



1978

The Parliament of the Commonwealth of Australia

CRIMES AT SEA BILL 1978

EXPLANATORY MEMORANDUM

(Circulated by the Attorney-General,
Senator the Hon. Peter Durack, Q.C.)

CRIMES AT SEA BILL 1978

Purpose

To apply the criminal laws of an appropriate State or Territory to and in relation to offences on or from Australian ships on overseas, inter-State and Territory voyages and in foreign ports, and in certain limited cases to offences on or from foreign ships; also to apply the criminal laws of the adjacent State or Territory to and in relation to offences in offshore areas under Australian jurisdiction outside the territorial sea. (Complementary State Bills have been prepared to deal with intra-State voyages and offences within the territorial sea.)

Clause 2

The Bill is to come into operation on a date to be proclaimed.

Clause 3(1) - Definitions

'Australian ship' - this definition will include ships registered in Australia or an external Territory under the Imperial Merchant Shipping Act or under any Commonwealth Act replacing that Act. Paragraph (b) refers to any other ship that is Australia-based or owned or Territory-based or owned (not being a ship registered in a foreign country).

'Criminal laws' - this definition refers to any laws, whether written or unwritten and whether substantive or procedural, and as in force from time to time, that make provision for or in relation to offences.

'Foreign country' - this definition refers to any country other than Australia or an external Territory. The distinction made in the Bill is between Australian ships and other ships and so no special reference is needed to ships of other Commonwealth countries.

Clause 3(2)(d)

This provision is necessary because offences under Commonwealth laws are not dealt with by this Bill. The extra-territorial applicability of such offences is dealt with in the particular Commonwealth Act concerned, and in the Acts Interpretation Act 1901.

Clause 3(3)

This provision defines 'a place of call' of a ship so as to exclude a call at an offshore installation (paragraph (b)) and so as to include a place in the territorial sea of a State or Territory (paragraph (c)).

Clause 3(4)

This provision deals with when a person ceases to be a 'survivor' - see paragraphs 6(1)(b), 7(1)(b) and 8(1)(b).

Clause 4

This provision, which follows in part section 6 of the Commonwealth Places (Application of Laws) Act 1970, authorizes an arrangement with a State for the exercise or performance of a power, duty or function (not involving the exercise of the judicial power) by an authority of the State under the provisions of the criminal laws in force in any State or Territory as applying by virtue of this Act.

Clause 5

This provision excludes the operation of certain Commonwealth provisions in relation to matters arising under the Bill. The Acts Interpretation Act 1901 other than section 30 providing that a person shall not be punished twice for the same offence - is excluded. Also, the provisions of the Crimes Act 1914 relating to aiders and abettors, accessories, attempts, incitements and conspiracy are excluded. Where an arrangement under clause 4 is in force, the provisions of the Crimes Act 1914 and of the Judiciary Act 1903 specified in sub-clause 5(4) are also excluded. These provisions deal with arrest, seizure, institution of proceedings, sentencing, fines and related matters.

These various matters will be dealt with by State or Territory laws as applying by virtue of the Bill.

Clause 6 - Australian Ships

This clause applies State or Territory criminal laws to and in relation to acts committed by a person on or from an Australian ship in the course of a 'prescribed voyage' and by the survivor of the wreck of such a ship, and to acts committed on Australian ships in foreign ports.

The criminal laws so applied are those of a State or Territory with which the ship is connected by registration. If the ship is not so registered, other kinds of connection with a State or Territory are to be recognized. See sub-clause 6(2).

'A prescribed voyage' is defined in sub-clause 6(3) so as to include -

- (a) a voyage from a State to a place in a foreign

- country, in another State, or in a Territory;
- (b) a voyage from the Northern Territory to a place in a foreign country, in a State, or in another Territory; and
- (c) any voyage from a Territory other than the Northern Territory or from a foreign country.

Clause 7 - Certain Foreign Ships

This clause applies in relation to acts committed on the high seas by a person on or from a foreign ship in the course of a voyage to a place in Australia or an external Territory, or which is fishing or is licensed to fish in the Australian fishing zone, and by a person who is a survivor of the wreck of such ships. See sub-clause 7(1).

The effect of sub-clause 7(2) is that only the last leg of a voyage from overseas to Australia is included for purposes of the clause - e.g., in a voyage Tokyo-Manila-Sydney, only the Manila-Sydney leg would be included - plus any leg of the voyage around Australia, e.g., Sydney-Melbourne.

