



## **FEDERAL COURT OF AUSTRALIA**

### **ADMIRALTY AND MARITIME JURISDICTION**

#### **MEMORANDUM TO ALL ADMIRALTY AND MARITIME PRACTITIONERS**

The Court has put in place new arrangements for the conduct of cases in its Admiralty and maritime jurisdiction.

A national arrangement has been set up in which there will be nominated Judges in each Registry who will undertake the work assisted by nominated skilled Registry officers.

A National Convening Judge and Registry Convening Judges will co-ordinate and harmonise practice and procedure.

The Judges involved are as follows:

|         |             |                            |
|---------|-------------|----------------------------|
| WA      | French J    |                            |
|         | Lee J       | (Registry Convening Judge) |
| SA & NT | Mansfield J | (Registry Convening Judge) |
|         | Selway J    |                            |

|           |   |   |
|-----------|---|---|
| Vic & Tas | Ryan J<br>Finkelstein J<br>Crennan J          | (Registry Convening Judge)                              |
| NSW & ACT | Tamberlin J<br>Emmett J<br>Hely J<br>Allsop J | (National Convening Judge and Registry Convening Judge) |
| Qld       | Kiefel J<br>Dowsett J                         | (Registry Convening Judge)                              |

Users Group Meetings will be held in each Registry in April to explain the new system. A draft Notice to Practitioners is enclosed for the purposes of discussion at these meetings.

Another matter for discussion at those meetings will be the establishment of a representative group of practitioners from each Registry to form a National Users Group to facilitate liaison with the Court.

The Users Group Meetings will be held in April 2005. Practitioners will be contacted by the Registries as to dates for those meetings.

**ALLSOP J**



## FEDERAL COURT OF AUSTRALIA

### CONDUCT OF ADMIRALTY AND MARITIME WORK IN THE FEDERAL COURT OF AUSTRALIA

**DRAFT**

#### NOTICE TO PRACTITIONERS

#### IN ALL STATES AND TERRITORIES

The purpose of this notice is to explain to practitioners the new arrangements the Court has put in place for the conduct of cases in its Admiralty and maritime jurisdiction.

The new arrangements apply to all cases within the Court's Admiralty and maritime jurisdiction. This jurisdiction is not limited to proceedings under the *Admiralty Act 1988* (Cth) but extends to matters arising under the various federal Acts listed in Schedule A. The attention of practitioners is drawn to the general conferral of civil jurisdiction upon the Court in all matters arising under a law of the Commonwealth Parliament: see *Judiciary Act 1903*, s 39B(1A)(c) and (2002) Aust Bar Rev 29. Thus, for instance, a marine insurance dispute involving an issue under the *Marine Insurance Act 1909* (Cth) will be dealt with under the new arrangements as would applications under the *Administrative Decisions (Judicial Review) Act 1977* for the review of decisions made under any of the Acts listed in Annexure A.

When a matter is brought in the Admiralty and maritime jurisdiction practitioners should ensure that the Registry staff are advised at the time of filing, preferably by letter, that the matter is of that nature.

## **Judges**

The Admiralty and maritime work of the Court will be allocated to the dockets of the following judges:

|                      |   |
|----------------------|---|
| <b>NSW &amp; ACT</b> | Tamberlin J<br>Emmett J<br>Hely J<br>Allsop J |
| <b>VIC &amp; TAS</b> | Ryan J<br>Finkelstein J<br>Crennan J          |
| <b>QLD</b>           | Kiefel J<br>Dowsett J                         |
| <b>SA &amp; NT</b>   | Mansfield J<br>Selway J                       |
| <b>WA</b>            | French J<br>Lee J                             |

**External territories:** According to Registry of filing.

Full Courts in Admiralty and maritime matters will, to the extent practicable, be constituted so as to include the Admiralty and maritime judges.

### **Harmonisation of procedure**

The judges who undertake this work will aim to harmonise procedures in the Registries so as to establish, nationally, as far as is practicable and useful, a uniform and consistent practice and procedure in Admiralty and maritime matters.

