

I. SUMMARY OF THE DRAFT LEGISLATION

The proposed new Admiralty Act is concerned with jurisdiction and procedure - it does not create new causes of action (with the single exception of a new cause of action for unjustified arrest).

What it does is:-

1. Brings a greatly extended list of maritime claims (causes of action) within the jurisdiction of the Admiralty Courts (Part 1 of the Act).
2. It then confers and limits the Admiralty Jurisdiction on certain Courts.  
(Part 2).
3. It then sets out who has the right to take proceedings in admiralty in respect of maritime claims and liens, and against whom claims may be brought, including surrogate ships (Part 3).
4. The Bill then covers transfer and remittal of proceedings and miscellaneous matters such as limitation periods and priorities (Parts 4 & 5).

There is also a new set of Admiralty Rules.

Part 1 of the Bill - Maritime Claims

BEFORE

(Principally deriving from the Colonial Courts of Admiralty Act 1890(UK)).

1. Ship Mortgages.
2. Claims for the building, equipping or repairing of a ship.
3. Necessaries.
4. Damage to cargo carried into Australia under a bill of lading (Section 6 of the Admiralty Court Act 1861(UK)).
5. Damage done to or by a ship.
6. Masters & Seamans wages and Masters disbursements.
7. Salvage.
8. Towage and pilotage.
9. Title, ownership and disputes between co-owners.
10. Bottomry and respondentia bonds.

AFTER

Proprietary Maritime Claims

(New Section 4(2))

- (a)(i) Possession of a ship.
- (ii) Title, ownership or shares in a ship.
- (iii) Mortgage of a ship or share.
- (iv) Mortgage of a ship's freight.
- (b) Co-ownership disputes.
- (c) Enforcement of an in rem judgment.
- (d) Associated claims to interest.

General Maritime Claims

(New Section 4(3))

- (a) Damage done by a ship.
- (b) Claims in respect of the Protection of the Sea (Civil Liability) Act 1981 (i.e. limitation of liability for oil pollution)
- (c) Loss of life or personal injury resulting from a defect in a ship.
- (d) Claims for loss or damage attributable to ship owners or operators and arising from the operation of the ship.
- (e) Loss of or damage to goods carried by ship.
- (f) Claims arising out of an agreement for the carriage of goods by ship or the hire of a ship (including charter parties).
- (g) Salvage.
- (h) General average.
- (j) Towage.
- (k) Pilotage.
- (m) Claims for goods, materials or services supplied or to be supplied to a ship.

- (n) Claims in respect of construction of a ship.
- (o) Alteration, repair or equipping.
- (p) Port and harbour dues.
- (q) Pollution damage claims under the Protection of the Sea (Shipping Levy) Act 1981.
- (r) Disbursements.
- (s) Unpaid insurance premiums.
- (t) Wages or monies due under a contract of employment.
- (u) Claims to enforce arbitral awards arising from maritime claims.
- (v) Associated claims to interest.

Jurisdiction - Part 2 of the Act

Admiralty Jurisdiction in Personam with respect to maritime claims is conferred concurrently on the Federal Court and the State and Territory Courts - Section 9(1)(a). The reference to "State Courts" in personam actions under Section 9 as opposed to "State Supreme Courts" in respect of rem proceedings under Section 10, means that all State Courts down to and including Magistrates Courts, can exercise in personam jurisdiction (see ALRC Para 233) within the limits of their respective jurisdictions. Those limits and the fact that the rules for service outside the jurisdiction are the same as the General Rules of Court, mean that obtaining jurisdiction over a foreign defendant in personam is no easier under the new Bill. This emphasises that admiralty proceedings in personam are in most respects similar to general Supreme Court actions.

Admiralty Jurisdiction in Rem is conferred concurrently on the Federal Court and on the State and Territory Supreme Courts, the only jurisdictional limits being as to the amount claimed and

remedies (if any) in the State or Territory Supreme Courts - Sections 10 and 39. Read with Section 5, this emphasises the fundamental and distinct nature of in rem proceedings, whereby the issue of a Writ in Rem and arrest of the vessel itself confers jurisdiction on the merits wherever the claim arose. Although proceedings in rem can only be commenced in the Federal Court or the Supreme Courts of a State or Territory, they can in appropriate circumstances be transferred or remitted to lower courts under Part IV. This will allow arrest, custody and sale to remain the province of superior courts and their officials, while permitting the merits to be decided in the court that would normally have tried an equivalent action in personam (ALRC Para 241).

In particular cases or locations, Lower Courts may be proclaimed as having in rem jurisdiction.

The Federal Court is a Court of limited subject matter jurisdiction. Issues arising which are not within either admiralty jurisdiction or any other jurisdiction possessed by the Federal Court, may be heard by the Federal Court pursuant to the Rules of accrued or pendent jurisdiction developed by the High Court in Fencott -v- Muller (1983) 46 ALR 41, and further Section 12 confers jurisdiction in "associated" matters (the term associated derives from, and has the same effect as defined in Section 32 of the Federal Court of Australia Act).

#### Rights to Proceed in Admiralty - Part III

Section 14 makes it clear that actions in rem against a ship or other property may only be commenced under the new Act - "ship"

being very broadly defined in Section 3(1) and "property" being defined by the general law on maritime liens and claims and by the definition of maritime claims in Section 4.

