



Australian Capital Territory

Court Procedures Amendment Rules 2008 (No 3)

Subordinate Law SL2008-50

We, members of the rule-making committee, make the following rules under the *Court Procedures Act 2004*, section 7.

Dated 22 December 2008.

T J HIGGINS

Chief Justice

M F GRAY

President of the Court of Appeal

R REFSHAUGE

Judge

R CAHILL

Chief Magistrate

J BURNS

Magistrate



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made under the

Court Procedures Act 2004

Contents

	Page
1 Name of rules	1
2 Commencement	1
3 Legislation amended	1
4 Rule 1701 (2), note 2	1
5 New rule 1740	1
6 New division 4.2.1A	2
7 Rule 6200 (3) and note	3
8 New rule 6603A	3
9 Rule 6606 (4)	3
10 Schedule 3	4

Contents

	Page
11	6
12	6
13	6
14	7
15	7
16	7
17	14

1 Name of rules

These rules are the *Court Procedures Amendment Rules 2008 (No 3)*.

2 Commencement

- (1) These rules (other than rule 6) commence on 1 January 2009.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Rule 6 commences on the commencement of the *Crimes Legislation Amendment Act 2008*, amendment 1.65.

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 Rule 1701 (2), note 2

substitute

Note 2 The costs of the proceeding include the costs of an application in the proceeding, unless the court otherwise orders (see r 1721 (2) (Costs—general rule)).

5 New rule 1740

in division 2.17.2, insert

1740 Costs—fixed costs for winding-up application

- (1) This rule applies to an application to wind up a company under schedule 6, part 6.5 (Winding-up proceedings (including oppression proceedings where winding-up is sought)) if—
- (a) the court orders the company to be wound up; or
 - (b) the applicant discontinues the application on a condition that the company pay an amount to the applicant.

- (2) The applicant's costs and disbursements (plus any filing and service fees actually paid) must be allowed without assessment if the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than the costs amount applying, from time to time, under schedule 3, part 3.3 (Company winding-up).
- (3) The costs allowed under subrule (2) are inclusive of any GST payable in relation to the work.
- (4) However, the costs payable to a party are reduced by the amount of any input tax credit for GST to which the party is entitled in relation to the party's costs.
- (5) The applicant's costs and disbursements must be agreed or assessed if the costs and disbursements claimed (other than any filing and service fees actually paid) are more than the costs amount applying, from time to time, under schedule 3, part 3.3 (Company winding-up).

Note See r 1702 (Costs—agreement about costs).

6 New division 4.2.1A

insert

Division 4.2.1A Magistrates Court criminal proceedings—prosecution evidence in committal proceedings

4305 Prosecution evidence to be given to accused etc—Magistrates Court Act, s 90

- (1) For the *Magistrates Court Act 1930*, section 90 (2), the period within which the informant must serve the documents on the accused person before the date set for the committal hearing is—
 - (a) 28 days; or
 - (b) if the court orders another period—the period ordered.

-
- (2) For the *Magistrates Court Act 1930*, section 90 (3), the period within which a copy of the documents mentioned in subrule (1) must be filed in the court is—
- (a) 28 days; or
 - (b) if the court orders another period—the period ordered.

7 Rule 6200 (3) and note

substitute

- (3) However, the master may not exercise the jurisdiction of the Supreme Court to hear or decide an appeal from an interlocutory order of the master.

Note Appeals from non-interlocutory orders of the master are to the Court of Appeal (see *Supreme Court Act 1933*, s 9 (2) (b)).

8 New rule 6603A

insert

6603A Subpoena—change of date for attendance of production

- (1) The issuing party may give the addressee notice of a date or time later than the date or time stated in a subpoena as the date or time for attendance or production or both.
- (2) If notice is given under subrule (1), the subpoena applies as if the date or time for attendance or production under the subpoena were the date or time stated in the notice.

9 Rule 6606 (4)

substitute

- (4) The addressee must comply with a subpoena to produce—
 - (a) by attending at the date, time and place stated for production or, if the addressee has received a notice under rule 6603A, at the later date or time, and producing the subpoena or a copy of

it and the document or thing to the court or the person authorised to take evidence in the proceeding; or

- (b) by delivering or sending the subpoena or a copy of it and the document or thing to the registrar at the address stated for the purpose in the subpoena, so that they are received not later than 2 days before the date stated in the subpoena for attendance and production or, if the addressee has received notice under rule 6603A, before the later date.

