

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

AUSTRALIAN MARITIME SAFETY AUTHORITY BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Transport and Communications,
the Honourable Kim Beazley MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY
THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED
AND THE CORRECTION TO THE EXPLANATORY MEMORANDUM AS
ORIGINALLY PRESENTED IN THE HOUSE OF REPRESENTATIVES



AUSTRALIAN MARITIME SAFETY AUTHORITY BILL 1990

OUTLINE

The proposed Act will establish the Australian Maritime Safety Authority as a statutory body. The Authority is to be able to operate with greater independence, and greater responsiveness to the needs of the maritime industry and the community generally, than is possible for a Department of State.

The functions conferred on the Authority under the proposed Act will include search and rescue and control of ship-sourced marine pollution. The proposed Act amends other Acts to confer on the Authority other functions including the safety regulation of maritime operations in Australia and Australian ships operating overseas, and also the provision of marine navigational aids in Australian waters.

The Authority will provide two basic classes of service: those provided on a commercial basis and those which cannot be so provided. The former includes such services as marine survey and the operation of the seamen's engagement system; the latter includes such services as search and rescue. The Government intends that the Authority will run its commercial services on a self-funded basis independently of the Commonwealth Budget; services which cannot be provided on a self-funded basis will be paid for by the Commonwealth. The Authority will be required to pay a dividend to the Commonwealth in each financial year if possible.

The Minister is authorised to give general directions to the Authority as to the performance of its functions, subject to the Authority being reimbursed for any revenue forgone or any extra costs incurred as a result of complying with the direction. Any directions given are to be published in the Authority's Annual Report. In addition the Authority is required to have regard to the objectives and policies of the Government in certain matters. The Bill thus ensures responsiveness to Government policies and proper Ministerial control.

The future direction of the Authority will be guided by corporate and financial plans, which the Authority will be obliged to prepare annually. The Minister is to have the right to direct the Authority to alter the financial plan. The Authority will be subject to the Audit Act 1901, and will therefore be obliged to report annually to the Minister on its performance during the past financial year. The Authority and any subsidiaries it may form will be subject to audit by the Auditor-General.

FINANCIAL IMPACT STATEMENT

The establishment of the Authority is expected to cost \$10.9m which will not be recovered from industry. The Bill does not have any significant implications for the on-going costs to the Public Sector. To the extent that greater efficiency is achieved costs can be expected to reduce in real terms over time.

NOTES ON CLAUSES

Clause 1 - Short Title

1. Provides for the Act to be cited as the *Australian Maritime Safety Authority Act 1990*.

Clause 2 - Commencement

2. Provision is made for the Act to come into operation in two stages.

3. Those sections which establish the Authority and provide for its administrative and financial framework will commence on Royal Assent.

4. The section which transfers statutory powers to the Authority (s.62), the section which provides for the payment of navigation levies to the Authority (s.48) and the necessary transitional provisions (ss.35 and 63) will commence on 1 January 1991.

5. This two stage approach will enable the members of the Authority to be appointed and necessary administrative systems put in place in advance of the Authority actually commencing its functions.

Clause 3 - Interpretation

6. Subclause (1) defines certain terms used in subsequent clauses of the Bill.

7. Subclause (2) amplifies the meaning of services by reference to subclause 10 (3).

8. Subclause (3) provides for the meaning of subsidiary to be consistent with that used in the *Companies Act 1981*.

Clause 4 - Extension to external Territories

9. Provides for the legislation to extend to all external Territories.

Clause 5 - Establishment of Authority

10. Subclause (1) establishes the Australian Maritime Safety Authority.

11. Subclause (2) provides for the Authority to be a body corporate with perpetual succession, to have a seal and sue or be sued in its corporate name.

12. Subclause (3) requires judicial notice to be taken of the seal of the Authority and where it appears on a document it must be presumed that the document was properly sealed.

