

Queensland



Subordinate Legislation 2004 No. 115

Supreme Court of Queensland Act 1991

UNIFORM CIVIL PROCEDURE AMENDMENT RULE (No. 1) 2004

TABLE OF PROVISIONS

Section		Page
1	Short title	4
2	Rules amended	4
3	Amendment of r 35 (General rule)	4
4	Amendment of r 107 (Personal service—corporations)	4
5	Amendment of r 168 (Implied non-admission)	4
6	Amendment of r 266 (Application of pt 3)	5
7	Replacement of ch 11, pts 5 and 6	5
	PART 5—EXPERT EVIDENCE	
	<i>Division 1—Preliminary</i>	
423	Purposes of pt 5	5
424	Application of pt 5	5
425	Definitions for pt 5	6
	<i>Division 2—Evidence given by an expert</i>	
426	Duty of expert	6
427	Expert evidence	7
428	Requirements for report	7
429	Disclosure of report	8
429A	Supplementary report	9
429B	Court may direct experts to meet	9
429C	Immunity	9

	429D Costs	10
	<i>Division 3—Experts appointed after proceeding started</i>	
	429E Application of div 3	10
	429F Definition for div 3.	10
	429G Appointment of experts	10
	429H Expert appointed by parties	11
	429I Expert appointed by court on application	12
	429J Expert appointed by court on court initiative.	12
	429K Considerations for court when appointing an expert.	13
	429L Report by court appointed expert given to registrar etc.	13
	429M Orders and directions for court appointed experts.	14
	429N Consequences of court appointment	15
	429O Court may direct access to information.	15
	429P Expert may apply for directions.	15
	<i>Division 4—Experts appointed before proceeding started</i>	
	429Q Definition for div 4.	16
	429R Expert appointed by disputants	16
	429S Expert appointed by court on application	17
8	Replacement of r 759 (Undertaking about appeal book)	18
	759 Registry preparation of appeal book	18
9	Amendment of r 793 (Definitions for ch 19).	19
10	Amendment of r 819 (Application to set aside enforcement)	20
11	Amendment of r 828 (Property that may be seized under enforcement warrant)	20
12	Amendment of r 832 (Nature of sale)	20
13	Amendment of r 833 (Sale at best price obtainable)	21
14	Amendment of r 834 (Advertising)	21
15	Omission of r 838 (Enforcement debtor dealing with charged property)	22
16	Replacement of ch 19, pt 7 (Enforcement warrants for payment of order debt by instalments)	22
	PART 7—ORDER FOR PAYMENT OF ORDER DEBT BY INSTALMENTS	
868	Order may authorise payment by instalments	22

Uniform Civil Procedure Amendment Rule (No. 1) No. 115, 2004
2004

	869 Prerequisites for instalment order	23
	870 No enforcement warrant to issue while instalment order	23
	871 Discharge or variation of instalment order	24
	872 Cessation of instalment order	24
17	Amendment of r 906 (Procedure)	24
18	Amendment of r 907 (Application to set aside enforcement)	24
19	Amendment of r 913 (Prerequisites to enforcement warrant for possession)	25
20	Amendment of r 914 (Procedure)	25
21	Insertion of new r 984A.	25
	984A Disposal of exhibits	25
22	Amendment of ch 23, hdg (Proceedings under Corporations Law and ASC Law)	26
23	Replacement of r 995 (Corporations law rules)	27
	995 Rules for proceedings under Corporations Act or ASIC Act.	27
24	Insertion of new ch 24.	27
	CHAPTER 24—TRANSITIONAL PROVISIONS	
	996 Transitional—Uniform Civil Procedure Amendment Rule (No. .) 2004	27
25	Amendment of sch 1 (Scale of costs—Supreme Court)	27
26	Amendment of sch 4 (Dictionary).	28
	SCHEDULE 1	29
	AMENDMENTS OF SCHEDULE 1A (PROCEEDINGS UNDER CORPORATIONS LAW)	
	SCHEDULE 2	55
	AMENDMENTS OF SCHEDULE 1B (POWERS OF THE COURT THAT MAY BE EXERCISED BY A REGISTRAR)	

1 Short title

This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 1) 2004*.

2 Rules amended

(1) This rule amends the *Uniform Civil Procedure Rules 1999*.

(2) Schedule 1¹ amends the *Uniform Civil Procedure Rules 1999*, schedule 1A.

(3) Schedule 2² amends the *Uniform Civil Procedure Rules 1999*, schedule 1B.

3 Amendment of r 35 (General rule)

Rule 35(1)—

insert—

‘(f) if the proceeding is a claim for the recovery of possession of land—the district in which the land is located.’.

4 Amendment of r 107 (Personal service—corporations)

Rule 107, ‘Corporations Law’—

omit, insert—

‘Corporations Act’.

5 Amendment of r 168 (Implied non-admission)

Rule 168(1), ‘the time for filing and serving pleadings closes’—

omit, insert—

‘the pleadings close’.

1 Schedule 1 (Amendments of schedule 1A (Proceedings under Corporations Law))

2 Schedule 2 (Amendments of schedule 1B (Powers of the court that may be exercised by a registrar))

6 Amendment of r 266 (Application of pt 3)

Rule 266(b), ‘Corporations Law’—

omit, insert—

‘Corporations Act’.

7 Replacement of ch 11, pts 5 and 6

Chapter 11, parts 5 and 6—

omit, insert—

‘PART 5—EXPERT EVIDENCE

‘Division 1—Preliminary

‘423 Purposes of pt 5

‘The main purposes of this part are to—

- (a) declare the duty of an expert witness in relation to the court and the parties; and
- (b) ensure that, if practicable and without compromising the interests of justice, expert evidence is given on an issue in a proceeding by a single expert agreed to by the parties or appointed by the court; and
- (c) avoid unnecessary costs associated with the parties retaining different experts; and
- (d) allow, if necessary to ensure a fair trial of a proceeding, for more than 1 expert to give evidence on an issue in the proceeding.

‘424 Application of pt 5

‘(1) This part does not apply in relation to a witness giving evidence, whether orally or in writing, in a proceeding who is—

- (a) a party to the proceeding; or
- (b) a person whose conduct is in issue in the proceeding; or

- (c) a doctor or another person who has given or is giving treatment or advice in relation to an injured person if the evidence is limited to 1 or more of the following matters in relation to the injured person—
- (i) the results of any examination made;
 - (ii) a description of the treatment or advice;
 - (iii) the reason the treatment or advice was, or is being, given;
 - (iv) the results of giving the treatment or advice.

‘(2) This part also does not apply in relation to a proceeding for a minor claim in a Magistrates Court.

‘425 Definitions for pt 5

‘In this part—

“appointed expert” means an expert appointed under division 3 or 4,³ including a court appointed expert.

“court appointed expert” means an expert appointed by the court under division 3 or 4.

“expert” means a person who would, if called as a witness at the trial of a proceeding, be qualified to give opinion evidence as an expert witness in relation to an issue arising in the proceeding.

“report”, for a proceeding, means a document giving an expert’s opinion on an issue arising in the proceeding.

‘Division 2—Evidence given by an expert

‘426 Duty of expert

‘(1) A witness giving evidence in a proceeding as an expert has a duty to assist the court.

3 Division 3 (Experts appointed after proceeding started) or 4 (Experts appointed before proceeding started)

‘(2) The duty overrides any obligation the witness may have to any party to the proceeding or to any person who is liable for the expert’s fee or expenses.

‘427 Expert evidence

‘(1) An expert may give evidence in a proceeding by a report.

‘(2) The report may be tendered as evidence only if—

- (a) the report has been disclosed as required under rule 429; or
- (b) the court gives leave.

