

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SEA INSTALLATIONS BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for the Arts, Sport,
the Environment, Tourism and Territories, the Honourable John
Brown, MP)

SEA INSTALLATIONS BILL 1987

TABLE OF NOTES ON CLAUSES

Clause

Subject

PART I - PRELIMINARY

- | | |
|-----|---|
| 1. | Short title |
| 2. | Commencement |
| 3. | Objects of Act |
| 4. | Interpretation |
| 5. | Adjacent areas |
| 6. | Installation of sea installations |
| 7. | Attachments to sea installations |
| 8. | Extension to certain Territories |
| 9. | Act to bind Crown |
| 10. | Consultation with States and Territories |
| 11. | Application of Act |
| 12. | Saving of other laws |
| 13. | Act to apply subject to international obligations |

PART II - PROHIBITIONS RELATING TO SEA INSTALLATIONS

- | | |
|-----|---|
| 14. | Installation of sea installations without permit prohibited |
| 15. | Use of sea installations without permission prohibited |
| 16. | Certain work on sea installations without permit prohibited |

PART III - PERMITS TO OPERATE SEA INSTALLATIONS

Division I - Grant of Permits

- | | |
|-----|---|
| 17. | Permit to operate sea installation |
| 18. | Eligibility for permit |
| 19. | Permit not to be granted in certain circumstances |
| 20. | Application for permit |
| 21. | Form of permit |
| 22. | Operation of permit |

Division 2 - Conditions of Permits

- | | |
|-----|----------------------------------|
| 23. | Conditions of all permits |
| 24. | Conditions of particular permits |
- Division 3 - Renewal of Permits

- | | |
|-----|-------------------|
| 25. | Renewal of permit |
|-----|-------------------|

- 26. Application for renewal of permit
- 27. Form and operation of renewal of permit

Division 4 - Variation of Permits

- 28. Variation of permit
- 29. Permit not to be varied in certain circumstances
- 30. Notice of variation of permit
- 31. Application to vary permit
- 32. Form and operation of variation of permit

Division 5 - Application of Environment Protection (Impact of Proposals) Act

- 33. Environmental Impact Statements

Division 6 - Suspension and Revocation of Permits

- 34. Suspension of permit
- 35. Revocation of permit

Division 7 - Miscellaneous

- 36. Publication in 'Gazette'
- 37. Securities etc.
- 38. Trust Account for money paid as security
- 39. Permits not evidence of compliance with law

PART IV - EXEMPTION CERTIFICATES

- 40. Exemption certificate
- 41. Application for exemption certificate
- 42. Form of exemption certificate
- 43. Termination of exemption certificate
- 44. Effect of exemption certificates

PART V - APPLICATION OF LAWS AND JURISDICTION OF COURTS IN RELATION TO SEA INSTALLATIONS

- 45. Application of Commonwealth Acts in adjacent areas
- 46. Application of laws in areas adjacent to States
- 47. Application of laws in areas adjacent to Territories
- 48. Installations and goods deemed to have been imported into certain external Territories
- 49. Jurisdiction of courts
- 50. Rules of courts

PART VI - OFFENCES AND PROCEDURES RELATING TO SEA INSTALLATIONS

- 51. Direct journeys between sea installations and external places prohibited
- 52. Maintenance of sea installations etc.
- 53. Notice of bad condition of sea installation
- 54. Repairs to avoid adverse effect on environment
- 55. Directions for removal of sea installations etc.
- 56. Forfeiture
- 57. Safety Zones
- 58. Contravention of conditions
- 59. Injunctions

PART VII - ADMINISTRATION

- 60. Appointment of inspectors
- 61. Identity cards
- 62. Power of entry
- 63. Power to require information
- 64. False statements
- 65. Indictable offences
- 66. Conduct by directors, servants or agents

PART VIII - INSTALLATION LEVY COLLECTION

- 67. Time for payment of installation levy
- 68. Penalty for non-payment
- 69. Recovery of levy and penalties
- 70. Valuation of sea installations
- 71. Authorised valuers

PART IX - MISCELLANEOUS

- 72. Fees
- 73. Recompense of expenses incurred by States etc.
- 74. Delegation
- 75. Application for review
- 76. Statement to accompany notice of decisions
- 77. Regulations
- 78. Transitional - sea installations installed before commencement of Act

SCHEDULE

Acts applying in adjacent areas

SEA INSTALLATIONS BILL 1987

OUTLINE

This Bill is one of a number of Bills required to put in place a scheme to regulate the operation of certain offshore sea installations fixed or moored to the sea bed of the Australian continental shelf beyond the territorial sea or adjacent to Australian territories. The Bill will facilitate the development of technically sound, environmentally acceptable and economically viable sea installations.

The effect of the Bills is that sea installations will be subject to the same legal regime as equivalent land-based operations. The effects of this Bill may be summarised as follows:

- the Bill applies directly to installations moored or fixed to the sea bed other than those used in the petroleum industry, minerals industry or built and used by the Commonwealth for defence purposes. Other installations may be excluded from the application of the legislation by regulations or individually by the Minister;
- . the Minister may issue a permit to operate a sea installation;

a permit may be issued for a period of up to 15 years subject to certain conditions and may be renewed and varied;
- . a permit may be suspended where a condition has not been complied with, and may be cancelled;

decisions to grant, renew, vary and revoke a permit are subject to AAT review;

the Bill provides for a security which will act as a bond should there be noncompliance with a condition;
- . Part V of the Bill is concerned with the application of certain Commonwealth laws, the application of the law in force in the adjacent State or Territory and the appropriate jurisdiction of the Courts;

the Bill provides that it will be used in addition to, and not in derogation of, any other law;
- . it is an offence under the Bill to install or operate an installation without a permit;
- . the Bill provides arrangements with the States and Northern Territory for payment by the Commonwealth of administration costs;

- a transitional period of five months is provided to cover the installation of a structure prior to passage of the Bill;
- the Bill requires the proper maintenance of an installation and provides for the removal of such installations where a permit has expired or been revoked;

Financial Implications

The legislation has been drafted to ensure that over time no nett costs will be borne by the Commonwealth. The application fee, to be determined by regulation, will need to be paid before the permit is issued. It is intended that the amount of fees will be set to recover the administrative costs to be borne by the Commonwealth as a result of administering the Bill.

