



Admiralty Amendment Rules 2006 (No. 1)¹

Select Legislative Instrument 2006 No. 287

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Rules under the *Admiralty Act 1988*.

Dated 16 November 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Attorney-General

1 Name of Rules

These Rules are the *Admiralty Amendment Rules 2006 (No. 1)*.

2 Commencement

These Rules commence on the day after they are registered.

3 Amendment of *Admiralty Rules 1988*

Schedule 1 amends the *Admiralty Rules 1988*.

Schedule 1 Amendments

(rule 3)

[1] Subrule 3 (1)

omit

In these Rules, unless the contrary intention appears:

insert

In these Rules:

[2] Subrule 3 (1), before definition of *amount claimed*

insert

Act means the *Admiralty Act 1988*.

[3] Subrule 3 (1), definition of *amount claimed*

omit

or costs.

insert

and costs.

[4] Subrule 3 (1), after definition of *arrest warrant*

insert

Australian legal practitioner means a person who is admitted to the legal profession in Australia and who holds a current practising certificate.

authorised deposit-taking institution has the meaning given by subsection 5 (1) of the *Banking Act 1959*.

[5] Subrule 3 (1), after definition of *caveator*

insert

costs, in relation to a proceeding, includes:

- (a) a party's reasonable costs of the proceeding; and
- (b) if relevant, any amount the party has paid, or is liable to pay, to the court or the Marshal in relation to the arrest, custody, preservation, discharge, release or sale of a ship or other property.

[6] Subrule 3 (1), definition of *the Act*

omit

[7] Subrule 3 (2)

omit

In these Rules, unless the contrary intention appears,

insert

In these Rules,

[8] After rule 6

insert

6A Relief from rules

The court may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

[9] Paragraph 7 (4) (b)

substitute

(b) an authorised deposit-taking institution.

[10] Subrule 9 (1)

substitute

- (1) This rule applies if:
- (a) a caveat against the arrest of a ship or other property is in force; and
 - (b) under these Rules, initiating process in a proceeding has been served on the caveator; and
 - (c) the proceeding is a proceeding of the kind specified in the caveat; and
 - (d) the caveat specifies an amount not less than the amount claimed.

[11] Rule 37

substitute

37 Acceptance of service

- (1) This rule applies if, in a proceeding commenced as an action *in rem* against a ship or other property, an Australian legal practitioner acting for a defendant in the proceeding or for the owner of the ship or property undertakes in writing to accept service of initiating process, or any other instrument, in relation to the proceeding.

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- (2) The process or instrument may be served on the Australian legal practitioner in any way in which other process of the court may be served on the Australian legal practitioner instead of being served in accordance with rule 30, 31, 32 or 36, as the case may be.

[12] Subrule 39 (2)

substitute

- (2) The application must be supported by an affidavit of the applicant or of an Australian legal practitioner or agent of the applicant.
- (3) The affidavit must be in accordance with Form 13 and must set out particulars of the claim and any necessary facts that would entitle an action *in rem* to be brought, in accordance with the Act, in respect of the claim.

Note A caveator or interested person may apply for an order that an arrest warrant be discharged for failure to comply with this rule (see subrule 43 (8)).

[13] After rule 39

insert

39A Disclosure of matters affecting safety

- (1) This rule applies to the following parties to a proceeding commenced as an action *in rem*:
- (a) a party who has applied, under rule 39, for an arrest warrant in respect of the ship or other property against which the proceeding was commenced;
 - (b) a party appearing in the proceeding after the execution of the arrest warrant.
- (2) Each party must disclose to the Marshal any fact or matter:
- (a) that the party is aware of; and
 - (b) that could affect the safety of the Marshal or any other person, or the ship or any other property, in, or in relation to, the arrest or custody of the ship or property.

- (3) The disclosure under subrule (2) must be made as soon as possible after the party becomes aware of the fact or matter and before the ship or property is released from arrest.