‘(3) The report is to be tendered as evidence-in-chief of the expert.

‘(4) Oral evidence-in-chief may be given by the expert only—

- (a) in response to the report of another expert; or
- (b) if directed to issues that first emerged in the course of the trial; or
- (c) if the court gives leave.

‘(5) Any party to the proceeding may tender as evidence at the trial any report disclosed by any party, subject to producing the expert for cross-examination if required.

‘428 Requirements for report

‘(1) An expert’s report must be addressed to the court and signed by the expert.

‘(2) The report must include the following information—

- (a) the expert’s qualifications;
- (b) all material facts, whether written or oral, on which the report is based;
- (c) references to any literature or other material relied on by the expert to prepare the report;
- (d) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
 - (i) a description of what was done; and

- (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
- (iii) the name and qualifications of any other person involved; and
- (iv) the result;
- (e) if there is a range of opinion on matters dealt with in the report, a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
- (f) a summary of the conclusions reached by the expert;
- (g) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.

(3) The expert must confirm, at the end of the report—

- (a) the factual matters stated in the report are, as far as the expert knows, true; and
- (b) the expert has made all enquiries considered appropriate; and
- (c) the opinions stated in the report are genuinely held by the expert; and
- (d) the report contains reference to all matters the expert considers significant; and
- (e) the expert understands the expert's duty to the court and has complied with the duty.

429 Disclosure of report

A party intending to rely on a report must, unless the court otherwise orders, disclose the report—

- (a) if the party is a plaintiff—within 90 days after the close of pleading; or
- (b) if the party is a defendant—within 120 days after the close of pleading; or
- (c) if the party is not a plaintiff or defendant—within 90 days after the close of pleading for the party.

‘429A Supplementary report

‘(1) If an expert changes in a material way an opinion in a report that has been disclosed, the expert must, as soon as practicable, provide a supplementary report stating the change and the reason for it.

‘(2) The supplementary report must comply with rule 428 and be disclosed as soon as practicable.

‘429B Court may direct experts to meet

‘(1) The court may, at any stage of a proceeding, direct experts to meet and—

- (a) identify the matters on which they agree; and
- (b) identify the matters on which they disagree and the reasons why; and
- (c) attempt to resolve any disagreement.

‘(2) The court may, for the meeting—

- (a) set the agenda; and
- (b) specify the matters the experts must discuss; and
- (c) direct whether or not legal representatives may be present; and
- (d) give directions about the form of any report to be made to the court about the meeting; and
- (e) give any other directions the court considers appropriate.

‘(3) Evidence of anything done or said, or an admission made, at the meeting is admissible at a trial of the proceeding only if all parties to the proceeding agree.

‘(4) However, subrule (3) does not apply to a report made to the court about the meeting identifying the matters mentioned in subrule (1)(a) or (1)(b).

‘429C Immunity

‘An expert has the same protection and immunity for the contents of a report disclosed as required under these rules as the expert could claim if the contents of the report were given orally at a trial of the proceeding in which the report is disclosed.

‘429D Costs

‘When deciding the order to make about the costs of a proceeding, the court may consider, in allowing, disallowing or limiting the costs for an expert’s report prepared for a party on an issue, the extent to which the proceedings may have been facilitated by the appointment of a person as the only expert in relation to the issue.

‘Division 3—Experts appointed after proceeding started

‘429E Application of div 3

‘This division applies only in relation to proceedings in the Supreme Court.

‘429F Definition for div 3

‘In this division—

“**court**” means the Supreme Court.

‘429G Appointment of experts

‘(1) If, after a proceeding has started, 2 or more parties agree that expert evidence may help in resolving a substantial issue in the proceeding, subject to rule 429H, those parties may in writing jointly appoint an expert to prepare a report on the issue.

‘(2) If parties to a proceeding are not able to agree on the appointment of an expert, subject to rules 429I and 429K, any party who considers that expert evidence may help in resolving a substantial issue in the proceeding may apply to the court for the appointment of an expert to prepare a report on the issue.

‘(3) Subject to rules 429J and 429K, the court may, on its own initiative and at any stage of a proceeding, if it considers that expert evidence may help in resolving a substantial issue in the proceeding, appoint an expert to prepare a report on the issue.

‘429H Expert appointed by parties

‘(1) An expert may be appointed under rule 429G(1) only if—

- (a) the parties appointing the expert agree in writing on the following matters—
 - (i) the issue in the proceeding the expert evidence may help resolve;
 - (ii) the identity of the expert;
 - (iii) when the report must be prepared by the expert and given to the parties to the agreement;
 - (iv) liability for fees and expenses payable to the expert; and
- (b) the expert has been made aware of the content of this part and consents to the appointment.

‘(2) A copy of the agreement must be—

- (a) signed by each party to the agreement; and
- (b) filed in the court; and
- (c) after being filed in the court, immediately served on any other party to the proceeding who is not a party to the agreement.

‘(3) The parties to the agreement must give the expert a statement of facts, agreed to by the parties to the agreement, on which to base the report.

‘(4) However, if the parties to the agreement do not agree on a statement of facts, then—

- (a) unless the court directs otherwise, each of the parties to the agreement must give the expert a statement of facts on which to base the report; and
- (b) the court may give directions about the form and content of the statement of facts to be given to the expert.

‘(5) The report is taken to be disclosed for this part if—

- (a) a copy of the report is given to each party to the agreement; and
- (b) within 14 days after the day by which all parties to the agreement have received a copy of the report, each party to the proceeding who is not a party to the agreement is given a copy of the report.

‘(6) Unless the court otherwise orders, the expert is the only expert who, in relation to the parties to the agreement, may give evidence in the proceeding on the issue.

‘(7) Unless the court otherwise orders, each party to the proceeding has the right to cross-examine the expert.

‘429I Expert appointed by court on application

‘(1) A party applying to the court for appointment of an expert under rule 429G(2) must serve a copy of the application and the supporting material on each other party to the proceeding.

‘(2) The supporting material must—

- (a) state the issue in the proceeding that expert evidence may help resolve; and
- (b) name at least 3 experts who—
 - (i) are qualified to give expert evidence on the issue; and
 - (ii) have been made aware of the content of this part and consent to being appointed; and
- (c) state any connection known to the applicant between an expert named and a party to the proceeding.

‘(3) When hearing the application, the court may receive other material and make other enquiries to help decide which expert to appoint.

‘(4) The court may appoint an expert other than an expert named in the supporting material.

‘(5) The court may appoint an expert only if the expert has been made aware of the content of this part and consents to the appointment.

‘429J Expert appointed by court on court initiative

‘(1) In deciding whether to appoint an expert under rule 429G(3) in relation to an issue in a proceeding, the court may—

- (a) ask each party to name at least 3 experts who—
 - (i) are qualified to give expert evidence on the issue; and
 - (ii) have been made aware of the content of this part and consent to being appointed; and

- (b) require each party to state any connection between an expert named and a party to the proceeding; and
- (c) receive other material and make other enquiries to help decide which expert to appoint.

‘(2) The court may appoint an expert other than an expert named by a party to the proceeding.

‘(3) The court may appoint an expert only if the expert has been made aware of the content of this part and consents to the appointment.

‘429K Considerations for court when appointing an expert

‘(1) In deciding whether to appoint an expert under rule 429G(2) or (3) in relation to an issue in a proceeding, the court may consider—

- (a) the complexity of the issue; and
- (b) the impact of the appointment on the costs of the proceeding; and
- (c) the likelihood of the appointment expediting or delaying the trial of the proceeding; and
- (d) the interests of justice; and
- (e) any other relevant consideration.

