



Western Australia

Crimes at Sea Act 2000

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Western Australia

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at 11 November 2011

Crimes at Sea Act 2000

An Act to give effect to a cooperative scheme for dealing with crimes at sea, to repeal the *Crimes (Offences at Sea) Act 1979*, to amend the *Off-shore (Application of Laws) Act 1982*, and for other purposes.

Why this Act needs to be enacted

The Commonwealth and the States have agreed to a cooperative scheme to apply the criminal law of the States extraterritorially in the areas adjacent to the coast of Australia.

Under the scheme, the criminal law of each State is to apply in the area adjacent to the State —

- (a) for a distance of 12 nautical miles from the baseline for the State —by force of the law of the State; and
- (b) beyond 12 nautical miles up to a distance of 200 nautical miles from the baseline for the State or the outer limit of the continental shelf (whichever is the greater distance) — by force of the law of the Commonwealth.

Responsibility for administering criminal justice in the area covered by the scheme will be divided between the Commonwealth and the States under the scheme and an intergovernmental agreement.

The purpose of this Act is to give legal force to the scheme (so far as it depends on the legislative power of the State) and to provide for consequential vesting of judicial and other powers.

1. Short title

This Act may be cited as the *Crimes at Sea Act 2000*¹.

2. Commencement

- (1) The provisions of this Act come into operation on a day fixed by proclamation¹.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

cooperative scheme means the legislative and administrative scheme for applying and enforcing criminal law in the areas adjacent to the coast of Australia set out in Schedule 1;

intergovernmental agreement means the agreement entered into under clause 5 of Schedule 1.

4. Cooperative scheme has force of law

To the extent that it lies within the legislative competence of the State to give the cooperative scheme the force of law, it has the force of law.

5. Classification of offences

Offences (other than offences arising under the law of the State) are classified for the purposes of the cooperative scheme as follows —

- (a) if the maximum penalty for the offence is a fine or imprisonment for not more than 2 years, the offence is classified as a summary offence;
- (b) if the maximum penalty for the offence is (or includes) imprisonment for more than 2 years but not more than 5 years, the offence is classified as a misdemeanour;

- (c) if the maximum penalty for the offence is (or includes) imprisonment for more than 5 years or for an indefinite term, the offence is classified as a crime.

6. Intergovernmental agreement etc. to be gazetted

The Minister must have the intergovernmental agreement, and any amendment to the intergovernmental agreement, published in the *Gazette*.

7. Regulations

- (1) The Governor may make regulations prescribing any matter that is necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Subsection (1) does not authorise the making of regulations for the purposes of the cooperative scheme.

8. *Crimes (Offences at Sea) Act 1979* repealed

The *Crimes (Offences at Sea) Act 1979* is repealed.

9. *Off-shore (Application of Laws) Act 1982* amended

Amendments are made to the *Off-Shore (Application of Laws) Act 1982* as set out in Schedule 2.

10. Application of repealed Act and amendments

- (1) In this section—
commencement day means the day on which sections 8 and 9 come into operation¹.
- (2) Although section 8 repeals the *Crimes (Offences at Sea) Act 1979*, that Act continues to apply, in relation to acts and omissions that took place before the commencement day, as if the repeal had not happened.
- (3) The amendments referred to in section 9 apply to acts and omissions that take place on or after the commencement day.

s. 10

- (4) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the commencement day, the act or omission is alleged to have taken place before the commencement day.

