



Western Australia

W.A. Marine (Court of Marine Inquiry) Rules

Reprinted as at 2 January 2001

Western Australia

W.A. Marine (Court of Marine Inquiry) Rules

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Western Australia

Reprinted under the
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Western Australian Marine Act 1982

W.A. Marine (Court of Marine Inquiry) Rules

Part 1 — Preliminary

[Heading inserted in Gazette 17 November 2000 p.6294.]

1. Short title and commencement ²

These Rules may be cited as the *W.A. Marine (Court of Marine Inquiry) Rules*. They shall come into operation on the date of their publication in the *Government Gazette*, and shall, so far as practicable, and unless otherwise expressly provided, apply to all matters arising in any pending inquiry, appeal, or reference, and also to all inquiries, appeals, references, or rehearings instituted on or after that date ¹.

[Rule 1 amended in Gazette 1 July 1983 p.2194.]

2. Interpretation

In these Rules —

“**Court**” means a Court of Marine Inquiry;

“**Clerk**” means Clerk of the Court of Marine Inquiry.

[Rule 2 amended in Gazette 17 November 2000 pp.6293-4.]

Part 2 — Appointment of Court and notice to parties

[Heading inserted in Gazette 17 November 2000 p.6294.]

3. Clerk to inform Magistrate when notice of appeal filed ²

Immediately upon the filing of a notice of appeal or reference, the Clerk shall communicate the fact to the Magistrate of the Court, who shall appoint a time and place for the hearing of the appeal or reference.

4. Clerk to inform parties of hearing date ²

As soon as the Clerk has ascertained when an appeal or reference will be heard, he shall send notice thereof to the Department and to the appellant, or, in the case of a reference, to the owner or master, in the Form No. 2 in the Appendix.

5. Department to give notice to complainant ²

If the appeal or reference is in respect of the detention of a ship after a survey made on the complaint of any person, hereinafter called the complainant, the Department shall send to the complainant notice of the time and place appointed for the hearing.

6. Notice of inquiry to be served ²

When the time and place for holding an inquiry have been fixed by the Court, the Clerk shall cause a notice, to be called a notice of inquiry, to be served upon the Department, and the owner, master, and officers of the ship, as well as upon any person whom the Court may direct to be served with such notice. The notice shall be in the Form No. 5 of the Appendix with such variations as circumstances may require.

Part 3 — Assessors

[Heading inserted in Gazette 17 November 2000 p.6294.]

7. Qualifications of assessors²

Persons placed on the list of assessors who assist in a Court of Marine Inquiry under the *Western Australian Marine Act 1982* shall be classified according to their qualifications as follows —

Class I — Mercantile Marine Masters

5 years' service as a master in the merchant service of which 2 years must have been service in command of a ship with a certificate of competency as Master Class I or equivalent.

Class II — Mercantile Marine Engineers

5 years' service as an engineer in the merchant service and at the time of appointment holding a certificate of competency as Marine Engineer Class I or equivalent.

[Rule 7 inserted in Gazette 1 July 1983 p.2194.]

8. Appointment of assessors²

Subject to these Rules, assessors for investigations into shipping casualties shall be appointed from the list of assessors by the Minister controlling the Department, and, so far as in his opinion circumstances permit, shall be taken in order of rotation from each class or subclass abovementioned.

[9. Repealed in Gazette 1 July 1983 p.2194.]

10. Class of assessors to be appointed

Subject to any special appointment or appointments which the Minister may think it expedient to make in any case where special circumstances appear to him to require it (subject always to compliance with section 105(2), of the Act), assessors shall be appointed as follows —

- (a) where the inquiry involves or appears likely to involve any question as to the cancelling or suspension of the

certificate of a master, mate, or coxswain, at least 2 assessors shall be appointed from Class I; and

- (b) where the investigation involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a marine engineer or a marine engine driver, at least 2 assessors shall be appointed from Class II.

[Rule 10 inserted in Gazette 1 July 1983 p.2194.]

11. Department to notify Minister when assessors required

The Department shall inform the Minister when assessors are required, and shall state from which of the aforesaid classes assessors ought, in its opinion, to be appointed; but the Department shall not request the appointment of any individual assessor.

