

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Torres Strait Treaty (Miscellaneous Amendments) Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Foreign Affairs
the Hon. Bill Hayden M.P.)

OUTLINE

Torres Strait Treaty (Miscellaneous Amendments) Bill 1983

This Bill seeks to amend the following legislation:

Continental Shelf (Living Natural Resources) Act 1968

by disapplying this Act in the Torres Strait Protected Zone and in certain proclaimed areas. (The Torres Strait Fisheries Act would apply to these areas.)

Coral Sea Islands Act 1969

to adjust the boundaries of the area which includes the Coral Sea Islands Territory to take account of the boundaries established by the Treaty.

Customs Act 1901

to provide for exemptions to give effect to the Treaty.

Customs Tariff Act 1982

to provide that no tariffs will be charged on certain categories of goods relevant to the Treaty.

Fisheries Act 1952

to disapply this Act to the Torres Strait Protected Zone and certain proclaimed areas, and to amend certain arrangements with the States. (The Torres Strait Fisheries Act would apply in those areas.)

Historic Shipwrecks Act 1976

to provide arrangements for declaring certain Papua New Guinea shipwrecks and relics to be historic.

Migration Act 1958

to make special provisions for traditional inhabitants in the Torres Strait Protected Zone.

Petroleum (Submerged Lands) Act 1967

to amend the co-ordinates of the Queensland adjacent area to take account of the sea-bed boundary established by the Treaty.

Quarantine Act 1908

to make special provisions in relation to ports of entry and exemptions to give effect to the Treaty.

Wildlife Protection (Regulation of Exports and Imports) Act 1982

to make special provision to give effect to the Treaty.

Torres Strait Treaty (Miscellaneous Amendments)
Bill 1983

- Part II - Amendment of the Continental Shelf (Living Natural Resources) Act 1968
- Clause 3 - identifies the Continental Shelf (Living Natural Resources) Act 1968 as the Principal Act in Part II of the Bill.
- Clause 4 - disapplies the Principal Act in the Torres Strait Protected Zone, and in areas outside that zone proclaimed to be areas in which the Torres Strait Fisheries Act applies in respect of a particular fishery except in respect of the powers of officers and the offences relating to obstruction of officers and in respect of matters that have occurred before the amending provisions come into force.
- Part III - Amendment of the Coral Sea Islands Act 1969
- Clause 5 - identifies the Coral Sea Islands Act 1969 as the Principal Act in Part III of the Bill.
- Clause 6 - repeals the Preamble and substitutes a new Preamble which changes the northern boundary of the area that includes the Territory, to take account of the agreed maritime boundary between Papua New Guinea and Australia.
- Clause 7 - amends section 2 of the Principal Act by adding two new sub-sections which reference the co-ordinates of the Territory to the Australian Geodetic Datum (AGD) to enable the points to be more accurately plotted on the earth's surface.
- Clause 8 - amends section 3 of the Principal Act to accommodate the change in format of the Preamble.
- Part IV - Amendment of the Customs Act 1901
- Clause 9 - identifies the Customs Act 1901 as the Principal Act in Part IV of the Bill.
- Clause 10 - inserts a new section 30A into the Principal Act to provide for exemptions to be made from the provisions of the Customs Acts as required by Article 16 of the Torres Strait Treaty.

Each Party shall apply those procedures in such a way so as not to prevent or hinder free movement or the performance of traditional activities in the Protected Zone and its declared vicinity by the traditional inhabitants of the other Party.

Notwithstanding that provision, each Party reserves its right to apply certain measures, temporary or otherwise, as it considers necessary to meet problems which may arise.

Sub-section 30A(1)

defines a number of terms and expressions for the purposes of this Part.

Sub-section 30A(2)

enables the Minister, by notice published in the Gazette, to declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purpose of this section.

Sub-section 30A(3)

enables the Minister, by notice published in the Gazette, to exempt (subject to conditions, if any) from so many of the provisions of the Customs Acts, as are specified in the notice:

- (i) any Protected Zone ship that arrives at an Australian place on a voyage from a Papua New Guinea place or that leaves an Australian place on a voyage to a Papua New Guinea place, being a ship, carrying traditional inhabitants within the Protected Zone or its declared vicinity for the purposes of those inhabitants carrying out traditional activities. (The fact that employees of the Commonwealth, of Queensland or of Papua New Guinea or of an Authority of the Commonwealth, of Queensland or of Papua New Guinea undertaking that voyage in connection with the performance of their duties are also on board, does not prevent the ship from being exempt);
- (ii) entry or departure of those persons from Australia; and

- (iii) any goods on board such a Protected Zone ship being goods imported into or exported out of Australia provided those goods are ships' stores or are goods under the control of or are the personal belongings of a person referred to in sub-paragraph (a)(ii).

Sub-section 30A(4)

provides that where the master of a ship (not being a ship to which sub-section (3) applies) or the pilot of an aircraft proposes to take that ship or aircraft, on a voyage or flight, from an Australian place to a Papua New Guinea place or from a Papua New Guinea place to an Australian place; and that voyage or flight, will not be undertaken by a person other than -

- i) a person referred to in sub-section (3); or
- ii) the master or a member of the crew of the ship or the pilot or a member of the crew of the aircraft;

then the master of the ship or the pilot of the aircraft may apply to the Minister for an exemption under sub-section (5) in relation to the particular voyage or flight.