‘(2) If the court considers an expert is the most appropriate expert to help resolve an issue in the proceeding, the court may appoint the expert even if the expert has already given a report to a party in the proceeding on the issue or on another issue in the proceeding.

‘429L Report by court appointed expert given to registrar etc.

‘(1) Unless the court otherwise orders—

- (a) a court appointed expert appointed in relation to an issue in a proceeding must—
 - (i) prepare a report on the issue; and
 - (ii) give the report to the registrar together with sufficient copies of the report for all parties to the proceeding; and
- (b) the registrar must—
 - (i) file the report in a sealed envelope; and

- (ii) within 7 days after receiving the report, forward a copy of it to each party to the proceeding.

‘(2) The report is taken to be disclosed for this part if the registrar forwards copies of the report to all parties as required.

‘429M Orders and directions for court appointed experts

‘(1) The court may make the orders and give the directions it considers appropriate in relation to a court appointed expert, including, for example, 1 or more of the following orders or directions—

- (a) an order or direction to facilitate the expert’s preparation of a report;
- (b) a direction about any of the following matters—
 - (i) a party giving the expert written information relevant to the preparation of the report and forwarding a copy of the written information to each other party;
 - (ii) the extent a party may communicate with the expert;
 - (iii) an inspection, examination or experiment by the expert;
 - (iv) the expert obtaining a report from another expert in a discipline relevant to the issue in relation to which the expert was appointed;
- (c) a direction about any of the following matters—
 - (i) when the expert must give the registrar the report;
 - (ii) liability for fees and expenses payable to the expert;
 - (iii) payment of any expenses incurred by the registrar;
- (d) an order permitting cross-examination of the expert before an examiner under part 2⁴ or before the trial starts.

‘(2) If the court directs that a report from another expert may be obtained by a court appointed expert, the other expert’s report must be attached to the court appointed expert’s report when it is given to the registrar.

‘(3) The court may receive in evidence the report of a court appointed expert on terms the court considers appropriate.

4 Part 2 (Evidence given out of court)

‘429N Consequences of court appointment

‘(1) This rule applies if the court appoints an expert in relation to an issue in a proceeding.

‘(2) Unless the court otherwise orders, the expert is to be the only expert to give evidence in the proceeding on the issue.

‘(3) However, the court may, on its own initiative or on application by a party, appoint another expert (the “**other expert**”) to prepare a report in relation to the issue if—

- (a) after receiving a report from the expert originally appointed (the “**first expert**”), the court is satisfied—
 - (i) there is expert opinion, different from the first expert’s opinion, that is or may be material to deciding the issue; or
 - (ii) the other expert knows of matters, not known by the first expert, that are or may be material to deciding the issue; or
- (b) there are other special circumstances.

‘429O Court may direct access to information

‘(1) The court may direct a party to a proceeding who has access to information reasonably necessary for the preparation of a report by an appointed expert—

- (a) to give the court or the expert a document stating the information; or
- (b) to otherwise make the information reasonably available to the expert.

‘(2) Subrule (1) does not limit the directions a court may give under rule 429M.

‘429P Expert may apply for directions

‘(1) An appointed expert may apply to the court for directions to facilitate the preparation of a report.

‘(2) The application must be served on the parties to the proceeding and on any other person directed by the court.

‘(3) The court may give the directions the court considers appropriate, including directions about an inspection, examination or experiment for the expert’s report.

‘Division 4—Experts appointed before proceeding started

‘429Q Definition for div 4

‘In this division—

“**court**” means the Supreme Court.

‘429R Expert appointed by disputants

‘(1) This rule applies if, before any proceeding is started, 2 or more persons (the “**disputants**”) agree in writing on the following matters—

- (a) there is a dispute between them that will probably result in a proceeding and obtaining expert evidence immediately may help in resolving a substantial issue in the dispute;
- (b) the identity of an expert from whom a report should be obtained;
- (c) when the report must be prepared by the expert and given to the disputants;
- (d) liability for fees and expenses payable to the expert.

‘(2) The disputants may in writing jointly appoint the agreed expert to prepare a report giving an opinion on the issue.

‘(3) The appointment must be expressed to be made under this rule.

‘(4) The disputants may appoint the expert only if the expert has been made aware of the content of this part and consents to the appointment.

‘(5) Rule 428(2) and (3) apply in relation to the report.

‘(6) Unless the court otherwise orders, in any proceeding started in the court between the disputants in which the issue is relevant, the expert is to be the only expert who, in relation to the disputants, may give evidence on the issue.

‘429S Expert appointed by court on application

‘(1) This rule applies if, before any proceeding is started, a person (the “**first person**”) believes on reasonable grounds that—

- (a) there is a dispute between the first person and 1 or more other persons that will probably result in a proceeding; and
- (b) obtaining expert evidence immediately may help in resolving a substantial issue in the dispute.

‘(2) The first person may apply to the court for the appointment of an expert to prepare a report giving an opinion on the issue.

‘(3) The application and the supporting material must be served on the other person or persons.

‘(4) The supporting material must—

- (a) describe the nature of the dispute; and
- (b) state the issue in dispute that expert evidence may help resolve; and
- (c) indicate why the report should be obtained immediately; and
- (d) name at least 3 experts who—
 - (i) are qualified to give expert evidence on the issue; and
 - (ii) have been made aware of the content of this part and consent to being appointed; and
- (e) state any previous connection between an expert named and the first person.

‘(5) The court, on being satisfied in relation to the matters mentioned in subrule (1)(a) and (b), may appoint an expert to give a report on the issue.

‘(6) The court may appoint an expert other than an expert named in the supporting material.

‘(7) In deciding whether to appoint an expert, the court may consider—

- (a) the complexity of the issue; and
- (b) the impact of the appointment on the costs of the contemplated proceeding; and
- (c) the likelihood of the appointment expediting or delaying the contemplated proceeding; and

- (d) the interests of justice; and
- (e) any other relevant consideration.

‘(8) The court may give directions as to—

- (a) the time in which the report is to be prepared and given to the first person; and
- (b) any filing of the report.

‘(9) The court may make orders and give directions to facilitate the expert’s preparation of a report.

‘(10) Rule 428(2) and (3) apply in relation to the report.

‘(11) Unless the court otherwise orders, in any proceeding started in the court between the first person and 1 or more of the other persons in which the issue is relevant, the expert appointed under this rule is to be the only expert who, in relation to those persons, may give evidence on the issue.

‘(12) The fees and expenses of an expert appointed under this rule, and the costs of the application, are to be borne by the first person, unless and until the court otherwise orders either on the application or in any proceeding started between the first person and 1 or more of the other persons in which the issue is relevant.

‘(13) The court may give directions as to the right to cross-examine an expert appointed under this rule.’

8 Replacement of r 759 (Undertaking about appeal book)

Rule 759—

omit, insert—

‘759 Registry preparation of appeal book

‘(1) An individual who is an appellant or cross-appellant may apply to the registrar for an order that the registry prepare the appeal book for the appeal or cross-appeal at no cost to the individual because of the individual’s financial position.

‘(2) The registrar may decide the application summarily and without extensive investigation.

‘(3) The registrar may order that the registry prepare the appeal book at no cost to the individual if, having regard to the individual’s financial

position, including, for example, the following matters, it is clearly in the interests of justice to make the order—

- (a) if the individual receives an income-tested pension under the *Social Security Act 1991* (Cwlth), the type and amount of the pension;
- (b) how much the individual is paying as rent for accommodation;
- (c) whether a spouse or close relative may be willing to give the individual financial help;
- (d) any other matter the registrar considers relevant.

‘(4) The individual, if dissatisfied with the registrar’s decision on an application under subrule (1) may apply to a judge of appeal for a review of the decision.

