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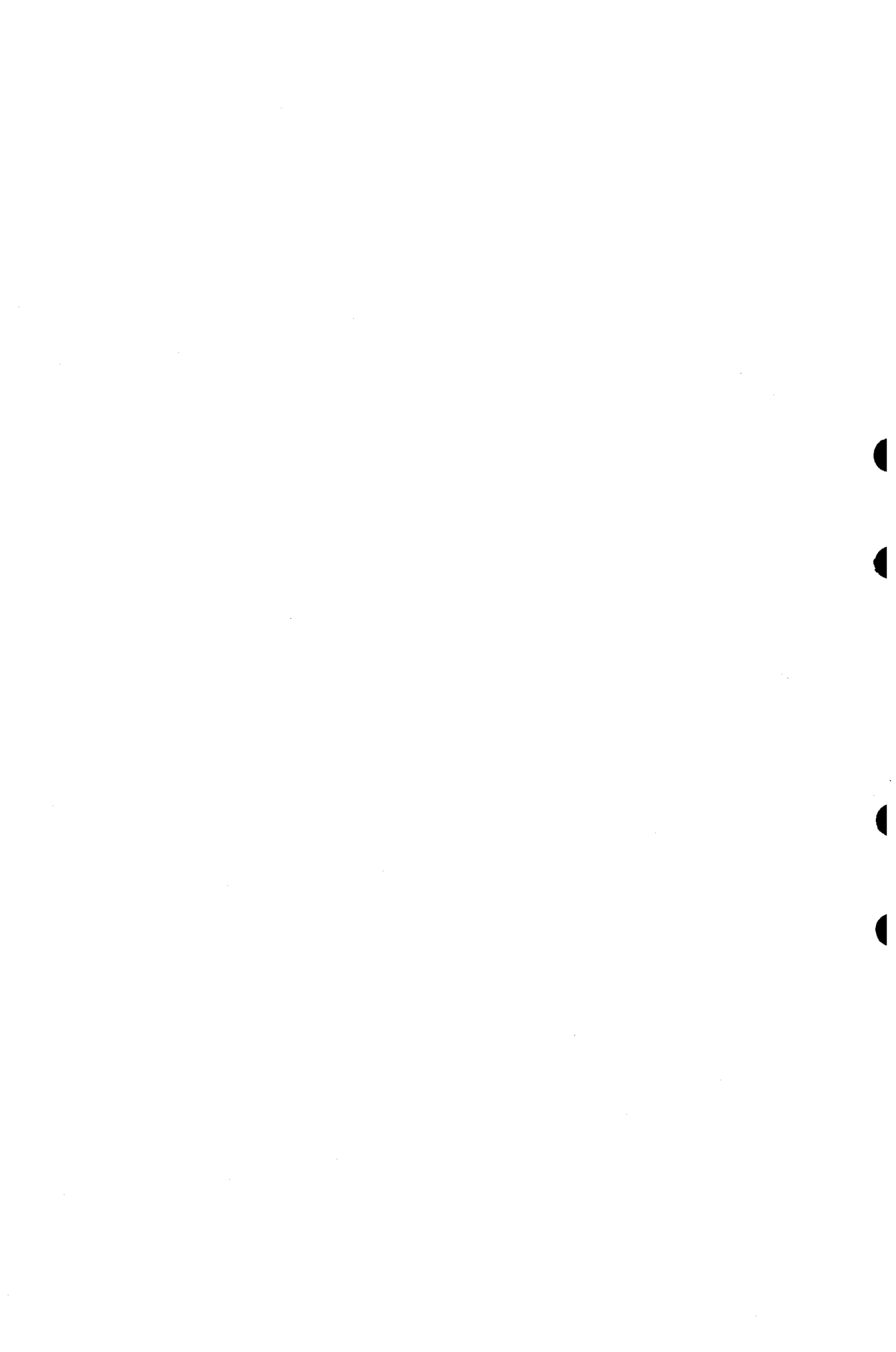
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE (VISITING WARSHIPS) BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for
Defence, the Rt Hon Ian Sinclair MP)



DEFENCE (VISITING WARSHIPS) BILL 1982

OUTLINE

This Bill provides authority and a legal framework for the entry to Australia of the warships of other countries.

The Bill empowers the Minister administering the Act to grant approval for the entry of foreign warships, providing a statutory basis for existing practice.

The entitlements conferred by the grant of an approval are set out. Provision is made for the Minister to give directions to facilitate access by foreign warships, should such facilitation become necessary.

It is intended that the Act will be administered by the Minister for Defence.

NOTES ON CLAUSES

Clause 1 - Short title

This clause sets out the short title of the proposed Act.

Clause 2 - Commencement

This clause provides for the Bill to come into force on a date to be fixed by Proclamation, enabling completion of arrangements necessary for the implementation of the Bill.

Clause 3 - Interpretation

This clause provides for the definition of certain terms used in the Bill. The definitions are largely self-explanatory.

The term "Australian port" is defined so as to include a particular place within a port or another area used by ships, so as to enable the powers conferred by the Act to be exercised in relation to a specific part of a port etc if this becomes necessary.

References in the definition of "Australian port" to Australia or an external territory are to be read as including the coastal sea of Australia or an external territory, respectively (see the Acts Interpretation Act 1901, section 15B).

