

Crimes at Sea Bill

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EXPLANATORY MEMORANDUM

Clause 1 states that the purpose of the Act is to give legal force (as far as it depends on the legislative power of the State) to a cooperative scheme for dealing with crimes at sea and to provide for consequential vesting of judicial and other powers.

Clause 2 provides that the Act will come into operation on the day that it is proclaimed.

Clause 3 defines the terms "cooperative scheme" and "intergovernmental agreement" that are used in the Act.

Further definitions of terms that are used in Schedule 1 are found in clauses 1(1), 3(1), 13 and 15 of Schedule 1.

Clause 4 provides that the cooperative scheme has the force of law to the extent that it lies within the legislative competence of the Victorian Parliament to give it such force.

The cooperative scheme is set out in Schedule 1. Under the scheme, the Parliaments of the other States and the Commonwealth will also enact, or have already enacted, a provision giving effect to the scheme to the extent of their legislative competence to do so.

Clause 5 provides how offences, other than offences arising under Victorian law, are classified for the purposes of the cooperative scheme. Offences are classified as either summary offences or indictable offences depending on the maximum penalty for the offence.

An offence that is classified as an indictable offence under this clause is intended to be an "indictable offence" within clause 1 of Schedule 1.

Clause 6 requires that the Minister responsible for the Act must have the intergovernmental agreement and any amendments to the agreement published in the Victorian Government Gazette.

Clause 7 clarifies that the Act and the cooperative scheme do not apply to an act or omission to which section 15 of the Crimes (Aviation) Act 1991 (Commonwealth) applies.

The definition of the "adjacent area" for each State includes space "above and below" that area. The purpose of this clause is to clarify that the scheme does not apply to conduct on specified flights within the terms of section 15 of the Crimes Aviation) Act 1991(Commonwealth).

Clause 8 provides that the Governor in Council may make regulations required or permitted by the Act or necessary or convenient for carrying out or giving effect to the Act.

Sub-clause (2) clarifies that this clause does not authorise the Governor in Council to make regulations for the purposes of the scheme. A conditional power for the Governor-General to make such regulations is provided in clause 12 of Schedule 1.

Clause 9 repeals the **Crimes (Offences at Sea) Act 1978**. The repeal will not take effect until the Act comes into operation under clause 2 of this Act.

Clause 10 amends the **Interpretation of Legislation Act 1984**.

Sub-clause (1) substitutes new paragraphs (b) and (c) for paragraph (b) in section 57(3). In general terms, the new paragraphs exclude the Victorian criminal law under the scheme. Instead, the scheme itself provides that Victorian criminal law applies.

Sub-clause (2) repeals paragraphs (b) and (c) in section 57(5). In general terms, these paragraphs provided a presumption regarding the location of an offence. Clause 4 of Schedule 1 now provides a presumption regarding the location of an offence.

Sub-clause (3) substitutes a new paragraph (a), and inserts new paragraphs (ba), (bb) and (bc) in section 57(6). These paragraphs amend the definition of "adjacent area" and insert definitions for the terms "cooperative scheme", "continental

shelf" and "criminal laws" used in the **Interpretation of Legislation Act 1984**.

Clause 11 clarifies which laws will apply during transition from the **Crimes (Offences at Sea) Act 1978** to the scheme and the commencement of amendments to the **Interpretation of Legislation Act 1984**.

Sub-clause (1) defines the term "commencement day" used in this clause.

Sub-clause (2) provides that the **Crimes (Offences at Sea) Act 1978** will continue to apply to acts and omissions that take place before the day on which the scheme commences, as if the repeal of that Act had not happened.

Sub-clause (3) then provides that the amendments to the **Interpretation of Legislation Act 1984** made by clause 10 of this Act will apply to acts and omissions that take place on or after the day on which the scheme commences.

Sub-clause (4) also provides a presumption regarding the date of an act or omission.

