

Form 2 Originating process

Court Procedures Rules 2006

(see sch 6 r 2.2 (Originating process and interlocutory process))

In the Supreme Court of the Australian Capital Territory

No SC of (year) (*Court to complete*)

In the matter of (*full name of corporation to which the proceeding relates and, if applicable, the words ‘(in liquidation)’, ‘(receiver appointed)’, ‘(receiver and manager appointed)’, ‘(controller acting)’ or ‘(under administration)’*)

*[ACN/ARBN]:

(name) *[and others]

Plaintiff

(*list, in a schedule, any further plaintiffs*)

(name) *[and others]

*Defendant

(*list, in a schedule, any further defendants*)

A DETAILS OF APPLICATION

This application is made under *[section/regulation] (*number*) of the *[Corporations Act/ASIC Act/Corporations Regulations].

Filed for the plaintiff by:

(*the plaintiff’s address for service and telephone number (if any) or, if the plaintiff is represented by a solicitor and the solicitor is the agent of another solicitor, the name and place of business of the other solicitor*)

(state briefly the nature of the proceeding, eg application for winding-up on ground of insolvency or complaint about a receiver.)

On the facts stated in the supporting affidavit(s), the plaintiff claims:

1

2

etc

AND

Date:

(signature of plaintiff/plaintiff's legal practitioner)

(name of plaintiff/plaintiff's legal practitioner)

This application will be heard by the Supreme Court at Knowles Place, Canberra City at *(time)* *[am/pm] on *(date)*.

B NOTICE TO DEFENDANT(S) (IF ANY)

To: *(name and address of each defendant (if any))*

If you or your legal practitioner do not appear before the Court at that time, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the approved form, in the Registry and serve a copy of it on the plaintiff.

<i>Note</i>	Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court gives leave.
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***C APPLICATION FOR WINDING-UP ON GROUND OF INSOLVENCY**

(Complete this section if this originating process is seeking an order that a company be wound up in insolvency on the ground that the company has failed to comply with a statutory demand (see Corporations Act, section 459Q.)

(Set out particulars of service of the statutory demand on the company and of the failure to comply with the demand.)

(Attach to this originating process a copy of the statutory demand and, if the demand has been varied by an order made under the Corporations Act, section 459H (4) because of a dispute or offsetting claim, a copy of the order made under that subsection.)

(The affidavit in support of this originating process must:

- (a) verify service of the demand on the company; and*
- (b) verify the failure of the company to comply with the demand; and*
- (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable at the date when the affidavit is made.)*

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 plaintiff should consider completing form 2, pt C as shown in attachment A.

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 attachment B.

D FILING

Date of filing: *(date of filing to be entered by Registrar)*

Registrar

This originating process is filed by *(name)* for the plaintiff.

E SERVICE

The plaintiff's address for service is *(address of plaintiff's legal practitioner or of plaintiff)*.

*[It is not intended to serve a copy of this originating process on any person.]

OR

*[It is intended to serve a copy of this originating process on each defendant and on any person listed below:

(name of defendant and any other person on whom a copy of the originating process is to be served)]

(Complete the following section if the time for service has been shortened)

The time by which a copy of this originating process is to be served has been shortened by order made by *(name of Judge or other Court officer)* on *(date)* to *(time and date)*.

**omit if, or whichever is, inapplicable*

Attachment A

Note 1—see sch 6, r 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/The demand and an accompanying affidavit were] served by X.Y. who delivered [it/them] to the registered office of the defendant at (insert address) on) (insert date). [A copy of the accompanying affidavit, marked B, is attached to this originating process.]*
OR (if service was by post)
2. **[The demand was/The demand and an accompanying affidavit were] served by X.Y who posted [it/them] by ordinary prepaid post to the registered office of the defendant at (insert address) on (insert date). [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/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/within 7 days after (insert date) when an application by the defendant under the Corporations Act, section 459G was finally determined or otherwise disposed of/(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 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 the Corporations Act, s 459H (4))

4. The demand was varied by order of the *(insert name of Court)* on *(insert date of order)*. A copy of the order, marked *(insert letter)*, is attached to this originating process.

**omit if, or whichever is, inapplicable*

Attachment B

Note 2—see sch 6, r 2.4 and r 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/solemnly affirm]:

1. *[I am the abovenamed plaintiff Now produced and shown to me and marked **A** is a copy of the originating process to be filed in the proceeding.]
OR (if the plaintiff is a corporation)
1. *[I am *[a/the director] of the above-named plaintiff which is registered or taken to be registered in (*state the 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 a State or Territory other than that of this Registry, state any facts—apart from the defendant’s principal place of business—which bear upon jurisdiction being exercised in the State or Territory of this Registry, 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/demand and the accompanying affidavit] as referred to in the originating process/X.Y. has been instructed to make an affidavit of service of the *[demand/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/the plaintiff].

Sworn, *etc.*

**omit if, or whichever is, inapplicable*