

[Act 1998 No 173]



New South Wales

Crimes at Sea Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to give legal force (so far as it depends on the legislative power of the State) to a cooperative scheme to apply the criminal law of the States extraterritorially in the area adjacent to the coast of Australia. and
- (b) to repeal the *Crimes (Offences at Sea) Act 1980*.

It is anticipated that the Commonwealth and States will enact legislation containing a Schedule that is identical in all substantial respects that constitutes the scheme for the extraterritorial application of State criminal laws in the area surrounding Australia ("the adjacent area"). The adjacent area extends 200 nautical miles from the baseline of the State or to the outer limit of the continental shelf (whichever is the greater distance).

The criminal law of the State is to apply of its own force to a distance of 12 nautical miles from the baseline of the State. Beyond 12 nautical miles, the criminal law of the State is applied with the force of a Commonwealth law. The boundaries and baselines of the States and the boundaries to the adjacent areas are described in Part 6 of Schedule 1 to the Bill. The scheme does not

apply to State and Commonwealth laws excluded by regulation from the ambit of the scheme. This is to cater for presently operating schemes relating to subjects such as fisheries.

Responsibility for the administration and enforcement of the law relating to crimes at sea is to be set out in an intergovernmental agreement. The agreement will also empower State authorities to perform functions and exercise powers in the investigation of offences as provided for in the legislation. This is provided for in the preamble and Part 3 of Schedule 1.

It is anticipated that the intergovernmental agreement will be entered into once the legislation is enacted in all jurisdictions. Clause 5 requires the Minister administering the proposed Act to have the intergovernmental agreement published in the Gazette.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 ratifies the scheme set out in the Schedule to the proposed Act.

Clause 5 states that the intergovernmental agreement (and any amendments) must be published in the Gazette.

Clause 6 provides for the making of regulations for carrying out, or giving effect to, the Act.

Clause 7 repeals the *Crimes (Offences at Sea) Act 1980*.

Clause 8 is a transitional provision.

Clause 9 is a formal provision giving effect to the amendments to the Acts set out in Schedule 2.

Schedule 1 The Cooperative Scheme

The details of the cooperative scheme are set out in Schedule 1.

Part 1 of Schedule 1 defines various terms used in the cooperative scheme.

Part 2 of Schedule 1 provides for the application of the substantive criminal laws of the State in the adjacent area (defined in Part 6). The laws of criminal investigation, procedure and evidence will apply as follows:

- (a) the law of the Commonwealth applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the Commonwealth,
- (b) the law of a State applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the State operating within the area of administrative responsibility for the relevant State,
- (c) in a Commonwealth judicial proceeding the law of the Commonwealth applies and in a State judicial proceeding the law of the State in which the proceeding was commenced applies (subject to the Commonwealth Constitution).

This Part also provides an evidentiary presumption in relation to the location of an offence (ie. whether it occurred in the adjacent area, inner adjacent area, or outer adjacent area for a particular State).

Part 3 of Schedule 1 deals with the intergovernmental agreement. Basically this provides for the making of an agreement providing for the division of responsibility for administering and enforcing the law relating to maritime offences. A charge of a maritime offence must not be brought in a court contrary to the intergovernmental agreement. If a charge is brought in contravention of the agreement, the court will, on application by the Commonwealth Attorney-General or participating State Minister, permanently stay the proceedings. The court is not, however, obliged to enquire into compliance with the agreement and non-compliance does not affect its jurisdiction.

Part 3 of Schedule

- (a) outlines circumstances (involving foreign ships) in which the written consent of the Commonwealth Attorney-General is required before the prosecution of a maritime offence, and
- (b) provides that the scheme does not exclude the extra-territorial operation of State law to the extent that such a law is capable of operating extra-territorially consistently with the scheme, and
- (c) provides that the regulations may exclude State and Commonwealth laws from the scheme, and
- (d) provides that the scheme does not apply to the Australia-Indonesia Zone of Cooperation (which is defined under Commonwealth law).

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Part 5 of Schedule 1 provides that the *Acts Interpretation Act 1901* of the Commonwealth applies to the scheme and provides for the making of regulations for the purpose of the scheme.

Part 6 of Schedule 1 defines the adjacent areas.

Schedule 2 makes consequential amendments.