Sea Installations Bill 1987

Date Introduced: 2 April 1987
House: House of Representatives
Presented by: Hon. Barry Cohen, M.P., Minister for Arts, Heritage and Environment

Digest of Bill

Purpose
To establish a scheme for regulating the operation of certain off-shore sea installations, engaged in environment related activities such as tourism, recreation, business, exploitation of marine life and marine archeology.

Background
Specific legislation already exists to protect the marine environment from certain potentially hazardous industries and to protect the most famous marine park, the Great Barrier Reef.

The operations of off-shore installations engaged in oil-drilling and mining activities are regulated by the Petroleum (Submerged Lands) Act 1967. The Great Barrier Reef (Marine Park) Act 1975 (GBRMP Act) prohibits these activities in the area defined in the Act as the Great Barrier Reef Region. The GBRMP Act established a Marine Park Authority which is responsible for the overall management of the Marine Park. Day-to-day management responsibility was given to the Queensland National Parks and Wildlife Service under an agreement drawn up between the Commonwealth and Queensland in 1979. These bodies carry out the implementation of regulations and of zoning plans for areas declared under the Act to be part of the Marine Park. Each zone allows for a different set of activities to be carried out to ensure the conservation of the Reef. As well as recreational activities and scientific research, present zoning plans allow for commercial shipping and trawl fishing.

The Great Barrier Reef Ministerial Council was established in 1979 for Commonwealth and Queensland Ministers to co-ordinate policy for the Reef. The Council considers recommendations for the declaration of areas of the Marine Park, development of zoning and management plans and arrangements for research and investigations such as the crown of thorns starfish research program which is being carried out under the control of the Authority.

The area delineated by the GBRMP Act as the Great Barrier Reef Region excludes
islands that are part of Queensland. However, the provisions of the Act apply to any action on those islands that could cause pollution damage to the Marine Park. The Reef Region was registered as part of the National Estate in June 1980. In 1981 the Reef Region, including Queensland islands in the region were inscribed on the World Heritage List and are, accordingly, subject to the provisions of the World Heritage Properties Conservation Act 1983.

In July 1985, new regulations under the GBRMP Act introduced to control the operation of off-shore structures in unzoned sections of the Marine Park pending the implementation of zoning plans. The regulations require permits for carrying out such prescribed activities as the operation of floating hotels, pontoon systems and mariculture projects. So far, the most complex of these has been the floating hotel which is to be moored at John Brewer Reef off Townsville. The proponents of the project, Barrier Reef Holdings Ltd, were granted a permit, subject to conditions, following assessment of the proposed project by Commonwealth and Queensland Government agencies in accordance with the Environment Protection (Impact of Proposals) Act 1974.

The Queensland Parliament has enacted the Off-shore Facilities Act 1986 which provides for Queensland laws to apply to off-shore structures, other than petroleum structures, in the waters adjacent to Queensland. These include waters beyond the territorial limit that are defined in terms of the Petroleum (Submerged Lands) Act 1982 (Qld) which complements the Commonwealth Petroleum (Submerged Lands) Act 1967.

This Bill will provide for the regulation of non-industrial off-shore installations by Commonwealth, State and Territory laws. The areas covered generally parallel those areas described in Schedule 2 to the Petroleum (Submerged Lands) Act 1967 that extend from the territorial limit to the outer limits of the continental shelf or the Australian fishing zone.

Main Provisions

Clause 3 contains the interpretation provisions. The more important ones are:

'sea installation' - a structure which is moored or fixed to the seabed for use in an environment related activity - excluding an industrial or defence installation;

'environment related activity' - an activity, including scientific and transport activity, for tourism or recreation; business; exploration or exploitation of living sea resources, marine archeology, or other prescribed purpose; and

'environment related work' - installation, construction, extension or alteration work, excluding repair or maintenance, disassembly, detachment or removal from location.

Clause 4 describes 'adjacent areas' of a State or Territory. These will be areas described in Schedule 2 to the Petroleum (Submerged Lands) Act 1967 where the
sea, including the space above or below it, is beyond the territorial limit; and within either the Australian continental shelf or fishing zone.

defined area of the Coral Sea will be treated as adjacent to Queensland (sub-clauses 4(3) and 4(4)). Sub-clauses 4(5) and 4(6) will define the areas adjacent to the Ashmore and Cartier Islands and other external territories.