Clause 6 - Functions of Authority

13. Subclause (1) generally defines the functions of the Authority.

14. Some functions are specifically mentioned in the subclause (combatting pollution, search and rescue, provision of services of a maritime nature on a commercial basis), while others are conferred on the Authority by other Acts (such as the Navigation Act 1912, the Lighthouses Act 1911, the Shipping Registration Act 1981 and various Acts dealing with the protection of the marine environment from pollution). The performance of incidental functions is also included.

15. Subclause (2) provides for the Authority's services to be provided within and outside Australian territory.

16. Subclause (3) empowers the Authority to provide services at its discretion.

Clause 7 - Functions to be performed in accordance with international treaties

17. This clause provides for the Authority to perform its functions consistently with Australia's obligations under relevant agreements between Australia and any other country (including obligations as a party to a multilateral treaty).

Clause 8 - Directions

18. Subclause (1) provides general power for the Minister to give directions to the Authority on the performance of its functions.

19. Because it would not be desirable for detailed directions to be given on the way in which the Authority performs its regulatory functions, subclause (2) limits directions relating to such functions (i.e. those conferred by other Acts) to directions of a general nature.

20. Subclause (3) requires that details of directions given in a particular financial year be included in the Authority's annual report for that year.

Clause 9 - Reimbursement of costs of complying with directions

21. Subclauses (1) and (2) set out the circumstances in which the Authority can be reimbursed for financial detriment as a result of complying with a Ministerial direction given pursuant to clause 8, including incurring greater costs or forgoing revenue.

22. Subclause (3) provides that Ministerial directions relating to varying a financial plan or to the payment of dividends are not included in the scope of this Clause.

Clause 10 - Powers of Authority

23. Subclause (1) confers general power on the Authority, over and above specific powers in the Act, in relation to the performance of its functions.

24. Subclause (2) provides specific examples of power conferred on the Authority, including power to enter into contracts; to acquire, hold and dispose of real and personal property; to join in the formation of companies; to enter partnerships; to hire plant and machinery not immediately required and invest money not immediately required.

25. Subclause (3) permits the Authority to provide a facility or service itself, in co-operation with others, or by arranging for others to do so on its behalf.

26. Subclause (4) makes it clear that the co-operation referred to in (3) includes co-operation with a State/Territory, the Commonwealth or a foreign government agency. This would enable joint projects with, for example, a State or overseas marine authority.

Clause 11 - Limitations on formation of companies, etc

27. Subclause (1) requires the Authority to inform the Minister before it acquires a major shareholding in a company, joins in the formation of a company that would be a subsidiary of the Authority or enters into a partnership.

28. Subclause (2) limits the things that companies in which the Authority has a controlling interest, or partnerships in which the Authority is a member, can do to things that the Authority can do.

Clause 12 - Consultation

29. The clause obliges the Authority to consult as appropriate with government, commercial, industrial, consumer and other relevant bodies.

Clause 13 - Constitution of Authority

30. Subclause (1) provides for the membership of the Authority. The Department is represented *ex officio* by the person occupying a position specified in writing by the Minister.

31. The Authority is to consist of 7 persons, one of whom is to be appointed as Chairman and one as Deputy Chairman. The Chief Executive Officer of the Authority will be a member as will an officer of the Department *ex officio*.

32. Subclause (2) allows the Chairperson to be a full-time or part-time member.

33. Subclause (3) requires members, other than the Chairperson and the Chief Executive Officer, to be part-time members.

34. Subclause (4) provides for members (other than the Chief Executive Officer and the departmental member) to be appointed by the Minister on terms and conditions (other than as provided for in the Act) as the Minister determines.

35. Subclause (5) preserves the Authority's power to discharge its functions notwithstanding the fact that there might be a vacancy on the Authority.

Clause 14 - Period of appointment of members

36. This clause specifies a 5 year maximum period of appointment for members of the Authority, other than the Chief Executive Officer and the departmental member, but provides that a member is eligible for re-appointment.

Clause 15 - Remuneration and allowances of members

37. Subclause (1) provides for the remuneration of members (other than the Chief Executive Officer and the departmental member) to be determined by the Remuneration Tribunal. If no such determination is in operation they will be paid such remuneration as is prescribed.

