

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SEA INSTALLATIONS (MISCELLANEOUS AMENDMENTS) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister  
for Arts, Heritage and Environment,  
the Honourable Barry Cohen, MP)



## SEA INSTALLATIONS (MISCELLANEOUS AMENDMENTS) BILL 1987

### OUTLINE

The purpose of this Bill is to amend the following Acts -

- . Customs Act 1901
- . Excise Act 1901
- . Migration Act 1958
- . Quarantine Act 1908

to give each of those Acts application in respect of any sea installations which are installed in a coastal area of Australia, or an area adjacent thereto.

The proposed amendments will give to officers administering the respective Acts powers over such installations, ships, aircraft, persons and goods arriving with or at the installations or departing overseas from such installations.

The proposed amendments are part of a package of measures proposed as a consequence to the Sea Installations Bill 1987. Complementary amendments are also proposed by the Customs Tariff Amendment (Sea Installations) Bill 1987 and the Excise Tariff Amendment (Sea Installations) Bill 1987.

### Financial Impact Statement

The measures proposed by this Bill have no financial implications.



SEA INSTALLATIONS (MISCELLANEOUS AMENDMENTS) BILL

1987

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## NOTES ON CLAUSES

### PART I - PRELIMINARY

#### Short Title

Clause 1 is a formal machinery clause, which provides for the citation of the Act.

#### Commencement

Clause 2 provides for the Act to be deemed to have commenced on the commencement of the Sea Installations Act 1987, which is to commence on a day to be proclaimed.

### PART II - AMENDMENTS OF THE CUSTOMS ACT 1901

#### Principal Act

Clause 3 is a formal machinery clause which identifies the Customs Act 1901 as the Principal Act for the purposes of this Part of the Bill.

#### Interpretation

Clause 4 amends Section 4 of the Principal Act to introduce a number of new definitions into the Principal Act, which serve to distinguish the existing regime in the Act applicable to Australian and overseas off-shore installations and the new regime to be inserted by this Bill, relating to Australian and overseas sea installations, and in particular,

- omits the definition of "installation" and substitutes a new definition to clearly distinguish between "off-shore installations" and "sea installations" (paragraph (g));

"off-shore installations" relate to the fixed structures or mobile units (vessels or floatable structures) used off-shore for exploring or exploiting natural resources (ie drilling rigs, oil exploration platforms,, etc) (paragraph (h)), and sub-sections 4(5) and (6) of the Principal Act);

"sea installations" relate to those man-made fixed or floatable structures defined in the Sea Installations Act 1987 as structures which can be used for environment related activities (defined in paragraph (f) and the Sea Installations Act 1987 as activities relating to tourism or recreation, exploring, exploiting or using the living resources of the sea (whether by fishing, pearling, oyster or fish farming or otherwise), the carrying on of a business, marine archaeology, scientific or transport activities, or such other activities as may be prescribed) (paragraph (j));

- omits the definition of "Australian installation" and substitutes two new definitions to again clearly distinguish between "Australian off-shore installations" and "Australian sea installations" (paragraphs (b) and (c));

"Australian off-shore installation" retains the same definition previously given to "Australian installation" under Section 5 of the Customs Tariff Act 1982;

"Australian sea installation" is defined pursuant to proposed new section 9A of the Customs Tariff Act 1982, which, similar to the definition of Australian off-shore installation, means a sea installation that is or becomes installed in a coastal area of Australia, or an area adjacent thereto;

- inserts new definitions for "coastal area" and "adjacent area", as follows:

"coastal area" is defined to mean the area comprising the waters of the territorial sea of Australia, or a Territory, and the sea on the landward side of the territorial sea and not within the limits of a State or that Territory (paragraph (d));

"adjacent area" is defined by reference to its definition in Section 3 of the Sea Installations Act 1987, which is an area beyond the 3 nautical mile territorial sea of Australia, but within the outer limits of the continental shelf of Australia, or the 200 mile Australian fishing zone (paragraph (a));



