

ADMIRALTY BILL

EXPLANATORY NOTE

This Bill defines the jurisdiction in admiralty of the Supreme Court of New Zealand and of Magistrates' Courts. It gives effect to the recommendations in the report of the Special Law Reform Committee on Admiralty Jurisdiction presented to the Minister of Justice in March 1972. Schedule A of that report included a proposed draft Bill, and this Bill follows that draft very closely, the changes being of a drafting nature.

The present jurisdiction in admiralty of the Supreme Court of New Zealand is derived from certain Acts of the Parliament of England or of the United Kingdom specified in the Schedule to the Bill, which, after the Act comes into force, are to cease to have effect as part of the law of New Zealand. In addition, Magistrates' Courts have in the past exercised jurisdiction in maritime matters, but there is some doubt as to the extent of the admiralty jurisdiction of those Courts. This Bill confers admiralty jurisdiction on Magistrates' Courts to the extent specified in the Bill.

In general, the Bill confers on the New Zealand Courts the jurisdiction conferred by the Acts specified in the Schedule, with the additional jurisdiction which the High Court of England has acquired since the passing of the Colonial Courts of Admiralty Act 1890 (U.K.).

Clause 1 relates to the Short Title and commencement. The Act is to come into force on a date to be fixed by Order in Council.

Clause 2 is the interpretation clause.

Clause 3 provides that the admiralty jurisdiction of the Supreme Court may be exercised in rem (that is, against a ship or its cargo or other property within the territorial jurisdiction of New Zealand) or in personam (that is, against a person), and in the latter case any judgment against the defendant may be enforced against him and executed against his property.

The admiralty jurisdiction of a Magistrate's Court may be exercised in personam only, and is limited to claims where the amount comes within the limits fixed for the ordinary jurisdiction of a Magistrate's Court.

Clause 4 defines the extent of the admiralty jurisdiction of the New Zealand Courts. It specifies the several matters in respect of which those Courts may exercise jurisdiction, and follows closely the provisions of the Administration of Justice Act 1956 (U.K.) relating to the jurisdiction of the High Court of England.

Clause 5 defines the cases in which the admiralty jurisdiction of the Supreme Court may be exercised in an action in rem.

That jurisdiction may be exercised in any case in which there is a maritime lien or other charge on any ship, aircraft, or other property for the amount claimed in any action, and may also be exercised in respect of all questions

and claims specified in *clause 4 (1)* (except claims specified in *paragraph (n)*), subject to certain restrictions specified in the proviso to *subclause (2)* limiting the action only to the particular ship or aircraft or property in respect of which the cause of action arose. The proviso also provides that an action in rem is available in cases where the person liable is the charterer of the ship concerned.

Clause 6 provides that an action in personam arising out of a collision, between ships, or out of any action taken or omitted to prevent a collision, or out of non-compliance with the Collision Regulations will not lie, unless the defendant ordinarily resides in New Zealand or has a place of business in New Zealand, or the cause of action arose in New Zealand territorial waters, or an action arising out of the same circumstances is proceeding in or has been determined in the Court.

The clause also prohibits an action in personam until proceedings previously brought in any other country arising out of the same cause of action have been discontinued or otherwise ended.

Those restrictions do not apply where the defendant submits to the jurisdiction of the Court.

Clause 7 provides that the Bill does not limit the jurisdiction of the Court to refuse to entertain an action for wages by the master or member of the crew if the ship is not a Commonwealth ship or a New Zealand ship.

Clause 8 confers on the Supreme Court of New Zealand permanent jurisdiction in prize. The legislation relating to prize is contained in the Prize Acts 1864 to 1939 (U.K.), and those Acts, with appropriate modifications, will continue to apply when the Supreme Court is sitting as a Prize Court.

Clause 9 provides that every Registrar of the Supreme Court is to have the functions and powers of the Admiralty Registrar and Marshal.

Clause 10 provides that the Act will bind the Crown, but preserves the rule in section 28 of the Crown Proceedings Act 1950 that an action in rem will not lie against the Crown.

Clause 11 enables Rules of Procedure to be made for the exercise by the Supreme Court or Magistrates' Courts of their admiralty jurisdiction.

Clause 12 enables proceedings commenced in the admiralty jurisdiction of any Court to be transferred to its ordinary jurisdiction, and proceedings commenced in the ordinary jurisdiction of any Court to be transferred to its admiralty jurisdiction.