10 Schedule 3

substitute

Schedule 3 Costs amount—debts, liquidated demands and company windings-up

Part 3.1 Claim for debt or liquidated demand

(see r 51, r 304, r 1102 and r 1104)

Table 3.1 Prescribed costs amount—claim for debt or liquidated demand

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrates Court—less than \$10 000	330.00
2	Magistrates Court—not less than \$10 000 but less than \$25 000	670.00
3	Magistrates Court—not less than \$25 000 but less than \$40 000	800.00

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
4	Magistrates Court—not less than \$40 000 but less than \$50 000	900.00
5	Supreme Court—any amount	1 000.00

Part 3.2 Default judgment

(see r 1121)

Table 3.2 Prescribed costs amount—default judgment

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrates Court—less than \$10 000	500.00
2	Magistrates Court—not less than \$10 000 but less than \$25 000	1 000.00
3	Magistrates Court—not less than \$25 000 but less than \$40 000	1 200.00
4	Magistrates Court—not less than \$40 000 but less than \$50 000	1 350.00
5	Supreme Court—any amount	1 500.00

Part 3.3 Company winding-up

(see r 1740)

Table 3.3 Prescribed costs amount—company winding-up

column 1 item	column 2 prescribed amount (\$)
1	3 400.00

11 Schedule 6, rule 1.3 (1) and (2)

substitute

- (1) Unless the Supreme Court otherwise orders—
 - (a) this schedule applies to a proceeding in the court under the Corporations Act, or the ASIC Act, that is started on or after 12 November 2003; and
 - (b) part 6.15A applies to a proceeding in the court under the Cross-Border Insolvency Act.
- (2) The other provisions of these rules apply, as far as they are relevant and not inconsistent with this schedule—
 - (a) to a proceeding in the Supreme Court under the Corporations Act, or the ASIC Act, that is started on or after 12 November 2003; and
 - (b) to a proceeding in the court under the Cross-Border Insolvency Act that is started on or after the commencement of part 6.15A.

12 Schedule 6, rule 1.5, new definition of *Cross-Border Insolvency Act*

insert

Cross-Border Insolvency Act means the *Cross-Border Insolvency Act 2008* (Cwlth) including, unless the contrary intention appears, the Model Law.

13 Schedule 6, rule 1.5, definition of *defendant*

substitute

defendant means a person against whom relief (except interlocutory relief) is claimed under the Corporations Act, the ASIC Act or the Cross-Border Insolvency Act, whether in the originating process or not.

14 Schedule 6, rule 1.5, new definition of *Model Law*

insert

Model Law means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, the English text of which is set out in the Cross-Border Insolvency Act, schedule 1, with the modifications set out in that Act, part 2.

15 Schedule 6, rule 1.5, definition of plaintiff

substitute

plaintiff means a person claiming relief (except interlocutory relief) under the Corporations Act, the ASIC Act or the Cross-Border Insolvency Act, whether in the originating process or not.

16 Schedule 6, new part 6.15A

insert

Part 6.15A Proceedings under the Cross-Border Insolvency Act

15A.1 Application—pt 6.15A and other rules

Unless the court otherwise orders—

- (a) this part applies to a proceeding in the court, under the Cross-Border Insolvency Act, involving a debtor other than an individual; and
- (b) the rules (other than this part) apply to a proceeding in the court under the Cross-Border Insolvency Act if they are relevant and not inconsistent with this part.

Note ***Cross-Border Insolvency Act***—see r 1.5.

15A.2 Terms used in Cross-Border Insolvency Act

- (1) Unless the contrary intention appears, a term that is used in this part and in the Cross-Border Insolvency Act, whether or not a particular meaning is given to the term by the Cross-Border Insolvency Act, has the same meaning in this part as it has in the Cross-Border Insolvency Act.

Note The following terms used in this part (including in the notes to this part) are defined in the Model Law as having the following meanings:

establishment means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding.

foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests.

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of the present article.

foreign proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation.

foreign representative means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

- (2) This part is to be interpreted in a way that gives effect to the Cross-Border Insolvency Act.

15A.3 Application for recognition

- (1) An application by a foreign representative for recognition of a foreign proceeding under the Model Law, article 15 must be made by filing an originating process.

Note See approved form 2 (Originating process).

- (2) The originating process must—
 - (a) be accompanied by the statements mentioned in the Model Law, article 15 and the Cross-Border Insolvency Act, section 13; and
 - (b) name the foreign representative as the plaintiff and the debtor as the defendant; and
 - (c) be accompanied by an affidavit verifying the matters mentioned in the Model Law, article 15, paragraphs 2 and 3 and the Cross-Border Insolvency Act, section 13.
- (3) When filing the originating process, the foreign representative must file, but need not serve, an interlocutory process seeking directions as to service, and the court may give any directions about service, and make any incidental orders, that it considers just.

Note See approved form 3 (Interlocutory process).

- (4) The plaintiff must serve a copy of the originating process and the other documents mentioned in subrule (2)—
 - (a) unless the court otherwise orders, in accordance with subrule 2.7 (1); and
 - (b) on any other people the court may direct at the hearing of the interlocutory process.
- (5) A person who intends to appear before the court at the hearing of an application for recognition must file and serve the documents mentioned in rule 2.9.

15A.4 Application for provisional relief under Model Law, art 19

- (1) Any application by the plaintiff for provisional relief under the Model Law, article 19 must be made by filing an interlocutory process.

Note See approved form 3 (Interlocutory process).

