



Australian Capital Territory

# **Colonial Courts of Admiralty Act 1890 53 and 54 Vic c 27**

## **Republication No 1**

Republication date: 10 July 2002

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Colonial Courts of Admiralty Act 1890* 53 and 54 Vic c 27 as in force on 10 July 2002. It includes any commencement, repeal or expiry affecting the republished law and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Colonial Courts of Admiralty Act 1890 53 and 54 Vic c 27

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Australian Capital Territory

# **Colonial Courts of Admiralty Act 1890 53 and 54 Vic c 27**

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An Act to amend the law respecting the exercise of admiralty jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom

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## **1 Name of Act**

This Act is the *Colonial Courts of Admiralty Act 1890*.

## **2 Colonial Courts of Admiralty**

- (1) Every court of law in a British possession, which is for the time being declared under this Act to be a court of Admiralty, or which, if no such declaration is in force in the possession, has in the possession original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers that it possesses for the purpose of its other civil jurisdiction.
- (2) The court in relation to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty.
- (3) If in a British possession the Governor is the sole judicial authority, the expression *court of law* in this section includes the Governor.
- (4) The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing because of any statute or otherwise, and the Colonial Court of Admiralty may exercise the jurisdiction in like way and to as full an extent as the High Court in England, and shall have the same regards as that court to international law and the comity of nations.
- (5) Subject to the provision of this Act, any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression 'Colonial Court of Admiralty' were in the enactment substituted for 'Vice-Admiralty Court' or for other expressions respectively referring to the Vice-Admiralty Courts or the judge of it, and the Colonial Court of Admiralty shall have jurisdiction accordingly.

- (6) Provided as follows:
- (a) any enactment in an Act of the Imperial Parliament referring to the Admiralty jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were in the enactment substituted for England and Wales; and
  - (b) a Colonial Court of Admiralty shall have under the *Naval Prize Act 1864* and under the *Slave Trade Act 1873* and any enactment relating to prize or the slave trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorised, shall not under this Act exercise any jurisdiction under the *Naval Prize Act 1864* or otherwise in relation to prize; and
  - (c) a Colonial Court of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence that according to the law of England is punishable on indictment; and
  - (d) a Colonial Court of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at sea, or under any Act providing for the discipline of Her Majesty's Navy, than may be from time to time conferred on the court by order in council.
- (7) If a court in a British possession exercises in relation to matters arising outside the body of a county or other like part of a British possession any jurisdiction exercisable under this Act, that jurisdiction shall be deemed to be exercised under this Act and not otherwise.

### **3 Power of colonial legislature as to admiralty jurisdiction**

- (1) The legislature of a British possession may by any colonial law—

- (a) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by the court of its jurisdiction under this Act, and limit territorially, or otherwise, the extent of the jurisdiction; and
  - (b) confer on any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem appropriate.
- (2) However, any such colonial law shall not confer any jurisdiction that is not by this Act conferred on a Colonial Court of Admiralty.

## **5 Local admiralty appeal**

Subject to rules of court under this Act, judgments of a court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like appeal (if any) as judgments of the court in the exercise of its ordinary civil jurisdiction, and the court having cognisance of the appeal shall for the purpose of the appeal possess all the jurisdiction by this Act conferred on a Colonial Court of Admiralty.

## **7 Rules of court**

- (1) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same way as rules about the practice, procedure, fees and costs in the court in the exercise of its ordinary civil jurisdiction respectively are made.
- (2) The rules may provide for the exercise of any jurisdiction conferred by this Act by the full court, or by any judge or judges of the court, and subject to any rules, if the ordinary civil jurisdiction of the court can in any case be exercised by a single judge, any jurisdiction



conferred by this Act may in the like case be exercised by a single judge.

## **8 Droits of Admiralty and of the Crown**

- (1) Subject to subsections (2) and (3), nothing in this Act shall alter the application of any droits of Admiralty or droits of or forfeitures to the Crown in a British possession.
- (2) It shall be lawful for her Majesty the Queen in Council by order to direct that, subject to any conditions, exceptions, reservations and regulations contained in the order, the said droits and forfeitures condemned by a court in a British possession shall form part of the revenues of that possession either for ever or for the limited term or subject to the revocation as may be specified in the order.
- (3) If and so long as any of the droits or forfeitures under this or any other Act form part of the revenues of the possession, they shall, subject to the provisions of any law for the time applying, be notified, accounted for and dealt with in way directed by the Government of the possession.

## **10 Power to appoint a vice-admiral**

- (1) Nothing in this Act shall affect any power of appointing a vice-admiral in and for any British possession or any place in it.
- (2) Whenever there is not a formally appointed vice-admiral in a British possession or any place in it, the Governor of the possession shall be ex-officio vice-admiral of the possession or place.

## **12 Application of Act to courts under Foreign Jurisdiction Acts**

It shall be lawful for Her Majesty the Queen in Council by order to direct that this Act shall, subject to the conditions, exceptions and qualifications (if any) contained in the order, apply to any court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions that is named in the order as if

that court were a Colonial Court of Admiralty, and to provide for carrying into effect the application.

