

JU301*

Supreme Court Act 1935
Corporations (Ancillary Provisions) Act 2001
Corporations Act 2001 (Commonwealth)

Supreme Court (Corporations) (WA) Amendment Rules 2008

Made by the Judges of the Supreme Court.

1. Citation

These rules are the *Supreme Court (Corporations) (WA) Amendment Rules 2008*.

2. Commencement

These rules come into operation as follows:

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. The rules amended

The amendments in these rules are to the *Supreme Court (Corporations) (WA) Rules 2004*.

4. Rule 1.5 amended

Rule 1.5(1) is amended by deleting the definition of “Commission”.

5. Rule 2.8 amended

The Table to rule 2.8(3) is amended in item 2 by deleting “of a compulsory” and inserting instead —

“ or termination of a ”.

6. Rule 2.15 amended

Rule 2.15 is amended by deleting “5.6.12” and inserting instead —

“ 5.6.11 ”.

7. Rule 9.1 amended

- (1) The note to rule 9.1(1) is deleted and the following notes are inserted instead —

“

Note 1: Under the Corporations Act s. 425(2)(b), 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 the Corporations Act s. 425 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).

”.

- (2) Rule 9.1(6) is repealed and the following subrule is inserted instead —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 the Corporations Act section 425(8); 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.

”.

8. Rule 9.2 repealed and rules 9.2 and 9.2A inserted

Rule 9.2 is repealed and the following rules are inserted instead —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 the Corporations Act section 449E(1)(c) or (1A)(c) 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;
 - (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 the Corporations Act section 449E(4); 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
 - (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 the Corporations Act section 449E(2).

Note: The amendment to the Corporations Act s. 449E 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 the Corporations Act section 449E(1)(a) or (b) or 449E(1A)(a) or (b).
- (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.
- (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 the Corporations Act section 449E(4);
 - (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.

”.

9. Rule 9.3 amended

- (1) Rule 9.3(3)(b) is deleted and the following paragraph is inserted instead —

“

- (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;

”.

- (2) Rule 9.3(7)(a) is amended by deleting “carried out” and inserting instead —

“ performed or likely to be performed ”.

- (3) Rule 9.3(7)(c) is amended by deleting “for the period for which remuneration is claimed”.

- (4) After rule 9.3(7) the following subrule is inserted —

“

- (8) The affidavit must also provide evidence of the matters mentioned in the Corporations Act section 473(10) —
- (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”.

”.

10. Rule 9.4 amended

- (1) Rule 9.4(1) is amended by deleting “section 473(3)” and inserting instead —

“ section 473(3)(b)(ii) ”.

- (2) After rule 9.4(1) the following note is inserted —

“

Note: The amendment to the Corporations Act s. 473 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).

”.

- (3) Rule 9.4(3)(a) is amended by deleting “the meeting of creditors;” and inserting instead —

“

any meeting of creditors at which the remuneration of the liquidator was considered;

”.

- (4) Rule 9.4(3)(b) is amended by deleting “creditors;” and inserting instead —

“ inspection; ”.

- (5) Rule 9.4(3)(c) is deleted and the following paragraphs are inserted 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% of the issued capital of the company.

”.

- (6) Rule 9.4(7) is repealed and the following subrule is inserted instead —

“

- (7) An affidavit in support of the interlocutory process seeking the order must —

- (a) include evidence of the matters mentioned in the Corporations Act section 473(10); 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.

”.

11. Rule 9.4A inserted

After rule 9.4 the following rule is inserted —

“

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 the Corporations Act section 473(5) or (6) or 504(1).

Note: The amendment to the Corporations Act s. 504 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 section 473(3)(a) or (b)(i), or fixed under section 495(1) or 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;
 - (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 the Corporations Act section 473(5) or (6) — the matters mentioned in the Corporations Act section 473(10);
 - (b) for an application under the Corporations Act section 504(1) — the matters mentioned in the Corporations Act section 504(2);
 - (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;
 - (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 Corporations Act s. 473(11), 473(12), 495(5), 499(6) and 499(7).
- (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.

”.

12. Rule 9.5 amended

- (1) Rule 9.5(3)(b) and “and” after it are deleted and the following is inserted instead —

“

- (b) each member of any committee of creditors or committee of inspection or, if there is no committee of creditors or committee of

inspection, each of the 5 largest (measured by amount of debt) creditors of the company; and

”.

- (2) Rule 9.5(7)(a) is amended by deleting “carried out” and inserting instead —
“ performed or likely to be performed ”.
- (3) Rule 9.5(7)(c) is amended by deleting “for the period for which remuneration is claimed”.

13. Part 11A inserted

After Part 11 the following Part is inserted —

“

**Part 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 the Corporations Act section 486B(1) 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.
- (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 Principal Registrar.

Note: The Corporations Act s. 489A to 489E, 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).

”.

14. Schedule 1 amended

- (1) Schedule 1 Form 8 is amended as follows:
 - (a) by inserting after the paragraph beginning with “I am not aware” the following —

“

EITHER

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

[Set out all relevant relationships.]

”.

- (b) by inserting after the paragraph beginning with “The hourly rates” the following —

“

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)).

”.

- (2) Schedule 1 is amended by inserting after Form 16 the following form —

“

Form 16A

rules 9.2A, 9.4A

Notice of intention to apply for review of remuneration

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 rule *9.2A(4)/ *9.4A(4) of the *Supreme Court (Corporations) (WA) Rules 2004*, 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

”.

- (3) Schedule 1 is amended by inserting after Form 17 the following form —

“

Form 17A

Corporations Act 2001 (Cth) s. 486B and
Supreme Court (Corporations) (WA) Rules 2004 r. 11A.1

Arrest warrant

[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
 - (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 not applicable*

”.

15. Various references to “the Commission” changed to “ASIC”

Each provision listed in the Table to this rule is amended by deleting “the Commission” and inserting instead —

“ ASIC ”.

Table

Provision	Provision	Provision
r. 2.4(2)	r. 2.4A(3)(a)	r. 2.8(1) (2 places)
r. 2.8(2) (2 places)	r. 2.8(3)	r. 2.10(1) (2 places)
r. 2.10(2) (2 places)	r. 3.5(b)	r. 6.2(2)(a) (2 places)
r. 7.1(1)	r. 7.2(2)(a)	r. 7.5(1)(b)
r. 7.5(3)(e)	r. 7.5(3)(g)(i)	r. 7.5(3)(h)
r. 7.7(2)(c)	r. 7.7(3)	r. 7.11(2)
r. 7.11(4)	r. 11.2(1)(a)	r. 11.2(1)(b)
r. 11.3(6) (3 places)	r. 11.5(3)(b) (3 places)	r. 11.8(1)(a)
r. 11.8(2) (2 places)	r. 11.11(2) note	r. 12.1 (2 places)
r. 15.1	Sch. 1 Form 5 (2 places)	Sch. 2 item 1 (2 places)
Sch. 2 item 2		

Dated: 5 August 2008.

Judges’ signatures:

W. S. MARTIN

J. R. McKECHNIE

M. J. MURRAY

C. J. L. PULLIN

N. J. OWEN

E. M. HEENAN

C. D. STEYTLER

N. JOHNSON

A. J. TEMPLEMAN

R. L. SIMMONDS

C. A. WHEELER

D. W. NEWNESS