- omits the definition of "overseas installation" and substitutes two new definitions to again distinguish between an "overseas off-shore installation" and an "overseas sea installation" (paragraph (h));
  - . an "overseas off-shore installation" repeats the previous definition for an "overseas installation" in the Principal Act;
  - . an "overseas sea installation" is a sea installation (as defined) that is in an adjacent area or coastal area (as defined) and has been brought into such an area from a place outside Australian waters;
- adds new sub-sections (11) to (15), similar to existing sub-section (9), to provide that a sea installation shall be taken to be installed in an adjacent area (for the purpose of deeming that installation to be part of Australia) if;
  - . the installation is in physical contact with, or is brought into physical contact with, a part of the seabed in an adjacent area or the installation is in physical contact with or is brought into physical contact with another sea installation that has been brought into physical contact with a part of the seabed in an adjacent area (proposed new sub-section (11)); or
  - . the whole or part of the installation is in the adjacent area, and has been for a period in excess of 14 consecutive days or 40 out of 60 consecutive days, and the installation has also been in the adjacent area at any time in the immediately preceding 60 days (proposed new sub-section (12));
- adds new sub-sections (16) to (20), to provide that sea installations shall be taken to be installed in coastal areas (again for the purposes of deeming such installations to be part of Australia) in exactly the same way as sea installations are taken to be installed in adjacent areas (the previous sub-sections (11) to (15))

### Attachment of overseas off-shore installations

- Clause 5 is a technical and consequential drafting amendment to section 5A of the Principal Act, making it now apply to overseas off-shore installations, as distinct from overseas sea installations.
- Clause 6 inserts a new section 5B into the Principal Act as follows:

### Installation of overseas sea installations

- The proposed new section applies the same controls over the installation of overseas sea installations in a coastal area or an area adjacent thereto that apply to the attachment of overseas off-shore installations to the Australian seabed, i.e.
  - . a new offence is created for installing an overseas sea installation in an adjacent or coastal area without the written permission of the Comptroller. Penalty \$50,000; (proposed new sub-section (1))
  - . the Comptroller may give permission for the installation of an overseas sea installation, which may be made subject to conditions and which may be revoked or varied or be subject to the imposition of new conditions (proposed new sub-sections (2) and (4));
  - .. conditions to which the permission might be subject include conditions relating to quarantine, and conditions requiring the permission holder to bring the installation to a prescribed place for inspection prior to installation (proposed new sub-section (5));
  - . failure to comply with any conditions to which the permission is subject renders one liable to a penalty not exceeding \$10,000 (proposed new sub-section (3))

## Collectors of Customs

Clause 7 amends Section 8 of the Principal Act, to extend the authority for the exercise of the statutory powers and functions of the various Collectors of Customs for the States and the Northern Territory under the Principal Act, to those designated adjacent areas introduced by the Sea Installations Act 1987.

## Off-shore installations subject to the control of the Customs

Clause 8 effects a technical and consequential drafting change to Section 33A of the Principal Act, making that Section now apply to Australian off-shore installations, as distinct from Australian sea installations.

## Sea installations subject to the control of the Customs

Clause 9 introduces a new Section 33B into the Principal Act, which subjects sea installations to the same Customs control as is presently applied to off-shore installations by section 33A; in particular,

- a new offence is created for using, without the written permission of a Collector, an Australian sea installation that is subject to the control of the Customs (ie, such an installation is subject to the control of the Customs until it has been dealt with in accordance with an entry for home consumption (section 30, and section 39) for "environment related activities" (defined in the Sea Installations Act 1987 and referred to in the definition of "sea installation" in this explanatory memorandum);
  - . the penalty for contravention of this sub-section is a maximum fine of \$50,000 (proposed new sub-section 1(1))
- a Collector may give permission to engage in specified activities in relation to the use of an Australian sea installation, which may be made subject to conditions and which may be revoked or varied or be subjected to the imposition of new conditions (proposed new sub-sections (2) and (4))

failure to comply with any conditions to which the permission is subject renders one liable to a penalty not exceeding \$10,000 (proposed new sub-section (3))

- Note - the specific exemption from the application of Section 33 for off-shore installations (ie, the prohibition on moving goods which are subject to the control of the Customs) applies equally to sea installations. Without this exemption, nothing would be permitted to be done in relation to a sea installation (in terms of moving it or operating it) following its importation or installation until all entry formalities were completed and authority had been given for the release of the installation from Customs Control.

#### Ships and aircraft deemed to be imported

Clause 10 effects a technical and consequential drafting change to Section 49A of the Principal Act, to expand the exemption from the application of the section to overseas sea installations;

- the effect of the new exemption is to exclude overseas sea installations from being deemed to be imported ships, similar to the current exemption for overseas off-shore installations.

#### Ships and aircraft to enter ports or airports

Clause 11 effects a similar technical and consequential drafting change as the one proposed in Clause 10, to Section 58 of the Principal Act, to make it clear that the present control over the entry of ships or aircraft at places other than designated ports or airports,

- extends to Australian installations (as proposed to be defined; ie - off-shore installations and sea installations) and,
- those installations are deemed to include ships which are at such installations.

