

Crimes at Sea Act 1979

No. 17 of 1979

An Act relating to offences committed at sea or in foreign ports or harbours, and matters connected therewith.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

- | | |
|---------------------|---|
| Short title | 1. This Act may be cited as the <i>Crimes at Sea Act 1979</i> . ¹ |
| Commence-
ment | 2. This Act shall come into operation on a date to be fixed by Proclamation. |
| Interpret-
ation | 3. (1) In this Act, unless the contrary intention appears—
“act” includes—
(a) a failure to do an act; and
(b) any circumstance or state of affairs;
“Australian fishing zone” has the same meaning as in the <i>Fisheries Act 1952</i> ;
“Australian ship” means—
(a) a ship registered in Australia or an external Territory under an Act or Imperial Act relating to the registration of ships that is applicable throughout the whole of Australia and the external Territories, not being an Act or Imperial Act relating to the registration of ships for a particular purpose or purposes only; or
(b) any other ship (not being a ship registered in a foreign country) the operations of which are based in a place or places in Australia or an external Territory or which is wholly owned by a person who, or persons each of whom, is a natural person resident in, or a company incorporated in, Australia or an external Territory;
“authority” means—
(a) in relation to a State—
(i) the Governor, a Minister or a member of the Executive Council of the State;
(ii) a person who holds office as a member of a court of the State;
(iii) a body created by or under the law of the State; and
(iv) an officer or employee of the State or of a body referred to in sub-paragraph (iii); and |

(b) in relation to the Northern Territory—

- (i) the Administrator or a Minister of the Territory;
- (ii) a person who holds office as a member of a court of the Territory;
- (iii) a body created by or under the law of the Territory; and
- (iv) an officer or employee of the Territory or of a body referred to in sub-paragraph (iii);

“committal”, in relation to an offence, means the committal of a person for trial, or to be sentenced or otherwise dealt with, for the offence;

“criminal laws” means any laws, whether written or unwritten and whether substantive or procedural, and as in force from time to time, that make provision for or in relation to offences (whether punishable on conviction on indictment or on summary conviction) or for or in relation to the investigation of offences or punishment of offenders, and includes any laws providing for the interpretation of those laws;

“fishing” has the same meaning as in the *Fisheries Act* 1952;

“foreign country” means a country other than—

- (a) Australia; or
- (b) an external Territory;

“foreign ship” means a ship other than an Australian ship;

“proceedings” includes proceedings with a view to the committal of a person for an offence;

“ship” means a vessel or boat of any description and includes—

- (a) any floating structure; and
- (b) any hovercraft or other similar craft.

(2) In this Act—

(a) a reference to the commission of an act shall—

- (i) in the case of a failure to do an act—be construed as a reference to the failure; and
- (ii) in the case of an act being a circumstance or state of affairs—be construed as a reference to the occurrence or coming into existence of the circumstance or state of affairs;

(b) a reference to a person who committed an act shall—

- (i) in the case of a failure to do an act—be construed as a reference to a person who failed to do the act; and
- (ii) in the case of an act being a circumstance or state of affairs—be construed as a reference to a person who was party to or concerned in, or otherwise has the responsibility for, the occurrence or existence of the circumstance or state of affairs;

- (c) a reference to an act committed from a ship includes a reference to an act committed in, on or below, or in the airspace above, the sea by a person from a ship; and
- (d) a reference to the criminal laws in force in a State or Territory does not include a reference to any laws of the Commonwealth in force in that State or Territory.

(3) For the purposes of this Act—

- (a) subject to paragraph (b), the place at which a ship's voyage commences constitutes a place of call of the ship;
- (b) a reference to a place of call does not include a place that is not in a State or Territory and is not in a foreign country or the territorial sea of a foreign country; and
- (c) a place in the territorial sea adjacent to a State or Territory shall be deemed to be a place in that State or Territory, as the case may be.

(4) For the purposes of this Act, a person ceases to be a survivor of a wreck or sinking of a ship when he is rescued.

Arrange-
ments with
States

4. (1) The Governor-General may make an arrangement with the Governor of a State or with the Administrator of the Northern Territory for or in relation to the exercise or performance in or in relation to that State or that Territory, as the case may be, of a power, duty or function (not being a power, duty or function involving the exercise of judicial power) by an authority of the State or Territory under the provisions of the criminal laws in force in any State or Territory as applying by virtue of this Act and, where such an arrangement is in force, the power, duty or function may or shall, as the case may be, be exercised or performed in or in relation to the first-mentioned State or Territory accordingly.

