

5. CURRENT TOPICS

A. ADMIRALTY JURISDICTION

In the final edition of the Newsletter reference was made to the presentation to the (then) Attorney-General, Senator Durack, of the Report of the Joint Committee of the Law Council of Australia and The Maritime Law Association of Australia and New Zealand on Admiralty Jurisdiction in Australia.

We publish herewith a summary of the Report, prepared by a member of the Joint Committee.

1. The terms of reference given to the Joint Committee contained the principle objective of the formulation and preparation of recommendations for the implementation of an Australia-wide solution to the problem of Admiralty jurisdiction in Australia. The problem arose from a serious divergence which has occurred between the antiquated colonial Admiralty jurisdiction still exercised in Australia on the one hand and on the other hand the course followed in England and in those former British possessions such as Canada, New Zealand and Singapore which have ceased reliance upon the Colonial Courts of Admiralty Act 1890 (Imp.) and now have their own Admiralty Acts. Existing Admiralty jurisdiction in Australia is confined to the High Court (both in the High Court's original jurisdiction and its appellate jurisdiction) and to the Supreme Courts in each State and the Northern Territory. That jurisdiction is limited to that which was exercisable in the Admiralty jurisdiction of the High Court of England as it existed at the time of the passing of the Colonial Courts of Admiralty Act 1890 (Imp.).
2. The report extensively covers the history and nature of the Admiralty jurisdiction of the various courts within Australia. It also examines the developments in Admiralty jurisdiction in other countries. The Report further examines the constitutional power of the Commonwealth in this field.
3. The recommendations of the Joint Committee may be summarised as follows:
 - 3.1 It is imperative that Australian admiralty legislation be enacted as soon as possible.
 - 3.2 The two necessary steps, a declaration that the Colonial Courts of Admiralty Act 1890 (Imp.) shall cease to apply to Australia and the enactment of the Australian admiralty legislation, should be taken contemporaneously.
 - 3.3 The Committee concluded that the Commonwealth Parliament has power to enact an Admiralty Act operative in and for the whole of Australia.

- 3.4 The Committee recommends there be enacted an Admiralty Jurisdiction Act.
- 3.5 The role of the High Court of Australia could be limited to appellate jurisdiction in admiralty.
- 3.6 The Committee recommends that the appropriate course to follow is to invest State courts with federal jurisdiction but the existing channels of appeal in admiralty from Supreme Courts should continue. In so far as the Commonwealth may need original jurisdiction for the purposes of its Territories, it is suggested that jurisdiction be conferred for that purpose upon the Supreme Court of the Territory with an appeal to the Full Court of the Federal Court.
- 3.7 The Committee recommends that Australia enact its own Prize law.
4. The Committee, with its Report, submitted a draft Admiralty Jurisdiction Bill, the Bill being based primarily upon the existing United Kingdom Admiralty legislation, with due regard for Australia's own position and needs. It adheres to the well-established international principle of uniformity in admiralty, maritime and navigation matters in and between nations. The Committee included Prize law in the draft Bill and it also recommends that the federal government gives consideration to the enacting in Australia of an Act comparable with the State Immunity Act 1978 (Eng.) relating to the immunity of foreign sovereignty.
5. The Committee also recommends that consideration be given to the bringing down of new Admiralty rules applicable to Australia.