

EXPLANATORY STATEMENT

Admiralty Act 1988: Admiralty Rules  
1988 No. 269

PART I - Preliminary

Rule 1 Citation

This Rule provides the short title of the Rules.

Rule 2 Commencement

This Rule provides that the Rules shall commence on 1 January 1989.

Rule 3 Interpretation

Rule 3 defines a number of expressions used generally throughout the Rules.

Rule 4: Marshal and Registrar.

This Rule provides that, where the Rules confer or impose powers or functions upon the Registrar or Marshal, those powers shall be exercised by the person appointed by the Court in which the proceedings are being heard as Registrar or Marshal. In general, the Registrar exercise quasi judicial functions akin to those of a Registrar, Prothonotary or Master, whereas the Marshal exercises those administrative functions exercised by a sheriff.

Rule 5 Headings

This rule provides that court documents filed or issued in Admiralty actions must be clearly marked "IN ADMIRALTY", and shall identify proceedings in accordance with the Rules of the Court in which the document is filed.

PART II - Caveats

Rule 6 Operation of rules

This Rule provides that the ordinary Rules of the Court exercising jurisdiction continue to operate to the extent that they are not inconsistent with these Rules. The Rule further provides that Rule 56, which creates an offence, will not apply if a person has been dealt with for contempt in the Court exercising jurisdiction for the same act or omission.

Rule 7 Caveats against arrest

This rule provides the procedure for a caveat against arrest. A caveat against arrest consists of a promise to enter an appearance in an action that may be begun against the property in question and to provide

security up to a specified amount within 3 days of receiving notice of any such action. This prevents a ship or cargo or other property from being arrested. Arrest of a ship may involve considerable cost and inconvenience to the ship owner, and the caveat allows the shipowner to avoid arrest, in return for lodging security. Rule 6 provides a discretion in the Registrar not to accept a caveat unless he is satisfied that the caveator will meet the security. An undertaking by a bank or protection and indemnity association may so satisfy the Registrar.

**Rule 8 Undertaking by caveator**

This Rule provides that the filing of a caveat amounts to an undertaking to appear.

**Rule 9 Caveator to give bail**

This Rule provides that the caveator must, within three days of being served with initiating process, pay into Court the amount of the claim or the amount specified in the caveat. Failure to comply renders the caveator liable to committal for contempt.

**Rule 10 Caveats against release**

This Rule provides that a caveat against release may be filed when a ship or other property is under arrest. A caveat against release allows a party to prevent the release of arrested property, at the risk of payment of damages if there was no good and proper reason for preventing that release.

**Rule 11 Caveat may be set aside**

This Rule provides that the court hearing the matter may set aside the caveat.

**Rule 12 Caveats in force 12 months**

This Rule provides that a caveat has a maximum life of 12 months, but may be renewed.

**Rule 13 Withdrawal of caveats**

This Rule provides the procedure for a caveator to withdraw a caveat.

**Rule 14 Registers**

This Rule provides for registers of caveats to be maintained. The register of caveats against arrest is to be maintained to the Federal Court. This is because the Federal Court register, being available in every State and Territory, is easily available to allow a person proposing to issue proceeding to determine whether a caveat against arrest is in force, whereas Supreme Court registers would only be available for inspection in that State or Territory.

The register of caveats against release is maintained in the court in which the arrest proceedings occurred. As the fact of arrest is known, a nationally available register is unnecessary.

### PART III - Parties

#### Rule 15 Actions in rem: parties

This Rule provides that a person must be identified as the defendant in the initiating process (writ) in an action in rem, even if only in the form "the owner of the ship".

#### Rule 16 Actions in rem: ships or property

This Rule provides that the ship or property must be identified in the initiating process. The surrogate ship action, permitted by s.19 of the Act, allows a ship owned by the same person as the wrong doing ship to be arrested in an action against the wrong doing ship.

#### Rule 17 Amendment of process

This Rule extends the existing powers of courts to amend proceedings or join parties to substituting personal defendants pursuant to Rule 15 or substituting ships pursuant to Rule 16. The procedure to amend would be found in the rules of the Court in which the action commenced.

### PART IV - Process

#### Division 1 - Initiating Process

#### Rule 18 Separate commencement of in rem and in personam actions.

This Rule provides that separate writs are required to initiate an in rem and an in personam action.

#### Rule 19 Initiating process

This Rule provides that an in rem action shall be commenced by writ. The form of the writ is in the Schedule. As the uniform rules are silent on commencing in personam action, the form of an in personam action will be governed by the rules of the Court in which the action commences.

#### Rule 20 Validity of initiating process

This Rule provides that a writ for an action in rem is valid only for 12 months after issue, and may not be served after that time without leave.

Rule 21 Limitation proceedings

This Rule provides for a limitation proceeding to be initiated as an action in personam. A limitation proceeding allows a defendant to limit the extent of liability. Australia is a party to the 1957 International Convention Relating to the Limitation of the Liability of Owners of Sea Going Ships, which is given effect in Australia by the Navigation Act 1912.

Division 2 - Statement of claim

Rule 22 Statements of claim

This Rule sets down the requirements for a statement of claim in an action in rem.