(2) An arrangement under this section may contain such incidental or supplementary provisions as—

- (a) in the case of an arrangement made by the Governor-General with the Governor of a State—the Governor-General and the Governor of the State think necessary; or
- (b) in the case of an arrangement made by the Governor-General with the Administrator of the Northern Territory—the Governor-General and the Administrator of the Territory think necessary.

(3) Where an arrangement is in force under this section, the Governor-General may—

- (a) in the case of an arrangement made by the Governor-General with the Governor of a State—arrange with the Governor of the State; or

- (b) in the case of an arrangement made by the Governor-General with the Administrator of the Northern Territory—arrange with the Administrator of the Territory,

for the variation or revocation of the arrangement.

(4) A copy of each instrument by which an arrangement under this section has been made, varied or revoked shall be published in the *Gazette*.

5. (1) Subject to sub-section (2), the *Acts Interpretation Act* 1901 (other than section 30) does not apply to or in relation to the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act.

Operation of certain Commonwealth laws excluded

(2) Nothing in sub-section (1) affects the application, by virtue of this Act, of any provisions of the criminal laws in force in a Territory by reason that those provisions adopt, incorporate or otherwise apply, with or without modification, any of the provisions of the *Acts Interpretation Act* 1901.

(3) Sections 5, 6, 7, 7A and 86 of the *Crimes Act* 1914 do not apply to or in relation to matters arising in or in relation to a State under the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act.

(4) Where there is in force an arrangement with the Governor of a State or with the Administrator of a Territory under section 4, then—

- (a) sections 8A, 9, 10, 13, 14, 15, 17, 18, 18A, 19, 19A, 19B, 20, 20A, 20B, 20C, 21, 21A, 21B and 21C of the *Crimes Act* 1914;
- (b) sections 69, 70, 71, 71A and 72 to 76 (inclusive) of the *Judiciary Act* 1903; and
- (c) the *Commonwealth Prisoners Act* 1967,

do not apply to or in relation to matters arising in or in relation to that State or Territory under the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act.

(5) Nothing in this Act affects the operation of section 68 of the *Judiciary Act* 1903.

6. (1) The provisions of the criminal laws in force in a State or Territory apply to and in relation to—

- (a) any act that is committed on or from an Australian ship if, at the time when the act was committed, the ship was connected with that State or Territory and was in the course of a prescribed voyage;
- (b) any act that is committed by a survivor of the wreck or sinking of an Australian ship if, immediately before the ship was wrecked or sunk, it was connected with that State or Territory and was in the course of a prescribed voyage; and

Criminal laws applicable in relation to Australian ships engaged on certain voyages

(c) any act that is committed on or from an Australian ship in a place in a foreign country if, at the time when the act was committed, the ship was connected with that State or Territory, and so apply as if the act were committed in that State or Territory.

(2) For the purposes of this section, an Australian ship shall be taken to be connected with a particular State or Territory at a particular time if—

- (a) the ship is registered at that time at a place in that State or Territory under an Act or Imperial Act relating to the registration of ships that is applicable throughout the whole of Australia and the external Territories, not being an Act or Imperial Act relating to the registration of ships for a particular purpose or purposes only;
- (b) in the case of a ship that at that time is not connected by virtue of paragraph (a) with any State or Territory—at that time the ship is registered or licensed for a particular purpose or purposes in that State or Territory under a law of the Commonwealth or of a State or Territory;
- (c) in the case of a ship that at that time is not connected by virtue of paragraph (a) or (b) with any State or Territory—at that time a place in that State or Territory serves as a base of operations for the ship; or
- (d) in the case of a ship that at that time is not connected by virtue of paragraph (a), (b) or (c) with any State or Territory—the ship may, having regard to all relevant considerations, reasonably be regarded as having at that time a connection with that State or Territory.

(3) For the purposes of this section, an Australian ship shall be taken to be on a prescribed voyage if—

- (a) the last preceding place of call of the ship was a place in a State and, at the time of the ship's departure from that place, it was intended that the next place of call of the ship would be a place outside that State;
- (b) the last preceding place of call of the ship was a place in the Northern Territory and, at the time of the ship's departure from that place, it was intended that the next place of call of the ship would be a place outside the Northern Territory; or
- (c) the last preceding place of call of the ship was a place in a Territory other than the Northern Territory or was a place in a foreign country.