12. Irregularity does not affect appointment

An appointment made by the Minister of any assessor or assessors for an investigation shall not be open to question on the ground that it was not in accordance with these Rules, or does not give full effect to the requirements of these Rules.

Part 4 — Parties

[Heading inserted in Gazette 17 November 2000 p.6294.]

Division 1 — Inquiries

[Heading inserted in Gazette 17 November 2000 p.6294.]

13. Parties to inquiries ²

The Department, and any certificated officer upon whom a notice of inquiry has been served, shall be deemed to be parties to the proceedings; and, unless the Court shall otherwise order, the Department shall be the party having the conduct of the case.

14. Who may appear ²

Any other person upon whom a notice of inquiry has been served, and any person who shows that he has an interest in the inquiry shall have a right to appear, and any other person may, by leave of the Court, appear; and any person who appears under this rule shall thereupon become a party to the proceedings.

Division 2 — Appeals or references

[Heading inserted in Gazette 17 November 2000 p.6294.]

15. Parties to appeals or references ²

The Department and the appellant, or, in the case of a reference the owner or master, shall be parties to the proceedings.

16. Court may make any person a party ²

Any other person, on entering an appearance, may by permission of the Court, be made a party to the proceedings.

Part 5 — Notice of appeal

[Heading inserted in Gazette 17 November 2000 p.6294.]

17. Notice of appeal to be given ²

Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to the Court, in respect of the detention of a ship alleged to be unsafe, he shall file at the office of the Clerk of the Court nearest to the place in which the ship is, a notice in the Form No. 1 in the Appendix.

Part 6 — Evidence

[Heading inserted in Gazette 17 November 2000 p.6294.]

18. Notice to produce ²

Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

19. Notice to admit ²

Either party may give to the other party a notice in writing to admit any document (saving all just exceptions); and in the case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all costs of proving such documents, whatever the results may be, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

20. Subpoenas ²

Subpoenas shall be according to one of the forms (Forms Nos. 6 and 7) in the Appendix, and may be issued to any party without leave of the Court; and the Court may direct the Clerk to subpoena any person to attend for the purpose of being examined.

21. Report of survey to be produced ²

On the hearing of an appeal or reference in respect of the detention of a ship, the Department shall produce as evidence all the reports of the survey of the ship.

Part 7 — Proceedings in Court

[Heading inserted in Gazette 17 November 2000 p.6294.]

Division 1 — General

[Heading inserted in Gazette 17 November 2000 p.6294.]

22. Method of taking down evidence ²

The evidence shall be taken down by a shorthand writer or typewriter, or in such other way as the Court may direct.

Division 2 — Inquiries

[Heading inserted in Gazette 17 November 2000 p.6294.]

23. Proceedings on non-appearance of any party ²

At the time and place appointed for holding an inquiry the Court may proceed with the inquiry, whether the parties upon whom a notice of inquiry has been served, or any of them, are present or not.

24. Department to begin ²

The proceedings on the inquiry shall commence by the Department opening its case and then proceeding with the examination of its witnesses. Each witness, after being examined on behalf of the Department, may be cross-examined by the parties in such order as the Court may direct, and may then be re-examined by the Department.

25. Order in which parties to be heard ²

When the examination of the witnesses produced by the Department has been concluded, each party to the investigation shall be entitled to produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties shall be heard, and their witnesses examined, cross-examined and

re-examined in such order as the Court shall direct. The Department may also produce and examine further witnesses who may be cross-examined by the parties and re-examined by the Department.

26. Parties may address the Court²

When the whole of the evidence has been concluded, any of the parties who desire so to do may address the Court upon the evidence, and the Department may address the Court in reply upon the whole case.

Division 3 — Appeals or references

[Heading inserted in Gazette 17 November 2000 p.6295.]

27. Department to begin²

At the hearing the Department shall open its case and then call its witnesses, and having done so, shall state, in writing, what order it requires the Court to make.

28. Complainant to follow²

The complainant, if he has appeared, shall then call his witnesses and having done so, shall state, in writing, what order he requires the Court to make.

29. Appellant to follow²

The appellant, or, in the case of a reference, the master or owner shall then call his witnesses, and having done so shall state, in writing, what order he requires the Court to make.