Division 3 - Appearance

Rule 23 Appearance

This Rule sets down the requirements for filing appearances to an action in rem.

Division 4 - Preliminary Acts

Rule 24 Application

This Rule is permits Preliminary Acts to be required in any proceeding arising out of a collision between two or more ships. A Preliminary Act is a statement by the defendant to be filed at an early stage in proceedings, before the plaintiffs full case has been pleaded. It sets out details of the course, speed, and circumstances of the collision, and each party's version of events. Preliminary Acts by both parties are sealed, and not shown to the other party until pleadings are closed.

Rule 25 Preliminary acts

This Rule sets out procedure for filing Preliminary Acts.

Rule 26 Preliminary acts to be sealed

This Rule requires Preliminary Acts to be sealed.

Rule 27 Default in filing preliminary act

This Rule imposes sanctions on a party for failing to file a preliminary act. If the plaintiff fails, the action may be dismissed, and if the defendant fails, the plaintiff may proceed as if the defendant failed to appear, and so obtain a default judgement under the rules of the Court in which the proceedings commenced.

Rule 28 Opening of preliminary acts

This Rule provides that the sealed preliminary acts should only be opened after pleadings have closed, unless ordered by the Court.

Division 5 - Trial without pleadings

Rule 29 Trial without pleadings

This Rule permits the Court to proceed to trial without pleadings, or without further pleadings.

PART V - Service of Initiating Process

Rule 30 Service of initiating process on ships and other property

This Rule provides that service of a writ or a ship or property shall be done by fixing the writ to the mast or other conspicuous part of the ship, or to the property. In the event that access to the ship or property cannot reasonably be obtained, the process may be served by personal service or a person in charge of the ship or property.

Rule 31 Service of initiating process on proceeds

This Rule provides for service where the ship or property has been sold and the proceeds are held in Court.

Rule 32 Service upon caveator

This Rule provides that a copy of the initiating process must be served on any caveator.

Rule 33 Service by Marshal

This Rule provides that the Marshal may serve any process.

Rule 34 Substituted service

This Rule provides that substituted service may not be ordered in an in rem action.

Rule 35 Service on any day

This Rule provides that a in rem action may be served on any day.

Rule 36 Service of amended process

This Rule provides that, where an initiating process has been amended after service, the amended process shall be served on any person served with the original.

Rule 37 Acceptance of service

This rule provides that an in rem actions a solicitor acting for a defendant may undertake in writing to accept service, as an alternative to the normal procedure to service.

Rule 38 Substituted service of statement of claim

This Rule provides that a statement of claim shall be served in the same way as a writ, save that substituted service may be ordered (of Rule 34).

**PART VI - Arrest**

**Division 1 - Arrest of ships and other property**

**Rule 39 Application for warrant**

This Rule provides that a party to an action in rem may apply for an arrest warrant against the ship against which the proceeding was commenced. The power to arrest a ship on an action in rem is a distinguishing feature of Admiralty jurisdiction.

**Rule 40 Issue of warrant**

This Rule sets out the circumstances in which an arrest warrant may issue. An arrest warrant may not issue where a caveat against arrest is in force.

**Rule 41 Liability for Marshal's fees and expenses**

This Rule provides that a party seeking an arrest warrant liable for the fees and expenses of the Marshal in relation to the arrest.

**Rule 42 Period of validity**

This Rule provides that an arrest warrant may only be executed for 6 months after issue, but may be renewed.

**Rule 43 Execution of arrest warrant**

This Rule sets out the process for execution of an arrest warrant, which may only be done by the Marshal.

**Rule 44 Duration of arrest**

This Rule provides that a ship or other property remains under arrest from the time an arrest warrant is executed until it is lawfully released or is sold by court order.

**Rule 45 Verification of service**

This Rule provides that execution of an arrest warrant shall be verified by affidavit.

**Rule 46 Execution on any day**

This Rule provides that an arrest warrant may be executed on any day.

**Division 2 - Custody of ships etc. under arrest**

**Rule 47 Custody of arrested ships and property**

This Rule provides that the Marshal has custody of an arrested ship or property, and sets out how such custody is to be exercised.

Rule 48 Applications concerning arrested property

This Rule provides that the Marshal or a party may apply to the Court for directions with respect to the ship or property.

Rule 49 Discharge

This Rule provides that, where the ship is under arrest but the cargo is not, or where the reverse applies, the cargo may be removed from the ship and the property not subject to arrest may be released.

Rule 50 Preservation, management and control powers

This Rule vests the Court with powers with regard to the preservation, management or control of arrested ships or property.

Division 3 - Release from arrest

Rule 51 Release by Registrar

This Rule provides a mechanism whereby an arrested ship or property can be released by the Registrar upon payment into court of a security of the amount claimed or the value of the ship, or upon filing a bail bond in the equivalent sum. Release can also occur where the arresting party consents, or where proceedings are discontinued.

Rule 52 Release from arrest by court

This Rule provides that the Court may order release of an arrested ship or property on application, on such terms as are just.