The Sea Installations Levy Bill will enable an annual levy rate to be imposed. The income derived will go to the Commonwealth. Arrangements will be made for payments to the States for costs associated with the administration of the legislation.

Amendments required in respect of income tax and sales tax will be made separately in accordance with the Treasurer's announcement in January 1987.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 - Short Title

This clause of the Bill provides for the short title of the legislation.

Clause 2 - Commencement

This clause provides for the Part I to come into operation on 15 October 1987 and for the remaining provisions to apply on the day the Act receives Royal Assent.

Clause 3 - Objects of the Act

The objects clause provides a framework for the administration of the Act through the setting out of the following objects:

the ensuring of the safety of persons using sea installations and the safety of people, ships and aircraft near them

to apply appropriate laws to sea installations, and

to ensure the protection of the environment through proper operation of sea installations

Clause 4 - Interpretation

This clause provides for the definition of certain expressions used in this Bill, including:

- environment related activity means any activity relating to tourism, recreation, the carrying on of a business, use of the sea's living resources, marine archeology or a prescribed purpose. The term encompasses scientific and transport activities;
- environment related work means work in relation to installing, constructing, extending or altering a sea installation, and includes repair or maintenance work, disassembly and detachment or removal of an installation from the location;
- sea installation means any man-made structure that can be used for an environment related activity when either floating or in contact with the sea bed. The term includes a partly completed structure or the remains of such a structure. It does not include an off-shore

industry fixed structure, an offshore industry mobile unit, or defence structure or any prescribed structures. Also excluded are certain cargo ships, dumping vessels, ship wrecks, pearling vessels, navigational aids and cables.

Sub-clause (2) provides that a resources industry fixed structure (including a pipeline) is a structure that:

is not able to move or be moved in one piece and is used wholly off-shore in activities associated with exploring or exploiting natural mineral resources.

Sub-clause (3) provides that resources industry mobile unit means either:

- (a) a vessel used wholly in exploring or exploiting natural mineral resources by drilling the seabed or its subsoil, or used wholly in incidental activities; or
- (b) a structure other than a vessel that is able to float, to be moved intact and is used wholly in exploring or exploiting natural mineral resources by drilling the seabed or its subsoil, or used wholly in incidental activities.

Clause 5 - Adjacent areas

This clause provides, subject to sub-clause (2), that the adjacent area of a State or the Northern Territory is so much of the area described in Schedule 2 of the Petroleum Submerged Lands Act 1967 by reference to that State or Territory as comprises sea waters that are outside the outer limits of the Australian territorial sea and are either within the outer limits of the continental shelf or the Australian fishing zone.

Sub-clause (2) provides that if the limit of the Australian territorial sea is declared more than 3 nautical miles, sub-clause (1) continues to operate as if the 3 nautical mile limit had continued.

Sub-clause (3) specifies the boundaries of the Coral Sea area for the purposes of the Act.

Sub-clause (4) applies the Act to the Coral Sea area as if it were part of the adjacent area in respect of Queensland and causes references in the Act to the adjacent area in respect of a State to be read in relation to Queensland as including references to the Coral Sea area.

Sub-clause (5) defines the adjacent area in respect of the Territory of Ashmore and Cartier Islands.

Sub-clause (6) defines the adjacent area in respect of an external Territory (other than the Australian Antarctic Territory, the Coral Sea Islands Territory and the Territory of Ashmore and Cartier Islands).

Sub-clause (7) defines the adjacent area in respect of the Australian Antarctic Territory.

Sub-clause (8) excludes, for the purposes of sub-clause (3), (5) and (6) any area of seabed or subsoil that is not an area of Australian sovereignty due to an agreement in force between Australia and another country.

Sub-clause (9) deems the space above or below an adjacent area as in that area for the purposes of this legislation.

Clause 6 - Installation of sea installations

For the purposes of this legislation a sea installation shall be considered as installed in an adjacent area if:

- . the installation is either in or brought into contact with the part of the adjacent area's seabed, or
- . the installation is either in or brought into physical contact with an installed installation.

Sub-clause (2) provides further that a sea installation shall be taken as installed in an adjacent area if, although not in contact with the seabed, the installation remains within an area with a radius of 20 nautical miles for 30 days that immediately preceded installation or one or more periods during the preceding 60 days that amount to 40 days.

Sub-clause (3) provides that where a sea installation which is a ship or aircraft:

- . contacts part of an adjacent area's seabed; or
- . is in contact with an installed sea installation,

for less than 5 days (or 30 days in relation to a foreign ship) it shall not be considered as installed.

Sub-clauses (4) and (5) clarify the meaning of "installed" and "brought into physical contact with the seabed" for the purposes of the Act.

Clause 7 - Attachments to sea installations

This clause provides that when a sea installation is in contact with an installed sea installation in an adjacent area, and that contact is in accordance with a permit, it shall be considered to be part of that installation.

Sub clause (2) provides that any other structure attached to a sea installation shall be considered part of that installation.

Clause 8 - Extension to external territories

This clause extends this legislation to all the external Territories.

Clause 9 - Act to bind Crown

This clause provides that the Act binds the Crown in right of the Commonwealth, States and the Northern Territory and Norfolk Island.

Sub-clause (2) provides that nothing in this legislation renders the Crown in right of the Commonwealth, State or Territory liable to be prosecuted for an offence.

Clause 10 - Consultation with States and Territories

This clause requires the Minister to give a representative of the appropriate State or Territory an opportunity to discuss with the Commonwealth the granting, renewal, variation or revocation of a permit or the giving of an exemption certificate before such action may be undertaken.

Clause 11 - Application of Act

This clause applies the Act to all natural persons and bodies corporate.

Clause 12 - Saving of other laws

This clause provides that this legislation is in addition to and not in derogation of any law of the Commonwealth or external Territories.

Clause 13 - Act to apply subject to international obligations

This clause provides that this legislation has effect subject to Australia's obligations under international law.

PART II - PROHIBITIONS RELATING TO SEA INSTALLATIONS

Clause 14 - Installation of sea installations without permit prohibited

This clause prohibits the installation of sea installations in adjacent areas otherwise than in accordance with a permit.

