

# Crimes at Sea Bill 1999

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Western Australia

LEGISLATIVE COUNCIL

## **Crimes at Sea Bill 1999**

**A Bill for**

**An Act to give effect to a cooperative scheme for dealing with crimes at sea, to repeal the *Crimes (Offences at Sea) Act 1979*, to amend the *Off-shore (Application of Laws) Act 1982*, and for other purposes.**

**Why this Act needs to be enacted**

The Commonwealth and the States have agreed to a cooperative scheme to apply the criminal law of the States extraterritorially in the areas adjacent to the coast of Australia.

- 5 Under the scheme, the criminal law of each State is to apply in the area adjacent to the State —
- (a) for a distance of 12 nautical miles from the baseline for the State — by force of the law of the State; and
  - 10 (b) beyond 12 nautical miles up to a distance of 200 nautical miles from the baseline for the State or the outer limit of the continental shelf (whichever is the greater distance) — by force of the law of the Commonwealth.

15 Responsibility for administering criminal justice in the area covered by the scheme will be divided between the Commonwealth and the States under the scheme and an intergovernmental agreement.

The purpose of this Act is to give legal force to the scheme (so far as it depends on the legislative power of the State) and to provide for consequential vesting of judicial and other powers.

The Parliament of Western Australia enacts as follows:

**1. Short title**

20 This Act may be cited as the *Crimes at Sea Act 1999*.

**2. Commencement**

- (1) The provisions of this Act come into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

**3. Interpretation**

In this Act, unless the contrary intention appears —

**“cooperative scheme”** means the legislative and administrative scheme for applying and enforcing criminal law in the areas adjacent to the coast of Australia set out in Schedule 1;

**“intergovernmental agreement”** means the agreement entered into under clause 5 of Schedule 1.

**4. Ratification of cooperative scheme**

To the extent that it lies within the legislative competence of the State to give the cooperative scheme the force of law, it has the force of law.

**5. Classification of offences**

Offences (other than offences arising under the law of the State) are classified for the purposes of the cooperative scheme as follows —

- (a) if the maximum penalty for the offence is a fine or imprisonment for not more than 2 years, the offence is classified as a summary offence;
- (b) if the maximum penalty for the offence is (or includes) imprisonment for more than 2 years but not more than 5 years, the offence is classified as a misdemeanour;

- (c) if the maximum penalty for the offence is (or includes) imprisonment for more than 5 years or for an indefinite term, the offence is classified as a crime.

**6. Publication of intergovernmental agreement**

5 The Minister must have the intergovernmental agreement, and any amendment to the intergovernmental agreement, published in the *Gazette*.

**7. Regulations**

10 (1) The Governor may make regulations prescribing any matter that is necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Subsection (1) does not authorize the making of regulations for the purposes of the cooperative scheme.

**8. *Crimes (Offences at Sea) Act 1979* repealed**

15 The *Crimes (Offences at Sea) Act 1979* is repealed.

**9. *Off-shore (Application of Laws) Act 1982* amended**

Amendments are made to the *Off-Shore (Application of Laws) Act 1982*\* as set out in Schedule 2.

[\* *Act No. 21 of 1982.*

20 *For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 166.]*

**10. Transitional and savings**

25 (1) This Act extends to give force of law to the cooperative scheme in its application to an offence committed, or alleged to have been committed, before the commencement of section 4 unless proceedings are pending in respect of that offence when that section commences.

- (2) The repeal effected by section 8 does not affect any proceedings in respect of an offence that are pending when that section commences.

## Schedule 1 — The Cooperative Scheme

[s. 3]

### Part 1 — Preliminary

#### 1. Definitions

- 5 (1) In this scheme —
- “**adjacent area**” for a State has the meaning given by clause 14 of this Schedule;
- “**Area A of the Zone of Cooperation**” has the same meaning as in the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* (Commonwealth);
- 10 “**Australian ship**” means —
- (a) a ship registered in Australia; or
  - (b) a ship that operates, or is controlled, from a base in Australia and is not registered under the law of another country; or
  - 15 (c) a ship that belongs to an arm of the Defence Force;
- “**baseline**” for a State has the meaning given by clause 15 of this Schedule;
- “**foreign ship**” means a ship other than an Australian ship;
- 20 “**inner adjacent area**” for a State means the parts of the adjacent area for the State that are —
- (a) on the landward side of the baseline for the State; and
  - (b) on the seaward side, but within 12 nautical miles from, the baseline for the State;
- 25 “**intergovernmental agreement**” means the agreement entered into under clause 5 of this Schedule;
- “**law of criminal investigation, procedure and evidence**” means law (including unwritten law) about —
- (a) the investigation of offences (including coronial inquiry); or