38. Subclause (2) provides for prescribed allowances paid to all members including the Chief Executive Officer and departmental member.

39. Subclause (3) provides that this Clause has effect subject to the *Remuneration Tribunals Act 1973*.

Clause 16 - Outside employment

40. Subclause (1) requires a full-time Chairperson to obtain the Minister's approval before engaging in outside employment.

41. Subclause (2) precludes a part-time member of the Authority from engaging in paid employment which, in the Minister's opinion, conflicts with the proper performance of the member's duties.

Clause 17 - Leave of absence

42. Subclause (1) allows the Minister to grant a full-time Chairperson leave of absence on such terms and conditions and remuneration as the Minister decides and a part-time Chairperson leave of absence from a meeting.

43. Subclause (2) allows the Chairperson to grant another member, other than the CEO, leave of absence from a meeting.

Clause 18 - Acting appointments

44. Subclause (1) provides for the appointment of an acting Chairperson during absence of the Chairperson or a vacancy in that office. It cannot be the Chief Executive Officer.

45. Subclause (2) provides for the appointment of an acting Deputy Chairperson during absence of the Deputy Chairperson or a vacancy in that office. It cannot be the Chief Executive Officer.

46. Subclause (3) provides for the appointment of an acting "ordinary" member during absence of a member or period of vacancy.

47. Subclause (4) provides that where there is a part-time Chairperson a person may only be appointed to act in that position on a part-time basis.

48. Subclause (5) restricts acting appointments on the basis of a vacancy in the office to a maximum period of 12 months.

49. Subclause (6) validates the actions of a person purporting to act pursuant to an acting appointment which is irregular for certain specified reasons.

Clause 19 - Disclosure of interests

50. Subclause (1) requires a member to disclose any direct or indirect pecuniary interest in a matter being considered by the Authority once that member becomes aware of the situation. Subclauses (2) and (3) set out the procedures to be followed where such an interest is disclosed.

Clause 20 - Resignation

51. This clause provides that a member (other than the Chief Executive Officer) may resign by writing to the Minister.

Clause 21 - Termination of appointment

52. Subclause (1) allows the Minister to terminate the appointment of a member for misbehaviour or physical or mental incapacity.

53. Subclauses (2) and (3) specify various actions by a member which constitute grounds under which the Minister may terminate the appointment. These include failing to comply with the requirements relating to outside employment, leave of absence or disclosure of interests and continued unsatisfactory performance.

54. Subclause (4) provides that this clause does not apply to the Chief Executive Officer.

Clause 22 : Meetings

55. Subclause (1) provides for an Authority to hold such meetings as are necessary for the performance of its functions.

56. Subclauses (2) and (3) provide for the convening of Authority meetings. The Chairperson may convene a meeting at any time and must convene a meeting when requested to do so by at least 2 other members. The Minister may convene a meeting at any time. These provisions are designed to ensure that the management of the Authority lies where it is intended it should - with the Authority as a whole.

57. Subclause (4) requires the Chairperson to preside at all meetings where he or she is present.

58. Subclause (5) specifies who shall preside at meetings when the Chairperson is not present.

59. Subclause (6) defines a quorum as 4 out of the 7 members.

60. Subclauses (7) and (8) specify that questions arising at Authority meetings are to be determined by a majority vote and that the person presiding has both a deliberative and a casting vote.

Clause 23 - Conduct of meetings

61. This clause provides the Authority with power to regulate proceedings at its meetings. Subclause (2), allows the Authority, for example, to permit members to participate in meetings by telephone, television or other means of communication and still be regarded as being present.

62. Subclause (3) permits the Authority to invite non-members to attend meetings to advise or inform the Authority.

Clause 24 - Resolutions without meetings

63. Subclause (1) allows the Authority, where it so determines, to take decisions without actually meeting, provided that such decisions are agreed to in accordance with a method determined by the Authority.

64. Subclause (2) provides that a resolution is to be taken as passed on the day determined according to that method.

Clause 25 - Corporate Plan

65. Subclauses (1), (2) and (3) require the Authority to develop a corporate plan for at least 3 years (including a statement of objectives), and provide for its annual review and revision.

