



Admiralty Act 1988

No. 34 of 1988

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Admiralty Act 1988

No. 34 of 1988

An Act relating to Admiralty and maritime jurisdiction

[Assented to 22 May 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Admiralty Act 1988*.

Commencement

2. This Act commences on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears:
“Australia”, when used in a geographical sense, includes each external Territory;
“Civil Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage done at Brussels on

29 November 1969 (a copy of the English text of which is set out in Schedule 1 to the *Protection of the Sea (Civil Liability) Act 1981*), as amended by:

- (a) until the commencement of Part IV of the *Protection of the Sea Legislation Amendment Act 1986*—the Protocol to that Convention done at London on 19 November 1976 (a copy of the English text of which is set out in Schedule 2 of the *Protection of the Sea (Civil Liability) Act 1981*); or
- (b) on and after the commencement of that Part—the Protocol to that Convention done at London on 25 May 1984 (a copy of the English text of which is set out in Schedule 2 to the *Protection of the Sea (Civil Liability) Act 1981* as amended by that Part);

“commencement”, in relation to a proceeding, has the meaning given by subsection (2);

“costs and expenses”, in relation to the Marshal, has the meaning given by subsection (5);

“entering appearance” has the meaning given by subsection (4);

“Federal Court” means the Federal Court of Australia;

“foreign ship” means a ship that is not registered, and is not permitted to be registered, under the *Shipping Registration Act 1981*;

“freight” includes passage money and hire;

“goods”, in relation to a ship, has the meaning given by subsection (3);

“hovercraft” means an air-cushion vehicle, or a similar vehicle, used wholly or principally in navigation by water;

“initiating process” includes a third party notice;

“inland waters” means waters within Australia other than waters of the sea;

“inland waterways vessel” means a vessel used or intended to be used wholly on inland waters;

“Liability Convention” means:

- (a) the Civil Liability Convention;
- (b) the Limitation Convention; or
- (c) any other international convention that is in force in relation to Australia and makes provision with respect to the limitation of liability in relation to maritime claims;

“Limitation Convention” means:

- (a) the International Convention relating to the limitation of the liability of owners of sea-going ships done at Brussels on 10 October 1957, a copy of the English text of which is set out in Schedule 6 to the *Navigation Act 1912*; and
- (b) the Protocol amending the International Convention relating to the limitation of the liability of owners of sea-going ships done at Brussels on 10 October 1957, being the Protocol done

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at Brussels on 21 December 1979, a copy of the English text of which is set out in Schedule 6A to the *Navigation Act 1912*;

“limitation proceeding” means a proceeding under:

- (a) section 25 of this Act;
- (b) section 335 of the *Navigation Act 1912*; or
- (c) section 10 of the *Protection of the Sea (Civil Liability) Act 1981*;

“maritime claim”, “general maritime claim” and “proprietary maritime claim” have the meanings given by section 4;

“master”, in relation to a ship, means a person who has command or charge of the ship;

“member of the crew”, in relation to a ship, means a person employed or engaged in any capacity on board the ship on the business of the ship, other than:

- (a) the master of the ship;
- (b) a person who has the conduct of the ship as the pilot of the ship; or
- (c) a person temporarily employed on the ship in port;

“mortgage”, in relation to a ship or a share in a ship, includes a hypothecation or pledge of, and a charge on, the ship or share, whether at law or in equity and whether arising under the law in force in a part of Australia or elsewhere;

“relevant person”, in relation to a maritime claim, means a person who would be liable on the claim in a proceeding commenced as an action *in personam*;

“sea” includes all waters within the ebb and flow of the tide;

“ship” means a vessel of any kind used or constructed for use in navigation by water, however it is propelled or moved, and includes:

- (a) a barge, lighter or other floating vessel;
- (b) a hovercraft;
- (c) an off-shore industry mobile unit within the meaning of the *Navigation Act 1912*; and
- (d) a vessel that has sunk or is stranded and the remains of such a vessel;

but does not include:

- (e) a seaplane;
- (f) an inland waterways vessel; or
- (g) a vessel under construction that has not been launched;

“surrogate ship” has the meaning given by subsection (6);

“this Act” includes the regulations and the Rules made under this Act.

(2) A reference in this Act to the time when a proceeding is commenced is a reference to the time when the initiating process in relation to the proceeding is filed in, or issued by, a court.

(3) A reference in this Act to goods, in relation to a ship, includes a reference to the baggage and other possessions of a person who is on the ship, being baggage and possessions that are being carried or are to be carried on the ship.

(4) A reference in this Act to the entering of appearance includes a reference to any similar procedure.

(5) A reference in this Act to the costs and expenses of the Marshal includes a reference to the amounts payable to a person acting in accordance with the Rules as a Marshal of a court.