[14] Rule 41

substitute

41 Marshal's costs and expenses

- (1) An application for an arrest warrant constitutes an undertaking to the court:
- (a) if the application is made by the applicant personally — by the applicant; or
 - (b) if the application is made by an Australian legal practitioner on behalf of the applicant — by the Australian legal practitioner; or
 - (c) if the application is made by any other agent of the applicant — by the applicant;
- to pay to the Marshal, on demand, an amount equal to the amount of the costs and expenses of the Marshal in relation to the arrest, including costs and expenses in relation to the ship or other property while it is under arrest.
- (2) In addition to any undertaking, the Marshal may demand from the applicant payment of an amount of money that the Marshal considers necessary as a deposit to enable the Marshal to discharge his or her duties effectively in relation to the arrest, including duties while the ship or other property is under arrest.

[15] After subrule 43 (7)

insert

- (8) A caveator or interested person may apply to the court for an order that the arrest warrant be discharged because of a failure to comply with rule 39 in relation to the application for the arrest warrant.

[16] After rule 48

insert

48A Provision of information by Marshal

- (1) This rule applies if:
 - (a) an arrest warrant that specifies a ship or other property has been issued; and
 - (b) the Marshal receives a written request for information in relation to the arrest from:
 - (i) a party; or
 - (ii) if a caveat against release of the ship is, at the time of the request, in force — the caveator.
- (2) Unless the Marshal is satisfied that the request is unreasonable, the Marshal must, as far as reasonably practicable, inform the party or caveator about the following matters in relation to the arrest:
 - (a) the status of the arrest;
 - (b) the costs and expenses of the Marshal;
 - (c) other anticipated costs and expenses of the Marshal;
 - (d) any anticipated demands under rule 78 for a deposit towards, or interim payments on account of, costs and expenses.
- (3) If the Marshal does not respond to the request, the party or caveator may apply to the court for a direction that the Marshal must provide the information mentioned in subrule (2).
- (4) The costs and expenses of the Marshal in responding to the request:
 - (a) form part of the Marshal's costs and expenses in relation to the arrest of the ship or other property; and
 - (b) must, unless the Court orders otherwise, be met by the party or caveator who made the request.

[17] Rule 53*substitute***53 Marshal's costs and expenses**

- (1) An application under rule 51 or 52 for the release from arrest of a ship or other property constitutes an undertaking to the court:
 - (a) if the application is made by the applicant personally — by the applicant; or
 - (b) if the application is made by an Australian legal practitioner on behalf of the applicant — by the Australian legal practitioner; or
 - (c) if the application is made by any other agent of the applicant — by the applicant;to pay to the Marshal, on demand, an amount equal to the amount of the Marshal's costs and expenses in connection with the custody of the ship or property while it was under arrest, including the costs and expenses associated with the release from arrest of the ship or property.
- (2) The Marshal may refuse to release a ship or other property from arrest unless arrangements satisfactory to the Marshal have been made for the payment of the costs and expenses mentioned in subrule (1).

[18] Subrule 54 (3)*substitute*

- (3) The sureties must sign the bond before:
 - (a) a Registrar of any court that has jurisdiction under the Act in a proceeding commenced as an action *in rem*; or
 - (b) a person before whom affidavits for use in such a court may be sworn, other than:
 - (i) a person who is acting as an Australian legal practitioner for the party on whose behalf bail is to be given in the proceeding; or

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- (ii) a person whose partner, employer or employee, is acting as an Australian legal practitioner for the party on whose behalf bail is to be given in the proceeding.
 - (4) A partnership or corporation carrying on business in the jurisdiction in which the proceeding is commenced may act as a surety.
 - (5) If both sureties signing the bond under subrule (3) are corporations, the corporations must not be related bodies corporate within the meaning of section 9 of the *Corporations Act 2001*.

[19] After subrule 56 (3)

insert

- (3A) Before the date appointed by the Registrar under subrule (2), the proposed surety must file and serve on each other party to the proceeding an affidavit regarding its financial circumstances.
- (3B) The affidavit must set out at least the following matters:
 - (a) the proposed surety's current and non-current assets and liabilities (including contingent liabilities);
 - (b) current proceedings in which the proposed surety is a party;
 - (c) whether, in the 5 years before the date of the affidavit, the proposed surety has been the subject of any demand under a law relating to bankruptcy or insolvency;
 - (d) whether, in the 5 years before the date of the affidavit, the proposed surety has been made bankrupt, placed in administration or receivership or has been the subject of bankruptcy or winding up proceedings or of a garnishee order.
- (3C) The Registrar may direct the proposed surety to file and serve a supplementary affidavit setting out additional information regarding:
 - (a) the proposed surety's financial circumstances; or

- (b) other circumstances relating to the proposed surety's sufficiency;
as the Registrar considers appropriate.