Criminal
laws
applicable in
relation to
certain
foreign ships

7. (1) This section applies in relation to—

- (a) any act that is committed on or from a foreign ship—
 - (i) at a time when the ship is beyond the outer limits of the territorial sea of Australia (but is not within the outer

limits of the territorial sea adjacent to an external Territory or the outer limits of the territorial sea of a foreign country) in the course of a voyage to a place in Australia or an external Territory; or

- (ii) in the case of a ship that is engaged in fishing or in respect of which a licence is in force under the *Fisheries Act* 1952—at a time when the ship is in the Australian fishing zone beyond the outer limits of the territorial sea of Australia but is not within the outer limits of the territorial sea adjacent to an external Territory;
- (b) any act that is committed beyond the outer limits of the territorial sea of Australia (but not within the outer limits of the territorial sea adjacent to an external Territory or within the outer limits of the territorial sea of a foreign country) by a survivor of the wreck or sinking of a foreign ship if, immediately before the ship was wrecked or sunk, the ship was in the course of a voyage referred to in sub-paragraph (a) (i); and
- (c) any act that is committed in the Australian fishing zone beyond the outer limits of the territorial sea of Australia (but not within the outer limits of the territorial sea adjacent to an external Territory) by a survivor of the wreck or sinking of a foreign ship if, immediately before the ship was wrecked or sunk, the ship was engaged in fishing or a licence was in force in respect of the ship under the *Fisheries Act* 1952.

(2) For the purposes of this section, a ship shall be taken to be in the course of a voyage to a place in Australia or an external Territory if at the time of the ship's departure from the last preceding place of call of the ship it was intended that the next place of call of the ship would be a place in Australia or an external Territory.

(3) If the person who committed an act in relation to which this section applies enters, or is brought into, a State or Territory, the provisions of the criminal laws in force in that State or Territory apply, and shall be deemed to have always applied, to and in relation to that act and so apply, and shall be deemed to have always so applied, as if that act had been committed in that State or Territory.

(4) In a prosecution of a person who is not an Australian citizen for an offence against a provision of the criminal laws in force in a State or Territory as applying by virtue of sub-section (3), it is a defence if that person establishes that the act constituting the offence would not have constituted an offence against the law of the country of which he is a national if the act had taken place in that country.

(5) Proceedings for an offence against a provision of the criminal laws in force in a State or Territory as applying by virtue of sub-section (3) in relation to an act committed on or from a foreign ship (other than proceedings for an offence against a law relating to fisheries) shall not be

heard or determined, and, in the case of an indictable offence, proceedings with a view to the committal of a person for the offence shall not take place, except with the consent in writing of the Attorney-General.

(6) Where a country other than Australia has jurisdiction under international law in relation to a foreign ship, the Attorney-General shall not give his consent under sub-section (5) in relation to an act committed on or from that ship unless he is satisfied that the government of that country has consented to the institution of the proceedings.

(7) Sub-section (6) does not apply in relation to an act that the Attorney-General is satisfied is of a piratical character.

(8) Notwithstanding that a consent has not been given in relation to an offence in accordance with sub-section (5)—

- (a) a person may be arrested for the offence, and a warrant for an arrest of a person for the offence may be issued and executed;
- (b) a person may be charged with the offence; and
- (c) a person so charged may be remanded in custody or on bail.

(9) Where the Attorney-General has given his consent under sub-section (5) to proceedings with a view to the committal of a person for an indictable offence, that consent shall be taken as sufficient consent to—

- (a) the committal of any person in relation to that offence or in relation to any other offence for which the person may be committed as a result of those proceedings; and
- (b) the hearing and determination of the proceedings for any offence for which a person is so committed.

(10) In proceedings requiring the consent of the Attorney-General under sub-section (5), a document purporting to be that consent is evidence, and in the absence of evidence to the contrary is conclusive evidence, of the matters stated in the document, and it shall be presumed, unless the contrary is established, that the consent has been duly given.

Criminal
laws
applicable to
Australian
citizens on
foreign ships

8. The provisions of the criminal laws in force in a State or Territory apply to and in relation to—

- (a) any act that is committed on or from a foreign ship at a time when the ship is beyond the outer limits of the territorial sea of Australia and is not within the outer limits of the territorial sea adjacent to an external Territory if—
 - (i) at that time the person who committed the act was an Australian citizen and was not a member of the crew of the ship; and
 - (ii) that person was domiciled at that time in that State or Territory or his last place of residence in Australia or the external Territories before that time was in that State or Territory; and

- (b) any act that is committed beyond the outer limits of the territorial sea of Australia and not within the outer limits of the territorial sea adjacent to an external Territory by a survivor of the wreck or sinking of a foreign ship if—

- (i) the survivor was an Australian citizen at the time when the act was committed; and
- (ii) the survivor was domiciled in that State or Territory at the time when the act was committed or his last place of residence in Australia or the external Territories before that time was in that State or Territory,

and so apply as if the act had been committed in that State or Territory.