‘(5) On an application for a review of the registrar’s decision, the judge conducting the review—

- (a) may consider the application with or without a hearing; and
- (b) may consider—
 - (i) anything the registrar considered under subrule (3); and
 - (ii) the preliminary merits of the appeal to which the application relates; and
- (c) may make the order the judge considers appropriate.

‘(6) When making an application under this rule, the individual must give the court a written undertaking that, if the individual is successful on the appeal or cross appeal and costs are awarded in the individual’s favour, the individual will pay the registrar the appeal books fee in relation to the appeal or cross appeal.

‘(7) In this rule—

“**appeal books fee**” means the fee payable under the *Uniform Civil Procedure (Fees) Regulation 1999*, schedule 1, item 15.’.

9 Amendment of r 793 (Definitions for ch 19)

Rule 793—

insert—

‘**“instalment order”** see rule 868(1).’.

10 Amendment of r 819 (Application to set aside enforcement)

Rule 819(1), ‘a person served with’—

omit, insert—

‘another person affected by’.

11 Amendment of r 828 (Property that may be seized under enforcement warrant)

(1) Rule 828, heading—

omit, insert—

‘828 Seizure of property under enforcement warrant’.

(2) Rule 828—

insert—

‘(3) An enforcement officer must—

- (a) have the warrant in the enforcement officer’s possession when enforcing the warrant; and
- (b) show the warrant to any person claiming an interest in the property to be seized.

‘(4) Actual seizure is not necessary to authorise the sale of real property under an enforcement warrant.

‘(5) If there is an advertisement of a notice about real property under rule 834, an enforcement officer is taken to have seized the real property for the purposes of these rules.

‘(6) An enforcement officer must send a copy of the notice by pre-paid post to the enforcement debtor at the enforcement debtor’s last known address.’.

12 Amendment of r 832 (Nature of sale)

(1) Rule 832(1)(b), after ‘at a place’—

insert—

‘and in a way’.

(2) Rule 832(2) to (8)—

renumber as rule 832(3) to (9).

(3) Rule 832—

insert—

‘(2) The public auction may be conducted by the enforcement officer or a person authorised by the enforcement officer.’.

(4) Rule 832(3), as renumbered, ‘enforcement officer’—

omit, insert—

‘person conducting the auction’.

13 Amendment of r 833 (Sale at best price obtainable)

Rule 833(1)—

omit, insert—

‘(1) This rule applies if the enforcement debtor’s property has not been sold under rule 832.’.

14 Amendment of r 834 (Advertising)

(1) Rule 834(1), ‘sold.’—

omit, insert—

‘sold.⁵’.

(2) Rule 834(3)—

renumber as rule 834(4).

(3) Rule 834—

insert—

‘(3) Also, if seized property is put up for sale at a public auction to be conducted by a person other than an enforcement officer—

- (a) it is sufficient for a notice under subrule (1) to contain only the details reasonable and usual for a public auction of property of the same nature as the seized property; and

5 For real property, see also rule 828(6) (Seizure of property under enforcement warrant).

- (b) subrule (4) does not apply and advertisement of the notice may be done in the way reasonable and usual for a public auction of property of the same nature as the seized property; and
- (c) the enforcement officer may require any other advertising the enforcement officer considers reasonable.’

15 Omission of r 838 (Enforcement debtor dealing with charged property)

Rule 838—

omit.

16 Replacement of ch 19, pt 7 (Enforcement warrants for payment of order debt by instalments)

Chapter 19, part 7—

omit, insert—

‘PART 7—ORDER FOR PAYMENT OF ORDER DEBT BY INSTALMENTS

‘868 Order may authorise payment by instalments

‘(1) A court may make an order authorising satisfaction of an order debt by instalment payments (an **“instalment order”**).

‘(2) A court may make the instalment order—

- (a) when making a money order; or
- (b) on the application of a party (the **“applicant”**), at any later time before the money order has been satisfied.

‘(3) The application may be made without notice to any other party.

‘(4) However, if the application is made without notice to another party and an instalment order is made on the application, the applicant must serve the instalment order on the other party.

‘(5) If a party—

- (a) is served with an instalment order under subrule (4); and

(b) was not before the court when the instalment order was made; the party may apply to the court, on notice to the applicant, to set aside or vary the instalment order.

‘(6) If the applicant was not before the court when an order setting aside or varying the instalment order was made, the party who applied for the order must serve the order on the applicant.

‘869 Prerequisites for instalment order

‘(1) In deciding whether to make an instalment order, the court must have regard to the following—

- (a) whether the enforcement debtor is employed;
- (b) the enforcement debtor’s means of satisfying the order;
- (c) whether the order debt, including any interest, will be satisfied within a reasonable time;
- (d) the necessary living expenses of the enforcement debtor and the enforcement debtor’s dependants;
- (e) other liabilities of the enforcement debtor;
- (f) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing money orders efficiently and expeditiously.

‘(2) In deciding the amount and timing of the instalments, the court must be satisfied that the instalment order will not impose unreasonable hardship on the enforcement debtor.

‘(3) However, an enforcement hearing is not necessary before the court makes the instalment order.

‘870 No enforcement warrant to issue while instalment order

‘Unless the court orders otherwise, while an instalment order is in force, no enforcement warrant may be issued in relation to the money order to which the instalment order relates.

‘871 Discharge or variation of instalment order

‘(1) The court may, on the application of a party, set aside, suspend or vary an instalment order.

‘(2) An order setting aside, suspending or varying the instalment order must be served on any other party not present when the order was made.

‘(3) An order suspending or varying the instalment order does not come into force until the end of 7 days after the order was made, or if the order is required to be served under subrule (2), the last day on which the order is served.

‘872 Cessation of instalment order

‘(1) An instalment order ceases to have effect if—

- (a) the order debt is satisfied; or
- (b) the instalment order is set aside or expires according to its conditions; or
- (c) the enforcement debtor fails to make 2 consecutive payments; or
- (d) unless the court orders otherwise, an enforcement warrant is issued in relation to the order debt.

‘(2) If an instalment order ceases to have effect under subrule (1), other than by an order made in the presence of the enforcement debtor, the enforcement creditor must give notice to the enforcement debtor that the instalment order has ceased to have effect.

‘(3) The notice must be in the approved form.

‘(4) The enforcement creditor must file a copy of the notice.’.

17 Amendment of r 906 (Procedure)

Rule 906(3), from ‘served on’—

omit, insert—

‘filed.’.

18 Amendment of r 907 (Application to set aside enforcement)

Rule 907(1)—

omit, insert—

‘(1) In relation to an enforcement warrant for a non-money order, a person affected by the order or another person affected by the warrant may apply to the court to set the warrant aside or to stay enforcement at any time.’.

19 Amendment of r 913 (Prerequisites to enforcement warrant for possession)

Rule 913(2), ‘written’—

omit.

20 Amendment of r 914 (Procedure)

Rule 914(1)(a), ‘written’—

omit.

21 Insertion of new r 984A

Chapter 22, part 2—

insert—

‘984A Disposal of exhibits

‘(1) This rule applies to an exhibit held by a court in a finalised proceeding.

‘(2) The registrar may give notice in the approved form to a party, the solicitor for a party or any other person who appears to the registrar to be the owner or person entitled to possession of the exhibit, to collect the exhibit from the registry within 28 days.

‘(3) If the exhibit is not collected from the registry within 3 months after the notice is given, the registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.

‘(4) The registrar may apply to the court at any time for an order about the return, destruction or other disposal of an exhibit.

‘(5) If the registrar returns, destroys or otherwise disposes of an exhibit under this rule, the registrar must ensure a note is placed on the court file

specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.