A penalty is provided:

- (a) for a person - \$50,000; or
- (b) for a body corporate - \$250,000

Penalties throughout this Bill are substantial, reflecting the gravity with which the Government regards the contraventions of the legislation which may have severe consequences for the environment.

Clause 15 - Use of sea installations without permit prohibited

This clause provides penalties for the owner or operator of a sea installation installed in an adjacent area that is used, or allowed to be used for any activity other than in accordance with a permit.

A penalty is provided:

- (a) for a person - \$50,000; or
- (b) for a body corporate - \$250,00.

Clause 16 - Certain work on sea installations without permit prohibited

This clause provides penalties for the owner or operator of a sea installation installed in an adjacent area that carries out certain work otherwise than in accordance with a permit.

A penalty is provided:

- (a) for a person - \$50,000; or
- (b) for a body corporate - \$250,000.

PART III - PERMITS TO OPERATE SEA INSTALLATIONS

Division 1 - Grant of Permits

Clause 17 - Permits to operate sea installation

This clause enables the Minister to either grant or refuse to grant a permit to operate a sea installation in an adjacent area.

Sub-clause (2) authorises -

- the holder of a permit to install a sea installation in the manner, at the location and for the time permitted in the permit and to keep it so installed;
- the installation to be used for environment related activities as specified in the permit;

- . the carrying out of environment related work as specified and the installation of another sea installation (as specified in the permit) for the purpose of such work; and
- . the granting of a permit for certain foreign ships.

Clause 18 - Eligibility for permit

This clause allows for permits to be granted only to:

- . the owner of the installation where there is no operator; or
- . to the owner and operator where there are both.

Sub-clause (2) prohibits the Minister from granting a permit unless the Minister is satisfied that the person is a fit and proper person to be granted that permit.

Sub-clause (3) provides for the Minister to have regard to, in relation to determining whether the person is fit and proper, whether the person has been convicted of an offence against this Act or regulations, a law of the Commonwealth, a State or Territory; whether the person is bankrupt, and whether the person provided misleading information in an application and whether or not the person knew the information to be false.

Clause 19 - Permit not to be granted in certain circumstances

Sub-clause (2) prohibits the Minister from granting a permit where he or she considers that such an installation would be contrary to another law of the Commonwealth.

Sub-clause (3) prohibits the Minister from granting a permit that would authorise an installation to be located partly in, or partly outside a State or affected Territory.

Clause 20 - Application for permit

Sub-clause (1) provides that a person may make a written application to the Minister in the approved form for the granting of a permit to operate a sea installation.

Sub-clause (2) requires that an application be accompanied by evidence that the applicant will be the owner or operator.

Sub-clause (3) requires that an application be accompanied by:

- . copies of construction plans;
- . copies of any reports on the construction and location of the installation;

- . any prescribed documents relating to the installation.

Sub-clause (4) requires the applicant to supply such further information as the Minister may require. The Minister is not required to continue dealing with the application until such information is supplied.

Sub-clause (5) sets separate time limits for the Minister to decide applications in relation to those applications that have not required any further information and those that have required more information.

Sub-clause (6) requires the Minister, if refusing an application, to supply a notice of refusal incorporating a statement of reasons

Clause 21 - Form of permit

Sub-clause (1) states that, subject to subclause (2), a permit shall be in writing in the approved form.

Sub-clause (2) requires a permit to set out any matters specified under sub-clause 15(2), whether an installation will be principally used for scientific activities or wholly or principally used for transport or other activities, and to set out any special conditions to which the permit is subject, and other prescribed particulars.

Clause 22 - Operation of permit

Clause 22 specifies that a permit:

- . comes into force on the day it is granted; and
- . remains in force for the period specified in the permit commencing on the day it was granted, being:
 - (i) a period of 15 years;
 - (ii) the period specified in the application; or
 - (iii) a period ascertained in accordance with the regulations;

whichever is the shortest.

Division 2 - Conditions of Permits

Clause 23 - Conditions of all permits

This clause provides that it is a condition of a permit that:

- . the holder will ensure that journeys are not made to and from the installation that involve contraventions of the Customs Act 1901; and
- . any activities will not unreasonably interfere with navigation, fishing, conservation of the resources of the sea or seabed or any other lawful activity by persons other than the permit holder.
- . the Minister by notified if a person ceases to be an operator
- . permit holders may be required to insure against liability for costs involving removal of installations or repairs to the environment.

Clause 24 - Special conditions of particular permits

This clause provides that a permit is subject to such conditions as the Minister considers appropriate. These conditions may include conditions relating to:

- . design, construction and safety standards;
- . monitoring procedures;
- . insurances; and
- . the production of documents identified in the permit.

Sub-clause (2) provides that special conditions determined in the granting of a permit may be varied under clause 27 or upon renewal of a permit under clause 23.

Division 3 - Renewal of Permits

Clause 25 - Renewal of permit

This clause provides that the Minister may renew or refuse to renew a permit where the holder has applied for renewal.

Sub-clause (2) provides for renewal on more than one occasion and sub-clause (3) provides that the Minister may not renew the permit if he or she is satisfied that, if it were not in force, it would not be granted.

Clause 26 - Application for renewal of permit

This clause provides that the holder of a permit may make an application to the Minister for the renewal of a permit.

Sub-clause (2) provides that an application must be made within the last third of the permit's duration and not later than 6 months before it is due to expire.

Sub-clause (3) enables the Minister to require by notice further information for the purposes of dealing with the application. The Minister is not required to continue to deal with the application until the information is available.

Sub-clause (4) requires the Minister to deal with the application within certain specified periods.

Sub-clause (5) requires the Minister, where an application to renew is refused, to give notice of the refusal, together with the reasons, to the applicant.

Sub-clause (6) requires the Minister, where a permit is renewed with variation, to provide a notice of the variation together with reasons, to the applicant.

Clause 27 - Form and operation of renewal of permit

This clause provides that renewal of a permit is effected by endorsement of the permit and that the renewal comes into effect on the day the permit would have expired but for the renewal.

This clause also provides for the period that a renewed permit remains in force.

Division 4 Variation of Permits

Clause 28 - Variation of permit

This clause provides that the Minister may vary a permit where the Minister considers it necessary or desirable to do so.

Sub-clause (3) enables the Minister to vary the permit by substituting the legal representative of the permit holder in the event of the death of the permit holder.

Sub-clause (4) permits the Minister to vary a permit to make the owner of the installation the sole holder of the permit where the operator is convicted of an offence under the Act or regulations.

Sub-clause (5) provides that where an operator ceases to be the operator in accordance with a permit the Minister will vary the permit accordingly.

Sub-clause (6) enables the Minister to vary a permit where a new operator and the owner become holders in common of a permit. Subject to sub-clauses (3), (4), (5) and (6) the Minister is not permitted to vary a permit to allow a person to become or cease to be a permit holder.

Clause 29 - Permit not to be varied in certain circumstances

Sub-clause (1) provides that the Minister may not vary a permit where the Minister considers that the permit as varied, would be contrary to any Commonwealth law or applicable State or Territory law.

The Minister may not vary a permit to authorise a sea installation to be located partly in and partly outside the adjacent area of a State or affected Territory.

Clause 30 - Notice of variation of permit

This clause provides that where the Minister varies a permit the Minister must advise the applicant in writing of the details of the variation and set out reasons for it.

The Minister may not vary a permit unless and until notice has been given of the decision to vary the permit and 20 days have expired after giving of the notice, or, where the permit holder has applied to the Administrative Appeals Tribunal for review of the decision to vary the permit, and the review has been completed - whichever occurs last.

Clause 31 - Application to vary permit

Clause 31 provides that a permit holder may apply to the Minister for the variation of a permit.

Sub-clause (2) provides that the Minister may seek further information from the applicant. The Minister is not required to continue with the application until the information is provided.

Sub-clause (3) requires the Minister to determine the application within 60 days after it has been made, or if further information is required under sub-clause (2), 60 days after receipt of that information.

Sub-clause (4) provides that where the Minister refuses to vary a permit the Minister is required to notify the applicant in writing setting out the reasons for the decision.

Clause 32 - Form and operation of variation of permit

Under sub-clause (1) a variation will be effected by the Minister causing particulars of the variation to be endorsed on the permit or by a statement of the particulars of the variation being attached to the permit.

Under sub-clause (2) the permit variation comes into effect on the day specified in the variation, not being a day earlier than the day on which the variation is effected in accordance with sub-clause (1).

Sub-clause (3) provides that where the Minister is entitled to vary a permit the permit holder is required to give the permit to

the Minister for the period needed for the variation to be effected.

Division 5 - Application of Environmental Protection (Impact of Proposals) Act 1974

Clause 33 - Environmental Impact Statements

This clause provides that the Minister may require within a specified period an environmental impact statement in relation to obtaining, renewing or varying a permit.

Where a person fails to comply, the application will be deemed to have been withdrawn on the date the requirement was made. If a person complies with the requirement, the 60 day time limit in which the Minister is required to finalise an application will not apply until the Minister has dealt with the requirements of the Environmental Protection (Impact of Proposals) Act 1974.

Division 6 - Suspension and Revocation of Permits

Clause 34 - Suspension of Permit

Sub-clause (1) provides that where the Minister considers the permit holder has contravened the permit the Minister may suspend the permit by notifying the holder of the suspension and providing details of the grounds of suspension. Where the permit is suspended the Minister may give the holder directions to comply with the permit.

Sub-clause (2) provides that where the permit is suspended the Minister must investigate the matter in respect of which it was suspended.

Sub-clause (3) provides that the suspension will be removed where, following investigation by the Minister, the Minister fails to find any grounds for revoking the permit.

Under sub-clause (4), notwithstanding sub-clause (3) a suspension of a permit ceases to have effect following compliance with a direction given or where such a direction was not given, at the end of 10 days after the permit was suspended.

Sub-clause (5) provides that during the period in which a permit is suspended the installation may not be used for any environment related activity or, where the suspension relates to environment related work, that work may not be carried out.

Clause 35 - Revocation of permit

Sub-clause (1) provides that the Minister shall revoke a permit if there is a change in the ownership of the installation.

Sub-clause (1A) provides for the Minister to revoke a permit if the holder of the permit requests, in writing, the Minister to do so.

Sub-clause (2) provides that the Minister may, subject to Commonwealth consultation with the appropriate State or Territory, revoke a permit, if the permit holder is convicted of an offence due to contravention by the holder of this Act or regulations.

Sub-clause (3) provides that subject to Commonwealth consultation with the relevant State or Territory, the Minister may revoke a permit where the holder contravenes the permit or fails to pay an amount due under this Act or the Sea Installations Levy Act

In a case where the Minister has revoked a permit, the Minister is required as soon as practicable to notify the holder of the revocation setting out reasons for the decision. Under sub-clause (5) the permit holder may be convicted of an offence because of contravention of the permit irrespective of the fact that the permit has been revoked.

Division 6 - Miscellaneous

Clause 36 - Publication in the 'Gazette'

Sub-clause (1) provides that for each application received for the grant, renewal or variation of a permit, the Minister is required to publish details of the application in the Gazette as soon as practicable. The applicant is required to publish, in a widely-circulated newspaper in the relevant State or Territory, details of the application for grant, renewal or variation of a permit. Both requirements must be met before the permit may be granted.

Under sub-clause (2) the Minister is required to publish particulars in the Gazette of the grant, renewal, variation, expiration without renewal, or revocation, of a permit as soon as practicable.

Clause 37 - Securities

Sub-clause (1) provides that the Minister may require, by notice in writing, an applicant for a permit to give security, in an amount determined by the Minister, to comply with the Act and regulations, not to contravene the permit and to meet any liability to the Commonwealth that the applicant could incur under the Act. The applicant is not entitled to be granted the permit unless the security has been given.

Under sub-clause (2) the Minister may also advise the applicant in writing of the requirement to insure against any specified liability to the Commonwealth that the holder or applicant could incur.

Clause 38 - Trust Account for money paid as security

Clause 38(1) provides for the establishment of an account known as the Sea Installations Trust Account. Sub-clause (2) specifies that the Trust Account is an account for the purposes of section 62A of the Audit Act 1901. All moneys paid as a security are to be paid by way of a cash deposit into the account.

Sub-clause (4) provides that where the sum of money paid by the applicant together with interest exceeds the amount required as security, any excess moneys will be refunded to the applicant.

