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REFORM OF THE ADMIRALTY JURISDICTION

by

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In November 1982 the Law Reform Commission was asked to report on the reform of Australian admiralty jurisdiction. After the publication of a number of consultative papers the Commission has now published its proposed draft legislation on civil admiralty jurisdiction, together with draft uniform rules.¹ The Commission proposes to issue a separate report on Civil Admiralty Jurisdiction. This will be completed by December 1985, with a view to tabling in Parliament early in 1986. A further short report will then be issued, in 1986, on the separate and less urgent issues of Admiralty criminal jurisdiction and prize.

The proposed legislation and rules set out in Research Paper 3 are based on a considerable range of views expressed to the Commission through public meetings, in written submissions and in other ways.

A number of the proposals remain controversial, and there have also been some changes compared with the proposals outlined in Discussion Paper 21. This Paper summarises in point form the key features of the legislation and rules. Further comments and suggestions on these are welcome. The Commission's Terms of Reference also require it to prepare an explanatory memorandum to accompany the proposed legislation, and an initial draft of this is attached as Appendix 1.

Draft Admiralty Act 1985

There should be new Australian Federal legislation, defining clearly and exhaustively the scope of Admiralty jurisdiction in Australia. Features of the legislation include the following. Comment on questions marked with an asterisk (*) is particularly sought.

- . Definition of 'ship'. Defined broadly to include vessels of any kind, and hovercraft, but excluding seaplanes and inland waterways vessels (cl 3(1)).
- . Definition of 'maritime claims'. An exhaustive definition of maritime claims, extending to the range of defined maritime claims in the legislation of comparable countries, but excluding any undefined residual jurisdiction (cl 4). Particular questions for consideration include the following:
 - inclusion of claims for the enforcement of foreign judgments (Cl 4(2)(c));
 - inclusion of a broader head of economic loss claims (cl 4(3) (da));
 - inclusion of claims for unpaid premiums or other similar amounts (cl 4(3)(r));
 - inclusion of claims for interest (cl 4(2)(d), 4(3)(t)).
- . Scope of Act. The Act should apply to claims wherever arising, except claims concerning local ships arising on inland waters (cl 5(1), (3) and (4)).
- . Jurisdiction in personam: Jurisdiction in personam with respect to proceedings on a maritime claim or for damage done to a ship is vested in the Federal Court and in State and Territory courts within the limits of their various jurisdictions (cl 10, 41).
- . Jurisdiction in rem: The Federal Court and State and Territory Supreme Courts to have jurisdiction in rem concurrently (cl 11). Proclaimed State and Territory courts may also have in rem jurisdiction (cl 12). Jurisdiction extends to associated matters of admiralty and maritime jurisdiction (cl 13) and is exclusive (cl 15).
- . Rights to proceed in rem: Rights to proceed in rem are conferred as follows:
 - on a maritime lien or other charge against the ship concerned (cl 17); 'maritime lien' is defined indicatively but not exhaustively: cl 17(2);
 - on a proprietary maritime claim against the ship concerned (cl 18); for definition see cl 4(2);

- * — on a general maritime claim where the relevant person (defined in cl 3 as the person liable on the claim) had some nexus with the ship concerned (ie as owner, charterer etc) when the claim arose and was either the owner or the demise charterer of the ship when the action was commenced (cl 19, 20; for definition of 'general maritime claim' see cl 4(3)).

- * . Rights to proceed in rem against surrogate ships: Instead of arresting the ship concerned on a general maritime claim the plaintiff may arrest any other ship owned by or demise chartered to the relevant person (cl 21).

- * . Limitation of liability: Concurrent jurisdiction is given to the Federal Court in respect of limitation actions (cl 25).

- * . Transfer and remittal: Extensive powers of transfer and remittal (including remittal to lower courts for trial on the merits) and for staying (or dismissing) proceedings pending arbitration, with ancillary provision for custody of the res, interim orders etc (cl 27—30).

- * . Related corporations: In determining which ships can be arrested the UCC provisions defining 'related corporations' are incorporated (cl 32).

- * . Damages for unjustified arrest: Provision is made for a right to damages for unjustified arrest, wrongful refusal to consent to release, etc, in carefully defined circumstances (cl 35).