Sub-clause 7(3) has the effect of applying to such acts the criminal laws of the State or Territory which the offender enters or to which he is brought. Sub-clause 7(4) makes it a defence that the act constituting the offence would not have constituted an offence under the law of the country of which the offender is a national.

The consent of the Attorney-General is required for proceedings (sub-clause 7(5)), to be given only if he is satisfied that the government of the foreign country under whose jurisdiction the ship comes has given its consent (sub-clause 7(6)). However, the requirement of

consent does not apply to piratical acts (sub-clause 7(7)), since all countries have jurisdiction to try piratical acts on any ship. Sub-clause 7(8) authorizes detention pending obtaining consent.

Clause 8 - Australian Citizens
on Foreign Ships

This clause applies State or Territory criminal laws to and in relation to acts on or from foreign ships beyond the territorial sea of Australia or an external Territory by an Australian citizen who was not a member of the crew of the ship, and by such a person who is the survivor of the wreck of such a ship.

The criminal laws applied are those of the State or Territory in which the person was domiciled at the time or he had his last place of residence in Australia or the external Territories.

Clause 9 - Continental Shelf

This clause applies the criminal laws of the adjacent State or Territory to all acts outside the territorial sea touching, concerning, arising out of or connected with the exploration of, or the exploitation of the resources of, the continental shelf of Australia or of an external Territory.

Clause 10 - Other Offshore Areas
within Australian Jurisdiction

This clause enables the application by regulation of the criminal laws of the adjacent State or Territory to and in relation to acts in offshore areas coming within Australian jurisdiction under international law (e.g., any 200-mile economic zone proclaimed by Australia).

Clause 11 - Actions by Australian
Citizens in Offshore Areas

This clause enables the application of the criminal laws of the adjacent State or Territory to and in relation to acts by Australian citizens or residents (other than acts covered by clause 9 or clause 10) in offshore areas outside the territorial sea to be defined by regulations (e.g., within a 200-mile economic zone).

Clause 12 - Certain Criminal
Laws Not to Apply

This provision excludes from the criminal laws applied by the Bill laws incapable of applying at sea or laws expressly worded so as not to extend or apply at sea.

Clause 13 - Procedure in Proceedings

Clause 13(1) provides that, subject to the Bill, proceedings under State or Territory criminal laws as applied by virtue of the Bill shall be instituted and conducted in a State or Territory in the same manner as though they were proceedings under the law of the last-mentioned State or Territory (cf. Commonwealth Places (Application of Laws) Act 1970, s.12(1)).

Clause 13(2) allows for the institution or conduct of proceedings in accordance with a law of the Commonwealth other than this Bill (see e.g., the Judiciary Act 1903, s.69), being proceedings in a State with which an arrangement is not in force under clause 4 or proceedings in a Territory (cf. Commonwealth Places (Application of Laws) Act 1970, s.12(2)).

All trials on indictment under criminal laws

applying by virtue of the Bill are to be by jury (sub-clause 13(3)).

Clause 14 - Joinder of Charges

The purpose of this provision is to prevent objection being taken to joining a charge for an offence directly under State or Territory law with a charge of an offence under State or Territory law as applied by virtue of this Bill.

Clause 15 - Concurrent Operation of Laws

The purpose of this provision is to save the operation of State and Territory laws so far as they are capable of operating concurrently with this Bill.

Clause 16 - Presumption of Jurisdiction

Under this provision, acts are to be presumed to have taken place on the voyage or at the place alleged, unless the contrary is established.

Clause 17 - Change of Venue

This provision authorizes a stay of proceedings (with a view to change of venue) if the Judge of a Supreme Court of the State or Territory in question is satisfied that other proceedings have been instituted or are proposed and that it is expedient that the proceedings be stayed.

Matters to be taken into account include whether the continuation of the proceedings would improve any special hardship on the accused (see sub-clause 17(2)).

Clause 18 - Regulations

As well as conferring a regulation-making power in the usual terms, this clause also authorizes regulations providing that provisions or classes of provisions of the

criminal laws in force in a State or Territory are not to apply by virtue of this Bill either absolutely or to specified acts or classes of acts or in specified circumstances (cf. Commonwealth Places (Application of Laws) Act 1970, s.4(6)).