66. Subclause (4) requires the Authority's plan to outline the strategies and policies designed to achieve its objectives.

Clause 26 - Corporate plan etc to be given to Minister

67. Subclauses (1) and (2) require the Authority to give a copy of the corporate plan to the Minister as soon as practicable and to inform the Minister of any matters (as they become apparent) which would or might affect the Authority's objectives as set out in the Corporate Plan.

68. Subclause (3) requires the plan to be accompanied by a copy of a financial plan for each year of the years covered by the corporate plan. The financial plan is to include performance indicators, estimates of receipts and expenditures and a forecast rate of return and dividend.

Clause 27 - Financial targets and performance indicators

69. This clause specifies the matters to be taken into account by the Authority in preparing the financial plan. They include the need for high standards of maritime safety, the objectives and policies of the Government known to the Authority, the financial expectations of the Commonwealth and appropriate commercial considerations.

Clause 28 - Estimates

70. This clause requires the Authority to prepare and submit estimates to the Minister in such form as he directs. It also provides for the timing of such submission to accord with the Commonwealth's budgetary timetable.

Clause 29 - Minister may direct variation of financial plan

71. Subclause (1) empowers the Minister to direct the Authority to vary its financial plan in certain respects.

72. Subclause (2) defines matters which should be taken into consideration by the Minister when giving such a direction.

73. Subclause (3) requires a direction to be in writing and to set out its reasons.

Clause 30 - Transfer of certain Commonwealth assets to Authority

74. Subclause (1) empowers the Minister to transfer from the Department to the Authority assets used in carrying out functions of the Authority which were previously carried out by the Department.

75. Subclause (2) provides for transfer of assets to the Authority other than in accordance with subclause (1).

Clause 31 - Statutory transfers of land etc to Authority

76. This clause sets out the procedures for the transfer of land from the Commonwealth to the Authority.

77. Subclause (1) clarifies the term "interests" and "land" for the purposes of this clause.

78. Subclauses (2) and (3) provide for the interest in a particular piece of land to be transferred to the Authority following the publication by the Minister in the Gazette of a notice describing that land.

79. Subclause (4) provides for freehold land to be transferred as freehold.

80. Subclauses (5) and (6) provide a simple method of enabling registration of transferred land under State/Territory law. A copy of the Minister's notice in the Gazette replaces the documentation that would normally be required under State/Territory law.

81. Subclause (7) provides a time limit of one year for transfers of land under the simplified procedures set out in the clause.

Clause 32 - Effects of transfers from Commonwealth to Authority

82. This clause sets out the financial effects of the transfer of assets from the Commonwealth to the Authority, either under clause 30 or, if they are in the nature of land, under clause 31.

83. Subclauses (2) & (3) require the Minister to determine the value of assets on the day of transfer or on a day prior to transfer. The Minister may then determine an amount (not greater than that value) which is then taken to be a loan to the Authority.

84. Subclause (4) empowers the Minister for Finance to determine terms and conditions of the loan, such as for servicing and repaying the loan.

85. Subclauses (5) & (6) automatically transfer all or part of any outstanding rights or obligations attached to the assets transferred to the extent determined by the Minister in writing.

Clause 33 - Liabilities in respect of personnel

86. This clause requires the Minister to determine, for the purpose of calculating the capital of the Authority, the amount of provision to be made by the Authority for outstanding liabilities in respect of personnel transferred from the Commonwealth to the Authority.

Clause 34 - Money paid in advance to Commonwealth

87. This clause provides for advance payments received by the Commonwealth to be paid to the Authority to the extent considered appropriate by the Minister.

Clause 35 - Rights in respect of services and facilities formerly provided by Department

88. Subclause (1) provides for the transfer to the Authority of rights possessed by the Commonwealth when the functions giving rise to those rights are transferred to the Authority. The extent of such transfer will be determined by the Minister in writing.

89. Subclause (2) provides for any proceedings in court in relation to matters covered in subclause (1) to be continued by the Authority.