Sections 15 to 19 then set out the rights to proceed in rem, namely -

Section 15 - Maritime Liens - The expression "maritime lien or other charge" is not defined exhaustively, that being a matter for the general law but subsection (2) does list the most important liens, namely salvage, damage done by a ship, wages of the master or member of the crew, and master's disbursements.

Section 16 - Proprietary Maritime Claims -

These are claims with respect to a particular ship and usually concern title or possession, for which surrogate ship arrest does not apply.

Section 17 - Owner's Liabilities on General Maritime Claims -

A proceeding in rem may be commenced against a ship where the person who would be liable on the claim in personam (the "relevant person") was firstly the owner of the ship or property at the time the action in rem was commenced and secondly also had a nexus with the ship or property as owner, charterer or person in possession or control when the cause of action arose.

Section 18 - on Demise Charterer's Liabilities on General Maritime Claims -

This section enables in rem proceedings against a ship in

respect of demise charterer's liabilities, with parallel requirements to the previous section in terms of being the demise charterer when the proceeding is commenced and having a nexus with the ship or property when the cause of action arose. This represents a major extension of admiralty rights in Australia.

Section 19 - against a Surrogate Ship on a General Maritime Claim -

In rem proceedings against a surrogate ship also involve a requirement for the relevant person to be the owner of the surrogate ship when the proceeding is commenced and to have had the required nexus with the particular (i.e. allegedly wrong doing) ship in terms of being the owner, charterer or person in possession or control when the cause of action arose. This also represents a major extension of admiralty rights in Australia. The expression "surrogate ship" was preferred to "sister ship" (See ALRC Para 205) to emphasise that it is not necessary for the two ships to have been in the same ownership at the same time e.g. a one ship company may commit some act giving rise to a general maritime claim against ship A, then dispose of Ship A and buy ship B, whereby ship B may be the subject of the action in rem.

Section 20 restates the existing admiralty law against multiple service or arrest in respect of a particular claim, subject to circumstances giving rise to both a lien on one ship and a general maritime claim against another ship. Section 21 spells out the Court's power to permit the

rearrest of a ship which had been previously arrested and later released.

Section 22(1) provides for service and arrest in Federal Court proceedings anywhere in Australia, including the territorial sea.

Section 22(2) and (3) provides for service in Supreme or Territory Court proceedings within the State or Territory, in the territorial sea or elsewhere in Australia if the ship or property has been present in the State or Territory at any time during the currency of the Writ (this is intended to preserve the requirement for a nexus within the State or Territory while covering the situation where, for example, a ship may be within the State or Territory when proceedings are commenced but may leave thereafter to avoid service and arrest) and for arrest anywhere in Australia once Supreme Court jurisdiction has been obtained by service on the res.

Sections 25 and 26 are concerned with proceedings under liability conventions in terms of applying to constitute a limitation fund, which is restricted to the Federal or State or Territory Supreme Courts, and pleading limitation by way of defence, which is not so restricted e.g. an inferior Court can hear a plea of limitation by way of defence to a specific claim (see ALRC paragraph 234).

#### Transfer and Remittal of Proceedings - Part IV

Section 27 provides for transfer of cases between Federal, State and Territory Courts having jurisdiction under the Bill. An

action in rem may only be transferred to a Federal, State or Territory Court with in rem jurisdiction but an action in personam may be transferred to any Court with in personam jurisdiction over the claim.

Section 28 provides for remittal to a lower Court not having in rem jurisdiction where the lower Court would have jurisdiction over an equivalent in personam claim. The remitting Court may give appropriate directions and will usually retain power to deal with the res. 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. Remittal may happen for example in an action for damages for personal injuries where the Supreme Court may decide liability and any application to constitute a limitation fund, and then remit the case to a lower Court for the assessment of damages.

Miscellaneous - Part V

This final part provides for various matters, the more important being -

- (a) Damages for unjustified arrest. This is a new provision establishing liability for damages for unjustified arrest, or unjustified refusal to release or demanding excessive security. The liability for damages arises only where the plaintiff has acted "unreasonably and without good cause" and recovery is limited to loss directly resulting to a party to the proceedings, or a person with a legal interest in the ship or property in question. Third parties such as cargo owners or those suffering consequential loss would be excluded.



- (b) Priorities - Section 35 provides, in effect, that a claim by a person having a lien over ship A, when transferred as a claim against a surrogate Ship B, ranks only as a statutory right in rem and thus behind a pre-existing lien or mortgage over the surrogate ship.
- (c) Limitation periods - Section 37 provides that where no time limit applies by force of another act, (e.g. by Section 396 of the Navigation Act applying a two year time bar in collision cases) then the relevant in personam time limit applies or if none exists, there is a residual limit of three years.

#### Rules

The Rules cover the usual procedural matters such as the formal setting out of initiating process, service, time for appearance, trial without pleadings and in addition covers further matters peculiar to admiralty, including -

- (1) Caveats against arrest and against release.
- (2) Preliminary acts.
- (3) Procedure for arrest, custody of arrested vessel and release from arrest.
- (4) Bail.
- (5) Limitation proceedings.
- (6) Reference of damages and accounts to a Registrar.