‘(6) In this rule—

“**exhibit**” includes an unfiled document held by the court.

“**finalised proceeding**” means a proceeding—

- (a) that has been discontinued; or
- (b) in relation to which a party has notified the registrar that the proceeding has been settled or otherwise ended other than by discontinuance or the granting of final relief; or
- (c) in which final relief has been granted if—
 - (i) 3 months have passed since final relief was granted and no notice of appeal has been filed under rule 746 starting an appeal, or applying for a new trial, in relation to the proceeding; or
 - (ii) an appeal, or application for a new trial, under rule 746 in relation to the proceeding has been decided and—
 - (A) 3 months have passed since the decision and no application for special leave to appeal to the High Court from the decision has been filed; or
 - (B) an application for special leave to appeal to the High Court from the decision has been decided other than by the grant of special leave and 3 months have passed since the High Court’s decision; or
 - (C) 1 month has passed since an appeal to the High Court in relation to the proceeding has been decided, other than by granting a new trial or remitting the proceeding to another court for final determination.’.

22 Amendment of ch 23, hdg (Proceedings under Corporations Law and ASC Law)

Chapter 23, heading, ‘CORPORATIONS LAW AND ASC LAW’—

omit, insert—

‘CORPORATIONS ACT OR ASIC ACT’.

23 Replacement of r 995 (Corporations law rules)

Rule 995—

omit, insert—

‘995 Rules for proceedings under Corporations Act or ASIC Act

‘The rules in schedule 1A apply to a proceeding in the Supreme Court under the Corporations Act or the ASIC Act, and are intended to apply in harmony with similar rules in the Federal Court and other Australian courts.’.

24 Insertion of new ch 24

After rule 995—

insert—

‘CHAPTER 24—TRANSITIONAL PROVISIONS

‘996 Transitional—Uniform Civil Procedure Amendment Rule (No. 1) 2004

‘(1) Unless the court otherwise orders, chapter 11, part 5,⁶ as inserted by the *Uniform Civil Procedure Amendment Rule (No. 1) 2004*, section 7, applies to an existing proceeding, other than in relation to an expert appointed before the commencement of this rule.

‘(2) If a difficulty arises in the application of subrule (1) to a particular proceeding, the court may, on application by a party or on its own initiative, make an order it considers appropriate to resolve the difficulty.

‘(3) In this rule—

“**existing proceeding**” means a proceeding started in the court, but not completed, before the commencement of this rule.’.

25 Amendment of sch 1 (Scale of costs—Supreme Court)

Schedule 1, item 20(b), ‘1 290.00’—

6 Chapter 11 (Evidence), part 5 (Expert evidence)

omit, insert—

‘1 175.00’.

26 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘**“instalment order”**, for chapter 19, see rule 868(1).

“seize”, for real property, includes seize under rule 828(5).’.

SCHEDULE 1

AMENDMENTS OF SCHEDULE 1A (PROCEEDINGS UNDER CORPORATIONS LAW)

section 2

1 Heading—

omit, insert—

**‘RULES FOR PROCEEDINGS UNDER CORPORATIONS
ACT OR ASIC ACT’.**

2 Rule 1.1, ‘Law’—

omit, insert—

‘Proceedings’.

3 Rule 1.3, ‘Corporations Law, or the ASC Law’—

omit, insert—

‘Corporations Act, or the ASIC Act’.

4 Rule 1.3, note—

omit, insert—

‘Note—

Under the *Acts Interpretation Act 1954*, section 7, a reference to the Corporations Act includes a reference to the Corporations Regulations.’.

5 Rule 1.4, ‘Corporations Law’—

omit, insert—

‘Corporations Act’.

SCHEDULE 1 (continued)

- 6 Rule 1.4, notes, item 1, definitions “Commission”, “foreign country”, “futures broker” and “Gazette”—**

omit.

- 7 Rule 1.4, notes, item 1—**

insert—

‘ASIC—see section 9’.

- 8 Rule 1.5, definitions “originating application” and “the Law”—**

omit.

- 9 Rule 1.5—**

insert—

‘**“originating application”** means an application starting a proceeding in the court under the Corporations Act or the ASIC Act.’.

- 10 Rules 1.8(a) and 1.10, ‘Corporations Law, the ASC Law’—**

omit, insert—

‘Corporations Act, the ASIC Act’.

- 11 Rule 2.2(1), ‘the Law’—**

omit, insert—

‘the Corporations Act’.

- 12 Rule 2.2(3)(b)(i) and (4)(b)(i), ‘Law or the ASC Law’—**

omit, insert—

‘Corporations Act or the ASIC Act’.

SCHEDULE 1 (continued)

13 Rule 2.4(2), ‘the Commission’—

omit, insert—

‘ASIC’.

14 Rule 2.4, at the end—

insert—

Note—

In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing form 2, part C.’.

15 Rule 2.8, heading, ‘Commission’—

omit, insert—

‘ASIC’.

16 Rule 2.8(1) and (3), ‘the Law’—

omit, insert—

‘the Corporations Act’.

17 Rule 2.8, ‘the Commission’—

omit, insert—

‘ASIC’.

18 Rule 2.8, table, column 1, ‘Section 1224(1) and (4)’—

omit, insert—

‘Sections 983A(1) and 983B⁷’.

⁷ Corporations Act, sections 983A (Court may freeze certain accounts) and 983B (Interim order freezing accounts)

SCHEDULE 1 (continued)

19 Rule 2.8, table, column 1, ‘Section 1226’—

omit, insert—

‘Section 983D⁸’.

20 Rule 2.8, table, column 1, ‘Section 1317JA(2), (4) and (5)’—

omit, insert—

‘Section 1317S(2) and (4)⁹’.

21 Rule 2.8, table, column 2, ‘section 482(1) of the Law’—

omit, insert—

‘the Corporations Act, section 482(1)¹⁰’.

22 Rule 2.8, table, column 2, ‘section 1224 of the Law’—

omit, insert—

‘the Corporations Act, section 983A(1) or 983B’.

23 Rule 2.9, heading, ‘s 465C of the Law’—

omit, insert—

‘Corporations Act, s 465C’.

8 Corporations Act, section 983D (Further orders and directions)

9 Corporations Act, section 1317S (Relief from liability for contravention of civil penalty provision)

10 Corporations Act, section 482 (Power to stay or terminate winding up)

SCHEDULE 1 (continued)

- 24 Rule 2.9(2), ‘section 465C of the Law’—**
omit, insert—
‘the Corporations Act, section 465C¹¹’.
- 25 Rule 2.9(3), ‘section 465C of the Law’—**
omit, insert—
‘the Corporations Act, section 465C’.
- 26 Rule 2.10, heading, ‘Commission (s 1330 of the Law)’—**
omit, insert—
‘ASIC (Corporations Act, s 1330)’.
- 27 Rule 2.10, ‘the Commission’—**
omit, insert—
‘ASIC’.
- 28 Rule 2.11, note, ‘the Law’—**
omit, insert—
‘the Corporations Act’.
- 29 Rule 2.15, ‘the Law’—**
omit, insert—
‘the Corporations Act’.

11 Corporations Act, section 465C (Applicant to be given notice of grounds for opposing application)

SCHEDULE 1 (continued)

30 Rule 3.2, ‘section 411(1), (1A) or (1B) of the Law’—

omit, insert—

‘the Corporations Act, section 411(1), (1A) or (1B)¹²’.

31 Rule 3.2(d), ‘section 411(7)(a) to (f) of the Law’—

omit, insert—

‘the Corporations Act, section 411(7)(a) to (f)’.

32 Rule 3.3, ‘section 411(1) or (1A) of the Law’—

omit, insert—

‘the Corporations Act, section 411(1) or (1A)’.