9. (1) Subject to this section, the provisions of the criminal laws in force in a State or Territory apply in the part of the adjacent area in relation to that State or Territory that is beyond the outer limits of the territorial sea of Australia and is not within the outer limits of the territorial sea adjacent to an external Territory and so apply as if that part of that area were part of that State or Territory.

Criminal laws applicable in offshore areas in relation to exploration or exploitation of the continental shelf

(2) Subject to sub-section (3), the provisions referred to in sub-section (1) apply by virtue of sub-section (1) to and in relation to all acts, matters and things touching, concerning, arising out of or connected with the exploration of, or the exploitation of the resources of, the continental shelf of Australia or of an external Territory and not otherwise.

(3) Without limiting the generality of sub-section (2), the provisions referred to in sub-section (1) apply by virtue of sub-section (1) to and in relation to all acts committed by or in relation to, and all matters, circumstances and things affecting, any person who is in the adjacent area for a reason touching, concerning, arising out of or connected with the exploration of, or the exploitation of the resources of, the continental shelf of Australia or of an external Territory.

(4) For the purposes of this section, “the adjacent area”, in relation to a State or Territory, has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*.

10. (1) If at any time the regulations declare that, with respect to a particular matter (not being the exploration of, or the exploitation of the resources of, the continental shelf of Australia or of an external Territory) Australia has jurisdiction under international law in relation to an area of waters beyond the outer limits of the territorial sea of Australia and not within the outer limits of the territorial sea adjacent to an external Territory, or in relation to such an area of waters and the airspace above, or the seabed and subsoil below, that area of waters or both that airspace and that seabed and subsoil, then, subject to this section, the provisions of the criminal laws in force in the State or Territory to which that area is adjacent apply in that area, or in that area and that airspace or that seabed and subsoil or both that airspace and that seabed and

Criminal laws applicable in offshore areas in relation to other matters within Australian jurisdiction

subsoil, as the case may be, and so apply as if that area were part of that State or Territory.

(2) Subject to sub-section (3), the provisions referred to in sub-section (1) apply by virtue of sub-section (1) to and in relation to all acts, matters and things touching, concerning, arising out of or connected with the matter declared by the regulations, and not otherwise.

(3) Without limiting the generality of sub-section (2), the provisions referred to in sub-section (1) apply by virtue of sub-section (1) to and in relation to all acts that are committed by or in relation to, and all matters, circumstances and things that affect, any person who is in, on or below, or in the airspace above, the relevant area of waters for a reason touching, concerning, arising out of or connected with the matter declared by the regulations.

(4) The regulations may make provision for and in relation to ascertaining the State or Territory to which an area of waters is to be taken to be adjacent for the purposes of sub-section (1).

(5) For the purposes of this section, an area of waters may be taken to be adjacent to a State or Territory if that area of waters is adjacent to the territorial sea adjacent to that State or Territory.

Criminal laws applicable in offshore areas in relation to Australian citizens or residents

11. (1) Subject to sub-section (2), the provisions of the criminal laws in force in a State or Territory apply in any prescribed area of waters beyond the outer limits of the territorial sea of Australia and not within the outer limits of the territorial sea adjacent to an external Territory, being an area of waters that is adjacent to that State or Territory but not being an area of waters within the territorial sea of another country, and in the airspace above and the seabed and subsoil below any such area of waters, and so apply as if that area were part of that State or Territory.

(2) The provisions referred to in sub-section (1) apply by virtue of that sub-section to and in relation to all acts that are committed by Australian citizens or Australian residents (other than acts to or in relation to which the provisions of the criminal laws in force in a State or Territory apply by virtue of section 9 or 10), and not otherwise.

(3) The regulations may make provision for or in relation to ascertaining the State or Territory to which an area of waters is to be taken to be adjacent for the purposes of sub-section (1).

(4) For the purposes of this section, an area of waters may be taken to be adjacent to a State or Territory if that area of waters is adjacent to the territorial sea adjacent to that State or Territory.

Certain criminal laws not to apply

12. (1) Nothing in this Act renders a provision of the criminal laws in force in a State or Territory applicable to or in relation to an act committed in a particular place—

- (a) in so far as the provision is incapable of applying in that place;
- (b) if those laws expressly provide that the provision does not extend to or apply in that place; or
- (c) if those laws expressly provide that the provision applies only in a specified locality in that State or Territory that does not include that place.

