



New South Wales

Crimes at Sea Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to give legal force (so far as it depends on the legislative power of the State) to a cooperative scheme to apply the criminal law of the States extraterritorially in the area adjacent to the coast of Australia, and
- (b) to repeal the *Crimes (Offences at Sea) Act 1980*.

It is anticipated that the Commonwealth and States will enact legislation containing a Schedule that is identical in all substantial respects that constitutes the scheme for the extraterritorial application of State criminal laws in the area surrounding Australia ("the adjacent area"). The adjacent area extends 200 nautical miles from the baseline of the State or to the outer limit of the continental shelf (whichever is the greater distance).

The criminal law of the State is to apply of its own force to a distance of 12 nautical miles from the baseline of the State. Beyond 12 nautical miles, the criminal law of the State is applied with the force of a Commonwealth law. The boundaries and baselines of the States and the boundaries to the adjacent areas are described in Part 6 of Schedule 1 to the Bill. The scheme does not

apply to State and Commonwealth laws excluded by regulation from the ambit of the scheme. This is to cater for presently operating schemes relating to subjects such as fisheries.

Responsibility for the administration and enforcement of the law relating to crimes at sea is to be set out in an intergovernmental agreement. The agreement will also empower State authorities to perform functions and exercise powers in the investigation of offences as provided for in the legislation. This is provided for in the preamble and Part 3 of Schedule 1.

It is anticipated that the intergovernmental agreement will be entered into once the legislation is enacted in all jurisdictions. Clause 5 requires the Minister administering the proposed Act to have the intergovernmental agreement published in the Gazette.

Outline of provisions

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

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

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 ratifies the scheme set out in the Schedule to the proposed Act.

Clause 5 states that the intergovernmental agreement (and any amendments) must be published in the Gazette.

Clause 6 provides for the making of regulations for carrying out, or giving effect to, the Act.

Clause 7 repeals the *Crimes (Offences At Sea) Act 1980*.

Clause 8 is a transitional provision.

Clause 9 is a formal provision giving effect to the amendments to the Acts set out in Schedule 2.

Schedule 1 The Cooperative Scheme

The details of the cooperative scheme are set out in Schedule 1.

Part 1 of Schedule 1 defines various terms used in the cooperative scheme.

Part 2 of Schedule 1 provides for the application of the substantive criminal laws of the State in the adjacent area (defined in Part 6). The laws of criminal investigation, procedure and evidence will apply as follows:

- (a) the law of the Commonwealth applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the Commonwealth.
- (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.
- (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 Commonwealth Constitution).

This Part also provides an evidentiary presumption in relation to the location of an offence (ie. whether it occurred in the adjacent area, inner adjacent area, or outer adjacent area for a particular State).

Part 3 of Schedule 1 deals with the intergovernmental agreement. Basically this provides for the making of an agreement providing for the division of responsibility for administering and enforcing the law relating to maritime offences. A charge of a maritime offence must not be brought in a court contrary to the intergovernmental agreement. If a charge is brought in contravention of the agreement, the court will, on application by the Commonwealth Attorney-General or participating State Minister, permanently stay the proceedings. The court is not, however, obliged to enquire into compliance with the agreement and non-compliance does not affect its jurisdiction.

Part 4 of Schedule 1:

- (a) outlines circumstances (involving foreign ships) in which the written consent of the Commonwealth Attorney-General is required before the prosecution of a maritime offence, and
- (b) provides that the scheme does not exclude the extra-territorial operation of State law to the extent that such a law is capable of operating extra-territorially consistently with the scheme, and
- (c) provides that the regulations may exclude State and Commonwealth laws from the scheme, and
- (d) provides that the scheme does not apply to the Australia-Indonesia Zone of Cooperation (which is defined under Commonwealth law).

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Part 5 of Schedule 1 provides that the *Acts Interpretation Act 1901* of the Commonwealth applies to the scheme and provides for the making of regulations for the purpose of the scheme.

Part 6 of Schedule 1 defines the adjacent areas.

Schedule 2 makes consequential amendments.