33 Rule 3.4, heading, ‘s 411(4), s 413(1) of the Law’—

omit, insert—

‘Corporations Act, ss 411(4) and 413(1)’.

34 Rule 3.4(1)(a), ‘section 411(4) of the Law’—

omit, insert—

‘the Corporations Act, section 411(4)’.

35 Rule 3.4(1)(b), ‘section 413(1) of the Law’—

omit, insert—

‘the Corporations Act, section 413(1)¹³’.

12 Corporations Act, section 411 (Administration of compromises etc.)

13 Corporations Act, section 413 (Provisions for facilitating reconstruction and amalgamation of Part 5.1 bodies)

SCHEDULE 1 (continued)

36 Rule 3.5, heading, ‘Commission’—

omit, insert—

‘ASIC’.

37 Rule 3.5, ‘section 411(1), (1A) or (4), or 413(1) of the Law’—

omit, insert—

‘the Corporations Act, section 411(1), (1A) or (4), or 413(1)’.

38 Rule 3.5(b), ‘the Commission’—

omit, insert—

‘ASIC’.

39 Part 4, heading, ‘PART 5.2 OF THE LAW’—

omit, insert—

‘CORPORATIONS ACT, PART 5.2’.

40 Rule 4.1, heading, ‘s 423 of the Law’—

omit, insert—

‘Corporations Act, s 423’.

41 Rule 4.1, ‘section 423(1)(b) of the Law’—

omit, insert—

‘Corporations Act, section 423(1)(b)¹⁴’.

14 Corporations Act, section 423 (Supervision of controller)

SCHEDULE 1 (continued)

- 42 Rule 5.1(a), ‘section 246AA of the Law’—**
omit, insert—
‘the Corporations Act, part 2F.1¹⁵’.
- 43 Rule 5.1(b), ‘part 5.4 or part 5.4A of the Law’—**
omit, insert—
‘the Corporations Act, part 5.4 or 5.4A¹⁶’.
- 44 Rule 5.2, heading, ‘s 459E(3) of the Law’—**
omit, insert—
‘Corporations Act, s 459E(3)’.
- 45 Rule 5.2, ‘section 459E(3) of the Law’—**
omit, insert—
‘the Corporations Act, section 459E(3)¹⁷’.
- 46 Rule 5.3, heading, ‘s 459P(2) of the Law’—**
omit, insert—
‘Corporations Act, s 459P(2)’.
- 47 Rule 5.4, heading, ‘s 459P, s 462, s 464 of the Law’—**
omit, insert—
‘Corporations Act, ss 459P, 462 and 464’.

15 Corporations Act, part 2F.1 (Oppressive conduct of affairs)

16 Corporations Act, part 5.4 (Winding up in insolvency) or 5.4A (Winding up by the Court on other grounds)

17 Corporations Act, section 459E (Creditor may serve statutory demand on company)

SCHEDULE 1 (continued)

48 Rule 5.4(2), at the end—*insert—**Note—*

Form 7A is an example of the affidavit in support of an application made in reliance on a failure to comply with a statutory demand.¹⁸

49 Rule 5.4(3), ‘section 461(1)(a) of the Law’—*omit, insert—*

‘the Corporations Act, section 461(1)(a)¹⁸’.

50 Rule 5.5, heading, ‘s 532(9) of the Law’—*omit, insert—*

‘Corporations Act, s 532(9)’.

51 Rule 5.5, ‘section 532(9) of the Law’—*omit, insert—*

‘the Corporations Act, section 532(9)¹⁹’.

52 Rule 5.9(b), ‘the Law’—*omit, insert—*

‘the Corporations Act’.

53 Rule 5.10, heading, ‘s 465B of the Law’—*omit, insert—*

‘Corporations Act, s 465B’.

18 Corporations Act, section 461 (General grounds on which company may be wound up by Court)

19 Corporations Act, section 532 (Disqualification of liquidator)

SCHEDULE 1 (continued)

54 Rule 5.10(1), ‘section 465B of the Law’—

omit, insert—

‘the Corporations Act, section 465B²⁰’.

55 Part 6, heading, ‘PART 5.4B OF THE LAW’—

omit, insert—

‘CORPORATIONS ACT, PART 5.4B’.

56 Rule 6.1, heading, ‘s 472 of the Law’—

omit, insert—

‘Corporations Act, s 472’.

57 Rule 6.1(1), ‘the Commission, under section 472(2) of the Law’—

omit, insert—

‘ASIC, under the Corporations Act, section 472(2)²¹’.

58 Rule 6.2(2)(a), ‘the Commission’—

omit, insert—

‘ASIC’.

59 Rule 7.1, heading, ‘s 473(1) of the Law’—

omit, insert—

‘Corporations Act, s 473(1)’.

20 Corporations Act, section 465B (Substitution of applicants)

21 Corporations Act, section 472 (Court to appoint official liquidator)

SCHEDULE 1 (continued)

60 Rule 7.1(1), ‘the Commission’—

omit, insert—

‘ASIC’.

61 Rule 7.2, heading, ‘s 473(7), s 502 of the Law’—

omit, insert—

‘Corporations Act, ss 473(7) and 502’.

62 Rule 7.2(2)(a), ‘the Commission’—

omit, insert—

‘ASIC’.

63 Rule 7.3, heading, ‘s 475 of the Law’—

omit, insert—

‘Corporations Act, s 475’.

64 Rule 7.3(1), ‘section 475 of the Law’—

omit, insert—

‘the Corporations Act, section 475²²’.

65 Rule 7.3(3), ‘section 475 of the Law’—

omit, insert—

‘the Corporations Act, section 475’.

22 Corporations Act, section 475 (Report as to company’s affairs to be submitted to liquidator)

SCHEDULE 1 (continued)

66 Rule 7.4, heading, ‘s 478 of the Law’—

omit, insert—

‘Corporations Act, s 478’.

67 Rule 7.5, heading, ‘s 480(c) and (d) of the Law’—

omit, insert—

‘Corporations Act, s 480(c) and (d)’.

68 Rule 7.5, ‘the Commission’—

omit, insert—

‘ASIC’.

69 Rule 7.5(2)(b), ‘section 481(3) of the Law’—

omit insert—

‘the Corporations Act, section 481(3)²³’.

70 Rule 7.5(2), note, ‘Subsection 481(3) of the Law’—

omit insert—

‘The Corporations Act, section 481(3)’.

71 Rule 7.5(3)(e), ‘section 539(2) of the Law’—

omit insert—

‘the Corporations Act, section 539(2)²⁴’.

23 Corporations Act, section 481 (Orders for release or deregistration)

24 Corporations Act, section 539 (Liquidator’s accounts)

SCHEDULE 1 (continued)

72 Rule 7.5(3)(h), ‘section 533 of the Law’—

omit insert—

‘the Corporations Act, section 533²⁵’.

73 Rule 7.5(3)(m), ‘section 480(c) of the Law’—

omit insert—

‘the Corporations Act, section 480(c)²⁶’.

74 Rule 7.7, heading, ‘s 481 of the Law’—

omit, insert—

‘Corporations Act, s 481’.

75 Rule 7.7(1), ‘section 481(1) of the Law’—

omit, insert—

‘the Corporations Act, section 481(1)²⁷’.

76 Rule 7.7(2)(a), ‘section 481(1) of the Corporations Law’—

omit, insert—

‘the Corporations Act, section 481(1)’.

77 Rule 7.7, ‘the Commission’—

omit, insert—

‘ASIC’.