(6) For the purposes of this Act, where:

- (a) a proceeding on a maritime claim may be commenced against a ship under a provision of this Act (other than section 19); and
- (b) under section 19, a proceeding on the claim may be commenced against some other ship;

the other ship is, in relation to the claim, a surrogate ship.

Maritime claims

4. (1) A reference in this Act to a maritime claim is a reference to a proprietary maritime claim or a general maritime claim.

(2) A reference in this Act to a proprietary maritime claim is a reference to:

- (a) a claim relating to:
 - (i) possession of a ship;
 - (ii) title to, or ownership of, a ship or a share in a ship;
 - (iii) a mortgage of a ship or of a share in a ship; or
 - (iv) a mortgage of a ship's freight;
- (b) a claim between co-owners of a ship relating to the possession, ownership, operation or earnings of the ship;
- (c) a claim for the satisfaction or enforcement of a judgment given by a court (including a court of a foreign country) against a ship or other property in a proceeding *in rem* in the nature of a proceeding in Admiralty; or
- (d) a claim for interest in respect of a claim referred to in paragraph (a), (b) or (c).

(3) A reference in this Act to a general maritime claim is a reference to:

- (a) a claim for damage done by a ship (whether by collision or otherwise);
- (b) a claim in respect of the liability of the owner of a ship arising under Part II or IV of the *Protection of the Sea (Civil Liability)*

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Act 1981 or under a law of a State or Territory that makes provision as mentioned in subsection 7 (1) of that Act;

- (c) a claim for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship;
- (d) a claim (including a claim for loss of life or personal injury) arising out of an act or omission of:
 - (i) the owner or charterer of a ship;
 - (ii) a person in possession or control of a ship; or
 - (iii) a person for whose wrongful acts or omissions the owner, charterer or person in possession or control of a ship is liable; being an act or omission in the navigation or management of the ship, including an act or omission in connection with:
 - (iv) the loading of goods on to, or the unloading of goods from, the ship;
 - (v) the embarkation of persons on to, or the disembarkation of persons from, the ship; and
 - (vi) the carriage of goods or persons on the ship;
- (e) a claim for loss of, or damage to, goods carried by a ship;
- (f) a claim arising out of an agreement that relates to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charterparty or otherwise;
- (g) a claim relating to salvage (including life salvage and salvage of cargo or wreck found on land);
- (h) a claim in respect of general average;
- (j) a claim in respect of towage of a ship;
- (k) a claim in respect of pilotage of a ship;
- (m) a claim in respect of goods, materials or services (including stevedoring and lighterage services) supplied or to be supplied to a ship for its operation or maintenance;
- (n) a claim in respect of the construction of a ship (including such a claim relating to a vessel before it was launched);
- (o) a claim in respect of the alteration, repair or equipping of a ship;
- (p) a claim in respect of a liability for port, harbour, canal or light tolls, charges or dues, or tolls, charges or dues of a similar kind, in relation to a ship;
- (q) a claim in respect of a levy in relation to a ship, including a shipping levy imposed by the *Protection of the Sea (Shipping Levy) Act 1981*, being a levy in relation to which a power to detain the ship is conferred by a law in force in Australia or in a part of Australia;
- (r) a claim by a master, shipper, charterer or agent in respect of disbursements on account of a ship;

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- (s) a claim for an insurance premium, or for a mutual insurance call, in relation to a ship;
- (t) a claim by a master, or a member of the crew, of a ship for:
 - (i) wages; or
 - (ii) an amount that a person, as employer, is under an obligation to pay to a person as employee, whether the obligation arose out of the contract of employment or by operation of law, including the operation of the law of a foreign country;
- (u) a claim for the enforcement of, or a claim arising out of, an arbitral award (including a foreign award within the meaning of the *Arbitration (Foreign Awards and Agreements) Act 1974*) made in respect of a proprietary maritime claim or a claim referred to in one of the preceding paragraphs;
- (w) a claim for interest in respect of a claim referred to in one of the preceding paragraphs.

Application

5. (1) Subject to the succeeding provisions of this section, this Act applies in relation to:

- (a) all ships, irrespective of the places of residence or domicile of their owners; and
- (b) all maritime claims, wherever arising.

(2) This Act does not apply in relation to a proceeding commenced before the commencement of this Act.

(3) This Act does not apply in relation to a cause of action that arose:

- (a) in respect of an inland waterways vessel; or
- (b) in respect of the use or intended use of a ship on inland waters.

(4) Paragraph (3) (b) does not have effect in relation to a cause of action if, at the time when the cause of action arose, the ship concerned was a foreign ship.

Certain rights not created or affected

6. The provisions of this Act (other than section 34) do not have effect to create:

- (a) a new maritime lien or other charge; or
- (b) a cause of action that would not have existed if this Act had not been passed.

