

Federal Court of Australia

Admiralty Marshals' Workshop

15-16 November 2001

Sydney

Report

This report

On 15-16 November 2001 the Federal Court conducted a workshop for those who perform the functions of a Marshal under the *Admiralty Act 1988* and the Admiralty Rules. It was the first workshop of its kind for more than four years.

The report briefly describes the proceedings of the workshop and identifies some areas for further action. No report, however, could capture the useful discussions and interactions that took place during the course of the workshop.

The agenda and attendees

The primary aim of the Workshop was to provide information on the functions of Marshals under the Admiralty Act and Rules, and how they might be carried out. The Workshop also provided participants with an opportunity to discuss issues associated with those functions.

A copy of the agenda for the Workshop is attachment A.

A total of 26 people attended the Workshop – 19 Federal Court staff and 7 staff from State and Territory Sheriff's Offices. A list of attendees is attachment B.

In addition to the Workshop attendees, Justice Tamberlin of the Federal Court and a number of other people attended particular sessions. In particular, Mick Kinley from the Australian Maritime Safety Authority participated in the sessions on the arrest and custody of vessels.

The proceedings

Overview of the Admiralty jurisdiction

Justice Tamberlin opened the Workshop with an overview of the Admiralty jurisdiction and the role the Marshal plays in it.

A copy of Justice Tamberlin's paper is attachment C. Included with this paper is a copy of the index to the English Law Reports which sets out the cases and subject matter considered by the English High Court in relation to its Admiralty jurisdiction. The index demonstrates the range of matters and issues that arise in this jurisdiction.

Marshals – appointment, role and resources

A short presentation was given on the appointment and role of Admiralty Marshals in the Federal Court, and on the resources that are available for Marshals to assist them in the performance of their functions. A copy of the slides for this presentation is attachment D.

A copy of a background paper on the Admiralty jurisdiction is attachment E.

Arrest

Alan Dawson provided an overview of the legislation concerning the arrest of vessels and property under the Admiralty Act, and discussed the various steps set out in the “arrest checklist” prepared by the Federal Court.

A copy of the checklist is attachment F.

Role of AMSA

Mick Kinley, from the Australian Maritime Safety Authority, gave a presentation on:

- the role and powers of AMSA;
- the types of safety issues that may arise in relation to vessels that are to be, or have been, arrested by the Marshal; and
- how AMSA and Marshals can work together.

A copy of the slides for this presentation is attachment G.

Custody

Laurence Kenyon provided an overview of the legislation concerning the custody of vessels and property arrested under the Admiralty Act, and identified a number of the issues that can arise while a vessel is in the Marshal’s custody.

A copy of the slides for this presentation is attachment H.

Sale

Lance Grant gave a presentation on the judicial sale of a vessel, including examples of the orders made by the Court and the matters to be addressed in giving effect to those orders.

A copy of the slides for this presentation is attachment I.

Admiralty matters and the Goods and Service Tax

Patricia Christie gave a short (impromptu) presentation on the application of the Goods and Services Tax to the costs and expenses incurred by the Marshal in the course of an Admiralty matter.

The current situation, at least for the Federal Court, can be summarised as follows:

1. Assuming that expenses incurred by the Marshal are ‘fees’ for the purposes of the Federal Court of Australia Regulations 1978, then the Marshal should:
 - pay each supplier the cost of the goods or services provided plus GST;
 - recover the cost of the goods or services from the plaintiff or the fund; and
 - through the Court, recover the GST from the Australian Taxation Office.
2. The Marshal must pay GST on the proceeds of the sale of any vessel or property.

This topic generated considerable discussion and a number of issues were identified. These issues included whether it could (or should) be assumed that expenses are ‘fees’ for the purpose of the Regulations, and at what point of time does the Court’s obligation to pay GST on the proceeds of sale arise.

The Workshop agreed that further work needs to be done on this issue, including the development of guidelines for inclusion in the Marshals’ Manual and of possible legislative changes to clarify the situation (such changes being to the Admiralty Act or Regulations so that they apply to all jurisdictions).

Dominic Olsson and David Llewelyn provided information on how the GST is administered in the Federal Court. A copy of their paper is attachment J.

Other issues

Many issues were discussed in the course of each session. Other issues that were identified included:

- Whether the Rules should provide that the prescribed affidavit in support of an arrest application include information such as:
 - **the estimated value, the registry and the condition of the ship;**
 - **whether crew is aboard and, if so, will need to be maintained aboard;**
 - **whether the ship is moored or will have to be anchored;**
 - **whether the ship will have to be moved;**
 - **whether cargo is aboard and, if so, whether or not it is perishable, dangerous or hazardous in nature; and**
 - **any other information that would pertain to the protection, maintenance and upkeep of the ship or the property while under arrest.**
- Safety and security of Marshals.
- Whether there should be guidelines on indicative amounts to be paid on account of arrest expenses (such as berthing and other costs).
- Whether the Rules should be amended to allow the Marshal to demand a payment on account of expenses before proceeding with the arrest.
- Whether there should be rules or practice notes as to when cargo should be loaded or unloaded, and who will be responsible for any costs or losses associated with such activities.
- Whether there should be guidelines on retaining, removing or repatriating the crew, either whole or in part, of an arrested vessel.
- How often should the Marshal visit an arrested ship.
- How should the Marshal’s costs be determined – salary plus on-costs or fixed rate?
- Whether the fees and expenses incurred after arrest include the Marshal’s salary.
- Whether the Admiralty Rules should specify who is liable for cost of bunkers and supplies ordered prior to an arrest.

- Whether protocols should be developed with port authorities and other relevant agencies, as is being done with AMSA.
- What mechanisms could be introduced to provide information to the Admiralty Rules Committee, and to promote necessary amendments to the Rules.
- How closely should the Marshal work with the judge in the absence of the parties?
- Establishment of solicitor panels and guidelines on when representation is necessary?
- Insurance for the ship and cargo.
- Whether there should be guidelines and training for dealing with the media.
- Whether the Rules should be amended to allow the Marshal to apply to the court for determination of the order of priorities.

Not all of these issues were discussed.

Feedback

An evaluation form was sent to all attendees. 20 forms were completed and provided the following feedback:

- 70 per cent of participants found the workshop to be very interesting – nobody found it uninteresting;
- 75 per cent found the time given for the workshop to be the correct amount – nobody considered the workshop to be too short;
- 80 per cent found the content of the workshop to be very relevant – nobody found it irrelevant;
- 70 per cent found the overall standard of the presentations to be high – nobody considered the standard to be low;
- 85 per cent found the time provided for questions and discussion to be the correct amount – 15 per cent considered it insufficient.

A number of improvements were suggested for future workshops. These included:

- inviting Marshals to contribute to the planning of future workshops;
- using more case studies (such as following a matter from arrest through to sale/release) and hypotheticals;
- asking the State and Territory Marshals to report on their activities;
- including summaries of relevant cases as well as the legislation;
- allowing more time to deal with the issues and to identify further actions – this might include the use of small groups;
- inviting other agencies, such as AQIS and port authorities, to give presentations
- circulating written material on presentations beforehand;
- introducing an open forum session where participants can discuss difficult or unusual situations;
- including information on identifying the different types of vessels;
- including a brief session on the work of Deputy Sheriffs;
- including a visit to an actual vessel.

Acknowledgments

The contribution of the following people is acknowledged:

- Justice Tamberlin
- Alan Dawson
- Laurence Kenyon
- Lance Grant
- Mick Kinley
- Dominic Olsson
- David Llewelyn
- Patricia Christie
- Susan Price

Thanks also to Warwick Soden for hosting the Thursday evening drinks.

The future

A workshop will be held in 2002 to discuss the Marshals' Manual being prepared by the Federal Court. Marshals will be invited to suggest other items that might be discussed at this workshop, and the possibility of visiting a vessel will be investigated.

Workshops will then be conducted every second year to provide an opportunity for training, information sharing and problem resolution.

Attachment A

**Federal Court of Australia
Admiralty Marshals' Workshop
15-16 November 2001
Level 17 Conference Room
Law Courts Building
Queens Square Sydney**

Agenda

Thursday 15 November 2001

9.00-9.30	Registration
9.30-9.35	Welcome
9.35-9.40	Introduction
9.40-10.00	Overview of the Admiralty jurisdiction
10.00-10.45	Marshals – appointment, role and resources
10.45-11.00	Morning tea
11.00-1.00	Arrest
1.00-2.00	Lunch
2.00-3.30	Custody
3.30-3.45	Afternoon tea
3.45-5.00	Sale
5.30	Drinks
7.30	Dinner

Slice – 248 Glenmore Road Fiveways Paddington Ph. 9331 2308
(The cost of dinner will be to the account of participants.)

Friday 16 November 2001

9.15-9.45	Admiralty matters and the GST
9.45-10.45	Issues (Including: Interstate arrests, Marshals' costs, , Preliminary conferences of interested parties prior to arrest, Indemnity insurance, Loading/unloading vessels, Relationship with government agencies)
10.45-11.00	Morning tea
11.00-12.30	Issues (Including: Crew, Electronic caveats registers, Panels of service providers, Rules amendments, Guidelines, Developments in Admiralty law)
12.30-1.00	Plenary and close of workshop

Note: Some of the issues may be discussed in the course of the sessions on arrest, custody and sale. They are not listed in any particular order.

Attachment B

Admiralty Marshal's Workshop 2001

**15-16 November 2001
Sydney**

Attendees

Ashcroft	John	NSW Sheriff's Office
Chair	Robert	VIC Sheriff's Office
Christie	Pat	Federal Court – SA
Cox	Christopher	NT Sheriff
Dawson	Alan	Federal Court – Principal
Goodes	Tim	SA Sheriff's Office
Grant	Lance	Federal Court – NSW
Hamilton	Barry	NSW Sheriff's Office
Hansen	Neil	Qld Sheriff and Marshal
Hedge	Jenny	Federal Court – NSW
Kellow	Phillip	Federal Court – Principal
Kenyon	Laurence	Federal Court – Vic
Liston	John	Federal Court – NSW
Manning	Jane	Federal Court – Vic
Marshall	Gordon	Federal Court –Qld
Mitchell	Brendan	Federal Court – WA
Mussett	Jane	Federal Court –Vic
Parrott	Alan	Federal Court –Tas
Rainsford	Bob	Federal Court – SA
Robinson	Peter	Federal Court – Qld
Segal	Geoff	Federal Court – NSW
Slater	Rodney	Federal Court – Qld
Stanley	Elizabeth	Federal Court – WA
Van Brederode	Kay	Federal Court – NT
Walker	Robert	Tas Sheriff's Office
Williams	Stephen	Federal Court – NSW

Attachment C

Paper by Tamberlin J – See 8.2 above

Attachment D

Slide 1


Federal Court of Australia

**Admiralty Marshals’
Workshop**

**15-16 November 2001
Sydney**

Slide 2

**Marshals:
Appointment, Role and
Resources**

A small, stylized illustration of a sailboat with a single mast and a large sail, sailing on the water. The drawing is in black and white and is positioned to the left of the main text on the slide.

Slide 3

- **Legislative framework**
- **Admiralty in the Federal Court**
- **The Court’s Admiralty Workload**
- **Appointments in the Federal Court**
- **Role of the Marshal**
- **Resources**

Slide 4

Legislative Framework

- Admiralty Act 1988
- Admiralty Rules 1988
- Federal Court of Australia Act 1976
- Federal Court of Australia Regulations 1978
- Federal Court Rules

Slide 5

Admiralty in the Federal Court

- Judges' Admiralty Panel
- Admiralty Committee
- Marshal in Principal Registry
- Marshals in District Registries
- External appointments

Slide 6

Admiralty Workload

- Over the last 5 years there have been about 370 matters filed under the Admiralty Act.
- In the period 1999-2001 there were 39 arrests and 3 judicial sales.

Slide 7

Appointments in the Federal Court

- Section 18N Federal Court of Australia Act
- Marshal in Principal Registry
- Marshals in District Registries
- External appointments

Slide 8

Role of the Marshal

- serve initiating process
- execute arrest warrants
- retain safe custody of, and preserve, a ship or property under arrest
- arrange for release of ship or property
- arrange for valuation and sale
- file return of sale, account of sale and supporting documents
- paying proceeds of sale into court
- filing copies of notices concerning priority applications
- other functions as ordered by court

Slide 9

Some resources

- **Primary resources**
 - Legislation
 - Cases
- **Secondary resources**
 - Marshals' Handbook
 - Admiralty Benchbook
 - Reference books
 - Web site
- **Other resources**
 - Training
 - Mentors
 - Equipment
 - Other agencies (eg AMSA, port authorities)

Slide 10

Federal Court of Australia

**Admiralty Marshals'
Workshop**

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Attachment E

Federal Court of Australia

Admiralty Jurisdiction

Introduction

The following information briefly sets out the Federal Court's admiralty jurisdiction and how it is exercised. The information is not exhaustive and is not a substitute for examining the *Admiralty Act 1988* (Cth), *Admiralty Rules 1988* (Cth), Federal Court Rules and other relevant material or seeking legal advice.

The Federal Court's admiralty jurisdiction

The Federal Court's admiralty jurisdiction is conferred by the *Admiralty Act 1988* (Cth) ("the Admiralty Act"). Under the Admiralty Act, the Federal Court may hear and determine 'proprietary' and 'general' maritime claims, as well as claims for damage done to a ship.

Proprietary maritime claims are defined in the Admiralty Act as including:

- (a) a claim relating to possession of a ship; title to or ownership of a ship or a share in a ship; a mortgage of a ship or a share in a ship; or a mortgage of a ship's freight;
- (b) a claim between co-owners of a ship relating to the possession, ownership, operation or earnings of the ship;
- (c) a claim for the satisfaction or enforcement of a judgment given by a court (including a court of a foreign country) against a ship or other property in a proceeding *in rem* in the nature of a proceeding in Admiralty; or
- (d) a claim for interest in respect of a claim referred to in paragraph (a), (b) or (c).

General maritime claims are defined as including:

- (a) a claim for damage done by a ship (whether by collision or otherwise);
- (b) a claim in respect of the liability of the owner of a ship arising under Part II or IV of the *Protection of the Sea (Civil Liability) Act 1981* or under a law of a State or Territory that makes provision as mentioned in subsection 7(1) of that Act;
- (c) a claim for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship;
- (d) a claim (including a claim for loss of life or personal injury) arising out of an act or omission of the owner or charterer of a ship; a person in possession or control of a ship; or a person for whose wrongful acts or omissions the owner, charterer or person in possession or control of a ship is liable. The act or omission must occur in the navigation or management of the ship, including an act or omission in connection with the loading of goods on to, or the unloading of goods from, the ship; the embarkation of persons on to, or the disembarkation of persons from, the ship; and the carriage of goods or persons on the ship.
- (e) a claim for loss of, or damage to, goods carried by a ship;
- (f) a claim arising out of an agreement that relates to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charter party or otherwise;

- (g) a claim relating to salvage (including life salvage and salvage of cargo or wreck found on land);
- (h) a claim in respect of general average;
- (j) a claim in respect of towage of a ship;
- (k) a claim in respect of pilotage of a ship;
- (m) a claim in respect of goods, materials or services (including stevedoring and lighterage services) supplied or to be supplied to a ship for its operation or maintenance;
- (n) a claim in respect of the construction of a ship (including such a claim relating to a vessel before it was launched);
- (o) a claim in respect of the alteration, repair or equipping of a ship;
- (p) a claim in respect of a liability for port, harbour, canal or light tolls, charges or dues, or tolls, charges or dues of a similar kind, in relation to a ship;
- (q) a claim in respect of a levy in relation to a ship, including a shipping levy imposed by the *Protection of the Sea (Shipping Levy) Act 1981*, being a levy in relation to which a power to detain the ship is conferred by a law in force in Australia or in a part of Australia;
- (r) a claim by a master, shipper, charterer or agent in respect of disbursements on account of a ship;
- (s) a claim for an insurance premium, or for a mutual insurance call, in relation to a ship;
- (t) a claim by a master, or a member of the crew, of a ship for wages; or an amount that a person, as employer, is under an obligation to pay to a person as employee, whether the obligation arose out of the contract of employment or by operation of law, including the operation of the law of a foreign country;
- (u) a claim for the enforcement of, or a claim arising out of, an arbitral award (including a foreign award within the meaning of the *Arbitration (Foreign Awards and Agreements) Act 1974*) made in respect of a proprietary maritime claim or a claim referred to in one of the preceding paragraphs;
- (w) a claim for interest in respect of a claim referred to in one of the preceding paragraphs.

The Federal Court is also able to determine any matter of admiralty or maritime jurisdiction not otherwise within its jurisdiction that is associated with a matter in which the jurisdiction of the Court under the Admiralty Act is invoked.

For the purposes of the Admiralty Act, a ship is a vessel of any kind used or constructed for use in navigation by water however it is propelled or moved and includes a barge, a lighter or other floating vessel, a hovercraft, an offshore industry mobile unit within the meaning of the *Navigation Act 1912* (Cth) and a vessel that has sunk or is stranded and the remains of such vessel. A ship does not include a seaplane, inland waterway vessel or a vessel under construction that has not been launched.

