

**CONSTITUTIONAL POWERS (COASTAL WATERS)
ACT, 1979, No. 138**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 138, 1979.

An Act to request the Parliament of the Commonwealth to enact an Act to extend the legislative powers of the States in and in relation to coastal waters. [Assented to, 28th November, 1979.]

Constitutional Powers (Coastal Waters).

WHEREAS it has been agreed between the Government of the Commonwealth and the Governments of the States of Australia that the legislative powers of the States in and in relation to coastal waters should be extended by an Act of the Parliament of the Commonwealth enacted at the request of the Parliaments of the States in pursuance of paragraph (xxxviii) of section 51 of the Constitution of the Commonwealth of Australia:

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. **1.** This Act may be cited as the "Constitutional Powers (Coastal Waters) Act, 1979".

Request for
enactment of
Common-
wealth
Act. **2.** The Parliament requests the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in Schedule 1.

Sec. 2.

SCHEDULE 1.

AN ACT

To extend the legislative powers of the States in and in relation to coastal waters.

Preamble WHEREAS, in pursuance of paragraph (xxxviii) of section 51 of the Constitution of the Commonwealth, the Parliaments of all the States have requested the Parliament of the Commonwealth to enact an Act in, or substantially in, the terms of this Act :

Constitutional Powers (Coastal Waters).

SCHEDULE 1—*continued.*

BE IT THEREFORE ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows :

1. This Act may be cited as the *Coastal Waters (State Powers) Act 1979.* Short
title

2. This Act shall come into operation on a date to be fixed by Proclamation. Commence-
ment

3. (1) In this Act—

Interpre-
tation

“adjacent area in respect of the State” means, in relation to each State, the area the boundary of which is described under the heading referring to that State in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* as in force immediately before the commencement of this Act;

“coastal waters of the State” means, in relation to each State—

- (a) the part or parts of the territorial sea of Australia that is or are within the adjacent area in respect of the State, other than any part referred to in sub-section 4 (2); and
- (b) any sea that is on the landward side of any part of the territorial sea of Australia and is within the adjacent area in respect of the State but is not within the limits of the State or of a Territory.

(2) The *Acts Interpretation Act 1901*, in the form in which it was in force, as amended, immediately before the day on which this Act received the Royal Assent, applies to the interpretation of this Act.

Constitutional Powers (Coastal Waters).

SCHEDULE 1—*continued.*

Extent of
territorial
sea and
coastal
waters

4. (1) For the purposes of this Act, the limits of the territorial sea of Australia shall be the limits existing from time to time, ascertained consistently with the *Seas and Submerged Lands Act* 1973 and instruments under that Act and with any agreement (whether made before or after the commencement of this Act) for the time being in force between Australia and another country with respect to the outer limit of a particular part of that territorial sea.

(2) If at any time the breadth of the territorial sea of Australia is determined or declared to be greater than 3 nautical miles, references in this Act to the coastal waters of the State do not include, in relation to any State, any part of the territorial sea of Australia that would not be within the limits of that territorial sea if the breadth of that territorial sea had continued to be 3 nautical miles.

Legislative
powers of
States

5. The legislative powers exercisable from time to time under the constitution of each State extend to the making of—

- (a) all such laws of the State as could be made by virtue of those powers if the coastal waters of the State, as extending from time to time, were within the limits of the State, including laws applying in or in relation to the sea-bed and subsoil beneath, and the airspace above, the coastal waters of the State;
- (b) laws of the State having effect in or in relation to waters within the adjacent area in respect of the State but beyond the outer limits of the coastal waters of the State, including laws applying in or in relation to the sea-bed and subsoil beneath, and the airspace above, the first-mentioned waters, being laws with respect to—
 - (i) subterranean mining from land within the limits of the State; or

Constitutional Powers (Coastal Waters).

SCHEDULE 1—*continued.*

- (ii) ports, harbours and other shipping facilities, including installations, and dredging and other works, relating thereto, and other coastal works; and
- (c) laws of the State with respect to fisheries in Australian waters beyond the outer limits of the coastal waters of the State, being laws applying to or in relation to those fisheries only to the extent to which those fisheries are, under an arrangement to which the Commonwealth and the State are parties, to be managed in accordance with the laws of the State.

6. Nothing in this Act affects the status of the territorial sea of Australia under international law or the rights and duties of the Commonwealth in relation to ensuring the observance of international law, including the provisions of international agreements binding on the Commonwealth and, in particular, the provisions of the Convention on the Territorial Sea and the Contiguous Zone relating to the right of innocent passage of ships.

Inter-
national
status of
territorial
sea

7. Nothing in this Act shall be taken to—

Savings

- (a) extend the limits of any State;
- (b) derogate from any power existing, apart from this Act, to make laws of a State having extra-territorial effect; or
- (c) give any force or effect to a provision of a law of a State to the extent of any inconsistency with a law of the Commonwealth or with the Constitution of the Commonwealth of Australia or the Constitution of Australia.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 28th November, 1979.*

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SECRET

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**CONSTITUTIONAL POWERS (COASTAL WATERS)
BILL, 1979**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to request the Parliament of the Commonwealth to enact an Act to extend the legislative powers of New South Wales in and in relation to the coastal waters of New South Wales to the extent specified in clause 5 of the Commonwealth Bill which appears as a Schedule to this Bill.

CONSTITUTIONAL PROVISIONS
BILL, 1979

EXPLANATORY NOTE

(This explanatory Note relates to the Bill as introduced into Parliament.)

