

# **Admiralty Rules (Amendment) 1996 No. 215**

## EXPLANATORY STATEMENT

### STATUTORY RULES 1996 No. 215

Issued by the authority of the Attorney-General and Minister for Justice

Admiralty Act 1988

Admiralty Rules (Amendment)

The primary purpose of the proposed amendments is to remedy a practical problem relating to the service of documents which has become apparent since the second set of amendments to the Rules was made in 1993. Also, the opportunity has been taken to remedy two minor discrepancies in the wording of the existing Rules.

Proposed Rule 2 inserts a new Rule 5A to enable documents in admiralty proceedings under the Act to be served by facsimile. The absence of service by facsimile has been a particular problem in relation to the release of vessels from arrest. This is because the place of arrest frequently is distant from the Court or Registrar issuing the Notice of Release from Arrest. The time taken to carry the Notice physically to the place of arrest can cause unnecessary delay and expense. Service of such notices under the Rule 5A will overcome that problem. That Rule will apply to the service of all documents (including notices) for the purposes of the Act and the Rules, other than initiating process (such as a Statement of Claim) or arrest warrants. The Rules already provide for the means by which facsimile copies of initiating process and arrest warrants may be served. Subrule 5A(4) will confirm that service by facsimile under Subrule 5A(3) is not confined to service between the parties to an admiralty action. It also extends to service of documents on other persons, or transmission of documents within a Court, to enable a function to be performed under the Act or Rules. For example, it would enable the Registrar of a Court to transmit a Notice of Release from Arrest to a harbourmaster in a distant port by facsimile.

Existing Rule 41 provides that an application for a warrant to arrest a vessel constitutes an undertaking by the person or solicitor seeking the arrest warrant to pay the fees and expenses of the admiralty Marshal in relation to the arrest. Proposed Rule 3 confirms that the undertaking to pay the Marshal's fees and expenses referred to in the existing Rule 41 is an undertaking to the Court. This ensures that a failure to abide by that undertaking could give rise to proceedings for contempt of court.

Proposed Rule 4 amends existing Rule 48 to correct an anomaly in the wording. Existing Rule 48 enables a party to the relevant action or an admiralty Marshal to apply to the Court for directions in respect of a ship or property over which the Marshal has custody. Subrule 48(4) authorises the Court to order the applicant for directions 'to give notice of the application' and 'to give notice of the directions' 'to' specified persons. The existing Rule 48 is the only Admiralty Rule dealing with transmission of 'notices' which does not refer to 'service' of notices 'on' a person. Rule 4 corrects that anomaly. The amended Subrule 48(4) would provide for directions 'to serve notice ' of the application' and 'to serve notice of the directions' 'on' specified persons.

The proposed Rules would commence on gazettal.