

1980

The Parliament of the Commonwealth of Australia

---

COASTAL WATERS (STATE POWERS) BILL 1980

COASTAL WATERS (NORTHERN TERRITORY POWERS) BILL 1980

COASTAL WATERS (STATE TITLE) BILL 1980

COASTAL WATERS (NORTHERN TERRITORY TITLE) BILL 1980

SEAS AND SUBMERGED LANDS AMENDMENT BILL 1980

EXPLANATORY MEMORANDUM

TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| Purpose of Bills                                    | 1           |
| Notes on Clauses                                    | 2           |
| COASTAL WATERS (STATE POWERS) BILL 1980             | 2           |
| COASTAL WATERS (NORTHERN TERRITORY POWERS BILL 1980 | 6           |
| COASTAL WATERS (STATE TITLE) BILL 1980              | 9           |
| COASTAL WATERS (NORTHERN TERRITORY TITLE) BILL 1980 | 12          |
| SEAS AND SUBMERGED LANDS AMENDMENT BILL 1980        | 15          |

COASTAL WATERS (STATE POWERS) BILL 1980  
COASTAL WATERS (NORTHERN TERRITORY POWERS) BILL 1980  
COASTAL WATERS (STATE TITLE) BILL 1980  
COASTAL WATERS (NORTHERN TERRITORY TITLE) BILL 1980  
SEAS AND SUBMERGED LANDS AMENDMENT BILL 1980

Purpose

This group of Bills constitute one of the basic parts of the "package" of legislation to be passed in order to implement the offshore constitutional settlement between the Commonwealth and the States completed at the Premiers' Conference in June 1979.

The State Powers Bill will give each State the same powers with respect to the adjacent territorial sea (including the seabed) as it would have if the waters were within the limits of the State. The Bill will also give each State powers beyond the territorial sea in respect of port-type facilities, underground mining extending from land within a State, and fisheries which by arrangement between the Commonwealth and the State concerned are to be managed in accordance with the laws of the State.

The State Title Bill will vest in each State proprietary rights and title in respect of the seabed of the adjacent territorial sea, subject to certain reservations.

The Northern Territory Bills will place the Northern Territory in substantially the same position as a State in relation to offshore powers and title to the seabed beneath the territorial sea.

The Seas and Submerged Lands Amendment Bill will make consequential amendments to the Seas and Submerged Lands Act 1973 designed to ensure that State and Northern Territory laws passed pursuant to the Powers Bills and the Title Bills will not be invalidated by the 1973 Act.

---

NOTES ON CLAUSES

COASTAL WATERS (STATE POWERS) BILL 1980

Preamble

Section 51(xxxviii) of the Constitution gives the Parliament power to make laws with respect to -  
the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of the Constitution be exercised only by the Parliament of the United Kingdom.

Each of the State Parliaments has passed legislation requesting the Parliament of the Commonwealth to enact an Act in, or substantially in, the terms of this Bill. The State Acts so requesting are:

- N.S.W. Constitutional Powers (Coastal Waters) Act 1979  
(No. 138 of 1979)
- VIC. Constitutional Powers (Coastal Waters) Act 1980  
(No. 9366)
- QLD. Constitutional Powers (Coastal Waters) Act 1980  
(No. 1 of 1980)
- S.A. Constitutional Powers (Coastal Waters) Act, 1979  
(No. 68 of 1979)
- W.A. Constitutional Powers (Coastal Waters) Act 1979  
(No. 95 of 1979)
- TAS. Constitutional Powers (Coastal Waters) Act 1979  
(No. 62 of 1979)

Clause 2

The Bill is to come into force on a date to be fixed by Proclamation.

Clause 3(1) (Definitions)

"Adjacent area in respect of the State" means the relevant "adjacent area" as described by the Petroleum (Submerged Lands) Act 1967. The boundaries separating the adjoining "adjacent areas" in that Act are used in the present Bill for the purpose of separating the adjoining coastal waters of neighbouring States - see the definition of "coastal waters of the State" and clause 5(b).

"Coastal waters of the State" are defined so as to include not only the part of the 3-mile territorial sea that is within the "adjacent area" of the State concerned, but also any "internal waters" that are on the landward side of the territorial sea and are not within the limits of a State or a Territory.

Clause 3(2)

The present Bill has been requested by the States on the basis that its terms will be interpreted in the light of the Acts Interpretation Act 1901 in its present form. This provision gives effect to that intention.

Clause 4(1)

For the purposes of the Bill (but subject to clause 4(2)), the territorial sea referred to is the territorial sea as it exists from time to time. This will take into account e.g. any future movement in the coastline leading to a change of the limits of the 3-mile territorial sea, as well as any international agreement between Australia and another country delimiting the limits of their respective territorial seas.

4.

Clause 4(2)

This provision limits the breadth of the territorial sea, for purposes of references in the Bill to the "coastal waters of the State", to its present breadth of 3 miles, irrespective of whether Australia subsequently adopts a greater breadth for international and national purposes.

Clause 5(a)

This provision provides that State legislative powers extend to the making of all such laws as could be made if the coastal waters of the State were within the limits of the State, including laws relating to the seabed and subsoil beneath, and the airspace above, the coastal waters of the State.

Clause 5(b)

This provision provides that State legislative powers extend beyond the outer limits of the coastal waters of a State to

- subterranean mining from land within the limits of the State;
- ports, harbours and other shipping facilities, including installations, and dredging and other works, relating thereto, and other coastal works.

Clause 5(c)

This provision provides that a State's legislative powers extend to fisheries in Australian waters beyond the outer limits of the coastal waters of the State where there is an arrangement between the Commonwealth and the State that the fisheries are to be managed in accordance with the laws of the State.

Clause 6

This clause ensures that nothing in the Bill affects the status of the territorial sea under international law or the rights and duties of the Commonwealth under international law.

Clause 7

This clause, which is designed, inter alia, to protect the validity of the Bill, contains savings to the effect that it is not to be taken to

- extend State limits;
  - derogate from existing State extra-territorial powers;
  - give any force to State law to the extent of any inconsistency with Commonwealth law or with the Constitution or the Constitution Act.
-

COASTAL WATERS (NORTHERN TERRITORY POWERS) BILL 1980

Clause 2

The Bill is to come into force on a date to be fixed by Proclamation.

Clause 3(1) (Definitions)

"Adjacent area in respect of the Territory" means the "adjacent area" of the Northern Territory as described in the Petroleum (Submerged Lands) Act 1967. The lateral boundaries of that area are used in the present Bill to separate the coastal waters of the Northern Territory from the coastal waters of Queensland and of Western Australia - see the definition of "coastal waters of the Territory" and clause 5(b).

"Coastal waters of the Territory" are defined so as to include not only the part of the 3-mile territorial sea that is within the "adjacent area" of the Northern Territory but also any "internal waters" that are on the landward side of the territorial sea and are not within the limits of a State or a Territory.

Clause 3(2)

This brings the interpretation of the present Bill into line with the interpretation of the Coastal Waters (State Powers) Bill.

Clause 4(1)

For the purposes of the Bill (but subject to clause 4(2)) the territorial sea referred to is the territorial sea as it exists from time to time. This will take into account e.g. any future movement in the coastline leading to a change of the limits of the 3-mile territorial sea, as well as any international agreement between Australia and another country delimiting the limits of their respective territorial seas.



Clause 4(2)

This provision limits the breadth of the territorial sea, for purposes of references in the Bill to the coastal waters of the Territory, to its present breadth of 3 miles, irrespective of whether Australia subsequently adopts a greater breadth for international and national purposes.

Clause 5(a)

This provision provides that the legislative powers of the Legislative Assembly of the Northern Territory extend to the making of all such laws as could be made if the coastal waters of the Territory were within the limits of the Territory, including laws relating to the seabed and subsoil beneath, and the airspace above, the coastal waters of the Territory.

Clause 5(b)

This provision provides that the legislative powers of the Legislative Assembly of the Northern Territory extend beyond the outer limits of the coastal waters of the Territory to

- subterranean mining from land within the limits of the Territory;
- ports, harbours and other shipping facilities, including installations, and dredging and other works, relating thereto, and other coastal works.

Clause 5(c)

This provision provides that the legislative powers of the Legislative Assembly of the Northern Territory extend to fisheries in Australian waters beyond the outer limits of the coastal waters of the Territory where there is an arrangement between the Commonwealth and the Territory that the fisheries are to be managed in accordance with the laws of the Territory.

8.

Clause 6

This clause ensures that nothing in the Bill affects the status of the territorial sea under international law or the rights and duties of the Commonwealth under international law.

Clause 7

This clause contains savings to the effect that the Bill is not to be taken to

- extend Territory limits;
  - derogate from existing Territory extra-territorial powers;
  - give any force to Territory law to the extent of any inconsistency with Commonwealth law or with the Constitution or the Constitution Act.
-

COASTAL WATERS (STATE TITLE) BILL 1980

Clause 2

The Bill is to come into force on a date to be fixed by Proclamation.

Clause 3(1) (Definitions)

"Authority of the Commonwealth" is defined to include, inter alia, companies in which the whole of the shares or stock, or shares or stock carrying more than half of the voting power, is or are owned by or on behalf of the Commonwealth. The Northern Territory is expressed not to be included in the expression "authority of the Commonwealth".

"Coastal waters of the State" has the same meaning as in the Coastal Waters (State Powers) Bill 1980.

Clause 3(2)

References to seabed are to be read as including references to the subsoil beneath and to structures and other things attached to the seabed.

Clause 4(1)

This provision vests right and title to the property of the seabed beneath the coastal waters of each State in that State, subject to the reservations contained elsewhere in the Bill. It also vests the same rights in respect of the space above that seabed as would belong to the State if that seabed were seabed within the limits of the State.

Clause 4(2)

This provision subjects the rights and title vested in a State under clause 4(1) to the following:

- (a) any subsisting right or title to property in the seabed, other than any such right or title of the Commonwealth that subsisted by reason only of the sovereignty referred to in the Seas and Submerged Lands Act 1973;
- (b) a right of the Commonwealth or an authorized authority of the Commonwealth to use the seabed and the space above for purposes relating to -
  - . communications,
  - . the safety of navigation,
  - . quarantine,
  - . defence;
- (c) a right of the Commonwealth to authorize the construction and use of petroleum pipelines.

Clause 4(3)

This provision provides that the rights and title vested by clause 4(1) are vested subject to the operation of the Great Barrier Reef Marine Park Act 1975 and that accordingly nothing done under that Act is to be taken to constitute an infringement of rights and title vested by the present Bill. (See also the note on clause 4(6) below.)

Clause 4(4)

The area of the "coastal waters" of a State may change from time to time, e.g., as a result of changes in the coastline. This provision is intended to deal with such changes, by ensuring that the present Bill will operate in respect of the "coastal waters" of each State as they exist from time to time.

Clause 4(5)

This provision is intended to make it clear beyond any doubt that a State may dispose of the right and title vested in it by the present Bill in accordance with the laws of the State.

Clause 4(6)

This provision ensures that the operation of the Great Barrier Reef Act 1975 protected by clause 4(3) applies in respect of, and only in respect of, the whole of the Great Barrier Reef Region as defined in section 3 of that Act.

Clause 5

This clause postpones the application of the vesting provisions in relation to parts of the seabed occupied by, or by structures or other property of, the Commonwealth or an authority of the Commonwealth. The vesting date in those cases is to be fixed by the Minister, by notice in the Gazette.

Clause 6

This clause ensures that nothing in the Bill affects the status of the territorial sea under international law or the rights and duties of the Commonwealth under international law.

Clause 7

This clause ensures that the Commonwealth Places (Application of Laws) Act 1970 applies to any "Commonwealth place" in the coastal waters of a State.

Clause 8

This clause contains savings to the effect that the Bill is not to be taken to

- extend State limits;
  - derogate from any right or title of a State apart from this Bill.
-

COASTAL WATERS (NORTHERN TERRITORY TITLE) BILL 1980

Clause 2

The Bill is to come into force on a date to be fixed by Proclamation.

Clause 3(1) (Definitions)

"Authority of the Commonwealth" is defined to include, inter alia, companies in which the whole of the shares or stock, or shares or stock carrying more than half of the voting power, is or are owned by or on behalf of the Commonwealth. The Northern Territory is expressed not to be included in the expression "authority of the Commonwealth".

"Coastal waters of the State" has the same meaning as in the Coastal Waters (State Powers) Bill 1980.

Clause 3(2)

References to seabed are to be read as including references to the subsoil beneath and to structures and other things attached to the seabed. However, "prescribed substances" within the meaning of the Atomic Energy Act 1953 are excluded. (These substances were excepted from the minerals transferred to the Northern Territory by the Northern Territory Self-Government Act 1978.)

Clause 4(1)

This provision vests right and title to the property of the seabed beneath the coastal waters of the Territory in the Territory. It also vests the same rights in respect of the space above that seabed as would belong to the Territory if that seabed were seabed within the limits of the Territory.

Clause 4(2)

This provision subjects the rights and title vested in a Territory under clause 4(1) to the following:

- (a) any subsisting right or title to property in the seabed, other than any such right or title of the Commonwealth that subsisted by reason only of the sovereignty referred to in the Seas and Submerged Lands Act 1973;
- (b) a right of the Commonwealth or an authorized authority of the Commonwealth to use the seabed and the space above for purposes relating to -
  - . communications,
  - . the safety of navigation,
  - . quarantine,
  - . defence;
- (c) a right of the Commonwealth to authorize the construction and use of petroleum pipelines.

Clause 4(3)

The area of the coastal waters of the Territory may change from time to time, e.g., as a result of changes in the coastline. This provision is intended to deal with such changes, by ensuring that the present Bill will operate in respect of the coastal waters of the Territory as they exist from time to time.

Clause 4(4)

This provision is intended to make it clear beyond any doubt that the Territory may dispose of the right and title vested in it by the present Bill in accordance with the laws of the Territory.

Clause 5

This clause postpones the application of the vesting provisions in relation to parts of the seabed occupied by, or by structures or other property of, the Commonwealth or an authority of the Commonwealth. The vesting date in those cases is to be fixed by the Minister, by notice in the Gazette.

Clause 6

This clause ensures that nothing in the Bill affects the status of the territorial sea under international law or the rights and duties of the Commonwealth under international law.

Clause 7

This clause contains savings to the effect that the Bill is not to be taken to

- extend the limits of the Territory;
  - derogate from any right or title of the Territory apart from this present Bill.
-



SEAS AND SUBMERGED LANDS AMENDMENT BILL 1980

Clause 2

The Bill is to come into force on a date to be fixed by Proclamation.

Clause 3(a) and (b)

These amendments are consequential upon the decision to treat the Northern Territory as a State for the purposes of the offshore constitutional settlement.

Clause 16(c)

These amendments are designed to ensure that laws passed by a State or the Northern Territory are not invalidated by the Seas and Submerged Lands Act 1973 -

- (i) if they relate to seabed within the territorial sea in which proprietary rights have become vested in the State or the Territory by or under a law of the Commonwealth; or
  - (ii) if the State or Territory law is otherwise within powers with respect to particular matters (subterranean mining, port and other shipping facilities, etc.) to be conferred, as the case may be, by the Coastal Waters (State Powers) Bill or the Coastal Waters (Northern Territory Powers) Bill.
-