- * . Priorities: No general statement of admiralty priorities, but cl 36 makes it clear that general maritime claims enforced by the arrest of a surrogate ship rank equally with claims against that ship as the ship concerned.

- * . Statutory powers of detention: Statutory powers of detention of ships in respect of maritime claims do not preclude arrest; when a ship is arrested such statutory powers are displaced and the underlying claim converted into a priority claim in the proceeding (cl 37).

- * . Limitation periods: The doctrine of laches is abolished and limitation periods otherwise applicable to the claim are applied to admiralty proceedings, with a residual limitation period of 3 years (if no other period applies) (cl 38).

- Mode of trial: Admiralty proceedings in rem, limitation proceedings and associated proceedings to be tried by judge alone, without a jury or assessors (cl 39).
- * • Appeals: All admiralty appeals to the Full Federal Court (cl 40).

Draft Admiralty (Miscellaneous Provisions) Act 1985

This Act would repeal the Colonial Courts of Admiralty Act 1890 (with prospective effect only) as well as various Imperial Acts still in force in Australia or parts of Australia and affecting admiralty jurisdiction. In addition, miscellaneous amendments would be made to the Navigation Act 1912 (s 59A, 91, 252, 262, 318—20, 322, 326, Part VII Division 5, ss 383, 385, 396, 405A) and the Shipping Registration Act 1981 (s 94A).

Draft Admiralty Rules

The Draft Admiralty Rules deal only with distinctive matters of procedure relating to admiralty jurisdiction. To the extent that the Rules make no provision, the ordinary Rules of the Court in question apply.

Matters on which comments etc are especially sought include the following:

- Commencement of proceedings: By statement of claim rather than by writ (r 15).
- Caveats: Provision is made for both caveats against arrest and caveats against release. Caveats against arrest now have a considerably increased effect:
 - they can only be filed in the Federal Court and apply Australia-wide (r 6,7);
 - they prevent (rather than simply penalizing in costs) the issue of an arrest warrant where the amount claimed does not exceed the amount specified in the caveat (r 34(2)(a)).
- Notification of consul: There is no longer any requirement that the consul of the flag state be notified of actions in rem for wages against foreign ships before a warrant can be issued.

- Issue of warrant: Without leave of the court, the issue of a warrant is prohibited where a relevant caveat is in force, the proceeding has been stayed after a payment into court, or a bail bond for not less than the amount claimed has been filed (r 34(2)). Arrest unreasonably and without good cause now incurs liability for damages rather than arrest in bad faith or grossly negligent arrest (cl 35).
- Avoiding arrest: It is an offence (in addition to any penalty for contempt of court) for a master to move a ship that is within the jurisdiction of a Court so as to prevent arrest after receiving notice of the issue of an arrest warrant (r 37).
- Custody of the res: The powers of the Marshal and of the court in relation to the custody of an arrested ship or other property are specified in r 42, 43 and 45.
- Discharge of cargo: Persons can apply to the Marshall without intervening in the action to discharge cargo that is not under arrest from an arrested ship or to discharge arrested cargo from a ship that is not under arrest (r 44).
- Limitation of liability: Rules for the conduct of limitation suits have been specifically included (r 17, 58—61). The procedure consists of:
 - an application to limit, served on at least one named respondent;
 - a determination by the court of the right to limit and the extent of that right;
 - where not all respondents were served, or a class of persons was named as respondents in the application to limit, the advertisement of the determination in accordance with a court order, fixing a time for claims to be entered against the limited amount;
 - provision for applications to set aside the determination within the period specified in the advertisement.
- Preliminary Acts: Provision is made for preliminary acts to be filed in collision cases (r 19—23).
- References to Registrar: Provision is made for referral of the assessment of damages or taking of accounts to the Registrar (Rules, Part IX).

- Solicitor's liability to committal: Solicitors remain liable to committal for breach of an undertaking to the court to appear, give bail etc (r 72).
- Admiralty short causes: Provision for speedy hearings is left to the general rules of court (but power to order trial without pleadings is specifically included (r 24)).