Proceedings in the Federal Court

Proceedings under the Admiralty Act are commenced as either an action in rem or an action in personam.

An action in rem is an action against a ship or cargo or other property on, or related to, the ship. In such an action, a ship coming into Australian waters may be arrested for the purpose of providing security for money claimed from the ship owner and operator. If security is not provided, a judge may order the sale of the ship to provide funds to pay the claims.

An action in personam is a proceeding against a person, including an organisation.

An action in rem may be commenced against a ship or other property on the basis of:

- (a) a proprietary maritime claim; or
- (b) a maritime lien or other charge in respect of the ship or other property (a maritime lien is defined in the Admiralty Act as including a lien for salvage, a lien for damage done by a ship, a lien for the wages of a master or crew member, and a lien for a master's disbursements;
- (c) a general maritime claim where the owner of the ship or property when the action is commenced was the owner or charterer or was in possession or control of the ship or property when the cause of action arose, and such person would be also liable on the claim if commenced as an action in personam; and
- (d) a general maritime claim where the demise charterer (being a person who has full possession and control of a ship pursuant to a lease) of the ship when the action is commenced was the owner or charterer or was in possession or control of the ship when the cause of action arose, and such person would be also liable on the claim if commenced as an action in personam.

A proceeding in respect of a general maritime claim against a ship ('the first ship') may also be commenced as an action in rem against some other ship ('the surrogate ship') where the owner of the surrogate ship when the action is commenced was the owner or charterer or was in possession or control of the first ship when the cause of action arose, and such person would be also liable on the claim if commenced as an action in personam. The right to proceed against a surrogate ship does not arise in relation to a proprietary maritime claim.

Procedural rules

The general procedure for the conduct of matters under the Admiralty Act is set out in the *Admiralty Rules 1988* (Cth). As the Admiralty Rules do not provide a comprehensive code, the Federal Court Rules also apply except to the extent of any inconsistency.

Commencing a proceeding

A proceeding which is an action in rem under the Admiralty Act is commenced by filing a writ in the Court and paying the relevant fees. Details of the procedure to be followed and the forms to be used are set out in the Admiralty Rules.

The Admiralty Rules do not provide for how an action in personam is to be commenced, other than to state that such an action can not be commenced by the same initiating process as the process initiating an action in rem. In the Federal Court the usual practice is for an action in personam to be commenced by filing the application form (Form 5) prescribed by the Federal Court Rules and paying the relevant fees.

Documents may be filed in accordance with Order 1 rule 5A of the Federal Court Rules, which provides that a document may be presented to a Registry when the Registry is open for business; or sent by post to a Registry; or sent by document exchange to the Federal Court of Australia at its box at the Australian Document Exchange; or sent by facsimile transmission to a Registry in accordance with rule 5AB; or sent by electronic communication to a Registry in accordance with rule 5AC.

Where the proceeding is an action in rem against a ship or other property on the ship, the Admiralty Rules provide that service is effected by securely affixing a sealed copy of the writ to a mast or some other conspicuous part of the ship. Where the action in rem is against property that is not at the time of service on board the ship, service is effected by securely affixing a sealed copy of the writ to the property or to a package or container containing the property. The Admiralty Rules also provide for service where it is not possible to gain access to the ship or property, or where the action in rem is against the proceeds of the sale of the ship or property that has been paid into the Court. Substituted service is not possible in an action in rem.

Where the proceeding is an action in personam, service of a sealed copy of the application must be carried out in the usual way. That is, service must be effected in accordance with the Federal Court Rules.

Arrest of a vessel

Immediately after an action in rem is commenced, an application supported by an affidavit may be made for an arrest warrant to be issued in respect of the ship or property concerned. The application constitutes an undertaking to the court to pay on demand the fees and expenses incurred by the Marshal in relation to the arrest.

An arrest warrant is executed in the same way as a writ is served. It may be executed at the same time as the writ is served, or at some later time.

An applicant for a warrant may ask that it not be executed. It is also possible for an interested person in relation to a ship or property that is the subject of a warrant to apply to the court for the warrant to be discharged, not to be executed at all or not to be executed within a specified time.

The ship or property specified in a warrant is under arrest from the time the warrant is executed until the ship or property is lawfully released from arrest or sold by order of the court. Any person removing the ship or property, without leave to do so, may be in contempt of court.

The court may make orders at any stage of a proceeding in relation to the preservation, management or control of a ship or property, including the loading and unloading of cargo, that is under arrest. The Marshal or a party may apply at any time for directions with respect to the ship or property.

Caveats against arrest

A caveat against the arrest of a ship or property may be filed in the registry of the Federal Court. The caveat constitutes an undertaking by the person lodging the caveat to enter an appearance in any action in rem started against the ship or property specified in the caveat. In certain situations the caveat also operates as an undertaking to pay into the court, unless otherwise agreed, within three days of being served with a writ, either the amount claimed in the writ or the amount specified in the caveat (whichever is the less) or to enter a bail bond in that amount.

The register of caveats against arrest can be searched at any registry of the Federal Court.

The Court will shortly be making a list of the current caveats on the Register available on the web site.

Release of an arrested vessel

A ship or property may be released from arrest where:

- the party who obtained the arrest consents in writing to the release; or
- the court orders release on just terms, or where the proceeding is discontinued or dismissed; or
- a bail bond in the required amount is filed in the court; or
- the required amount is paid into the court.

The ship or property will only be released if satisfactory arrangements have been made for the payment of the fees and expenses incurred in connection with its custody while under arrest.

