

15.6 Circular to the profession from the Federal Court

FEDERAL COURT OF AUSTRALIA

Judges' Chambers
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SYDNEY NSW 2000

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MEMORANDUM

TO: Interested Persons

FROM: Allsop J

DATE: 9 May 2003

SUBJECT: **FEDERAL COURT ADMIRALTY USERS' GROUP**

At the meeting of the Federal Court Admiralty Users' Group held on 24 April 2003 it was decided to set up a sub-committee (Tamberlin and Allsop JJ, Peter McQueen, Drew James, Sandy Street SC and Greg Nell) to organise the next full meeting of the profession.

The meeting will be held at 4.30 pm on Tuesday 3 June 2003 at level 17 of the Joint Courts Building.

The most important matter to discuss is the question of reform of the Statutory Rules. Enclosed is material dealing with the question of rule reform. Before explaining what is contained in the enclosed material it is appropriate to say that the most germane material for the next meeting is the fourth enclosure referred to and emboldened below. However, since there has been a body of work undertaken by the Court, the Supreme Court and the profession leading up to this point, it is appropriate that all interested parties have access to all material.

The enclosed material is as follows: First there is a paper by Justice Finkelstein prepared in 2001 which was sent to MLAANZ in November 2001. A number of practitioners have seen it already. It was intended to act as a point of discussion.

Secondly, there is a commentary by Sandy Street SC on Justice Finkelstein's paper which was provided to the Federal Court shortly after the meeting of 24 April 2003.

Thirdly, there is a document entitled "Amendment to Part 83 – Admiralty List – NSW Supreme Court Rules" supplied to the Federal Court by Street SC shortly after the meeting of 24 April 2003.

Fourthly, and most importantly for the meeting, is an adaption of the matters in the second and third enclosures to the Statutory Rules and suggested changes, prepared by Street SC, with some further comments by him.

Arising from the discussion on 24 April 2003, it is appropriate to have a discussion amongst all interested NSW practitioners of their views on the following topics:

1. Which elements raised by the above documents should be sought to be included within the Statutory Rules, in particular to avoid, where possible, inconsistency between court practices?
2. Which elements, if any, raised by the above documents should not be sought to be included within the Statutory Rules – whether because it would be a bad idea or because it is somehow more appropriate for individual courts to deal with the matter?
3. What drafting issues arise and how should that be progressed?
4. The question of the development of standards or guidelines or perhaps practice notes dealing with traditional thorny problems such as dealing with cargo, ship movement, repairs and maintenance etc. It may be that, whilst recognising the difficulty and danger in being too prescriptive in advance of changing or particular situations, an essential guide can be provided for the assistance of practitioners of the very least which the Court would expect in such situations for orders to be made. It may be sufficient for these to be drafted by the profession and agreed through users' meetings with the general imprimatur of the Court. Practice notes may be too prescriptive. Views may differ.
5. Should there be a co-ordinated push to eliminate poundage all round Australia? .
6. Should the question of jurisdictional facts in ss 17-19 of the *Admiralty Act* be able to be dealt with on an interlocutory basis in circumstances of urgency: cf *The Shin Kobe Maru* (1994) 181 CLR 404, 426 and *The Zoya* (1997) 79 FCR 71? If so the *Admiralty Act* may need amendment.

Not all this may be able to be dealt with in one meeting.

It is important, however, to gain the views of all interested practitioners about, in particular, 1 to 4 above.

One matter to be discussed is the election or nomination of delegates to prepare final drafts of discussion and views of interested practitioners, in order to assist in the formulation of any submission to the Statutory Rules Committee.

Not everyone may be able to get to the meeting. Not everyone may be interested in every point raised. If anyone cannot get to the meeting, or would otherwise prefer to deal with the matter in writing, he or she is welcome to send an email to me with any contribution. (Justice.Allsop@fedcourt.gov.au).

The Judges in the Federal Court Sydney Admiralty Panel think it appropriate to invite any interested New South Wales Supreme Court Judges to attend. To that end, these

documents have been sent to Sheller JA, Ipp JA, Palmer J and Nicholas J, with an invitation to attend the meeting.

ALLSOP J
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