Clause 13 provides that the provisions of the Magistrates' Courts Act 1947 relating to appeals to the Supreme Court against a decision of a Magistrate's Court are to apply in the case of a decision of a Magistrate's Court in its admiralty jurisdiction, the provisions of the Judicature Act 1908 relating to appeals to the Court of Appeal against a decision of the Supreme Court are to apply in the case of a decision of the Supreme Court in its admiralty jurisdiction, and the rules as to appeals to the Privy Council against a decision of the Court of Appeal or of the Supreme Court are to apply in admiralty matters.

Clause 14 provides that the Acts of the Parliament of England or of the United Kingdom specified in the Schedule are to cease to have effect as part of the law of New Zealand, and also provides for other consequential repeals and amendments.

Hon. Dr Finlay

ADMIRALTY

ANALYSIS

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A BILL INTITULED

An Act to make provision with respect to the jurisdiction in admiralty of the Supreme Court of New Zealand and of Magistrates' Courts, and the jurisdiction in prize of the Supreme Court

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BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Admiralty Act 1973.

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(2) This Act shall come into force on a date to be appointed by the Governor-General, by Order in Council.

2. Interpretation—In this Act, unless the content otherwise requires,—

“Aircraft” has the same meaning as in the Civil Aviation Act 1964:

“Collision Regulations” has the same meaning as in section 286 of the Shipping and Seamen Act 1952: 5

“Court” means any Court upon which jurisdiction is conferred by this Act:

“Goods” includes baggage:

“Hovercraft” means a machine designed to be supported in the atmosphere, wholly or partly by air expelled from the machine to form a cushion extending beneath the machine to the surface of any ground, water, or other part of the earth’s surface: 10

“Maritime lien”, without derogating from the generality of the term, includes a lien in respect of bottomry, respondentia, salvage of property, seamen’s wages, and damage: 15

“Master”, in relation to any ship, means any person (except a pilot) having command or charge of the ship: 20

“New Zealand territorial waters” means all waters within the outer limits of the territorial sea of New Zealand (as defined in section 3 of the Territorial Sea and Fishing Zone Act 1965); and includes the waters of any lake, river, or stream: 25

“Ship” includes any description of vessel used in navigation; and includes a hovercraft:

“Towage” and “pilotage”, in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne. 30

3. Exercise of admiralty jurisdiction—(1) The admiralty jurisdiction conferred by this Act—

(a) May be exercised by the Supreme Court in rem and in personam; and 35

(b) May be exercised by a Magistrate’s Court in personam where the debt, demand, or damage or the value of the chattels claimed is not more than the amount specified in section 29 of the Magistrates’ Courts Act 1947, and it is hereby declared that a Magistrate’s Court shall not, for the purposes of this Act, have jurisdiction in rem. 40

(2) In addition to the jurisdiction conferred by this Act, the Court may exercise all the powers which it possesses for the purpose of its civil jurisdiction, and nothing in this Act shall derogate from any common law or equitable jurisdiction of the Supreme Court or the Magistrates' Courts.

4. Extent of admiralty jurisdiction—(1) The Court shall have jurisdiction in respect of the following questions or claims:

- 10 (a) Any claim to the possession or ownership of a ship or to the ownership of any share therein:
- (b) Any question arising between the co-owners of a ship as to possession, employment, or earnings of that ship:
- 15 (c) Any claim in respect of a mortgage of or charge on a ship or any share therein:
- (d) Any claim for damage done by a ship:
- (e) Any claim for damage received by a ship:
- 20 (f) Any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the
- 25 owners, charterers, or persons in possession or control of a ship are responsible, being an act, neglect, or default in the navigation or management of the ship, in the loading, carriage, or discharge of goods on, in, or from the ship or in the embarkation, carriage, or disembarkation of persons on, in, or
- 30 from the ship:
- (g) Any claim for loss of or damage to goods carried in a ship:
- (h) Any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire
- 35 of a ship:
- (i) Any claim in the nature of salvage (including claims for services rendered in saving life from a ship or an aircraft or in preserving its cargo, apparel, or wreck pursuant to the provisions of sections 356
- 40 and 357 of the Shipping and Seamen Act 1952):

