

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MARITIME LEGISLATION AMENDMENT BILL 1993

(Circulated by the Authority of the
Attorney-General the Hon. Michael Lavarch, MP)

EXPLANATORY MEMORANDUM

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OUTLINE

The Bill completes the process of bringing Australia's maritime zones into line with those to which Australia is entitled under international law, as reflected in the 1982 Convention on the Law of the Sea.

This Bill amends the *Seas and Submerged Lands Act 1973* and a number of other Acts to replace references to the 1958 Territorial Sea and Continental Shelf Conventions with references to comparable provisions in the 1982 Law of the Sea Convention. It also provides for the first time in Commonwealth legislation provisions declaring sovereign rights and jurisdiction in an exclusive economic zone and rights of control in a contiguous zone. It incorporates a new definition of the continental shelf based on that in the 1982 Convention.

The amendments to the *Seas and Submerged Lands Act 1973* to deal with the exclusive economic zone and contiguous zone follow the format of the existing provisions of that Act dealing with the territorial sea and continental shelf. This includes provisions for the limits of the various zones to be established by proclamation and for charts to be issued as *prima facie* evidence of the limits of such zones.

A number of consequential amendments are made to other Acts to ensure that references to the continental shelf or territorial sea are references to those zones as defined by the *Seas and Submerged Lands Act*. It is also necessary to amend the description of the picture frame boundary used to determine the offshore adjacent areas for Tasmania and Western Australia. This will ensure that the *Petroleum (Submerged Lands) Act* and other offshore resources legislation can operate over areas falling within the new definition of the continental shelf.

The Bill does not affect the offshore constitutional settlement.

FINANCIAL IMPACT STATEMENT

The Bill will have no effect on revenue.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause sets out the short title.

Clause 2 - Commencement

This clause provides for commencement by proclamation, but no later than 6 months after Royal Assent. This will enable necessary proclamations of the limits of the exclusive economic zone to be prepared before commencement.

PART 2 - AMENDMENT OF SEAS AND SUBMERGED LANDS ACT 1973

Clause 3 - Principal Act

References to the Principal Act in this Part are to the *Seas and Submerged Lands Act 1973*.

Clause 4 - Long title

The long title of the Principal Act is amended to include reference to the exclusive economic zone and contiguous zone.

Clause 5 - Preamble

Amendments are made to the Preamble to include references to the rights which Australia as a coastal State has in an exclusive economic zone and contiguous zone. The wording is designed to reflect the relevant provisions of the 1982 Law of the Sea Convention (Articles 56 in relation to the economic zone and Article 33 in relation to the contiguous zone).

Clause 6 - Interpretation

This clause includes definitions of the various maritime zones by reference to the 1982 Law of the Sea Convention and makes other consequential changes to definitions.

Paragraph 6(a) amends the existing definition of the continental shelf so that it refers to the 1982 Law of the Sea Convention rather than the 1958 Continental Shelf Convention.

Paragraph 6(b) inserts new definitions of the contiguous zone, exclusive economic zone, territorial sea and the Convention.

Paragraphs 6(c)-(d) provide for any reference to the exclusive economic zone or contiguous zone to be a reference to the zone as it extends from time to time. This ensures that changes in the relevant baselines will ensure automatic changes to the meaning of the zones in the Principal Act and other Acts which pick up these meanings by cross-reference.

Paragraphs 6(e)-(f) provide that where a Proclamation declares the limits of the exclusive economic zone or contiguous zone, the zones will extend for all purposes of the Act, and other Acts which define references to these zones in those Acts by cross reference to the Principal Act, to the limits declared by the Proclamation. This provision mirrors the existing provision for the continental shelf (s.3(5) of Principal Act).

Clause 7 - Extension to Territories

This updates the Act by excluding reference to Papua New Guinea.

Clause 8 - Heading to Part II

This changes the heading of Part II to reflect the inclusion of provisions on a contiguous zone.

Clause 9 - Limits of Territorial Sea

This clause amends section 7 of the Principal Act so that any future proclamation of the limits of the territorial sea will need to be consistent with the relevant articles in the 1982 Law of the Sea Convention, rather than the 1958 Territorial Sea Convention.

Clause 10 - Insertion of new Division

This inserts a new division 1A dealing with the exclusive economic zone.

Section 10A — Sovereign rights in respect of the exclusive economic zone

This clause provides that the rights and jurisdiction of Australia in relation to the exclusive economic zone are vested in the Commonwealth. This is equivalent to existing s.11 of the Principal Act in relation to the continental shelf.

Section 10B — Limits of Exclusive Economic Zone

This clause authorises a Proclamation to be made defining the limits of the whole or part of the exclusive economic zone. It must be not inconsistent with the relevant provisions of the Law of the Sea Convention or any agreement to which Australia is a party.

Section 10C — Charts of Exclusive Economic Zone

This clause is the equivalent section for the economic zone as is s.13 of the Principal Act in relation to the continental shelf, and enables charts to be prepared showing any matter relating to the limits of the zone. The production of a copy of such a chart is *prima facie* evidence of any matter shown on the chart relating to the limits.

