

EXPLANATORY STATEMENT

Select Legislative Instrument No. 204, 2015

Issued by the authority of the Attorney-General

Admiralty Act 1988

Admiralty Amendment (Electronic Communication) Rules 2015

Subsection 41(1) of the *Admiralty Act 1988* (the ‘Act’) provides, in part, that the Governor-General may make Rules, not inconsistent with the Act, making provision in relation to the practice and procedure to be followed in courts exercising jurisdiction under the Act and other incidental matters. The *Admiralty Rules 1988* (the ‘Rules’) were made by the Governor-General under this authority.

Admiralty law is a distinct body of law which governs maritime issues and claims. The Act provides a uniform national law to govern the exercise of admiralty jurisdiction by Australian courts. Subsection 41(4) of the Act provides that admiralty jurisdiction is conferred on the Federal Court, the Federal Circuit Court and on the courts of the Territories, and invests courts of the States with federal jurisdiction, in respect of matters arising under the Rules.

The *Admiralty Amendment (Electronic Communication) Rules 2015* (the ‘Amendment Rules’) amend the Rules to make provision for the service and filing of documents under the Act by electronic means. Several minor amendments ensure the language used in the Rules is current and consistent with other similar instruments, such as the *Federal Court Rules 2011*.

Details of the amendments are set out in the [Attachment](#).

The Amendment Rules were developed in conjunction with the Admiralty Rules Committee, which is established under section 42 of the Act to advise the Attorney-General with respect to the Admiralty Rules. The Committee is constituted by not more than seven persons appointed by the Attorney-General, including a Judge of the Supreme Court of a State or Territory and a Judge of the Federal Court.

In reviewing the Amendment Rules, the Committee consulted extensively with stakeholders including the Federal Court and State and Territory Supreme Courts; the Maritime Law Association of Australia and New Zealand; the Australian Maritime Safety Authority; the Law Council of Australia; and the shipping industry.

The Amendment Rules commenced the day after they were registered on the Federal Register of Legislative Instruments.

Authority: Subsection 41(1) of the
Admiralty Act 1988

Details of the proposed *Admiralty Amendment (Electronic Communication) Rules 2015*

This attachment outlines the provisions of the *Admiralty Amendment (Electronic Communication) Rules 2015* (the ‘Amendment Rules’).

Section 1 - Name

The name of the instrument is the *Admiralty Amendment (Electronic Communication) Rules 2015*.

Section 2 - Commencement

The Amendment Rules commenced on the day after registration on the Federal Register of Legislative Instruments.

Section 3 - Authority

Section 41 of the *Admiralty Act 1988* (the ‘Act’) provides that the Governor-General may make rules in relation to the practice and procedure to be followed, and matters incidental thereto, in courts exercising jurisdiction under the Act. This includes, among other things, rules regarding the service and execution of process (paragraph 41(2)(d)).

Section 4 - Schedules

Section 4 provides that the Amendment Rules amend the Admiralty Rules 1988 (the Rules) in the manner set out in Schedule 1.

Schedule 1 - Amendments

Item 1 - Subrule 3(1)

Item 1 inserts a new definition of “electronic communication” into subrule 3(1). This definition specifies that an electronic communication, for the purpose of the Rules, is a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy. This definition is consistent with the *Electronic Transactions Act 1999* and the *Federal Court Rules 2011* (the ‘Federal Court Rules’).

Item 2 - Subrule 5A(3)

Item 2 repeals existing subrule 5A(3) and replaces it with a new subrule which extends the scope of electronic service beyond facsimile messages. New subrule 5A(3) allows a document to be served on a person by email, fax, or by means of a particular kind of electronic communication as ordered by the court.

Under new paragraph 5A(3)(a) a document may be served on a person by e-mail at either the email address that has been provided by the person for the purpose of service in the proceeding or otherwise to an email address of the person.

The new subrule also updates and clarifies the requirements for service of documents by fax, removing the requirement that the recipient fax machine be located at the same physical

address as would be used for service. The new subrule also imports the term “fax” in lieu of “facsimile” consistent with current practice for all amending legislation.

