



# An overview of the Admiralty Act and Admiralty Rules

The Hon Justice James Allsop  
Federal Court of Australia



# 2 Admiralty Act

## Admiralty Jurisdiction

- ss 9 and 10
- The distinction between *in rem* and *in personam* proceedings is fundamental.
- s 9 is to be amended to include the FMC as an *in personam* court. The relevant bill is being introduced during this sitting of Parliament.



# 3 Admiralty Act

## What kinds of Claim?

- s 4(1) - general maritime claim
  - proprietary maritime claim
- s 4(2) - proprietary maritime claim
- s 4(3) - general maritime claim
- Note that the list is closed, though it does not necessarily conform to the outer limits of, or exhaust the Constitutional head of power in, s 76(iii) of the Constitution:

*“of Admiralty and maritime jurisdiction”*



# 4 Admiralty Act

## No Geographical Restriction

- s 5 - on its face provides for unlimited worldwide jurisdiction
- Limits - service *ex juris* rules for *in personam* proceedings
  - requirement for presence of ship for service of *in rem* proceedings and arrest
  - *forum non conveniens* stay



# 5 Admiralty Act

## Service

- *In personam* proceedings according to general Rules of Court as long as they are not inconsistent with Admiralty Rules
- *In rem* proceedings according to Part V of the Rules
- No service outside Australia: see ss 22 and 23
- s 20 service on one ship



# 6 Admiralty Act

## *In rem* proceedings and arrest

- The act does not provide for arrest, only the Rules. There can be no arrest unless there is statutory authority to entertain an *in rem* proceeding: see Rule 39.
- Part III – especially ss 14 to 19.
- s 14 the exclusivity of the *in rem* proceeding.
- An *in rem* proceeding is against **the thing** (the *res*), generally a ship. If there is no appearance, the claim proceeds against the *res*, judgment is obtained, the *res* is sold and the fund is used to pay creditors. If someone appears, and if that person is the “relevant person” the claim proceeds as a action *in rem* and *in personam*.



# 7 Admiralty Act

## *In rem* proceedings and arrest (2)

- s 15 - maritime liens

A maritime lien is a claim which attaches to the ship and passes with the ship to bind any new owner. Only certain types of maritime liens are recognised, by s 15.

- s 16 - proprietary maritime claims
- It is essential to understand the concept of “relevant person”. See definition in s 3(1):

“a person who would be liable on the claim in a proceeding commenced as an action *in personam*”



# 8 Admiralty Act

- The rights to proceed *in rem* provided for by ss 17, 18 and 19 depend on the confluence of a number of factors at various times. In tabular form, they can be set out as follows:





s 17	s 19	s 18
1. That there is a claim which is a general maritime claim.	1. The same.	1. That there is a claim which is a maritime claim (general or proprietary).
2. That the claim is concerning a ship or other property.	2. That claim is concerning the first ship.	2. That the claim is concerning a ship.
3. That a particular person would be liable on the claim on the assumption that the claim is successful: the relevant person.	3. The same.	3. The same.
4. When the cause(s) of action arose the relevant person was: <ul style="list-style-type: none"> <li>● owner</li> <li>● charter</li> <li>● in possession</li> <li>● in control</li> </ul> of the ship or property	4. The same in respect of the first ship.	4. The same in respect of a ship.
5. When the proceedings were commenced the relevant person was the owner of the ship or property.	5. The same in respect of the second ship.	5. When the proceedings were commenced the relevant person was the demise charterer of the ship.

# 10 Admiralty Act

- The timing can be critical – note the facts and the result in *The MV ‘Cape Moreton’* (2005) 219 ALR 48
- “Owner” means true or beneficial owner – *The ‘Iron Shortland’* (1995) 59 FCR 535; *The ‘Maria Luisa’* (No 2) (2003) 130 FCR 12; and *The MV ‘Cape Moreton’* (2005) 219 ALR 48.
- s 21 Limit on re-arrest
- s 24 Can proceed *in rem* against a fund.
- s 29 Note how arrest on security can be used for foreign proceedings.
- s 34 Damages for unjustified arrest



# 11 Admiralty Rules

- Part I Preliminary
- Part II Caveats against - arrest  
- release
- Part III Parties
- Part IV Process
- Part V Service of Process
- Part VI Arrest



# 12 Admiralty Rules

- Part VII Bail
- Part VIII Limitation proceedings
- Part IX Reference of damages and accounts to a Registrar
- Part X Valuation and sale
- Part XI Priorities
- Part XII Miscellaneous