#### Direct journeys between sea installations and external places prohibited

Clause 12 introduces a new Section 58A into the Principal Act, to expressly control the direct movement of persons and or goods between sea installations and overseas places. In particular,

- proposed sub-section (1) deems sea installations to not be part of Australia for the purposes of this control. Without such a deeming provision, the control could not operate, as the Customs Acts do not extend to transit between places in Australia;
- proposed sub-section (2) imposes a control over persons travelling direct from overseas to a sea installation as follows:
  - . the person, the holder of the permit for the installation, and the owner and person in charge of the ship or aircraft on which the person is conveyed to the installation, are each guilty of a fine not exceeding \$10,000 or \$20,000 (for natural persons or bodies corporate respectively), where
  - ... the person has not been available for questioning in Australia for the purposes of the Principal Act, after leaving the overseas place and before arriving at the installation;
- proposed sub-section (3) imposes a similar control to that in proposed sub-section (2), for goods brought from overseas to a sea installation;
- proposed sub-sections (4) and (5) repeat the same controls over persons and goods in sub-sections (2) and (3) respectively, for journeys from a sea installation to an overseas place;
- proposed sub-section (6) prescribes three exceptions to the "prohibition" on direct journeys to or from sea installations, as follows:
  - . the direct journey to or from the sea installation was necessary to secure the safety of, or avert a threat to, human life, (paragraph a),
  - . the direct journey to or from the sea installation was necessary to secure the safety of, or avert a threat to, a ship at sea, an aircraft in flight or a sea installation (paragraph b), or

the direct journey to or from the sea installation was authorised in writing by a Collector, and was carried out in accordance with any conditions which may have been prescribed (paragraph c);

- proposed sub-section (8) serves to qualify the application of this control, by clarifying that a person or goods are not deemed to have travelled to or from an external place or a sea installation by reason only of having been in an aircraft flying over the place or sea installation, or on a landing strip in the place or sea installation. This provision is intended to exempt, amongst other things, in-transit passengers or goods from the control of the section, where such passengers or goods do not disembark, or are not unloaded, in an external place, or a sea installation.

#### Ships and aircraft to obey signals

Clause 13 effects a technical and consequential drafting change to Section 59 of the Principal Act, to expand the current requirement for masters of ships or aircraft to permit their vessel or aircraft to be boarded, where such craft are within or flying over the waters within 500 metres of an Australian off shore installation, to also include Australian sea installations.

#### Facility for Boarding

Clause 14 effects a technical and consequential drafting change to Section 61 of the Principal Act, to extend the obligation on the master of an off-shore installation to facilitate the boarding of the installation by authorised persons, to also include the owner of a sea installation.

#### Power to board and search

Clause 15 effects a technical and consequential drafting change to Section 187 of the Principal Act, to extend the current Customs power to board and search Australian off-shore installations and to secure goods on board such installations, to Australian sea installations in respect of which permission has been granted for installation in an Australian coastal area or an area adjacent thereto, and where;

the installation remains subject to Customs control;

an overseas ship or aircraft is at the installation; or

an officer has reasonable cause to believe that goods subject to the control of Customs are on the installation;

#### Power to question passengers, etc

Clause 16 is a consequential drafting amendment to Section 195 of the Principal Act, as a result of the amendments to Section 187 noted in Clause 15 above.

#### Forfeited off-shore installations

Clause 17 amends section 228A of the Principal Act, to reflect the new distinction between off-shore installations and sea installations. Section 228A is now restricted to overseas off-shore installations, and provides that such installations shall be forfeited to the Crown where they are attached to the Australian seabed without permission.

#### Forfeited sea installations

Clause 18 inserts a new Section 228B into the Principal Act, to provide for the same forfeiture applying to overseas off-shore installations in Section 228A, to overseas sea installations installed without permission in coastal areas of Australia or areas adjacent thereto.

#### Transitional provisions

Clause 19 is a transitional provision under which current regulations that prohibit the importation or exportation of any goods into, or from, Australia, apply in relation to the doing of any act in relation to a sea Installation which, pursuant to Sections 9B to D of the Customs Tariff Act 1982, would constitute an importation into or exportation from Australia.

### Part III - Amendments of the Excise Act 1901

#### Principal Act

Clause 20 identifies the Excise Act 1901 as the Principal Act for the purposes of this Part of the Bill.

#### Powers of officers in relation to off-shore installations

- Clause 21 effects a technical and consequential drafting change to Section 87A of the Principal Act, to restrict the section (which gives to excise officers powers in relation to installations producing excisable goods equivalent to the powers these officers now have in respect of access to excise factories and the examination of goods, processes and systems in such factories) to Australian off-shore installations.

