Admiralty Bill 1988

Date Introduced: 24 March 1988
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney - General

Digest of Bill

Purpose

To clarify the extent of admiralty jurisdiction that may be exercised in Australia and to replace out of date United Kingdom laws.

Background

The term 'admiralty jurisdiction' refers to a range of legal causes of action which relate to ships. These legal causes of action are called maritime claims.

The unique feature of admiralty jurisdiction is the action in rem. An action in rem is an action taken against a ship itself, rather than a person. The ship may be arrested and used as security for a maritime claim involving the ownership or operation of ships. Actions directed against specific persons in relation to maritime claims are also included in admiralty jurisdiction. These are called actions in personam. But where a specific person cannot be identified, the ability to take legal action against the ship itself can be invaluable.

At present, admiralty jurisdiction in Australia is governed by an Imperial Act, the Colonial Courts of Admiralty Act 1890 (UK). This Act incorporates into Australian law the admiralty jurisdiction of the English High Court as it existed in 1890. Thus admiralty jurisdiction in Australia is fixed as the admiralty jurisdiction exercisable by the High Court in England in 1890. Although later legislation, both Australian and Imperial, has affected this area of law, Australia's admiralty jurisdiction remains substantially the same as it was at federation.
The Constitution gives the federal government power to make laws with respect to admiralty and maritime jurisdiction (section 76 (iii) and see section 77 (iii)). Other provisions of the Constitution would also cover aspects of admiralty jurisdiction, for example the trade and commerce power, and the external affairs power.

The Australian Law Reform Commission was requested to report on appropriate Australian legislation on admiralty jurisdiction. Its report, titled *Civil Admiralty Jurisdiction* (No. 33) was released in 1986.

This Bill is a direct reproduction of the draft Bill recommended by the Australian Law Reform Commission.

**Main Provisions**

The Bill is to apply to all ships and all claims wherever arising (except for Australian ships travelling on inland waterways) (Clause 5). Presence of the ship within Australian waters is sufficient for the Bill to apply.

Statutory maritime claims are divided into proprietary maritime claims and general maritime claims (Clause 4). These statutory maritime claims are exhaustively defined in the Bill. Proprietary maritime claims are claims concerning the ownership or possession of a ship (Sub-clause 4(2)). General maritime claims are claims arising from the operation of a ship including claims for damage done by a ship (for example, as a result of a collision), claims for personal injury arising from a defect in the ship or its equipment, claims for loss or damage done to goods carried by the ship, claims relating to salvage and claims by a master or a crew member for wages (Sub-clause 4(3)).

Another type of maritime claim is the maritime lien. The Bill does not exhaustively define maritime liens. The existing general law on what amounts to a maritime lien is preserved. Generally speaking, a maritime lien is a right, which may arise from a contract, for example, to hold the property of another as security for damage or loss caused as a result of a collision or other damage.

All proprietary maritime claims but only some general maritime claims may be commenced as an action is rem, that is, an action against the ship itself (Clauses 14, 15, 16, and 17). Claims based on maritime liens or other charges may be commenced as actions in rem. Examples of maritime liens that may be used in this way are liens for salvage, damage done by a ship, wages of the master or a crew member and master's disbursements (Clause 15). Proceedings in respect of an owner's liabilities on a general maritime claim where, both at the time of the incident and at the time the action is commenced
person owned, chartered, possessed or controlled the ship or property may also be commenced as an action in rem (Clause 17 and see Clause 18). Thus actions taken against the ship under the Bill require some nexus with the person against whom the claim arises. Except in these circumstances, general maritime claims as defined in Sub-clause 4(3) may not be commenced as an action in rem.

If the ship involved is not within Australian waters, an action in rem may be commenced against a 'surrogate ship', that is, another ship that is owned, chartered, possessed or controlled by the same person (Clause 19). As a general rule, actions against, government ships or property are not permitted by the Bill (Clause 8).

The Bill grants in personam jurisdiction in maritime claims and claims for damage done to a ship to all courts of Australia within the ordinary limits of their civil jurisdiction, such as size of claim (Clause 9). Jurisdiction in rem is allocated only to superior courts (that is, the Federal Court and the State and Territory Supreme Courts) (Clause 10). This rule may be changed by Proclamation of the Governor-General (Clause 11).

Provision is made for transferring matters begun in one court to another court with the appropriate jurisdiction (Part IV). Special provision is made for the various courts given jurisdiction to 'act in aid of, and be auxiliary to, each other' (Clause 40).

The Governor-General is empowered to make rules governing the practice and procedure of the courts exercising admiralty jurisdiction (Clause 41). The Attorney-General may establish a committee to advise him on these rules (Clause 42).

The Imperial legislation that has governed admiralty jurisdiction in Australia is to be repealed (Part VI).

For further information, if required, contact the Law and Government Group.

22 July 1988

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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