

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 19 October 1988)

(SENATOR NEWMAN)

A B I L L

FOR

An Act to establish procedures to enable visiting foreign warships to obtain safe and unimpeded access to Australian ports, and for related purposes

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

Short title

- 5 1. This Act may be cited as the Defence (Safe and Unimpeded Access for Visiting Foreign Warships) Act 1988.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears:

"Australian port" means a port in Australia or an external Territory and includes:

(a) any place in Australia or an external Territory that is used by ships for the purpose of embarking or disembarking passengers or loading or unloading goods; or

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(b) any place within a port in Australia or an external Territory or within a place referred to in paragraph (a);

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"authorization" includes an approval, permission, clearance or certification;

"commander", in relation to a foreign warship, includes master;

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"foreign warship" means a ship that:

(a) belongs to the armed forces of a country other than Australia or a part of those armed forces;

(b) belongs to the coast-guard of such a country;

(c) is being operated on behalf of, or in support of, the armed forces of such a country or a part of those armed forces; or

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(d) is under the direction or control of a member of the armed forces of such a country in the course of that member's duties as such a member,

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irrespective of the purpose for which the ship is being
used;

"goods" includes:

5 (a) in relation to the loading or unloading of a ship.
baggage, cargo, fuel, water, stores and equipment,
and

(b) in relation to the provision of goods to a ship
water, gas and electricity;

10 "ship" means any kind of vessel capable of navigating the
high seas and includes:

(a) a barge, lighter or other floating vessel; and

(b) an air-cushion vehicle, or other similar craft,
used wholly or primarily in navigation by water,

"supply" includes:

15 (a) in relation to goods: sell, lease and let on hire,
and

(b) in relation to services: provide.

Object of Act

20 4. (1) The object of this Act is to establish
procedures for the discharge by the Government of the
Commonwealth of its responsibilities and powers with respect
to external affairs and defence in connection with visits to
Australia and the external Territories of foreign warships
25 (including nuclear-powered warships and warships carrying
nuclear weapons) and related matters, and it is the
intention of the Parliament that this Act shall be
administered so as to further that object.

(2) It is also the intention of the Parliament that, in the furtherance of the object of this Act but subject to the provisions of this Act, the co-operation and assistance of the States and their authorities be sought and utilized, in so far as it is appropriate and practicable to do so, in facilitating access to Australian ports for warships visiting Australia in accordance with approvals granted under this Act. 5

Application

5. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island. 1

(2) This Act extends to the external Territories.

Exclusion of certain State and Territory laws

6. (1) This Act operates to the exclusion of any law of a State or Territory, or any instrument (including rules, regulations or by-laws) made, granted or issued under such a law, that would, but for this section, prevent or obstruct a foreign warship or any person from doing any act or thing that the warship or person is required or permitted by this Act to do. 1 2

(2) Without limiting by implication the generality of subsection (1), the imposition of a condition, restriction or requirement on the doing of any act or thing shall be taken, for the purposes of that subsection, to constitute th obstructing of the doing of that act or thing. 2

(3) Except as provided by subsections (1) and (2), this Act shall not be taken to exclude or limit the operation of any law of a State or Territory, or any instrument (including rules, regulations or by-laws) mad , granted or issued under such a law, that is capable of operating concurrently with the operation of this Act. 3

Approval for foreign warships to obtain access to Australian ports

5 7. (1) The Minister may grant an approval for a specified foreign warship, or for foreign warships included in a specified class of foreign warships, to obtain access during a specified period to all Australian ports or to a specified Australian port or specified Australian ports and may at any time revoke or vary an approval so granted.

10 (2) Without limiting by implication the ways in which a class of foreign warships may be defined for the purposes of subsection (1), such a class may be defined as consisting of all or any of the warships of a particular country.

15 (3) An approval under subsection (1) in relation to a foreign warship, or in relation to foreign warships included in a class of foreign warships, may be granted subject to compliance with such conditions in relation to the ship or ships or its or their crew as are specified in the approval.

20 (4) The Minister may give to the commander of a foreign warship in respect of which an approval to obtain access to an Australian port is in force under this section such directions as the Minister thinks fit with respect to:

(a) the movement of the ship into, within and out of that Australian port;

25 (b) the movement of members of the crew while the ship is in that Australian port; and

(c) the loading of goods on to the ship or the unloading of goods from the ship,

and may at any time revoke directions so given.

Effect of grant of approval

8. (1) Where an approval for a foreign warship to obtain access to an Australian port is in force under section 7, then, during the period specified in the approval but subject to any laws of the Commonwealth other than this Act, to any conditions to which the approval is subject and to any directions given by the Minister under subsection 7(4):

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(a) the ship is entitled to enter that Australian port;

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(b) the ship is entitled to remain in that Australian port;

(c) goods may, with the authority of the commander of the ship, be loaded on to, or unloaded from, the ship;

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(d) services may, with the authority of the commander of the ship, be supplied to the ship; and

(e) the ship is entitled to depart from that Australian port.

(2) References to a ship in paragraphs (1)(a), (b) and (e) shall be construed as references to the ship together with its crew, stores and equipment.

