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ELIZABETHAE II REGINAE

A.D. 1980

No. 5 of 1980

An Act relating to offences committed at sea and matters connected therewith.

[Assented to 3rd April, 1980]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Crimes (Offences at Sea) Act, 1980. Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. (1) In this Act, unless the contrary intention appears— Interpretation.

"act" includes any circumstance or state of affairs:

"Australian ship" means—

 - (a) a ship registered in Australia or in an external Territory under an Act of the Commonwealth or an 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" in relation to the State, means—

 - (a) the Governor or a Minister of the Crown;
 - (b) a court of the State;
 - (c) a person who holds office as a member of a court of the State;
 - (d) a body created by or under the law of the State;

and

(e) an officer or employee of the State or of a body referred to in paragraph (d) of this definition:

“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, apprehension, custody, committal, trial or punishment of offenders, and includes any laws providing for the interpretation of those laws, but does not include a law of the Commonwealth:

“external territory” means a Territory of the Commonwealth, other than the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory, for the government of which as a Territory provision is made by an Act of the Commonwealth:

“foreign country” means a country other than—

(a) Australia;

or

(b) an external Territory:

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

“omission” includes a failure by any person to perform a duty cast on him by law:

“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:

“the coastal sea” means—

(a) the territorial sea adjacent to the State;

and

(b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State,

and includes the airspace over and the sea-bed and sub-soil beneath any such sea:

“the territorial sea” means the territorial sea of Australia.

(2) In this Act—

(a) a reference to the commission of an act shall, in the case of an act being a circumstance or state of affairs, be construed as a reference to the occurrence or existence of that circumstance or state of affairs;

(b) a reference to a person who committed an act or who committed an offence by reason of an act shall, in the case of an act being a circumstance or state of affairs, be construed as a reference to a

person who, if the circumstance or state of affairs had occurred or existed in the State, would be liable to be punished in respect thereof;

and

(c) a reference to an act or omission committed from a ship includes a reference to an act or omission committed in, on or below, or in the airspace over, the sea by a person from a ship.

(3) For the purposes of this Act—

(a) a ship shall be taken to be on a voyage between places in the State if, at the time when the ship departs from a place in the State or in the coastal sea, it is not intended that the next place of call of the ship should be a place outside the State and the coastal sea;

and

(b) a voyage of a ship may be between places in the State notwithstanding that the place in the State or in the coastal sea from which the ship departs and the place which it is intended at the time when the ship departs from that place should be the next place of call of the ship, or which proves to be the next place of call of the ship are the same,

and for the purposes of this subsection a place of call of a ship that is not in Australia or the territorial sea or in an external Territory or the territorial sea adjacent to an external Territory and that is not in a foreign country or the territorial sea of a foreign country shall be disregarded.

(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.

4. (1) The Governor may make an arrangement with the Governor-General of the Commonwealth for or in relation to the exercise or performance 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 under the provisions of the criminal laws in force in the State that apply by virtue of the *Crimes at Sea Act 1978* of the Commonwealth or, if that Act is amended, by virtue of that Act as amended, 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 accordingly.

Arrangements
with
Common-
wealth.

(2) An arrangement under this section may contain such incidental or supplementary provisions as the Governor and the Governor-General think necessary.

(3) The Governor may arrange with the Governor-General for the variation or revocation of any arrangement in force under this section.

(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. Notwithstanding the provisions of any law of the State, an authority may—

Authorities
may act under
laws applied
by Common-
wealth.

(a) exercise or perform the powers or functions that it or he is empowered to exercise or perform under the provisions of the criminal laws in force in the State that apply by virtue of the *Crimes at Sea Act 1978* of the Commonwealth or, if that Act is amended, by virtue of that Act as amended;

and

(b) act in any office or capacity in accordance with the provisions of an arrangement in force under section 4 of this Act,

in addition to carrying out its or his duties as an authority under the law of the State.

State's criminal laws applicable in the coastal sea and in relation to Australian ships engaged on intra-State voyages.

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

- (a) any act or omission that is committed at a place in the coastal sea;
- (b) any act or omission that is committed on or from an Australian ship beyond the outer limits of the territorial sea during a voyage of the ship between places in the State;

and

- (c) any act or omission that is committed by a survivor of the wreck or sinking of a ship if, had he committed it on or from the ship, the provisions of the criminal laws in force in the State would have applied to it by virtue of this Act,

and so apply as if the act or omission were committed in the State.