- (2) Unless the court otherwise orders, the interlocutory process and any supporting affidavit must be served in accordance with subrule 2.7 (2).

15A.5 Official liquidator's consent to act

If the relief sought in an application under the Model Law, article 15 includes an application for an order under article 19 or 21 to entrust the distribution of the debtor's assets to a person designated by the court (other than the foreign representative) then, unless the court otherwise orders, the person must—

- (a) be an official liquidator; and
- (b) have filed a consent to act that states an address for service for the person within Australia.

Note See approved form 19 (Consent to act as designated person).

15A.6 Notice of filing application for recognition

- (1) Unless the court otherwise orders, the plaintiff in a proceeding mentioned in rule 15A.3 must—
 - (a) send a notice of filing the application to each person whose claim to be a creditor of the defendant is known to the plaintiff; and
 - (b) publish a notice of filing the application for recognition of a foreign proceeding in accordance with rule 2.11.

Note See approved form 20 (Notice of filing of application for recognition of foreign proceeding).

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- (2) The court may direct the plaintiff to publish the notice in a daily newspaper circulating generally in any State or Territory not described in rule 2.11.

15A.7 Notice of order for recognition, withdrawal etc

- (1) If the court makes an order for recognition of a foreign proceeding under the Model Law, article 17 or makes any order under the Model Law, article 19 or 21, the plaintiff must, as soon as practicable after the order is made, do all of the following:

- (a) have the order entered;
- (b) serve a copy of the entered order on the defendant;
- (c) send a notice of the making of the order to each person whose claim to be a creditor of the defendant is known to the plaintiff;

Note See approved form 21 (Notice of making of order under the Cross-Border Insolvency Act 2008).

- (d) publish the notice of the making of the order in accordance with rule 2.11.

- (2) The court may direct the plaintiff to publish the notice in a daily newspaper circulating generally in any state or territory not described in rule 2.11.

- (3) If the application for recognition is dismissed or withdrawn, the plaintiff must, as soon as practicable, do all of the following:

- (a) for a dismissal—have the order of dismissal entered;
- (b) serve a copy of the entered order of dismissal, or notice of the withdrawal, on the defendant;
- (c) send a notice of the dismissal or withdrawal to each person whose claim to be a creditor of the defendant is known to the plaintiff;

Note See approved form 22 (Notice of dismissal or withdrawal of application for recognition of foreign proceeding).

- (d) publish the notice of the dismissal or withdrawal in accordance with rule 2.11.
- (4) The court may direct the plaintiff to publish the notice of the dismissal or withdrawal in a daily newspaper circulating generally in any State or Territory not described in rule 2.11.

15A.8 Relief after recognition

- (1) If the court has made an order for recognition of a foreign proceeding, any application by the plaintiff for relief under the Model Law, article 21, paragraph 1 must be made by filing an interlocutory process, and any supporting affidavit.

Note See approved form 3 (Interlocutory process).

- (2) Unless the court otherwise orders, an interlocutory process under subrule (1) and any supporting affidavit must be served in accordance with rule 2.7 (2) but on the following people:
 - (a) the defendant;
 - (b) any person that the court directed be served with the originating process by which the application for recognition was made;
 - (c) any other person that the court directs.
- (3) A person who intends to appear before the court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

15A.9 Application to modify or terminate order for recognition or other relief

- (1) This rule applies to—
 - (a) an application under the Model Law, article 17, paragraph 4 for an order modifying or terminating an order for recognition of a foreign proceeding; and

- (b) an application under the Model Law, article 22, paragraph 3 for an order modifying or terminating relief granted under the Model Law, article 19 or 21.
- (2) An application mentioned in subrule (1) must be made by filing an interlocutory process.
 - Note* See approved form 3 (Interlocutory process).
- (3) An interlocutory process for an application under subrule (1) and any supporting affidavit must be served on—
 - (a) for an application under subrule (1) (a)—the defendant and any other people who were served with, or filed a notice of appearance in relation to, the application for recognition; and
 - (b) for an application under subrule (1) (b)—the defendant and any other people who were served with, or filed a notice of appearance in relation to, the application for relief under the Model Law, article 19 or 21.
- (4) Unless the court otherwise orders, a plaintiff who applies for an order under subrule (1) must—
 - (a) send a notice of filing the application to each person whose claim to be a creditor of the defendant is known to the plaintiff; and
 - Note* See approved form 23 (Notice of filing of application to modify or terminate an order for recognition or other relief).
 - (b) publish the notice of filing the application in accordance with rule 2.11.
- (5) The court may direct the applicant to publish the notice of filing the application in a daily newspaper circulating generally in any State or Territory not described in rule 2.11.
- (6) A person who intends to appear before the court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

17 Dictionary, new definitions of *Cross-Border Insolvency Act* and *Model Law*

insert

Cross-Border Insolvency Act, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

Model Law, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

Endnotes

1 Notification

Notified under the Legislation Act on 23 December 2008.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