1. The following Papers are available or proposed:

Research Papers

RP 1: An Australian Admiralty Act: The Ambit of Admiralty Jurisdiction (available)

RP 2: Admiralty Jurisdiction in Australia: The Courts Exercising Original and Appellate Jurisdiction (available)

RP 3: Draft Legislation; Admiralty Procedure and Rules (available)

RP 4: Admiralty Criminal Jurisdiction

RP 5: Prize Law, Jurisdiction, and Procedure (available)

Discussion Paper

ALRC DP 21 Admiralty Jurisdiction (November 1984)

The papers are available to persons and organisations interested in commenting on them or contributing to the Commission's consideration of the issues. Copies of Discussion Paper 21, and (in the case of persons or organizations wishing to make more detailed submissions) the relevant Research Paper(s), may be obtained on application to The Secretary, ALRC, 99 Elizabeth Street, Sydney NSW 2000. All comments should be received by 14 November 1985.

APPENDIX I

Annotations to Draft Admiralty Bill

Table of Abbreviations
used in the Annotations

Brussels Conv	International Convention relating to the arrest of Sea-Going Ships, Brussels, 1952
Can	Federal Court Act 1970 (Can)
CCA	Colonial Courts of Admiralty Act 1894 (Imp)
DP 21	ALRC Discussion Paper 21, <u>Admiralty Jurisdiction</u> (1984)
MSA	Merchant Shipping Act 1894 (UK)
NA	Navigation Act 1912 (Cth)
NZ	Admiralty Act 1973 (NZ)
RP 1-2	ALRC Admiralty Research Papers (see list above)
SAf	Admiralty Jurisdiction Regulation Act 1983 (S Africa)
UK 1956	Administration of Justice Act 1956 (UK), Part I
UK 1981	Supreme Court Act 1981 (UK)

Clause 3: Interpretation

1. Clause 3(1):

- 'foreign ship': Foreign ships (defined as ships which cannot be registered under the Shipping Registration Act 1981 (Cth)) are subject to admiralty jurisdiction even where the maritime claim concerned arises in respect of the use or intended use of the ship on inland waters (cl 7(3)(b), (4)).
- 'inland waterways vessel': A ship used or intended to be used exclusively on Australian inland waters is not subject to Admiralty jurisdiction under the Act (cl 5(3)(a)). This is so partly because of likely restrictions in the scope of Constitution s 76(ii), but also because there is no clear case for extending Admiralty jurisdiction to such ships. See RP 1, 116; and cf NZ s 2.
- 'relevant person': This means a person (not necessarily the only person) who would be liable on a maritime claim (ie who would be liable if the plaintiff's case was made out). For certain purposes there must be specified links between the relevant person and the ship in question at particular times. See cl 19—21.
- 'sea': cf NA s 6.
- 'ship': 'Ship' is broadly defined (following the definition in NA s 6; cf MSA s 742), and specifically includes a hovercraft, but specifically excludes seaplanes, inland waterways vessels (see above) and vessels under construction but not yet launched. See RP 1, 108—119; DP 21, para 13.

2. Clause 3(2): This sub-clause confirms the common law rule that the nexus between the ship in question and the relevant person has to exist at the time the action is commenced, not at any later time of arrest. See The Monica S [1968] P 741 (Brandon J).

4. Clause 3(4): This defines a 'surrogate ship' for the purposes of the Bill (termed a 'sister-ship' under UK 1956 and UK 1981, but it may never have been in the same ownership: 'surrogate ship' is accordingly the more accurate term). For rights to arrest surrogate ships see cl 21.

Clause 4: Maritime claims

1. Clause 4(2): 'Maritime claim' is the key defining term by which Admiralty jurisdiction is conferred. Maritime claims are either 'proprietary' or 'general': see cl 4(2) & 3.

2. Clause 4(2): 'Proprietary maritime claims' are claims involving disputes over title of or possession of a ship, mortgage claims, co-ownership disputes, claims to enforce statutory liens (ie the right against a vessel resulting from a judgment in rem) and associated claims to interest. Since the right of action in such cases itself defines the ship concerned, no nexus with a specified 'relevant person' is required for an action in rem. Proprietary maritime claims usually involve determining or enforcing claims to title or possession of the ship in question and surrogate ship arrest is accordingly excluded. See cl 18, 21. cf UK 1981 s 20(2)(a)-(c). See further RP 1, 174-177, 212-14.
3. Clause 4(3): 'General maritime claims' represent the bulk of maritime claims within Admiralty jurisdiction. The sub-clause involves a substantial extension of existing jurisdiction under CCA, and would bring Australia fully into line with comparable overseas jurisdictions. See RP 1, ch 8; DP 21 para 20.