External Territories

7. This Act extends to each external Territory.

Act to bind Crown

8. (1) This Act binds the Crown in all its capacities.

(2) This Act does not authorise:

- (a) a proceeding to be commenced as an action *in rem* against a government ship or government property; or
- (b) the arrest, detention or sale of a government ship or government property.

(3) Where a proceeding has been commenced as an action *in rem* against a government ship or government property, the court may, if it is satisfied that the proceeding was so commenced in the reasonable belief that the ship was not a government ship, or the property was not government property:

- (a) order that the proceeding be treated as though it were a proceeding commenced as an action *in personam* on the claim against a person specified as defendant in the order; and
- (b) make such consequential orders as are necessary.

(4) In this section:

“government” means the Commonwealth, a State, the Northern Territory or the Administration of Norfolk Island;

“government property” means cargo or other property that belongs to a government, but does not include cargo or other property that belongs to a trading corporation that is an agency of a government;

“government ship” means a ship that belongs, or is for the time being demised or sub-demised, to a government (including such a ship used by or in connection with a part of the Defence Force), but does not include a ship that belongs, or is for the time being demised or sub-demised, to a trading corporation that is an agency of a government.

PART II—JURISDICTION IN ADMIRALTY

Admiralty jurisdiction *in personam*

9. (1) Jurisdiction is conferred on the Federal Court and on the courts of the Territories, and the courts of the States are invested with federal jurisdiction, in respect of proceedings commenced as actions *in personam*:

- (a) on a maritime claim; or
- (b) on a claim for damage done to a ship.

(2) Subsection (1) does not confer on a court other than the Federal Court or a Supreme Court of a Territory, or invest a court of a State other than the Supreme Court of a State with, jurisdiction in respect of limitation proceedings.

Jurisdiction of superior courts in respect of Admiralty actions *in rem*

10. Jurisdiction is conferred on the Federal Court and on the Supreme Courts of the Territories, and the Supreme Courts of the States are invested with federal jurisdiction, in respect of proceedings that may, under this Act, be commenced as actions *in rem*.

Jurisdiction of other courts in respect of Admiralty actions *in rem*

11. (1) The Governor-General may by Proclamation declare a court of a State or of a Territory to be a court to which this section applies.

(2) Subject to any condition or limitation (whether as to locality, subject-matter or otherwise) specified in the Proclamation, a court of a State to which this section applies is invested with federal jurisdiction, and jurisdiction is conferred on a court of a Territory to which this section applies, in respect of proceedings that may, under this Act, be commenced as actions *in rem*.

(3) Where a Proclamation has been varied or rescinded, the variation or rescission does not deprive a court of jurisdiction to hear and determine a proceeding that was pending in the court at the time of the variation or rescission.

Jurisdiction in associated matters

12. The jurisdiction that a court has under this Act extends to jurisdiction in respect of a matter of Admiralty and maritime jurisdiction not otherwise within its jurisdiction that is associated with a matter in which the jurisdiction of the court under this Act is invoked.

Restriction to Admiralty and maritime jurisdiction

13. This Act does not confer jurisdiction on a court, or invest a court with jurisdiction, in a matter that is not of a kind mentioned in paragraph 76 (ii) or (iii) of the Constitution.

PART III—RIGHTS TO PROCEED IN ADMIRALTY

Admiralty actions *in rem* to be commenced under this Act

14. In a matter of Admiralty or maritime jurisdiction, a proceeding shall not be commenced as an action *in rem* against a ship or other property except as provided by this Act.

Right to proceed *in rem* on maritime liens etc.

15. (1) A proceeding on a maritime lien or other charge in respect of a ship or other property subject to the lien or charge may be commenced as an action *in rem* against the ship or property.

(2) A reference in subsection (1) to a maritime lien includes a reference to a lien for:

- (a) salvage;

- (b) damage done by a ship;
- (c) wages of the master, or of a member of the crew, of a ship; or
- (d) master's disbursements.

Right to proceed *in rem* on proprietary maritime claims

16. A proceeding on a proprietary maritime claim concerning a ship or other property may be commenced as an action *in rem* against the ship or property.

Right to proceed *in rem* on owner's liabilities

17. Where, in relation to a general maritime claim concerning a ship or other property, a relevant person:

- (a) was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship or property; and
- (b) is, when the proceeding is commenced, the owner of the ship or property;

a proceeding on the claim may be commenced as an action *in rem* against the ship or property.

Right to proceed *in rem* on demise charterer's liabilities

18. Where, in relation to a maritime claim concerning a ship, a relevant person:

- (a) was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship; and
- (b) is, when the proceeding is commenced, a demise charterer of the ship;

a proceeding on the claim may be commenced as an action *in rem* against the ship.