(2) A provision of the criminal laws in force in a State or Territory shall not be taken to be a provision to which sub-section (1) applies by reason only that it is limited in its application to acts committed within the territorial jurisdiction of the State or Territory or within the territorial or adjacent waters (however described) of the State or Territory.

13. (1) Subject to this Act, proceedings (whether original or appellate) under any part of the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act shall be instituted and conducted in a State or Territory in the same manner as though they were proceedings under the law of that last-mentioned State or Territory and all other proceedings in relation to any such proceedings (including declining to proceed further in a prosecution) shall also be taken as though the first-mentioned proceedings were proceedings under that law.

Procedure in
proceedings
under
applied State
or Territory
law

(2) Sub-section (1) does not prevent—

- (a) the institution or conduct in a State, in accordance with a law of the Commonwealth other than this Act, of proceedings under any part of the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act if there is not in force an arrangement with the Governor of the first-mentioned State under section 4;
- (b) the institution or conduct in the Northern Territory, in accordance with a law of the Commonwealth other than this Act, of proceedings under any part of the criminal laws in force in a State or Territory as applying by virtue of this Act if there is not in force an arrangement with the Administrator of the Northern Territory under section 4; or
- (c) the institution or conduct in a Territory other than the Northern Territory, in accordance with a law of the Commonwealth other than this Act, of proceedings under any part of the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act.

(3) The trial on indictment of an offence against any part of the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act shall be by jury.

Objection
not
allowable
where two
offences
charged

14. Objection shall not be allowed in any proceedings in which an offence is alleged against a part of the provisions of the criminal laws in force in a State or Territory as applying by virtue of this Act by reason only that an offence is also alleged against a law of a State or Territory.

Concurrent
operation of
laws

15. This Act is not intended to exclude the operation of any provision of a law in force in a State or Territory in so far as that provision is capable of operating concurrently with the provisions of the criminal laws in force in the States and Territories as applying by virtue of this Act.

Presumption
of
jurisdiction

16. In any proceedings in which an act that is shown to have been committed is alleged to have been committed in the course of such a voyage, or in such a place, that a provision of the criminal laws in force in a State or Territory applies, or is deemed to have applied, by virtue of this Act to the act, it shall be presumed, unless the contrary is established, that the act was committed in the course of such a voyage or in such a place.

Stay of
proceedings

17. (1) Where proceedings are instituted against a person for an offence against a provision of the criminal laws in force in a State or Territory as applying by virtue of this Act, a Judge of a Court of a State or Territory who is authorized by sub-section (4) may, of his own motion or on application made to him, order, on such conditions (if any) as he thinks fit, a stay of the proceedings for such period as he thinks fit if he is satisfied that—

- (a) other proceedings have been, or are proposed to be, instituted against that person for an offence against that provision, against another provision of a law of the Commonwealth, or against a provision of a law of a State or Territory, in relation to the same act; and
- (b) it is expedient that the proceedings should be stayed.

(2) In deciding whether it is expedient that proceedings against a person should be stayed under this section, a Judge shall have regard to all relevant matters including—

- (a) whether the continuation of the proceedings would impose any special hardship on the person, including any hardship that would arise by reason of his absence for a substantial period during the hearing of the proceedings from his place of residence, business or employment;
- (b) the need for the person to receive a speedy trial; and
- (c) whether the continuation of the proceedings would be inconvenient to other persons who are to be called as witnesses at the hearing of the proceedings.

(3) Where a Judge orders a stay of proceedings in pursuance of this section, he may make such orders as he thinks fit—

- (a) for the remand of the accused person, in custody or on bail; and
- (b) for recognizances of witnesses, or the variation of such recognizances already entered into,

to secure their attendance at any resumed hearing of the proceedings, and may make such other orders as he considers to be incidental to the stay of the proceedings.

(4) The power conferred by this section to make an order staying proceedings instituted against a person may be exercised—

- (a) where the proceedings sought to be stayed are proceedings upon indictment before a Judge of a Court of a State or Territory—by that Judge; and
- (b) in any other case—by a Judge of the Supreme Court of the State or Territory in which the proceedings were instituted.

18. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations

(2) Without limiting the generality of sub-section (1), the regulations may provide that such provisions or classes of provisions of the criminal laws in force in a State or Territory as are specified in the regulations—

- (a) do not apply by virtue of this Act;
- (b) do not apply by virtue of this Act to acts or classes of acts specified in the regulations; or
- (c) do not apply by virtue of this Act in circumstances specified in the regulations.

NOTE

1. Act No. 17, 1979; assented to 22 March 1979.