If so stipulated in the relevant Rules of Court, a document may be served other than by electronic means. It is therefore noted under subrule 5A(3) that documents may be served through means other than electronic communication where such service is permitted by the Rules of the Court. This allows each court to make its own rules regarding service, recognising that not all courts exercising jurisdiction under the Act have electronic filing.

Item 3 – At the end of subrule 6(1)

Item 3 adds an example to subrule 6(1) to clarify the operation of the Rules in relation to Rules of Court of a court exercising jurisdiction under the Act. The example states that the Rules of Court of a court exercising jurisdiction under the Act requiring or permitting documents to be filed by electronic communication will apply to documents required or permitted to be filed in the court under the Rules.

This addition makes clear that other Rules of Court of a court exercising jurisdiction under the Act may also require or permit filing by electronic communication. As a number of different courts exercise Admiralty jurisdiction, this ensures that where those courts have particular requirements regarding electronic filing, the Admiralty Rules are sufficiently flexible to allow these to be implemented.

Item 4 – Subrule 24(2)

Item 4 replaces “of its own motion” in subrule 24(2) with “on its own initiative,” reflecting updated language and ensuring consistency with the Federal Court Rules.

Item 5 – Rule 26

Rule 26 is repealed by item 5. A new rule 26 is inserted which restates and expands the scope of confidentiality requirements for preliminary acts being filed with a court to include electronic communications.

Subrule 26(1) is inserted which replicates the existing rule 26 confidentiality requirements for filing a preliminary act by means other than by electronic communication and adds an additional requirement that the envelope be marked confidential.

New subrule 26(2) inserts equivalent confidentiality requirements for preliminary acts sent to a court for filing by electronic communication. Preliminary acts transmitted by electronic communication are considered “sent” rather than “filed” with the court. New subrule 26(2) adopts this language, ensuring consistency with the language used in the Federal Court Rules.

New subrule 26(3) clarifies that the term “file” includes “lodge for filing” to reflect updated language concerning preliminary acts.

Item 6 – Rule 28

Rule 28 is repealed by item 6. A new rule 28 is inserted which updates the rules for opening of preliminary acts including provision for the opening of preliminary acts sent by electronic communication.

New subrule 28(1) is consistent with previous subrule 28(1) which is repealed by the Amendment Rule. This subrule is then replicated by new subrule 28(2) to allow a preliminary act sent through electronic communication to be made available to the parties under the same circumstances.

New subrule 28(3) replicates the intention of previous subrule 28(2), outlining the circumstances in which the court may order that a preliminary act be opened in accordance with the power granted to it by subrules 28(1) and (2).

Item 7 – Subrule 30(4)

Item 7 makes a consequential amendment to subrule 30(4) which is necessary following the amendments made by items 1 and 2 in relation to the definition of electronic communication. The new language of “sent by electronic communication” replaces the former reference to transmission by fax.

Item 8 – Subrule 39A(3)

Rule 39A concerns disclosure of matters affecting safety. Item 8 removes reference to “party” in subrule 39A(3) and replaces it with “person.” This amendment makes subrule 39A(3) consistent with subrule 39A(2). It also makes clear that subrule 39A(3) also applies to the master of a ship against which the proceeding was commenced, rather than limiting its application to the parties mentioned in paragraphs 39A(1)(a) and (b).

Item 9 – Rule 65

As in item 4, Item 9 replaces the text “of its own motion” with “on its own initiative” as it appears in rule 65. This reflects updated language and ensures consistency with the Federal Court Rules.

Item 10 – Subrule 80(1)

As in items 4 and 9, item 10 replaces the text “of its own motion” with “on its own initiative” in subrule 80(1).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Admiralty Amendment (Electronic Communication) Rules 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Admiralty Amendment (Electronic Communication) Rules 2015* (the ‘Amendment Rules’) amend the *Admiralty Rules 1988* in response to particular issues identified by the Admiralty Rules Committee.

Among other matters, the Amendment Rules makes provision for the service of documents under the *Admiralty Act 1988* by electronic communication. Several minor amendments are also made to ensure the language used in the Rules is current and consistent with similar instruments, such as the *Federal Court Rules 2011*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.