Rule 53 Payment of fees and expenses

This Rule provides that the Marshal may refuse to release a ship or property pursuant to Rule 51 or 52 until satisfactory arrangements are made for payment of the fees and expenses of the Marshal in relation to the arrest of the ship or property.

PART VII - Bail

Rule 54 Bail bonds

This Rule provides for the form of bail bond required under Rule 51 to release a ship or property from arrest. Two sureties are required.

Rule 55 Notice of bail

This Rule requires a party lodging bail to serve notice on the other parties.

Rule 56 Objection to bail

This Rule provides a mechanism whereby a party can object to the proposed bail. The Registrar may conduct a hearing to determine the adequacy of the bail. As failure to obey an officer of the Court could be dealt with as contempt, Rule 6 provides that a person may only be dealt with once for this offence. Failure to attend this hearing, after notification, is an offence.

Rule 57 Filing bond

This Rule sets out the times at which a bail bond may be filed.

Rule 58 Sureties bound

This Rule binds a surety from the time the bond is filed.

Rule 59 Court may vary bail

This Rule gives the Court power to reduce the amount of bail.

Rule 60 Costs of bail

This Rule provides that the costs of bail are those of the proceedings. The exception is that a party who unsuccessfully objects to the amount of bail under Rule 56 pays the costs of the objection hearing.

PART VIII - Limitation Proceedings

Rule 61 Service on at least one respondent

This Rule provides that a limitation proceeding can not be heard until at least one of the respondents has been served with initiating process.

Rule 62 Advertisement of determination

This Rule provides that, where there are a number of respondents, and the court determines that liability should be limited, that determination may be advertised to allow all respondents to prosecute their claim, or apply to have the determination set aside. This does not occur if all respondents have been served with initiating process.

Rule 63 Effect of determination

This Rule provides that, where a determination has not been advertised pursuant to Rule 62, it only binds those respondents served with initiating process.

Rule 64 Proceedings to set aside determination

This Rule provides that a respondent may apply, within the time set out in the advertisement, to set aside a determination limiting liability, and sets out the procedure for so applying.

PART IX - Reference of Damages and Accounts to Registrar

Rule 65 Reference to Registrar

This Rule provides that assessments of damages and taking of an account may be referred from the Court to the Registrar.

Rule 66 Affidavits

This Rule provides that where such questions are referred to the Registrar an affidavit setting out the amount claimed should be filed by the party seeking the amount.

Rule 67 Registrar to make determinations

This Rule provides that the Registrar shall determine the amount payable on a reference, and that such a determination has effect as a judgement of the Court.

Rule 68 Application to vary

This Rule provides that a party may apply to the Court within 14 days of a determination to vary that determination.

PART X - Valuation and Sale

Rule 69 Orders for valuation and sale

This Rule provides that the Court may order that a ship or property under arrest be valued and sold on the application of a party. The Court has power of its own motion to sell a ship or property which is deteriorating in value (for example, a cargo of perishable goods).

Rule 70 Sale

This Rule provides that such a sale will be conducted by the Marshal and be by auction unless the Court directs.

Rule 71 Return of sale

This Rule requires the Marshal to account for and pay the proceeds of the sale into Court.

Rule 72 Taxation of Marshal's expenses

This Rule provides that the Registrar may set the expenses of the Marshal in connection with a sale.

PART XI - Priorities

Rule 73 Priorities

This Rule provides that any person who has obtained a judgment in any court against a ship or property may apply to the Court for determination of the order of priority of claims.

Rule 74 Marshal's fees and expenses

This rule provides that the Marshal's fees and expenses in connection with a determination of priorities are to be part of the expenses of the sale of the ship or property.

PART XII - Miscellaneous

Rule 75 Solicitors undertakings

This Rule provides that a solicitor who fails to comply with an undertaking given to a Court under the Rules is liable to be dealt with for contempt.

Rule 76 Wages, collision: security for costs

This Rule provides that security for costs shall not be required in actions by masters or crew members for wages or for loss of goods due to a collision.

Rule 77 Collision proceedings: stay pending security

This Rule operates in actions arising from a collision, and provides that, where the other party has counter claimed, both parties must provide security, otherwise proceedings are stayed.

Rule 78 Marshal may make interim demands for fees and expenses

This Rule provides that, where a person is liable to pay expenses of the Marshal, they may be required to pay interim amounts before proceedings are concluded.

Rule 79 Register of Admiralty proceedings

This Rule provides that Courts shall keep a register of in rem actions, which shall be open to inspection without charge.

**Rule 80 Courts may give directions, vary Rules**

This Rule provides that the Court may give directions in relation to a proceeding, extend or abridge time limits, or dispense with the compliance of the Rules.

**Rule 81 Review of Registrars actions**

This Rule provides that a party may apply to the Court for review of any decision by a Registrar.

**Rule 82 Instruments to be signed by Registrar, sealed**

This Rule provides that all documents issued by the Court in a proceeding shall be signed and sealed by the Registrar

**Rule 83 Inspection of Registers**

This Rule provides that any person may inspect a Register without charge.

**SCHEDULE**

The Schedule sets out the forms which are to be used. The appropriate form for a Rule is indicated in the Rule.