- (b) immunity from prosecution and undertakings about the use of evidence; or
- (c) the arrest and custody of offenders or suspected offenders; or
- 5 (d) bail; or
- (e) the laying of charges; or
- (f) the capacity to plead to a charge, or to stand trial on a charge; or
- 10 (g) the classification of offences as indictable or summary offences (and sub-classification within those classes); or
- (h) procedures for dealing with a charge of a summary offence; or
- 15 (i) procedures for dealing with a charge of an indictable offence (including preliminary examination of the charge); or
- (j) procedures for sentencing offenders and the punishment of offenders; or
- (k) the hearing and determination of appeals in criminal proceedings; or
- 20 (l) the rules of evidence; or
- (m) other subjects declared by regulation to be within the ambit of the law of criminal investigation, procedure and evidence; or
- (n) the interpretation of laws of the kind mentioned above;
- 25 **“maritime offence”** means an offence against a law that applies in the adjacent area for a State under this scheme;
- “offence”** means an indictable or summary offence;
- “outer adjacent area”** for a State, means the part of the adjacent area for the State that is outside the inner adjacent area for the State;
- 30 **“participating State Minister”** means a Minister responsible for administering a State Act that gives effect to this scheme;

“**ship**” means a vessel or boat of any description and includes —

- (a) a floating structure; and
- (b) a hovercraft or similar craft;

“**State**” includes the Northern Territory and Norfolk Island;

5 “**substantive criminal law**” means law (including unwritten law) —

- (a) creating offences or imposing criminal liability for offences; or
- (b) dealing with capacity to incur criminal liability; or
- (c) providing a defence or for reduction of the degree of criminal liability; or
- 10 (d) providing for the confiscation of property used in, or derived from, the commission of an offence; or
- (e) providing for the payment of compensation for injury, loss or damage resulting from the commission of an offence, or the restitution of property obtained through the
- 15 (f) dealing with other subjects declared by regulation to be within the ambit of the substantive criminal law of a State; or
- (g) providing for the interpretation of laws of the kinds mentioned above;

20 “**summary offence**” means any offence other than an indictable offence.

- (2) The law of criminal investigation, procedure and evidence of the Commonwealth includes provisions of State law on the relevant subjects applied under the *Judiciary Act 1903* (Commonwealth).

## 25 **Part 2 — Application of State criminal law in adjacent area**

### **2. Application of State criminal law in adjacent area**

- (1) The substantive criminal law of a State, as in force from time to time, applies, by force of the law of the State, throughout the inner adjacent area for the State.

(2) The provisions of the substantive criminal law of a State, as in force from time to time, apply, by force of the law of the Commonwealth, throughout the outer adjacent area for the State.

(3) However, this clause does not —

5 (a) apply to a substantive criminal law that is incapable of applying in an adjacent area or is limited by its express terms to a place within the area of a State; or

10 **Example.** A law making it an offence to drive a motor vehicle at a speed exceeding a prescribed limit on a road could not apply in an adjacent area because of the inherent localizing elements of the offence. The scheme does not therefore purport to extend the application of such a law to the adjacent area.

(b) give a legal effect to a provision of a substantive criminal law that the provision does not have within the area of the State.

15 **Example.** If the effect of a provision of the substantive criminal law of a State is limited under section 109 of the Constitution within the area of the State, the effect is similarly limited in the outer adjacent area for the State even though the provision applies in the outer adjacent area under the legislative authority of the Commonwealth.