Caveats against release

A caveat against release may be filed in the court by which the arrest warrant was issued. Where a caveat against release is in force, the person who lodged the caveat must be given a copy of any application to the court for an order to release the ship or property under arrest. In addition, the Registrar is not able to order the release of the ship or property unless the court so orders. The caveat may be withdrawn by the person who lodged it, or the caveat may be wholly or partly set aside by the court.

The register of caveats against release filed in the Federal Court can be searched at any registry of the Court.

The Court will shortly be making a list of the current caveats on the Register available on the web site.

Valuation and sale

Under rule 69 of the Admiralty Rules, the Court may, on the application of a party, and either before or after final judgment, order that a ship or property under arrest be valued, be valued and sold, or be sold without valuation. An application under rule 69 by a party constitutes an undertaking by the party to pay the Marshal on demand the amount of the Marshal's fees and expenses in complying with the orders made by the Court.

The sale of a ship or other property ordered to be sold under rule 69 must be conducted by the Marshal or other authorised person. The Marshal has a duty to realise the highest price for the ship or property. A sale by the Marshal gives a valid title, good against the whole world, free of all liens and encumbrances.

As soon as practicable after the sale of a ship or other property, the Marshal must

- file a return of sale and pay the proceeds of the sale into the court; and
- file an account of sale and documents in support of the account for taxation.

The role of the Marshal

The Federal Court has Marshals in each State and Territory.

The functions and obligations of the Marshal are set out in the Admiralty Rules. They include:

- serving initiating process;
- executing arrest warrants;
- taking all appropriate steps to retain safe custody of, and to preserve, a ship or property under arrest, including:
 - removing from the ship, or storing, cargo that is under arrest;
 - removing cargo from a ship that is under arrest and storing it;
 - removing, storing or disposing of perishable goods that are under arrest or are in a ship that is under arrest; and
 - moving the ship that is under arrest.
- arranging for the release of a ship or property pursuant to an order by the court or a registrar;
- arranging for the valuation and sale of a ship or property pursuant to an order by the court;
- filing a return of sale, and an account of sale and documents in support of the account for taxation;
- paying the proceeds of the sale of a ship or property into the court;
- filing copies of notices concerning an application for a determination of the order of priority of claims against the ship or property, or the proceeds of the sale such ship or property.

The Marshal may also carry out other functions, as directed by the court, with respect to the custody of a ship or property under arrest.

Information about fees and the Marshal's costs

The fee for starting a proceeding under the Admiralty Act in the Federal Court is set by the *Federal Court of Australia Regulations 1978*. At present, the fee is \$1262 for a corporation and \$526 in any other case.

The Regulations also provide that the fee for a Marshal serving a writ or executing an arrest warrant is an amount equal to the amount of any expenses reasonably incurred by that officer in the service or execution, or attempted service or execution, of the writ or warrant, together with a charge calculated at the hourly rate of salary payable to an officer of the Court who is involved in the service or execution or attempted service or execution.

The cost of a Marshal retaining safe custody of a ship or property (including carrying out a judicial sale or performing other functions) is calculated at the hourly rate of salary payable to the Marshal plus a 20 per cent loading for overheads. It also includes an 'on call allowance' paid to the Marshal. The amount of any expenses reasonably incurred, such as berthing fees and other charges, must also be paid to the Marshal.

Under the Admiralty Rules, a Marshal is entitled to make one or more demands for interim payments on account of the Marshal's fees and expenses. In most cases, a Marshal will seek a payment prior to the arrest of a vessel.

Attachment F

Federal Court of Australia

ARRESTS UNDER THE ADMIRALTY ACT 1988



CHECK LIST FOR ARRESTING A SHIP

No.	Item	
1.	Ensure original sealed documents available. Arrest warrant and (if not already served) initiating process (writ), supporting affidavits, statement of claim, etc.	
2.	Obtain details of location of ship and best method of getting there (e.g. if at wharf, by car; if at sea, by MSB, Water Police, etc.)	
3.	Notify Harbour Master of pending arrest for boarding vessel, to ensure clearance to leave NOT given.	
4.	Arrange for AFP or water police etc. to attend.	
5.	Obtain deposit from Plaintiff's solicitors for fees incurred by Marshal (including insurance).	
6.	Arrange insurance of Marshal's interest.	
7.	Take: ID card, appointment as Deputy Sheriff, Marshal's delegation, torch, camera, tape, plastic document sleeve, Crimes Act extracts, pen, paper.	
8.	On arrival satisfy yourself as to the identity of vessel and hand copy to Master (if on board) and affix document in plastic sleeve to mast or other conspicuous place with masking tape.	
9.	Ascertain the identity of the Ship's agent and provide a copy of Writ, Arrest Warrant and Statement of Claim, etc. to ship's agent.	
10.	Provide sealed copy of Writ and Warrant to Harbour Master, Customs and Water Police.	
11.	Appoint Master as Ship's keeper if found to be suitable (see appointment and undertaking annexure).	
12.	Ascertain the following information of the ship's condition:	
	1) Amount of bunker fuel - days sailing.	
	2) Amount of diesel fuel for generators.	
	3) Drinking water.	
	4) Stock water/feed.	
	5) Condition of sewerage system.	
	6) Medical supplies.	

No.	Item	
	7) Medical condition of crew.	
	8) Crew List.	
	9) Ship's Register	
	10) Classifications details and date of expiry of classification	
	11) Rations - hard.	
	12) Rations - fresh.	
	13) Communication system.	
	14) Overall seaworthiness of ship.	
	15) Any major structural or mechanical problems.	
	16) Any past arrest history of the ship.	
	17) Any cargo on board - type.	
	18) Condition of refrigeration on board.	
	19) Owners of cargo.	
	20) Destination of cargo.	
14.	Swear affidavit of execution of Warrant, service of Writ, etc.	
15.	Write up log.	