- (c) the arrest and custody of offenders or suspected offenders; or
- (d) bail; or
- (e) the laying of charges; or
- (f) the capacity to plead to a charge, or to stand trial on a charge;
or
- (g) the classification of offences as indictable or summary offences (and sub-classification within those classes); or
- (h) procedures for dealing with a charge of a summary offence;
or
- (i) procedures for dealing with a charge of an indictable offence (including preliminary examination of the charge); or
- (j) procedures for sentencing offenders and the punishment of offenders; or
- (k) the hearing and determination of appeals in criminal proceedings; or
- (l) the rules of evidence; or
- (m) other subjects declared by regulation to be within the ambit of the law of criminal investigation, procedure and evidence; or
- (n) the interpretation of laws of the kinds mentioned above;

maritime offence means an offence against a law that applies in the adjacent area for a State under this scheme;

offence means an indictable or summary offence;

outer adjacent area for a State means the part of the adjacent area for the State that is outside the inner adjacent area for the State;

participating State Minister means a Minister responsible for administering a State Act that gives effect to this scheme;

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

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

State includes the Northern Territory;

substantive criminal law means law (including unwritten law) —

- (a) creating offences or imposing criminal liability for offences; or
- (b) dealing with capacity to incur criminal liability; or

- (c) providing a defence or for reduction of the degree of criminal liability; or
- (d) providing for the confiscation of property used in, or derived from, the commission of an offence; or
- (e) providing for the payment of compensation for injury, loss or damage resulting from the commission of an offence, or the restitution of property obtained through the commission of an offence; or
- (f) dealing with other subjects declared by regulation to be within the ambit of the substantive criminal law of a State; or
- (g) providing for the interpretation of laws of the kinds mentioned above;

summary offence means any offence other than an indictable offence.

- (2) The law of criminal investigation, procedure and evidence of the Commonwealth includes provisions of State law on the relevant subjects applied under the *Judiciary Act 1903* (Commonwealth).

[Clause 1 amended: No. 42 of 2010 s. 183(2) and (3).]

Part 2 — Application of State criminal law in adjacent area

2. State criminal law, application of in adjacent area

- (1) The substantive criminal law of a State, as in force from time to time, applies, by force of the law of the State, throughout the inner adjacent area for the State.
- (2) The provisions of the substantive criminal law of a State, as in force from time to time, apply, by force of the law of the Commonwealth, throughout the outer adjacent area for the State.
- (3) However, this clause does not —
 - (a) apply to a substantive criminal law that is incapable of applying in an adjacent area or is limited by its express terms to a place within the area of a State; or

Example. A law making it an offence to drive a motor vehicle at a speed exceeding a prescribed limit on a road could not apply in an adjacent area because of the inherent localizing elements of the offence. The scheme does not therefore purport to extend the application of such a law to the adjacent area.

- (b) give a legal effect to a provision of a substantive criminal law that the provision does not have within the area of the State.

Example. If the effect of a provision of the substantive criminal law of a State is limited under section 109 of the Constitution within the area of the State, the effect is similarly limited in the outer adjacent area for the State even though the provision applies in the outer adjacent area under the legislative authority of the Commonwealth.

3. Laws of criminal investigation, procedure and evidence, application of to maritime offences

- (1) In this clause —

act includes an omission;

area of administrative responsibility for a particular State is —

- (a) the area of the State; and
- (b) the inner adjacent area for the State; and
- (c) other parts of the adjacent area in which the State has, under the intergovernmental agreement, responsibility (which may be either exclusive or concurrent) for administering criminal justice;

authority includes an agent or official;

Commonwealth judicial proceeding means —

- (a) a judicial proceeding related to a maritime offence —
 - (i) initiated by an authority of the Commonwealth; or
 - (ii) for the conduct of which an authority of the Commonwealth has assumed responsibility;

or

- (b) a judicial proceeding about an investigation, procedure or act by an authority of the Commonwealth in relation to a maritime offence;

judicial proceeding means —

- (a) a proceeding in a court (whether between parties or not) or a proceeding incidental to or connected with a proceeding in court; or
- (b) the laying of a charge; or

- (c) the preliminary examination of a charge of an indictable offence or a proceeding incidental to or connected with the preliminary examination of a charge of an indictable offence;

preliminary examination of a charge of an indictable offence means a proceeding to decide whether the defendant should be committed for trial or, if the defendant pleads guilty to the charge, to commit the defendant for sentence or trial;

State judicial proceeding means —

- (a) a judicial proceeding related to a maritime offence —
- (i) initiated by an authority of a State; or
 - (ii) for the conduct of which an authority of a State has assumed responsibility;

or

- (b) a judicial proceeding about an investigation, procedure or act by an authority of a State in relation to a maritime offence.