20 **3. Application of laws of criminal investigation, procedure and evidence**

(1) In this clause —

“act” includes an omission;

“area of administrative responsibility” for a particular State is —

- 25 (a) the area of the State; and  
 (b) the inner adjacent area for the State; and  
 (c) other parts of the adjacent area in which the State has, under the intergovernmental agreement, responsibility (which may be either exclusive or concurrent) for  
 30 administering criminal justice;

“authority” includes an agent or official;

**“Commonwealth judicial proceeding”** means —

- (a) a judicial proceeding related to a maritime offence —
  - (i) initiated by an authority of the Commonwealth; or
  - (ii) for the conduct of which an authority of the Commonwealth has assumed responsibility;

5

or

- (b) a judicial proceeding about an investigation, procedure or act by an authority of the Commonwealth in relation to a maritime offence;

10

**“judicial proceeding”** means —

- (a) a proceeding in a court (whether between parties or not) or a proceeding incidental to or connected with a proceeding in court; or
- (b) the laying of a charge; or
- (c) the preliminary examination of a charge of an indictable offence or a proceeding incidental to or connected with the preliminary examination of a charge of an indictable offence;

15

**“preliminary examination”** of a charge of an indictable offence means a proceeding to decide whether the defendant should be committed for trial or, if the defendant pleads guilty to the charge, to commit the defendant for sentence;

20

**“State judicial proceeding”** means —

- (a) a judicial proceeding related to a maritime offence —
  - (i) initiated by an authority of a State; or
  - (ii) for the conduct of which an authority of a State has assumed responsibility;

25

or

- (b) a judicial proceeding about an investigation, procedure or act by an authority of a State in relation to a maritime offence.

30

- (2) The laws of criminal investigation, procedure and evidence of the Commonwealth and the States apply to maritime offences as follows —
- (a) the law of the Commonwealth applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the Commonwealth; and
  - (b) the law of a State applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the State operating within the area of administrative responsibility for the relevant State; and
  - (c) in a Commonwealth judicial proceeding the law of the Commonwealth applies and in a State judicial proceeding the law of the State in which the proceeding was commenced applies (subject to the Constitution) irrespective of whether —
    - (i) the maritime offence arises under the law of the State in which the proceeding was commenced or another State; or
    - (ii) the substantive criminal law against which the offence was committed applies in the relevant part of the adjacent area under the law of the State in which the proceeding was commenced, another State or the Commonwealth.

**Example 1.** Suppose that a person is charged by a State authority with a maritime offence on the assumption that the offence was committed in the inner adjacent area for the State but the court is satisfied in the course of proceedings that the acts alleged against the defendant took place in the outer adjacent area for the State. In this case, the court could continue with the proceedings under the procedural laws of the State. However, the court could not (for example) convict the defendant on the basis of a majority verdict of a jury (because to do so would be contrary to the constitutional principle stated in *Cheatle v The Queen* (1993) 177 CLR 541).

5                   **Example 2.** Suppose that a person is charged by a State authority in a South Australian court with a maritime offence alleged to have been committed in the adjacent area for Western Australia. For the purposes of the proceedings, the offence would be classified as a major indictable, minor indictable or summary offence according to the South Australian rules and not by reference to its classification under the law of Western Australia or the Commonwealth.

- (3) This clause operates to the exclusion of any Commonwealth or State law that is inconsistent with it.
- 10           (4) A Commonwealth or State law enacted or made after the commencement of this clause is to be construed as having effect subject to this clause, unless the law expressly overrides this clause.
- (5) The *Administrative Decisions (Judicial Review) Act 1977* (Commonwealth) does not apply to a decision taken under a State law that applies to investigations, procedures and acts by authorities of the State under subclause (2)(b).
- 15

**4. Evidentiary presumption about the locus of an offence**

20           If, in proceedings for a maritime offence, an alleged act, omission or state of affairs, that is an element of the offence, is proved, an allegation in the information or complaint that the act, omission or state of affairs happened in the adjacent area, inner adjacent area or outer adjacent area for a particular State is taken to be proved in the absence of proof to the contrary.

**Part 3 — The intergovernmental agreement**

25   **5. Intergovernmental agreement**

- (1) The Commonwealth Attorney-General, on behalf of the Commonwealth, and the participating State Ministers may enter into an agreement providing for the division of responsibility for administering and enforcing the law relating to maritime offences.
- 30           (2) The intergovernmental agreement may provide for concurrent responsibility in specified parts of the adjacent area.