The object of the Bill is to amend the Constitution of the Republic of South Africa in order to give effect to the provisions of the Constitution of the Republic of South Africa, 1977, and to give effect to the provisions of the Constitution of the Republic of South Africa, 1977, and to give effect to the provisions of the Constitution of the Republic of South Africa, 1977.

**CONSTITUTIONAL POWERS (COASTAL WATERS)
BILL, 1979**

No. , 1979.

A BILL FOR

An Act to request the Parliament of the Commonwealth to enact
an Act to extend the legislative powers of the States in and in
relation to coastal waters.

[Mr F. J. WALKER—17 *October*, 1979.]

Constitutional Powers (Coastal Waters).

WHEREAS it has been agreed between the Government of the Commonwealth and the Governments of the States of Australia that the legislative powers of the States in and in relation to coastal waters should be extended by an Act of the Parliament of the Commonwealth enacted at the request of the Parliaments of the States in pursuance of paragraph (xxxviii) of section 51 of the Constitution of the Commonwealth of Australia:

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Constitutional Powers (Coastal Waters) Act, 1979".

2. The Parliament requests the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in Schedule 1.

Request for enactment of Commonwealth Act.

SCHEDULE 1.

Sec. 2.

AN ACT

To extend the legislative powers of the States in and in relation to coastal waters.

WHEREAS, in pursuance of paragraph (xxxviii) of section 51 of the Constitution of the Commonwealth, the Parliaments of all the States have requested the Parliament of the Commonwealth to enact an Act in, or substantially in, the terms of this Act :

Preamble

Constitutional Powers (Coastal Waters).

SCHEDULE 1—*continued.*

BE IT THEREFORE ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows :

- 5 1. This Act may be cited as the *Coastal Waters (State Powers) Act 1979.* Short
title
2. This Act shall come into operation on a date to be fixed by Proclamation. Commence-
ment
3. (1) In this Act— Interpre-
tation
- 10 “adjacent area in respect of the State” means, in relation to each State, the area the boundary of which is described under the heading referring to that State in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* as in force immediately before the commencement of this Act;
- 15 “coastal waters of the State” means, in relation to each State—
- (a) the part or parts of the territorial sea of Australia that is or are within the adjacent area in respect of the State, other than any part referred to in sub-section 4 (2); and
- 20 (b) any sea that is on the landward side of any part of the territorial sea of Australia and is within the adjacent area in respect of the State but is not within the limits of the State or of a Territory.
- 25 (2) The *Acts Interpretation Act 1901*, in the form in which it was in force, as amended, immediately before the day on which this Act received the Royal Assent, applies to the interpretation of this Act.

Constitutional Powers (Coastal Waters).

SCHEDULE 1—*continued.*

4. (1) For the purposes of this Act, the limits of the territorial sea of Australia shall be the limits existing from time to time, ascertained consistently with the *Seas and Submerged Lands Act* 1973 and instruments under that Act and with any agreement (whether made before or after the commencement of this Act) for the time being in force between Australia and another country with respect to the outer limit of a particular part of that territorial sea.

Extent of territorial sea and coastal waters

10 (2) If at any time the breadth of the territorial sea of Australia is determined or declared to be greater than 3 nautical miles, references in this Act to the coastal waters of the State do not include, in relation to any State, any part of the territorial sea of Australia that would not be within the limits of that territorial sea if the breadth of that territorial sea had continued to be 3 nautical miles.

5. The legislative powers exercisable from time to time under the constitution of each State extend to the making of—

Legislative powers of States

20 (a) all such laws of the State as could be made by virtue of those powers if the coastal waters of the State, as extending from time to time, were within the limits of the State, including laws applying in or in relation to the sea-bed and subsoil beneath, and the airspace above, the coastal waters of the State;

25 (b) laws of the State having effect in or in relation to waters within the adjacent area in respect of the State but beyond the outer limits of the coastal waters of the State, including laws applying in or in relation to the sea-bed and subsoil beneath, and the airspace above, the first-mentioned waters, being laws with respect to—

30 (i) subterranean mining from land within the limits of the State; or

Constitutional Powers (Coastal Waters).

SCHEDULE 1—*continued.*

- 5 (ii) ports, harbours and other shipping facilities, including installations, and dredging and other works, relating thereto, and other coastal works; and
- 10 (c) laws of the State with respect to fisheries in Australian waters beyond the outer limits of the coastal waters of the State, being laws applying to or in relation to those fisheries only to the extent to which those fisheries are, under an arrangement to which the Commonwealth and the State are parties, to be managed in accordance with the laws of the State.

6. Nothing in this Act affects the status of the territorial sea of Australia under international law or the rights and duties of the Commonwealth in relation to ensuring the observance of international law, including the provisions of international agreements binding on the Commonwealth and, in particular, the provisions of the Convention on the Territorial Sea and the Contiguous Zone relating to the right of innocent passage of ships.

**Inter-
national
status of
territorial
sea**

20 7. Nothing in this Act shall be taken to—

Savings

- (a) extend the limits of any State;
- (b) derogate from any power existing, apart from this Act, to make laws of a State having extra-territorial effect; or
- 25 (c) give any force or effect to a provision of a law of a State to the extent of any inconsistency with a law of the Commonwealth or with the Constitution of the Commonwealth of Australia or the Commonwealth of Australia Constitution Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES, 1979

Continental Power (Special) Act

SCHEDULE 1

1. The power, authority and other shipping facilities including installations and fittings and other equipment, machinery and other vessels.

2. The power, authority and other shipping facilities including installations and fittings and other equipment, machinery and other vessels.

3. The power, authority and other shipping facilities including installations and fittings and other equipment, machinery and other vessels.

4. The power, authority and other shipping facilities including installations and fittings and other equipment, machinery and other vessels.

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