

I certify that this is a copy of the authorised version of this Act as at 27 November 2023, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 27 November 2023.

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Dated 11 December 2023



TASMANIA

CRIMES AT SEA ACT 1999

No. 11 of 1999

CONTENTS

Preamble

1. Short title
2. Commencement
3. Interpretation
4. Ratification of cooperative scheme
5. Classification of offences
6. Publication of intergovernmental agreement
7. Regulations
8. Administration of Act
9. *Crimes (Offences at Sea) Act 1979* repealed

Schedule 1 – The cooperative scheme



CRIMES AT SEA ACT 1999

No. 11 of 1999

An Act to give effect to a cooperative scheme for dealing with crimes at sea and for other purposes

[Royal Assent 30 April 1999]

Preamble

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

Crimes at Sea Act 1999
Act No. 11 of 1999

s. 1

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.

Be it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Crimes at Sea Act 1999*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act –

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. Ratification of cooperative scheme

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 minor indictable offence;
- (c) if the maximum penalty for the offence is (or includes) imprisonment for more than 5 years or for an indeterminate term, the offence is classified as a major indictable offence.

Crimes at Sea Act 1999
Act No. 11 of 1999

s. 6

6. Publication of intergovernmental agreement

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

7. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Subsection (1) does not authorise the making of regulations for the purposes of the cooperative scheme.

8. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

Crimes at Sea Act 1999
Act No. 11 of 1999

s. 9

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

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

SCHEDULE 1 – THE COOPERATIVE SCHEME

Section 3

PART 1 – PRELIMINARY

1. Interpretation

(1) In this scheme –

adjacent area for a State has the meaning given by clause 14;

Area A of the Zone of Cooperation has the same meaning as in the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* of the Commonwealth;

Australian ship means –

- (a) a ship registered in Australia; or
- (b) a ship that operates, or is controlled, from a base in Australia and is not registered under the law of another country; or
- (c) a ship that belongs to an arm of the Defence Force;

baseline for a State has the meaning given by clause 15;

foreign ship means a ship other than an Australian ship;

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

inner adjacent area for a State means the parts of the adjacent area for the State that are –

- (a) on the landward side of the baseline for the State; and
- (b) on the seaward side, but within 12 nautical miles from, the baseline for the State;

intergovernmental agreement means the agreement entered into under clause 5;

law of criminal investigation, procedure and evidence means law (including unwritten law) about –

- (a) the investigation of offences (including coronial inquiry); or
- (b) immunity from prosecution and undertakings about the use of evidence; or
- (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

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

- (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;

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

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 other similar craft;

State includes the Northern Territory and Norfolk Island;

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

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

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* of the Commonwealth.

**PART 2 – APPLICATION OF STATE CRIMINAL LAW
IN ADJACENT AREA**

2. Application of State criminal law 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.

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

- (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
 - (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.

3. Application of laws of criminal investigation, procedure and evidence

- (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

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

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 a 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

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

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;

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;

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

- (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;
- (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.
- (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* of the 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 subclause (2)(b).

4. Evidentiary presumption about the locus of an offence

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 complaint 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

- (1) The Commonwealth Attorney-General, on behalf of the Commonwealth, and the participating State Ministers may enter into an agreement providing for the division of responsibility for administering and enforcing the law relating to maritime offences.
- (2) The intergovernmental agreement may provide for concurrent responsibility in specified parts of the adjacent area.

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

6. Effect of the agreement

- (1) A charge of a maritime offence must not be brought in a court contrary to the intergovernmental agreement.
- (2) If a charge of a maritime offence is brought in a court in contravention of subclause (1), the court must, on application by the Commonwealth Attorney-General or a participating State Minister, permanently stay the proceedings in that court.
- (3) However –
 - (a) a contravention of subclause (1) does not affect a court's jurisdiction; and
 - (b) if a charge of a maritime offence is brought in a court, the court will not (except on an application under subclause (2)) be concerned to enquire into whether the intergovernmental agreement has been complied with.

PART 4 – LIMITATIONS AND EXCLUSIONS

7. Commonwealth Attorney-General's consent required for certain prosecutions

- (1) The Commonwealth Attorney-General's written consent is required before a charge of a maritime offence can proceed to hearing or determination or, if the offence is an indictable offence, to a preliminary examination in committal proceedings, if –

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

- (a) the offence is alleged to have been committed on or from a foreign ship; and
 - (b) the ship is registered under the law of a country other than Australia; and
 - (c) the country of registration has, under international law, jurisdiction over the alleged offence.
- (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.

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

(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 is to be accepted, in the absence of proof to the contrary, as proof of such consent.

8. Non-exclusion of consistent extraterritorial legislative schemes

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. Exclusion of certain laws from ambit of this scheme

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

10. Non-application of scheme to Area A of the Zone of Cooperation

This scheme does not apply to Area A of the Zone of Cooperation.

PART 5 – MISCELLANEOUS

11. *Acts Interpretation Act 1901* of the Commonwealth applies to scheme

The *Acts Interpretation Act 1901* of the Commonwealth applies to this scheme in the same way as to a Commonwealth Act.

12. Regulations

- (1) The Governor-General may make regulations for carrying out, or giving effect to, this scheme.
- (2) However, a regulation affecting the operation of this scheme in relation to the inner adjacent area for a State may only be made with the agreement of the participating State Minister for the relevant State.

PART 6 – ADJACENT AREAS

13. Interpretation: Part 6

In this Part –

baseline of Australia's territorial sea means the baseline from which the breadth of the territorial sea is to be measured under section 7 of the *Seas and Submerged Lands Act 1973* of the Commonwealth;

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973* of the Commonwealth;

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

territorial sea has the same meaning as in the
Seas and Submerged Lands Act 1973 of
the Commonwealth.

