

## Update on Ship Arrest in Australia – Hidden Arrest Proceedings

**Nathan Cecil, Partner**

This short note is to update our clients and contacts in relation to revised ship arrest filing procedures recently adopted by the Federal Court of Australia.

Parties filing ship arrest proceedings in Australia have previously raised the concern that the publication of the details of the Application for Arrest and Arrest Warrant on the Court's searchable database could give unfair advance notice to the vessel to be arrested, potentially resulting in the vessel abandoning its call to Australia in order to avoid arrest.

In order to arrest a vessel in Australia, the arresting party must file:

- i) a Writ *in rem*;
- ii) an Application for Arrest;
- iii) an Affidavit in Support of the Application for Arrest; and
- iv) an Arrest Warrant.

The Writ is the initiating process and contains details of the claim for damages underlying the Application for Arrest. The Writ is filed *in rem* against the vessel, but does not contain any request to or result in the arrest of the vessel. The Application for Arrest, Affidavit in Support and Arrest Warrant obviously disclose that arrest is imminently intended.

Previously, details of all documents filed were publicly available in the Court's searchable online database. Concerned parties could search the Court's database before calling at Australia in order to see whether any Application for Arrest was filed against them and, potentially, take action to try and avoid any intended arrest. As a result of the above concerns, the Court has decided not to publish the filing of any Application for Arrest and accompanying documents until after the arrest has been effected.

The Court initially trialled a procedure whereby no details of the proceedings were published, even the Writ. However, we alerted the Court to the fact that this would prevent intending purchasers and other interested parties from conducting writ/clean title searches

at the time of the sale and purchase of a vessel. As a result, details of the Writ and therefore the existence of a maritime claim will continue to be published and searchable.

Owners and operators of vessels should now be aware that they will not be able to search for and obtain advance notice of any intended arrest proceeding in the Federal Court. The first notice that will be received is when the Admiralty Marshal boards the vessel and serves the Arrest Warrant. Of course, details of the *in rem* Writ will still be available and it should prudently be assumed that, if *in rem* proceedings have been filed against a vessel, there is a high prospect that the initiating party intends to arrest the vessel if it calls in Australia.

As yet, the Supreme Courts of the States and Territories (all of which have concurrent arrest jurisdiction along with the Federal Court) have not yet adopted the above procedure. In those jurisdictions, all filings are published and available to be searched – but in many cases this has to be done in person at the Registry.

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If you have any queries or require further information, please contact:

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