Clause 39 - Permit not evidence of compliance with law

This clause provides that the granting of a permit is not evidence of compliance by the holder with this Act or any other Commonwealth or Territory Law.

PART IV - EXEMPTION CERTIFICATES

Clause 40 - Exemption certificate

This clause provides that the Minister may give a certificate that an installation be installed at a certain location without a permit where the Minister is satisfied that the installation will only be used for certain scientific or marine archeology activities. The Minister may also refuse to grant an exemption certificate.

Before issuing a certificate in any other case, the Minister shall consider:

- . the proposed use of the installation;
- . the proposed activities to be carried out in relation to the installation by the owner or operator;
- . the environmental effects of the installation;
- . the number of persons likely to be on the installation at any one time;
- . the duration of the proposal; and
- . other such matters as the Minister thinks fit.

The certificate is subject to any conditions the Minister considers appropriate.

Clause 41 - Application for exemption certificate

This clause provides that a person may apply to the Minister for an exemption certificate. The application must set out such particulars as are prescribed.

The applicant is required under sub-clause (3) to provide evidence that the applicant will be the owner or operator of the installation. Under sub-clause (4) the Minister may, where additional information is required, request that the applicant provide such information and the Minister is not required to consider the application until that information is provided.

The Minister is required to deal with the application within specified time limits.

Where an application is refused the Minister is required to furnish details of the reasons to the applicant.

Clause 42- Form of exemption certificate

This clause sets out the matters that are to be included in an exemption certificate.

Clause 43 - Termination of exemption certificate

Under this clause an exemption certificate ceases to have effect where the specified period ends, the installation is used for a purpose not specified or the Minister provides such a notice to the owner or operator under sub-clause (2) that the certificate has ceased to be in force.

Sub-clause (2) provides that where the Minister has reasonable grounds for believing the conditions set out in the certificate have been contravened, the Minister may notify the owner or operator that the certificate has ceased to be in force.

Clause 44 - Effect of exemption certificates

This clause provides that where an exemption certificate is in force clauses 11, 12, and 13 of the Act do not apply.

PART V - APPLICATION OF LAWS AND JURISDICTION OF COURTS IN RELATION TO SEA INSTALLATIONS

Clause 45 - Application of Commonwealth Acts in adjacent areas

Clause 45 provides that the Acts specified in the Schedule apply in relation to sea installations in adjacent areas as if those areas were part of the Commonwealth.

Sub-clause (2) provides that the regulations may revoke the application of an Act or part of an Act specified in the Schedule. Sub-clause (3) provides that the regulations may provide that a specified Act or part thereof applies in the adjacent area as if those areas were part of the Commonwealth. Provision is also made for the application of laws to activities and persons in the vicinity of the installation.

The operation of other laws is not restricted by the clause

Clause 46 - Application of laws in areas adjacent to States

This clause provides that State laws apply to installations installed or being installed in the adjacent area of a State as if that area were part of that State or the Commonwealth. Sub-clause (2) excludes criminal laws under the Crimes at Sea Act 1979.

Sub-clause (4) provides that a State law applies in relation to certain acts, omissions and matters on or in the vicinity of an installation. This sub-clause also embraces a person on an installation, in adjacent areas or in the vicinity of an installation.

Sub-clause (5) places certain limitation on the application of the clause.

Sub-clauses (7) and (8) clarify the regulation making power in relation to the application of laws in areas adjacent to States and the investing of a State Court with federal jurisdiction.

Clause 47 - Application of laws in areas adjacent to Territories

This clause provides that the laws of an affected Territory apply by force of this clause to installations in an adjacent area as if that area were part of the Territory, and in the case of the Northern Territory, were part of the Commonwealth. Criminal laws under the Crimes at Sea Act 1979 are not included although nothing in this Bill derogates from the operation of the Bill. Following passage of this Bill, regulations under section 10 of the Crimes at Sea Act will be made so that State and Territory criminal laws will apply to installations in adjacent areas.

A law of a Territory applies in the same manner as a State law applies in areas adjacent to a State under clause 46.

Clause 48 - Installations and goods deemed to have been imported into certain external Territories

This clause provides that an installation and goods on an installation will be deemed to be imported where an installation becomes installed in the adjacent area of Norfolk Island, Christmas Island or Cocos (Keeling) Islands.

Clause 49 - Jurisdiction of courts

This clause provides for State courts and courts having jurisdiction in an affected Territory to have federal jurisdiction in all areas under the laws having effect under clauses 45 and 46 and in relation to matters arising under this Act or regulations.

Clause 50 - Rules of Courts

This clause provides that where State or Territory courts have jurisdiction because of this Act, those courts have the power to make rules relating to the practice and procedure of the court for the purposes of that jurisdiction.

PART VI - OFFENCES AND PROCEDURES RELATING TO SEA INSTALLATIONS

Clause 51 - Direct journeys between sea installations and external places prohibited

This clause provides that, subject to sub-section (4), it is an offence to make a direct journey from an external place to a sea installation or from a sea installation to an external place.

Sub-clauses (2) and (3) provide that it is an offence for goods to be taken directly from an external place to a sea installation or from a sea installation to an external place.

Sub-clause (4) provides that it is a defence to a charge of an offence against this clause if it is necessary to make a direct journey for the purposes of human safety, safety of a ship, an aircraft in flight, or a sea installation, or was authorised in writing by the Minister and carried out in accordance with any conditions specified in that authorisation.

Sub-clause (5) provides that sub-clause (4) does not limit any defence that would, but for the sub-clause, be available to a person charged with an offence under the clause.

Sub-clause (6) describes the situations in which a person will be taken to have made a direct journey from an external place to a sea installation, and sub-clause (7) refers to journeys from a sea installation to an external place.

Sub-clause (8) describes the circumstances under which goods will be taken to have been taken directly from an external place to a sea installation and sub-clause (9) refers to goods taken directly from a sea installation to an external place.

Sub-clause (10) describes those situations in which persons or goods will not be taken to have travelled from or to an external place or sea installation because of only having flown in an aircraft that flies over, or one that has landed at, that place or installation.

Sub-clause (11) defines 'external place', 'inhabited external Territory' and 'uninhabited external Territory', and provides for a penalty for contravention of sub-clauses (1), (2) or (3).

