HISTORIC SHIPWRECKS AMENDMENT BILL 1980

Date Introduced: 23 April 1980
House: House of Representatives
Presented by: Hon. R.J. Ellicott, Q.C., Minister for Home Affairs

Purpose

To clarify that the Historic Shipwrecks Act 1976 will only apply, or continue to apply, to waters adjacent to a State or the Northern Territory with the consent of the State or Territory.

Background

The Historic Shipwrecks Act 1976 came into effect on 15 December 1976 and has the intention of protecting the large number of historic shipwrecks and relics on the continental shelf of Australia. The Act, in particular, makes provision for protecting Dutch shipwrecks and relics covered by a 1972 agreement between Australia and the Netherlands. Before 1976 the Commonwealth had not passed any legislation relating to historic shipwrecks. Western Australia had legislation but at the time it was the subject of a challenge in the High Court (Robinson v. Western Australia Museum (1977) 51 A.L.J.R. 806). The Commonwealth decided to legislate to negate an adverse High Court decision and in fact the High Court did declare the W.A. legislation invalid.

The Historic Shipwrecks Act 1976 has limited application because it only applies to waters adjacent to the coast of a State if a Proclamation has been made declaring it to apply. Proclamations are only made at the request of the States so that at present the Act applies to just Western Australia, Queensland and New South Wales. The Bill will not change the basic application of the Act but will clarify it. The need for this stemmed from the constitutional off-shore settlement agreed to at a Premier's Conference on 29 June 1979. A number of other bills relating to this agreement has also been introduced.

Provisions

Clause 3 amends the preamble to the Principal Act by omitting "Australia" and substituting "the Commonwealth and the States, in co-operation".
Clause 4 inserts new sub-ss. 2(2)-(10) to further specify the application of the Act. Sub-section 2(2) provides that a Proclamation made under sub-s. 2(1) may be expressed to apply to only part of the waters adjacent to the coast of a State. A State could thus request the Act to apply to a specified area (e.g. beyond territorial sea). Sub-section 2(3) specifies that no further Proclamations, that is in addition to those already existing for N.S.W., Queensland and W.A., shall be made except at the request or with the consent of the Government of a State. If a State has requested that the Act apply it may later notify the Commonwealth that it desires the Act to cease to apply and the Governor-General shall make a Proclamation accordingly (sub-s. 2(4)). However if a State Government gives a notice under sub-s. 2(4) it can request that the Act continue to apply to specified articles or articles of a specified class removed from waters adjacent to a State (sub-s. 2(5)). A Proclamation made under sub-s. 2(4) has no application to a Dutch shipwreck or relic (sub-s. 2(6)). Also in relation to Dutch shipwrecks and relics the Governor-General may, in certain circumstances, declare by Proclamation that the Act cease to apply to all such shipwrecks and relics or such shipwrecks and relics that are in, or have been removed from, specified waters adjacent to W.A. (sub-s. 2(7)). A Proclamation made under sub-s. 2(7) may specify that the Act continue to apply to specified Dutch relics (sub-s. 2(8)).

Clause 5 inserts a new sub-s. 3(5) so that in determining the extent of the "waters adjacent to the coast of a State" the Act will rely on the boundaries of the "adjacent areas" of the States referred to in Schedule 2 to the Petroleum (Submerged Lands) Act 1967.

Clause 6 amends s.16 to add on extra defence of "any other reasonable excuse" for an offence against s.13, s.15(5) or against the regulations made for the purpose of s.14. This is in addition to the existing offences of saving human life, securing the safety of a ship or dealing with an emergency involving a serious threat to the environment.

Clause 7 amends s.19 so that the Act will also apply to arrangements between the Commonwealth and the Northern Territory.

30 April 1980

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