

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

HISTORIC SHIPWRECKS AMENDMENT BILL 1980
EXPLANATORY MEMORANDUM

(Circulated by the Minister for Home Affairs,
the Hon. R.J. Ellicott, Q.C., M.P.)

HISTORIC SHIPWRECKS AMENDMENT
BILL 1980

Clause 3

It is proposed to omit "Australia" first occurring in the second paragraph of the Preamble to the Principal Act and substituting "the Commonwealth and the States, in co-operation". The substitution of "the Commonwealth" for "Australia" is in line with normal drafting practice. The administration of the Principal Act is one for co-operation between the Commonwealth and the States.

Clause 4

The new section 2(2) provides that a Proclamation made under sub-section (1) of the Principal Act may apply to a specified part of the waters adjacent to a State and consequentially the Act will apply in relation to those waters only. The proposed amendment would allow a State to which the Principal Act at present does not apply to request that the Act apply either to all the waters adjacent to a State or to such waters as are beyond the territorial sea. At present the Principal Act applies, after a Proclamation has been made, in relation to waters (including waters above the Continental Shelf) adjacent to the coast of a State.

The Principal Act presently applies to the waters adjacent to the States of Western Australia, New South Wales and Queensland. The new section 2(3) provides that no further Proclamation will be made in respect of the waters adjacent to the remaining States except at the request or with the consent of the Government of the State concerned.

The Principal Act makes no provision for the withdrawal of the Act from the waters adjacent to a State where a Proclamation has been made in relation to that State.

The new section 2(4) provides for a State to request the withdrawal of the Principal Act either from the waters adjacent to that State or from a specified part of those waters as are within the territorial sea.

The new section 2(5) also provides that at the request of the Government of a State, the Principal Act will continue to apply to specified relics or articles of a specified class removed from the waters adjacent to a State so as to provide Australia-wide protection of such relics.

The new section 2(6) provides that where a Proclamation is made under the new section 2(4), the Proclamation will declare that it does not affect the application of the Principal Act in relation to any wrecked vessel or article that is a Dutch shipwreck or Dutch relic within the meaning of the Principal Act.

The new section 2(7) provides that where the Governor-General is satisfied that arrangements which have been made with respect to Dutch shipwrecks and Dutch relics make it appropriate for him to do so, the Governor-General may by Proclamation, declare that the Principal Act ceases to apply to, and in relation to, all Dutch shipwrecks and Dutch relics, or such Dutch shipwrecks and Dutch relics as are in, or have been removed from, a specified part of the waters adjacent to Western Australia.

The new section 2(8) provides that a Proclamation made under the new section 2(7) may provide that the Principal Act shall continue to be applicable to, and in relation to, specified Dutch relics of a specified class which have been removed from the waters to which the Proclamation relates. Where such a Proclamation is made, Australia-wide protection may be afforded to the Dutch relics which have been removed from the waters adjacent to the State.

The new section 2(9) provides that the Government of the Northern Territory would have the same rights as the Government of a State in securing the withdrawal of the Act from the waters adjacent to the Territory. (The Principal Act already applies to the waters adjacent to the Territory and the Bill does not propose any automatic alteration of this situation.)

The new section 2(10) is an evidentiary provision.

Clause 5

The new section 3(5) clarifies the extent of "waters adjacent to the coast of a State", by using for the purposes of the Act the boundaries of the respective "adjacent areas" of the States referred to in Schedule 2 to the Petroleum (Submerged Lands) Act.

Clause 6

The amendment to section 16 provides the defence of "any other reasonable excuse" for an offence against section 13 and sub-section 15(5) of the Principal Act.

At present the Principal Act provides a defence to a prosecution of a person for an offence against section 13 and sub-section 15(5) of the Act and for an offence against regulations made for the purpose of section 14 of the Act if the act that constituted the offence was done for the purpose of

- (a) saving human life
- (b) securing the safety of a ship where the ship was endangered by stress of weather or by navigational hazards, or
- (c) dealing with an emergency involving a serious threat to the environment.

The amendment to section 16 provides that the additional defence of any reasonable excuse applies in relation to charges in respect of offences committed before the commencement of the Act as well as charges in respect of offences committed after that commencement.

Clause 7

The amendments to section 19 ensures that the arrangements which may be made between the Commonwealth and a State for the protection, recovery, preservation and exhibition of historic shipwrecks and historic relics may also be made between the Commonwealth and the Northern Territory.