#### Powers of officers in relation to sea installations

- Clause 22 inserts a new Section 87B, which extends the same excise officer powers applying to Australian off-shore installations in Section 87A, to Australian sea installations.

#### Part IV - Amendment Of Migration Act 1958

##### Principal Act

##### Clause 23

Clause 23 identifies the Principal Act in Part IV of the Bill as the Migration Act.

##### Interpretation

- Clause 24 This clause defines words and phrases associated with the introduction of the new sea installations regime. "Installation" is defined to mean an "off-shore installation" or a "sea installation". An off-shore installation is defined, in effect, to mean an industrial installation (previously, an installation) and a sea installation to mean a sea installation within the meaning of the Sea Installations Act. An "Australian off-shore installation" is defined as an off-shore installation deemed part of Australia by section 5B of the Migration Act (as amended - see clause 25 below) and an "Australian sea installation" as a sea installation deemed part of Australia by the new section 5C (see clause 26 below). The definition of "port" is amended to include Australian off-shore and sea installations as ports.

"Adjacent area" is to have the same meaning as in the Sea Installations Act and "coastal area" as in the Customs Act 1901.



Paragraphs (m), and (p) to (r) of clause 24 amend the references to "installations" in sub-sections 5(2A), 5(10) and 5(11) of the Migration Act to reflect the fact that such (industrial) installations will now be referred to as "off-shore installations".

Paragraph (n) of clause 24 inserts a new sub-section 5(2B) into the Migration Act. The sub-section deems a sea installation which has been brought into Australian waters to have entered Australia when it was installed and a person on board the installation to have entered Australia at the same time.

Paragraph (s) of clause 24 inserts new sub-sections 5(12) to 5(21) into the Migration Act to detail the circumstances in which a sea installation will be taken to be installed in an adjacent or coastal sea.

#### Certain off-shore installations to be part of Australia

Clause 25      Section 5B of the Migration Act deems "installations" to become and to cease to be part of Australia in certain circumstances. Clause 25 amends the references to installations in section 5B to reflect the fact that such (industrial) installations will now be referred to as "off-shore installations".

#### Certain sea installations to be part of Australia

Clause 26      This clause inserts a new section 5C into the Migration Act equivalent to section 5B in relation to off-shore installations (see clause 25 above). The new section provides that an installed sea installation is deemed to be a part of Australia and that a sea installation ceases to be a part of Australia when (in certain circumstances) it is detached or moved from its location.

#### Persons entering Australia to be prohibited non-citizens in certain circumstances

Clause 27      Paragraph 16(4)(b) of the Migration Act deems certain persons to have evaded an officer when entering Australia with the consequence that, under paragraph 16(1)(a) of the same Act, the person becomes a prohibited non-citizen. Persons who enter Australia at, or on, an Australian installation are exempted from the deeming provision. Clause 27 amends paragraph 16(4)(b) to ensure that the exemption extends to persons who enter Australia at, or on, both sea and off-shore installations.

Duty of master, etc., of vessel or installation  
which brought deportee to Australia to provide passage

- Clause 28      Sub-section 21(3A) of the Migration Act empowers an authorized officer to require a person responsible for an installation to transport a deportee out of Australia without cost to the Commonwealth where the deportee entered Australia on that installation. Clause 28 amends sub-section 21(3A) to ensure that the provision applies to both sea and off-shore installations.

Production of identity documents  
by person in charge of installation

- Clause 29      Section 23A of the Migration Act requires that the person in charge of an installation produce identity documents in respect of persons on board that installation upon its arrival and before its detachment from the Australian seabed. Clause 29 amends the references to "installations" in section 23A to reflect the fact that such (industrial) installations will now be known as "off-shore installations".

Production of identity documents  
by person in charge of sea installation

- Clause 30      Clause 30 inserts a new section 23B into the Migration Act. The new provision is equivalent to the provisions in section 23A in relation to off-shore installations (see clause 29 above). It likewise provides that a person in charge of a sea installation must produce identity documents in respect of persons on board that installation upon its arrival and before its detachment from its location.

Custody of prohibited non-citizen  
during stay of aircraft in Australia

- Clause 31      Section 36A of the Migration Act authorizes the detention of stowaways and certain other persons who arrive in Australia at proclaimed airports. Proclaimed airports are defined in sub-section 36A(9) to include Australian installations. Clause 31 repeals sub-section 36A(9) and substitutes a new definition of proclaimed airport which includes both Australian off-shore and sea installations.