Clause 5 will provide that a sea installation, including a ship or an aircraft, will be regarded as being installed in an adjacent area if it is in contact with part of the seabed or with another installed sea installation in the area; or in an area for longer than a specified time.

Clause 15 will provide that the Minister may grant a permit to operate a sea installation in an adjacent area authorising the holder to have the installation installed in a specified manner and location for a specified period; use of the installation for specified environment related activities; the carrying out of specified environment related work on the installation; and another sea installation to be installed for work on the first installation.

Performing any of these acts without a permit will be an offence, for which the penalty will be a fine of $100 000 for people and $200 000 for companies (clauses 12 to 14).

A permit to operate a sea installation is to be granted to the owner where there is no operator, or to the owner and the operator (clause 16).

The Minister will be obliged to consult with a representative of the relevant State or Territory before granting a permit (clause 17).

Application procedures, the form of permit and its period of operation are set out in clauses 18 to 20.

Clause 21 will make it a condition of all permits that:

the permit holder take all reasonable steps to ensure that journeys to and from the installation do not contravene section 58A of the Customs Act 1901; and there is to be no interference with navigation, fishing, conservation of resources of the sea or seabed, or any lawful activity by persons other than the permit holder.

Particular permits may include conditions dealing with design, construction and safety standards, monitoring procedures, insurances and the production of documents identified in the permit (clause 22).
Clauses 23 to 33 deal with the renewal, variation, suspension and revocation of permits. Clauses 24 and 28 will oblige the Minister to consult with a representative of the affected State or Territory before renewing or varying a permit. A permit is not to be varied if the Minister considers that it would result in a contravention of Commonwealth, State or Territory law (sub-clause 28(3)).

An applicant may be required by the Minister to give security by bond, guarantee or cash deposit before a permit will be granted (clause 35). Security by way of cash deposit is to be paid into the Sea Installations Trust Account which will be established by clause 36.

The Minister may grant a certificate of exemption to an owner or operator if satisfied that the permit requirement would impose an unreasonable burden on particular scientific or marine archeological activities (clause 38). The certificate is not to be granted before consultation has taken place with a representative of the affected State or Territory (clause 39).

Subject to variation by regulation, the provisions of Commonwealth Acts specified in the Schedule to the Bill, State and Territory laws will apply to sea installations in adjacent areas (clauses 44 to 46). State and Territory courts will be invested with the necessary federal jurisdiction and power to make rules for practice and procedure in matters arising under these laws (clauses 47 and 48).

Penalties will be imposed for failure to maintain a sea installation in good condition or to comply with a Ministerial directive to remove an installation and make good any damage to the seabed or subsoil (clauses 49 and 50).

To protect a sea installation, the Minister may prohibit certain vessels from being in a specified safety zone surrounding the installation without Ministerial consent. Penalties for contravention are provided (clause 52).

Permit holders will be liable to pay levy on sea installations (clause 61). The market value of installations will be determined by the Commissioner of Taxation (clause 64).

Regulations may prescribe fees for applications, or a method of ascertaining them. A fee payment may be waived by the Minister (clause 66).

The Commonwealth may recompense a State or the Northern Territory for expenses incurred because of the application of State or Territory laws under this Bill. Payments will be made from money appropriated by Parliament (clause 67).

The Minister will be empowered to delegate to specified persons, including State or Territory Public Service officers or employees, any of the Ministerial powers under this Bill other than the power of delegation and the power to grant, renew, vary, suspend or revoke a permit and to direct the removal or forfeiture of sea installations (clause 68).
Clause 69 will provide for the Administrative Appeals Tribunal to review certain decisions.

The Governor-General may make regulations consistent with this Bill, in particular to prohibit or regulate activities on sea installations; prescribe safety measures and emergency procedures; control waste disposal; regulate ship travel between sea installations and other places; and to prohibit or regulate trade or other activities in the vicinity of sea installations (clause 71).

It will be an offence if a sea installation which is installed in an adjacent area when this Bill comes into operation, remains installed without a permit or exemption certificate after a specified period (clause 72).

For further information, if required, contact the Science, Technology and Environment Group.

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Bills Digest Service
Legislative Research Service

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