



Queensland

# Uniform Civil Procedure Amendment Rule (No. 4) 2008

**Subordinate Legislation 2008 No. 303**

made under the

*Supreme Court of Queensland Act 1991*

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[s 1]

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**1 Short title**

This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 4) 2008*.

**2 Rules amended in schedule**

The schedule amends the *Uniform Civil Procedure Rules 1999*, schedule 1A.

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**Schedule**                      **Amendment of Uniform Civil  
Procedure Rules 1999,  
schedule 1A (Rules for  
proceedings under  
Corporations Act or ASIC Act)**

section 2

**1**        **Rule 1.4—**

*insert—*

*‘foreign company—see section 9’.*

**2**        **After rule 2.4—**

*insert—*

**‘2.4A Application for order setting aside statutory demand  
(Corporations Act, s 459G)**

- ‘(1) This rule applies, and rule 2.4(2) does not apply, to an originating application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.
- ‘(2) The applicant may file with the originating application seeking the order a copy of the statutory demand and a copy of any affidavit that accompanied the statutory demand.
- ‘(3) The applicant must—
  - (a) no earlier than 7 days before the originating application is filed, and not later than the day before the hearing of the application, carry out a search of the records maintained by ASIC in relation to the applicant; and
  - (b) either—
    - (i) annex the record of the search to the affidavit in support of the originating application; or

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- (ii) file the record of the search before, or tender it on, the hearing of the application.’.

**3 Rule 2.8, table—**

*omit, insert—*

<b>‘Column 1 Provision</b>	<b>Column 2 Description of application</b>
section 480	application for the release of a liquidator of a company and the deregistration of the company
section 482(1)	application for the stay of a compulsory winding-up
section 509(6)	application for the deregistration of a company
section 536(1)	application for an inquiry into the conduct of a liquidator
section 601AH(2)	application to reinstate the registration of a company
section 601CC(8)	application to restore the name of an Australian body to the register
section 601CL(9)	application to restore the name of a foreign company to the register
chapter 6, 6A, 6B, 6C, 6D or 7	any application under these chapters
section 1317S(2), (4) and (5)	application for relief from liability for contravention of a civil penalty provision’.

**4 Rule 2.15, ‘5.6.12’—**

*omit, insert—*

‘5.6.11’.

**5 Rule 9.1(1), note—**

*omit, insert—*

*Note—*

- 1 Under the Corporations Act, section 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.
- 2 The amendment to the Corporations Act, section 425 made by the *Corporations Amendment (Insolvency) Act 2007* applies in relation to a receiver appointed on or after 31 December 2007—see the Corporations Act, section 1480(5).’

**6 Rule 9.1(6)—**

*omit, insert—*

- ‘(6) An affidavit in support of the originating application, or interlocutory application, 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.’

**7 Rule 9.2—**

*omit, insert—*

**‘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 application, or interlocutory application, seeking the order, the administrator must serve a notice in 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 application, or interlocutory application, 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 application, or interlocutory application, 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 application, or interlocutory application, seeking the order on each creditor or contributory who has given a notice of objection.
- ‘(6) An affidavit in support of the originating application, or interlocutory application, 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))—form 16A**

- ‘(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).

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*Note—*

The amendment to the Corporations Act, section 449E made by the *Corporations (Amendment) Insolvency Act 2007* applies in relation to an administrator appointed on or after 31 December 2007—see the Corporations Act, section 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 application, or the interlocutory application, applying for a review, the applicant must serve a notice, in form 16A, of intention to apply for the review and a copy of any affidavit on which the 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 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 applicant a notice under subrule (4).
- ‘(6) If the applicant is served with a notice under subrule (4), the applicant must serve a copy of the originating application, or

interlocutory application, 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 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.’.

**8 Rule 9.3(7)(a), ‘carried out’—**

*omit, insert—*

‘performed or likely to be performed’.

**9 Rule 9.3(7)(c), from ‘for’ to ‘claimed’—**

*omit.*

**10 Rule 9.3—**

*insert—*

- ‘(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’.’.

**11 Rule 9.4, hdg—**

*omit, insert—*

**‘9.4 Determination by court of liquidator’s remuneration (Corporations Act, s 473(3)(b)(ii))—form 16’.**

**12 Rule 9.4(1), ‘section 473(3)’—**

*omit, insert—*

‘section 473(3)(b)(ii)’.

**13 Rule 9.4(1), at the end—**

*insert—*

*‘Note—*

The amendment to the Corporations Act, section 473 made by the *Corporations (Amendment) Insolvency Act 2007* applies in relation to a liquidator appointed on or after 31 December 2007—see the Corporations Act, section 1480(7).’.

**14 Rule 9.4(3)(a), ‘the meeting of creditors’—**

*omit, insert—*

‘any meeting of creditors at which the remuneration of the liquidator was considered’.

**15 Rule 9.4(3)(c)—**

*omit, insert—*

- ‘(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.’.

**16 Rule 9.4(7)—**

*omit, insert—*

- ‘(7) An affidavit in support of the interlocutory application 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.’.

**17 After rule 9.4—**

*insert—*

**‘9.4A Review of remuneration of liquidator (Corporations Act, s 473(5) and (6) and s 504(1))—form 16A**

- ‘(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).

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*Note—*

The amendment to the Corporations Act, section 504 made by the *Corporations (Amendment) Insolvency Act 2007* applies in relation to a liquidator appointed on or after 31 December 2007—see the Corporations Act, section 1480(7).

- ‘(2) The application may only be made after remuneration has been determined under the Corporations Act, section 473(3)(a) or (b)(i), or fixed under the Corporations Act, section 495(1) or 499(3).
- ‘(3) At least 21 days before filing the application applying for a review, the applicant must serve a notice, in form 16A, of intention to apply for the review and a copy of any affidavit on which the 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 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 applicant a notice under subrule (4).

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- ‘(6) If the applicant is served with a notice under subrule (4), the applicant must serve a copy of the application 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 that 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 the Corporations Act, sections 473(11) and (12), 495(5) and 499(6) and (7).

- ‘(9) The 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.’.

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**18 Rule 9.5(3)(b), before ‘committee’—**

*insert—*

‘committee of creditors or’.

**19 Rule 9.5(7)(a), ‘carried out’—**

*omit, insert—*

‘performed or likely to be performed’.

**20 Rule 9.5(7)(c), from ‘for’ to ‘claimed’—**

*omit.*

**21 Rule 11.3(8), ‘is to’—**

*omit, insert—*

‘must’.

**22 Before part 12—**

*insert—*

**‘Part 11A Warrants (Corporations Act, section 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 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 a registrar in the registry from which the warrant was issued.

*Note—*

The Corporations Act, sections 489A to 489E, inserted by the *Corporations (Amendment) Insolvency Act 2007*, apply in relation to a warrant issued on or after 31 December 2007—see the Corporations Act, section 1481(3).’.

**23 Rule 12.2(4), ‘is to’—**

*omit, insert—*

‘must’.

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ENDNOTES

- 1 Made by the Governor in Council on 11 September 2008.
- 2 Notified in the gazette on 12 September 2008.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.

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