Powers of entry and search

- Clause 32      Section 37 of the Migration Act empowers an officer to enter a vessel and search it for stowaways and

certain other persons. A reference to a vessel includes, by virtue of sub-section 37(2A), an Australian installation. Clause 32 repeals sub-section 37(2A) and substitutes a new definition of vessel which includes both Australian off-shore and sea installations.

## Part V - Amendments to the Quarantine Act 1908

### Principal Act

Clause 33 This clause defines the Quarantine Act 1908 as the Principal Act for the purposes of Part V.

### Interpretation

Clause 34 Paragraphs (a) - (k) inclusive of this clause amend section 5 of the Principal Act by removing from sub-section (1) the definitions of 'Australian installation', 'Installations' and 'Overseas installation'. by inserting definitions of 'Adjacent area', 'Australian installation', 'Australian off-shore installation', 'Australian sea installation', 'coastal area', 'Installation', 'Installation activity', 'Off-shore installation', 'Overseas installation', 'Sea installation', and 'Sea Installations Act', and by making drafting changes to sub-sections (6) and (7) which are consequential upon these changes to the definitions.

Paragraph (p) of this clause inserts new sub-sections (7A) - (7K) inclusive which specify the circumstances in which a sea installation shall be taken to be installed in an adjacent area (sub-sections (7A) to (7E)) and in a coastal area (sub-sections (7F) to (7K)).

### Certain Off-shore installations to be part of Australia

Clause 35 This clause makes drafting changes to the expressions 'installation' and 'overseas installation' in section 16AA of the Principal Act as a consequence of the insertion in the Act of new definitions of these expressions.

### Certain sea installations to be part of Australia

Clause 36 This clause inserts a new section 16AAA into the Principal Act which describes the circumstances in which sea installations are deemed to be part of Australia for the purposes of the Act.

### Certain goods deemed to be imported into Australia

Clause 37 This clause inserts a new sub-section (16AB) (1A) into the Principal Act which deems all goods, animals and plants of foreign origin which are on board an overseas sea installation at the time that the installation is installed to be imported at that time. The section also makes a consequential drafting change to sub-section 16AB(1) of the Principal Act.

#### Persons and goods subject to quarantine

Clause 38 This clause amends section 18 of the Principal Act by inserting a new paragraph 2(e) to make any animal which goes on board a sea installation subject to quarantine, and makes consequential drafting changes to paragraphs 2(c) and (d).

#### Notification of outbreak of disease

Clause 39 This clause amends section 22 of the Principal Act to extend the obligation to report an outbreak of disease to the master of a sea installation.

#### Boarding of installations

Clause 40 This clause amends section 25A of the Principal Act to extend the obligation to allow and assist a quarantine officer to board installations to the master of a sea installation.

#### Granting of pratique to installations

Clause 41 This clause amends sub-section 33A(2) of the Principal Act to specify when a certificate of pratique is required to be given to an overseas off-shore installation and to an overseas sea installation, where pratique has been granted by radio.

#### Order to perform quarantine

Clause 42 This clause amends sub-section 35(1) of the Principal Act by extending the power of a quarantine officer to order things into quarantine to apply to sea installations, and to make a consequential drafting change.

#### Vessel or installation having a communicable disease on board

Clause 43 This clause amends section 35A of the Principal Act by replacing sub-section 35A(6) to extend the meaning of 'vessel' to include sea installations.

#### Power to order goods into quarantine

- Clause 44      This clause amends sub-section 55A(2) of the Principal Act to extend the power to order goods into quarantine to include goods on board sea installations.

#### Liability of owner etc. for expenses of quarantine

- Clause 45      this clause amends sub-section 59(2) of the Principal Act by inserting paragraphs (ab) and (ac) which extend the range of expenses of quarantine which may, if the Governor-General so directs, be required to be borne by the Commonwealth to include expenses incurred by vessels trading exclusively between Australian ports and sea installations.

#### Cleansing and disinfection of insanitary vessels or installations

- Clause 46      This clause amends section 78A of the Principal Act by including a sub-section (5) which enables a quarantine officer to order the cleansing, fumigation, disinfecting or treatment of sea installations, and makes consequential drafting changes to sub-section 78A(4) of the Principal Act.

#### Master, medical officer or agent misleading quarantine officer

- Clause 47      This clause amends section 83 of the Principal Act to apply the offence of wilfully making a false statement or misleading a quarantine officer, and the penalty for the offence, to the master or medical officer of a sea installation.

#### Regulations

- Clause 48      This clause amends section 87 of the Principal Act by replacing sub-section (4) to extend the reference to the meaning of 'vessel' to include sea installations.