- (j) Any claim in the nature of towage in respect of a ship or an aircraft:
- (k) Any claim in the nature of pilotage in respect of a ship or an aircraft:
- (l) Any claim in respect of goods or materials supplied to a ship for her operation or maintenance: 5
- (m) Any claim in respect of the construction, repair, or equipment of a ship or dock charges or dues:
- (n) Any claim in respect of work done in connection with the loading or discharging of cargo or fuel on or from a ship: 10
- Provided that no ship shall be liable to arrest in respect of any such claim:
- (o) Any claim by a master or member of the crew of a ship for wages, and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Shipping and Seamen Act 1952, is recoverable as wages or in the Court and in the manner in which wages may be recovered: 15 20
- (p) Any claim by a master, shipper, charterer, or agent in respect of disbursements made on account of a ship:
- (q) Any claim arising out of an act which is or is claimed to be a general average act: 25
- (r) Any claim arising out of bottomry:
- (s) Any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty. 30
- (2) In addition to the jurisdiction specified in subsection (1) of this section, the Supreme Court shall continue to have any other admiralty jurisdiction which was vested in it immediately before the commencement of this Act, and when exercising its admiralty jurisdiction shall also have any other jurisdiction connected with ships or aircraft which is vested in the Court under any other Act. 35
- (3) The jurisdiction of the Court under paragraph (b) of subsection (1) of this section includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the Court thinks fit. 40

(4) The provisions of this section apply—

- 5 (a) In relation to all ships or aircraft, whether New Zealand ships or aircraft or not, and whether registered or not, and whatever the nationality or residence or domicile of their owners may be:
- 10 (b) In relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land):
- (c) So far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not, and whether legal or equitable, and whether fixed or floating, including mortgages and charges created under the law of any other country:

15 Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Shipping and Seamen Act 1952.

5. Actions in rem—(1) In any case in which there is a maritime lien or other charge on any ship, aircraft, or other property for the amount claimed, the admiralty jurisdiction of the Supreme Court may be invoked by an action in rem against that ship, aircraft, or property.

20 (2) In addition to the rights conferred by subsection (1) of this section, the admiralty jurisdiction of the Supreme Court may be invoked by an action in rem in respect of all questions and claims specified in subsection (1) of section 4 of this Act (except claims specified in paragraph (n) of that subsection):

Provided that —

- 30 (a) In questions and claims specified in paragraphs (a), (b), (c), and (s) of subsection (1) of section 4 of this Act the admiralty jurisdiction in rem may be invoked against only the particular ship or property in respect of which the questions or claims arose:
- 35 (b) In questions and claims specified in paragraphs (d) to (r) (except paragraph (n)) of subsection (1) of section 4 of this Act arising in connection with a ship where the person who would be liable on the claim in an action in personam was, when the cause

of action arose, the owner or charterer of, or in possession or in control of, the ship, the jurisdiction of the Supreme Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against— 5

(i) That ship if, at the time when the action is brought, it is beneficially owned as respects all the shares therein by, or is on charter by demise to, that person; or

(ii) Any other ship which, at the time when the action is brought, is beneficially owned or on charter by demise as aforesaid. 10

(3) Where in the exercise of its admiralty jurisdiction the Court orders any ship or other property to be sold, the Court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale. 15

6. Restrictions on proceedings—(1) No claim in personam in respect of damage, loss of life, or personal injury arising out of—

(a) A collision between ships; or 20

(b) A manoeuvre or omission to carry out a manoeuvre by any ship to avoid a collision; or

(c) Non-compliance with the Collision Regulations,— shall lie unless—

(d) The defendant ordinarily resides in New Zealand or has a place of business within New Zealand; or 25

(e) The cause of action arose within New Zealand territorial waters; or

(f) An action arising out of the same incident or series of incidents is proceeding in or has been heard and determined in the Court. 30

(2) No action in personam shall be brought in any Court in New Zealand until any proceedings previously brought by the plaintiff against the defendant in any Court outside New Zealand in respect of the same incident or series of incidents have been discontinued or otherwise come to an end. 35

(3) This section shall not apply where the defendant submits or has agreed to submit to the jurisdiction of the Court. 40

7. **Actions for wages**—Nothing in this Act shall be construed as limiting the jurisdiction of the Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a Commonwealth or New Zealand ship.

8. **Jurisdiction of Supreme Court in prize**—(1) The Supreme Court shall be a permanent Prize Court within the meaning of the Acts of the United Kingdom known as the Prize Acts 1864 to 1939, and those Acts shall continue in force as part of the law of New Zealand.

