



Ships, personal injury claims

and the *Admiralty Act 1988* (Cth)

A brief introduction for personal injury lawyers as to the potential application, use and advantages of the *Admiralty Act 1988* (Cth) in personal injury claims.

The first port of call for any claim for personal injury involving a ship at sea should be the *Admiralty Act 1988* (Cth) ("the Act"). The Act came into force on 1 January 1999.

The purpose of the Act as outlined in the explanatory memorandum was "to provide for the 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." Prior to the Act, Australian admiralty jurisdiction was governed by the *Colonial Courts of Admiralty Act 1890* (UK).

Application of the Act

The Act applies to "all ships irrespective of the place of residence or domicile of their owners and all maritime claims wherever arising"¹ (my emphasis). It does not apply to

inland waterways vessels or in respect of the use of or intended use of a ship on inland water.² It does not also apply to government vessels. The limitation in relation to land water vessels does not apply if the ship is a foreign ship.³ A foreign ship is defined in section 3(1) to mean a ship that is not registered and is not permitted to be registered under the *Shipping Registration Act 1981*.

Ship

A ship is defined in section 3(1) to mean a vessel of any kind used or constructed for use in navigation by water, however it is propelled or moved, and includes a barge, lighter or other floating vessel, hovercraft and an off-shore industry mobile unit within the meaning of the *Navigation Act 1912* and a vessel that has sunk or is stranded and the remains of such a vessel. It does not include a seaplane, an inland waterways vessel or a vessel under construction that has not been launched.

It would appear to include barges, pontoons and floating cranes.⁴ Some items that have been found not to be a ship include jet skis⁵ and rafts of timber⁶.

Maritime Claims

Section 4(3) of the Act defines maritime claims as follows:

"(a) a claim for damage done by a ship (whether by a collision or otherwise); (b) a claim for a loss of life or for personal injuries sustained in consequence of the 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: The owner or charterer of a ship; A person in possession or control of a ship; a person for whose wrongful acts or omissions the owner, charterer or person in possession or control of the ship is liable; being at an act or omission in the navigation or management of the ship including an act or omission in connection with: the loading of goods onto or the unloading of goods from the ship; the embarkation of persons onto or the disembarkation of persons from the ship; and the carriage of goods or persons on the ships."

To fall within the jurisdiction of the Act, a claim must fall within one of the general definitions in section 4.

Section 4(3)(a) which requires a "claim for damages done by a ship" would appear to require that "the damage be regarded as done by the ship as an active agent or as the 'noxious instrument'".

However, claims under paragraph (c) and (d) appear much wider and would not require that the ship be the

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active cause of the injury. This was considered by his Honour Justice Murray in the Supreme Court of Western Australia in the decision of *Yulianta & Ors v The Ship (Glory Cape)*⁸.

The facts simply stated are as follows:

- (a) Five plaintiffs were crewmembers of the ship. The sixth was the father of a crewmember who had died as a result of the injuries.
- (b) There was a dispute in relation to wages and conditions. It was agreed that the ship would not leave the port until the resolution of the dispute.
- (c) Despite the undertaking, the Master of the ship prepared to sail and leave the port. Once the ship got underway, the plaintiffs sought to leave the ship via the life raft. However, the life rafts had been tampered with by the management so that they could not operate in a normal way.

Management had also ordered other crew members to attempt to dissuade them from leaving, if necessary by physical force. The other crew members employed violence against them. One member was rendered unconscious and the others were put in such fear that they jumped or fell overboard and suffered injuries as a result, with one plaintiff dying.

The plaintiffs brought an action against the defendants for damages, pursuant to the Act. The defendants applied for orders to set aside the writ on the grounds that the court lacked jurisdiction as the claim did not fall within s4(3).

In construing the Act, his Honour relied on the approach stated by the High Court in *Owners of "Shin Kobe Maru" v Empire Shipping Co Inc*⁹, that the Admiralty Act was remedial legislation and the words of section 4 should be given their natural and ordinary meaning. The provisions should not be interpreted in a restrictive way or read down by reference to the earlier expression of Admiralty Practice and Principles. The evident purpose of the Act must be given

effect to, and the court should proceed by reference to, the propositions that a statutory definition should be approached on the basis that parliament said what it meant and meant what it said.

His Honour concluded that "it imposes no strain on the ordinary and natural meaning of the words used in s 4(3)(c) to hold the life rafts which were part of the equipment of the ship were defective in that the method by which they had secured to the vessel was such as, for practical purposes, to prevent their being launched with other than considerable difficulty. In that regard, the equipment of the ship was defective in that it was unable to be operated in an ordinary way and according to the manner in which the process of securing the life rafts was meant to function."

