



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 31 of 1996²

We, Judges of the Supreme Court, make the following Rules of Court under section 36 of the *Supreme Court Act 1933*.

Dated 17 December 1996.

JEFFREY MILES

Chief Justice

J F GALLOP

Judge

T J HIGGINS

Judge

A G TOWILL

Registrar

Commencement

1. These Rules commence on the day on which they are notified in the *Gazette*.

Principal Rules

2. In these Rules, “Principal Rules” means the Supreme Court Rules.

Substitution

3. Rule 36A of Order 75B of the Principal Rules is repealed and the following rule substituted:

Form of affidavit in support of statutory demand—subsection 459E (3)

“36A. (1) An affidavit referred to in subsection 459E (3) of the Corporations Law shall—

- (a) be made by the creditor or, if there is more than 1 creditor, by 1 of them;
- (b) set out the facts entitling the deponent to make the affidavit;
- (c) state the source of the deponent’s knowledge of the matters stated in the affidavit concerning the debt or debts;
- (d) state that the deponent believes those matters to be true; and
- (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

“(2) Where the creditor is a corporation, an affidavit by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation is taken to be an affidavit by the creditor.

“(3) Where the creditor is the Crown, an affidavit by an officer of the Crown having knowledge of the facts as far so they are known to the Crown is taken to be an affidavit by the creditor.

“(4) Where the creditor is a company to which a liquidator or provisional liquidator has been appointed, an affidavit by the liquidator or provisional liquidator is taken to be an affidavit by the creditor.

“(5) An affidavit under this rule shall—

- (a) be in accordance with Form 93B;
- (b) contain the note set out in the form; and
- (c) not state a proceedings number.

“(6) An affidavit under this rule shall not be filed.

“(7) Notwithstanding subrule (1), for the purposes of subsection 459E (3) of the Corporations Law, an affidavit referred to in that subsection that complies with the rules of the Supreme Court of the State or Territory in which the registered office of the company to be served is situated is taken to be an affidavit that complies with this rule.

“(8) In this rule—

‘Crown’ means the Crown in right of the Commonwealth, in right of a State or in right of a Territory.”.

Winding up of a company in insolvency under section 459P

4. Rule 37 of Order 75B of the Principal Rules is amended—

(a) by omitting paragraph (4) (b) and substituting the following paragraph:

“(b) if the debt is not a judgment debt, an affidavit which—

- (i) is in accordance with Form 94;
- (ii) is made by the applicant, or if there is more than 1 applicant, by 1 of them;
- (iii) sets out the facts entitling the deponent to make the affidavit;
- (iv) states the source of the deponent’s knowledge of the matters stated in the affidavit concerning the debt or debts;
- (v) states that the deponent believes those matters to be true; and
- (vi) states that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.”;

(b) by omitting subrules (5) and (6) and substituting the following subrules:

“(5) Where the applicant is a corporation, an affidavit by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation is taken to be an affidavit by the applicant.

“(5A) Where the applicant is the Crown, an affidavit by an officer of the Crown having knowledge of the facts so far as they are known to the Crown is taken to be an affidavit by the applicant.

“(5B) Where the applicant is a company to which a liquidator or provisional liquidator has been appointed, an affidavit by the liquidator or provisional liquidator is taken to be an affidavit by the applicant.

“(6) On filing and serving an application referred to in subrule (3), the applicant shall also file and serve an affidavit which—

- (a) sets out the material facts relied on in support of the application; and
 - (b) unless the Court orders otherwise—was made by a person who has knowledge of the facts relied on to support the application.”;
- (c) by omitting subrule (8) and substituting the following subrule:
- “(8) As soon as practicable after filing the application and any affidavit in support, and in any event not later than 14 days after the date of filing, the applicant (unless it is the company) shall serve, in a manner permitted by section 220, on the company—
- (a) a signed and sealed copy of the application;
 - (b) the affidavits on which it relies; and
 - (c) any nomination of a liquidator under subrule (7).”;
- (d) by adding at the end the following subrule:
- “(17) In this rule—
- ‘Crown’ means the Crown in right of the Commonwealth, in right of a State or in right of a Territory.”.

Schedule 12

5. Schedule 12 to the Principal Rules is amended—

- (a) by omitting Form 93B and substituting the form set out in Part I of the Schedule to these Rules; and
- (b) by omitting Form 94 and substituting the form set out in Part II of the Schedule to these Rules.

SCHEDULE

Rule 5

PART I

FORM 93B

AFFIDAVIT UNDER SUBSECTION 459E (3)
OF THE CORPORATIONS LAW
(Order 75B, rule 36A)

(name of creditor)
Creditor
(name of company)
Debtor

AFFIDAVIT

On (date), I (name, address and occupation) say on oath:

1. The facts entitling me to make this affidavit are as follows: (set out facts)
2. I believe that the amount of \$ _____, being the *[debt/the total of the amounts of the debts specified in the accompanying demand], is due and payable by the debtor to the creditor.
3. The source of my knowledge of the matters stated in this affidavit concerning the *[debt/ debts] is as follows: (set out source)
4. I believe that there is no genuine dispute about the existence or amount of the *[debt/debts] referred to in paragraph 2.

SWORN at: _____)
before me: _____)

NOTE:

- (1) This affidavit accompanies a statutory demand under subsection 459E (3) of the Corporations Law.
- (2) *[No proceedings/No winding up proceedings] have been commenced in respect of the *[debt/debts] to which this affidavit relates.
- (3) Any questions relating to this affidavit or the *[debt/debts] to which it relates should be directed either to the person named as creditor or the creditor's solicitors.]

*(Delete whichever is inapplicable)

PART II

FORM 94

AFFIDAVIT VERIFYING DEBT UNDER SECTION 459Q
OF THE CORPORATIONS LAW
(Order 75B, subrule 37 (4))
(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. The facts entitling me to make this affidavit are as follows: (set out facts)
2. I believe that the amount of \$ _____, being the *[debt/ the total of the amounts of the debts] specified in the statutory demand served on the respondent, is due and payable by the respondent to the applicant.

SCHEDULE—continued

3. The source of my knowledge of the matters stated in this affidavit concerning the *[debt/debts] is as follows: (*set out source*)
4. I believe that there is no genuine dispute about the existence or amount of the *[debt/ debts] referred to in paragraph 2.
5. The respondent has failed to pay the amount of \$ (*amount*) to the applicant or to secure or compound for that amount to the reasonable satisfaction of the applicant.

SWORN at:)
before me:)

**(Delete whichever is inapplicable)*

NOTES

Principal Rules

1. Reprinted as at 31 January 1996. See also Subordinate Laws Nos. 4, 10, 11, 22 and 27, 1996.

Notification

2. Notified in the ACT Gazette on 20 December 1996.