

CRIMES AT SEA BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the legislation is to enact Queensland's component of a new national scheme of legislation that will simplify the law dealing with criminal offences committed in the waters surrounding Australia.

Under the proposed scheme, the substantive criminal law of the States and the Northern Territory will apply out to 200 nautical miles or the outer limit of the continental shelf, whichever is the greater distance. Within 12 nautical miles, the law of the various States and the Northern Territory will apply by force of their own law. For the rest of the adjacent area, the law of the various States and the Northern Territory will apply by force of Commonwealth law. Generally, the laws of criminal investigation, procedure and evidence of the Commonwealth and States will apply to investigations and in judicial proceedings conducted by the police or in the courts of those jurisdictions. This will permit, for example, South Australian procedural and evidentiary provisions to apply in proceedings conducted in a South Australian court for an offence against Western Australian law. There will be special rules for offences committed beyond the limit of the adjacent area for Australia, generally 200 nautical miles, or on or from a foreign ship. The consent of the Commonwealth Attorney-General is required in relation to such offences. There will also be an Intergovernmental Agreement between the Commonwealth, the States and the Northern Territory.

Reasons for the objectives and how they will be achieved

The criminal law applicable to an offence committed at sea is currently determined by reference to matters that include: the ship's location; its intended destination; the domicile of the persons on the ship; the citizenship of the persons on the ship; and other matters. The laws that apply to an offence may overlap and the laws of the various States are

sometimes inconsistent. There are also problems with enforcement. The scheme set out above will simplify the present situation in a straightforward and uniform way.

The proposed national cooperative scheme was an initiative of the Standing Committee of Attorneys-General (SCAG). The initial impetus for the matter being considered by this body was the Australian Law Reform Commission's 1990 report, *Criminal Admiralty Jurisdiction and Prize* (Report No. 48).

It is noted that the subject matter of this legislation, the coastal waters surrounding Australia, is inherently well suited to the approach of a national legislative scheme. The Commonwealth, New South Wales, Victoria, South Australia, Tasmania and Western Australia and the Northern Territory have all now enacted their parts of that scheme.

Administrative cost to Government of implementation

No significant additional administrative cost to Government is foreseen as a result of this Bill.

Fundamental legislative principles

The Bill does not breach any fundamental legislative principles.

It is noted that clause 4 in the schedule does contain an evidentiary presumption as to the locus of an offence, which operates in the absence of proof to the contrary. Although this would cast an obligation upon an accused person to prove the contrary, the matter is essentially procedural in nature, is an approach necessitated by the nature of the subject matter and is similar to the approach followed in section 16 of the current *Crimes at Sea Act 1979* (Cwlth).

Consultation

Consultation occurred with: the current and, during his term, the former Director of Public Prosecutions; the Queensland Police Service; the Department of the Premier and Cabinet; Queensland Treasury; Queensland Transport; the Department of Primary Industries; the Environmental Protection Agency; and the Department of Natural Resources. The Commonwealth Attorney-General's Department was also consulted. Crown Law provided comments as well as advice on aspects of the scheme.

It is noted again that the scheme is an initiative of SCAG. The Special Committee of Solicitors-General and national Parliamentary Counsel's Committee were also involved in the development of the legislation. The Australian Police Ministers Council also considered the proposal.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Act.

Clause 2 states that the Act will commence on a day to be fixed by proclamation.

Clause 3 defines the terms "cooperative scheme" and "intergovernmental agreement". The cooperative scheme can be found in the schedule.

Clause 4 gives the cooperative scheme, contained in the schedule, the force of law to extent that the State is able to achieve this. The Commonwealth, the other States and the Northern Territory will also give effect to the scheme to the extent that their respective legislative competencies permit.

Clause 5 classifies offences, other than offences arising under the law of this State, for the purpose of the cooperative scheme.

Clause 6 provides for the publication of the intergovernmental agreement contemplated by the scheme.

Clause 7 provides that the scheme does not affect section 15 of the *Crimes (Aviation) Act 1991* (Cwlth). A provision to this effect is also contained in section 8 of the *Crimes at Sea Act 2000* (Cwlth).

Clause 8 provides for the making of regulations by the Governor in Council under the Act, but not for the purposes of the cooperative scheme contained in the schedule.

Clause 9 omits section 14A of the *Criminal Code*.

Clause 10 is a transitional provision, indicating the applicable law in certain situations.

SCHEDULE

THE COOPERATIVE SCHEME

PART 1—PRELIMINARY

Schedule, clause 1 inserts the definitions to be used in the schedule.

PART 2—APPLICATION OF STATE CRIMINAL LAW TO ADJACENT AREA

Schedule, clause 2 provides for the application of a State's substantive criminal law in the adjacent area for the State, including whether that law applies by force of the law of the State or of the Commonwealth. The provision contains examples to illustrate the concepts it describes.

Schedule, clause 3 provides for the application of a State's laws of criminal investigation, procedure and evidence. Further definitions are contained in the provision, together with examples to illustrate what is described.

Schedule, clause 4 provides for an evidentiary presumption about the locus of an offence.

PART 3—THE INTERGOVERNMENTAL AGREEMENT

Schedule, clause 5 allows for the Commonwealth Attorney-General and participating State Ministers to enter into an intergovernmental agreement about the division of responsibility for administering and enforcing the law relating to maritime offences.

Schedule, clause 6 provides for the effect of the intergovernmental agreement, including in relation to court proceedings.

PART 4—LIMITATIONS AND EXCLUSIONS

Schedule, clause 7 requires the Commonwealth Attorney-General's consent for certain prosecutions involving offences committed on or from foreign ships in certain circumstances and contains provisions related to that requirement.

Schedule, clause 8 relates to the extraterritorial operation of State law.

Schedule, clause 9 states that the cooperative scheme does not apply to State and Commonwealth law excluded from its ambit by regulation.

Schedule, clause 10 provides that the cooperative scheme does not apply to "Area A of the Zone of Cooperation". That term is defined in clause 1 of the schedule.

PART 5—MISCELLANEOUS

Schedule, clause 11 states that the *Acts Interpretation Act 1901* (Cwlth) applies to the scheme contained in the schedule in the same way as to a Commonwealth Act. This is to help ensure the scheme is interpreted consistently in the various jurisdictions.

Schedule, clause 12 provides for the making of regulations by the Governor-General in relation to the scheme.

PART 6—ADJACENT AREAS

Schedule, clause 13 defines the terms "baseline of Australia's territorial sea", "continental shelf" and "territorial sea" for part 6.

Schedule, clause 14 provides for the "adjacent areas" of each of the States and the Northern Territory.

Schedule, clause 15 defines the term "baseline".

Schedule, clause 16 provides for an indicative map of Australia showing the various areas that are relevant to the scheme. It is made clear that the map is intended to be indicative only and that the provisions of the Act are to prevail in the event of any inconsistency.

APPENDIX 1

INDICATIVE MAP

The appendix contains the indicative map of Australia referred to in clause 16 of the schedule.