25 Corporations Act, section 533 (Reports by liquidator)

26 Corporations Act, section 480 (Release of liquidator and deregistration of company)

27 Corporations Act, section 481 (Orders for release or deregistration)

SCHEDULE 1 (continued)

78 Rule 7.8, heading, ‘s 483(3)(b) of the Law’—

omit, insert—

‘Corporations Act, s 483(3)(b)’.

79 Rule 7.8, ‘section 483(3)(b) of the Law’—

omit, insert—

‘the Corporations Act, section 483(3)(b)²⁸’.

80 Rule 7.9, heading, ‘s 488(2) of the Law’—

omit, insert—

‘Corporations Act, s 488(2)’.

81 Rule 7.10, heading, ‘s 488 of the Law’—

omit, insert—

‘Corporations Act, s 488’.

82 Rule 7.10, ‘Corporations Law’—

omit, insert—

‘Corporations Act’.

83 Rule 7.10, ‘part 5.4B of the Law’—

omit, insert—

‘the Corporations Act, part 5.4B²⁹’.

28 Corporations Act, section 483 (Delivery of property to liquidator)

29 Corporations Act, part 5.4B (Winding up in insolvency or by the Court)

SCHEDULE 1 (continued)

- 84 Rule 7.10, ‘section 488(1) of the Law’—**
omit, insert—
‘the Corporations Act, section 488(1)³⁰’.
- 85 Rule 7.11, heading, ‘s 536 of the Law’—**
omit, insert—
‘Corporations Act, s 536(1) and (2)’.
- 86 Rule 7.11(1), ‘section 536(1)(b) of the Law’—**
omit, insert—
‘the Corporations Act, section 536(1)(b)³¹’.
- 87 Rule 7.11, ‘the Commission’—**
omit, insert—
‘ASIC’.
- 88 Rule 7.11, ‘section 536(2) of the Law’—**
omit, insert—
‘the Corporations Act, section 536(2)’.
- 89 Part 8, heading, ‘PART 5.4B OF THE LAW’—**
omit, insert—
‘CORPORATIONS ACT, PART 5.4B’.

30 Corporations Act, section 488 (Delegation to liquidator of certain powers of Court)

31 Corporations Act, section 536 (Supervision of liquidators)

SCHEDULE 1 (continued)

90 Rules 8.1, 8.2 and 8.3, heading, ‘s 484 of the Law’—

omit, insert—

‘Corporations Act, s 484’.

91 Rule 9.1, heading, ‘s 425(1) of the Law’—

omit, insert—

‘Corporations Act, s 425(1)’.

92 Rule 9.1(1), ‘section 425(1) of the Law’—

omit, insert—

‘the Corporations Act, section 425(1)³²’.

93 Rule 9.1(1), note, ‘section 425(2)(b) of the Law’—

omit, insert—

‘the Corporations Act, section 425(2)(b)’.

94 Rule 9.2, heading, ‘s 449E(1) of the Law’—

omit, insert—

‘Corporations Act, s 449E(1)’.

95 Rule 9.2(1), ‘section 449E(1) of the Law’—

omit, insert—

‘the Corporations Act, section 449E(1)³³’.

32 Corporations Act, section 425 (Court's power to fix receiver's remuneration)

33 Corporations Act, section 449E (Remuneration of administrator)

SCHEDULE 1 (continued)

96 Rule 9.2(2), ‘section 449E(1)(a) of the Law’—

omit, insert—

‘the Corporations Act, section 449E(1)(a)’.

97 Rule 9.3, heading, ‘s 473(2) of the Law’—

omit, insert—

‘Corporations Act, s 473(2)’.

98 Rule 9.3(1), ‘section 473(2) of the Law’—

omit, insert—

‘the Corporations Act, section 473(2)³⁴’.

99 Rule 9.4, heading, ‘s 473(3) of the Law’—

omit, insert—

‘Corporations Act, s 473(3)’.

100 Rule 9.4(1), ‘section 473(3) of the Law’—

omit, insert—

‘the Corporations Act, section 473(3)’.

101 Rule 9.4(2)(b), ‘section 473(4) of the Law’—

omit, insert—

‘the Corporations Act, section 473(4)’.

34 Corporations Act, section 473 (General provisions about liquidators)

SCHEDULE 1 (continued)

102 Rule 9.5, heading, ‘s 484(2) of the Law’—

omit, insert—

‘Corporations Act, s 484(2)’.

103 Rule 9.5(1), ‘section 484(2) of the Law’—

omit, insert—

‘the Corporations Act, section 484(2)³⁵’.

104 Rule 10.1, heading, ‘s 554A(2) of the Law’—

omit, insert—

‘Corporations Act, s 554A(2)’.

105 Rule 10.1, ‘section 554A(2)(b) of the Law’—

omit, insert—

‘the Corporations Act, section 554A(2)(b)³⁶’.

106 Rule 10.2, heading, ‘s 568(1A) of the Law’—

omit, insert—

‘Corporations Act, s 568(1A)’.

107 Rule 10.2(1), ‘section 568(1A) of the Law’—

omit, insert—

‘the Corporations Act, section 568(1A)³⁷’.

35 Corporations Act, section 484 (Appointment of special manager)

36 Corporations Act, section 554A (Determination of value of debts and claims of uncertain value)

37 Corporations Act, section 568 (Disclaimer by liquidator; application to Court by party to contract)

SCHEDULE 1 (continued)

108 Rule 10.3, heading—*omit, insert—***‘10.3 Winding up part 5.7 bodies (Corporations Act, ss 583 and 585) and registered schemes (Corporations Act, s 601ND)’.****109 Part 11, heading, ‘PART 5.9, DIVISIONS 1 AND 2 OF THE LAW’—***omit, insert—***‘CORPORATIONS ACT, PART 5.9, DIVISIONS 1 AND 2’.****110 Rule 11.1, ‘section 596A or 596B of the Law’—***omit, insert—***‘the Corporations Act, section 596A or 596B³⁸’.****111 Rule 11.2, heading, ‘s 411, s 423 or s 536(3) of the Law’—***omit, insert—***‘Corporations Act, s 411(9)(b), 423 or 536(3)’.****112 Rule 11.2(1), ‘section 411, 423 or 536(3) of the Law’—***omit, insert—***‘the Corporations Act, section 411(9)(b), 423 or 536(3)³⁹’.**

38 Corporations Act, section 596A (Mandatory examination) or 596B (Discretionary examination)

39 Corporations Act, section 411 (Administration of compromises etc.), 423 (Supervision of controller) or 536 (Supervision of liquidators)

SCHEDULE 1 (continued)

113 Rule 11.2(1), ‘the Commission’—

omit, insert—

‘ASIC’.

114 Rule 11.2(3), ‘Division 1 of part 5.9 of the Law’—

omit, insert—

‘the Corporations Act, part 5.9, division 1⁴⁰’.

115 Rule 11.2(3), ‘section 411, 423 or 536(3) of the Law’—

omit, insert—

‘the Corporations Act, section 411(9)(b), 423 or 536(3)’.

116 Rule 11.3, heading, ‘s 596A, s 596B of the Law’—

omit, insert—

‘Corporations Act, ss 596A and 596B’.

117 Rule 11.3(4)(a), ‘section 596A of the Corporations Law’—

omit, insert—

‘the Corporations Act, section 596A⁴¹’.

118 Rule 11.3(4)(b), ‘section 596B of the Corporations Law’—

omit, insert—

‘the Corporations Act, section 596B⁴²’.

40 Corporations Act, part 5.9 (Miscellaneous), division 1 (Examining a person about a corporation)

41 Corporations Act, section 596A (Mandatory examination)

42 Corporations Act, section 596B (Discretionary examination)

SCHEDULE 1 (continued)

119 Rule 11.3(6), ‘the Commission’—

omit, insert—

‘ASIC’.