14. Adjacent areas

- (1) The adjacent area for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to that State that is within the outer limits of the continental shelf and includes the space above and below that area.
- (2) The adjacent area for Queensland is –
 - (a) so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to Queensland that is within the outer limits of the continental shelf; and
 - (b) the Coral Sea area (within the meaning of section 5A(7) of the *Petroleum (Submerged Lands) Act 1967* of the 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*

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

Lands Act 1973 of the 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 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to Western Australia that –
- (a) is within the outer limits of the continental shelf; and
 - (b) is not within Area A of the Zone of Cooperation –

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 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to the Northern Territory that –
 - (i) is within the outer limits of the continental shelf; and
 - (ii) is not within Area A of the Zone of Cooperation; and
 - (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of section 5A(3) of the

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

Petroleum (Submerged Lands) Act 1967
of the Commonwealth) other than the
territorial sea within that area; and

- (c) the space above and below the areas
described in paragraphs (a) and (b).
- (5) The adjacent area for Norfolk Island is the area
the boundaries of which are –
- (a) the baseline for Norfolk Island; and
 - (b) the outer limit of the continental shelf
adjacent to the coast of Norfolk Island –
- and includes the space above and below that
area, but does not include any area in the
adjacent area for any other State.
- (6) However, the adjacent area for a State does not
include any area inside the limits of any State or
Territory.

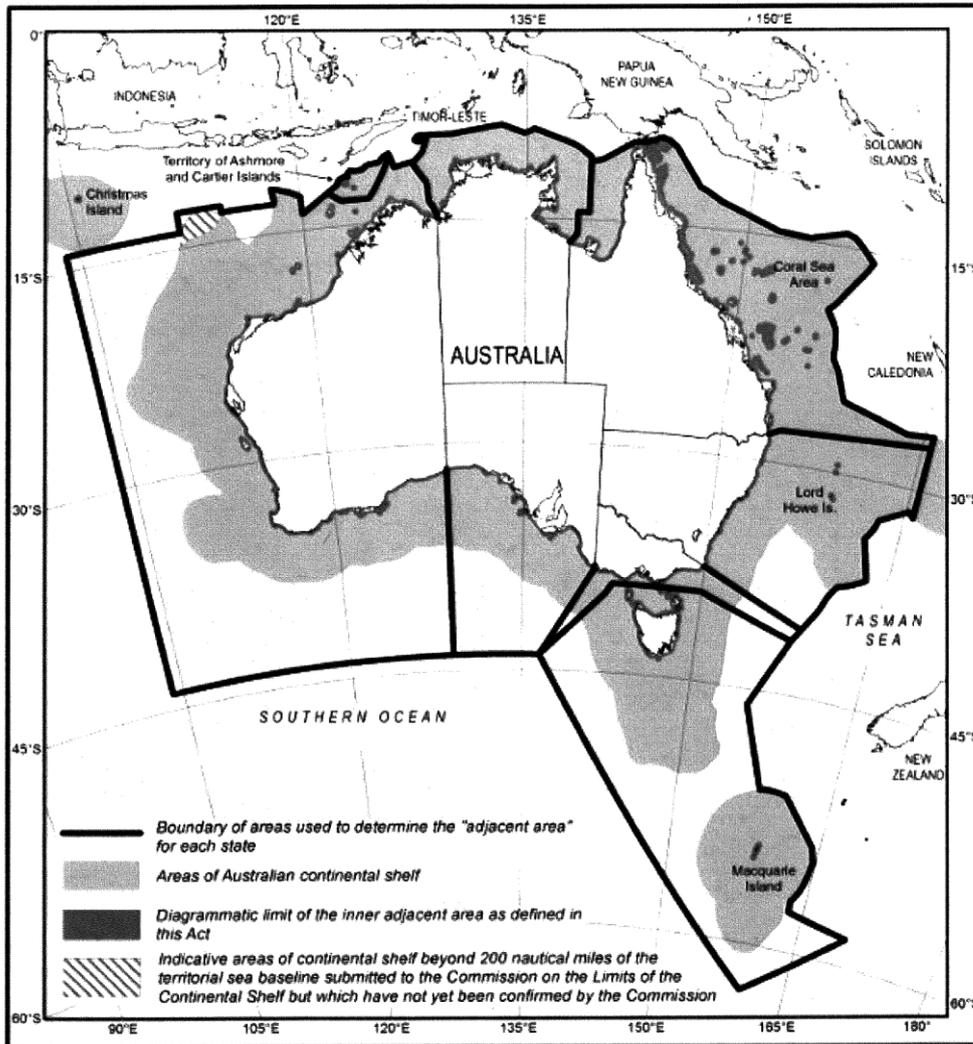
15. Baselines

- (1) The baseline for a State (other than Norfolk
Island) is the part of the baseline of Australia's
territorial sea from which the part of the
territorial sea that is within the adjacent area for
that State is measured.
- (2) The baseline for Norfolk Island is the coastline
of Norfolk Island at mean low water.

Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

ANNEXURE TO SCHEDULE 1



Crimes at Sea Act 1999
Act No. 11 of 1999

sch. 1

NOTES

The foregoing text of the *Crimes at Sea Act 1999* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 27 November 2023 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Crimes at Sea Act 1999</i>	No. 11 of 1999	31.3.2001
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2023</i>	No. 33 of 2023	27.11.2023

TABLE OF AMENDMENTS

Provision affected	How affected
The Annexure to Schedule 1	Amended by No. 33 of 2023, s. 9