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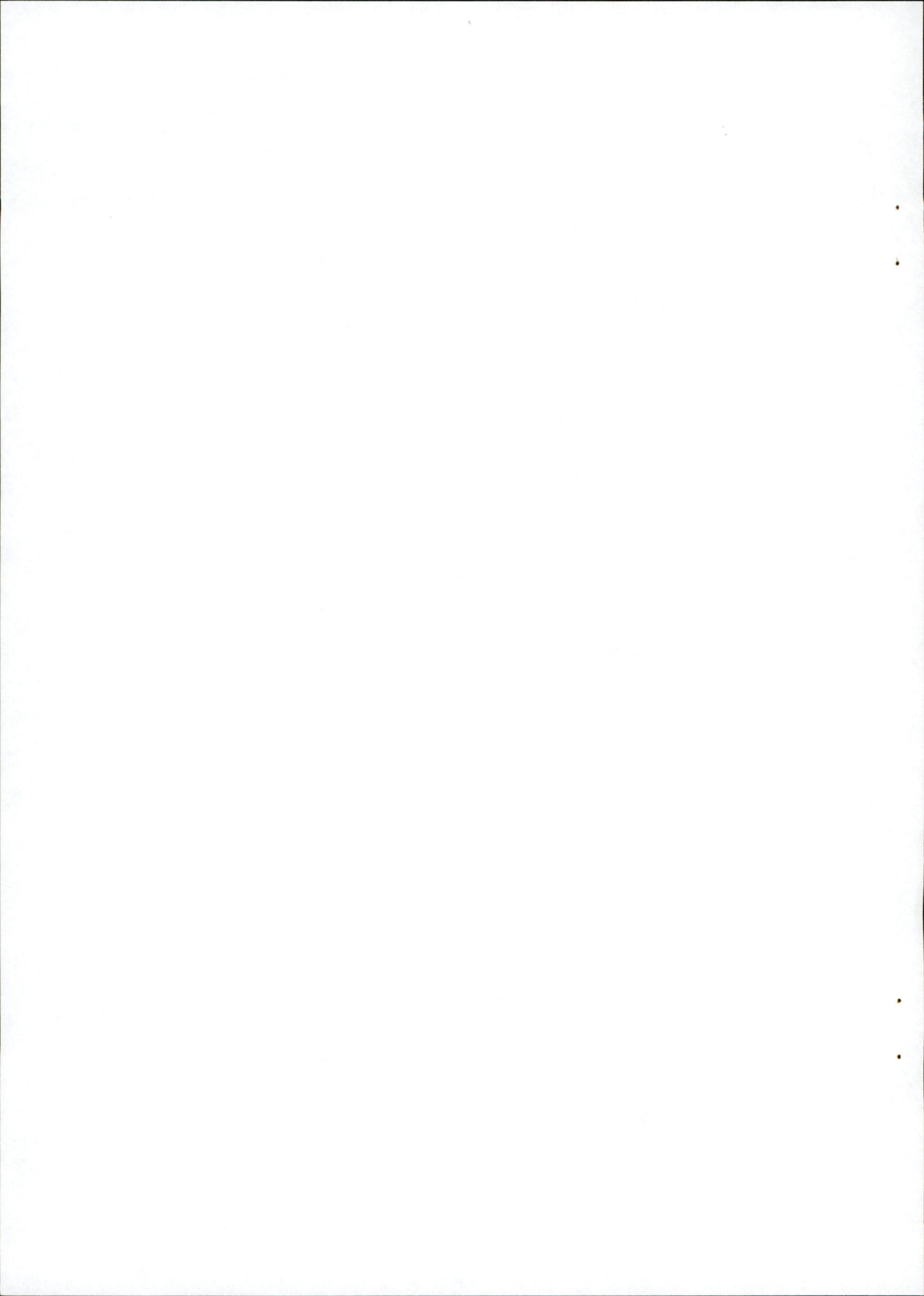
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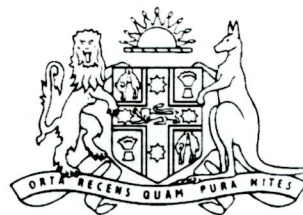
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New South Wales

Crimes at Sea Bill 1998

No. , 1998

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 1980*; and for other purposes.

Preamble

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.

Under the scheme, the criminal law of each State is to apply in the area adjacent to the State: 5

- (a) for a distance of 12 nautical miles from the baseline for the State—by force of the law of the State, and
- (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. 10

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. 15

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 Legislature of New South Wales enacts:

1 Name of Act 20

This Act is the *Crimes at Sea Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions 25

In this Act:

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. 30

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 Publication of intergovernmental agreement

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

6 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10

(2) However, this section does not (except as provided by subsection (3)) authorise the making of regulations for the purposes of the cooperative scheme. 15

(3) Without limiting the generality of subsection (1), regulations may be made for or with respect to the classification of offences for the purposes of the cooperative scheme.

7 Repeal of Crimes (Offences at Sea) Act 1980 No 145

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The *Crimes (Offences at Sea) Act 1980* is repealed.

