

Arresting a Vessel under the Admiralty Act 1988



Admiralty Act 1988

The safety of commercial shipping and recreational vessels are fundamental to the Australian way of life. However, legal claims involving vessels are becoming more common. One difficulty with such claims is that vessels frequenting Australian waters are often foreign owned, and in many cases, the vessel itself is the only asset which can be used to secure a claim brought in connection with the activities of the vessel. **Fortunately**, you can take action to protect your rights under the *Admiralty Act 1988* by arresting the vessel of the other party. This can be

achieved by commencing an action *in rem*, which means that the claim is made against property (in this case a vessel) as opposed to a claim against an individual or company.

What are the advantages of commencing an action in rem under the Admiralty Act 1988?

- By arresting the vessel of the other party, you will have security for the duration of your claim.
- If the court finds in your favour, you will be able to enforce the judgement by obtaining a court order to sell the vessel. This can be particularly helpful if the other party does not have any assets in Australia.
- While the vessel is under arrest the other party will be deprived of the use of and the economic benefits that flow from the use of that vessel. As such it is in the interests of the other party to secure the release of their vessel by providing an alternative form of security for their claim. The security could include a bank guarantee or a letter of undertaking from a secured third party.
- If your claim is unsuccessful and the vessel is released, the other party will only have a recourse to claim damages where you have acted 'unreasonably and without good cause' in arresting their vessel.

How do I know if I am eligible to claim?

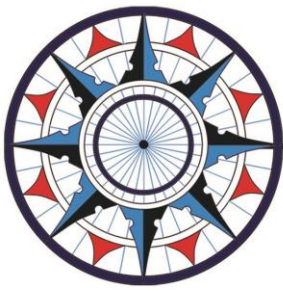
An action *in rem* may be commenced against a vessel under the *Admiralty Act 1988* in the Federal Court if the claim is a proprietary maritime claim, which includes claims relating to:

- The possession of a vessel, title to or ownership or a share in a vessel, or a share in or ownership of the vessel's freight;
- A claim between the co-owners of a vessel relating to the possession, operation or earnings of the vessel;
- Claims for interests that relate to claims between co-owners of a vessel or claims of possession, title or ownership or a share in the ownership of the vessel's freight.

Arrest can also be sought for general maritime claims under the *Admiralty Act 1988*. This is significant for potential claimants because of the wide scope that general maritime claims are defined as under the act. They include but are not limited to claims relating to:

- Damage done by vessels, including damage done to goods carried by vessels;
- The loss of life or for personal injury sustained due to a defect in a vessel or the equipment used by the vessel;





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- An act or omission of the owner or charterer of a vessel; a person in possession or control of a vessel; or a person for whose wrongful acts or omissions the owner, charterer or person in possession or control of a vessel is liable;
- The construction of a ship;
- 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.

How is a claim commenced under the Admiralty Act 1988?

The action is commenced by filing a writ in the Federal Court. The writ must be served on the vessel. This would normally take place whilst the vessel is alongside an Australian port but can also occur anywhere within Australian waters. The writ is served once it has been transfixed to the mast, bridge or a conspicuous part of the vessel. Upon service, the claimant can then file the application for arrest warrant on the Registrar of the Federal Court. The application includes a personal undertaking to pay the costs and expenses of the arrest. In deciding whether an arrest warrant, the Registrar will need to establish that a caveat against the arrest has not been lodged. The applicant does not need to convince the Registrar of the strengths of its claim for the arrest warrant to be issued.

What is the process for carrying out the arrest of the vessel?

Upon the issuing of the arrest, the vessel will become the possession of the Admiralty Marshal who, as an officer of the court, will execute the arrest warrant. The Marshal is then empowered to take all appropriate steps to retain safe custody of and retain the vessel. The Marshal is also empowered to remove property from the vessel and is allowed to authorise the movement of the vessel. Any person moving the vessel without the authority of the Marshal will be in contempt of court.



The vessel will remain under arrest until either of the following occurs:

- The applicant makes an application to the Registrar to release the arrested vessel;
- The court orders the release of the vessel;
- A bail bond in the required amount is filed in the court.

Written by:

Beau Foley / Pacific Maritime Lawyers / Graduate