Clause 52 - Maintenance of sea installations etc.

This clause provides that a permit holder is required to properly maintain the installation and any other equipment or property associated with the installation. This does not apply where the permit holder did not authorise a structure, equipment or property to be brought into the adjacent area.

The penalties are \$50,000 for a person and \$250,000 for a body corporate.

Clause 53 - Notice of bad condition etc of sea installation

This clause provides for an offence and penalties where the permit holder of a sea installation, which is in such bad condition or repair as to be a real or potential environmental threat, fails to notify the Minister that it is in such condition and repair.

A defence is provided in this clause if it is established that the person charged was not, or could not reasonably be expected to be aware of the installations bad condition and repair.

Clause 54 - Repairs to avoid adverse effect on environment

Sub-clause (1) allows the Minister to require, by notice in writing to the permit holder, the taking of action specified in the notice to improve the condition and repair of the installation, to prevent or reduce the adverse effect and to rectify any damage caused thereby to the environment

Sub-clause (2) provides for the Commonwealth to take the action specified in a notice served under sub-clause (1) where the permit holder does not take the action within the time specified in the notice or the sum of the time in the notice and the time taken for a review of the notice by the Administrative Appeals Tribunal to be disposed of.

Sub-clause (3) makes any expense incurred by the Commonwealth in taking action under sub-clause (2) to be a debt due to the Commonwealth by the permit holder. If such a debt is not recovered from securities lodged under sub-clause 35(1) it may be recovered by court action under clause 47.

Clause 55 - Direction for removal of sea installations

Under this clause the Minister may by written notice direct the owner or operator of an unauthorised installation, within a period specified, to remove the installation and all associated property brought into the area and/or repair any damage to the seabed or subsoil caused by the owner or operator or any other person, in a manner specified in the notice.

Sub-clause (2) states the Minister may require the permit holder of an installation to similarly remove any property relating to the installation and/or repair any damage, in a manner specified by the Minister.

The person directed to comply with the Minister's direction must do so. The penalties for noncompliance are \$50,000 for a person or \$250,000 for a body corporate.

Clause 56 - Forfeiture

Under this clause the Minister, by notice in writing in the Gazette, may order forfeiture to the Commonwealth of an installation or property where a person has failed to comply with a direction to remove an installation or property.

Under sub-clause (2), a court may make an order of forfeiture to the Commonwealth of the installation involved in the offence if the person is convicted of an offence under clause 12, 13, 14 or 72 or clause 5 or 7 of the Crimes Act 1914.

Further, sub-clause (3) provides that where the Commonwealth incurs expense in removing or disposing of an installation forfeited under this clause the amount is payable to the Commonwealth by the owner of the installation. Where the debt is not met by enforcing the security given under sub-clause 35(1) it may be recovered by a court empowered under clause 47.

Clause 57 - Safety Zones

This clause allows for protection of an installation. The Minister may prohibit vessels from entering or remaining in a specified safety zone around the installation without the consent of the Minister.

The safety zone may extend to 500 metres around the installation.

Where a vessel contravenes the Minister's prohibition both the owner and the person in charge of the vessel will be guilty of an offence. Punishment, on conviction will be a fine not exceeding:

- . \$100,000 or imprisonment for a period not exceeding 10 years where the person convicted is a natural person
- . \$500,000 where the person convicted is a body corporate.

Sub-clause (4) provides that an offence has not occurred where the person charged can prove that the entering or remaining in the safety zone

- . was due to factors beyond the person's control
- . was necessary to protect a human life
- . was necessary for the safety of a ship or an installation.

This sub-clause does not limit by implication any defence that would otherwise be available to a person charged with such an offence.

Clause 58 - Contravention of conditions

This clause provides penalties for the holder of a permit who contravenes its conditions.

Clause 59 - Injunctions

This clause provides that a court may grant an injunction where, on the application of the Minister or an interested person, a court is satisfied that a person has or proposes to engage in conduct that constitutes:

- . a contravention of this Act, its regulations or the conditions of a permit;
- . attempting such a contravention;
- . aiding, abetting, counselling or procuring a person to commit such a contravention;
- . inducing or attempting to induce a person to commit such a contravention;
- . being concerned in or party to such a contravention by a person;
- . conspiring with others to commit such a contravention.

Where a court determines it is desirable to grant an interim injunction pending determination of an application the court may do so

The court may also rescind or vary an injunction under sub-clauses (1) or (3).

Where the Minister applies to a court for an interim injunction, the court will not require an applicant or other person to give undertakings as to damages as a condition of granting an interim injunction.

Under sub-clause (6) the court is empowered to grant a restraining injunction -

- . whether or not it appears to the court that the person intends to engage again or continue to engage in conduct of that kind;
- . whether or not the person has previously engaged in conduct of that kind;
- . whether or not there exists a serious threat of injury to the environment if the person engages in conduct of that kind.

Sub-clause (7) provides that the court may grant an injunction requiring a person to do an act or thing -

- . whether or not it appears to the court that the person will refuse or fail to do that act or thing
- . whether or not the person has previously refused or failed to do that act or thing
- . whether or not there exists a serious and immediate threat of injury to the environment if the person refuses or fails to do that act or thing.

Sub-clause (8) defines an interested person as (a) one whose interests in an adjacent area may be affected by the above mentioned conduct or (b) an organisation or association, the objects or purposes of which and activities that relate to the preservation or conservation of an adjacent area that is likely to be affected by that conduct.

Paragraph 8 (b) does not apply to conduct undertaken before the organisation or association was formed, before the objects or purposes of the organisation or association included the matter concerned, or before the organisation or association engaged in activities related to the matter concerned.

PART VII - ADMINISTRATION

Clause 60 - Appointment of inspectors

This clause enables the Minister to appoint, in writing, a person or persons in a specified class of persons to be an inspector for the purposes of the Act.