Particular features of cl 4(3) include the following:

- .. inclusion of pollution damage claims (cl 4(3)(h))
- .. possible inclusion of a general economic loss head (cl 4(3)(da))
- .. inclusion of claims for unpaid insurance premiums (cl 4(3)(r))
- .. absence of any residual clause.

Clause 5: Applications

1. Clause 5(1): Generally the Act extends to all ships and all claims wherever arising. See RP 1, 104-107. cf UK 1981 s 20(7).
2. Clause 5(2): The Bill would be prospective only. Actions already commenced under CCA will proceed as if the Admiralty Act had not been enacted. See also Admiralty (Miscellaneous Provisions) Act 1985 cl 3, 6.
3. Clause 5(3)&(4): The Bill does not apply to causes of action arising on inland waters involving Australian ships, or with respect to inland waterways vessels as defined (cl 3(1)). See RP 1, 121.

Clause 6: Certain rights not created or affected

1. The Bill would not create new maritime liens or create new causes of action, as distinct from creating new procedures by which existing causes of action may be enforced.

Clause 7: Innocent passage

1. This gives effect to the limitation upon grounds for arresting a ship engaged in innocent passage within the meaning of the 1958 Territorial Sea Convention (to which Australia is a party). This limitation is required by Art 20(2)--(3) of the Convention. See RP 1, 120—1.

Clause 9: Act to bind Crown

1. The Act binds the Crown in all its capacities.
2. No right of action in rem is created in respect of ships or property belonging to the Commonwealth or an Australian State or Territory: cl 9(2), (4). But where proceedings are commenced 'innocently' against such ships or property, cl 9(3) converts them into actions in personam against the relevant person. The Miscellaneous Provisions Bill cl 13 will repeal NA s 405A(2), which cl 9(3) will replace. See RP 1, 167—8.

Clause 10: Admiralty jurisdiction in personam

1. Admiralty jurisdiction in personam with respect to maritime claims is conferred on the Federal Court and on State and Territory courts within the limits of their respective jurisdictions: cl 10(a), 41. See RP 2, 40—63; DP 21, para 24.
2. In addition, these courts have jurisdiction with respect to claims 'for damage done to a ship' (cl 10(b)), an established head of admiralty jurisdiction with respect to which an action in rem is not appropriate. See RP 1, 123, 163—5, 170, 204—5; cf UK 1981 s 20(2)(d), 21(4).

Clause 11: Jurisdiction of superior courts in actions in rem

1. The Federal Court and State and Territory Supreme Courts have concurrent original jurisdiction with respect to all proceedings which may be commenced as actions in rem under the Act: see cl 17—21. See further RP 2, 46—56; DP 21 para 25.

Clause 12: Jurisdiction of other courts in respect of actions in rem

1. No inferior or intermediate courts are specifically given in rem jurisdiction. But in particular cases where this is desirable (eg though geographical remoteness or other local circumstances) particular courts may be proclaimed as courts having in rem jurisdiction under the Bill: cl 12(1). Cf RP 2, 63—69; DP 21 para 26 (where a different proposal was made).

Clause 13: Jurisdiction in associated matters

1. It is not clear whether s 39, Judiciary Act 1903 (Cth) confers federal Admiralty and maritime jurisdiction on State and Territory courts, and it has no application to the Federal Court in any event. Clause 13 confers 'associated' jurisdiction over Admiralty and maritime matters in all courts having jurisdiction under the Bill (the term 'associated' derives from, and has the same effect as, Federal Court of Australia Act 1976 (Cth) s 32). This will complete as far as possible the scope of federal admiralty jurisdiction and avoid cases of divided or partial federal jurisdiction.

Clause 14: Effect of vesting of jurisdiction

1. In the event that any matter mentioned in cl 10 falls outside the scope of federal jurisdiction under s 76(ii) or (iii), that jurisdiction is not conferred, and problems of severance or invalidity are avoided.