For this purpose there will be a national convening judge and, in each Registry, a Registry convening judge.

The Marshals of the Court will be available to arrest a vessel anywhere in Australia at any time on any day of the year.

The Court has its own Marshals in every State and Territory and suitably qualified staff from relevant agencies (usually the Sheriff's Office or local police) in Victoria, Queensland, Western Australia, South Australia, Tasmania and the Northern Territory have also been appointed as Federal Court Marshals. Additional Marshals are based in regional and remote parts of Australia.

Arrangements are also in place in each registry for the urgent appointment of a Marshal where necessary. A Marshal may be appointed, for example, when there is insufficient time for a registry-based Marshal to reach the vessel before it leaves the jurisdiction or when the cost of sending a registry-based Marshal to the vessel is excessive. Such appointments are strictly supervised by the principal Marshal in the relevant registry of the Court.

The Marshals have maritime skill and experience or have persons with that skill and experience readily available to them.

Applications to arrest vessels or applications in respect of arrests may be made at any time and the Court is available at all times (24/7) to deal with such applications.

As was announced last year, poundage has been **abolished** in the Federal Court.

The approach of the Court to the Marshal's costs is, except in exceptional cases where the amount of work necessitates additional staff, to restrict the costs of the Marshal charged to the parties to the direct third party costs involved in the arrest.

### **Alternative Dispute Resolution (ADR)**

Section 53A of the *Federal Court of Australia Act 1976* provides for Court ordered mediation and arbitration (the latter only with consent). Immunity is conferred on the mediator or arbitrator: section 53C. The parties are expected to discuss the utility of any such ADR mechanism in their case. The Court has Registry officers who are knowledgeable in maritime matters and cargo claims and who are trained mediators. Mediation by way of early neutral evaluation by a registrar or a judge can be arranged. Mediation can be used to help identify and reduce issues and dispute, or to eliminate procedural arguments, as well as for the purposes of resolving the whole matter.

It is expected that both sides would always seek early resolution of matters and will consider Court annexed mediation or early neutral evaluation. This is especially so for the resolution of small cargo claims in a speedy and inexpensive manner.

In appropriate cases, and in particular in small cargo claims, directions will be made on the first return date, or shortly thereafter, for a case management conference to be held before the District Registrar as soon as possible. At this conference the Registrar will seek to identify whether the matter is appropriate for an early mediation (perhaps undertaken on the basis of the parties' instructions, as opposed to statements), what issues are involved and the most timely and efficient method of disposing of the matter.

## **Registrars and Mediators**

The Court has staff within its Registries, some of whom are Marshals, with skills and expertise in maritime matters. These members of the Court staff will be available as required in any Registry to conduct or assist in the conduct of mediations carried out by Registrars. By way of example, Registry staff include persons who have expertise in cargo claim handling, loss adjusting and navigation.

The Court is developing the skills of its Registry staff in technical maritime areas so that they may be able to assist Marshals, Registrars and judges and, in particular, for assistance in mediations.

## ***Ad Hoc* retained expertise and ADR**

In appropriate cases the Court is prepared to make available outside persons with relevant skills retained by the Court on an *ad hoc* basis. They would assist in the resolution of matters using mediation or early neutral evaluation. The engagement of such persons would generally be through the offices of professional or industry associations.

## **Court annexed arbitration**

The Court also has power to refer matters (by consent) to arbitration under s 53A of the *Federal Court Of Australia Act 1976* (Cth).

## **Approach to litigation**

At directions hearings, practitioners will be expected to be able to answer questions about the real issues in dispute, the evidence that will be required (including any need for overseas witnesses), the issues (if any) in which technical expertise is required, when the case will be ready for hearing, how long the case will take and any other matter relevant to the preparation of the case for hearing, the listing of the matter and the hearing of the matter.