Clause 61 - Identity cards

Sub-clause (1) provides that the Minister may issue an identity card to an inspector who is not a member of a police force

Sub-clause (2) requires a person who ceases to be an inspector to return an identity card and provides a penalty of \$100

Clause 62 - Power of entry

Subject to sub-clauses (2), (3) and (4), sub-clause (1) provides that an inspector may board a sea installation at any reasonable time to ascertain whether there has been or is a contravention of the Act, regulations or a permit, or to comply with a request under the Act or in accordance with the regulations for attending the installation. The inspector may:

- . enter and search the installation;
- . take on to and into any part of the installation such equipment and materials as is necessary to exercise his or her powers under this sub-clause;

- examine, inspect, measure or test any thing on the installation;
- . photograph or sketch the installation or any thing on the installation;
- . record any events on or in the installation;
- inspect, take extracts or copy any installation related books, records or documents; or
- . direct that the installation or any part of it be left undisturbed for a specified period.

Sub-clause (2) prevents an inspector boarding an installation that is not a permitted installation; unless the operator consents to the inspector boarding; the inspector is authorised under a warrant to board the installation or unless the inspector believes there exists a risk to human life or serious damage to the installation or the environment.

Sub-clause (3) prevents an inspector entering residential or sleeping quarters unless the occupier consents to the inspector entering, the inspector has a warrant to enter or the inspector has a reasonable belief that there is a risk to human life or of serious damage to the installation or the environment.

Sub-clause (4) allows for the issuing of a warrant by a Magistrate to authorise an inspector to board, with such assistance as required and by force if necessary the installation for the purposes of exercising the powers of an inspector under sub-clause 56(1). The Judge or Magistrate must be satisfied by information on oath that the issuing of a warrant is reasonably necessary for the inspector to have access to the installation.

Sub-clause (6) requires a warrant issued under sub-clause (4) to state:

- . whether entry is authorised at any time of day and or night or during specified hours of the day or night; and
- . a day, not later than one month after the day issue of the warrant after which the warrant ceases to have effect.

Sub-clause (7) authorises an inspector, where it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning any structure, plant, substance or thing on a sea installation, to:

- . take possession of the structure, plant, substance or thing and remove it; or
- . take a sample from the structure, plant, substance or thing and remove it from the workplace.

Sub-clause (8) enables a inspector, under conditions of urgency to apply by telephone to a Judge or Magistrate for a warrant under sub-clause (4).

It is a requirement of sub-clause (9) that before an inspector can make an application under sub-clause (8), he or she must prepare an information which sets out the grounds for which the warrant is sought. The inspector may, if necessary, make the application before the information is sworn.

Sub-clause (10) details other procedural requirements for a warrant to be issued under sub-clause (8). These are that:

- . the Judge or Magistrate shall complete and sign the warrant, inform the inspector of the warrant's terms, date and time of signature and record on the warrant the reasons for which it was issued under sub-clause (8).
- . The inspector shall record a form of warrant in the terms supplied by the Magistrate or Judge whose name shall be written on it, together with time and date of signature.

Sub-clause (11) requires an inspector to send to the Magistrate who signed the warrant obtained under sub-clause (10)(b) the form of warrant completed by the inspector together with the sworn information by the day following the expiry of the warrant.

Sub-clause (12) details the procedure to be followed by the Judge of Magistrate upon receipt of documents under sub-clause (11) This involves attaching the documents to the warrant and then proceeding as if the warrant was issued under sub-clause (4).

Sub-clause (13) deems a warrant obtained by telephone and duly completed in accordance with sub-clause (10)(b) to be a warrant issued under sub-clause (4).

Sub-clause (14) provides that a reference to a contravention of this Bill or regulations includes a reference to offences under the Crimes Act 1914.

Clause 63 - Power to require information

Sub-clause (1) enables an inspector to require a person to give such information as is required, including information verified by statutory declaration.

Sub-clause (2) makes it an offence to fail to comply with sub-clause (1) and provides a penalty.

Sub-clause (3) provides that a person may not withhold information on the grounds that it may incriminate that person although such information is not admissible in evidence in criminal proceedings, other than proceedings for an offence against sub-clause (2) or 58(2).

Clause 64 - False Statements

Sub-clause (1) provides that where an applicant for a permit, a renewal, or variation of a permit or an applicant for an exemption certificate, knowingly or recklessly -

- (a) makes a false or misleading statement; or
- (b) provides a document containing misleading information

the person is guilty of an offence punishable by a fine not exceeding \$5000, or up to 2 years imprisonment, or both in the case of a natural person or a fine up to \$25,000 in the case of a body corporate.

Sub-clause (2) makes it an offence for a person applying for renewal or variation of a permit to knowingly or recklessly -

- (a) make a false or misleading statement to an inspector;
- (b) provide an inspector with a document containing misleading information.

A penalty or a fine not exceeding \$2000 or imprisonment for a period up to 12 months, or both for a natural person or \$10000 for a body corporate is provided.

Clause 65 - Indictable offences

This clause provides that offences against certain sections of the Act are indictable offences, however a court of summary jurisdiction may hear the matter if the court considers it proper to do so and the defendant and prosecutor consent.

Sub-clause (4) provides for reduced penalties where the matter is heard by a Court of summary jurisdiction.

Clause 66 - Conduct by directors, servants, or agents

This clause provides that where it is necessary to establish the state of mind of a body corporate in relation to conduct engaged in or deemed by sub-clause (2) to have been engaged in, it is sufficient to show that a director, servant or agent of the body corporate had that state of mind at the time of being engaged in conduct within the scope of his or her actual or apparent authority.

Sub-clause (2) provides that conduct engaged in on behalf of a body corporate will be deemed to have been engaged in also by the body corporate.

Sub-clause (3) provides that it is sufficient to show that a servant or agent had that state of mind where it is necessary to establish the state of mind of a person in relation to conduct deemed by sub-clause(4) to have been engaged in by the person.

Sub-clause (4) provides that conduct engaged in on behalf of a person other than a body corporate will be deemed to have been engaged in by the first-mentioned person.

Sub-clause (5) provides that the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

Sub-clause (6) provides that a reference in this clause to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory

PART VIII - INSTALLATION LEVY COLLECTION

Clause 67 - Time for payment of installation levy

This clause provides for the day on which an installation levy is due and payable.

Clause 68 - Penalty for non-payment

This clause provides a penalty for non-payment of the levy by the due date. Where this happens the holder is liable to pay to the Commonwealth an amount calculated at the rate of 30% per annum upon the amount of unpaid levy, calculated from the due date of the levy.