(2) In the enactments mentioned in subsection (1) of this section and in any rules or Orders in Council made thereunder, references to “the Admiralty” and “the Treasury” shall be read as references to the “Minister of Transport” and “the Minister of Finance”, respectively.

(3) All droits of the Crown and forfeitures when condemned by the Supreme Court in the exercise of its jurisdiction under this section shall be dealt with or disposed of in such manner as the Minister of Finance directs.

9. **Functions and powers of Registrar**—(1) Every Registrar of the Supreme Court shall have and exercise the functions and powers of the Admiralty Registrar and Marshal for the purpose of this Act and any rules made hereunder.

(2) The Registrar shall execute, by himself or by his appointed officers or agents, all instruments issued from the Court which are addressed to him, and shall make returns thereof.

10. **Act to bind the Crown**—Subject to section 28 of the Crown Proceedings Act 1950, relating to the exclusion of actions in rem against the Crown, this Act shall bind the Crown.

11. **Rules of procedure and regulations as to fees**—(1) Rules for the practice and procedure of the Supreme Court in its admiralty jurisdiction may be made in the same manner as is provided in the Judicature Act 1908 for the making of rules for practice and procedure in the Supreme Court.

(2) Rules for the practice and procedure of the Magistrates' Courts in their admiralty jurisdiction may be made by the Governor-General from time to time, by Order-in-Council, pursuant to section 122 of the Magistrates' Courts Act 1947.

(3) Without derogating from the provisions of subsections (1) and (2) of this section, rules may be made pursuant to those subsections for consolidation of actions, the appointment of Court experts, or the giving of bail or other security to prevent the arrest of a ship or other res, or to obtain the release of the same after arrest.

(4) The Governor-General may from time to time, by Order in Council, prescribe all fees payable under this Act.

12. Transfer of proceedings from or to admiralty jurisdiction—The Court may, of its own motion or upon application, at any stage order that any proceedings be transferred from or to the Court in its admiralty jurisdiction.

13. Appeals—(1) The provisions of the Magistrates' Courts Act 1947 relating to appeals to the Supreme Court against a decision of a Magistrate's Court shall apply with respect to a decision of a Magistrate's Court in its admiralty jurisdiction.

(2) The provisions of the Judicature Act 1908 relating to appeals to the Court of Appeal against a decision of the Supreme Court of New Zealand shall apply with respect to a decision of the Supreme Court of New Zealand in its admiralty jurisdiction.

(3) Subject to the rules governing appeals to Her Majesty in Council against a decision of the Court of Appeal of New Zealand or of the Supreme Court of New Zealand, such an appeal may be made in admiralty proceedings to Her Majesty in Council.

14. Repeals and amendments—(1) As from the commencement of this Act, the Acts of the Parliament of England or of the United Kingdom specified in the Schedule to this Act shall cease to have effect as part of the law of New Zealand.

(2) The provisions of sections 20 and 21 of the Acts Interpretation Act 1924 shall apply with respect to the Acts specified in the Schedule to this Act as if they were Acts of the General Assembly of New Zealand that had been repealed by this Act.

(3) Subsection (2) of section 359 and subsection (1) of section 486 of the Shipping and Seamen Act 1952 are hereby repealed.

(4) Section 257 of the Legislature Act 1908 is hereby amended by omitting from the definition of the expression "Court of record" in subsection (1) the words "the Supreme Court, the Colonial Court of Admiralty", and substituting the words "and the Supreme Court sitting in admiralty".

SCHEDULE

Section 14

ENACTMENTS OF THE PARLIAMENT OF ENGLAND OR OF THE UNITED KINGDOM CEASING TO HAVE EFFECT AS PART OF THE LAW OF NEW ZEALAND

13 Ric. 2, stat. 1, c. 5	.....	Admiralty jurisdiction.
15 Ric. 2, c. 3	.....	Admiralty jurisdiction.
8 Geo. 1, c. 24	.....	The Piracy Act 1721.
9 Geo. 4, c. 83	.....	The Australian Courts Act 1828.
3 & 4 Vict., c. 65	.....	The Admiralty Court Act 1840.
13 & 14 Vict., c. 26	.....	The Piracy Act 1850: Sections 2 and 3.
24 & 25 Vict., c. 10	.....	The Admiralty Court Act 1861.
39 & 40 Vict., c. 59	The Appellate Jurisdiction Act 1876: Section 23.
53 & 54 Vict., c. 27	The Colonial Courts of Admiralty Act 1890.

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