Attachment G

Slide 1




AMSA AND ARREST

Admiralty Marshal's Workshop

Slide 2

Legislation


- *Australian Maritime Safety Authority Act 1990*
- *Navigation Act 1912*
- *Protection of the Seas (Prevention of Pollution from Ships) Act 1983*
- *Protection of the Seas (Powers of Intervention) Act 1981*



Slide 3

AMSA Act 1990

- Object is to promote marine safety, protect the marine environment, provide search and rescue
- Establishes Authority
- Outlines functions of Authority



Slide 4

Navigation Act 1912

- Regulates various matters for both Australian and foreign-flag ships
- Applies to ships engaged on interstate and overseas voyages
- Gives AMSA surveyors authority to board and inspect ships (s.190AA)
- Defines and allows for detention of unseaworthy or substandard ships (ss.207, 207A, 210)



Slide 5

Navigation Act 1912

- Allows for penalties for “every person” who sends an unseaworthy ship to sea (s.208)
- Regulates some matters concerning cargo that may be carried on ship (dangerous goods, for example)
- Allows for subordinate legislation (Regulations, Marine Orders)



Slide 6

Navigation Act 1912

- Allows for directions to be given to foreign ships (not to enter an Australian port, for example) (ss.267K, 267Y)
- Requires accidents, incidents, etc to be reported (s.268)
- Deals with wrecks and salvage (allows for plunder to be suppressed by force! s.299)



Slide 7

Navigation Act 1912

- Creates numerous offences...
 - ◆ Being on board a ship unlawfully
 - ◆ Master and crew being under influence of alcohol
 - ◆ Obstructing officials, bribing officials
- Allows for distress and sale of ships (s.399)



Slide 8

Protection of the Seas Acts

- Give effect in part to international pollution conventions (MARPOL, Intervention)
- Mostly concern illegal discharges – heavy penalties for master and *owner*
- Regulates some cargo operational matters for chemical and oil tankers
- Allows for detention of ships to investigate discharges



Slide 9

Protection of the Seas Acts

- Gives extensive powers to Inspectors
- Intervention Act allows for actions to prevent or mitigate pollution in event of casualty on the high seas...
 - ◆ Moving ship
 - ◆ Removing cargo
 - ◆ Destroying ship and cargo



Slide 10

Protection of the Seas Acts

- Intervention Act also allows for directions to be made to ships in coastal sea or internal waters that are or are likely to threaten the environment (s.10)



Slide 11

Issues related to arrest of ships

- A ship subject to arrest may also be subject to detention by AMSA...
 - ◆ Arrest is often related to financial matters
 - ◆ When finances are restricted for a ship, maintenance will often have been cut
 - ◆ When maintenance is cut back, essential equipment can quickly deteriorate to the point where the ship is rendered unseaworthy



Slide 12

Safety Issues

- A vessel subject to arrest may have safety issues related to it's cargo...
 - ◆ Containerised cargo will often contain dangerous goods – if so there *should* be a dangerous goods manifest on board
 - ◆ Tankers may contain flammable cargoes or residues and be subject to restrictions by port authority



Slide 13

Safety Issues

- Cargo of chemical tankers may pose hazards due to:
 - ◆ Toxicity, by inhalation of vapours, contact, ingestion
 - ◆ Threat to environment
 - ◆ Need to control containment environment



Slide 14

Safety Issues

- Bulk cargoes may pose hazards ...
 - ◆ Due to toxic, flammable, or oxygen depleting nature of cargo
 - ◆ Due to nature of cargo loading making ship unstable (for example, partly loaded grain cargoes)



Slide 15

Statutory issues...

- For a ship to legally sail on international voyages many international conventions must be complied with
- Each of these conventions generally require some evidence of compliance (usually in the form of certification)



Slide 16

Welfare Issues

- If a ship is under arrest for any period of time, and crew are living on board, it will need supplies of...
 - ◆ Fuel – diesel and heavy
 - ◆ Fresh water
 - ◆ Food
 - ◆ Access to medical treatment
 - ◆ Spare parts etc



Slide 17

AMSA locations...

- Cairns
- Mackay
- Gladstone
- Brisbane
- Newcastle
- Sydney
- Darwin
- Port Kembla
- Melbourne
- Devonport
- Adelaide
- Fremantle
- Karratha
- Port Hedland



Attachment H

Slide 1

**ADMIRALTY MARSHALS'
WORKSHOP 15 & 16
NOVEMBER 2001**

CUSTODY

Slide 2

RULES RELVANT TO CUSTODY

- r.41 Liability for Marshal's fees and expenses.
- r.47 Custody of arrested ships and property.
- r.48 Applications concerning arrested property.
- r.49 Discharge
- r.50 Preservation, management and control powers
- r.78 Marshal may make interim demands for fees and expenses.

Slide 3

**ISSUES TO BE DEALT WITH IN THE
COURSE OF CUSTODY**

- Berthing
- Moving Ship
- Master and Crew
- Expenses and Funds
- Record Keeping
- Cargo
- Ship's Agent

Slide 4

BERTHING

- **No specific mention in the rules other than:**
- r.47(2) The Marshal shall, unless the court otherwise orders, take all appropriate steps to retain safe custody of, and to preserve, the ship or property including:
 - (d) moving the ship that is under arrest.
- **Also relevant are:**
- r.48(1) Where a Marshal has the custody of a ship or other property, the Marshal or a party may at any time apply to the court for directions with respect to the ship or property.
- **And:**
- r.50 The court may, at any stage of a proceeding, make appropriate orders with respect to the preservation management or control of a ship or property that is under arrest in the proceeding.