Clause 15: Jurisdiction exclusive

1. To the extent that it confers jurisdiction, the Bill 'covers the field' of the admiralty and maritime jurisdiction of State and Territory courts, to the exclusion of other laws, thus avoiding any Lorenzo v Carey ((1921) 29 CLR 243) argument about concurrent State jurisdictions.

Clause 16: Admiralty actions in rem to be commenced under the Act

1. The Bill will provide exclusively for in rem actions in Admiralty and maritime jurisdiction in Australia.

Clause 17: Rights to proceed in rem on maritime liens & c

1. Clause 17(1): This confers jurisdiction to proceed in rem on a maritime lien or other charge against the ship or property subject to the lien or charge. See RP 1, 95--100; 172--3; DP 21, para 19. Cf UK 1981 s 21(3).
2. Clause 17(2): The term 'maritime lien or other charge' is not defined exhaustively, being left to the general law. But an indicative list (based on NZ s 2) is provided, stating the most important liens these days. Cf cl 6.

Clause 18: Right to proceed in rem on proprietary maritime claims

As explained (see Notes to cl 4(2)) proprietary maritime claims involve claims, especially to title, possession etc, concerning the ship itself. They include the traditional admiralty actions of possession and restraint. The cause of action itself defines the nexus with the ship (cf UK 1981 s 21(2)) and it is sufficient therefore simply to confer a right to proceed in rem with respect to such claims. For the same reason surrogate ship arrest does not apply to these claims. See further RP 1, 174--177.

Clause 19: Right to proceed in rem on owner's liabilities

With respect to general maritime claims (see Notes to cl 41(3)) the first case where arrest is proper (under Australian law at present the only case: The Lastrigoni (1974) 131 CLR 1) is where, at the time the action was commenced (as to which see Notes to cl 3(2)), the owner was a relevant person. But modern Admiralty jurisdiction is not simply a device for enforcing liabilities of persons who happen to own ships: the owner must also have had a nexus with the ship or property (as owner, charterer, or person in possession or control). To similar effect see UK 1981 s 21(4). See further RP 1, 127--35; DP 21 para 15.

Clause 20: Right to proceed in rem as demise charterer's liabilities

1. In addition, most overseas Acts allow arrest in respect of demise charterers' liabilities at the relevant time (the requirements parallel those in cl 19 for owner's liabilities). See RP 1, 135--7.

2. In DP 21 para 15—17, RP 1, 135—40, it was tentatively proposed that this provision apply not only to demise charterers but to any kind of charterer (or person otherwise lawfully in possession or control). A similar proposal was defeated at the Lisbon C MI Conference in May 1985: to maintain uniformity the present proposal is confined to the internationally acceptable limit of demise charterer's liabilities.

Clause 21: Right to proceed in rem against surrogate ship

1. Clause 21 proposes to introduce, for the first time in Australia, the internationally well-known and well-accepted remedy of 'sister-ship' arrest in respect of general maritime claims. See Brussels Conv Art 3(1); and cf DP 21; para 17; RP 1, 140—154.
2. Like NZ s 5(2)(b)(ii) the present proposal allows arrest of surrogate ships in respect of the liabilities of a demise charterer of that ship. For terminological issues see Notes to cl 3(2), 4(3).

Clause 22: Service on and arrest of only one ship

1. Clause 22(1): This provision prevents service within Australia of more than one ship in respect of a particular claim. Cf UK s 21(8). Service on ship A (without arrest) does not prevent subsequent arrest of ship A (or of a surrogate ship under cl 21). But it does establish the jurisdiction of the court of service.
2. Clause 22(2): Similarly cl 22(2) and (3) restate the general admiralty rule preventing multiple arrest. Clause 22(2) does not prevent rearrest of a particular ship in the limited circumstances where this is proper.
3. Clause 22(3): This allows arrest of a ship subject to a subsisting maritime lien or charge even though some other ship has previously been arrested on the maritime claim concerned. (Of course, if the maritime claim is satisfied by the first arrest the lien or charge is extinguished). See RP 1, para 145—6.