120 Rule 11.5(3)(b), ‘the Commission’—

omit, insert—

‘ASIC’.

121 Rule 11.6, heading, ‘s 597(13) of the Law’—

omit, insert—

‘Corporations Act, s 597(13)’.

122 Rule 11.6, ‘section 597(13) of the Law’—

omit, insert—

‘the Corporations Act, section 597(13)⁴³’.

123 Rule 11.7, heading, ‘s 597(14) of the Law’—

omit, insert—

‘Corporations Act, s 597(14)’.

124 Rule 11.7, ‘section 597(14) of the Law’—

omit, insert—

‘the Corporations Act, section 597(14)’.

43 Corporations Act, section 597 (Conduct of examination)

SCHEDULE 1 (continued)

125 Rule 11.8, heading, ‘s 411, s 423 or s 536 of the Law’—

omit, insert—

‘Corporations Act, s 411, 423 or 536’.

126 Rule 11.8(1), ‘section 411, 423 or 536’—

omit, insert—

‘the Corporations Act, section 411, 423 or 536⁴⁴’.

127 Rule 11.8, ‘the Commission’—

omit, insert—

‘ASIC’.

128 Rule 11.9(1)(a), ‘section 597 of the Law’—

omit, insert—

‘the Corporations Act, section 597⁴⁵’.

129 Rule 11.11, heading, ‘s 598 of the Law’—

omit, insert—

‘Corporations Act, s 598’.

130 Rule 11.11(1), ‘section 598 of the Law’—

omit, insert—

‘the Corporations Act, section 598⁴⁶’.

44 Corporations Act, section 411 (Administration of compromises etc.), 423 (Supervision of controller) or 536 (Supervision of liquidators)

45 Corporations Act, section 597 (Conduct of examination)

46 Corporations Act, section 598 (Order against person concerned with corporation)

SCHEDULE 1 (continued)

131 Rule 11.11, note, ‘the Commission’—

omit, insert—

‘ASIC’.

132 Part 12, heading and rule 12.1—

omit, insert—

**‘PART 12—TAKEOVERS, ACQUISITIONS OF SHARES
ETC. (CORPORATIONS ACT, CHAPTERS 6 TO 6D) AND
SECURITIES (CORPORATIONS ACT, CHAPTER 7)**

**‘12.1 Service on ASIC in relation to proceedings under Corporations
Act, chapter 6, 6A, 6B, 6C, 6D or 7**

‘If ASIC is not a party to an application made under the Corporations Act, chapter 6, 6A, 6B, 6C, 6D or 7,⁴⁷ the applicant must serve a copy of the originating application and the supporting affidavit on ASIC as soon as practicable after filing the originating application.

**‘12.1A Reference to court of questions of law arising in proceeding
before takeovers panel (Corporations Act, s 659A)**

‘The *Uniform Civil Procedure Rules 1999*, rule 781⁴⁸ applies, with necessary changes, to the reference to the court under the Corporations Act, section 659A⁴⁹ of a question of law arising in a proceeding before the takeovers panel.’.

47 Corporations Act, chapter 6 (Takeovers), 6A (Compulsory acquisitions and buy-outs), 6B (Rights and liabilities in relation to Chapter 6 and 6A matters), 6C (Information about ownership of listed companies and managed investment schemes), 6D (Fundraising) or 7 (Financial services and markets)

48 *Uniform Civil Procedure Rules 1999*, rule 781 (Form and contents of case stated)

49 Corporations Act, section 659A (Panel may refer questions of law to the Court)

SCHEDULE 1 (continued)

133 Rule 12.2, heading, ‘s 1092(3) of the Law’—

omit, insert—

‘Corporations Act, s 1071D(4)’.

134 Rule 12.2(1), ‘section 1092(3) of the Law’—

omit, insert—

‘the Corporations Act, section 1071D(4)⁵⁰’.

135 Rule 12.3—

omit, insert—

‘12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)

‘(1) An application for an order under the Corporations Act, section 1071F (2)⁵¹ must be made by filing an originating application.

‘(2) As soon as practicable after filing the originating application, the applicant must serve a copy of the originating application and the supporting affidavit on—

- (a) the company; and
- (b) any person against whom an order is sought.’.

136 Part 13—

omit.

137 Part 14, heading, ‘PART 9.5 OF THE LAW’—

omit, insert—

‘CORPORATIONS ACT, PART 9.5’.

50 Corporations Act, section 1071D (Registration of transfer at request of transferor)

51 Corporations Act, section 1071F (Remedy for refusal to register transfer or transmission)

SCHEDULE 1 (continued)

138 Rule 14.1, heading, ‘s 554A, s 1321 of the Law’—

omit, insert—

‘Corporations Act, ss 554A and 1321’.

139 Rule 14.1(1) and (2), ‘the Law’—

omit, insert—

‘the Corporations Act’.

140 Part 15, heading, ‘ASC LAW’—

omit, insert—

‘ASIC ACT’.

141 Rule 15.1, heading, ‘Commission (s 61 of the ASC Law)’—

omit, insert—

‘ASIC (ASIC Act, s 61)’.

**142 Rule 15.1, ‘the Commission to the court under section 61 of the
ASC Law’—**

omit, insert—

‘ASIC to the court under the ASIC Act, section 61⁵²’.

143 Rule 15.3, heading, ‘s 70, s 201, s 219 of the ASC Law’—

omit, insert—

‘ASIC Act, ss 70, 201 and 219’.

52 ASIC Act, section 61 (Reference to Court of question of law arising at hearing)

SCHEDULE 1 (continued)

144 Rule 15.3, ‘section 70(3), 201(3) or 219(7) of the ASC Law’—

omit, insert—

‘the ASIC Act, section 70(3), 201(3) or 219(7)⁵³’.

145 Rule 16.1(1), ‘the Law’—

omit, insert—

‘the Corporations Act’.

146 Rule 16.1(2), ‘the Law or the ASC Law’—

omit, insert—

‘the Corporations Act or the ASIC Act’.

⁵³ ASIC Act, section 70 (Powers of Court where non-compliance with Part), 201 (Powers of Court where non-compliance with section 192) or 219 (Failure of witnesses to attend and answer questions)

SCHEDULE 2

AMENDMENTS OF SCHEDULE 1B (POWERS OF THE COURT THAT MAY BE EXERCISED BY A REGISTRAR)

section 2

1 First column, heading, ‘the Law’—

omit, insert—

‘the Corporations Act’.

2 Entries for section 743, 1053(5), 1092, 1094, 1096(4) and 1274(11)—

omit.

3 Schedule 1B—

insert—

‘section 227	Power to declare that conditions prescribed by part 2E.1, division 3 ¹ have been satisfied
section 283AE(2)(a)	Power to appoint body corporate as trustee for debenture holders
section 283EC	Power to make an order for meeting of debenture holders to direct trustee
section 1071D	Power to make an order in relation to a person summoned
section 1071F	Power to make an order in relation to a company’s refusal to register a share transfer

SCHEDULE 2 (continued)

section 1071H(6)	Power to make an order to remedy default in issuing certificate etc.
section 1274	Power to make an order if failure to lodge, amend etc. a document ¹ .

-
- 1 Corporations Act, part 2E.1 (Member approval needed for related party benefit), division 3 (Procedure for obtaining approval)

4 Entry for section 464, ‘ASC Law’—

omit, insert—

‘the ASIC Act’.

5 Entry for rule 2.8, ‘commission’—

omit, insert—

‘ASIC’.

ENDNOTES

1. Made by the Governor in Council on 1 July 2004.
2. Notified in the gazette on 2 July 2004.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.