[20] Subrule 56 (4), penalty

substitute

Penalty: 10 penalty units.

[21] After subrule 56 (4), including the penalty

insert

- (4A) The Registrar may:
 - (a) adjourn from time to time the hearing appointed under subrule (2); and
 - (b) allow the proposed surety or a party to the proceeding to file and serve additional affidavit material regarding the sufficiency of the proposed surety; and
 - (c) give directions regarding such matters as the Registrar considers appropriate.
- (4B) If a material adverse change occurs in relation to a matter or circumstance mentioned in an affidavit filed under this rule, the proposed surety must, within 7 days after that change occurs, file and serve on each other party to the proceeding another affidavit setting out the changed details in relation to the matter.

[22] Subrule 70 (2)

substitute

- (2) The court may direct that the sale be by auction, public tender or any other method.

[23] Paragraph 71 (c)*omit*

account for taxation.

insert

account.

[24] Rule 72*omit***[25] Rule 74, heading***substitute***74 Marshal's costs and expenses****[26] Before rule 75***insert in Part XII***74AA Definitions for this Part**

In this Part:

incorporated legal practice means a corporation that engages in legal practice in Australia, whether or not it also provides services that are not legal services.

law firm means a partnership consisting only of:

- (a) Australian legal practitioners; or
- (b) one or more Australian legal practitioners and one or more Australian-registered foreign lawyers.

law practice means:

- (a) a law firm; or
- (b) a multi-disciplinary partnership; or
- (c) an incorporated legal practice.

legal practitioner director means a director of an incorporated legal practice who is an Australian legal practitioner holding an unrestricted practising certificate.

legal practitioner partner means a partner of a multi-disciplinary partnership who is an Australian legal practitioner holding an unrestricted practising certificate.

multi-disciplinary partnership means a partnership between one or more Australian legal practitioners and one or more persons who are not Australian legal practitioners, where the business of the partnership includes the provision of legal services in Australia as well as other services.

principal, of a law practice, means an Australian legal practitioner who is:

- (a) in the case of a law firm — a partner; or
- (b) in the case of a multi-disciplinary partnership — a legal practitioner partner; or
- (c) in the case of a incorporated legal practice — a legal practitioner director.

[27] After rule 75

insert

75A Undertakings by a law practice

- (1) If a provision of these Rules requires or provides for an Australian legal practitioner to give an undertaking, the court or the Registrar may instead accept an undertaking given by a law practice if the undertaking is signed by a principal authorised by the law practice to give such an undertaking.
- (2) If, under a provision of these Rules, the making of an application by an Australian legal practitioner on behalf of an applicant constitutes an undertaking given by the Australian legal practitioner, the undertaking is taken to be given by the law practice for which the Australian legal practitioner works if a principal authorised by the law practice to give such an undertaking gives to the court a written undertaking to that effect.

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- (3) If an undertaking is given, or taken to be given, by a law practice in accordance with subrule (1) or (2), any personal undertaking to the court (in accordance with these Rules or otherwise) by a principal is taken to be an undertaking by the principals of the law practice at the time the undertaking is given or taken to be given.
 - (4) On application by one or more principals or former principals of the law practice referred to in subrule (1) or (2), the court may add the name of a principal to, or delete the name of a principal or former principal from, the list of principals of the law practice that is subject to the undertaking.
 - (5) The court may add or delete the name of a principal or former principal on such terms, and with effect from a date, that the court considers appropriate.

75B Use of clean bonds

- (1) Subrule (2) applies if, in an application under these Rules:
 - (a) an undertaking is required to be given, or is constituted, to pay the costs and expenses of the Marshal; and
 - (b) the person required to give, or who is taken to have given, the undertaking, or the law practice that may give the undertaking, offers an irrevocable, unconditional bank bond or guarantee that is:
 - (i) issued by an authorised deposit-taking institution; and
 - (ii) payable, on demand and either generally or specifically, in favour of the Marshal.
- (2) If the court is satisfied in relation to the bond or guarantee and its amount, and any other matter relevant to the undertaking, the court may, either generally or on terms, make an order:
 - (a) varying or dispensing with any rule or other requirement providing for a personal undertaking; or
 - (b) releasing the person required to give, or who is taken to have given, the undertaking, or the law practice that may give the undertaking, from the undertaking, with or without conditions.