Slide 5

TYPES OF BERTH

- WORKING BERTH
- LAYBY OR LAYUP BERTH
- BUOY
- DOLPHIN
- TROT
- ANCHORAGE

Slide 6

MOVING SHIP

- **RULES**
- r.47 (2) (d)
- r.48
- r.50
- **OCCASIONS WHEN MOVE MAY BE NECESSARY**
- Arrest continues over more than a few days and harbour authorities wish to clear the working berth.
- Ship is at a layby berth and a decision is made to unload cargo.
- Ship is arrested at anchor/buoy and needs to be brought to a berth
 - > for cargo operations
 - > to layby for shore facilities
 - > to clear the channel
- Ship is to be sold and needs to be brought to a berth (layby?) pending sale.
- **IT IS POSSIBLE THAT MORE THAN ONE MOVE MAY BE NECESSARY IN THE COURSE OF AN ARREST (eg: "Rangitata")**

Slide 7

MASTER AND CREW

- RULES
- There are no rules that deal specifically with the treatment of the Master or Crew of an arrested vessel.
- ISSUES THAT MAY ARISE IN RELATION TO MASTER AND CREW
- Victualling
- Medical
- Wages and Employment
- Duties and ongoing work (including use as Ship's Keepers)
- Cargo Operations
- Moving Ship

Slide 8

EXPENSES AND FUNDS

- RULES;
- r.41 An application for an arrest warrant constitutes an undertaking:
 - (a) if the application is made by the applicant personally - by the applicant.
 - (b) if the application is made by a solicitor on behalf of the applicant - by the solicitor;
- to pay to the Marshal, on demand, an amount equal to the amount of the fees and expenses of the Marshal in relation to the arrest.
- r.49(2) Where:
 - (a)
 - (b) the applicant gives an undertaking in writing that is satisfactory to the Marshal to pay on demand to the Marshal the fees and expenses of the Marshal in connection with the discharge; and
 - (c)
- the Marshal may comply with the application.
- r.53 - deals with fees and expenses in relation to release.
- r.78 Where a person is liable to pay fees and expenses of a Marshal under these rules, the Marshal;
 - (a) may accept an amount of money as a deposit toward discharging the liability; and
 - (b) may make 1 or more demands for interim payments on account of those fees and expenses.

Slide 9

ISSUES IN RELATION TO EXPENSES & FUNDS

- Making an 'up-front' demand prior to execution of warrant.
- Timing and quantum of further interim demands.
- Provision of reports to plaintiff (& other parties?) on progressive expenditure.
- Quarantine of expenses and fees;
 - in relation to arrest
 - in relation to cargo operations
 - in relation to release
 - in relation to sale.
- What is appropriate as an expense?
 - berthing, shore power, manning (where dead ship but NOT crew wages), surveys, stevedorage, tugs, pilots - may all be legitimate
 - what about; victualling, medical, repairs/maintenance?

Slide 10

RECORD KEEPING

- RULES:
- There are no rules dealing with the types or extent of records to be kept by a Marshal in relation to the arrest or custody of a ship or property other than some reports in relation to the sale and proceeds of sale.
- WHAT TYPES OF RECORDS SHOULD BE KEPT?
- Log
- Marshal's time sheet
- Record of expenses & disbursements
- Record of demands made for funds - including a record of payments received
- Record (file) of correspondence
- WHAT SHIP'S DOCUMENTS SHOULD BE COPIED FOR THE MARSHAL'S RECORDS?
- Some suggestions;
- Ship's Certificates - current survey, safe manning, load line etc
- Ship's Details and specifications
- Crew List
- Loading Plan

Slide 11

CARGO

- RULES:
- r.49(1) Where:
 - (a) cargo on board a ship is under arrest but the ship is not; or
 - (b) a ship is under arrest but cargo is not;
- a person who is entitled to immediate possession of the ship or the cargo, respectively, may apply, in accordance with Form 17, to the Marshal to discharge the cargo from the ship.
- (2) Where:
 - (a) the Marshal is satisfied that the applicant is entitled to immediate possession of the ship or cargo;
 - (b) the applicant gives an undertaking in writing that is satisfactory to the Marshal to pay on demand to the Marshal the fees and expenses of the Marshal in connection with the discharge; and
 - (c) if the Marshal so requires, the applicant indemnifies the Marshal, in a form satisfactory to the Marshal, in respect of any claim against the Marshal arising from the discharge;
- the Marshal may comply with the application.
- (3) Where:
 - (a) cargo on a ship is under arrest but the ship is not; or
 - (b) a ship is under arrest but its cargo is not;
- the court may, on application and subject to such terms and conditions as are just, order the cargo to be discharged from the ship.

Slide 12

ISSUES IN RELATION TO CARGO OPERATIONS

- Should a Marshal allow cargo to be or continue to be discharged?
- Should a Marshal allow cargo to be or continue to be loaded?
- What is required to allow cargo operations to take place?
 - > Move ship?
 - > Stevedorage?
 - > Willing crew?
 - > Proper identification of cargo ownership
 - > Will storage on wharf be required?
 - > Expenses - should these be covered by way of reimbursement, 'up-front' payment or is it better to arrange for the cargo interests to pay direct?
 - > Fees and expenses and funds for cargo operations must be quarantined from fees and expenses and funds for other aspects of the arrest.

Slide 13

SHIP'S AGENT

- Where does the ship's agent stand during custody?
- Solely an 'interested party' or do they have a practical role to play?
- Do they have any ongoing responsibilities?
 - > Crew wages?
 - > Crew victualling?
 - > Crew medical?
 - > Crew replacement?
 - > Ship repairs and maintenance?
 - > Ship's stores, eg: bunkering?

Slide 14



Attachment I

Sale of Vessels under the Admiralty Act

Documents scanned as PDF format due to size

Attachment J

Summary –

The Court can claim refunds of any GST that Marshals pay on their expenses, but does not charge any GST to litigants when recovering Marshals' expenses.

The Court is able to claim refunds of GST paid by Marshals because Marshals' expenses are considered to be incurred as part of the normal "business" of the Court. This is because Marshals incur the expenses as officers of the Court fulfilling duties placed on them by the *Admiralty Rules*.