- (2) The laws of criminal investigation, procedure and evidence of the Commonwealth and the States apply to maritime offences as follows —

- (a) the law of the Commonwealth applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the Commonwealth; and
- (b) the law of a State applies to investigations, procedures and acts (other than judicial proceedings) by authorities of the State operating within the area of administrative responsibility for the relevant State; and
- (c) in a Commonwealth judicial proceeding the law of the Commonwealth applies and in a State judicial proceeding the law of the State in which the proceeding was commenced applies (subject to the Constitution) irrespective of whether —
 - (i) the maritime offence arises under the law of the State in which the proceeding was commenced or another State; or
 - (ii) the substantive criminal law against which the offence was committed applies in the relevant part of the adjacent area under the law of the State in which

the proceeding was commenced, another State or the Commonwealth.

Example 1. Suppose that a person is charged by a State authority with a maritime offence on the assumption that the offence was committed in the inner adjacent area for the State but the court is satisfied in the course of proceedings that the acts alleged against the defendant took place in the outer adjacent area for the State. In this case, the court could continue with the proceedings under the procedural laws of the State. However, the court could not (for example) convict the defendant on the basis of a majority verdict of a jury (because to do so would be contrary to the Commonwealth Constitution — see *Cheatle v The Queen* (1993) 177 CLR 541).

Example 2. Suppose that a person is charged by a State authority in a South Australian court with a maritime offence alleged to have been committed in the adjacent area for Western Australia. For the purposes of the proceedings, the offence would be classified as a major indictable, minor indictable or summary offence according to the South Australian rules and not by reference to its classification under the law of Western Australia or the Commonwealth.

- (3) This clause operates to the exclusion of any Commonwealth or State law that is inconsistent with it.
- (4) A Commonwealth or State law enacted or made after the commencement of this clause is to be construed as having effect subject to this clause, unless the law expressly overrides this clause.
- (5) The *Administrative Decisions (Judicial Review) Act 1977* (Commonwealth) does not apply to a decision taken under a State law that applies to investigations, procedures and acts by authorities of the State under paragraph (b) of subclause (2).

4. Place of maritime offence, rebuttable presumption as to

If, in proceedings for a maritime offence, an alleged act, omission or state of affairs, that is an element of the offence, is proved, an allegation in the information or complaint² that the act, omission or state of affairs happened in the adjacent area, inner adjacent area or outer adjacent area for a particular State is taken to be proved in the absence of proof to the contrary.

Part 3 — The intergovernmental agreement

5. Intergovernmental agreement, content of etc.

- (1) The Commonwealth Attorney-General, on behalf of the Commonwealth, and the participating State Ministers may enter into

- (2) Before granting such a consent, the Commonwealth Attorney-General must take into account any views expressed by the government of the country of registration.
- (3) Even though the Commonwealth Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay —
 - (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
 - (b) the laying of a charge against the suspected offender; or
 - (c) proceedings for the extradition to Australia of the suspected offender; or
 - (d) proceedings for remanding the suspected offender in custody or on bail.
- (4) If the Commonwealth Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay the proceedings.
- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Commonwealth Attorney-General in accordance with this clause will be accepted, in the absence of proof to the contrary, as proof of such consent.

8. Extraterritorial application of State law, scheme does not exclude if it is consistent

This scheme does not exclude the extraterritorial operation of State law to the extent that the State law is capable of operating extraterritorially consistently with the scheme.

9. Prescribed laws, scheme does not apply to

This scheme does not apply to State and Commonwealth laws excluded by regulation from the ambit of the scheme.

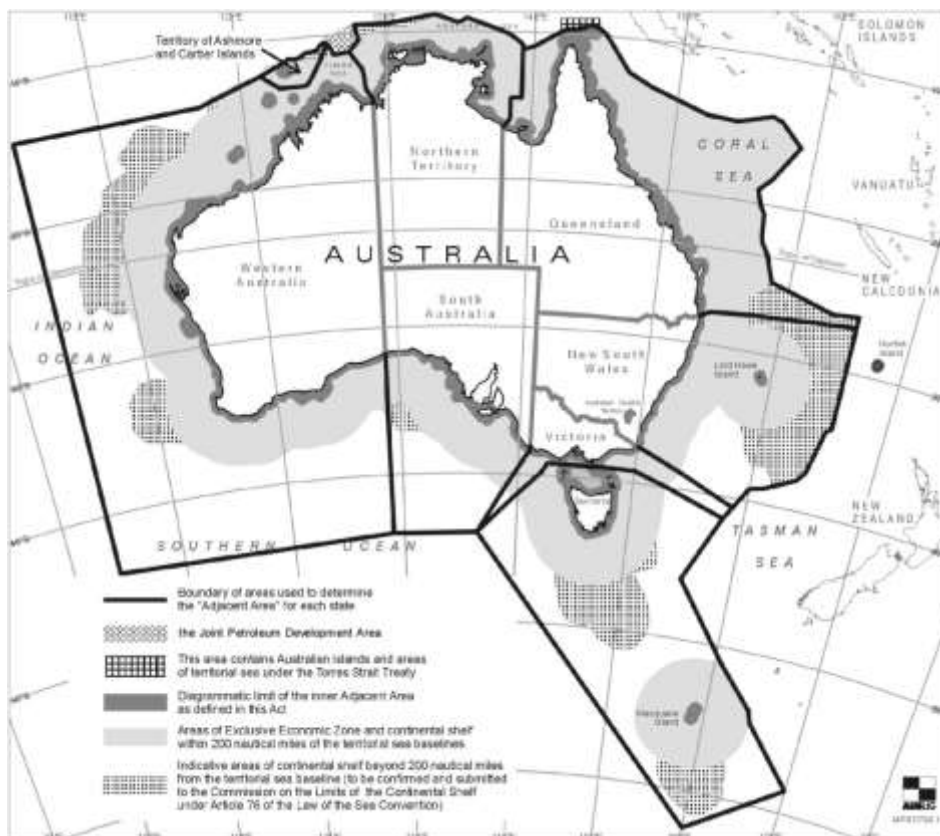
10. Joint Petroleum Development Area, scheme does not apply to

This scheme does not apply to the Joint Petroleum Development Area.

[Clause 10 amended: No. 42 of 2010 s. 183(4).]

- (2) The **adjacent area** for Queensland is —
- (a) so much of the area described in Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth) in relation to Queensland as is within the outer limits of the continental shelf; and
 - (b) the Coral Sea area (within the meaning of section 7(2) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth)) other than the territorial sea within the Coral Sea area; and
 - (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 4 February 1983 under section 7 of the *Seas and Submerged Lands Act 1973* (Commonwealth); and
 - (d) the space above and below the areas described in paragraphs (a), (b) and (c).
- (3) The **adjacent area** for Western Australia is so much of the area described in Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth) in relation to Western Australia as —
- (a) is within the outer limits of the continental shelf; and
 - (b) is not within the Joint Petroleum Development Area,
- and includes the space above and below that area.
- (4) The **adjacent area** for the Northern Territory is —
- (a) so much of the area described in Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth) in relation to the Northern Territory as —
 - (i) is within the outer limits of the continental shelf; and
 - (ii) is not within the Joint Petroleum Development Area;and
 - (b) the offshore area for the Territory of Ashmore and Cartier Islands (within the meaning of section 7(1) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth)) other than the territorial sea within that area; and

Appendix 1 — Indicative map



[Appendix 1 amended: No. 42 of 2010 s. 183(10).]