8 Transitional

This Act extends to give force of law to the cooperative scheme in its application to offences committed, or alleged to have been committed, before the commencement of this section. However, it does not extend to give force of law to the cooperative scheme in its application to any proceedings pending in respect of such an offence at that commencement. 25

9 Amendments

The Acts in Schedule 2 are amended as set out in that Schedule. 30

Schedule 1 The Cooperative Scheme

(Section 3)

Part 1 Preliminary

1 Definitions

- (1) In this scheme: 5
- adjacent area** for a State means the area outside the limits of the State described in Part 6 of this scheme as adjacent to the State.
- Australia-Indonesia Zone of Cooperation** means Area A of the Zone of Cooperation as defined 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.
- foreign ship** means a ship other than an Australian ship.
- inner adjacent area** for a State, means the parts of the adjacent area for the State that are: 20
- (a) on the landward side of the baseline for the State described in Part 6 of this scheme, and
 - (b) on the seaward side, but within 12 nautical miles from, the baseline for the State described in Part 6 of this scheme.
- intergovernmental agreement** means the agreement entered into under clause 5. 25
- law of criminal investigation, procedure and evidence** means law (including unwritten law) about:
- (a) the investigation of offences (including coronial inquiry), or 30

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- (b) immunity from prosecution and undertakings about the use of evidence, or
- (c) the arrest and custody of offenders or suspected offenders, or
- (d) bail, or 5
- (e) the laying of charges, or
- (f) the capacity to plead to a charge, or to stand trial on a charge, or
- (g) the classification of offences as indictable or summary offences (and sub-classification within those classes), or 10
- (h) procedures for dealing with a charge of a summary offence, or
- (i) procedures for dealing with a charge of an indictable offence (including preliminary examination of the charge), or 15
- (j) procedures for sentencing offenders and the punishment of offenders, or
- (k) the hearing and determination of appeals in criminal proceedings, or
- (l) the rules of evidence, or 20
- (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 kinds mentioned above.
- maritime offence*** means an offence against a law that applies in the adjacent area for a State under this scheme. 25
- 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 other similar craft.

State includes the Northern Territory and Norfolk Island.

substantive criminal law means law (including unwritten law): 5

- (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 commission of an offence, or 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. 30

(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:

(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

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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 localising elements of the offence. The scheme does not therefore purport to extend the application of such a law to the adjacent area.

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(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.

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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.

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3 Application of laws of criminal investigation, procedure and evidence

(1) In this clause:

act includes an omission.

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area of administrative responsibility for a particular State is:

(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 administering criminal justice.

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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, or 5
- (b) a judicial proceeding about an investigation, procedure or act by an authority of the Commonwealth in relation to a maritime offence.

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 a court, or 10
- (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, or 25
 - (b) a judicial proceeding about an investigation, procedure or act by an authority of a State in relation to a maritime offence.
- (2) The laws of criminal investigation, procedure and evidence of the Commonwealth and the States apply to maritime offences as follows: 30

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- (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 5
- (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: 10
- (i) the maritime offence arises under the law of the State in which the proceeding was commenced or another State, or 15
- (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. 20

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 the 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). 25 30

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. 35

- (3) This clause operates to the exclusion of any Commonwealth or State law that is inconsistent with it.
- (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
- (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). 10

4 Evidentiary presumption about the locus of an offence

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. 15

Part 3 The intergovernmental agreement

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. 20
- (2) The intergovernmental agreement may provide for concurrent responsibility in specified parts of the adjacent area. 25

6 Effect of the agreement

- (1) A charge of a maritime offence must not be brought in a court contrary to the intergovernmental agreement.

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- (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: 5
- (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. 10

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: 15
- (a) the offence is alleged to have been committed on or from a foreign ship, and 20
- (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. 25
- (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.
- (3) Even though the Commonwealth Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay: 30

- (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 5
 - (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. 10
- (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. 15
- 8 Non-exclusion of consistent extra-territorial legislative schemes**
- 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. 20
- 9 Exclusion of certain laws from ambit of this scheme**
- This scheme does not apply to State and Commonwealth laws excluded by regulation from the ambit of the scheme.
- 10 Non-application of scheme to Australia-Indonesia Zone of Cooperation** 25
- This scheme does not apply to the Australia-Indonesia 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. 30

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. 5

Part 6 Adjacent areas

13 Definitions

In this Part: 10

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).

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973* (Commonwealth). 15

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. 20
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- (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 30

- (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 5
 - (d) the space above and below the areas described in paragraphs (a), (b) and (c). 10
- (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 15
 - (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: 20
 - (i) is within the outer limits of the continental shelf, and
 - (ii) is not within Area A of the Zone of Cooperation, and 25
 - (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 30
 - (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:

(a) the baseline for Norfolk Island, and

(b) the outer limit of the continental shelf adjacent to the coast of Norfolk Island.