Sub-section 30A(5)

enables the Minister, after receiving an application under sub-section (4) by notice in writing given to the person who made the application, to exempt (subject to conditions, if any) from the provisions of the Customs Acts as are specified in the notice, the entry into or the departure from Australia, of that ship or aircraft, any person on board that ship or aircraft, any goods that are ship's or aircraft's stores or goods that are in the control of or are the personal belongings of a person on board that ship or aircraft.

Sub-section 30A(6)

provides that where a ship, aircraft or person exempt under sub-sections (3) or (5) arrives at, or goods exempt under sub-sections (3) or (5) are taken to a place in Australia that is not in the Protected

Zone or its declared vicinity, then the provisions of the Customs Acts apply as if that ship, aircraft, or person had arrived at that place, or those goods had been taken direct to that place, from parts beyond the seas.

- Part V - Amendment of the Customs Tariff Act 1982
- Clause 11 - identifies for the purposes of this Part, the Customs Tariff Act 1982 as the Principal Act.
- Clause 12 - inserts a new Item 20 in Part I of Schedule 4 to the Principal Act to provide, in accordance with Article 16 of the Torres Strait Treaty, that goods imported by traditional inhabitants in the performance of traditional activities in or in the vicinity of the Protected Zone will not be subject to duties of Customs.
- Part VI - Amendment of the Fisheries Act 1952
- Clause 13 - identifies the Fisheries Act 1952 as the Principal Act in Part VI of the Bill.
- Clause 14 - disapplies the Principal Act in the Torres Strait Protected Zone, and in areas outside that zone proclaimed to be areas in which the Torres Strait Fisheries Act applies in respect of a particular fishery, except in respect of the powers of officers and the offences relating to obstruction of officers and in respect of matters that have occurred before the amending provisions come into force.
- Clause 15 - declares that an arrangement between the Commonwealth and a State under Part IVA of the Principal Act has no effect in the Torres Strait Protected Zone and in areas outside that zone proclaimed to be areas in which the Torres Strait Fisheries Act applies in respect of a particular fishery, save in respect of matters that occurred before the amending provisions came into force.
- Clause 16 - provides that the offence of landing fish from a foreign boat does not apply to Papua New Guinea boats that have an entry under the Torres Strait Fisheries Act authorising such a landing.

- Part VII - Amendments to the Historic Shipwrecks Act 1976
- Clause 17 - identifies the Historic Shipwrecks Act 1976 as the Principal Act in Part VII of the Bill.
- Clause 18 - amends section 2 of the Principal Act by adding two new sub-sections.

Sub-section 2(9A) provides that should a Proclamation be made under sub-section (4) of the Principal Act declaring that the Act ceases to apply to the waters adjacent to Queensland or to specified parts of those waters, the Proclamation shall declare that the Proclamation does not affect the application of the Principal Act in relation to any wrecked vessel or article that is a Papua New Guinea shipwreck or Papua New Guinea relic within the meaning of the Principal Act.

Sub-section 2(9B) provides that where the Governor-General is satisfied that arrangements which have been made with respect to a Papua New Guinea shipwreck or a Papua New Guinea relic make it appropriate for him to do so, he may, by Proclamation, declare that the Principal Act ceases to apply to, and in relation to, that shipwreck or that relic.

- Clause 19 - amends section 3 of the Principal Act to include a definition of a Papua New Guinea shipwreck and a Papua New Guinea relic.

- Clause 20 - amends section 5 of the Principal Act by adding two new sub-sections.

Sub-section 5(5) provides that the remains of a ship may be declared by the Minister to be a Papua New Guinea shipwreck if it is not a military vessel wrecked after the commencement of this sub-section, is situated in Australian waters or in waters above the continental shelf of Australia, and he is of the opinion that the shipwreck is of historic or special significance to Papua New Guinea.

Similarly, sub-section 5(6) enables the Minister to declare a particular article to be a Papua New Guinea relic.

- Part VIII - Amendments of the Migration Act 1958
- Clause 21 - identifies the Migration Act 1958 as the Principal Act in Part VIII of the Bill.
- Clause 22 - contains definition and interpretation provisions.

For the purpose of this Act:

"area in the vicinity of the Protected Zone" in sub-clause 22(a) is defined to mean an area in respect of which a notice is in force under sub-section 5(5A).

"inhabitant of the Protected Zone" in sub-clause 22(b) is defined to mean a person who is a citizen of Papua New Guinea and who is a traditional inhabitant.

"Protected Zone" in sub-clause 22(c) is defined to mean the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that Treaty.

"Torres Strait Treaty" in sub-clause 22(d) is defined to mean the Treaty between Australia and the Independent State of Papua New Guinea that was signed at Sydney on 18 December 1978.

"traditional activities" in sub-clause 22(d) has the same meaning as in the Torres Strait Treaty.