Right to proceed *in rem* against surrogate ship

19. A proceeding on a general maritime claim concerning a ship may be commenced as an action *in rem* against some other ship if:

- (a) a relevant person in relation to the claim was, when the cause of action arose, the owner or charterer of, or in possession or control of, the first-mentioned ship; and
- (b) that person is, when the proceeding is commenced, the owner of the second-mentioned ship.

Service on and arrest of only one ship

20. (1) Where service of initiating process in a proceeding commenced as mentioned in section 15, 17, 18 or 19 has been effected on a ship, service of initiating process in the proceeding shall not be effected on any other ship unless the service on the first-mentioned ship has been set aside or the proceeding, so far as it relates to that ship, has been discontinued, dismissed or struck out.

(2) Where service of initiating process in a proceeding commenced as mentioned in section 15, 17, 18 or 19 has been effected on a ship, service of initiating process in some other proceeding on the same claim commenced as mentioned in any of those sections shall not be effected on any other ship unless the first-mentioned proceeding has been discontinued, dismissed or struck out.

(3) Where a ship has been arrested in a proceeding commenced as mentioned in section 15, 17, 18 or 19, no other ship shall be arrested in the proceeding unless the first-mentioned ship:

- (a) was invalidly arrested and has been released from arrest; or
- (b) was unlawfully removed from the custody of the Marshal and the Marshal has not regained custody of the ship.

(4) Where:

- (a) a person has a claim that is both:
 - (i) a claim on a maritime lien or other charge; and
 - (ii) a general maritime claim;in respect of a ship; and
- (b) the person has commenced a proceeding under section 19 against a surrogate ship;

subsection (3) does not prevent the arrest of the first-mentioned ship in a proceeding on the maritime lien or other charge if the amount recovered by the person in the proceeding commenced under section 19 is less than the amount of the claim on the maritime lien or other charge.

Re-arrest

21. (1) A ship or other property arrested in a proceeding on a maritime claim may not be re-arrested in the proceeding in relation to the claim unless the court so orders, whether because default has been made in the performance of a guarantee or undertaking given to procure the release of the ship or property from the earlier arrest or for some other sufficient reason.

(2) An order under subsection (1) may be made subject to such conditions as are just.

Service and arrest out of jurisdiction

22. (1) Subject to subsection (4):

- (a) initiating process in a proceeding commenced as an action *in rem* in the Federal Court may be served on a ship or other property; and
- (b) a ship or other property may be arrested in such a proceeding; at any place within Australia, including a place within the limits of the territorial sea of Australia.

(2) Subject to subsection (4), initiating process in a proceeding commenced as an action *in rem* in a court of a State or a Territory may be served on a ship or other property:

- (a) if, at a time when the process was effective for service, the ship or property was within the locality within which the court may exercise jurisdiction—at any place within Australia, including a place within the limits of the territorial sea of Australia; or
- (b) in any case—at any place within the State or Territory, including a place within the limits of the territorial sea of Australia that is adjacent to the State or Territory.

(3) Subject to subsection (4), in a proceeding commenced as an action *in rem* in a court of a State or Territory, a ship or other property may be arrested at any place within Australia, including a place within the limits of the territorial sea of Australia.

(4) Where the arrest of a foreign ship, or of cargo on board a foreign ship, would be inconsistent with a right of innocent passage that is being exercised by the ship, this Act does not authorise the service of process on the ship or the arrest of the ship or cargo.

(5) In this section:

“innocent passage” has the meaning it has under the Convention on the Territorial Sea and the Contiguous Zone done at Geneva on 29 April 1958, a copy of the English text of which is set out in Schedule 1 to the *Seas and Submerged Lands Act 1973*.

Service and Execution of Process Act not to apply

23. The *Service and Execution of Process Act 1901* does not apply to the service of initiating process on, or the arrest of, a ship or other property under this Act.

Proceeds

24. Where, but for the sale of a ship or other property under this Act, a proceeding could have been commenced as an action *in rem* against the ship or property, the proceeding may be commenced as an action *in rem* against the proceeds of the sale that have been paid into a court under this Act.

Limitation of liability under Liability Conventions

25. (1) A person who apprehends that a claim for compensation under a law (including a law of a State or a Territory) that gives effect to provisions of a Liability Convention may be made against the person by some other person may apply to the Federal Court to determine the question whether the liability of the first-mentioned person in respect of the claim may be limited under that law.

(2) Subsection (1) does not affect the jurisdiction of any other court.

(3) On an application under subsection (1), the Federal Court may, in accordance with the law referred to in that subsection:

- (a) determine whether the applicant's liability may be so limited and, if it may be so limited, determine the limit of that liability;
- (b) order the constitution of a limitation fund for the payment of claims in respect of which the applicant is entitled to limit his or her liability; and
- (c) make such orders as are just with respect to the administration and distribution of that fund.