75C Orders relating to undertakings and securities

- (1) This rule applies if the court accepts more than one undertaking or security in relation to the Marshal's costs and expenses.
- (2) The court may make directions and orders in relation to:
 - (a) the just and fair allocation of responsibilities between those undertakings or securities; and
 - (b) if appropriate, the release of a person from an undertaking, with or without conditions.

[28] Rule 78

substitute

78 Marshal may make interim demands for costs and expenses

If a person is liable to pay the costs and expenses of a Marshal under these Rules, the Marshal:

- (a) may demand or accept an amount of money that the Marshal considers reasonable as a deposit towards discharging the liability; and
- (b) may make 1 or more demands for interim payments on account of those costs and expenses.

78A Marshal's costs and expenses: aid to other courts

- (1) If a Marshal of a court having jurisdiction under the Act acts in aid of another court having jurisdiction under the Act (the *second court*), the costs and expenses incurred by the Marshal in doing so form part of the costs and expenses of the Marshal of the second court.
- (2) The Marshal may:
 - (a) take any step the Marshal would otherwise have been able to take under these Rules in aid of the second court; and
 - (b) request and obtain from the Marshal of the second court reimbursement of all the costs and expenses incurred in aiding the second court.

Note Under rule 78B, the costs and expenses incurred by the Marshal in acting in aid of the second court are fully recoverable without taxation.

78B Taxation of Marshal's costs and expenses

- (1) Unless the court orders otherwise, the Marshal's costs and expenses are not subject to taxation.
- (2) If the Marshal's costs and expenses are taxed under an order, the taxing officer must allow all the Marshal's costs and expenses other than those costs and expenses that the taxing officer considers have been incurred unreasonably or otherwise than in good faith.

[29] Schedule, Form 3

substitute

Form 3 Australian legal practitioner's undertaking

(subrule 7 (3))

(Title)

AUSTRALIAN LEGAL PRACTITIONER'S UNDERTAKING

(To be endorsed on the caveat)

If a proceeding to which this caveat applies is commenced against the ship/property¹ in any Australian court, I undertake that the caveator on whose behalf the caveat is filed will:

- (a) enter an appearance in the proceeding; and
- (b) comply with the obligations as to bail or payment into court under rule 9 of the *Admiralty Rules 1988*;

within 3 days after being served with initiating process in the proceeding.

1. *strike out whichever is not applicable*

[30] Schedule, Form 12*substitute***Form 12 Application for arrest warrant**

(subrule 39 (1))

*(Title)***APPLICATION FOR ARREST WARRANT**

Please issue a warrant for the arrest of
(for a ship, insert name of ship and port of registry; if other property, describe property)

I undertake to the court to pay the costs and expenses of the Marshal in complying with this application, including costs and expenses in relation to *(if ship, insert name of ship and port of registry; if other property, describe property)* while it is under arrest.¹

Note Paragraph 41 (1) (b) of the *Admiralty Rules 1988* provides that if the application is made by an Australian legal practitioner on behalf of the applicant, the application constitutes an undertaking to the court by the Australian legal practitioner.

1. *delete sentence if undertaking is to be given by a law practice under subrule 75A (2) of the Admiralty Rules 1988*

[31] Schedule, Form 13, heading*substitute***Form 13 Affidavit to support application for arrest warrant**

(subrule 39 (3))

[32] Schedule, Form 13*omit*

3. *set out short particulars of the claim*

insert

3. *set out short particulars of the claim and any necessary facts that would entitle an action in rem to be brought, in accordance with the Admiralty Act 1988, in respect of the claim*

[33] Schedule, Form 14*omit*

2. *insert name of applicant and description, for example, "solicitor for the plaintiff"*

insert

2. *insert name of applicant and description, for example, 'Australian legal practitioner for the plaintiff'*

[34] Schedule, Form 18*omit*

I undertake to pay the fees and expenses of the Marshal in complying with this application.

