

Federal Court of Australia

And

Ports Australia

Memorandum of Understanding

Description of Agencies

Ports Australia

Ports Australia is the peak body representing the interests of ports and marine authorities in Australia.

The mission of Ports Australia is to provide leadership and support in areas of common interest related to ports and to promote the achievement of their trade facilitation objectives.

Ports Australia's objectives are:

- to represent and promote the common interests and views of Australia's ports and marine authorities at a national and international level
- to provide advice to, and seek to influence, Governments in all matters that affect ports and marine regulations
- to promote public awareness, understanding and support for ports' contribution to national, state and regional development and their key role in transport supply chains
- to provide a forum for:
 - - the creation, exchange and evaluation of views on strategic issues relevant to the efficient development, management of Australia's ports and maritime facilities; and,
 - sharing information and expertise to encourage the development of efficient practices and techniques for the general management of ports as well as nationally consistent technical policies, practices and regulatory environments;
- to act both proactively and reactively to meet members' needs in all areas that can impact on their business responsibilities and
- to pursue such other objectives as Ports Australia may from time to time determine.

Federal Court Registry (Admiralty Jurisdiction)

The Federal Court of Australia, created by the *Federal Court of Australia Act 1976* (Cth), is a superior court of record and a court of law and equity. Under the *Admiralty Act 1988* (Cth), the Federal Court may hear and determine 'proprietary' and 'general' maritime claims, as well as claims for damage done to a ship.

The Marshal assists the Court in the administration of its jurisdiction under the *Admiralty Act 1988* (Cth). The functions and obligations of the Marshal are set out in the *Admiralty Rules* and include:

- serving initiating process and 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
- 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 of 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.

Under the *Admiralty Rules*, the Marshal may apply to the Court or a Judge for directions concerning the custody, valuation and sale of a ship or property, and concerning the distribution of the proceeds of such a sale.

Relevant Legislation

Ports Australia

Ports Australia's members are responsible for meeting the requirements of various State and Territory legislation including the following:

- *Tasmanian Ports Corporation Act 2005* (Tas)
- *Ports Management Act 2015* (NT)
- *Darwin Port Corporation Act 2005* (NT)
- *Port Management Act 1995* (Vic)
- *Government Owned Corporations Act 1993* (Qld)
- *Transport Infrastructure Act 1994* (Qld)
- *Transport Operations (Marine Safety) Act 1994* (Qld)
- *The Ports & Maritime Administration Act 1995* (NSW)
- *Port Authorities Act 1999* (WA)
- *Shipping & Pilotage Act 1967* (WA)
- *Harbours and Navigation Act 1993* (SA) and
- Commonwealth and State environment, planning, WH & S and other legislation that impacts upon activities within a port.

Federal Court

Federal Court of Australia Act 1976, and Regulations and Rules made thereunder *Admiralty Act 1988*, and Regulations and Rules made thereunder.

Mutual Assistance

Ports Australia Members will assist the Marshal and the Court by:

- Ensuring the relevant personnel within port corporations and marine authorities, understand and respect the need for confidentiality prior to any proposed arrest, and are aware of the Federal Court's role and responsibilities
- Providing officers of the Federal Court with contact details for the Harbour Master (or equivalent) and other relevant personnel within a specific port in order to assist Federal Court officials with carrying out their responsibilities, noting that port authorities may not have full control over the activities of all port users and service providers
- Facilitating communication channels before, during and after the arrest
- Identifying the location (either a berth or an anchorage) that is suitable for jurisdictional enforcement by the attending officer of the Court
- Advising the Court, where relevant, of privatised facilities whose berths may no longer be under the control of the port corporation and facilitate contacts with the privatised operator
- Assisting with transportation to and from the ship that is to be arrested (particularly noting limitations in some ports during hours of darkness)
- Facilitating communications with the relevant port authority in the provision of tugs and pilot, noting that there may be a need to move the ship from time to time in order to accommodate the ongoing operation of the port and to take into account any adverse weather forecasts
- Assisting with Vessel Traffic Service monitoring once the vessel has been arrested.
- Discussing with officers of the Court the roles and responsibilities of the individuals involved in the arrest and ongoing operations
- Assisting officers of the Court with identifying those organisations within the port who can assist with taking appropriate steps to preserve the ship, its machinery and equipment, its sea-worthiness and class (eg, dry docks, repair berths, facilities for floating maintenance tenders, bunkering, etc)
- Assisting officers of the Court with the preservation of the value of the cargo including any discharge of the cargo (eg warehousing, transport companies, etc), keeping in mind that some of the cargo may be dangerous goods or perishable goods, and also noting that, at the time of the arrest of the vessel, it may have been either loading or unloading cargo and that the safety and stability of the vessel must be maintained
- Facilitating communications with organisations with a presence within the port whose activities may impact upon the roles and responsibilities of Federal Court officers, eg, towage, pilotage, mooring line providers, and government departments such as the Department of Agriculture, the Australian Maritime Safety Authority, Department of Immigration & Border Protection, the Office of Transport Security, etc.
- Assisting the Court with questions such as who would meet the costs associated with detention e.g. port charges, mooring/unmooring/keeping moorings secure, bunkering,