Clause 69 - Recovery of levy and penalties

This clause provides that the installation levy or amounts payable under clause 62 are debts due to the Commonwealth and may be recovered by the Commonwealth.

Clause 70 - Valuation of sea installations

Sub-clause (1) provides that the Minister may determine the amount of the market value of a sea installation installed in an adjacent area in respect of which a permit is in force, having regard to sound valuation principles.

Sub-clause (2) provides that the Minister may determine a new market value in accordance with sound valuation principles where there has been a significant change in the market value of a sea installation.

Clause 71 - Authorised valuers

Sub-clause (1) allows the Minister to appoint valuers.

An authorised valuer may, under sub-clause (2) board an installation installed or being installed in an adjacent area for the purpose of a valuation.

Sub-clause (3) provides that an authorised valuer must produce evidence of his or her appointment as an authorised valuer. If not the valuer may not remain on the installation.

PART IX - MISCELLANEOUS

Clause 72 - Fees

This clause provides that fees, or a method of ascertaining fees, for applications, renewals or variations of permits may be prescribed by regulation.

Sub-clause (2) provides that a fee in relation to an application shall be paid at the time of application or at a prescribed time. If the fee is not paid then the application will be considered not to have been made.

Sub-clause (3) provides that the Minister may waive the fees for an application.

Clause 73 - Recompense of expenses incurred by States etc.

This clause provides for the Minister to enter arrangements with a State or the Northern Territory for payment by the Commonwealth of money in relation to the administration of this Act.

Sub-clause (2) provides that payments under sub-clause (1) shall be from Parliamentary appropriations made for the purpose.

Clause 74 - Delegation

This clause provides that the Minister may, in writing, either generally or otherwise, delegate to:

the holder of an office established by an Act;

the holder of an office established by a State or Territory law;

. an officer or employee of the Australian Public Service;

. an officer or employee of the Public Service of a State or Territory

any of the Minister's powers under the Act other than this power of delegation.

Sub-clause (2) provides that when a delegated power is exercised it shall be deemed to have been exercised by the Minister, for the purposes of the Bill.

Sub-clause (3) provides that a delegation under this clause does not prevent the Minister from exercising the power.

Clause 75 - Application for review

This clause provides for review by the Administrative Appeals Tribunal of:

- . a decision under clause 17 to grant or refuse a permit;
- . a decision relating to conditions of particular permits under clause 24;
- . a decision under clause 25 to renew or refuse to renew a permit;
- . a decision under sub-clause 28(1) to vary or refuse to vary a permit;
- . a decision under sub-clause 28(2) to vary or refuse to vary a permit;
- . a decision under sub-clause 28(3) to vary or refuse to vary a permit;
- . a decision under sub-clause 34(1) to suspend a permit;
- . a decision under sub-clauses 35(2) or 35(3) to revoke a permit;
- . a determination of the amount of security for the purposes of sub-clause 37(1);
- . a decision under clause 40 to refuse to give an exemption certificate; or
- . a decision of the Minister for the purposes of sub-clause 40(3);
- . a decision of the Minister for the purposes of sub-clause 51(4)(c);
- . a direction under sub-clauses 55(1) or 55(2) relating to the removal of installation and repairing damage;
- . a decision of an inspector for the purposes of paragraph 62(1)(g) or sub-clause 62(7); or
- . a determination under clause 72 relating to valuation,

or a decision of the Minister for the purposes of sub-clause 78(4)

Sub-clause (2) provides that the meaning of "decision" in subsection (1) is the same as in the Administrative Appeals Tribunal Act 1975.

Clause 76 - Statement to accompany notice of decisions

This clause provides that where a decision of the kind referred to in sub-clause 69(1) is made by the Minister and notice is given in writing of that decision that notice shall include a statement that application may be made to the Administrative Appeals Tribunal, subject to the Administrative Appeals Tribunal Act 1975, for a review of that decision.

Sub-clause (2) provides for the validity of a decision where sub-clause (1) has not been complied with.

Clause 77 - Regulations

This clause enables the Governor-General to make regulations prescribing matters:

- (a) required or permitted by the Act to be prescribed; or
- (b) necessary or convenient to prescribe for the purposes of the Act;

and particularly:

- (c) prohibiting or regulating activities on sea installations installed or being installed;
- (d) prescribing safety matters;
- (e) prescribing emergency procedures;
- (f) controlling waste disposal;
- (g) prescribing matters relating to ships travelling between installations and other places;
- (h) prohibiting or controlling trade or other activities near sea installations; and
- (i) prescribing penalties for contraventions of the regulations not exceeding \$5,000 for a natural person or \$25,000 for a body corporate.

Sub-clause (2) provides that sub-clause (1) does not prevent the maximum penalty being applied under clause 58 where compliance with a specified regulation is a condition of a permit.

Clause 78 - Transitional - sea installations installed before the commencement of the Act

This clause provides that if on the commencement of this legislation a sea installation is installed in an adjacent area and remains installed otherwise than in accordance with a permit or an exemption certificate:

- (a) the owner may keep the installation installed if an application for a permit or exemption certificate is made within 2 months, 3 months after the expiration of those 2 months or after the final disposal of that application, whichever occurs last; or
- (b) in any other case, 5 months after the date of commencement.

Sub-clause (2) provides that where the Minister requests that an environmental impact statement be lodged within a specified period, if the person fails to provide the statement, the application will be considered to be withdrawn, or, if the person complies with the requirement, the time limit in which the Minister is required to finalise an application will not include the time commencing when the requirement for the environmental impact statement was made and ending when the Minister has finally dealt with all matters relating to the statement

Where additional information is required by the Minister in relation to a statement, that information will be requested under the Environment Protection (Impact of Proposals) Act 1974.

Sub-clause (4) provides that a person may, under sub-clause (1), keep an installation installed for a certain period and not beyond that period. The penalty for non-compliance is \$50,000 for a natural person and \$250,000 for a body corporate.

Sub-clause (5) enables an owner or operator to use an installation for an environment related activity, to carry out environment related work and to carry out work relating to the disassembly, detaching or removing of an installation that is kept installed under sub-clause (1).

SCHEDULE

This schedule provides a list of Commonwealth Acts that have application in adjacent areas.











