.5 (3) (b).

[38] Division 11, heading

Omit the heading. Insert instead:

Division 11 Inquiries, examinations, investigations, and orders against person concerned with corporation

[39] Rule 11.2

Omit the rule. Insert instead:

11.2 Inquiries, examinations and investigations under paragraph 411 (9) (b) or subsection 423 (3) of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)

- (1) An application for an order for an examination or investigation under subsection 423 (3) of the Corporations Act in relation to a controller of property of a corporation may be made by any of the following:
- (a) a person with a financial interest in the administration of the corporation,
 - (b) an officer of the corporation,

(c) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee,

(d) ASIC.

Note. An application:

(a) under paragraph 411 (9) (b) of the Corporations Act for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with such an inquiry, or

(b) under Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations) for an inquiry into the external administration of a company or an examination or investigation in connection with such an inquiry,

may be made by a person mentioned in subsection 90–10 (2) of the Insolvency Practice Schedule (Corporations): see paragraph 411 (9) (b) of the Corporations Act and subsection 90–10 (1) of the Insolvency Practice Schedule (Corporations).

(2) The following applications may be made without notice to any person:

(a) an application under paragraph 411 (9) (b) of the Corporations Act for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with such an inquiry,

(b) an application for an order for an examination or investigation under subsection 423 (3) of the Corporations Act,

(c) an application under Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations) for an inquiry into the external administration of a company or an examination or investigation in connection with such an inquiry.

(3) The provisions of this Division that apply to an examination under Division 1 of Part 5.9 of the Corporations Act apply, with any necessary adaptations, to an inquiry, examination or investigation under paragraph 411 (9) (b) or subsection 423 (3) of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations).

[40] Rule 11.3 Application for examination summons (Corporations Act s 596A, s 596B)—Form 17

Insert after rule 11.3 (4):

(4A) If the originating process or interlocutory process, and supporting affidavit, are sent by electronic communication to a Registry for filing, the originating process or interlocutory process, and supporting affidavit:

(a) must be marked ‘Confidential’, and

(b) must be accompanied by a statement that the originating process or interlocutory process, and supporting affidavit, are, as appropriate:

(i) ‘Application and supporting affidavit for issue of summons for examination under section 596A of the *Corporations Act 2001*’, or

(ii) ‘Application and supporting affidavit for issue of summons for examination under section 596B of the *Corporations Act 2001*’.

[41] Rule 11.8, heading

Omit the heading. Insert instead:

11.8 Inspection of record or transcript of examination or investigation under s 411 or s 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)

[42] Rule 11.8 (1)

Omit “under section 411, 423 or 536”.

Insert instead “under section 411 or 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)”.

[43] Division 14, heading

Omit the heading. Insert instead:

Division 14 Appeals authorised by the Corporations Act

[44] Rule 14.1, heading

Omit the heading. Insert instead:

14.1 Appeals against acts, omissions or decisions

[45] Rule 15A.5, heading

Omit the heading. Insert instead:

15A.5 Registered liquidator’s consent to act

[46] Rule 15A.5 (c)

Omit “an official”. Insert instead “a registered”.

[47] Division 17 Proceedings under the Federal Courts (State Jurisdiction) Act 1999

Omit the Division.

[48] Schedule 1, Form 8 Consent of liquidator/provisional liquidator

Omit “(rules 5.5, 6.1)”. Insert instead “(rules 5.5, 6.1, 7.2)”.

[49] Schedule 1, Forms 8 and 19

Omit “an official” wherever occurring. Insert instead “a registered”.

[50] Schedule 1, Forms 8 and 19

Omit “hourly rates” wherever occurring. Insert instead “time–cost rates”.

[51] Schedule 1, Form 8

Omit the note. Insert instead:

Note. The remuneration that an external administrator is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration of a company is regulated by Division 60 of the Insolvency Practice Schedule (Corporations).

[52] Schedule 1, Forms 8 and 19

Omit “*Signature of official liquidator*” wherever occurring.

Insert instead “*Signature of registered liquidator*”.

[53] Schedule 1, Forms 8 and 19

Omit “*hourly rates(s)*”. Insert instead “*time-cost rate(s)*”.

[54] Schedule 1, Form 16 Notice of intention to apply for remuneration

Omit “9.4.”.

[55] Schedule 1, Forms 16 and 16A

Omit “*administrator” wherever occurring. Insert instead “*external administrator”.

[56] Schedule 1, Form 16

Omit “**administrator*”. Insert instead “**external administrator*”.

[57] Schedule 1, Form 16A Notice of intention to apply for review of remuneration

Omit “(rules 9.2A, 9.4A)”. Insert instead “(rule 9.2A)”.

[58] Schedule 1, Form 16A

Omit “subrule *9.2A (4)/*9.4A (4)”. Insert instead “subrule 9.2A (4)”.