Money paid by litigants to reimburse a Marshal's expenses and to pay the salary costs of a Marshal is considered to be a fee paid under the *Federal Court of Australia Regulations 1978* (Item 6 of the Schedule to the *Regulations*). As these fees are included on the Treasurer's Determination of taxes and fees that are exempt from the GST, the Court does not charge GST to litigants.

Since the Court can claim a refund of any GST paid by a Marshal, the actual costs incurred by a Marshal are exclusive of any GST paid by the Marshal and therefore only the GST-exclusive amount of the expenses needs to be recovered from the litigant (i.e. project code funds).

Implications –

Marshals' expenditure procedures

- Marshals need to be aware of any GST charged on an item and remember that the GST-exclusive price represents the actual expense incurred by the Marshal.
- Most Marshals' expenses will be subject to GST. Some things such as government fees might not be subject to GST.
- Marshals have to follow the standard GST-related purchasing rules in chapter 9 of the CEIs, essentially:
 - Wherever possible, obtain a tax invoice before payment.
 - Always obtain an ABN or a declaration that a supplier does not need an ABN before payment.

Finance One accounts and Marshals' records

When an expense that includes GST is paid in Finance One, the general and cash ledgers will record only the GST-exclusive amount of the expense.

For example, if an expense of \$110 that includes GST is paid in Finance One using the rate code C, \$100 is posted to the Marshal's expense account number for the matter (e.g. 13-2501-41-4-8321.2840) and the \$10 GST is posted to the GST ledger.

	Credit		Debit	
Accounts Payable	110	Expense (8321)	100	To be recovered from the litigant (i.e. debited from project)
	110	GST ledger	10	To be recovered from the tax
			110	

Consequently, Marshals' expense records need to be kept on a GST-exclusive basis, and statements provided to litigants only need to show the GST-exclusive expenses of the Marshal. The GST-exclusive expenditure as recorded by Marshals should reconcile with the expenditure recorded in the general ledger.

Project code funds finalisation and recovery of a Marshal's salary

Only the GST-exclusive amount of a Marshal's expense is recovered from the litigant, and no GST is added to the amount recovered in respect of a Marshal's salary. Marshals do not need to provide a tax invoice to litigants, however they should provide the Court's ABN (49 110 847 399) to litigants before receiving money from litigants.

The receipt of a litigant's money into the Marshal's trust fund uses a special Admiralty Receipts format. As this format automatically uses the GST rate code NA, the entire amount received will be credited to the vessel's project code funds.

On the finalisation of the project funds the registry will be required to recover the Marshal's salary and expenses incurred in the arrest and maintenance of the vessel. The recovery money will be paid into the Court's Departmental Account and receipted into the Court's Section 31 Account. The payment to the departmental bank account, and the receipt into a registry's section 31 account both use the rate code NA as no GST is involved. The procedure is shown over the page.

TRANSFERRING MARSHAL'S PROJECT CODE FUNDS TO THE COURT'S SECTION 31 ACCOUNT

Step 1 – Accounts Payable – Admiralty Format

1. From the **Accounts Payable** menu select **Admiralty Payment**.
2. Enter the creditor number **9990**, (name of entity is 'Marshal's Section 31 Account'). This creditor has been created in the global chart for admiralty creditors. The creditor provides the account details of the Court's departmental account for crediting purposes.
3. Complete the other details on the data entry format as you would other claims.
4. The General Ledger account number should be as follows:

13- &&&-41-4-8321.&&&

The &'s are to be replaced with the appropriate cost centre and the specific project code for the particular vessel/matter to be debited.

5. Use the GST rate code NA.
6. This admiralty claim will then require 'Accepting' and 'Posting' by the appropriately delegated officers.

Step 2 – Accounts Receivable – General Departmental

1. On completion of the admiralty claim in step 1 a general departmental receipt should be created.
2. The general ledger code entered should be the following format:

13- &&&-41-1-4206.0000

The &'s are to be replaced with the cost centre of the registry undertaking the receipt.

3. Use the GST rate code NA.
4. The general departmental receipt will then need to be 'Accepted' and 'Posted'.

Project code fund balances which are to be returned to the litigant on finalisation of the account will be paid using the Admiralty payment format and the GST rate code NA. This final payment should return the project code balance in Finance One to nil.

Sale of ships

When the Court sells a ship, the Court is liable for GST on the sale because the Court has custody of the ship and receives the proceeds of the sale. The Court must remit 1/11th of the proceeds of sale to the tax office as GST.

The Court must account for GST in the first month in which either:

- payment for the ship is received, or;
- an invoice is issued.

A contract for sale will be considered to be an invoice if it specifies when the money for the ship is due. Consequently, if the money for the ship will not be received in the same month as the contract is completed, you may need to advise Principal Registry so that the GST can be paid to the tax office in advance.

On receipt of the sale money, 1/11th of the sale price will need to be deposited in the Court's Departmental Account. This amount will be forwarded to the tax office as the GST component of the sale. On the deposit of this amount, Principal Registry should be informed so that it can complete a GST-only receipt in Finance One (District Registries will not need to receipt this amount in Finance One).

The remaining sale money will need to be managed as per the judge's orders (i.e. deposited into an investment account or dispersed to litigants).

Marshals should ensure that the judge's orders in respect of the sale money provide information on the dispersal of the GST amount. It may be recommended that the purchaser of the vessel provide a separate cheque or money transfer for the GST component.

Exception – GST-free export

The sale of a ship will be GST-free where the purchaser removes the ship from Australia within 60 days of taking possession of the ship. A ship should only be sold as GST-free if there is clear agreement with the purchaser that the ship will be removed from Australia within 60 days, and there is a mechanism to recover an additional amount for GST from the purchaser if the sale of the ship subsequently becomes subject to GST because the ship is not removed from Australia in time.