

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN NATIONAL MARITIME MUSEUM BILL 1989 [1990]

EXPLANATORY MEMORANDUM

LIBRARY

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the Arts, Sport, the Environment, Tourism and Territories,
the Hon. Ros Kelly, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE SENATE
TO THE BILL AS INTRODUCED

AUSTRALIAN NATIONAL MARITIME MUSEUM BILL 1989

OUTLINE

The purpose of the Bill is to establish the Australian National Maritime Museum (the Museum) as a statutory authority. The functions of the Museum will include exhibiting, in co-operation with other public and private institutions, maritime historical material included in the national maritime collection or otherwise held by the Museum; developing, preserving and maintaining the national maritime collection and informing the community on Australian maritime history and on the Museum itself. The Museum will be able to develop sponsorship, marketing and other commercial activities; promote research into matters relating to Australian maritime history and encourage the recovery from the marine environment of maritime material of significance to Australian heritage.

The Museum will be a body corporate with all the powers necessary to perform its functions. A full-time Director, appointed by the Governor-General, will be responsible for the day-to-day management of the Museum. The Director will be subject to policies formulated and directions given by a Council.

The Council, comprising a Chairperson, the Director and no more than 10 other members also appointed by the Governor-General, is to ensure the proper and efficient performance of the functions of the Museum. The Council shall comply with any directions given by the Minister concerning the performance of a function, or the exercise of a power.

The Bill provides for the money of the Museum to be disbursed in accordance with its functions. The Museum will prepare estimates of receipts and expenditure annually, which will be approved by the Council and the Minister. In keeping with the changing emphasis on accountability, the Museum will submit three year strategic plans and annual operational plans to the Minister. The strategic plans will be tabled in Parliament within 15 sitting days of approval by the Minister.

The Museum will be subject to audit by the Auditor-General and will also be obliged to prepare an annual report. Although the Museum will not be subject to taxation under Commonwealth, State or Territory law, including sales tax and debits tax, it will be subject to customs and excise duty.

Financial Impact Statement

The capital cost to the Commonwealth of the Museum building, site works, wharves and sea-walls was \$30 million. The Government provided \$20.605 million for the Museum in the 1990/91 Budget. This included \$2.04 million as the Commonwealth's share of the completion, rectification and prolongation costs of the Museum building at Darling Harbour and \$8.594 million for the design, fabrication and installation of the opening exhibitions. Salary costs for the Museum in 1990/91 are estimated at \$2.889 million with running costs of \$3.373 million. The current allocation for the National Maritime Collection is \$0.904 million.

The Bill will marginally increase the Museum's costs (e.g. production of the Annual Report and audit fees). These increases are expected to be offset by the Museum's ability as a statutory authority to generate revenue through sponsorship and commercial activities.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short title

1. The Act to be cited as the *Australian National Maritime Museum Act 1989* [1990].

Clause 2: Commencement

2. This clause provides for the Act to commence on 1 July 1989 if the Act receives Royal Assent before 1 July 1989. If the Act receives Royal Assent on or after 1 July 1989, the Act commences one month after it receives Royal Assent.

Clause 3: Interpretation

3. Subclause 3(1) defines terms and expressions used in the legislation. Terms of note are 'Australian marine environment' which includes the environment of lakes, rivers, internal waters of Australia and the sea above, and sea-bed of, the continental shelf, and 'Australian maritime history' which is defined widely to include the geological and biological history of the Australian marine environment and the interaction of human beings with that environment.

4. Subclause 3(2) provides that a reference to Australia in the definitions of 'Australian marine environment' and 'Australian maritime history' includes the former territories of Australia such as Papua New Guinea and Nauru during the period they were territories of Australia.

Clause 4: Extension to external Territories

5. The Act extends to all external Territories.

PART 2 - THE AUSTRALIAN NATIONAL MARITIME MUSEUM

Clause 5: Establishment of Museum

6. This clause establishes a Museum known as the Australian National Maritime Museum. The Museum is to have all the normal incidents of corporate personality.