(4) Where a court has jurisdiction under this Act in respect of a proceeding, that jurisdiction extends to entertaining a defence in the proceeding by way of limitation of liability under a law that gives effect to provisions of a Liability Convention.

Proceedings under Civil Liability Convention

26. A proceeding under this Act on a maritime claim referred to in paragraph 4 (3) (b) shall not be brought otherwise than in accordance with paragraphs 1 and 3 of Article IX of the Civil Liability Convention, whether or not the proceeding also relates to a maritime claim or to a maritime lien or other charge.

PART IV—TRANSFER AND REMITTAL OF PROCEEDINGS

Transfer

27. (1) Where a proceeding commenced under this Act is pending in the Federal Court, in the Supreme Court of a State or Territory or in a court of a State or Territory exercising jurisdiction under section 11, the court (in this section called the "first court") may, at any stage of the proceeding, upon application or on its own motion, by order, transfer the proceeding to some other court that has jurisdiction under this Act with respect to the subject-matter of the claim (in this section called the "second court").

(2) Subsection (1) does not authorise the transfer of a proceeding commenced as an action *in rem* to a court that does not, apart from the operation of subsection 28 (7), have jurisdiction in respect of proceedings so commenced.

(3) Where a proceeding has been so transferred, the second court shall proceed as if:

- (a) the proceeding had been commenced in that court;
- (b) the same or similar steps in the proceeding had been taken in that court as were taken in the first court; and
- (c) the orders and directions made by the first court in the proceeding had been made by the second court.

Remittal

28. (1) Where a proceeding commenced under this Act as an action *in rem* against a ship or other property is pending in the Federal Court or in the Supreme Court of a State, the court may, at any stage of the proceeding, upon application or on its own motion, remit the proceeding for hearing to:

- (a) a court of a State; or
- (b) if service of the initiating process was effected on the ship or property in a Territory—a court of that Territory;

being a court that would have had jurisdiction in respect of the proceeding if:

- (c) the proceeding had been commenced in that court as an action *in personam*; and
- (d) service of initiating process in that proceeding had been effected within the locality within which that court may exercise jurisdiction.

(2) Where a proceeding commenced under this Act as an action *in rem* is pending in the Supreme Court of a Territory, the court may, at any stage of the proceeding, upon application or on its own motion, remit the proceeding for hearing to some other court of the Territory that would have had jurisdiction in respect of the proceeding if:

- (a) the proceeding had been commenced in that court as an action *in personam*; and
- (b) service of initiating process in that proceeding had been effected in that Territory.

(3) The court from which the proceeding is remitted (in this section called the “first court”) may give such orders or directions as are appropriate in relation to the further steps to be taken in the proceeding and, subject to any such orders and directions, the court to which the proceeding is remitted (in this section called the “second court”) may give orders and directions of a similar kind.

(4) Subject to any orders and directions given under subsection (3), the second court shall proceed as if:

- (a) the proceeding had been commenced in that court;
- (b) the same or similar steps in the proceeding had been taken in the second court as were taken in the first court; and
- (c) the orders and directions made by the first court in the proceeding had been made by the second court.

(5) The first court shall give effect to a judgment or order given in the proceeding, being a judgment or order that finally disposes of the proceeding, as though that judgment or order were a judgment or order of that court in the proceeding.

(6) Subsection (5) does not affect:

- (a) a right of appeal that a party to the proceeding has; or
- (b) the power of a court to stay execution pending an appeal.

(7) The second court is invested with federal jurisdiction, or, if that court is a court of a Territory, jurisdiction is conferred on that court, in respect of the proceeding.

Security in relation to stayed or dismissed proceedings

29. (1) Where:

- (a) it appears to the court in which a proceeding commenced under this Act is pending that the proceeding should be stayed or dismissed on the ground that the claim concerned should be determined by arbitration (whether in Australia or elsewhere) or by a court of a foreign country; and
- (b) a ship or other property is under arrest in the proceeding;

the court may order that the proceeding be stayed on condition that the ship or property be retained by the court as security for the satisfaction of any award or judgment that may be made in the arbitration or in a proceeding in the court of the foreign country.

(2) Subsection (1) does not limit any other power of the court.

(3) The power of the court to stay or dismiss a proceeding includes power to do so on such conditions as are just, including a condition:

- (a) with respect to the institution or prosecution of the arbitration or proceeding in the court of the foreign country; and
- (b) that equivalent security be provided for the satisfaction of any award or judgment that may be made in the arbitration or in the proceeding in the court of the foreign country.

(4) Where a court has made an order under subsection (1) or (3), the court may make such interim or supplementary orders as are appropriate in relation to the ship or property for the purpose of preserving:

- (a) the ship or property; or
- (b) the rights of a party or of a person interested in the ship or property.

