CRIMES AT SEA BILL 1978

Date Introduced: 22 August 1978
House: Senate
Presented by: Hon. P.D. Durack, Attorney-General

Purpose

To apply State and Territory criminal laws to offences on and from Australian ships on overseas voyages, in foreign ports and on inter-State and Territory voyages; to some offences on and from foreign ships; and to some offences in off-shore areas beyond the territorial sea.

Background

In Oteri v The Queen (51 A.L.J.R. 122) the Privy Council held that the relevant criminal law applicable on "British ships" (that is, owned by British subjects including Australian citizens) in Australian waters is the law in force from time to time in England. Accordingly the theft of crayfish pots on board a vessel owned by naturalized Australian citizens twenty-two miles off the coast of Western Australia was covered by the Theft Act 1968 (Imp.). This was because the Offences at Sea Act 1799 (Imp.) extended English law to British ships upon the high seas. Admiralty jurisdiction to deal with such offences was conferred on Australian courts by the Admiralty Offences (Colonial) Act 1849 (Imp.) and the Courts (Colonial) Jurisdiction Act 1874 (Imp.).

This Bill is part of a scheme, involving complementary Commonwealth, State and Northern Territory legislation, to apply the criminal laws of Australian States and Territories to acts committed on and from Australian ships and in Australian waters. This Bill deals with Australian ships on inter-State and overseas voyages and in foreign ports and with offences in waters outside the territorial sea. The States will legislate directly to cover intra-State voyages and offences within the territorial sea. The Northern Territory is to pass its own legislation as if it were a State.

The intention of the Bill does not appear to be to alter the existing Admiralty jurisdiction of Australian courts but to ensure that there will be relevant Australian law applicable.
Main Provisions

The Bill deals with the application of State and Territory criminal laws. These are defined in clause 3 to include all laws dealing with offences; the definition covers statutory law and common law and includes procedural rules and rules of interpretation; laws for investigation, apprehension, custody, committal, trial and punishment are also included. Clause 12 excludes laws which are expressed not to apply or which are incapable of applying and clause 18 enables laws to be excluded by regulation.

"Australian ships" are those registered under an Imperial Act or a Commonwealth Act (so that if the Merchant Shipping Act 1894 Imp. is replaced by Commonwealth legislation that law will apply) and other Australian-based or Australian-owned ships (unless they are registered in a foreign country). All other ships are "foreign ships". An act is committed from a ship when it is committed in, on or below the sea or in the airspace above the sea by a person from the ship.

State and Territory laws are applied by clauses 6 to 11. Clause 6 deals with acts committed on or from Australian ships on prescribed voyages (overseas or inter-State or Territory voyages), in foreign ports or by survivors from Australian ships if they are wrecked or sunk. The acts committed are to be treated as if they were committed in the State or Territory with which the ship was connected, under the criminal laws in force in the State or Territory. Connection depends primarily on registration in a State or Territory but also because the place serves as a base for the ship. The clause applies equally to Australian citizens and foreigners.

Clause 7 applies to acts committed on or from foreign ships on the high seas (not within the territorial waters of Australia, an external Territory or a foreign country) if the next intended place of call of the ship is in Australia or an external Territory and to acts committed on the high seas by a survivor from such a ship; and also to acts committed in the Australian fishing zone outside the territorial waters of Australia or an external Territory on or from foreign ships that are fishing or have a licence to fish and by survivors from such ships. If persons who commit acts in these circumstances subsequently come or are brought within any State or Territory, the criminal laws of that place are deemed always to have applied to the acts, whether or not the ship had intended to call at that place or there was any likelihood of this occurring. Persons who are not Australian citizens have a defence if the acts would not constitute an offence in their native country but there
is no corresponding defence for Australian citizens. The consent of the Attorney-General is required before proceedings can be commenced but the person can be arrested, charged and remanded in custody or on bail before consent is given. Before giving consent where a foreign country also has jurisdiction under international law the Attorney-General must be satisfied that the country concerned has consented, unless the acts involve piracy.

Clause 8 deals with acts by Australian citizens on or from foreign ships or who are survivors from foreign ships when the acts are committed outside the territorial sea of Australia or an external Territory but not if the person is a member of the crew. The relevant laws are those of the place where the person is domiciled or last resided.

Clause 9 applies State and Territory criminal laws to acts committed in waters above the continental shelf adjacent to a State or Territory, outside the territorial sea of Australia or an external Territory. The laws only apply to acts done in relation to the exploration and exploitation of the continental shelf or by or to a person whose presence in the area is connected with exploring or exploiting the shelf.

Clause 10 enables the making of regulations to apply State and Territory criminal laws in adjacent areas outside territorial waters on matters within Australia's international jurisdiction (other than that over the continental shelf). The example given by the Attorney-General is the declaration of an exclusive economic zone.

Clause 11 applies State and Territory criminal laws to all acts committed by Australian citizens and residents in adjacent areas outside territorial waters (but not acts already covered by clauses 9 and 10).

The laws are to apply as State and Territory laws and in pursuance of this, Commonwealth laws for interpreting statutes (except for the principle that a person may not be punished more than once for the same offence) are excluded by sub-clause 5(1). Sub-clause 5(2) excludes, in matters arising in or in relation to States, the provisions of Commonwealth law dealing with aiding and abetting, accessories, attempts, inciting and conspiracy.

Clause 4 provides for the Governor-General and State Governors to enter into arrangements for the exercise by State authorities of non-judicial powers, duties and functions under the applied criminal laws (for example to make arrests). Where such an arrangement is in force the Commonwealth laws dealing with these matters are excluded by sub-clause 5(4)). Matters excluded include such things as
search warrants, remands, institution of proceedings and so on. Sub-clause 13(1) provides for proceedings to be instituted and conducted as if they were proceeding under State or Territory law; the concurrent operation of Commonwealth laws such as those excluded under sub-clause 5(2) is continued by sub-clause 13(2) for Territories and for States with whom no arrangement has been made. Clause 15 continues in force any State or Territory laws capable of application; under clause 14 matters arising directly under State or Territory laws can be dealt with in the same proceedings as matters applying because of this Bill. Under clause 17 a stay of proceedings may be ordered where it is found that proceedings are or will be instituted under another law (either Commonwealth, State or Territory) relating to the same act.

Clause 16 deals with allegations that acts were committed on a journey or in a place so that the criminal laws of a State or Territory are attracted. This will be presumed unless evidence is given by the defendant proving that this is not the case.

18 September 1978

Law & Government Group
LEGISLATIVE RESEARCH SERVICE