Clause 6: Functions of the Museum

7. The functions of the Museum are to:

- . create exhibitions from the Museum's, and other related, collections;
- . plan educational and cultural programs to complement the exhibitions;
- . develop, preserve and maintain the national maritime collection;
- . promote the Museum and its activities;

- . establish a reference and information service;
- . undertake research; and
- . seek corporate sponsorship and support, and undertake marketing and other commercial activities.

Clause 7: Powers of Museum

8. This clause provides the Museum with the power to do all things necessary to carry out its functions, including to:

- . purchase, commission, borrow or hire maritime historical material either in its own right or jointly with others;
- . collect material relating to Australian maritime history and dispose of that material under certain circumstances;
- . recover, or arrange for, or assist in the recovery of, maritime historical material from the Australian marine environment and from other areas;
- . accept gifts, devises, bequests and assignments of money or property, whether as trustee or otherwise;
- . acquire and operate vessels anywhere, whether or not the vessels are maritime historical material,
- . disseminate information relating to Australian maritime history and sell replicas or reproductions of maritime historical material;
- . enter into contracts, acquire, hold and dispose of real or personal property; charge fees (in addition to the charges fixed by regulation); appoint agents and attorneys and act as an agent for other persons, as well as raise money, by appropriate means, for the purposes of the Museum.

Clause 8: Land, etc. for the Museum

9. This clause allows the Minister to transfer property, real or personal, held on lease or otherwise, to the Museum for its use or for inclusion in the national maritime collection.

10. Subclause 8(2) provides that where the Council so requests, the Minister may transfer maritime historical material owned by the Commonwealth to the Museum. The Minister may also transfer such other goods or equipment owned by the Commonwealth that the Minister considers would be of use to the Museum.

11. Subclauses 8(3) and (4) provide for the Minister, or his/her delegate, to transfer assets to the Museum from a specified date and for the Museum to be liable to pay and discharge all debts, liabilities and obligations of the Commonwealth in respect of that asset.

12. Subclause 8(5) provides that the Minister may declare that any agreement or instrument entered into by the Commonwealth or Commonwealth Government immediately before the commencement of the Act which relates to a maritime museum is to have effect after the commencement of the Act as if references to the Museum were substituted for references to the Commonwealth or Commonwealth Government.

13. Subclause 8(6) provides that the Minister may delegate his/her powers under the clause to the person holding or performing the duties of the office of Secretary to the Department.

Clause 9: National maritime collection

14. The Museum is to develop a national collection of maritime historical material to comprise all maritime historical material solely owned by the Museum, that the Council determines should be included in the national maritime collection. A determination by the Council that material be included in the national maritime collection shall be based upon criteria and made in accordance with guidelines approved by the Minister. The Council shall only dispose of material included in the collection in accordance with clause 10.

Clause 10: Disposal of material in national maritime collection

15. This clause provides that after obtaining and considering reports from 2 independent experts as to the importance of material to the national maritime collection, the Council, once satisfied that the material is unfit for the collection, may determine that the material is to be disposed of by way of sale, exchange, gift or destruction. Before destroying any material in the national maritime collection, the Council will be required under subclause 10(3) to determine that the material could not otherwise have been disposed of by sale, exchange or gift. Subclause 10(4) provides that the Museum may dispose of material in the national maritime collection if so determined by the Council or, if the value of the material exceeds \$10,000 (as determined in accordance with the regulations), the Minister has approved of its disposal.

PART 3 - THE COUNCIL OF THE MUSEUM

Clause 11: Establishment of Council

16. This clause establishes the Council of the Museum.

Clause 12: Functions of Council

17. The functions of the Council are to ensure the proper and efficient performance of the functions of the Museum and to determine its policy, subject to any ministerial directions (see clause 14).

Clause 13: Council may give directions to Director

18. Subject to clause 12, the Council may give directions to the Director regarding the management of the affairs of the Museum, and the Director will comply with any such directions.

Clause 14: Directions to Council

19. The Minister may give directions in writing to the Chairperson of the Council concerning the performance of the functions, or the exercise of the powers, of the Museum. The Council shall comply with any such directions. The Minister will be required to table in each House of Parliament a copy of each direction given to the Council within 6 sitting days of the direction being given. If a direction is not tabled in the time allowed, it will cease to have effect.