30. Department and complainant may call evidence in reply²

After the appellant or, in the case of a reference the master or owner has examined all his witnesses, the Department and the complainant may, on cause shown to the satisfaction of the Court call further witnesses in reply.

31. Order in which parties to address ²

After all the witnesses have been examined the Court shall first hear the appellant or in the case of a reference the master or owner, then the complainant (if any), and afterwards the Department.

32. Order for release or detention ²

As soon as possible after the Court has come to its decision, the Court shall issue an order for the release or detention (either finally or on condition) of the vessel, in the Form No. 3 in the Appendix.

Division 4 — Adjournment

[Heading inserted in Gazette 17 November 2000 p.6295.]

33. Court may adjourn hearing ²

The Court may adjourn the hearing of the inquiry, appeal, or reference from time to time and from place to place; and, where an adjournment is asked for by a party or by the Department, the Court may impose such terms as to payment of costs or otherwise as it may think just as a condition to granting the adjournment.

Part 8 — Rehearing by order of the Governor

[Heading inserted in Gazette 17 November 2000 p.6294.]

34. Magistrate to fix time and place for rehearing²

Where the Governor directs a rehearing of any case, the Magistrate shall fix a time and place for the rehearing, and the clerk shall give such reasonable notice to the parties affected by the order for rehearing as the circumstances of the case may permit.

35. Parties may be added²

The Court may, if it thinks fit, order any other person, other than the parties served with the notice of rehearing, to be added as a party or parties to the proceedings for the purpose of the rehearing, on such terms with respect to costs and otherwise as the Court may think fit. Any party to the proceedings may object to the appearance on the rehearing, of any other party as unnecessary.

36. Copy of evidence on hearing to be admitted on rehearing²

The evidence taken at the hearing shall be proved before the Court at the rehearing by a copy of the notes of the shorthand writer, or other person authorised by the Court to take down evidence. For the purpose of this rule, copies of the notes of the evidence, as well as a copy of the decision given by the Court, shall be supplied to any party to the proceedings, on request, on payment of the usual charge for copying.

37. Copy of decision and notes of evidence to be sent to Governor²

On the conclusion of the rehearing the Court shall send to the Governor a copy of the decision, together with notices of any further evidence which may have been given.

Part 9 — Costs

[Heading inserted in Gazette 17 November 2000 p.6294.]

38. Court may order any party to pay costs ²

The Court may, in its discretion, order the costs and expenses of the inquiry, appeal, reference, or rehearing, or any part thereof, to be paid by any party. An order for the payment of costs shall be in the Form No. 9 in the Appendix, with such variations as circumstances may require.

39. Taxation of costs ²

Where the costs are not assessed by the Court, they shall be taxed by the clerk on one of the scales provided by the *Local Court Rules 1961*, so far as same may be applicable; and the Court shall direct on what scale the taxation shall take place.

Part 10 — General provisions

[Heading inserted in Gazette 17 November 2000 p.6294.]

40. Court to report to Governor²

At the conclusion of the inquiry, or of the hearing, of the appeal or reference, the Court shall draw up its decision or report, which shall be in one of the forms (Forms Nos. 4 and 8) in the Appendix, with such variations as circumstances may require; and shall send the report, or a copy of the decision, together with notes of the evidence given, to the Governor.

41. Master or officer may obtain copy of decision²

Where the certificate of a master, mate, or engineer has been cancelled or suspended, the clerk shall, on application by any party to the proceedings, give him a copy of the decision of the Court.

42. Computation of time²

In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or public holiday, in which case the time shall be reckoned exclusive of that day also.

43. Service of process²

Service of any notice, subpoena, summons, or other process shall be deemed good service if made personally on the person to be served, or if made at his last known place of abode or business, or if made on board any ship or vessel to which he belongs and accompanied with a statement of the purport thereof to the person being or appearing to be in command or charge of such ship or vessel; and in the case of an owner of a

r. 44

ship if made on board such ship in manner aforesaid, or at any address he may give for service.

44. Proof of service²

The service of any notice, subpoena, summons, or other process or document may be proved by the oath or affidavit of the person by whom it was served.

45. Local Courts Act and Rules to apply²

The provisions of the *Local Courts Act 1904*, and any Act amending the same, and of the *Local Court Rules 1961* made thereunder, shall apply to inquiries, appeals, references, and rehearings, so far as may be applicable, save and except in so far as they may conflict with these Rules.

46. Fees²

No fees shall be demanded of any person for filing any document, or for issuing any process of the Court, other than process to enforce an order for the payment of money.

47. Clerk²

For every Court there shall be a clerk, who shall sign and issue all process of the Court and have the custody of all records, minutes and proceedings of the Court.

48. Clerk of Local Court to act as Clerk²

The officer of the Local Court performing for the time being the duties of Clerk of that Court shall act as Clerk of the Court of Marine Inquiry.

49. Minute book²

The Clerk shall keep a minute book, according to the Form No. 10 in the Appendix, in which he shall enter a minute of the decision or report of the Court as to every inquiry, appeal, reference, or rehearing.

50. Seal ²

For each Court there shall be a seal bearing an impression of the Royal Arms, and having inscribed thereon the words “Court of Marine Inquiry”, with the name of the town where the Court is held.

51. All process to be sealed ²

The Clerk shall seal with the seal of the Court all process of the Court issued by him.

Appendix

Appendix

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Court shall be of opinion that the deviation was material: —

Form No. 1

Western Australian Marine Act 1982

NOTICE OF APPEAL

To the Clerk of the Court of Marine Inquiry at
held at

Take notice that I (name and address) the master (or managing owner or owner of _____ shares) of the ship “ _____ ” of the port of _____ do appeal from the report of _____ the surveyor appointed by the Department to survey the said ship (or as the case may be).

The address at which all notices and documents may be served on me is

Dated the _____ day of _____, 20____.

(To be signed by Appellant.)

Form No. 2

Western Australian Marine Act 1982

NOTICE OF SITTING OF COURT

The Court of Marine Inquiry at

In the matter of an appeal by _____, from the report of _____, the surveyor appointed by the Department to survey the ship “ _____ ” (or as the case may be).

To A.B., the master (or managing owner or owner of _____ shares) of the ship “ _____ ” the appellant (or the Department).

Take notice that the Court of Marine Inquiry will meet at _____ on _____ the _____ day of _____ 20____, at _____ o'clock in the _____ noon to hear the (appeal) in the above matter.

Dated this _____ day of _____, 20____.

Clerk of the Court.

Form No. 3

Western Australian Marine Act 1982

ORDER OF COURT FOR RELEASE OR DETENTION OF SHIP

The Court of Marine Inquiry at

In the matter of an appeal by _____ from the report of
the surveyor appointed by the Department to survey the ship
“ _____ ” (or as the case may be).

The Court (or I, _____) (with the concurrence of _____)
orders (or do order) the said ship to be released (or detained) (finally or
conditionally upon _____).

Given under my hand this _____ day of _____, 20____.

Presiding Magistrate.

We (or I) concur in the above report.

Assessor.

Assessor.

Appendix

Form No. 4.

Western Australian Marine Act 1982

REPORT OF MAGISTRATE OF COURT OF MARINE INQUIRY

The Court of Marine Inquiry at

In the matter of an appeal by _____ from the report of the
surveyor appointed by the Department to survey the ship “ _____ ” (or
as the case may be).

I, _____, do report that (this Court) having heard this
appeal (I) did with (concurrence of _____) order the
said ship to be released (or detained) (finally and conditionally upon _____).

The Court (or I) did also order that the costs of this appeal be paid by
_____ to the Department (or that all parties shall
pay their own costs, or as the case may be).

Dated this _____ day of _____, 20 _____.

Magistrate.

We (or I) concur in the above report.

Assessor.

Assessor.

I dissent from the above report, for the following reasons, viz.: —

Assessor.

Form No. 5

Western Australian Marine Act 1982

NOTICE OF INQUIRY

The Court of Marine Inquiry at

To the Department (or to _____ Master or _____ (or as the case
may be) of (or belonging to) the ship “ _____ ”).

I hereby give you notice that the Court of Marine Inquiry will, on
the _____ day of _____, 20____, at the hours of _____
o'clock in the _____ noon, at the Courthouse, situate at _____ make
inquiry into the circumstances attending the shipwreck of the “ _____ ”
(or as to the charge of incompetency on the part of _____) (or as
the case may be).

I have further to give you notice to produce to the Court (your master's
certificate, the log books of the vessel, and) any (other) documents relevant to
this case which may be in your possession.

Dated this _____ day of _____, 20____.
Clerk of the Court.

Form No. 6

Western Australian Marine Act 1982

SUBPOENA TO WITNESS TO GIVE EVIDENCE

The Court of Marine Inquiry

In the matter of an inquiry as to the shipwreck of the “ _____ ”
(or as the case may be).

You are hereby commanded to attend at the Courthouse at
on _____ the _____ day of _____ 20____, at the hour of _____
in the _____ noon, to give evidence in the above case (on behalf of _____
), and thence from day to day until the said case shall be disposed
of.

Dated this _____ day of _____, 20____.
Clerk of the Court.

To.

Appendix

Form No. 7

Western Australian Marine Act 1982

SUBPOENA TO WITNESS TO PRODUCE DOCUMENTS

The Court of Marine Inquiry at

In the matter of an inquiry as to the shipwreck of the
(or as the case may be). You are hereby commanded to attend at the Court
House, at _____, on _____ the _____ day of _____,
20_____, at the hour of _____ in the _____ noon, to give
evidence in the above case (on behalf of _____), and thence from day
to day until the said case shall be disposed of; and you are also to bring with
you and produce at the time and place aforesaid the several documents
hereunder specified (and all other books, papers, writing and other documents
relating to the above case which may be in your custody, possession, or power).

Dated this _____ day of _____, 20_____.

Clerk of the Court.

To

List of documents required to be produced: —

Form No. 8.

Western Australian Marine Act 1982

DECISION OF THE COURT

The Court of Marine Inquiry at

In the matter of a formal inquiry held at _____ before (name
of Magistrate) assisted by (names of assessors) into the circumstances attending
the shipwreck of the _____ (or as the case may be).

The Court having carefully inquired into the circumstances attending the
abovementioned (shipping casualty) finds that the (here state the decision of the
Court).

Dated this _____ day of _____, 20_____.

Magistrate.

Form No. 9

Western Australian Marine Act 1982

ORDER ON A PARTY FOR PAYMENT OF COSTS

The Court of Marine Inquiry at

In the matter of a formal inquiry held at _____, before (name of Magistrate) assisted by (names of assessors) into the circumstances attending the shipwreck of the _____ (or as the case may be).

The Court orders (or I do order) that A.B. do pay to the Department (or as the case may be) the sum of _____ dollars on account of the expenses of this (inquiry).

Given under my hand this _____ day of _____, 20____. _____ Magistrate.

Form No. 10.

Western Australian Marine Act 1982

MINUTE BOOK

Minutes of Proceedings in the Court of Marine Inquiry at

No. of Case	Name of Ship	Name of Parties	Nature of Inquiry, Appeal or Reference	Judgment or Decision of the Court	Names of Members of the Court and Assessors	Date of Judgment or Decision

[Appendix amended in Gazette 1 July 1983 p.2194.]

W.A. Marine (Court of Marine Inquiry) Rules

Notes

- ¹ This reprint is a compilation as at 2 January 2001 of the *W.A. Marine (Court of Marine Inquiry) Rules* and includes the amendments referred to in the following Table.

Table of Rules

Citation	Gazettal	Commencement	Miscellaneous
<i>W.A. Marine (Court of Marine Inquiry) Rules</i>	15 March 1950 pp.583-9	15 March 1950	
<i>W.A. Marine (Court of Marine Inquiry) Amendment Rules 1983</i>	1 July 1983 p.2194	1 July 1983 (see regulation 2)	
<i>W.A. Marine (Court of Marine Inquiry) Amendment Rules 2000</i>	17 November 2000 pp.6293-5	17 November 2000	

- ² The *W.A. Marine (Court of Marine Inquiry) Amendment Rules 2000* deleted headings to various rules that formed part of the written law. The deletions are not noted in footnotes to the rules. The headings to the rules in this reprint do not form part of the written law (see *Interpretation Act 1984* s. 32).