Parties are urged to agree to short minutes of order sufficiently prior to any scheduled directions hearing such that they can be sent, where agreed, by email to the judge's associate. Where possible, a directions hearing will be vacated if the parties can agree upon an appropriate regime prior to the nominated time and date of the directions hearing. An exception to this convenient method of procedure is where one or more parties is or are, or has or have been, in significant default of existing orders, or where there are difficult issues which need, sooner rather than later, to be ventilated. It is inappropriate for one party to send submissions, letters and partisan documents to the judge. The facsimile machine and the email system are not to be used for private or unilateral filing of submissions or complaints without the leave of the Court, but if all parties agree on a communication being sent to the judge it may be forwarded, without leave, to the associate.

At some point in the procedural conduct of a matter, the Court will wish to understand the nature of the dispute, the real issues in dispute, how the real issues are to be proved and whether or not there are evidential difficulties, whether because of expert or overseas witnesses. The Court appreciates that in Admiralty and maritime matters both the plaintiff and the defendant may, on occasions, need extended periods of time to obtain instructions from overseas clients and to ascertain what did or did not happen in places or on ships which may be both far away and inaccessible. Nevertheless, due allowance being made for such matters, the Court expects the parties and their legal representatives promptly to ascertain, as far as is reasonably possible, the nature and extent of the facts which pertain to any particular case. This is not limited to the particular points which the party wants to prove. It is not an acceptable way of conducting litigation to 'put the other side to proof' on all issues. The parties are expected to identify the real and genuine issues in dispute, whether of fact or law, after due investigation. It is the duty of the profession to assist the Court in carrying out the Court's public obligation of the resolution of disputes by reference to what truly is, or should be, in dispute: see generally *Ashmore v Corporation of Lloyds* [1992] 1 WLR 446, 453, and see the speech by Hayne J 'Judicial Case Management and the Duties of Counsel', Wednesday 24 February 1999 to the Readers of the Bar Practice Course, Brisbane, contained on the High Court Website under the link 'publications'.

How the parties co-operate to identify the issues in dispute, and to agree on facts that are not truly in dispute is a matter for the profession and their commercial clients. An aspect of this co-operation between the parties' representatives that the Court expects is the provision of information and documentation in a prompt and timely fashion. Where legal practitioners make reasonable requests for documents or information (whether strictly 'particulars' or not) those requests should generally be met without the delay. In some cases, for various reasons, the formality (and cost) of a verified list of documents is necessary.

These matters should be made plain to clients. This could be achieved by providing this Notice to Practitioners to them. In dealing with questions of costs the Court will presume that clients have been made aware of the general approach and the expectations of the Court reflected in this Notice to Practitioners.

**ANNEXURE A (to draft Notice)**

- *Admiralty Act 1988* and Admiralty Rules;
- *Carriage of Goods by Sea Act 1991* and regulations there under;
- *Navigation Act 1912* and regulations there under;
- Collision Regulations;
- *Marine Insurance Act 1909* and regulations there under;
- *Limitation of Liability of Maritime Claims Act 1989* and regulations there under;
- *Shipping Registration Act 1981* and regulations there under;
- *Maritime Transport Security Act 2003* and regulations there under;
- *Australian Maritime Safety Authority Act 1990* and regulations there under;
- *Environment Protection (Sea Dumping) Act 1991* and regulations there under;
- *Sea Installations Act 1987* and regulations there under;
- *Seafarers Rehabilitation and Compensation Act 1992* and regulations there under;
- *Protection of Sea (Civil Liability) Act 1981* and regulations there under;
- *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund – Customs) Act 1993* and regulations there under;
- *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund – Excise) Act 1993* and regulations there under;
- *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund – General) Act 1993* and regulations there under;
- *Protection of the Sea (Oil Pollution Compensation Fund) Act 1913* and regulations there under;
- *Protection of the Sea (Powers of Intervention) Act 1981* and regulations there under;
- *Protection of the Sea (Prevention of Pollution from ships) Act 1983* and regulations there under;
- *Protection of the Sea (Shipping Levy) 1981 Act* and regulations there under;
- *Protection of the Sea (Shipping Levy Collection) Act 1981* and regulations there under;
- *Shipping Grants Legislation Act 1996* and regulations there under;
- *Ships (Capital Grants) 1987* and regulations there under.