Clause 15: Committees of Council

20. The Council may constitute such committees as are necessary for the purposes of the Act. Committees are to be made up either of members of the Council only or a mix of members of the Council and other persons.

Clause 16: Delegation by Council

21. By resolution, the Council may delegate all or any of its powers under the Act to the Director, any other member of the Council or member of Museum's staff. A delegate is subject to the directions of Council. A delegation of power remains in force notwithstanding a change in the membership of the Council and may be revoked by Council.

Clause 17: Membership of Council

22. This clause stipulates that the Council shall consist of the Chairperson, the Director and no fewer than 7 nor more than 10 other members. The members of the Council, including the Chairperson but excluding the Director, are appointed by the Governor-General as part-time members. Subclause 17(3) provides that an appointed member is to be a person having knowledge and experience of matters relating to Australian maritime history or such other areas of knowledge relevant to the affairs of the Museum. Subclause 17(4) places an upper age limit of 65 years on appointments, and subclause 17(5) provides that no appointment shall exceed 3 years.

23. Subclause 17(6) provides that the performance of the functions of the Council is not affected if there is a vacancy in the office of Chairperson or Director or that there are fewer than 7 other appointed members for less than 3 months.

Clause 18: Acting members

24. This clause allows the Minister to appoint a current member of Council to act as Chairperson during a vacancy in that office or if the Chairperson is absent from duty, overseas or unable to perform the functions of that office. Such an appointment shall not exceed 12 months.

25. Subclauses 18(2) and 18(3) provide that the Minister may appoint a person who is not a member of Council to act as a member where there is a vacancy, but such an appointment shall not exceed 12 months.

26. Subclause 18(4) provides that the validity of anything done by a person purporting to act under this clause is not invalid because of some irregularity or defect in the appointment, the person's appointment having ceased to have effect, or the occasion for the person to act having not arisen or having ceased.

Clause 19: Leave of absence

27. The Council may grant leave to an appointed member from a meeting of the Council on such terms and conditions as it sees fit, in accordance with guidelines approved by the Minister.

Clause 20: Resignation

28. An appointed member may resign in writing to the Governor-General.

Clause 21: Termination of appointment

29. The Governor-General may terminate an appointment (see clause 17) for misbehaviour or for physical or mental incapacity. However, the Governor-General shall terminate the appointment if the appointed member becomes bankrupt, is absent from 3 consecutive meetings of Council without leave, or fails to disclose direct or indirect pecuniary interests.

Clause 22: Disclosure of interests

30. This clause places an obligation on a member of Council, who has a direct or indirect pecuniary interest in a matter under consideration by the Council, to disclose the nature of that interest. This shall be recorded in the minutes of a meeting of the Council and the member shall not be a part of a decision or the decision making process with respect to that matter, unless the Minister or Council determines otherwise.

Clause 23: Meetings of Council

31. The Chairperson shall convene such meetings of the Council as are necessary for the efficient conduct of its functions. The Chairperson shall convene a meeting of the Council on receipt of a written request signed by no fewer than 4 members. The Minister may at any time convene a meeting of the Council.

32. The clause outlines the quorum requirements for meetings, arrangements for chairing meetings and voting procedures. Council is required to keep minutes of its proceedings and to forward a copy of those minutes to the Minister.

33. Subclauses 23(11) and 23(13) provide that the Council may determine that members may participate in, and be considered present at, meetings of the Council by means of telephone, close circuit television or any other method of communication determined by Council.

Clause 24: Remuneration and allowances

34. This clause provides that remuneration of members of the Council and its Committees is to be determined by the Remuneration Tribunal or, if no determination of the Tribunal is in operation, the member or person shall be paid such remuneration as is prescribed. Members shall be paid such allowances as are prescribed.

Clause 25: Strategic Plans

35. The Council shall prepare 3-year strategic plans, the first of which commences from a date within 12 months of the commencement of this Act.

