

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ADMIRALTY BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,

the Hon. L. Bowen, MP)

ADMIRALTY BILL 1988

OUTLINE

1. The purpose of the Admiralty Bill 1988 is to provide for the admiralty jurisdiction of Australian courts, in a form which is comprehensive, accessible, and consistent with Australian needs and with international standards concerning civil jurisdiction over ships. The Bill regulates admiralty jurisdiction of Australian courts both in actions in rem and in personam and deals with a number of related matters. It provides for uniform rules of procedure to be made dealing with distinctive aspects of admiralty procedure.
2. At present, admiralty jurisdiction in Australia derives from the Colonial Courts of Admiralty Act 1890 (UK), an Imperial statute which limits admiralty jurisdiction to that possessed by the English courts in 1890.
3. The proposed legislation is based upon a report and recommendations of the Law Reform Commission (ALRC 33, Civil Admiralty Jurisdiction (1986)), which involved a thorough review of developments in other countries and at the international level.
4. Financial Impact - The financial impact of the legislation is expected to be negligible.

Table of Abbreviations  
used in the Explanatory Memorandum

References are included throughout the Explanatory Memorandum to the relevant passages in the Report of the Law Reform Commission and, where appropriate, to similar provisions in other legislation. The following abbreviations are used:

Brussels Conv	International Convention for the Unification of Certain Rules relating to the arrest of Sea-Going Ships, Brussels, 1952
Can	Federal Court Act 1970 (Can)
CCA	Colonial Courts of Admiralty Act 1890 (UK)
MSA	Merchant Shipping Act 1894 (UK)
NA	Navigation Act 1912 (Cth)
NZ	Admiralty Act 1973 (NZ)
Report	Australian Law Reform Commission, Report No 32, <u>Civil Admiralty Jurisdiction</u> (1986)
SAf	Admiralty Jurisdiction Regulation Act 1983 (S Africa)
UK 1981	Supreme Court Act 1981 (UK)

NOTES ON CLAUSES

PART I -- PRELIMINARY

Clauses 1 and 2: Short title and Commencement

These clauses provide for the short title and commencement of the Bill. The Bill, when enacted, will come into operation on a date to be fixed by the Governor-General by Proclamation.

Clause 3: Interpretation

1. Sub-cl 3(1) defines a number of expressions used generally throughout the Bill, including in particular the following:

- . '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 5(3)(b), (4)).
- . 'inland waterways vessel': A ship used or intended to be used exclusively on Australian inland waters (as defined in this sub-cl) 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 s 76(iii) of the Constitution, but also because there is no clear case for extending Admiralty jurisdiction to such ships.

Reference: Report, para 106.

- . '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 17--19.

- . 'ship': 'Ship' is broadly defined (following the definition in NA s 6; cf MSA s 742, but with some further clarifications), and specifically includes hovercraft and moveable oil rigs, but specifically excludes seaplanes, inland waterways vessels (see above) and vessels under construction but not yet launched.

Reference: Report, para 98--105, 108.

- 2. Sub-cl 3(2) 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.

References: Report, para 136; The Monica S [1968] P 741; In re Aro [1980] Ch 196.

- 3. Sub-cl 3(6) defines a 'surrogate ship' for the purposes of the Bill (sometimes termed a 'sister ship', but since it may never have been in the same ownership, 'surrogate ship' is the more accurate term). For rights to arrest surrogate ships see cl 19.

#### Clause 4: Maritime claims

- 1. Sub-cl 4(1) defines 'maritime claim', which is the key defining term by which admiralty jurisdiction is conferred. Under sub-cl(1), maritime claims are either 'proprietary' or 'general': see cl 4(2) & (3).
- 2. Sub-cl 4(2) defines 'proprietary maritime claims'. These are claims involving disputes over title to 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 16, 19.

References: Report, para 132, 149--51, 190--2, 208; UK 1981 s 20(2)(a)--(c).