(5) Where:

- (a) a ship or other property is under arrest in a proceeding;
- (b) an award or judgment as mentioned in subsection (1) has been made in favour of a party; and
- (c) apart from this section, the award or judgment is enforceable in Australia;

then, in addition to any other proceeding that may be taken by the party to enforce the award or judgment, the party may apply to the court in the stayed proceeding for an appropriate order in relation to the ship or property to give effect to the award or judgment.

Power to deal with ship or other property

30. (1) This section applies where:

(a) a proceeding has been transferred or remitted under the preceding provisions of this Part; and

(b) a ship or other property is under arrest in the proceeding.

(2) The court from which the proceeding was transferred or remitted:

(a) may deal with the ship or property as though it were under arrest in a proceeding that had not been so transferred or remitted; and

(b) may make such orders as are necessary or convenient for transferring the custody of the ship or property to the court to which the proceeding has been so transferred or remitted.

(3) Notwithstanding any other provision of this Act, an order made under subsection (2) has effect according to its tenor.

(4) Where a court has made an order under paragraph (2) (b), the court to which the proceeding has been transferred or remitted has the same powers in relation to the ship or property as it has in relation to a ship or other property under arrest in a proceeding commenced in that court.

PART V—MISCELLANEOUS

Effect of judgment

31. (1) Where judgment is given for the plaintiff in a proceeding on a maritime claim commenced as an action *in rem* against a ship or other property, the extent to which a defendant in the proceeding who has entered an appearance and is a relevant person in relation to the claim is personally liable on the judgment is not limited by the value of the ship or property.

(2) Where judgment is given for the plaintiff in a proceeding on a maritime claim commenced as an action *in rem* against a ship or other property, a defendant in the proceeding who has entered an appearance and is not a relevant person in relation to the claim is not personally liable on the judgment for the payment of money in respect of the claim except so far as the judgment is for costs against that defendant.

(3) Subsection (2) does not prevent the sale, under this Act, of a ship or other property that is under arrest in a proceeding.

Powers of Federal Court in relation to register

32. In a proceeding in the Federal Court on a proprietary maritime claim, the orders that the court may make include orders of the kind that a court may make under section 59 of the *Shipping Registration Act 1981*.

Co-ownership disputes

33. In a proceeding on a maritime claim between co-owners of a ship relating to the possession, ownership, operation or earnings of the ship, the orders that the court may make include:

- (a) orders for the settlement of accounts outstanding and unsettled; and
- (b) an order directing that the ship, or a share in the ship, be sold.

Damages for unjustified arrest etc.

34. (1) Where, in relation to a proceeding commenced under this Act:

- (a) a party unreasonably and without good cause:
 - (i) demands excessive security in relation to the proceeding; or
 - (ii) obtains the arrest of a ship or other property under this Act;or
- (b) a party or other person unreasonably and without good cause fails to give a consent required under this Act for the release from arrest of a ship or other property;

the party or person is liable in damages to a party to the proceeding, or to a person who has an interest in the ship or property, being a party or person who has suffered loss or damage as a direct result.

(2) The jurisdiction of a court in which a proceeding was commenced under this Act extends to determining a claim arising under subsection (1) in relation to the proceeding.

Priorities: general maritime claims

35. (1) Where:

- (a) a proceeding in respect of a general maritime claim concerning a ship has been commenced under this Act against a surrogate ship; or
- (b) in relation to a proceeding commenced under this Act concerning a ship, a surrogate ship has been arrested;

the order in which general maritime claims against both the ships shall be paid out of the proceeds of the sale of the surrogate ship shall be determined as if all the claims were general maritime claims against the surrogate ship.

(2) Subsection (1) applies notwithstanding any other law, including a law of a State or Territory.

Statutory powers of detention

36. (1) This section applies where:

- (a) a law other than this Act (including a law of a State or Territory) confers on a person a power to detain a ship in relation to a civil claim; and
- (b) a proceeding on the civil claim may be commenced as an action *in rem* against the ship.

(2) Where the ship is under arrest under this Act, the power to detain the ship shall not be exercised.

(3) The exercise of the power to detain the ship does not prevent the arrest of the ship under this Act.

(4) Where a ship that has been detained under such a power is arrested under this Act, then, by force of this subsection, the detention is suspended for so long as the ship is under arrest.

(5) Where a ship that has been detained, or would, but for subsection (2), be liable to be detained, under such a power is arrested and sold under this Act, the civil claim is, unless the court otherwise directs, payable in priority to any claim against the ship other than the claim of a Marshal for expenses.

Limitation periods

37. (1) A proceeding may be brought under this Act on a maritime claim, or on a claim on a maritime lien or other charge, at any time before the end of:

- (a) the limitation period that would have been applicable in relation to the claim if a proceeding on the claim had been brought otherwise than under this Act; or
- (b) if no proceeding on the claim could have been so brought—a period of 3 years after the cause of action arose.