His Honour found that it was open to the court to conclude that the defective condition of the life rafts was a contributing cause to the injuries and therefore fell under section 4(3)(c) as a defect of the ship.

Further, his Honour also found that it was open for a claim to be made under section 4(3)(d). He identified the "acts and omissions in the management of the ship in the sense that it had to do with the operation of the ship when put to sea, when the life rafts were immobilised and when the Plaintiffs were attacked to prevent their use to leave the ship. Those were acts directed to preventing the ship being detained in Port, to allowing it to continue its operation as a cargo carrier for the benefit of its owners and to ensuring that the Plaintiffs remained on board to perform their duties of officers and members of the crew."

In Annotated Admiralty Legislation 1989, Stuart Hetherington stated that s4(3)(d) would allow a claim for damages for personal injuries to be made by a relative of a person killed for nervous shock, although the plaintiff has no physical connection with the ship. There appears to have been no issue raised by the defendants in *Yulianta* as to the ability of the father of the deceased crew member to bring such an action. The wording of s4(3)(d) would also appear

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to allow a claim to be made when a person is only injured and not killed.

Act In Rem

The Act allows an action in rem to be brought.¹⁰ As his Honour Justice Murray noted in *Yulianto*, if the plaintiffs "are able to proceed in rem, the Plaintiffs have the advantage . . . of arresting the ship and thus securing their capacity to recover damages." This is a clear advantage especially where a foreign ship is involved.

In regards to procedures generally and particularly on arrest warrants, reference should be made to the *Admiralty Rules 1998* (Cth) (Vic). It would appear to be the only jurisdiction to have its own rules in relation to procedure in the Supreme Court (Admiralty) Rules 2000. All other jurisdictions would appear to be governed by the Commonwealth Rules.

An action in rem may be distinguished from an action in personam. An action in rem allows proceedings to be made against the ship whereas an action in personam is proceedings against the person individually. Regardless of whether an action is brought in personam or in rem, the procedures are governed by the previously referred to rules. Section 10 of the Act states that only Federal Courts and Supreme Courts of the states and territories are able to hear and determine proceedings brought in rem.

In relation to in personam claims,

they may be brought before and determined by the Federal Court or any court of a state or territory.

Limitations of Actions

This is a complex area. In some states (for example, Victoria and South Australia) the injury proceedings are generally governed by the relevant State Limitations Actions Legislation. In other states (for example, Western Australia) it is a combination of state and Commonwealth legislation.¹¹

Limitation of Liability

Most personal injury claims on ships are subject to international conventions of limitations.

The Limitation of Liability for Maritime Claims Act 1989 (Cth) gives effect to the Convention on Limitation of Liability for Maritime Claims 1976 and applies to occurrences that take place after 1 June 1991.¹² This has the effect of limiting the amount of damages payable in respect of claim for loss of life or personal injury. The amounts vary depending upon the size of the ships expressed in tonnage. The amount is determined by reference to Special Drawing Rights as determined by the International Monetary Fund and the exchange rate with the Australian dollar.

Section 25 of the *Admiralty Act* allows the defendant to make application to the court to determine whether

the liability of the defendant is limited under the liability convention.

The limitations do not apply where damage is intentionally or recklessly caused.¹³

Bon Voyage

I have only dipped my toe into the pool of law regarding personal injury maritime claims. There are numerous other Acts, international conventions and centuries old customs and case law regarding the law of the sea which needs to be traversed. However, the point of embarkation and disembarkation should always be the *Admiralty Act*. **PL**

Footnotes:

- ¹ Section 5(1).
- ² Section 5(2).
- ³ Section 5(4).
- ⁴ Annotated Admiralty legislation, Stuart Hetherington 1989, p.29.
- ⁵ *Steedman v Scofield* [1992] 2 Lloyd's Rep. 163.
- ⁶ *Raft of Timber* [1844] 2 W Rob 251.
- ⁷ *Dixon J. Nagrint v Ship Regis* [1939] 61 CLR 688 at 700.
- ⁸ [1995] 134 ALR 92.
- ⁹ [1994] 181 CLR 404.
- ¹⁰ See section 17.
- ¹¹ Section 37(1)(b) of the Act.
- ¹² see *Victrawl Pty Ltd v Testra Corporation Ltd* [1995] 183 CLR 595.
- ¹³ Article 4 of the convention.

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