Navigation Amendment Bill 1980

Date Introduced: 23 April 1980
House: House of Representatives
Presented by: Hon. Ralph Hunt, Minister for Transport.

Short Digest of Bill

Purpose

To clarify and reallocate shipping and navigation responsibilities between the Commonwealth, the States and the Northern Territory in accordance with an agreement reached between the parties.

Background

As mentioned in the Minister's second reading speech, from federation to the present day, the division of responsibility between the Commonwealth and States in respect of the regulation of shipping in Coastal waters has been confused and uncertain. At federation, the Imperial Merchant Shipping Act 1894 provided a common code throughout the British Empire. Under that Act, each colonial (state) government could and did enact its own navigation legislation which has continued in operation to the present day, in spite of the fact that the Commonwealth enacted its own Navigation Act in 1912.

The essential problem created by this legislative structure related to the duplication of government control arising from the simultaneous operation of both the Commonwealth and State Acts. Section 2 of the Commonwealth Act presently provides that Commonwealth navigation control extends not only to ships engaged in inter-state, overseas or territorial trade but also to ships on the high seas or in waters used by ships engaged in inter-state or overseas trade; this latter application gave rise to the notion of "common waters" which meant that a ship on an intra-state voyage could be required to comply with State law for parts of the journey and Commonwealth law for other parts.

In the past, administrative arrangements between the Commonwealth and the States have managed to overcome this problem; however, the relatively recent arrival of off-shore industries (e.g. oil drilling) as again raised the issue of legislative demarcation.
Consequently, at the Premier's Conference in June 1979, an agreement was reached on the distribution of navigation responsibilities between the respective governments which formed part of a larger off-shore constitutional settlement reached at the Conference.

The Bill excludes from the operation of the Commonwealth Navigation Act 1912, the following:

- trading ships except those on interstate or overseas voyages;
- commercial fishing vessels except those on overseas voyages;
- inland waterways vessels;
- pleasure craft; and
- offshore industry vessels confined to one State or to the Northern Territory.

These fundamental changes require a number of consequential amendments to the Act relating to the survey and issue of certificates to ships, the regulation of ships’ crews and sundry other matters and these issues are explained fully in the Explanatory Memorandum accompanying the Bill.

Main Provisions

Application and Definitions

Clause 3 substitutes a new section 2 dealing with the application of the Act. The new section eliminates the 'trade' and 'common waters' concepts previously used to determine the application of Commonwealth or State law and replaces it with a 'voyage' concept which effectively excludes the operation of the Commonwealth Act in respect of trading ships (except on inter-state or overseas voyages), fishing vessels (except on overseas voyages), pleasure craft and inland waterways vessels. However, this new application provision will not operate in respect of certain specific parts of the Act such as marine casualty enquiries and certain international convention requirements (Clauses 70, 76, 89, 95 and 96). New sub-section 2 (3) gives effect to an agreement with Queensland that that state will continue to regulate fishing vessels operating out of Queensland which call at Papua New Guinea ports incidental to a fishing operation.

Clause 5 inserts new definitions in section 6 and groups them into various sub-sections to facilitate their
being brought into operation on different dates. Those in sub-clause (1) relate to the new application provisions of section 2; those in sub-clause (2) relate to provisions being inserted by the Bill in respect of off-shore industry vessels, mobile units and the new concept of 'contract of sea service' for seamen; sub-clause (3) omits the definitions of various classes of ships which are not necessary in view of new section 2.

Clause 8 substitutes a new section 8 to provide definitions for the new provisions relating to off-shore industry vessels and mobile units. This Clause also introduces a new section 8A defining the off-shore industry vessels to which the Act applies and a new section 8B which provides that ships imported into Australia are to be deemed to be registered in Australia. The present section 8 is in effect defines 'intra-State vessels' and it is being repealed because the saving clauses for which this term was defined are being adjusted under the Bill in terms of new section 2 and the term will no longer be used.

Contracts of Sea Service

Clause 18 inserts a new section 47A to provide for the optional use in respect of seamen of 'contracts of sea service' in addition to the traditional system of 'articles of agreement'. This new term is introduced for the purposes of employment of masters and seamen on an off-shore industry vessel or off-shore industry mobile unit. 'Articles of agreement' constitutes a relatively rigid system of employment in that they can only be signed in respect of a master or seaman and a specific ship. The new term 'contracts of agreement' will enable a master or seaman to enter into a contract with the owner of a number of ships to serve on any or all of the owners' ships. The result of this new system is that when a seaman is not, for any reason, serving on a ship, he does not have to be discharged and re-engaged later. Many consequential amendments to the Act are required as a result of the introduction of this new scheme and these amendments take up almost half the clauses in the Bill.

The Off-Shore Industry

Clause 76 inserts a new Part VB to give effect to the respective government responsibilities for 'off-shore industry vessels' and 'off-shore industry mobile units' as defined in new section 8. Essentially, 'off-shore industry vessels' covers the small ships that supply and service oil rigs and similar installations; while 'off-shore industry mobile units' covers mobile drilling rigs and other large mineral recovery vessels. Under this new Part, the
Commonwealth will be responsible for offshore industry vessels other than those whose operations are confined to the one State or the Northern Territory and its adjacent area of sea (new section 283D); in respect of off-shore industry mobile units, the Commonwealth will have total responsibility in respect of the navigation and marine aspects (new section 283E). However, in the case of both types of vessels, the Commonwealth's responsibility will only operate to the extent that it is not inconsistent with the Commonwealth or State Petroleum (Submerged Lands) Acts.

Miscellaneous Amendments

Clause 70 introduces a new section 187AA to preserve the Commonwealth's power; on request by the shipowner, to issue survey certificates to any ship, including ones engaged solely on intra-state voyages, to facilitate that ship subsequently making inter-State or overseas voyages at short notice.

Clause 89 amends section 329 relating to the removal of wrecked or abandoned ships on or near the coast. Principally, the amendment ensures that the application provisions of new section 2 will not apply to such ships and consequently the respective government's powers over wrecks will remain.

Because of the repeal of the existing section 2, clause 105 inserts a new section 423A to maintain the Minister for Transport's powers to exempt a Commonwealth ship from the provisions of the Act.

30 April 1980

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