36. Subclause 25(3) provides that each strategic plan shall be laid before each House of Parliament.

37. This provision seeks to ensure that the Council operates within overall Commonwealth objectives and policies.

Clause 26: Approval and commencement of strategic plans

38. Council shall submit any strategic plan to the Minister for approval not less than three months before the commencement of the period to which the plan relates (unless the Minister agrees to a period shorter than three months). The strategic plan shall come into force on the day on which it is approved by the Minister or the day of commencement of the period to which it relates, whichever is the later.

Clause 27: Variation of strategic plans

39. This clause provides that the Council may review a strategic plan and vary the plan with the approval of the Minister. A variation of a strategic plan must also be laid before each House of Parliament after the Minister has approved it.

Clause 28: Annual operational plans

40. The Council shall develop an operational plan for each financial year ending after the commencement of the Act. Such plans are to set out the programs the Council proposes to carry out and the resources to be allocated to each program. The Minister may request the Council to revise an operational plan if the Minister considers that the plan is inconsistent with the current strategic plan. The Council may also revise an operational plan at any time. An operational plan, or any revision of it, shall be submitted to the Minister as soon as practicable and comes into force when the Minister approves it in writing.

Clause 29: Compliance with plans

41. This clause provides that the Museum shall as far as possible perform its functions and exercise its powers in a manner consistent with any strategic or operational plans which are in force.

PART 4 - THE DIRECTOR OF THE MUSEUMClause 30: Director

42. This clause provides for a Director of the Museum who is to be appointed by the Governor-General. Such a person shall not be older than 65 years, shall hold office for a period not exceeding 7 years and shall hold office on such terms and conditions (if not provided for in the Act) as are determined by the Governor-General.

Clause 31: Duties of Director

43. The Director shall manage the affairs of the Museum subject to directions from, and in accordance with the policies of, the Council.

44. All acts and things done in the name of, or on behalf of, the Museum by the Director shall be deemed to have been done by the Museum.

Clause 32: Director not to engage in other work

45. The Director shall not engage in paid employment outside the duties of that office except with the approval of the Minister.

Clause 33: Remuneration and allowances

46. The Remuneration Tribunal is to determine the remuneration of the Director. If there is no such determination, the Director shall be paid such remuneration as is prescribed. Allowances for the Director are to be prescribed.

Clause 34: Leave of absence

47. The Minister may grant leave of absence to the Director on such terms and conditions as the Minister determines. The Chairperson may grant leave of absence to the Director if the period of leave of absence is less than 5 days.

Clause 35: Resignation

48. The Director may resign in writing to the Governor-General.

Clause 36: Termination of appointment

49. This clause provides that the Governor-General may terminate the Director's appointment because of misbehaviour or because of physical or mental incapacity. The Governor-General shall terminate the Director's appointment in the case of bankruptcy, unauthorized absence from duty for 14 consecutive days or for 28 days in any 12 months, unauthorized absence from 3 consecutive meetings of Council, engagement in unauthorized paid employment or failure to disclose indirect or direct pecuniary interests.

Clause 37: Disclosure of interests

50. This clause provides that the Director shall advise the Minister in writing of direct or indirect pecuniary interests the Director has, or acquires, in any business.

Clause 38: Acting Director

51. The Minister may appoint a person, other than a member, to act as Director during a vacancy in that office for such periods as the Director may be absent from duty or be unable to perform the functions of the office. However, such an appointment shall not exceed 12 months.

52. Subclause 38(2) provides that the validity of anything done by such a person will not be questioned because of some irregularity or defect in the appointment or by reason of the appointment ceasing to have effect.

Clause 39: Delegation by Director

53. The Director may, with the approval of the Council, delegate all or any of the powers of the Director to a member of the staff of the Museum.

PART 5 - STAFF AND CONSULTANTSClause 40: Staff

54. In respect of the staff of the Museum, the Director shall have all the powers of a Secretary of a Department, exercisable as if the Museum were a separate Department. Subject to clause 41, the Museum's staff shall be appointed or employed under the Public Service Act 1922.

Clause 41: Arrangements relating to Staff

55. Arrangements may be entered into between the Director and other Commonwealth, State or Territory governmental agencies for the services of staff of that agency.

Clause 42: Engagement of consultants,

56. The Director may engage, on behalf of the Museum, persons of suitable qualifications and experience as consultants, subject to terms and conditions determined by the Director.