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

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

15 Baselines

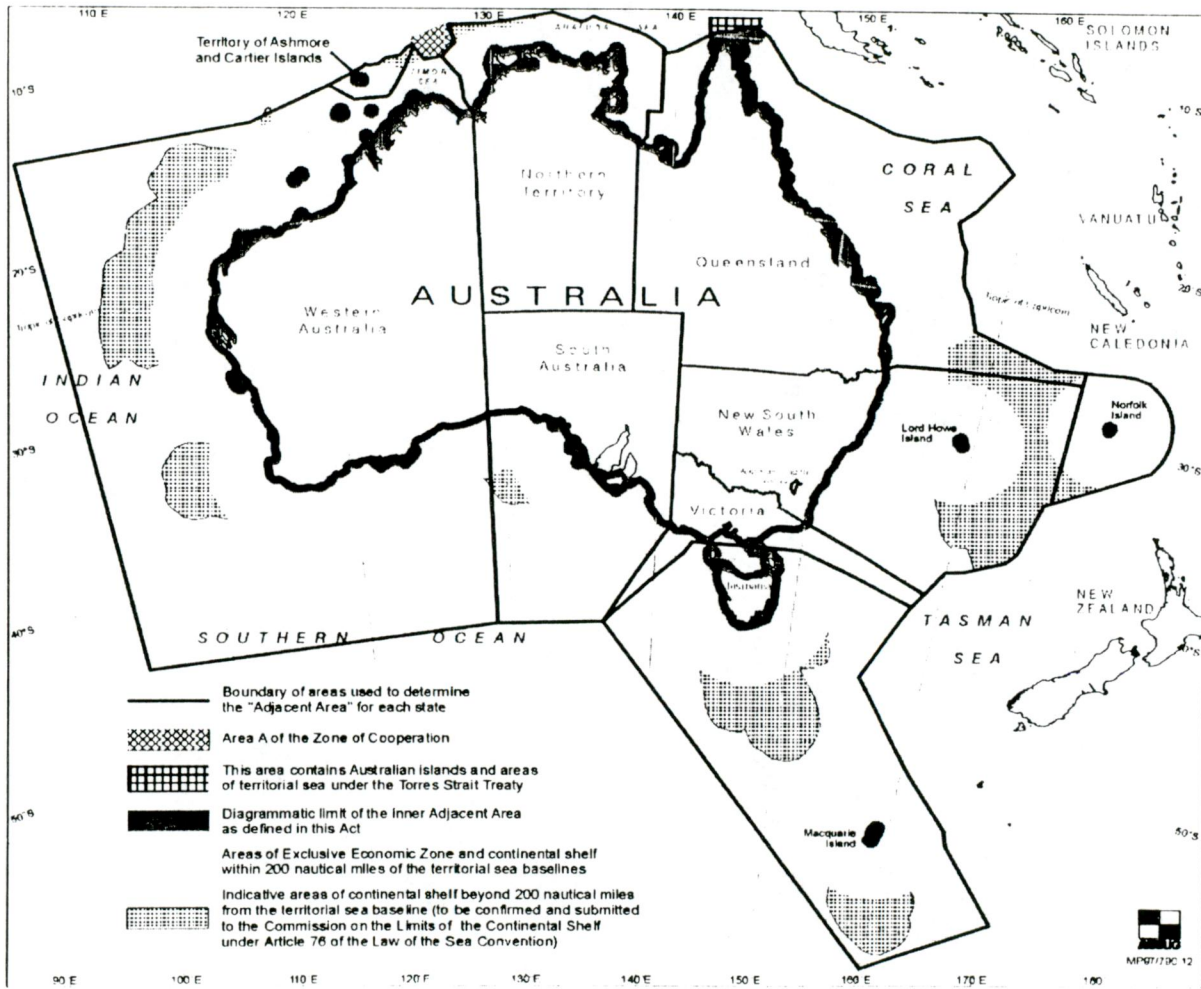
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(1) The *baseline* for a State (other than Norfolk Island) is the part of the baseline of Australia's territorial sea from which the part of the territorial sea that is within the adjacent area for that State is measured.

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

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Appendix 1 Adjacent areas



Schedule 2 Amendments

(Section 9)

2.1 Application of Laws (Coastal Sea) Act 1980 No 146

Section 3 Definitions

Omit the definition of *criminal laws* from section 3 (1).

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Insert instead:

criminal laws means the substantive criminal law, and the law of criminal investigation, procedure and evidence, within the meaning of the *Crimes at Sea Act 1998*.

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2.2 Petroleum (Submerged Lands) Act 1982 No 23

Section 15 Application of laws in the adjacent area

Omit “*Crimes (Offences at Sea) Act 1980*” from section 15 (2).

Insert instead “*Crimes at Sea Act 1998*”.