insert

I undertake to the court to pay the costs and expenses of the Marshal in relation to the custody of the ship/property¹, ², while under arrest, including the costs and expenses associated with the release of that ship/property¹.⁹

[35] Schedule, Form 18, after footnote 8*insert*

9. *delete sentence if undertaking is to be given by a law practice under subrule 75A (2) of the Admiralty Rules 1988*

[36] Schedule, Form 19*substitute***Form 19 Application to Court for release of ship or other property**

(subrule 52 (1))

*(Title)***APPLICATION TO COURT FOR RELEASE OF SHIP OR OTHER PROPERTY**Ship/property¹: ²Applicant: ³Grounds on which release sought: ⁴

I have caused a search to be made of the Register of Caveats Against Release and:

¹ (a) no such caveat is in force;¹ (b) the following caveat/s¹ is/are¹ in force: ⁵and a copy of this application was served on the following caveator/s¹:
^{6, 7}I undertake to the court to pay the costs and expenses of the Marshal in relation to the custody of the ship/property¹, ², while under arrest, including the costs and expenses associated with the release of that ship/property¹. ⁸

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1. *strike out whichever is not applicable*
 2. *insert name of ship; if other property, insert description of property*
 3. *insert name of applicant and description, for example, 'plaintiff' or 'Australian legal practitioner for the plaintiff'*
 4. *set out particulars of grounds*
 5. *set out short particulars of caveats in force*
 6. *set out clearly which caveators have been served with the application*
 7. *insert date of service*
 8. *delete sentence if undertaking is to be given by a law practice under subrule 75A (2) of the Admiralty Rules 1988*

[37] Further amendments — shall

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subrule 4 (1)	shall	must
Paragraphs 5 (a) and (b)	shall	must
Subrules 7 (1), (2) and (3) and 9 (2)	shall	must
Paragraph 9 (3) (a)	shall be	is
Subrules 14 (1) and (2), 15 (1) and 16 (1) and (2)	shall	must
Subrule 17 (2)	shall be	is
Rules 18 and 19	shall	must
Subrules 21 (1), (2) and (3), 22 (1), (2) and (3), 23 (1), (2) and (3) and 25 (1), (2) and (3)	shall	must
Paragraphs 25 (4) (a) and (b)	shall	must
Rule 26	shall	must
Subrules 28 (1) and 30 (1) and (2)	shall	must
Rules 31, 32, 34 and 36	shall	must
Subrules 40 (2) and (3), 42 (1) and 43 (3), (5) and (6)	shall	must
Rule 45	shall	must
Subrules 47 (2), 48 (3), 51 (2) and (5), 52 (2), 54 (1) and (2), 55 (1) and (2) and 56 (2) and (3)	shall	must
Subrule 56 (4)	shall not fail to attend	must attend
Subrules 56 (5) and 57 (1) and (2)	shall	must
Rule 60	shall be	are

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subrules 61 (1) and (2), 62 (1) and (2), 64 (3), 66 (1) and (2), 67 (1) and (3), 69 (2) and (3) and 70 (1)	shall	must
Rule 71	shall	must
Subrules 73 (3) and (4)	shall	must
Rules 76, 79 and 82	shall	must

[38] Further amendments — where

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subrules 4 (1), (2) and (3)	Where	If
Subrule 4 (4)	where	if
Subrule 6 (2)	Where	If
Rule 10	Where	If
Subrules 17 (2) and 27 (1) and (2)	Where	If
Rules 29, 32, 36 and 37	Where	If
Subrule 43 (7)	Where	If
Subrule 47 (3)	where	if
Subrules 47 (4), 48 (1), 49 (1), (2) and (3) and 51 (1) and (3)	Where	If
Subrule 51 (4)	where	if
Subrules 51 (5), 52 (2) and 59 (2)	Where	If
Subrule 62 (1)	where	if
Rule 63	Where	If
Subrules 64 (1), 66 (1) and 73 (1)	Where	If
Rules 77 and 78	Where	If

[39] Further amendments — fees and expenses

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Paragraph 49 (2) (b)	fees and expenses	costs and expenses
Subrule 69 (4)	fees and expenses	costs and expenses
Rule 74	fees and expenses	costs and expenses
Schedule, Form 17	fees and expenses	costs and expenses
Schedule, Form 26, item 4	fees and expenses	costs and expenses

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.