"traditional inhabitants" in sub-clause 22(d) has the same meaning as in the Torres Strait Fisheries Act 1983.

The clause also inserts new sub-section 5(5A) into the Act to empower the Minister, by notice published in the Gazette, to declare an area adjacent to the Protected Zone and to the south of the line described in Annex 5 to the Torres Strait Treaty to be an area in the vicinity of the Protected Zone for the purposes of this Act.

- Clause 23 - amends sub-section 8(1) of the Act to exempt certain inhabitants of the Protected Zone from entry permit requirements. Sub-clause 23(b) inserts new paragraph 8(1)(f) into the Act to exempt from the requirements of the Act relating to entry permits, inhabitants of the Protected Zone who are entering a

part of Australia in or in the vicinity of the Protected Zone in connection with the performance of traditional activities. The exemption will not apply in the case of a person in respect of whom a declaration is in force under sub-section 8(2) or who, at the time of entry, is a person of any of the descriptions set out in paragraph 16(1)(c).

Paragraph 23(e) inserts new paragraph 8(3)(e) into the Act to provide that the exemption contained in paragraph 8(1)(f) will not apply to a person who ceases to be an inhabitant of the Protected Zone, who remains in Australia otherwise than in connection with the performance of traditional activities, or who enters a part of Australia other than in the Protected Zone or in the vicinity of the Protected Zone.

Clause 24 - amends section 110 of the Act to exempt carriers of traditional inhabitants of the Protected Zone from the provisions of the Act relating to the carriage of persons without visas or return endorsements.

Clause 25 - is a consequential amendment following the amendment made by paragraph 23(e).

Part IX - Amendments of the Petroleum (Submerged Lands) Act 1967

Clause 26 - identifies the Petroleum (Submerged Lands) Act 1967 as the Principal Act in Part IX of the Bill.

Clause 27 - amends Section 156A of the Principal Act by including a reference to the Torres Strait Treaty as an "International Seabed Agreement" for the purposes of the Act.

Clause 28 - amends Schedule 2 to the Petroleum (Submerged Lands) Act 1967 to ensure that the northern boundary of the Queensland Adjacent Area will co-incide with the Torres Strait Treaty Seabed Line.

Part X - Amendments of the Quarantine Act 1908

Clause 29 - identifies the Quarantine Act 1908 as the Principal Act in Part X of the Bill.

Clause 30 - amends section 5 of the Principal Act which is an interpretative provision.

Paragraphs 30(a), (b) and (c) insert definitions of the terms used in the Treaty into existing sub-section 5(1).

A new sub-section 5(8) provides that the Minister for Health may, by notice published in the Gazette, declare an area to be an area in the vicinity of the Protected Zone for the purposes of the Quarantine Act 1908.

A new sub-section 5(9) also provides that a vessel is not to be regarded as a Protected Zone vessel if it enters part of Australia that is within the Protected Zone or the vicinity of the Protected Zone within 3 months of it having voyaged to a place outside Australia that is outside the Protected Zone or any area in the vicinity of the Protected Zone. The purpose of this provision is to exclude from any quarantine exemptions provided to Protected Zone vessels a vessel that had recently voyaged outside the Protected Zone to a place such as Irian Jaya.

- Clause 31 - amends existing section 13 of the Principal Act by adding new sub-sections 13(4) and 13(5).

These new sub-sections will allow the Governor-General to exempt from the operation of a Proclamation prohibiting the importation of any articles, animals or plants, articles, animals or plants that are brought into a port of Australia that is in the Protected Zone or in an area in the vicinity of the Protected Zone on board a Protected Zone vessel, and that are owned or under the control of a traditional inhabitant on board the vessel and that are connected with traditional activities.

- Clause 32 - inserts a new section 14A that will allow the Minister to exempt, subject to conditions (if any), from all or specified provisions of the Act or the regulations;

- a protected zone vessel that enters a part of Australia that is in the Protected Zone or is in an area in the vicinity of the Protected Zone, on which there are only traditional inhabitants or government officials;
- traditional inhabitants and officials on board such vessels;

- . goods on board such vessels, that are in the charge of traditional inhabitants for use in traditional activities, or are the personal belongings of an official.

The effect of this provision will be to allow the Minister for Health to exempt traditional inhabitants on board traditional vessels that enter a part of Australia that is in the Protected Zone or is in an area in the vicinity of the Protected Zone, from being required to enter Australia through a declared first port of entry.

- Part XI - Amendment of the Wildlife Protection (Regulation of Exports and Imports) Act 1982
- Clause 33 - identifies the Wildlife Protection (Regulation of Exports and Imports) Act 1982 as the Principal Act in Part XI of the Bill.
- Clause 34 - inserts a new section 8A that would give effect to Article 14.4 of the Torres Strait Treaty by amending the Act to empower the Minister for Home Affairs and Environment, by notice published in the Gazette, to exempt from the provisions of the Act the importation into, or exportation from Australia of specimens specified in the notice, by traditional inhabitants for traditional activities. These exemptions only apply if the specimens remain within the Protected Zone.