Clause 23: Service and execution out of jurisdiction

1. Clause 23(1): This prevents service out of the jurisdiction on a ship or property (and, by virtue of cl 23(3), excludes the Service and Execution of Process Act 1901, s 3 (definition of 'suit') of which may, by inadvertence, apply in such cases). The jurisdiction of admiralty courts, to the extent that this is attracted by service on the res, is (subject to NA s 380(1) which is preserved) strictly territorial. See RP 2, 55-57.
2. Clause 23(2): Similarly cl 23 (2) preserves the basic admiralty rule that a ship is only liable to arrest within the jurisdiction, including ships lying offshore, by virtue of NA, s 380(1).
3. Clause 23(3): These provisions apply notwithstanding the Service and Execution of Process Act 1901 (Cth). Plaintiffs seeking to serve or arrest ships in another Australian State or Territory have the option of commencing proceedings in the relevant Supreme Court or in the Australia-wide jurisdiction of the Federal Court.

Clause 24: Proceeds

1. The Bill (following in this respect UK 1981 s 21(2), (3), (6) rather than SAf s 3(5)) does not define the 'ship or property' which may be the subject of an action in rem. Comments are particularly sought as to the desirability of such a definition. However the existing admiralty practice whereby the proceeds of sale of a ship or property may themselves be the subject of an action in rem is restated in cl 24. See RP 1, 159-163 (where a different view was taken).

Claim 25: Limitation of liability under Liability Conventions

1. Clause 25(1)-(3): These sub-clauses confer concurrent jurisdiction on the Federal Court in respect of limitation actions under the various Conventions (for definition see cl 3(1)); they also make necessary ancillary provisions. At present only State and Territory Supreme Courts have such jurisdiction. See RP 1, 218-19.
2. Clause 25(4): Questions of limitation of liability often arise in proceedings commenced in rem or in personam on a maritime claim. This clause confers jurisdiction over limitation defences on any court with jurisdiction under the Bill.

Clause 26: Proceedings under Civil Liability Convention

1. Art IX (1) and (3) of the Civil Liability Convention (see definition in cl 3(1)) restricts certain proceedings for pollution damage under the Convention to courts of countries having specified links to the claim. Clause 26 implements this restriction as part of Australian law.

Clause 27: Transfer

1. This allows ready transfer of cases between courts having jurisdiction under the Bill. See also cl 30 (custody of res etc).

Clause 28: Remittal

1. Clause 28(1)(2) & (5). Although lower courts will not (apart from cl 12, to the extent that it is used) have in rem jurisdiction under the Bill, it may well be appropriate for the merits of a maritime claim to be determined by a lower court, where that court would have jurisdiction over an equivalent in personam claim. Clause 28(1) allows remittal in such cases: cl 28(2) allows the remitting court to give appropriate directions, and the lower court also to give directions as to subsequent proceedings. In cases where a matter is remitted the remitting court retains custody over and power to deal with the res (unless it orders to the contrary) under cl 30.
2. Clause 28(3) & (4): Any judgment of the court of remittal is enforceable by the original court against the res and in other ways, subject to any appeal and consequent stay of execution.

Clause 29: Security in relation to stayed or dismissed proceedings

1. This allows a court to retain security of (and, under cl 29(5), subsequently to enforce any order, judgment or award against) the res in cases where proceedings are pending in another court or where an arbitration is pending in Australia or elsewhere. Alternatively the court may stay or dismiss proceedings on condition that alternative security is provided (cl 29(3)). See RP 1, 207—12.

Clause 30: Power to deal with ship or property

Clause 30(1): Where a case is transferred or remitted under cl 27 or 28, the original court retains custody of the res and may deal with it as if the case had not been remitted or transferred.

Clause 30(2): Alternatively that court may, at the time of transfer of remittal or at some later time, by order transfer custody of the res to the other court.

Clause 31: Effect of judgment

This states, for greater certainty and clarity, the effect on a defendant of appearing personally in a proceeding commenced in rem. In accordance with The Dictator [1892] P 304, a relevant person who appears is liable personally to the full amount of the claim. However a person who is not a relevant person but who appears to defend the res is not personally liable (save as to costs): in such cases the judgment is enforceable by sale of the res itself. This probably represents the admiralty rule but in any event is the desirable rule to adopt.