**6.      Effect of the agreement**

- (1) A charge of a maritime offence must not be brought in a court contrary to the intergovernmental agreement.
- 5      (2) If a charge of a maritime offence is brought in a court in contravention of subclause (1), the court must, on application by the Commonwealth Attorney-General or a participating State Minister, permanently stay the proceedings in that court.
- (3) However —
- 10      (a) a contravention of subclause (1) does not affect a court's jurisdiction; and
- (b) if a charge of a maritime offence is brought in a court, the court will not (except on an application under subclause (2)) be concerned to enquire into whether the intergovernmental agreement has been complied with.

15                      **Part 4 — Limitations and exclusions**

**7.      Commonwealth Attorney-General's consent required for certain prosecutions**

- (1) The Commonwealth Attorney-General's written consent is required before a charge of a maritime offence can proceed to hearing or determination or, if the offence is an indictable offence, to a preliminary examination in committal proceedings, if —
- 20                      (a) the offence is alleged to have been committed on or from a foreign ship; and
- 25                      (b) the ship is registered under the law of a country other than Australia; and
- (c) the country of registration has, under international law, jurisdiction over the alleged offence.
- (2) Before granting such a consent, the Commonwealth Attorney-General must take into account any views expressed by the government of the country of registration.
- 30

- 5
- 10
- 15
- (3) Even though the Commonwealth Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay —
- (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
  - (b) the laying of a charge against the suspected offender; or
  - (c) proceedings for the extradition to Australia of the suspected offender; or
  - (d) proceedings for remanding the suspected offender in custody or on bail.
- (4) If the Commonwealth Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay the proceedings.
- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Commonwealth Attorney-General in accordance with this clause will be accepted, in the absence of proof to the contrary, as proof of such consent.

**8. Non-exclusion of consistent extra-territorial legislative schemes**

20 This scheme does not exclude the extra-territorial operation of State law to the extent that the State law is capable of operating extra-territorially consistently with the scheme.

**9. Exclusion of certain laws from ambit of scheme**

This scheme does not apply to State and Commonwealth laws excluded by regulation from the ambit of the scheme.

25 **10. Non-application of scheme to Area A of the Zone of Cooperation**

This scheme does not apply to Area A of the Zone of Cooperation.

## Part 5 — Miscellaneous

### 11. Interpretation

The *Acts Interpretation Act 1901* (Commonwealth) applies to this scheme in the same way as to a Commonwealth Act.

### 5 12. Regulations

- (1) The Governor-General may make regulations for carrying out, or giving effect to, this scheme.
- (2) However, a regulation affecting the operation of this scheme in relation to the inner adjacent area for a State may only be made with the agreement of the participating State Minister for the relevant State.

10

## Part 6 — Adjacent areas

### 13. Definitions

In this Part —

15

“**baseline of Australia’s territorial sea**” means the baseline from which the breadth of the territorial sea is to be measured under section 7 of the *Seas and Submerged Lands Act 1973* (Commonwealth);

20

“**continental shelf**” has the same meaning as in the *Seas and Submerged Lands Act 1973* (Commonwealth);

“**territorial sea**” has the same meaning as in the *Seas and Submerged Lands Act 1973* (Commonwealth).

### 14. Adjacent areas

- (1) The “**adjacent area**” for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* (Commonwealth) in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.

25

- (2) The “**adjacent area**” for Queensland is —
- (a) so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* (Commonwealth) in relation to Queensland as is within the outer limits of the continental shelf; and
  - (b) the Coral Sea area (within the meaning of section 5A(7) of the *Petroleum (Submerged Lands) Act 1967* (Commonwealth) other than the territorial sea within the Coral Sea area; and
  - (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 4 February 1983 under section 7 of the *Seas and Submerged Lands Act 1973* (Commonwealth); and
  - (d) the space above and below the areas described in paragraphs (a), (b) and (c).
- (3) The “**adjacent area**” for Western Australia is so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* (Commonwealth) in relation to Western Australia as —
- (a) is within the outer limits of the continental shelf; and
  - (b) is not within Area A of the Zone of Cooperation,
- and includes the space above and below that area.
- (4) The “**adjacent area**” for the Northern Territory is —
- (a) so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* (Commonwealth) in relation to the Northern Territory as —
    - (i) is within the outer limits of the continental shelf; and
    - (ii) is not within Area A of the Zone of Cooperation;and
  - (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of section 5A(3) of the *Petroleum (Submerged Lands) Act 1967* (Commonwealth)) other than the territorial sea within that area; and

(c) the space above and below the areas described in paragraphs (a) and (b).