3. Sub-cl 4(3) defines 'general maritime claims'. These represent the bulk of maritime claims within admiralty jurisdiction. Sub-cl 4(3) involves a substantial extension of existing jurisdiction under CCA, and would bring Australia fully into line with comparable overseas jurisdictions. Particular features of cl 4(3) include the following:

- . inclusion of all claims for loss or damage attributable to ship owners or operators and arising from the operation of a ship (cl 4(3)(d));
- . inclusion of all claims for goods, materials or services supplied or to be supplied to a ship (cl 4(3)(m));
- . inclusion of pollution damage claims (cl 4(3)(q));
- . inclusion of claims for unpaid insurance premiums (cl 4(3)(s));
- . inclusion of claims to enforce arbitral awards arising from maritime claims (cl 4(3)(u));
- . absence of any 'residual clause' including the vague and ill-defined residual jurisdiction of the English Admiralty Court before 1890.

References: Report, para 153--84, 186, 193--5.

Clause 5: Application

1. Sub-cl 5(1) makes it clear that, subject to cl 5(3), the Act extends to all ships and all claims wherever arising. This is a key aspect of admiralty jurisdiction: it is accepted that service of a writ in rem within the jurisdiction confers jurisdiction on the merits wherever the claim arose.

2. Sub-cl 5(2) deals with the temporal application of the Bill. The Bill will be prospective only. Actions already commenced under CCA will be unaffected.

3. Sub-cl 5(3) & (4) deal with claims arising within Australia, ie on inland waters or involving inland waterways vessels. 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)).

References: Report, para 106, 115, 271.

Clause 6: Certain rights not created or affected

The Bill would not create new kinds of maritime liens, nor does it create new causes of action, as distinct from creating new procedures by which existing causes of action may be enforced. That is, the Bill is concerned with procedure and jurisdiction; it does not (with the exception of cl 34, dealing with wrongful arrest) create new substantive rights.

Reference: Report, para 16--17, 80--1, 121.

Clause 7: External Territories

The Act is Australia-wide in scope and extends to each external Territory.

Clause 8: Act to bind Crown

1. Under sub-cl (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 (as distinct from a separate trading corporation owned by the Commonwealth, a State or Territory): sub-cl 8(2), (4). But where in rem proceedings are commenced in good faith without knowledge that the Crown is the owner or demise charterer of the ship or property, cl 8(3) converts them into actions in personam against the relevant person. Clause X will repeal NA s 405A(2) (which presently makes provision to this effect and which cl 8(3) will replace).

Reference: Report, para 199.



PART II -- JURISDICTION IN ADMIRALTY

Clause 9: Admiralty jurisdiction in personam

1. Admiralty jurisdiction in personam with respect to maritime claims is conferred concurrently on the Federal Court and on State and Territory courts within the limits of their respective jurisdictions: cl 9(1)(a), 39.

Reference: Report, para 233--4.

2. In addition, sub-cl 9(1)(b) gives these courts jurisdiction with respect to claims 'for damage done to a ship', an established head of admiralty jurisdiction with respect to which an action in rem is not appropriate.

Reference: Report, para 172; The Eschersheim [1976] 1 All ER 920; UK 1981 s 20(2)(d), 21(4).

3. However it is not appropriate to confer on lower courts general jurisdiction to hear limitation actions (ie actions brought by a ship owner or operator to limit liability under one of the Liability Conventions in force in Australia (eg NA Sch 6; Protection of the Sea (Civil Liability) Act 1981 (Cth) Sch 1: see the definitions in cl 3(1)). Sub-cl 9(2) excludes lower court in personam jurisdiction over limitation actions, but preserves their power to hear a defensive claim to limit liability in proceedings already commenced: cf cl 25(5).

Reference: Report, para 234, 299.

Clause 10: Jurisdiction of superior courts in respect  
of Admiralty actions in rem

The Federal Court and State and Territory Supreme Courts are to have concurrent original jurisdiction with respect to all

proceedings which may be commenced as actions in rem under the Act: see cl 15--19.

Reference: Report, para 230--2, 235--9.