Clause 32: Related corporations

In determining the ownership of a ship for the purposes of cl 19, 20, 21 it may be necessary to 'pierce the corporate veil' to prevent the evasion of admiralty jurisdiction through elaborate corporate structures, one-ship companies etc. Clause 32(2) and (3) incorporate the 'corporate veil' provisions of the Uniform Companies Code (see eg Companies Act 1981 (ACT) s 7) to achieve this result. See further DP 21, para 18; RP 1, 154-8.

Clause 33: Powers of Federal Court in relation to register

Power to rectify the register under the Shipping Registration Act 1981 (Cth) is vested by that Act only in State and Territory Supreme Courts. This clause confers concurrent power on the Federal Court in a proceeding on a proprietary maritime claim (where rectification may well be the, or an, appropriate order).

Clause 34: Co-ownership disputes

This gives the Court appropriate powers to settle accounts and to sell the ship in co-ownership disputes. Cf UK 1981, s 20(4).

Clause 35: Damages for unjustified arrest etc

1. Clause 35(1): This creates a more extensive liability for damages for unjustified arrest of, or unjustified refusal to release, a ship or other property under the Bill. See SAF s 5(4) (the only overseas equivalent).
2. Clause 35(2)–(5): These sub-clauses confer jurisdiction with respect to proceedings for damages under cl 35(1): where a ship or property has been arrested, the court of arrest has jurisdiction; in all other cases, the Federal Court and the various Supreme Courts have concurrent jurisdiction.

Clause 36: Priorities

The Bill does not attempt to spell out, even in indicative form, the admiralty order of priorities. However it is provided that general maritime claims the subject of proceedings against a ship rank as they would if all the claims were claims against that ship as the ship concerned. A claimant on a general maritime claim is accordingly not postponed in priority to another such claimant merely because the claim is brought under cl 21 against a surrogate ship. This clarifies the legal position, which has not been settled in other jurisdictions where sister-ship or associated ship arrest exists. See RP 1, 257–270 (the proposals made there differ in one important respect from that in cl 36).

Clause 37: Statutory powers of detention

This clarifies and regularises the situation where there are competing rights to arrest and to detain a ship in respect of a maritime claim under the Bill and under another law. The court's power of arrest prevails, but the claim which is the subject of the statutory power of detention is converted into a claim against the ship having, under cl 36(5), an appropriately high priority. See RP 1, 270–272.

1. Clause 38(1)—(2): The present situation with limitation periods (ie time limits for suing) in admiralty is obscure and confused. This clause applies to an admiralty proceeding under the Bill the most appropriate time limit applicable. If no time limit applies by force of another Act (see NA s 398 for an example of such a time limit) cl 38(1) applies the relevant in personam time limits, or (if none exists) a residual limit of 3 years.
2. Clause 38(3)—(4). Otherwise existing powers to extend time limits are extended to time limits which cl 38(1) applies to admiralty proceedings. But the presence or absence of the res is not to be taken into account in exercising the discretion to extend time limits. This has the effect of assimilating admiralty and non-admiralty cases, from the point of view of limitation periods.
3. Clause 38(5): Consequently, the special admiralty doctrine of laches is abolished. It is obscure and uncertain in effect, and rarely relied on in practice. The relative certainty of the fixed time limits applied under cl 38(1) and (2), combined with limits in the rules on issue and renewal of writs and warrants, are sufficient to deal with problems of delay. See RP 1, 235—257.

Clause 39: Mode of trial

Trial of admiralty actions in rem, limitation proceedings and associated proceedings is to be by judge alone, without jury or assessors. This is appropriate, and reflects the present de facto situation. Though assessors are presently available in theory they are rarely used.

Clause 40: Appeals

Admiralty appeals are to be made to the Federal Court; thence, in the usual way, to the High Court. See RP 2, 70—74; DP 21, para 27.

Clause 41: Jurisdictional limits

This clause applies the usual restriction on conferral of federal jurisdiction on State or Territory courts to all conferrals of jurisdiction under the Bill.

Clause 42: Fees

It is not proposed to regulate fees in respect of proceedings under the Bill. Equivalent powers to prescribe fees in relation to courts are applied by cl 42 to such proceedings.

Clause 43: Rules

An extensive rule-making power is conferred on the Governor-General, and ancillary provision for the exercise of jurisdiction under the rules is made.

Clause 44: Regulations

In addition the Governor-General may make necessary regulations in relation to the Bill.