

EXPLANATORY STATEMENT

Subordinate Law 2000 No. 16.

Issued by the Authority of the Judges of the
Supreme Court of the Australian Capital Territory

Corporations Law Rules 2000

The resident Judges of the court (of whom there are four, including the Chief Justice) or any two of the resident Judges, may make Rules of Court for regulating the practice and procedure of the court pursuant to Section 36 of the *Supreme Court Act 1933*.

The *Corporations Act 1989* provides that the Judges of the Federal Court of Australia (section 60) and the Supreme Court of each State and the Capital Territory (section 61) may make rules with respect to proceedings under the Corporations Law.

Section 51 of the *Corporations Act 1989* confers jurisdiction on the Federal Court of Australia and on the Supreme Court of each State and the Capital Territory with respect to civil matters arising under the Corporations Law of the Territory.

These rules, which set out the practice and procedure to be applied to a proceeding in the court under the Corporations Law, are a national model set of rules that were drafted by a committee of Judges of the Federal Court and the State and Territory Supreme Courts.

The rules are extensive and reference is made in this Explanatory Statement to the more significant aspects of the rules.

PART 1 – PRELIMINARY

Commencement

These rules apply to a proceeding commenced in the court under the Corporations Law, or the ASC Law, that is commenced on or after the commencement of these rules, which is 3 April 2000.

The rules in force immediately before the commencement of these rules continue to apply to a proceeding that was commenced before the commencement of these rules.

Expressions and Definitions

An expression referred to in rule 4 of these rules has the same meaning in the rules as it has in the Corporations Law. Rule 5 defines certain words in the rules.

Forms

A reference to a form in these rules is a reference to a form in Schedule 1 to these rules; substantial compliance with the forms is sufficient compliance.

Court's power to give directions

The court may give directions in relation to the practice and procedure to be followed in respect of a proceeding.

Time

Rules 9 and 10 provide for the calculation of time and the extending or shortening of time for doing anything in relation to a proceeding to which these rules apply.

PART 2 – PROCEEDINGS GENERALLY

Part 2 sets out the procedure to be followed in respect of proceedings generally, including the forms to be used when filing an originating process or interlocutory process, affidavits in support of originating process or interlocutory process, notice of certain applications to be given to the commission, notice of intervention in a proceeding by the commission, notice of appearance and publication of notices.

PART 3 – COMPROMISES AND ARRANGEMENTS IN RELATION TO PART 5.1 BODIES

Part 3 sets out the procedure to be followed where an application is made to the court under Part 5.1 of the Law for approval of a compromise or arrangement between a Part 5.1 body and its creditors or members, or any class of its creditors or members. A Part 5.1 body is defined in the Law as a company, a foreign company, or a registrable Australian body (other than a registrable local body).

PART 4 – RECEIVERS AND OTHER CONTROLLERS OF CORPORATION PROPERTY (PART 5.2 OF THE LAW)

Under paragraph 423(1)(b) of the Law a person may complain to the court about an act or omission of a receiver or other controller of the property of a corporation. This part provides that such a complaint must be made by filing an originating process seeking an inquiry in relation to the complaint.

PART 5 – WINDING UP PROCEEDINGS (INCLUDING OPPRESSION PROCEEDINGS WHERE WINDING UP IS SOUGHT)

Part 5 applies to applications for the winding up of a company under section 246AA, Part 5.4 or Part 5.4A of the Law and sets out the procedure to be followed in respect of such applications.

Section 246AA of the Law allows the court to order that a company be wound up if it is satisfied that the company's conduct or proposed conduct is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the company, or is contrary to the interests of the members as a whole.

Part 5.4 of the Law allows the court to order a company to be wound up on the basis that it is insolvent, while Part 5.4A gives the court the power to order the winding up of a company on grounds other than insolvency.

PART 6 - PROVISIONAL LIQUIDATORS (PART 5.4B OF THE LAW)

Part 6 sets out the procedure to be followed in respect of the appointment of a provisional liquidator. Notice of appointment of a provisional liquidator is to be lodged with the commission, served on the company and given to the provisional liquidator. Publication of notice of the provisional liquidator's appointment is required.

PART 7 – LIQUIDATORS

Part 7 provides for a number of procedural matters in relation to liquidators, including:

- resignation of liquidator;
- report to liquidator as to company's affairs;
- release of liquidator and deregistration of company;
- report on accounts of liquidator;
- delegation of powers to liquidator by the court;
- inquiry into conduct of liquidator.

PART 8 - SPECIAL MANAGERS (PART 5.4B OF THE LAW)

This Part sets out the procedure to be followed where a liquidator applies to the court for the appointment of a special manager.