Clause 11: Jurisdiction of other courts in respect  
of Admiralty actions in rem

No inferior or intermediate courts are specifically given in rem jurisdiction. But in particular cases where this is desirable (eg through geographical remoteness or other local circumstances) particular courts may be proclaimed as courts having in rem jurisdiction under the Bill: cl 11(1).

Sub-cl 11(2) & (3) provide for the effect of proclamations under sub-cl 11(1).

Reference: Report, para 240--1.

Clause 12: Jurisdiction in associated matters

It is not clear whether the Judiciary Act 1903 (Cth) s 39 confers federal Admiralty and maritime jurisdiction on State and Territory courts, and in any case it has no application to the Federal Court. Cl 12 confers 'associated' jurisdiction over Admiralty and maritime matters on 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.

Reference: Report, para 72, 195, 227--8, 237.

Clause 13: Restriction to Admiralty and maritime jurisdiction

Cl 13 is a 'severance' clause. In the event that any jurisdiction sought to be conferred by the Bill falls outside the scope of federal jurisdiction under s 76(ii) or (iii) of

the Constitution, that jurisdiction is not conferred, and problems of severance or invalidity are avoided. The limited Australian case law, and the experience of other federal constitutions, suggest that all the jurisdiction conferred by the Bill will in fact fall within s 76(ii) or (iii), but the ambit of s 76(iii) especially has not been explored in Australia, and cl 13 is inserted out of an abundance of caution.

PART III -- RIGHTS TO PROCEED IN ADMIRALTY

Clause 14: Admiralty actions in rem to be commenced  
under this Act

The Bill provides exclusively for in rem actions in Admiralty and maritime jurisdiction in Australia.

Clause 15: Right to proceed in rem on maritime liens, &c

1. Sub-cl 15(1) confers jurisdiction to proceed in rem on a maritime lien or other charge against the ship or property subject to the lien or charge.
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 in sub-cl 15(2) stating the most important liens these days. See also cl 6.

Reference: Report, para 119--23; UK 1981 s 21(3).

Clause 16: 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 or possession, concerning the ship itself. They include the traditional admiralty actions of possession and restraint. The cause of action defines the nexus with the ship, and it is sufficient 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.

Reference: Report, para 132, 149--51, 190--2, 208; UK 1981 s 21(2).

Clause 17: Right to proceed in rem on owner's liabilities

With respect to general maritime claims (see Notes to cl 4(3)) the first case where arrest is proper (under Australian law at present the only case) is where, at the time the action was commenced (as to which see 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) when the cause of action arose.

Reference: Report, para 124--5, 129, 136; UK 1981 s 21(4).

Clause 18: Right to proceed in rem on demise  
charterer's liabilities

Demise charterers are persons in full control of the commercial operation and navigation of a ship: in effect a demise charter is a lease of a ship. Most overseas Acts allow an action in rem to be brought in respect of demise charterers' liabilities at the relevant time, and cl 18 makes provision to the same effect (the requirements parallel those in cl 17 for owner's liabilities). There is no power to proceed in rem against a ship in respect of liabilities of other kinds of charterers (eg time or voyage charterers): cl 18 is confined to the internationally acceptable limit of demise charterer's liabilities.

Reference: Report, para 126--36.

Clause 19: Right to proceed in rem against surrogate ship

Cl 19 will 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. For terminological issues see Notes to sub-cl 3(2), 4(3). A

surrogate ship may be the subject of an action in rem if the relevant person had one of the defined links to the ship in respect of which the claim arose (cl 19(a)) and if the surrogate ship is owned by the relevant person when the action is commenced (cl 19(b)).

Reference: Report, para 202--9; Brussels Conv art 3(1).

Clause 20: Service on and arrest of only one ship

1. Sub-cl 20(1) & (2) prevent service of process within Australia upon more than one ship in a particular proceeding or in respect of a particular claim. Service on a ship in an action in rem establishes the jurisdiction of the court over the merits of the case. The established admiralty rule is that only one ship can be the subject of service (or arrest) in respect of a single claim or proceeding at any time. This does not however prevent subsequent service on another ship if the service on the first ship has been struck out or the proceeding against that ship dismissed or discontinued (eg if the wrong ship has been served), and sub-cl 20(1) & (2) so provide.