(2) Subsection (1) does not apply if a limitation period is fixed in relation to the claim by an Act, an Imperial Act, an Act of a State or an Act or Ordinance of a Territory, including such an Act or Ordinance in its application in a part of Australia.

(3) Where:

- (a) but for this subsection, a court would not have power to extend a limitation period in respect of a maritime claim or a claim of a particular kind on a maritime lien or other charge; and
- (b) the court has power to extend a limitation period in respect of a claim of the same kind;

then, by force of this subsection, the court has power, exercisable in the same way, and in the same kinds of circumstances, as the power referred to in paragraph (b), to extend the period fixed by subsection (1) in respect of maritime claims, or claims on maritime liens or other charges, of a kind referred to in that subsection.

(4) The absence of the ship or property concerned from the locality in which the court may exercise jurisdiction shall not be taken into account in relation to the exercise of the power conferred by subsection (3).

(5) The law relating to laches does not apply in relation to a claim brought within a period fixed by or under this section.

Mode of trial

38. A proceeding under this Act commenced as an action *in rem*, a limitation proceeding and a proceeding under this Act that is associated with either shall be tried without a jury.

Jurisdictional limits

39. (1) Subject to any Proclamation made under subsection 11 (2), where a court of a State is invested with jurisdiction in relation to a proceeding commenced as an action *in rem*, or such jurisdiction is conferred on a court of a Territory, by or under this Act, then:

- (a) in the case of a court of a State—the court is invested with the jurisdiction within the limits of the jurisdiction of that court as to the amount claimed and as to remedies, but not otherwise; and
- (b) in the case of a court of a Territory—the jurisdiction is conferred on the court only so far as the Constitution permits and within the limits of the jurisdiction of that court as to the amount claimed, as to locality and as to remedies, but not otherwise.

(2) Where a court of a State is invested with jurisdiction in relation to a proceeding commenced under section 9 or such jurisdiction is conferred on a court of a Territory, the jurisdiction is invested or conferred within the limits of the jurisdiction of the court concerned and, in the case of a court of a Territory, only so far as the Constitution permits.

(3) Section 15C of the *Acts Interpretation Act 1901* does not apply in relation to proceedings to which this section applies.

Courts to act in aid of each other

40. All courts having jurisdiction under this Act, the judges of those courts and the officers of or under the control of those courts shall severally act in aid of, and be auxiliary to, each other in all matters arising under this Act.

Rules

41. (1) The Governor-General may make Rules, not inconsistent with this Act, making provision in relation to the practice and procedure to be followed in courts exercising jurisdiction under this Act and matters incidental to such practice and procedure.

- (2) In particular, the Rules may make provision in relation to:
- (a) pleading;
 - (b) parties;
 - (c) appearance;
 - (d) the service and execution of process;
 - (e) bail;
 - (f) caveats against arrest or release of ships and other property;
 - (g) the arrest, custody and sale of ships and other property;
 - (h) the furnishing of security;
 - (j) the forms to be used;
 - (k) records and registers and inspections of those records and registers;
 - (m) limitation proceedings, including:
 - (i) the parties to those proceedings; and

- (ii) the operation of determinations made in those proceedings;
 - (n) evidence; and
 - (o) enforcement and satisfaction of judgments of courts in matters under this Act.
- (3) The Rules may prescribe penalties for offences against the Rules not exceeding:
- (a) if the defendant is a natural person—a fine of \$1,000; or
 - (b) if the defendant is a corporation—a fine of \$5,000.
- (4) Jurisdiction is conferred on the Federal Court and on the courts of the Territories, and the courts of the States are invested with federal jurisdiction, in respect of matters arising under the Rules.
- (5) Part XII of the *Acts Interpretation Act 1901* applies in relation to Rules made under this section as it applies in relation to regulations.

Rules Committee

42. (1) The Attorney-General shall constitute a committee consisting of not more than 7 persons to advise the Attorney-General with respect to the Rules and shall appoint a member of the committee to preside at meetings of the committee.
- (2) The members of the committee shall include a Judge of the Supreme Court of a State or Territory and a Judge of the Federal Court.
- (3) Subject to the directions, if any, of the Attorney-General, the procedure of the committee shall be as the committee determines.

Regulations

43. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART VI—REPEALS AND AMENDMENTS OF IMPERIAL LEGISLATION

Colonial Courts of Admiralty Act

44. (1) The Imperial Act known as the Colonial Courts of Admiralty Act, 1890, as amended and in force at the date of commencement of this Act, is repealed so far as it is part of the law of the Commonwealth or of an external Territory.
- (2) The repeal effected by subsection (1) does not affect a proceeding under the Colonial Courts of Admiralty Act, 1890 commenced but not finally determined before the commencement of this Act.

