



DPP

Commonwealth Director of Public Prosecutions

SUBMISSION BY THE COMMONWEALTH DPP

THE HOUSE STANDING COMMITTEE ON SOCIAL POLICY AND LEGAL AFFAIRS

INQUIRY INTO THE ARRANGEMENTS SURROUNDING CRIMES COMMITTED AT SEA

Introduction

The purpose of this submission is to outline the role of the Office of the Commonwealth Director of Public Prosecutions (CDPP) in prosecuting offences under the law as applied in accordance with the *Crimes at Sea Act 2000* (CAS Act).

Prosecution responsibility of the CDPP under the *Crimes at Sea Act 2000*

The CDPP is an independent prosecuting service established by the *Director of Public Prosecutions Act 1983* (Cth) to prosecute alleged offences against Commonwealth law. The functions of the CDPP include prosecuting offences under the law as applied by the provisions of the CAS Act, a function it shares with the prosecuting authorities of the States (in this submission, as in Schedule 1 of the CAS Act, a reference to the States includes the Northern Territory).

Whether the CDPP or State prosecuting authorities are responsible for taking prosecution action in accordance with the CAS Act depends largely in which of the three principal maritime areas the criminal act is alleged to have been committed, being the area at sea outside the adjacent area, the inner adjacent area or the outer adjacent area.

In the case of the area at sea outside the adjacent area, the applicable law is determined in accordance with section 6 of the CAS Act. Unlike the area within the adjacent area, the provisions of the cooperative scheme and the intergovernmental agreement made in accordance with clause 5 of the cooperative scheme (the intergovernmental agreement) have no role to play. Under section 6 of the CAS Act, the substantive criminal law of the Jervis Bay Territory, to the extent that it applies or is taken to apply, applies by force of Commonwealth law in accordance with section 6 of the CAS Act.

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Being offences against Commonwealth law, the responsibility for taking any prosecution action generally rests with the CDPP. However, it is possible for State Directors of Public Prosecutions to conduct such prosecutions in accordance with existing joint trial arrangements with the CDPP.

Regarding the adjacent area, the cooperative scheme applies the substantive criminal law of the adjacent State. To this end, a distinction is drawn between the inner adjacent area for a State and the outer adjacent area for a State as defined in clause 1 of the cooperative scheme. Essentially, the inner adjacent area is that area within a 12 nautical mile belt of sea as measured from the baseline of the State, and the outer adjacent area is that area 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).

In the case of the inner adjacent area of a State, by virtue of clause 2(1) of the cooperative scheme the substantive criminal law of the State applies by force of the law of the State. Being offences against the law of a State, the responsibility for taking prosecution action generally rests with the respective State prosecuting authorities. Nevertheless, it is possible for the CDPP to conduct such prosecutions in accordance with existing joint trial arrangements with the States.

In the case of the outer adjacent area of a State, by virtue of clause 2(2) of the cooperative scheme the provisions of the substantive criminal law of that State apply by force of the law of the Commonwealth. Accordingly, offences under the applied State law in the outer adjacent area are technically Commonwealth offences. Unlike the prosecution of alleged offences in the area at sea outside the adjacent area, the responsibility for prosecuting alleged offences within the outer adjacent area does not generally rest with the CDPP. Instead, the primary responsibility for prosecuting offences may rest with the adjacent State, another State or the Commonwealth depending on the circumstances as prescribed in clause 4 of the intergovernmental agreement. In a case which does not involve the circumstances prescribed in clause 4 and where more than one party may take prosecution action, clause 6 of the intergovernmental agreement requires a consultative process to determine how the matter should be dealt with.