2. Sub-cl 20(3) restates the general admiralty rule preventing multiple arrest, in a particular proceeding or in respect of a particular claim. Sub-cl (3) is cumulative upon sub-cl (1) & (2), since a ship cannot be arrested unless it has also been served with process. But arrest of another ship should be possible where the first arrest has been set aside or the ship has broken arrest and custody of it has not been regained, and sub-cl 20(3) so provides.

3. Sub-cl 20(4) allows service on and 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. If the maritime claim is satisfied by the first arrest the lien or charge is extinguished.

Reference: Report, para 210--12; Brussels Conv art 3(3); UK 1981 s 21(8); The Banco [1971] P 137; The Stephan J [1985] 2 Lloyd's Rep 344.

#### Clause 21: Rearrest

Sub-cl 21(1) spells out the court's power to permit the rearrest of a ship previously arrested and released. For example, an undertaking may have been given to obtain the release of the ship: if default occurs on the undertaking rearrest will normally be permitted. The order permitting rearrest may impose appropriate conditions (cl 21(2)).

Reference: Report, para 211.

#### Clause 22: Service and arrest out of jurisdiction

1. The admiralty rule has always been that both service on the res (ie the ship, cargo or freight) and arrest are strictly territorial. NA 1912 s 380(1) provides in rather vague terms for jurisdiction over ships 'lying off' the coast. Cl 22 clarifies and amplifies the present rules, and modifies them in certain limited respects.

2. Sub-cl 22(1) provides for service of process on and arrest of ships or property in Federal Court proceedings anywhere in Australia, including the territorial sea.

3. Sub-cl 22(2) provides for service of process on ships or other property in Supreme Court proceedings. Service may be effected within the State or Territory in question, 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 limited

form of extraterritorial service avoids difficulties, for example where a ship sails just before service is effected, while still maintaining the requirement of some nexus with the State or Territory.

4. Once Supreme Court jurisdiction has been obtained by service on the res under sub-cl 22(2), there is no objection to arrest of the res anywhere within Australia, and sub-cl 22(3) makes provision for this.

5. Sub-cl 22(1)--(3) are subject to sub-cl (4), which restricts service on or arrest of a ship in innocent passage through the territorial sea to claims arising out of the voyage in question, thus implementing the obligation contained in art 20(2) of the Geneva Convention on the Territorial Sea and the Contiguous Zone of 1958 (Seas and Submerged Lands Act 1973 (Cth), Sch 1) to which Australia is a party. Sub-cl (5) (Cth) contains a related definition.

Reference: Report, para 111-14, 236, 239; Geneva Convention on the Territorial Sea and Contiguous Zone 1958 art 20; NA s 380.

Clause 23: Service and Execution of Process Act not to apply

Cl 22 provides exhaustively for interstate service of process on a ship or property and arrest in admiralty. For the avoidance of doubt, cl 23 makes it clear that the Service and Execution of Process Act 1901 (Cth) does not apply to such service or arrest.

Reference: Report, para 236, 239.

Clause 24: Proceeds

The Bill does not define the 'ship or property' which may be the subject of an action in rem: they are sufficiently defined by the law of maritime liens and claims, together with the



definition of maritime claims in cl 4. However the existing admiralty practice whereby the proceeds of sale of a ship or property may be the subject of an action in rem is restated in cl 24.

Reference: Report, para 107, 109--10.

Clause 25: Limitation of liability under Liability Conventions

1. Sub-cl 25(1)--(4) confer concurrent jurisdiction on the Federal Court in respect of limitation actions under the various Liability Conventions (for definition see cl 3(1)), and make necessary ancillary provisions. At present only State and Territory Supreme Courts have such jurisdiction, but the Federal Court as a superior court with admiralty jurisdiction under the Bill should also have power to hear limitation actions.

2. Questions of limitation of liability can arise by way of defence in proceedings commenced in rem or in personam on a maritime claim. Sub-cl 25(5) confers jurisdiction over limitation defences on any court with jurisdiction under the Bill.

Reference: Report, para 234, 299.

Clause 26: Proceedings under Civil Liability Convention

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. Cl 26 implements this restriction as part of Australian law.

Reference: Report, para 175; Protection of the Sea (Civil Liability) Act 1981 (Cth) Sch 1.

PART IV -- TRANSFER AND REMITTAL OF PROCEEDINGS

Clause 27: Transfer

The Bill provides for concurrent jurisdiction of the Federal Court and of State and Territory courts in admiralty, and for co-operation between them in respect of cases which may involve the same ship. Consistently with this, cl 27 allows transfer of cases between courts having jurisdiction under the Bill. A Court with in rem jurisdiction may transfer a case commenced as an action in rem to another such court. A case commenced as an action in personam may be transferred to any court with in personam jurisdiction over the claims in question. See also cl 30 (custody of res, etc).

Reference: Report, para 238.

Clause 28: Remittal

1. Although lower courts will not (apart from cl 11, 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 (eg for personal injuries). Sub-cl 28(1) & (2) allow remittal in such cases: sub-cl 28(3) & (4) allow the remitting court to give appropriate directions, and the lower court may also 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. Under sub-cl 28(5) & (6), 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.

Reference: Report, para 241.

Clause 29: Security in relation to stayed or  
dismissed proceedings

Cl 29 allows a court to retain custody 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, whether in Australia or elsewhere. Alternatively the court may stay or dismiss proceedings on condition that alternative security is provided (sub-cl 29(3)).

Reference: Report, para 187--9; Civil Jurisdiction and Judgments Act 1982 (UK) s 26; SAf s 5(3).

Clause 30: Power to deal with ship or other property

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: sub-cl 30(2)(a). Alternatively that court may, at the time of transfer or remittal or at some later time, by order transfer custody of the res to the other court: sub-cl 30(2)(b) & (3).

Reference: Report, para 238.

PART V -- MISCELLANEOUS

Clause 31: Effect of judgment

This states, for greater certainty and clarity, the position of a defendant who appears in a proceeding commenced in rem. It is settled law that 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 (except as to costs): in such cases the judgment is enforceable by sale of the res itself. The question of equitable orders against such a defendant is left open.

Reference: Report, para 143; The Dictator [1892] P 304; The August 8 [1983] AC 450.

Clause 32: 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 an appropriate order).

Reference: Report, para 152.

Clause 33: Co-ownership disputes

This gives the Court appropriate powers to settle accounts and to sell the ship in co-ownership disputes.

Reference: Report, para 150; UK 1981, s 20(4).

Clause 34: Damages for unjustified arrest. &c

1. Under the present law a party is only liable for damages for unjustified arrest in cases of gross neglect. Substantial loss may be caused by unjustified arrests, although alternative security may have been offered. Cl 34(1) creates a more extensive liability for damages for unjustified arrest of, or unjustified refusal to release, a ship or other property under the Bill. Cl 34 applies only where proceedings are actually commenced under the Bill. 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.

Reference: Report, para 301--4; SAf s 5(4).

2. Sub-cl 34(2) confers jurisdiction on the court in question with respect to claims for damages under cl 34(1).

Clause 35: Priorities: general maritime claims

The Bill does not attempt to spell out the admiralty order of priorities. However it is provided that general maritime claims brought against a ship (some of which may be brought under cl 17 or 18 against the ship concerned, others under cl 19 against the ship as a surrogate ship) rank as they would if all the claims were claims against the 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 19 against a surrogate ship. This issue has not been settled in other jurisdictions where sister ship or associated ship arrest exists. Cl 35 both clarifies the position and establishes the desirable rule for such cases.

Reference: Report, para 256--61.

Clause 36: Statutory powers of detention

Cl 36 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. Cl 36 has no application to penal, administrative or similar powers of detention, eg under customs legislation: it is concerned only with claims which can be brought in admiralty as maritime claims.

Reference: Report, para 263--6; The Queen of the South [1968] P 449.

Clause 37: Limitation periods

1. The present situation with limitation periods (ie time limits for suing) in admiralty is obscure and confused. Sub-cl 37(1) & (2) apply 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 396 for an example of such a time limit) cl 37(1) applies the relevant in personam time limit, or (if none exists) a residual limit of 3 years.
2. Otherwise existing powers to extend time limits are extended to time limits which cl 37(1) applies to admiralty proceedings: cl 37(3). But the presence or absence of the res is not to be taken into account in exercising the discretion to extend time limits: cl 37(4). This has the effect of assimilating admiralty and non-admiralty cases, from the point of view of limitation periods.
3. Consequently, the admiralty doctrine of laches, which has been used to fill the gap created by the absence of statutory time limits, 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 37(1) & (2), combined with limits in the rules on issue and renewal of writs and warrants, are sufficient to deal with problems of delay.

Reference: Report, para 249--55.

Clause 38: Mode of trial

Trial of admiralty actions in rem, limitation proceedings and associated proceedings is to be by judge alone without jury. This reflects the present de facto situation.

Reference: Report, para 294.

Clause 39: Jurisdictional limits

Cl 39 makes it clear that (subject to any constitutional restraints that may exist under s 122 in the case of Territory courts) the only jurisdictional limits applying to State or Territory courts exercising in rem jurisdiction under the Bill are limits as to the amount claimed and as to remedies. For example, lower court venue requirements do not apply, once service is duly effected.

Clause 40: Courts to act in aid of each other

As with other cases of concurrent federal jurisdiction (eg Bankruptcy Act 1966 (Cth) s 29; Family Law Act 1975 (Cth) s 47) courts with jurisdiction under the Bill, and the personnel of those courts, are to act in aid of each other. For example the Marshal of one court may be required under cl 22 to serve or arrest a ship in an action in another State or Territory Supreme Court.

Reference: Report, para 239.

Clause 41: Rules

Uniform rules are an essential part of admiralty jurisdiction, having regard to the procedural issues that frequently arise especially with actions in rem and limitation proceedings. An extensive rule-making power is conferred on the Governor-General, and ancillary provision for the exercise of jurisdiction under the rules is made. The rules are subject to disallowance by either House of the Parliament, in the same way as regulations: cl 41(5).

Reference: Report, para 281--3, Appendix A.

Clause 42: Rules Committee

The uniform admiralty rules to be made under cl 41 will need to be monitored in practice, and modifications may be necessary from time to time. Sub-cl 42(1) provides for a small committee to advise the Attorney-General with respect to the rules and their operation. The rules committee is to include a Supreme Court judge and a Federal Court judge: cl 42(2). The Attorney-General may give the committee directions as to its procedure: cl 42(3).

Reference: Report, para 282.

Clause 43: Regulations

The Governor-General may also make necessary regulations in relation to the Bill.



PART VI -- REPEALS AND AMENDMENTS OF IMPERIAL LEGISLATION

Clause 44: Colonial Courts of Admiralty Act

Cl 44 repeals for Australia the Colonial Courts of Admiralty Act 1890 (UK), on which admiralty jurisdiction in Australia has depended until now. The repeal does not affect cases pending under the 1890 Act.

Reference: Report, para 83, 271.

Clause 45: Repeal of certain Imperial laws

Cl 45 repeals a number of old Imperial Acts which may apply in Australia and which relate to admiralty jurisdiction. To the extent necessary, the Bill makes provision for the matters dealt with in these old Acts.

Reference: Report, para 271.

Clause 46: Merchant Shipping Act

Cl 46 repeals for Australia ss 449 and 472 of the Merchant Shipping Act 1894 (UK). S 449 confers on Colonial Courts of Admiralty jurisdiction with respect to forfeiture of certain dangerous goods carried on board British or foreign ships. S 472 confers on those courts jurisdiction to remove the master of a ship and to appoint a new master. Colonial Courts of Admiralty will cease to exist when the Bill is enacted and comes into force. Moreover adequate provision for forfeiture exists in the Navigation Act 1912 (Cth) and other legislation. The provision for removal of masters is obsolete and should be repealed.

Reference: Report, para 54, 177, 276.

Clause 47: Transitional

Cl 6 applies s 8 of the Acts Interpretation Act 1901 (Cth) to Imperial Acts and provisions repealed by this Bill, thus dealing with transitional matters.

PART VII -- VALIDATION OF CERTAIN PROVISIONS  
OF THE NAVIGATION ACT 1912

Clause 48: Validation

It is possible that certain provisions of the Navigation Act 1912 (Cth) are invalid either because of inconsistency with Imperial legislation applying by paramount force in Australia before 1939 (when the Statute of Westminster 1931 (UK) came into force for Australia), or because legislation affecting the jurisdiction, practice or procedure of Colonial Courts of Admiralty was not reserved for the royal assent in accordance with s 4 of the Colonial Courts of Admiralty Act 1890 (UK) before 1931 when the Statute of Westminster 1931 (UK) removed the need to comply with this formality. However it has been assumed by all concerned that the Navigation Act 1912 is valid despite these possible defects, and it is desirable to confirm this assumption by validating the Act retrospectively (in the same way that the Navigation Regulations were validated by the Navigation Act 1965 (Cth) s 57).

Reference: Report, para 56, 276.

PART VIII -- AMENDMENTS OF THE NAVIGATION ACT 1912

Clauses 49 and 50: Principal Act and Crown bound

These clauses define the application of the amendments made by this Part.

Clause 51: Abolition of defence of common employment

Cl 51 abolishes any residual effect the defence of common employment may have with respect to claims arising at sea.

Reference: Report, para 276.

Clause 52: Jurisdiction as to wages

Cl 52 amends s 91 of the Navigation Act 1912 (Cth), which confers a statutory jurisdiction as to wages, by deleting the redundant reference to 'any Court having Admiralty jurisdiction'.

Reference: Report, para 163.

Clause 53: Compensation for loss occasioned by  
improper use of signals

Claims for compensation under s 230 of the Navigation Act 1912 (Cth) can be brought in any court of competent jurisdiction: the reference to admiralty jurisdiction in salvage in s 230(2) is unnecessary and should be repealed.

Reference: Report, para 155.

Clause 54: Forfeiture of dangerous goods

Under the Bill, forfeiture, which is essentially penal in character, will no longer be part of admiralty jurisdiction. Cl 54 amends s 252 of the Navigation Act 1912 (Cth) to confer forfeiture jurisdiction on State and Territory Supreme Courts, rather than on courts with admiralty jurisdiction.

Reference: Report, para 177.

Clause 55: Repeals

Cl 55 repeals miscellaneous provisions of the Navigation Act 1912 (Cth) so as to make that Act consistent with the distribution of civil jurisdiction in admiralty brought about by the Bill, and to remove certain obsolete provisions.

Reference: Report, para 155, 163, 177, 276.

Clause 56: Limitation of actions

Cl 56 removes the reference to the lack of reasonable opportunity to arrest a ship as a ground for an extension of time under s 396(3) of the Navigation Act 1912 (Cth). This is consistent with the provision for time limits in admiralty actions embodied in cl 37.

Reference: Report, para 249--55.

Clause 57: Proceedings against the Crown

Provision for actions in admiralty against the Crown is made in cl 8 of the Bill, and s 405A(2) of the Navigation Act 1912 (Cth), which deals with such actions, should accordingly be repealed.

Reference: Report, para 199.

PART IX -- AMENDMENT OF THE SHIPPING REGISTRATION ACT 1981

Clauses 58 and 59 -- Repeal of s 94A

S 94A of the Shipping Registration Act 1891 made transitional provision for the exercise of admiralty jurisdiction over mortgages registered under that Act. With the passage of the Bill, s 94A will become redundant and should be repealed.

Reference: Report, para 152.







