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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BORDER PROTECTION BILL 2001

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Immigration and Multicultural Affairs,
the Honourable Philip Ruddock MP)

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BORDER PROTECTION BILL 2001

GENERAL OUTLINE

The Bill seeks, for more abundant caution, to ensure that there is no doubt about the Government's ability to order ships to leave Australia's territorial waters. Provision is also made to avoid the possibility of legal action being taken in Australian courts as a result of any action taken under the Act. Once assented to, the Act will operate from 9.00 am on 29 August 2001 (by legal time in the Australian Capital Territory). Transitional provisions will ensure actions taken in relation to ships during any period between the commencement time and Royal Assent will be covered by the substantive provisions of the Act.

FINANCIAL IMPACT STATEMENT

There will be no financial impact of this Bill.

NOTES ON CLAUSES

Clause 1—Short Title

1. This clause provides that the Act may be cited as the *Border Protection Act 2001*.

Clause 2—Commencement

2. Clause 2 provides that the Bill is taken to have commenced on 29 August 2001 at 9.00 am by legal time in the Australian Capital Territory.

Clause 3—Commencement

3. Clause 3 defines certain terms used in the Bill.
4. *Australia* is defined to include the external Territories.
5. *Officer* is defined as a person authorised for the purposes of the Act by the Prime Minister or the Minister for Immigration and Multicultural Affairs. The definition provides that the only people who can be so authorised are the Secretary or an employee of the Department of Immigration and Multicultural Affairs, an officer for the purposes of the *Customs Act 1901*, a member of the Australian Federal Police or of the police force of a State or internal or external Territory, or a member of the Australian Defence Force.
6. *Ship* is defined to mean any vessel used in navigation (other than air navigation), including a barge, lighter or other floating vessel.
7. *Territorial sea* is defined as the territorial sea as declared under the *Seas and Submerged Lands Act 1973*.

Clause 4—Direction that ship be removed from Australian territorial sea

8. Clause 4 of the Bill enables an authorised officer to direct that a ship that is within the outer limits of the territorial sea be taken outside the territorial sea. That direction would cover all persons on board the ship. Subclause (3) enables the officer to use any reasonable means to give the direction, and subclause (4) ensures that the direction is effective even if it is claimed that that the master was not on board the ship at the time, or did not receive, or could not understand, the order.

Clause 5—Enforcement of direction

9. Clause 5 provides that a direction given under clause 4 may be enforced by an officer, who may detain the ship and take it, or cause it to be taken, outside the territorial sea. The clause provides that reasonable means, including reasonable force, may be used to do so.

Clause 6—Persons may be returned to ship

10. Clause 6 provides that an officer may return a person to a ship if the person was on board the ship when a direction was given under clause 4 requiring the ship to be taken outside the territorial sea. This is to ensure that people on board a ship who seek to avoid preventative action by jumping overboard may be returned to the ship. Also, people who are removed from the ship for humanitarian reasons (for instance for medical treatment) may be returned to the ship.

Clause 7—Liability for actions taken under this Act

11. Clause 7 provides that no proceedings, whether civil or criminal, may be taken or continued against the Commonwealth, an officer, or a person assisting, in respect of any action taken under clause 5 or 6 (ie action to remove a ship from Australian territorial waters or to return a person to a ship).

Clause 8—No proceedings available to prevent removal of ship

12. Clause 8 ensures that proceedings may not be instituted or continued to prevent a ship from being removed from the territorial sea of Australia pursuant to a direction under section 4. It also ensures that such proceedings cannot prevent the removal of persons who are on the ship.

Clause 9—No applications for protection visas

13. Subclause (1) ensures that persons who are on board a ship when a direction is given under clause 4 cannot apply for a protection visa. Subclause (2), by applying section 91F of the *Migration Act 1958*, gives the Minister a non-compellable power to accept an application in certain limited circumstances.

Clause 10—Act has effect in spite of other law

14. Clause 10 ensures that this Bill has effect in spite of any other law.

Clause 11—Validation of actions taken before Assent to this Act

15. Clause 11 ensures that certain actions taken after 9 am by legal time in the Australian Capital Territory on 29 August 2001, and before this Bill receives the Royal Assent, are covered by this Act. In particular, it ensures that, where the Prime Minister or the Minister has authorised a person to direct a ship to be removed from the territorial sea, any action of the kind described in clause 5 or 6 (ie action to remove a ship from Australian territorial waters or to return a person to a ship) is deemed for all purposes to be validly done under this Bill. In addition, it ensures that clauses 7 and 8 apply in these circumstances to prevent the institution or continuation of proceedings, and that any person on a ship that is the subject of a direction during the period between commencement and Royal Assent is prevented by clause 9 from applying for a protection visa.