SCHEDULE 1—THE COOPERATIVE SCHEME

PART 1—PRELIMINARY

Clause 1 defines a number of terms used in this Schedule: "adjacent area"; "Area A of the Zone of Cooperation"; "Australian ship"; "baseline"; "foreign ship"; "indictable offence"; "inner adjacent area"; "intergovernmental agreement"; "law of criminal investigation, procedure and evidence"; "maritime offence"; "offence"; "outer adjacent area"; "participating State Minister"; "ship"; "State"; "substantive criminal law" and "summary offence".

In the definition of the term "indictable offence", the phrase "or an equivalent process" is intended to include presentment.

Sub-clause (2) also further defines the term "law of criminal investigation, procedure and evidence" for the Commonwealth. The term includes provisions of State law on the relevant subjects applied under the Judiciary Act 1903 (Commonwealth).

PART 2—APPLICATION OF STATE CRIMINAL LAW TO ADJACENT AREA

Clause 2 provides that the substantive criminal law of a State, as in force from time to time, applies in the adjacent area of the State. The term "substantive criminal law" is defined in clause 1 of this Schedule. The term includes the criminal law creating offences, providing defences, and imposing penalties.

Sub-clause (1) provides that the substantive criminal law of a State is applicable by force of the law of the State throughout the "inner adjacent area" for that state. The term "inner adjacent area" is defined in clause 1 of this Schedule. In general terms, and subject to exceptions, the inner adjacent area extends out to 12nm from the State coastline.

Sub-clause (2) then provides that the substantive criminal law of a State is applicable by force of the law of the Commonwealth throughout the "outer adjacent area" for that State. The term "outer adjacent area" is also defined in clauses 1 and 14 of this Schedule. In general terms, and subject to exceptions, the outer adjacent area extends out from 12nm to 200nm from the State coastline.

The adjacent area of a State is composed of the two areas for reasons concerning the scope of the legislative authority of the Parliaments of the States and the Commonwealth. By applying the laws of the adjacent State between 12 and 200nm under Commonwealth law, an unnecessary jurisdictional divide at 12nm is avoided. Although the substantive criminal law that applies between 12 and 200nm is technically Commonwealth law, the substantive criminal law of the adjacent State will apply as if it were Commonwealth law.

Sub-clause (3) also clarifies the types of substantive criminal law that are not applied in the adjacent area of a State by this clause.

Clause 3 provides how the laws of criminal investigation, procedure and evidence apply under the scheme.

Sub-clause (1) defines a number of terms used in the clause: "act"; "areas of administrative responsibility"; "authority"; "Commonwealth judicial proceeding"; "judicial proceeding"; "preliminary examination" and "State judicial proceeding".

Sub-clause (2)(a) and (b) then provides that the laws of criminal investigation, procedure and evidence of the:

Commonwealth applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the Commonwealth; and

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.

Sub-clause 2(c) also provides that 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 Constitution).

Finally, sub-clauses (3) and (4) clarify how this clause operates with respect to laws that are inconsistent or made after the commencement of this clause, and sub-clause (5) provides that the Administrative Decisions (Judicial Review) Act 1977 (Commonwealth) does not apply to a decision taken under a State law that is applicable by force of this Act.

The main purpose of this clause is to reduce the uncertainty that characterises the current scheme by simplifying the rules for determining the applicable criminal law in a particular case, and to improve the effectiveness of the law by allowing the enforcement and judicial authorities of each jurisdiction to operate under the regime that is familiar to them.

Clause 4 provides a presumption that if in proceedings for a maritime offence an element of the offence is proved, an allegation in the information or complaint that the element happened in the adjacent area, inner adjacent area, or outer adjacent area for a particular State is taken to be proved in the absence of proof to the contrary.

PART 3—THE INTERGOVERNMENTAL AGREEMENT

Clause 5 provides that the Commonwealth Attorney-General, on behalf of the Commonwealth, and the participating State Ministers may enter into an intergovernmental agreement providing for the division of responsibility for administering and enforcing the law relating to maritime offences.

Sub-clause (2) also clarifies that the intergovernmental agreement may provide for concurrent responsibility in specified parts of the adjacent area.