**Schedule 2 — Off-shore (Application of Laws) Act 1982
amended**

[s. 9]

1. Section 2 amended

In section 2, before the definition of *law of the State*, the following definitions are inserted —

“

cooperative scheme has the same meaning as that expression has in the *Crimes at Sea Act 2000*;

criminal laws means the substantive criminal law, and the law of criminal investigation, procedure and evidence, within the meaning of the cooperative scheme;

”

2. Section 3 amended

Section 3(2)(b) is deleted and the following paragraph is inserted instead —

“

- (b) to apply the provisions of the criminal laws of the State to or in relation to the coastal waters of the State or the sea-bed or subsoil beneath or the airspace above those waters.

”

3. Section 3A amended

Section 3A(2)(b) is deleted and the following paragraph is inserted instead —

“

- (b) to apply the provisions of the criminal laws of the State to or in relation to the adjacent area in respect of the State or the sea-bed or subsoil beneath or the airspace above that adjacent area.

”

Notes

- ¹ This reprint is a compilation as at 11 November 2011 of the *Crimes at Sea Act 2000* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Crimes at Sea Act 2000</i>	11 of 2000	19 May 2000	s. 1 and 2: 19 May 2000; Act other than s. 1 and 2: 31 Mar 2001 (see s. 2 and <i>Gazette</i> 30 Mar 2001 p. 1755)
<i>Petroleum and Energy Legislation Amendment Act 2010</i> s. 183	42 of 2010	28 Oct 2010	25 May 2011 (see s. 2(b) and <i>Gazette</i> 24 May 2011 p. 1892)

Reprint 1: The *Crimes at Sea Act 2000* as at 11 Nov 2011 (includes amendments listed above)

- ² The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 81 reads as follows:

81. References to “complaint” to be read as references to “prosecution notice”

- (1) A reference in a written law or book, document or writing to a complaint in the context of commencing proceedings in a court for an offence is, unless the contrary intention appears, to be taken to be a reference to a prosecution notice.
- (2) A reference in a written law to a complaint in the context of applying for a warrant to enter or search a place or to seize any thing is, unless the contrary intention appears, to be taken to be a reference to an application.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
act.....	Sch. 1 cl. 3(1)
adjacent area	Sch. 1 cl. 1(1)
area of administrative responsibility	Sch. 1 cl. 3(1)
Australian ship	Sch. 1 cl. 1(1)
authority	Sch. 1 cl. 3(1)
baseline	Sch. 1 cl. 1(1)
baseline of Australia's territorial sea	Sch. 1 cl. 13
commencement day	10(1)
Commonwealth judicial proceeding	Sch. 1 cl. 3(1)
continental shelf	Sch. 1 cl. 13
cooperative scheme	3
foreign ship	Sch. 1 cl. 1(1)
indictable offence	Sch. 1 cl. 1(1)
inner adjacent area	Sch. 1 cl. 1(1)
intergovernmental agreement.....	3, Sch. 1 cl. 1(1)
Joint Petroleum Development Area	Sch. 1 cl. 1(1)
judicial proceeding.....	Sch. 1 cl. 3(1)
law of criminal investigation, procedure and evidence	Sch. 1 cl. 1(1)
maritime offence	Sch. 1 cl. 1(1)
offence	Sch. 1 cl. 1(1)
outer adjacent area	Sch. 1 cl. 1(1)
participating State Minister	Sch. 1 cl. 1(1)
preliminary examination	Sch. 1 cl. 3(1)
ship.....	Sch. 1 cl. 1(1)
State	Sch. 1 cl. 1(1)
State judicial proceeding.....	Sch. 1 cl. 3(1)
substantive criminal law	Sch. 1 cl. 1(1)
summary offence.....	Sch. 1 cl. 1(1)
territorial sea	Sch. 1 cl. 13