

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 84

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

Federal Court (Corporations) Amendment Rules 2005 (No. 1)

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*, the *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Court of Australia Act 1976* or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of the *Federal Court of Australia Act 1976*.

The Federal Court (Corporations) Rules 2000 apply to a proceeding in the Court under the *Corporations Act 2001* or the *Australian Securities and Investments Commission Act 2001* commenced on or after 1 January 2000.

The Judges have agreed to amend the Federal Court (Corporations) Rules 2000 in accordance with recommendations of the Council of Chief Justices' Harmonised Corporations Rules Monitoring Committee which consists of representatives from the Federal Court and each State and Territory Supreme Court.

Rule 2.2 prescribes the form to be used to make an application required or permitted by the Corporations Act to be made to the Court. Rule 2.2 is amended to make it clear that an application in an existing Corporations Act proceeding should be made by an interlocutory process irrespective of the nature of the relief sought. For example, a cross-claim in such a proceeding is to be made by filing an interlocutory process, even though the cross-claim may seek final relief.

Rule 6.1 deals with applications for the appointment of a provisional liquidator of a company pursuant to section 472 of the Corporations Act. The amendment makes it clear that all applications for the appointment of a liquidator provisionally must be accompanied by a consent signed by the official liquidator whose appointment is sought.

The amendments have been the subject of consultation with the Law Council of Australia.

Details of the Rules are in the Attachment.

The Rules commence on the day after they are registered.

ATTACHMENT

Federal Court (Corporations) Amendment Rules 2005 (No. 1)**RULE 1 Name of rules**

This rule provides that the Rules are to be cited as the *Federal Court (Corporations) Amendment Rules 2005 (No. 1)*.

RULE 2 Commencement

This rule provides that these Rules commence on the day after they are registered.

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**Originating process and interlocutory process — Forms 2 and 3**[1] Paragraph 2.2 (1) (b)

This amendment replaces paragraph 2.2 (1) (b) with a new paragraph 2.2 (1) (b). The effect of the amendment is to insert the words ‘, and whether final relief or interlocutory relief is claimed’ after the words ‘in any other case’ in paragraph 2.2 (1) (b).

Appointment of provisional liquidator (Corporations Act s 472) — Form 8[2] Subrule 6.1 (1)

This amendment replaces subrule 6.1 (1) with a new subrule 6.1 (1). The effect of the amendment is to omit the words ‘by a company, creditor or contributory of the company, or the Commission’ in subrule 6.1 (1).