

Marine Safety Legislation (Lakes Hume and Mulwala) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to rationalise the application of the marine safety legislation of New South Wales and Victoria in Lake Hume and Lake Mulwala on the Murray River border.

At present the border between New South Wales and Victoria follows the top of the bank on the Victorian side of the Murray River (see *Ward v Queen* 142 CLR 308). That bank of the Murray River is submerged by Lakes Hume and Mulwala.

Under the combined operation of this Bill and corresponding legislation in Victoria, the marine safety legislation of Victoria is to be applied to the waters of Lake Hume downstream of the Bethanga Bridge and the marine safety legislation of New South Wales is to be applied to the waters of Lake Hume upstream of that bridge and to all of the waters of Lake Mulwala (including the waters of the Ovens River north of the Murray Valley Highway Bridge).

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act and states its purpose.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. In particular, the clause:

(a) defines the “transferred New South Wales area” as so much of the area covered for the time being by the waters of Lake Hume downstream of the Bethanga Bridge as is within the territorial limits of New South Wales (being the area in which the marine safety legislation of Victoria is to apply), and

(b) defines the “transferred Victorian area” as:

(i) so much of the area covered for the time being by the waters of Lake Hume upstream of the Bethanga Bridge, and

(ii) so much of the area covered for the time being by the waters of Lake Mulwala (including the waters of the Ovens River north of the Murray Valley Highway Bridge),

as are within the territorial limits of Victoria (being the area in which the marine safety legislation of New South Wales is to apply), and

(c) defines “Lake Hume” so as to include all the waters upstream of Hume Weir to a point at longitude 147 degrees and 30 minutes east (being in the vicinity of the point near Talmalmo where the backed-up waters of the Murray River no longer submerge the southern bank of the River), and

- (d) defines “Lake Mulwala” so as to include:
- (i) the waters from the Yarrawonga Weir upstream to the imaginary line across the Murray River at longitude 146 degrees and 15 minutes east (being in the vicinity of the point near Shanty where the backed-up waters of the Murray River no longer submerge the southern bank of the River), and
 - (ii) the waters of the Ovens River north of the Murray Valley Highway Bridge (the Parolos Bridge) in Victoria, and
- (e) defines “marine safety legislation of New South Wales” as the *Marine Safety Act 1998* (and instruments made under that Act) or, until the commencement of that Act, the existing legislation that is to be replaced by that Act (clause 14), and
- (f) defines “marine safety legislation of Victoria” as the *Marine Act 1988* (and instruments made under that Act).

Clause 4 defines *associated laws*, in relation to the marine safety legislation of a State, as the provisions of any laws of that State concerning a matter arising under that legislation (including legislation relating to the investigation and prosecution of offences, the jurisdiction of courts, the jurisdiction of the Ombudsman and access to information held by public officials).

Part 2 Area transferred to Victorian jurisdiction

This Part makes provision with respect to the application of the relevant legislation of Victoria to the area being transferred to Victorian jurisdiction. The corresponding Part of the Victorian Bill will make similar provision with respect to the application of the relevant legislation of New South Wales to the area being transferred to New South Wales jurisdiction.

Clause 5 applies the marine safety legislation of Victoria (and associated laws of Victoria) to the transferred New South Wales area as if the area were within Victoria, and removes the application of the marine safety legislation of New South Wales (and associated laws of New South Wales) in relation to that area.

Clause 6 provides that persons with functions conferred or imposed on them for the purposes of the marine safety legislation of Victoria (and associated laws of Victoria) also have those functions for the purposes of the application in New South Wales of that legislation (and those laws). The clause also invests Victorian courts with the necessary jurisdiction to deal with matters arising as a result of the application of that legislation (and those laws).

Clause 7 makes it clear that the marine safety legislation of Victoria does not apply in a particular place if it is incapable of applying in that place or if it expressly provides that it does not apply in that place or applies only elsewhere.

Clause 8 provides that the regulations may make further provision in relation to the application in New South Wales of particular provisions of the marine safety legislation of Victoria (or associated laws of Victoria), namely, provisions to exclude Victorian provisions and to apply New South Wales provisions instead.

Part 3 Area transferred to New South Wales jurisdiction

This Part makes provision with respect to the application of the relevant legislation of New South Wales to the area being transferred to New South Wales jurisdiction. The corresponding Part of the Victorian Bill will make similar provision with respect to the

application of the relevant legislation of Victoria to the area being transferred to Victorian jurisdiction.

Clause 9 declares that this Part has effect for the purpose of applying the marine safety legislation of New South Wales (and associated laws of New South Wales) to the transferred Victorian area as if the area were within New South Wales.

Clause 10 provides that persons with functions conferred or imposed on them for the purposes of the marine safety legislation of New South Wales (and associated laws of New South Wales) also have those functions for the purposes of the application of that legislation (or those laws) in the transferred Victorian area. The clause also invests New South Wales courts with the necessary jurisdiction to deal with matters arising as a result of the application of that legislation (and those laws).

Part 4 Miscellaneous

This Part contains miscellaneous provisions relating to the operation of the proposed Act. Similar provisions will be included in the corresponding Victorian Bill.

Clause 11 extends a power under the marine safety legislation of New South Wales to appoint or authorise a person for the purposes of the enforcement of that legislation to the appointment or authorisation of a person who is a member of the Police Force of Victoria or a member of the staff of a Victorian agency. Any such appointment or authorisation will enable the Victorian officers to exercise functions under that legislation in its application to areas within New South Wales or areas within Victoria transferred to New South Wales jurisdiction. In addition, the clause acknowledges that police officers and staff of New South Wales agencies may be appointed or authorised under the marine safety legislation of Victoria to enforce that legislation in Victoria or areas within New South Wales transferred to Victorian jurisdiction.

Clause 12 provides that the proposed Act binds the Crown.

Clause 13 provides for the making of regulations under the proposed Act.

Clause 14 enacts savings and transitional provisions.