PART 6 - FINANCE

Clause 43: Appropriation of money

57. Money may be appropriated by Parliament for the purposes of the Museum in such amounts and at such times as directed by the Minister for Finance.

Clause 44: Australian National Maritime Museum Fund

58. This clause provides for the establishment of the Australian National Maritime Museum Fund. Money from gifts and bequests (other than money received on trust) and money received by the Museum from the disposal of property given (other than on trust) by gift, devise or bequest shall be paid into a bank account named the Australian National Maritime Museum Fund. Payment of money into that account shall be deemed to be payment of money into the Fund.

Clause 45: Application of money

59. This clause stipulates that the money of the Museum shall be applied only in discharging the costs, expenses and obligations incurred by the Museum in the performance of its functions and in payment of remuneration and allowances payable under the Act.

60. Subclause 45(2) provides that the Museum may invest money on deposit with an approved bank, in securities of the Commonwealth or in any other manner approved by the Treasurer.

Clause 46: Estimates

61. The Museum will prepare estimates, in such form as the Minister directs, of receipts and expenditure (other than trust funds) for each financial year and for such other periods as directed. The estimates which have been approved by the Council shall be submitted to the Minister. The money of the Museum shall not be spent other than in accordance with the estimates of expenditure as approved by the Minister.

Clause 47: Contracts

62. Subject to the restriction in clause 10 on disposal of material in the national maritime collection, the Museum shall not, except with the approval of the Minister, enter into a contract for acquisitions for an amount exceeding \$100 000, or higher if prescribed; or in any other case \$100 000, or higher if prescribed. The Minister's approval is required for the Museum to enter into leases for more than ten years.

Subclause 47(3) provides that the contract limits specified in subclause 47(1) do not apply to the investment of money by the Council in accordance with subclauses 45(2) or 50(2)(b).

Clause 48: Application to Museum of Division 3 of Part XI of Audit Act

63. This clause declares that the Museum is a public authority for the purposes of Division 3 of Part XI of the Audit Act 1901. In effect this means that the Auditor-General will audit accounts of the Museum and that the Museum is required to provide an Annual Report on its activities to the Minister for tabling in the Parliament. The Museum is required to include in its annual report for any year:

- . each direction given by the Minister to the Council under clause 14 during that year;
- . the approved operational plan (and any revisions) for that year; and
- . an assessment of the Museum's performance against the strategic plan and annual operational plan which relate to that year.

Clause 49: Exemption from taxation

64. The Museum will not be subject to taxation under any Commonwealth, State or Territory law, including sales tax and debits tax, but will be subject to customs and excise duty.

PART 7 - MISCELLANEOUS

Clause 50: Trust money etc.

65. Any trust moneys of the Museum shall be held in a separate account and that the Auditor-General may audit the trust account. Subclause 50(2) provides that the money or other property held on trust by the Museum shall not be dealt with other than in accordance with the terms of the trust and the Museum's obligations as trustee. It obliges the Museum to invest trust money only in accordance with any terms of the trust and under law.

Clause 51: Limit on charges

66. Any charge fixed under the Act shall not amount to a tax.

Clause 52: Operation of certain other laws not affected

67. The Museum will be subject to the law of copyright, to those laws relating to the preservation and use of archival resources and to the rights of the public for access to official documents of the Commonwealth Government and its agencies.

Clause 53: Supply of liquor

68. This clause provides that regulations may deal with the supply of alcoholic beverages on any land, building or vessel owned by, or under the control of, the Museum.

69. Any regulations in force under subclause 53(1) operate to the exclusion of any State or Territory laws that would otherwise apply.

Clause 54: Regulations

70. Regulations may be made as required, or as prescribed by the Act, or as necessary or convenient to give effect to the Act. In particular, regulations may be made controlling the entry into and conduct of persons in Museum premises (defined to mean land, water, building, structure or vessel), fixing charges, regulating the publishing, exhibiting or trading of replicas and reproductions of copies of maritime historical material owned by the Museum and prescribing penalties not exceeding \$500 for offences against the regulations.



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