Repeal of certain Imperial laws

45. The Imperial Acts specified in the following Table are repealed to the extent set out in the Table so far as they are part of the law of the Commonwealth or of an external Territory:

<i>Reign and chapter</i>	<i>Citation or description</i>	<i>Extent of repeal</i>
13 Richard II, Statutes I, chapter 5	Jurisdiction of the Admiral and his Deputy	The whole
15 Richard II, chapter 3	Jurisdiction of the Admiral	The whole
17 Edward II, chapter 13	<i>Prerogativa Regis</i>	The paragraph commencing "Also the King shall have Wreck"
2 Henry IV, chapter 11	Statute of 13 Richard II, Statutes 1, chapter 5 as to the Admiral's Jurisdiction confirmed	The whole
2 William and Mary, Session 2, chapter 2	Admiralty Act, 1690	The whole

Merchant Shipping Act

46. Sections 449 and 472 of the Imperial Act known as the Merchant Shipping Act, 1894, as amended and in force at the date of commencement of this Act, are repealed so far as they are part of the law of the Commonwealth or of an external Territory.

Transitional

47. The application of section 8 of the *Acts Interpretation Act 1901* extends to an Imperial Act, and a provision of an Imperial Act, repealed by this Part as though it were an Act of the Parliament, or a provision of an Act of the Parliament, repealed by this Part.

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

Validation

48. (1) No provision of the *Navigation Act 1912* is invalid, or shall be taken to have been at any time invalid, because of:

- (a) its inconsistency with an Imperial Act; or
- (b) a failure to comply with section 4 of the Imperial Act known as the Colonial Courts of Admiralty Act, 1890.

(2) This section binds the Crown in all its capacities.

PART VIII—AMENDMENTS OF THE NAVIGATION ACT 1912

Principal Act

49. In this Part, "Principal Act" means the *Navigation Act 1912*¹.

Crown bound

50. This Part binds the Crown in the same capacities as the Principal Act binds the Crown.

Abolition of defence of common employment

51. Section 59A of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Notwithstanding sections 2 and 10, this section applies in relation to all ships.”.

Jurisdiction as to wages

52. (1) Section 91 of the Principal Act is amended by omitting “, and any court having Admiralty jurisdiction,”.

(2) The amendment effected by subsection (1) does not affect a proceeding under section 91 of the Principal Act commenced but not finally determined before the commencement of this Act.

Compensation for loss occasioned by improper use of signals

53. Section 230 of the Principal Act is amended by omitting subsection (2).

Forfeiture of dangerous goods

54. (1) Section 252 of the Principal Act is amended by omitting “any Court having Admiralty jurisdiction” and substituting “the Supreme Court of a State or Territory”.

(2) The amendment effected by subsection (1) does not affect a proceeding under section 252 of the Principal Act commenced but not finally determined before the commencement of this Act.

Repeals

55. (1) Sections 262, 318 to 320 (inclusive) and 322 and 326, Division 5 of Part VII and sections 383 and 385 of the Principal Act are repealed.

(2) The repeal effected by subsection (1) does not affect an order issued under section 383 of the Principal Act and in force immediately before the commencement of this Act and proceedings on such an order may be instituted, continued and completed as though this section had not been enacted.

Limitation of actions

56. Section 396 of the Principal Act is amended by omitting from subsection (3) all words after “as it thinks fit”.

Proceedings against the Crown

57. Section 405A of the Principal Act is amended by omitting subsection (2).

**PART IX—AMENDMENT OF THE SHIPPING REGISTRATION
ACT 1981**

Principal Act

58. The *Shipping Registration Act 1981*² is in this Part referred to as the Principal Act.

Repeal

59. Section 94A of the Principal Act is repealed.

NOTES

1. No. 4, 1913, as amended. For previous amendments, see No. 32, 1919; No. 1, 1921; No. 8, 1925; No. 8, 1926; No. 49, 1934; No. 30, 1935; No. 1, 1943; No. 80, 1950; No. 109, 1952; No. 96, 1953; No. 46, 1956; No. 36, 1958; No. 96, 1961; No. 1, 1965; No. 93, 1966; No. 60, 1967; No. 62, 1968; Nos. 1 and 117, 1970; No. 28, 1972; No. 216, 1973 (as amended by No. 20, 1974); Nos. 91 and 157, 1976; Nos. 98 and 155, 1979; Nos. 70 and 87, 1980; Nos. 10 and 36, 1981; Nos. 39, 84 and 136, 1983; No. 72, 1984; and No. 65, 1985.
2. No. 8, 1981, as amended. For previous amendments, see No. 39, 1983; and No. 165, 1984.

[*Minister's second reading speech made in—
House of Representatives on 24 March 1988
Senate on 28 April 1988*]