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Power of Minister to direct persons to facilitate access by foreign warship to Australian port

9. (1) Subject to subsection (2), where an approval for a foreign warship to obtain access to an Australian port is in force under section 7, then, during the period specified in the approval, the Minister may:

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- 5 (a) direct a person who performs functions in respect of the control of the movement of ships, the provision of pilots or tugs, the berthing of ships, the supply of stevedoring equipment, or the control of the entry of vehicles to, or the departure of vehicles, from wharves, at that Australian port, or a person who is an officer, employee or agent of such a person:
- (i) to provide a pilot or tug for the ship;
- 10 (ii) to make a suitable berth, or a specified berth, available to the ship;
- (iii) to make suitable stevedoring equipment available to the ship; or
- 15 (iv) to allow the entry to, or departure from, a wharf at that Australian port of vehicles carrying goods for loading on to the ship or goods that have been unloaded from the ship,
- 20 (b) direct a person who has possession or control of a tug or stevedoring equipment at that Australian port, or a person who is an officer, employee or agent of such a person, to make the tug or equipment available to the ship;
- 25 (c) direct a person who performs services in relation to the piloting, mooring or berthing of ships, or the loading or unloading of goods on to or from ships, at that Australian port, or a person who is an officer, employee or agent of such a person, to perform, in relation to the ship, such of those services as are specified in the approval; and

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- (d) direct a person who supplies goods, services or facilities to ships moored or berthed at that Australian port, or a person who is an officer, employee or agent of such a person, to supply to that ship, such of those goods, services or facilities as are specified in the approval,

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and may at any time revoke a direction given under this subsection.

(2) A direction may be given under subsection (1) in relation to a foreign warship in relation to an Australian port only where the Minister is satisfied that the giving of the direction:

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(a) is necessary to secure:

(i) the entry of the ship to that Australian port;

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(ii) the stay of the ship at that Australian port,

(iii) the departure of the ship from that Australian port; or

(iv) the safety of the ship or its crew or any other persons; or

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(b) is necessary or convenient for the effective operation of the ship.

Offences

10. (1) During the period specified in an approval for a foreign warship to obtain access to an Australian port that is in force under section 7:

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(a) a person shall not prevent, hinder or obstruct:

(i) the entry of the ship to, the berthing of the ship at, or the departure of the ship from, that Australian port;

(ii) the loading of goods onto, or the unloading of goods from, the ship with the authority of the commander of the ship;

(iii) the supply of any services to the ship with the authority of the commander of the ship;
or

(iv) the entry to or departure from a wharf at which the ship is berthed of a vehicle carrying goods to be loaded on to the ship or goods that have been unloaded from the ship; and

(b) a person to whom a direction in relation to the ship has been given under section 9 shall not, without reasonable excuse, fail to comply with the direction.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) It is not a reasonable excuse for a person, hereafter called the employee, to fail to comply with a direction under section 9 that the employee believed that he or she was prohibited from complying with the direction by or under a law of a State or Territory, by the terms of his or her employment or by an order given to the employee by a person having authority over the employee in his or her employment.

Right of compensation or payment for services or goods

11. (1) Where:

- (a) a person suffers loss or damage as a result of compliance by the person or by a servant or agent of the person with a direction under section 9; or
- (b) the operation of this Act, or the doing of any act pursuant to a direction under section 9, results in the acquisition of property from a person, being an acquisition of property within the meaning of paragraph 51 (xxxi) of the Constitution,

the Commonwealth is liable to pay compensation to the person who suffered the loss or damage or whose property was acquired, as the case may be.

(2) Where a person performs a service, provides goods, services or facilities or does any other act or thing pursuant to a direction under section 9, the Commonwealth is liable to pay that person for the performance of the service, the provision of the goods, services or facilities or the doing of that other act or thing.

(3) The amount of the compensation to be paid to a person by the Commonwealth under subsection (1), or the amount of a payment to be made to a person by the Commonwealth under subsection (2), shall be such amount as is agreed between them or, in default of agreement, as is determined by a court of competent jurisdiction to be just.

Certificate as to approval

5 12. (1) In any proceeding, a certificate in writing given by the Minister stating that an approval for a specified foreign warship to obtain access during a specified period to a specified Australian port was in force at a particular time or during a particular period shall be received in evidence as prima facie evidence of the matters stated in the certificate.

10 (2) A document purporting to be a certificate referred to in subsection (1) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

Savings

15 13. This Act does not affect the operation of a provision of any other law of the Commonwealth that requires the grant or issue of any authorization in respect of the entry of a ship to, or the stay of a ship at, or the departure of a ship from, an Australian port.

Delegation

20 14. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to an officer of the Australian Public Service or a member of the Defence Force all or any of the Minister's powers under this Act,
25 other than this power of delegation.

(2) A delegation under subsection (1) may be to a specified person or to the person from time to time holding a specified office or appointment.

30 (3) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(4) A delegation under this section does not prevent the exercise of a power by the Minister.

Regulations

15. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed;
or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