Clause 4 - Object of Act

Sub-clause 4(1) states the object of the proposed Act in the context of the constitutional responsibilities of the Commonwealth for external affairs and defence, and declares the intention of the Parliament that the Act be administered to further that object.

Sub-clause 4(2) declares the intention of the Parliament that, in furthering the object of the proposed Act, the cooperation and assistance of the States and their authorities be sought and utilized.

Clause 5 - Application

Sub-clause 5(1) provides for the proposed Act to bind the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

Sub-clause 5(2) provides for the proposed Act to extend to the external Territories of Australia.

Clause 6 - Exclusion of certain State and Territory laws

Sub-clause 6(1) provides that the proposed Act operates to the exclusion of State or Territory laws, or instruments under such laws, which would otherwise prevent or obstruct any act or thing that a foreign warship or a person is required or permitted by the Act to do.

Under section 109 of the Constitution, when a law of a State is inconsistent with a law of the Commonwealth, the Commonwealth law prevails and the State law is, to the extent of the inconsistency, invalid.

Sub-clause 6(2) sets out circumstances which, for the purposes of sub-clause (1), amount to obstruction.

Sub-clause 6(3) provides that the proposed Act shall not, except as provided in sub-clauses (1) and (2), be taken to exclude or limit State or Territory legislation capable of operating concurrently with the Act.

Clause 7 - Approval for foreign warships to obtain access to Australian ports

Sub-clause 7(1) empowers the Minister to approve the access of foreign warships to Australian ports. An approval may be given in respect of a specified warship, or of warships included in a specified class of warships. The approval must specify the period during which it is in force. The approval may authorize access to all Australian ports, or to a specified port or specified ports. An approval may

be revoked or varied at any time.

Sub-clause 7(2) provides that, for the purposes of sub-clause (1), a class of warships may be defined to include all or any of the warships of a particular country.

Sub-clause 7(3) provides that an approval under sub-clause (1) may be granted subject to compliance with conditions relating to the ship or ships or its or their crew, as specified in the approval.

It is envisaged that approvals would be subject to conditions requiring compliance with navigation and safety requirements, and health, quarantine, customs and immigration requirements.

It is intended that special additional conditions would apply in the case of nuclear powered warships, relating to safety, emergency procedures, etc.

Sub-clause 7(4) provides that, where an approval is in force under section 7, the commander of a warship covered by the approval may be given directions by the Minister with respect to particular matters.

It is envisaged that such directions would be given only where the conditions of the approval are inadequate to cover a particular situation, or where unforeseen circumstances arise after an approval has been given.

The Bill does not create offences for breaches of or failure to comply with conditions or directions under clause 7. In those circumstances the appropriate remedies would be withdrawal of the approval or government-to-government representations.

Clause 8 - Effect of grant of approval

This clause states the effect of a grant of approval under clause 7. A foreign warship which has approval for access to an Australian port is entitled, with its crew, stores and equipment, to enter, remain in and depart from the port, subject to the laws of the Commonwealth and to any conditions imposed, or directions given, under clause 7. While in the port, goods may be loaded on to and unloaded from it and services may be supplied to it.

Clause 9 - Power of Minister to direct persons to facilitate access by foreign warships to Australian port

This clause empowers the Minister to direct the performance of functions or services, the provision of facilities or equipment, or the supply of goods, in relation to a ship for which an approval is in force under clause 7.

Sub-clause 9(2) provides that a direction may be given under sub-clause (1) only where the Minister is satisfied that it is necessary to secure the entry, stay or departure of the ship or the safety of the ship, its crew or other persons or that it is necessary or convenient for the effective operation of the ship.

Clause 10 - Offences

Sub-clause 10(1) creates offences of two kinds:

- . preventing, hindering or obstructing either the entry, berthing or departure of a foreign warship, or particular activities related to the ship;
- . failing, without reasonable excuse, to comply with a direction under clause 9.

Sub-clause 10(2) provides that a belief of a kind described in the sub-clause does not constitute a reasonable excuse for the purposes of sub-clause (1).

Clause 11 - Right of compensation or payment for services or goods

Sub-clause 11(1) provides a right to compensation where a person suffers loss or damage as a result of compliance with a direction under clause 9 or where the operation of the Act, or the doing of an act pursuant to a direction under clause 9, results in an acquisition of property within the meaning of paragraph 51(xxxi) of the Constitution (ie, an acquisition of property for which the Commonwealth is liable to pay just terms).

Sub-clause 11(2) provides a right to payment where a person furnishes goods, services etc pursuant to a direction under clause 9.

Under sub-clause 11(3) the amount of compensation or payment due to a person is to be such amount as is agreed with the Commonwealth or, in default of agreement, as is determined by a court of competent jurisdiction to be just.

Clause 12 - Certificate as to approval

This clause is an evidentiary provision, whereby a certificate by the Minister that an approval for a specified foreign warship was in force is prima facie evidence of the matters stated in the certificate. A document purporting to be such a certificate is, unless the contrary is established, deemed to be such a certificate duly given.

Clause 13 - Savings

This clause preserves the operation of any other Commonwealth law requiring authorization for the entry, stay or departure of a ship to, at or from an Australian port.

Clause 14 - Delegation

This clause empowers the Minister to delegate, all or any of his powers under the Bill (except the power of delegation) to an officer of the Australian Public Service or a member of the Defence Force. The usual associated provisions are also included.

Clause 15 - Regulations

This clause empowers the making of regulations for the purposes of the Bill.