Clause 6 requires that a charge of a maritime offence must not be brought in a court contrary to the intergovernmental agreement.

Sub-clause (2) also requires that if a charge is brought in contravention of the agreement, the court must, on application by the Commonwealth Attorney-General or a participating State Minister, permanently stay the proceedings in that court.

However, sub-clause (3)(a) provides that if a charge is brought contrary to the intergovernmental agreement, a court's jurisdiction is not affected. Further, sub-clause (3)(b) provides that if a charge of a maritime offence is brought in a court, the court will not, except on an application by the Commonwealth Attorney-General or a participating State Minister, be concerned to inquire into whether the intergovernmental agreement has been complied with.

PART 4—LIMITATIONS AND EXCLUSIONS

Clause 7 provides that the Commonwealth Attorney-General's written consent is required before a charge of a maritime offence can proceed to hearing, determination or committal where the matter also falls within a foreign government's jurisdiction.

Sub-clause (2) then provides that before granting such consent, the Commonwealth Attorney-General must take into account any views expressed by the foreign government.

Sub-clause (3) also provides that even though the Commonwealth Attorney-General has not granted such consent, the absence of consent is not to prevent or delay certain preliminary matters such as arrest. However, sub-clause (4) requires that the court in which the suspected offender has been charged with the offence must permanently stay the proceedings.

Finally, sub-clause (5) provides that in any proceedings, an apparently genuine document purporting to be a written copy of such consent will be accepted, in the absence of proof to the contrary, as proof of such consent.

Clause 8 clarifies that the scheme does not exclude the extra-territorial operation of State law to the extent that the State law is capable of operating extra-territorially consistently with the scheme.

Clause 9 clarifies that the scheme does not apply to State and Commonwealth laws excluded by regulation from the ambit of the scheme.

A conditional power for the Governor-General to make such regulations is provided in clause 12 of this Schedule.

Clause 10 provides that the scheme does not apply to Area A of the Zone of Cooperation. The Commonwealth Act under the scheme will contain additional provisions subjecting criminal offences in this zone to Commonwealth law.

The term "Area A of the Zone of Cooperation" is defined in clause 1 of this Schedule to have the same meaning as in the Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990 (Commonwealth). The Commonwealth law applied in this zone will accord with Australia's obligations under the Timor Gap Treaty with Indonesia.

PART 5—MISCELLANEOUS

Clause 11 provides that the Acts Interpretation Act 1901 (Commonwealth) applies to the scheme in the same way as to a Commonwealth Act.

The purpose of this clause is to avoid the scheme being read according to different interpretive rules under the law of each State and the Commonwealth.

Clause 12 provides that the Governor-General may make regulations for carrying out, or giving effect to, the scheme.

However, sub-clause (2) also provides that a regulation affecting the operation of the scheme in relation to the inner adjacent area for a State may only be made with the agreement of the participating State Minister for the relevant State.

The main purpose of this clause is to enable certain State laws relating to specific subjects to apply outside the crimes at sea scheme and for overcoming anomalies in the operation of the scheme.

PART 6—ADJACENT AREAS

Clause 13 defines terms used in this Part of this Schedule in the description of adjacent areas: "baseline of Australia's territorial sea"; "continental shelf" and "territorial sea".

Clause 14 defines the adjacent area for each State. These definitions are based on those in Schedule 2 to the Petroleum (Submerged Lands) Act 1967 (Commonwealth), subject to specified modifications for Queensland, Western Australia and the Northern Territory.

The adjacent area includes the space above and below that area. However clause 7 of this Act provides that the scheme does not apply to crimes committed on aircraft within the terms of section 15 of the Crimes (Aviation) Act 1991 (Commonwealth).

Sub-clause (5) also clarifies that the adjacent area for each State does not include any area inside the limits of any State or Territory.

Clause 15 defines the term "baseline" used in this Schedule.

Clause 16 states that a map showing the various areas that are relevant to the scheme appears in Appendix 1.

Sub-clause (2) also clarifies that the map is intended to be indicative only and the provisions of the scheme and the body of the Act prevail over the map if there is any inconsistency.