(5) The “**adjacent area**” for Norfolk Island is the area the boundaries of which are —

- 5            (a) the baseline for Norfolk Island; and  
              (b) the outer limit of the continental shelf adjacent to the coast of Norfolk Island,

and includes the space above and below that area, but does not include any area in the adjacent area for any other State.

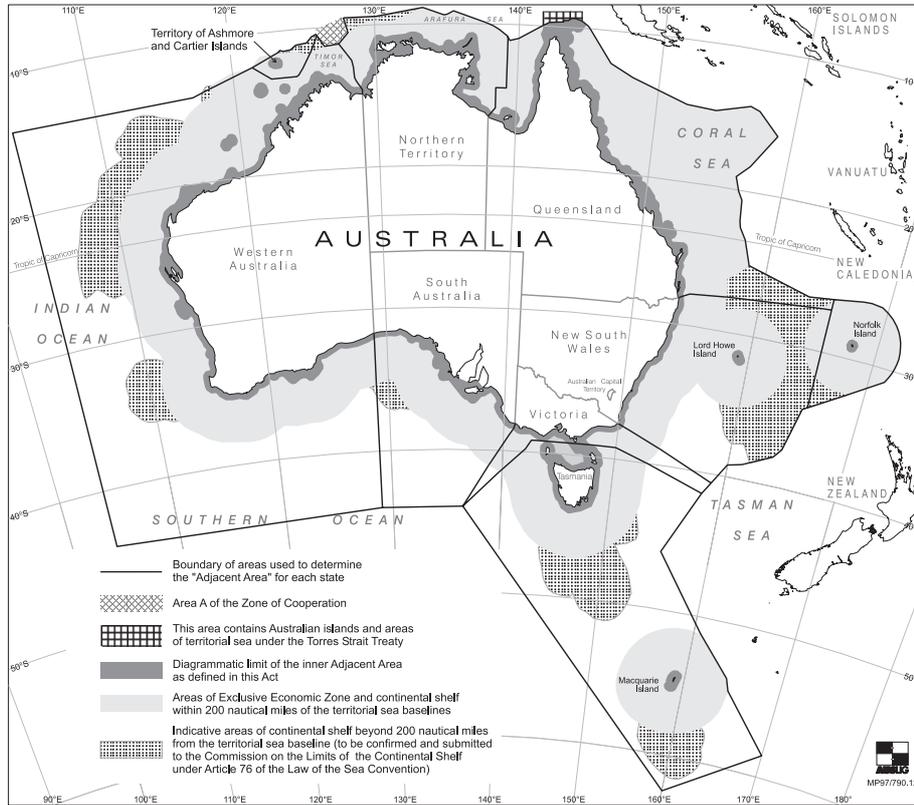
10          (6) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.

**15.      Baselines**

15          (1) The “**baseline**” for a State (other than Norfolk Island) is the part of the baseline of Australia’s territorial sea from which the part of the territorial sea that is within the adjacent area for that State is measured.

(2) The “**baseline**” for Norfolk Island is the coastline of Norfolk Island at mean low water.

### Appendix 1 — Adjacent areas



5

**Schedule 2 — *Off-shore (Application of Laws) Act 1982 amended***

[s. 9]

**1. Section 2 amended**

5 In section 2, before the definition of “law of the State”, the following definitions are inserted —

“

“**cooperative scheme**” has the same meaning as that expression has in the *Crimes at Sea Act 1999*;

10 “**criminal laws**” means the substantive criminal law, and the law of criminal investigation, procedure and evidence, within the meaning of the cooperative scheme;

”.

15 **2. Section 3 amended**

Section 3(2)(b) is deleted and the following paragraph is inserted instead —

“

20 (b) to apply the provisions of the criminal laws of the State to or in relation to the coastal waters of the State or the sea-bed or subsoil beneath or the airspace above those waters.

”.

**3. Section 3A amended**

Section 3A(2)(b) is deleted and the following paragraph is inserted instead —

“

5

(b) to apply the provisions of the criminal laws of the State to or in relation to the adjacent area in respect of the State or the sea-bed or subsoil beneath or the airspace above that adjacent area.

”.

=====

10