(2) The provisions of the criminal laws in force in the State apply to and in relation to every person who commits an offence by reason of an act or omission to which those provisions apply by virtue of this Act and apply to and in relation to every other person who, if the act or omission had occurred in the State, would be deemed to have taken part in committing the offence and to be guilty of it.

Certain criminal laws not to apply.

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

- (a) insofar 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 the State that does not include that place.

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

Provisions concerning proceedings that involve a foreign ship.

8. (1) Proceedings for an offence against a provision of the criminal laws in force in the State that apply by virtue of this Act to an act or omission committed on or from a foreign ship during its voyage (other than proceedings for an offence against a law relating to fisheries) shall not be heard and determined and, where such offence is 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.

(2) The Attorney-General shall not give his consent to any proceedings referred to in subsection (1) of this section unless he is satisfied, after consultation with the Attorney-General of the Commonwealth, that the case is an appropriate one for the taking of the proceedings and, without limiting the matters

to which regard might be had for the purposes of this subsection, the Attorney-General shall have regard to the provisions of Article 19 of the Convention on the Territorial Sea and the Contiguous Zone referred to in the *Seas and Submerged Lands Act 1973* of the Commonwealth.

(3) Where the Attorney-General has given his consent under subsection (1) of this section 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 upon a charge of that offence or upon a charge of 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.

(4) In proceedings requiring the consent of the Attorney-General under subsection (1) of this section 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.

(5) Notwithstanding that a consent has not been given under subsection (1) of this section in relation to an offence—

(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. (1) All persons who, upon the commission in the State of an offence against any provision of the criminal laws in force in the State, may exercise powers and authorities conferred on them by law shall have and may exercise all or any of those powers and authorities upon the commission of an act or omission to which that provision of those criminal laws applies by virtue of this Act as if that act or omission had been committed in the State.

Extent of jurisdiction in relation to offences at sea.

(2) Where a person is charged in the State with an offence against the provisions of the criminal laws in force in the State by reason of an act or omission to which those provisions apply by virtue of this Act all courts, judges, justices, public officers and other persons having jurisdiction, powers and authorities had the offence been committed in the State shall have and may exercise all or any of such jurisdiction, powers and authorities as if the act or omission had been committed in the State.

(3) Where the charge of an offence against any provision of the criminal laws in force in the State relates to an act or omission to which that provision applies by virtue of this Act and is one that may be heard and determined in a summary way according to law, any court in the State that exercises its jurisdiction in a summary way, the justices constituting the court and all persons acting in aid of the court shall have and may exercise, subject to this Act, all or any of their jurisdiction, powers and authorities in relation to the charge and to the person charged as if the Act or omission had been committed in the area in which the court is authorized to exercise its jurisdiction.

Concurrent
operation of
laws.

10. Where an act or omission committed by a person is an offence against a provision of the criminal laws in force in the State that applies by virtue of this Act and is also an offence against a provision of a law in force in another State or in a Territory of the Commonwealth that applies otherwise than by virtue of this Act the person may be prosecuted and convicted in respect of each of those offences but nothing in this Act renders a person liable to be punished more than once in respect of the same act or omission.

Presumption of
jurisdiction.

11. In any proceedings in which an act or omission 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 the State applies by virtue of this Act to the act or omission it shall be presumed, unless the contrary is established, that the act or omission was committed in the course of such a voyage or in such a place.

Stay of
proceedings.

12. (1) Where proceedings are instituted against a person for an offence against a provision of the criminal laws in force in the State by reason of an act or omission to which that provision applies by virtue of this Act a judge of a court who is authorized by subsection (4) of this section 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 a provision of a law of the Commonwealth, or against a provision of a law of another State or of a Territory that applies otherwise than by virtue of this Act, in relation to the same act or omission;

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 pursuant to 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 for an offence against a provision of the criminal laws in force in the State that applies by virtue of this Act may be exercised—

(a) where the proceedings sought to be stayed are proceedings upon indictment before a judge of any court—by that judge;

and

(b) in any other case, by a judge of the Supreme Court.

13. (1) The Governor 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 subsection (1) of this section, the regulations may provide that such provisions or classes of provisions of the criminal laws in force in the State 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 omissions, or classes of acts or omissions, specified in the regulations;

or

(c) do not apply by virtue of this Act in circumstances specified in the regulations.

(3) Where regulations such as are referred to in subsection (2) of this section are in force this Act shall be construed to apply the provisions of the criminal laws in force in the State subject to and in accordance with the regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor