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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Border Protection Bill 2001**

**No.     , 2001**

*(Immigration and Multicultural Affairs)*

**A Bill for an Act to provide for the removal of ships  
from the territorial sea of Australia, and for related  
purposes**



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1     **A Bill for an Act to provide for the removal of ships**  
2     **from the territorial sea of Australia, and for related**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6             This Act may be cited as the *Border Protection Act 2001*.

7     **2 Commencement**

8             This Act is taken to have commenced on 29 August 2001 at 9.00  
9             am by legal time in the Australian Capital Territory.

1     **3 Definitions**

2             In this Act:

3             ***Australia*** includes all the external Territories.

4             ***officer*** means any of the following persons who is authorised  
5             (whether orally or in writing) for the purposes of this Act by the  
6             Prime Minister or the Minister:

- 7             (a) the Secretary, or an employee, of the Department;  
8             (b) a person who is an officer for the purposes of the *Customs  
9             Act 1901*;  
10            (c) a member of the Australian Federal Police or of the police  
11            force of a State or an internal Territory;  
12            (d) a member of the police force of an external Territory;  
13            (e) a member of the Australian Defence Force.

14            ***ship*** means any vessel used in navigation, other than air navigation,  
15            and includes a barge, lighter or any other floating vessel.

16            ***territorial sea***, in relation to Australia, means the territorial sea  
17            area whose outer limits are from time to time specified in a  
18            Proclamation made by the Governor-General for the purposes of  
19            section 7 of the *Seas and Submerged Lands Act 1973*.

20     **4 Direction that ship be removed from Australian territorial sea**

21            (1) An officer may, in his or her absolute discretion, direct the master  
22            or other person in charge of a ship that is within the outer limits of  
23            the territorial sea of Australia to take the ship, and any person on  
24            board the ship, outside the territorial sea.

25            (2) A direction given under subsection (1) must not be called into  
26            question, or challenged, in any proceedings in any court in  
27            Australia.

28            (3) An officer may use any reasonable means to give a direction under  
29            subsection (1).

30            (4) To avoid doubt, a direction is given under subsection (1) even if:

- 1 (a) there was no master on board the ship to receive the  
2 direction; or  
3 (b) the master did not receive or understand the direction.

4 **5 Enforcement of direction**

5 Where a direction has been given under section 4, an officer may  
6 detain the ship, and take it, or cause it to be taken, outside the  
7 territorial sea of Australia. For this purpose, reasonable means,  
8 including reasonable force, may be used by the officer or another  
9 person.

10 **6 Persons may be returned to ship**

11 An officer, or a person assisting an officer, may return to a ship a  
12 person who:

- 13 (a) at the time when a direction is given under section 4 in  
14 respect of the ship, is on board the ship; and  
15 (b) later leaves the ship.

16 For this purpose, reasonable means, including reasonable force,  
17 may be used by the officer or another person.

18 **7 Liability for actions taken under this Act**

- 19 (1) Proceedings, whether civil or criminal, may not be instituted or  
20 continued against the Commonwealth in respect of action taken  
21 under section 5 or 6.
- 22 (2) Proceedings, whether civil or criminal, may not be instituted or  
23 continued against an officer who takes action under section 5 or 6,  
24 or a person who assists in taking action under section 5 or 6, if the  
25 officer or other person acts in good faith.

26 **8 No proceedings available to prevent removal of ship**

27 Proceedings may not be instituted or continued by any person in  
28 any court to prevent a ship, or any persons on board a ship, being  
29 removed to a place outside the territorial sea of Australia pursuant  
30 to a direction given under section 4.

1     **9 No applications for protection visas**

2             (1) Any application for a protection visa under the *Migration Act*  
3                 *1958*, made by a person who is on board a ship at the time when a  
4                 direction is given under section 4 in respect of the ship, is not a  
5                 valid application.

6             (2) Section 91F of the *Migration Act 1958* applies in relation to an  
7                 application covered by subsection (1) of this section as if it were an  
8                 application covered by section 91E of that Act.

9     **10 Act has effect in spite of any other law**

10             This Act has effect in spite of any other law.

11    **11 Validation of actions taken before Assent to this Act**

12             (1) This section applies to action taken during the period between the  
13                 commencement of this Act and the time when this Act received the  
14                 Royal Assent.

15             (2) If, during that period, the Prime Minister or the Minister authorised  
16                 a person (the *authorised person*) described in any of the  
17                 paragraphs of the definition of *officer* in section 3 to give a  
18                 direction of the kind described in section 4 (however that  
19                 authorisation was expressed), then:

20                 (a) any action of the kind described in section 5 or 6 that was  
21                     taken pursuant to that authorisation (including any action  
22                     taken by any other person at the request or direction of the  
23                     authorised person) is deemed for all purposes to have been  
24                     validly taken under this Act; and

25                 (b) section 7 applies in respect of any such action as if the action  
26                     had been taken under section 5 or 6; and

27                 (c) section 8 applies in respect of any removal of a ship pursuant  
28                     to such an authorisation as if a direction had been given  
29                     under section 4; and

30                 (d) section 9 applies to any application made by a person who  
31                     was on board the ship at any time during that period as if a

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direction had been given under section 4 in respect of the  
ship concerned while the person was on board the ship.