### **13 Rules for procedure in slave trade matters**

- (1) It shall be lawful for Her Majesty the Queen in Council by order to makes rules about the practice and procedure (including fees and costs) to be observed in and the returns to be made from Colonial Courts of Admiralty and Vice-Admiralty Courts in the exercise of their jurisdiction in matters relating to the slave trade.
- (2) Except when inconsistent with such order in council, the rules of court for the time being in force in a Colonial Court of Admiralty or Vice-Admiralty Court shall, so far as applicable, extend to proceedings in the court in matters relating to the slave trade.

### **14 Orders in Council**

It shall be lawful for Her Majesty in Council from time to time to make orders for the purposes authorised by this Act, and to revoke and vary the orders, and every such order while in operation shall have effect as if it were part of this Act.

### **15 Definitions for Act**

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

In this Act:

***appeal*** means any appeal, rehearing or review.

***colonial law*** means any Act, ordinance or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for the possession.

***judgment*** includes a decree, order and sentence.

*unlimited civil jurisdiction* means civil jurisdiction unlimited as to the value of the subject matter at issue, or as to the amount that may be claimed or recovered.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

### 3 Legislation history

This Act was originally a UK Act—Colonial Courts of Admiralty Act, 1890 53 and 54 Vic c 27 (UK). The Act was renamed as the *Colonial Courts of Admiralty Act 1890* when it was first republished under the *Legislation Act 2001*

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former UK laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

Under the *Interpretation Act 1967* (repealed), s 65 all former UK Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former UK Acts fully into ACT laws.

#### **Colonial Courts of Admiralty Act 1890 53 and 54 Vic c 27**

as amended by

#### **Imperial Acts Application Act 1986 No 93 s 5 and sch 3 pt 27**

notified 12 January 1987 (Cwlth Gaz 1986 No S1)

s 5 and sch 3 pt 27 commenced 12 January 1987 (s 2 (1))

### 4 Amendment history

The *Imperial Acts Application Act 1986* (the **1986 Act**), sch 3, pt 27 set out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT (see 1986 Act, s 5 (1), (4) and (5)).

Section 4, and the parts of section 7 requiring the approval of the Crown in Council to rules of court made under section 7, were omitted by the 1986 Act. They ceased to have effect in the Commonwealth from 3 September 1939 (*Statute of Westminster 1931*, s 6).

Section 6 was omitted by the 1986 Act because it was repealed by the *Australia Act 1986* (Cwlth), section 11 (2).

This Act came into force in NSW on 1 July 1911 (see Statutory Rules and Orders 1911 No 440 (UK)), that is, after the date of establishment of the ACT

(1 January 1911). Therefore, at the time of the enactment of the 1986 Act, the jurisdiction conferred on the ACT Supreme Court by the *Supreme Court Act 1933*, section 11 (b) (see now section 20 (1) (b)) did not include the jurisdiction conferred by this Act (as in force in NSW) on the Supreme Court of NSW.

Section 8 was amended by the 1986 Act to make it clear that droits of Admiralty, and droits of, or forfeitures to, the Crown, that form part of the revenues of the Commonwealth (now the ACT) are to be dealt with as directed by the Government of the ACT and not by the Treasury of the UK.

Section 9 was omitted by the 1986 Act. It enabled the Admiralty to establish Vice-Admiralty Courts in a British possession.

Section 11 was omitted by the 1986 Act. Subsection (1) dealt with the application of the Act in the Channel Islands. Subsection (2) conferred power on the Queen in Council to declare that the jurisdiction conferred by the Act on a Colonial Court of Admiralty should not vest in a court in a possession that did not have a representative legislature.

Section 13 (1) was amended by the 1986 Act to omit the reference to East Africa Courts. Section 13 (3) was omitted by the 1986 Act because it dealt only with appeals from judgments of East African Courts.

The definition of *local appeal* was omitted from section 15 by the 1986 Act. The definition was unnecessary as appeals from the ACT Supreme Court are regulated by Commonwealth law.

Section 16 (3) was amended by the 1986 Act to omit provisions relating to India and Vice-Admiralty Courts.

Section 16 and schedule 1 (which related to the commencement of the Act and its application) and section 17 (which was about the abolition of Vice-Admiralty Courts) are clearly spent and were omitted under the *Legislation Act 2001*.

Section 18 and the second schedule were omitted by the 1986 Act. They repealed certain provisions of certain Imperial Acts.

This Act has not been amended since the enactment of the 1986 Act, except under the *Legislation Act 2001*.

**Name of Act**

s 1 hdg am R1 LA  
s1 am R1 LA

**Colonial Courts of Admiralty**

s 2 ss renum R1 LA

**Power of colonial legislature as to admiralty jurisdiction**

s 3 ss num R1 LA

**Rules of court**

s 7 ss renum R1 LA

**Power to appoint a vice-admiral**

s 10 ss num R1 LA

**Definitions for Act**s 15 def *representative legislature* om R1 LA**Commencement of Act**

s 16 om R1 LA

**Abolition of Vice-Admiralty Court**

s 17 om R1 LA

**Schedules**

schs hdg om R1 LA

sch 1 om R1 LA

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