Clause 11 - Limits of Continental Shelf

This amendment ensures that any proclamation of the limits of the continental shelf will be in conformity with the limits set by Article 76 of the 1982 Convention, instead of the 1958 Continental Shelf Convention.

Clause 12 - Insertion of New Division

This inserts a new Division 2A dealing with the contiguous zone.

Section 13A — Right of control in respect of contiguous zone

This clause declares that Australia has a contiguous zone. The note makes clear that the authority to exercise power in such a zone depends on provisions in other relevant Commonwealth, State and Territory legislation.

Section 13A — Limits of Contiguous Zone

This clause authorises the Governor-General by Proclamation to declare the limits of the whole or part of the contiguous zone of Australia, consistently with the 1982 Convention or any agreement to which Australia is a Party.

Section 13C — Chart of Limits of Contiguous Zone

This clause authorises the preparation of charts showing any matter relating to the limits of the contiguous zone, and provides for production of a copy of such a chart certified by the Minister to be *prima facie* evidence of any matter shown on the chart.

Clause 13 - Repeal of Schedules 1 and 2

This clause replaces the 1958 Territorial Sea and Continental Shelf Conventions in the Schedules to the Principal Act with a new Schedule containing the relevant Parts of the 1982 Law of the Sea Convention dealing with territorial sea, contiguous zone, exclusive economic zone and continental shelf.

Clause 14 - Transitional

This continues in force existing territorial sea baseline proclamations under s.7(1) of the Principal Act, as if they had been made and authorised under the revised provisions. This clause is included to avoid any doubt that, because the relevant provisions of the 1982 Convention differ slightly from the 1958 Convention, the validity of existing proclamations would somehow be affected as a result of the amended Act. There are no existing Proclamations in relation to the continental shelf so no similar transitional provision is included in relation to s.7(2) of the Principal Act.

PART 3 - AMENDMENT OF OTHER LEGISLATION

Clause 15 - Amendment of Acts

This clause amends a number of Acts in a minor way as set out in the Schedule.

SCHEDULE 1

This Schedule amends a number of Acts in a minor way principally to ensure that inappropriate references to the 1958 Territorial Sea and Continental Shelf Conventions, given the amendments to the Principal Act, are replaced either by references to the 1982 Convention or by appropriate cross references to the *Seas and Submerged Lands Act*.

Admiralty Act 1988: this amends sub-section 22(5) so that references to innocent passage are to that concept in the 1982 Law of the Sea Convention.

Customs Act 1901: 'continental shelf' will be defined by reference to *Seas and Submerged Lands Act*.

Designs Act 1906: 'continental shelf' will be defined by reference to *Seas and Submerged Lands Act*.

Fisheries Management Act 1991: Following enactment of provisions for an exclusive economic zone, it is necessary to adjust the definition of the 'Australian fishing zone'. However, given the offshore constitutional arrangements, Commonwealth fisheries management will continue to extend from the 3 nautical mile limit. It is, therefore, appropriate to retain the Australian fishing zone as a separately defined zone for purposes of the fisheries legislation (being the waters within the 3-12 nm area of territorial sea and the 200 nm exclusive economic zone) and not to replace all references to it with references simply to the exclusive economic zone.

Migration Act 1958: 'continental shelf' will be defined by reference to the *Seas and Submerged Lands Act*.

Minerals (Submerged Lands) Act 1981: makes amendments to remove references to the 1958 Continental Shelf Convention and insert provisions reflecting amendments to Principal Act.

National Museum of Australia Act 1967: defines 'continental shelf' will be defined by reference to *Seas and Submerged Lands Act*.

Petroleum (Submerged Lands) Act 1967: makes amendments to remove references to the 1958 Continental Shelf Convention and insert provisions reflecting amendments to the Principal Act. In particular, amendments are made to the co-ordinates in Schedule 2 which are relevant to the determination of 'adjacent area' boundaries in relation to Western Australia and Tasmania. The revised co-ordinates ensure that the additional areas of continental shelf which Australia will accrue by virtue of adopting the definition in the 1982 Convention will be brought within an 'adjacent area'. The 'adjacent area' determines the allocation of the continental shelf between the States for the purposes of the administration of petroleum and mineral exploration and exploitation.

Pipeline Authority Act 1973: 'continental shelf' will be defined by reference to the *Seas and Submerged Lands Act*.

Quarantine Act 1908: 'continental shelf' will be defined by reference to the *Seas and Submerged Lands Act*

Sea Installations Act 1987: replaces references to 'Australian fishing zone' with references to waters within the outer limits of the exclusive economic zone. The relevant area of application of the Act will, therefore, include the 3-12 nm area of territorial sea, the exclusive economic zone and any area of continental shelf beyond that limit.

Whale Protection Act 1980: amends references to 'Australian fishing zone' to refer to 'exclusive economic zone'.

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