Clause 36 - Capital of Authority

90. Subclause (1) sets out the way in which the capital of the Authority at any particular time is to be calculated.

91. Subclauses (2) and (3) provide that no interest is payable to the Commonwealth by the Authority in respect of its capital, but that capital is repayable as determined by the Minister in writing. The Minister must have regard to any advice provided on the Authority's financial affairs.

Clause 37 - Exemption from tax

92. This clause exempts the Authority from Commonwealth and State taxes, other than Commonwealth sales tax and customs duties and State or Territory payroll taxes.

Clause 38 - Payments of dividends to Commonwealth

93. This clause sets out the procedures to be followed by the Authority in relation to the payment of dividends. Having regard to those matters to be considered in drawing up its financial plan, the Authority must propose to the Minister, within 4 months after the end of a financial year, the level of dividend (if any) it proposes to pay.

94. The Minister, after taking into account the Government's policy, matters required to be considered by the Authority, and other commercial considerations as appropriate, can accept that recommended dividend or substitute another.

95. Once the recommended dividend is accepted by the Minister or the Authority is directed to pay an alternative dividend, the Authority must pay it within 8 months of the end of the financial year to which it relates.

Clause 39 - Borrowing from Commonwealth

96. This clause gives a discretion to the Minister for Finance to lend money to the Authority from the Consolidated Revenue Fund, on terms and conditions determined in writing by that Minister.

Clause 40 - Borrowings otherwise than from Commonwealth

97. This clause provides for the Authority to borrow money otherwise than from the Commonwealth, including money in foreign currency.

Clause 41 - Guarantee of borrowings by Authority

98. This clause empowers the Treasurer to enter into a contract to guarantee repayment of the borrowings of the Authority or a wholly owned subsidiary of the Authority.

99. The Treasurer must report the details of any such guarantees to Parliament.

Clause 42 - Authority may give security

100. This clause empowers the Authority to give security over all or part of its assets in meeting its obligations arising from borrowings, including reimbursement to the Commonwealth for any payments made by it pursuant to a guarantee.

Clause 43 - Delegation by Treasurer

101. This clause provides for the Treasurer to delegate any or all of his powers under clause 41 to an officer of the Treasury.

Clause 44 - Application of Division 2 of Part XI of the Audit Act

102. This clause declares the Authority to be a public authority to which Division 2 of Part XI of the Audit Act 1901 applies, and specifies details which must be included in its annual report under that Act.

Clause 45 - Audit of subsidiaries

103. This clause provides for the Auditor-General to inspect and audit the accounts and records of financial transactions of the Authority's subsidiaries. It authorises the Auditor-General to have such access to information as necessary and provides penalties for failing to supply required information.

104. Provision is made for the Auditor-General to report the result of audits to the Minister.

105. Subclause (7) makes it clear that the requirements relating to audit by the Auditor-General do not affect any requirements contained in State or Territory law relating to audits.

Clause 46 - Interpretation

106. This clause defines "charge" for the purposes of Division 2 of Part 5 of the Bill. In particular, it makes it clear that it includes fees imposed under the various pieces of legislation to be administered by the Authority.

Clause 47 - Charges for services and facilities.

107. Subclause (1) empowers the Authority to make determinations fixing charges and penalties for non-payment.

108. Subclause (2) makes the charges of the Authority subject to the Prices Surveillance Authority Act 1983.

109. Subclauses (3) to (11) set out procedures for Ministerial and Prices Surveillance Authority (PSA) oversight of charges. The Minister must be advised of a proposed determination and may disallow it. If the PSA holds an inquiry into a proposed charge, its report is given to the Minister who may use the PSA's findings to make a substitute determination binding on the Authority.

110. Subclause (12) emphasises that the Authority's power to determine charges is limited to charges reasonably related to costs and must not amount to taxation.