ships stores, security and ship's watch, and, potentially (depending on the condition of the vessel), booming or patrolling to reduce the risk of pollution, and the costs applicable for the provision of a pilot and tugs should it be necessary to move the vessel whilst it is under arrest

- Assisting the Federal Court where necessary in identifying the organisation which can supply food and other essentials of life to the crew together with the possible need to take appropriate steps for the well-being of the crew, such as shore access and possible repatriation home
- Facilitating the provision of safety inductions to the relevant port or facility for Court officers to ensure the ability of Court officers to carry out their responsibilities
- Assisting with the provision of advice and assistance, where necessary, on relevant aspects of the *Maritime Transport and Offshore Facilities Security Act 2003* where security incidents might have an impact upon the roles of Federal Court officers in carrying out their responsibilities
- Assisting with advice and assistance should the National Plan for Maritime Environmental Emergencies be activated in a port whilst a vessel is under arrest in that port
- Providing appropriate speakers at relevant training courses organised for Federal Court officers and staff
- Assisting Federal Court officers and staff to undertake familiarisation visits to ports, whenever possible
- Assisting Federal Court officials with any other reasonable request
- Providing the Marshal or the Court, as soon as reasonably practical, with information to assist the Marshal or a judge to understand any actual or potential operational, safety or other issue, including difficulties that the port operator or others within the port may experience or that may arise in a proposed or actual arrest, and provide advice or assistance as to how the Marshal or the Court might be able to respond to or deal with such an issue having regard to their legal responsibilities and duties.

The Marshal will assist Ports Australia's members by:

- Contacting the relevant port corporation as early as is reasonably possible to advise of the Court's interest in a particular vessel
- Discussing with the port corporation, authority or operator the safety and/or security implications of any intended action by the Marshal in respect of a vessel under arrest
- Taking cognisance of the relevant port corporation's or authority's or operator's concerns regarding the possible implications/impacts on port operations and port safety by a vessel under arrest
- Informing the relevant port corporation, authority or operator of any orders that the Court has made or intends making that will prevent the corporation's, authority's or operator's staff from taking the full range of regulatory actions in respect of a vessel that they would be entitled to take were the vessel not in the custody of the Court
- Discussing, so far as is reasonably practicable, what steps the Marshal might take or suggest that the Court might order, to deal with any operational, safety or other issue, including difficulties that the port operator or others within the port may experience or that might arise in a proposed or actual arrest.

Contacts

Within Ports Australia

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Policy Manager
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Tel: (02) 9247 7581
Fax: (02) 9247 7585
Email: info@portsaustralia.com.au

Within the Federal Court

General matters of policy should be discussed with:
Tony Tesoriero, Deputy Registrar (Admiralty and Maritime)
Tel: (02) 9230 8250
Email: Tony.Tesoriero@fedcourt.gov.au

For further information about a ship or property that is in custody, contact the Marshal responsible for the arrest or the District Registry where the ship or property is located. A list of contact details for each registry is at Schedule A.

Agreement of Memorandum of Understanding

Signed by:

The Hon James Allsop AO
Chief Justice
Federal Court of Australia

Dated: _____

Signed by:

Mr David Anderson
Chief Executive Officer
Ports Australia

Dated: _____

SCHEDULE A

Contact details for Marshals within the Federal Court

New South Wales:
Phone: (02) 9230 8567
E-mail: nswdr@fedcourt.gov.au

Queensland:
Phone: (07) 3248 1100
E-mail: marshal_qld@fedcourt.gov.au

Victoria:
Phone: (03) 8600 3333
E-mail: marshal_vic@fedcourt.gov.au

Western Australia:
Phone: (08) 9268 7100
E-mail: marshal_wa@fedcourt.gov.au

South Australia:
Phone: (08) 8219 1000
E-mail: sareg@fedcourt.gov.au

Tasmania:
Phone: (03) 6232 1700
E-mail: marshal_tas@fedcourt.gov.au

Northern Territory:
Phone: (08) 8941 2333
E-mail: ntreg@fedcourt.gov.au