The affidavit in support of the application must state the circumstances making it proper for a special manager to be appointed; details of the proposed remuneration for the special manager; and whether the appointment has been approved by any committee of inspection in the winding-up or a meeting of creditors.

PART 9 - REMUNERATION OF OFFICE-HOLDERS

This Part sets out the procedure to be followed by a person who applies to the court for an order fixing the person's remuneration as a receiver, administrator, provisional liquidator, liquidator or special manager.

PART 10 – WINDING-UP GENERALLY

This Part deals with some miscellaneous aspects of the winding up of a company including:

- determination of value of debts or claims referred to the court by a liquidator;
- disclaimer of contract by leave of the court;
- winding-up of Part 5.7 bodies and registered schemes. A Part 5.7 body is defined by the Law as a foreign company, a registrable body (other than a registrable local body), or a partnership, association or other body (whether a body corporate or not) that consists of more than 5 members. A registered scheme is defined by the Law as a managed investment scheme that is registered under section 601EB of the Law.

PART 11 – EXAMINATIONS AND ORDERS (PART 5.9, DIVISIONS 1 AND 2 OF THE LAW)

This Part sets out the procedure to apply in respect of certain examinations under the Law, including mandatory and discretionary examinations about a corporation's examinable affairs under sections 596A and 596B respectively; an examination of a person appointed to administer a compromise or arrangement under Part 5.1 of the Law; an examination of a controller of property of a corporation about the performance or exercise of the controller's functions and powers as controller; an examination of a liquidator in relation to the winding-up of a Company.

Provision is also made in this Part for an application for the issue, service and discharge of an examination summons; filing, authentication and inspection of and entitlement to a transcript of an examination; default in relation to an examination, including the issue of a warrant for the arrest of the person summonsed or ordered to attend for examination.

PART 12 - ACQUISITION OF SHARES (CHAPTER 6 OF THE LAW) AND SECURITIES (CHAPTER 7 OF THE LAW)

This Part sets out the procedure to apply in respect of an application under Chapter 6 (which deals with the acquisition of shares) and Chapter 7 (which deals with securities); a summons in accordance with form 18 and supported by an affidavit may be issued to require a person to deliver share documents to the company or to appear before the court to show cause why the documents should not be delivered as required. An application for orders relating to refusal by a relevant authority to register, transfer or transmit shares, debentures or an interest in a company is made by originating process supported by an affidavit.

PART 13 – THE FUTURES INDUSTRY (CHAPTER 8 OF THE LAW)

This Part sets out the procedure to apply where a person appeals against a decision of a futures exchange or a futures association to refuse, suspend or cancel the person's membership of that exchange or association.

This Part also provides the procedure for proceedings in the court against a futures organisation to establish a claim against the fidelity fund.

PART 14 – POWERS OF COURTS (PART 9.5 OF THE LAW)

This Part sets out the procedure for appeals authorised by the Law from an act, omission or decision of an administrator, receiver, liquidator or special manager.

PART 15 – PROCEEDINGS UNDER THE ASC LAW

This Part sets out the procedure to apply in respect of references to the court of questions of law arising at a commission hearing under section 51 of the ASC Law or at a Corporations and Securities Panel under section 187 of the ASC Law. The referral is to be in accordance with Order 50 of the Federal Court Rules which provides that a referral must be in the form of a stated case which states the facts concisely and annexes all the documents necessary to enable the court to decide the questions referred to it.

This Part also sets out the procedure to apply where an application is made to the court for an inquiry where a person fails to comply with a requirement made under the ASC Law in respect of a commission investigation, a Corporations and Securities Panel inquiry or a hearing of the Companies Auditors and Liquidators Disciplinary Board.

PART 16 – POWERS OF MASTER AND REGISTRAR

This Part confers the power of the court on the master and registrar under a provision of the Law or the ASC Law specified in Schedule 2.

A decision, direction or act of the master or registrar made in the exercise of a conferred power under this Part may be reviewed by the court.

If a proceeding before the master or registrar appears to the master or registrar to be proper for the decision of the court or a judge, the master or the registrar may refer the matter to the court or judge. Where a matter has been so referred the court or judge may dispose of the matter or refer it back to the master or registrar with appropriate directions.

SCHEDULE 1 - FORMS

Schedule 1 sets out the forms to be used in respect of applications made under these rules.

**SCHEDULE 2 – POWERS OF THE COURT THAT MAY BE EXERCISED BY
THE MASTER OR REGISTRAR**

This Schedule sets out the powers of the court that may be exercised by the master or registrar under the Law or the ASC Law.