

Federal Court (Corporations) Amendment Rules 2003 (No. 2) 2003 No. 376

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 376

Issued by the authority of the Judges of the Federal Court of Australia

Federal Court (Corporations) Amendment Rules 2003 (No. 2)

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court or a majority of them, to make rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 59 (4) of the *Federal Court of Australia Act 1976*, sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* which relate to the making of regulations, apply to these Rules of Court as if references to the regulations in those sections were references to Rules of Court.

DIVISION 1 PRELIMINARY

RULE 1 Name of rules

This rule provides that the Rules are to be cited as the *Federal Court (Corporations) Amendment Rules 2003 (No. 2)*.

RULE 2 Commencement

This rule provides that these Rules commence on gazettal.

RULE 3 Amendment of Federal Court (Corporations) Rules 2000

This rule provides that the *Federal Court (Corporations) Rules 2000* are amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

[1] Paragraph 5.10 (2) (b)

Section 465B of the *Corporations Act 2001* (Cth) provides that the Court may order a person or persons be substituted as applicant or applicants in an application under section 459P, 462 or 464 for a company to be wound up. Subrule 5.10 (1) of the *Federal Court (Corporations) Rules 2000* states that if the Court makes such an order, the Court may also order that the substituted party publish a notice of the intention to apply for an order that the company be wound up.

The effect of this amendment is to replace paragraph 5.10 (2) (b) with a new paragraph 5.10 (2) (b) which provides that, where the Court makes an order under subrule 5.10 (1), the notice must be published at least 7 days before the date fixed for the hearing of the application or as otherwise directed by the Court.

[2] Schedule 1, Form 1

This amendment replaces the words '(under administration)' in Form 1 with the words '(administrator appointed)'. The amendment ensures that the form is consistent with section 450E of the *Corporations Act 2001*.

[3] Schedule 3, Note 2, paragraph 3

Schedule 3, Note 2 contains a suggested form of words for an affidavit in support of an application for winding up in insolvency.

This amendment replaces paragraph 3 of the affidavit with a new paragraph 3 that omits the reference to exercise of jurisdiction in the State of Victoria. This reference is not relevant to proceedings in the Federal Court.