111. Subclause (13) requires the Authority to publicise its charges.

112. Subclauses (14) to (16) empower the Authority to levy a penalty not exceeding 1.5% per month on unpaid charges.

113. Subclause (17) specifies that charges and penalties are recoverable as debts due to the Authority.

Clause 48 - Payment of amounts of levy to Authority

114. As well as receiving revenue by way of fees for specific services provided to individual shipowners, the Authority will need to receive the revenue from the more general marine navigation levy and the oil pollution fund levy. For Constitutional reasons, these levies must initially be paid into the Consolidated Revenue Fund. Clause 48 appropriates them from the CRF to the Authority.

Clause 49 - Chief Executive Officer

115. This clause provides for a Chief Executive Officer (CEO) to be appointed by the Minister. The CEO may only be appointed for a maximum of 5 years but is eligible for re-appointment.

116. Subclauses (3) and (4) make it clear that the function of the CEO is to manage the Authority and that anything done by the CEO is to be taken to be done by the Authority.

Clause 50 - Chief Executive Officer not to engage in other work

117. This clause prevents the CEO from engaging in outside work, except with Ministerial approval.

Clause 51 - Terms and conditions of service of Chief Executive Officer

118. This clause provides for the terms and conditions of service, including remuneration and allowances) of the CEO to be determined by the Authority. It will allow for a negotiated remuneration package.

Clause 52 - Resignation

119. This clause provides that the CEO may resign by writing to the Minister.

Clause 53 - Term of office

120. This clause specifies that the CEO holds office during the Authority's pleasure.

Clause 54 - Acting Chief Executive Officer

121. This clause enables the Minister to appoint a person to act as CEO during a vacancy or absence and limits the acting period to 12 months. Unless an employee of the Authority, the person acting is to receive the same remuneration and allowances as are payable to the CEO. An employee is to be paid the appropriate difference in salary and allowances.

122. Subclause (4) validates the actions of an acting CEO despite an irregularity in his or her appointment for certain specified reasons.

Clause 55 - Staff of Authority

123. Subclause (1) provides that the staff of the Authority are to be employed under the *Public Service Act 1922*.

124. Subclause (2) provides for the CEO to have the powers of a Secretary under the *Public Service Act 1922* in respect of the staff of the Authority.

125. Subclause (3) allows the exchange of staff between the Authority and another parts of the Commonwealth and other bodies.

Clause 56 - Consultants

126. This clause empowers the Authority to engage consultants.

Clause 57 - Delegation by Minister

127. This clause enables the Minister to delegate specified powers relating to the transfer of assets and liabilities to the Secretary, Associate Secretary and other senior officers of the Department.

Clause 58 - Delegation by Authority

128. This clause allows the Authority to delegate its powers. The scope of delegation has been made deliberately flexible to allow for some of the technical functions to be delegated to such persons as State/Territory officials, officials of overseas marine administrations or even, where appropriate, to non-governmental professional persons.

Clause 59 - Substitution of Authority for Commonwealth in contracts etc

129. This clause empowers the Minister to substitute the Authority for the Commonwealth in respect of a contract or other instrument relating to the assets of the Authority.

Clause 60 - Publication of directions

130. This clause requires that Ministerial directions under clauses 8, 29 or 38 be notified in the Gazette within 21 days.

Clause 61 - Regulations

131. This clause empowers the Governor-General to make regulations.

Clause 62 - Amendments of other Acts

132. This clause provides, in a schedule, for consequential amendments to other legislation as a result of this Act.

133. Most of the amendments are a direct transfer of functions to the Authority under various maritime statutes or a necessary result of such transfer. The opportunity has also been taken to tidy up the power to make Marine Orders, currently appearing in various ways in various places in the *Navigation Act 1912*, into a single section of that Act.

Clause 63 - Actions etc. under provisions amended or repealed

134. Subclause (1) provides that acts done or decisions made under other legislation amended, or repealed and re-enacted, by this Bill are to continue to have effect.

135. Subclause (2) provides that in an instrument kept in effect by subclause (1), references to Secretary and Department are to be read as references to the Authority.

136. Subclause (3) provides that Ministerial orders made under the *Navigation Act 1912*, the *Protection of the Sea (Powers of Intervention) Act 1981* or the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (known collectively as "Marine Orders") are continued in force.

