



SPECIAL MEASURES IN RESPONSE TO COVID-19

ADMIRALTY AND MARITIME

(SMIN-2)

Warrants for the arrest of ships

1. INTRODUCTION

- 1.1 This Special Measures Information Note (SMIN-2) sets out arrangements for the issue of warrants for the arrest of a ship during the COVID-19 outbreak in Australia.
- 1.2 Due to the COVID-19 pandemic, where appropriate and necessary, the Federal Court is modifying its practices in order to mitigate the risks associated with COVID-19 pandemic, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges, marshals and staff, and the families of all of these groups.
- 1.3 The cooperation of all court users and court staff is required in this regard.
- 1.4 A person who wishes to apply for the issue of a warrant for the arrest of a ship must give consideration to the matters raised in this special measures information note.
- 1.5 This special measures information note is to be read in conjunction with the Federal Court's Admiralty and Maritime Practice Note (A&M-1). Where inconsistent, this special measures information note is to take precedence over A&M-1 in respect of the arrangements for the issue of a warrant for the arrest of a ship during the COVID-19 outbreak in Australia.
- 1.6 This special measures information note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.
- 1.7 This special measures information note remains in effect until and unless superseded or revoked.

2. MARSHALS – ISSUES OF AVAILABILITY AND ACCESS

- 2.1 Due to the COVID-19 pandemic, it may be that the marshal or marshals charged with effecting an arrest will not be able to do so in the usual way because of public health, logistical or legislative restrictions. By way of example, where the ship is in a remote area and, ordinarily a Border Force officer would act as a marshal, Border Force may not have anyone available to carry out the arrest. Further, in some States there may be restrictions on a marshal boarding a ship during the COVID-19 outbreak.
- 2.2 If a marshal is not available to effect an arrest in the usual way, consideration may need to be given to whether it would be appropriate to seek an order from a judge that the Court waive compliance with r 43 of the *Admiralty Rules 1988*, under r 6A, and direct that service or

execution of the warrant be effected by electronic communication to the master of the ship using email, text message or other means. The deemed time of arrest should be addressed if such relief is sought.

3. ARRESTED SHIPS, QUARANTINE ARRANGEMENTS AND ATTENDANT COSTS

- 3.1 Practitioners should give consideration to the possibility that vessels to be arrested may harbour the COVID-19 virus because a person suffering from COVID-19, or a person with symptoms of COVID-19, is, or was, on board, or because the vessel, or a person on the vessel, left a site of contamination.
- 3.2 In such circumstances, ships may, for public health and other legitimate reasons, have to remain under arrest for a protracted period of time for the purposes of quarantine and or disinfection.
- 3.3 An applicant for an arrest warrant, being the plaintiff or (as is ordinarily the case) the plaintiff's Australian legal practitioner or other agent, may potentially be liable for a significantly larger sum than might ordinarily be the case, in consequence of the undertaking given for the issue of a warrant pursuant to r 41 of the *Admiralty Rules 1988*.
- 3.4 The marshal has power to demand payment up front under r 41(2) of the Admiralty Rules. In light of the present economic situation, a plaintiff seeking arrest will be required to pay a deposit in advance, and if necessary from time to time, to enable the marshal to undertake the arrest and ongoing custody of the ship.

J L B ALLSOP
Chief Justice
1 April 2020