

## SCHEDULE

## 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:

Be it therefore enacted by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

Short title.

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

Commencement.

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

Interpretation.

3. (1) In this Act—

“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.

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;

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- (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
  - (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.

International  
status of  
territorial sea.

7. Nothing in this Act shall be taken to—

- (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 Commonwealth of Australia Constitution Act.

Savings.

# Capricornia Section of the Great Barrier Reef Marine Park

*Commonwealth of Australia Gazette, No. S 212, 21 October 1979*

## PROCLAMATION

Commonwealth of  
Australia  
ZELMAN COWEN  
Governor-General

By His Excellency the  
Governor-General of  
the Commonwealth of  
Australia

WHEREAS it is provided by sub-section (1) of section 31 of the *Great Barrier Reef Marine Park Act 1975* that, subject to sub-section (5) of that section, the Governor-General may, by Proclamation, declare an area specified in the Proclamation, being an area within the Great Barrier Reef Region, to be a part of the Great Barrier Reef Marine Park and assign a name or other designation to that area:

AND WHEREAS it is provided by sub-section (5) of that section that the Governor-General shall not make a Proclamation under that section except after consideration by the Federal Executive Council of a report by the Great Barrier Reef Marine Park Authority in relation to the matter dealt with by the Proclamation:

AND WHEREAS the Federal Executive Council has considered a report by the Great Barrier Reef Marine Park Authority in relation to the declaration of so much of the area specified in the Schedule as is within the Great Barrier Reef Region to be a part of the Great Barrier Reef Marine Park:

NOW THEREFORE I, Sir Zelman Cowen, the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby—

- (a) declare so much of the area specified in the Schedule as is within the Great Barrier Reef Region to be a part of the Great Barrier Reef Marine Park;
- (b) assign the name 'Great Barrier Reef Marine Park—Capricornia Section' to the area so declared (hereinafter referred to as the 'declared area');
- (c) specify the depth of 1000 metres below the seabed beneath any sea within the declared area as the depth below that seabed to which the sub-soil beneath that seabed shall be taken to be in the Great Barrier Reef Marine Park;

- (d) specify the depth of 1000 metres below the surface of any land within the declared area as the depth below that surface to which the sub-soil beneath that land shall be taken to be in the Great Barrier Reef Marine Park; and
- (e) specify the height of 915 metres above the surface of the declared area as the height above that surface to which the airspace above that area shall be taken to be in the Great Barrier Reef Marine Park.

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### Description of Declared Area

The boundary of which—

- (a) commences at a point of Latitude  $22^{\circ} 30'$  South, Longitude  $151^{\circ} 30'$  East;
  - (b) runs thence south-easterly along the geodesic to a point of Latitude  $23^{\circ} 10'$  South, Longitude  $152^{\circ} 10'$  East;
  - (c) runs thence south-easterly along the geodesic to a point of Latitude  $24^{\circ} 15'$  South, Longitude  $153^{\circ} 05'$  East;
  - (d) runs thence west along the parallel of Latitude  $24^{\circ} 15'$  South to its intersection with meridian of Longitude  $152^{\circ} 40'$  East;
  - (e) runs thence north-westerly along the geodesic to a point of Latitude  $23^{\circ} 45'$  South, Longitude  $151^{\circ} 55'$  East;
  - (f) runs thence west along the parallel of Latitude  $23^{\circ} 45'$  South to its intersection with meridian of Longitude  $151^{\circ} 30'$  East; and
  - (g) runs thence north along the last-mentioned meridian to the point of commencement.
- (L.S.) GIVEN under my Hand and the Great Seal of Australia on the seventeenth day of October 1979.

By His Excellency's Command,

J. J. WEBSTER

Minister of State for Science and the Environment

GOD SAVE THE QUEEN!

## Australian laws to apply to offences at sea

*Statement by the Commonwealth Attorney-General,  
Senator the Hon. Peter Durack, Q.C.*

The Attorney-General, Senator Peter Durack, Q.C., announced in Townsville today that the Federal Crimes at Sea Act would come into operation next Thursday, 1 November.

Its application will coincide with the commencement of the 200 mile offshore fishing zone around Australia.

Senator Durack said the Crimes at Sea Act would ensure that Australian criminal laws—mainly State laws—would apply to Australian ships and to offshore areas coming within Federal authority on a sound and up-to-date legal footing.

The new Act would correct a position that had required attention for some time. The Privy Council pointed out in 1977 that Australian passengers who crossed the Bass Strait by ship from Melbourne to Launceston were still governed by English criminal law. This was a relic of the Admiralty jurisdiction inherited from England, he said.

The Crimes at Sea Act resulted from consultations with the States in the Standing Committee of Attorneys-General. The approach adopted was a 'federal' one under which the law of an appropriate State or Territory would be applied to offences at sea coming under Australian jurisdiction.

The Attorney-General said that under the scheme arrived at with the States, it was primarily a matter for the States to legislate for offences committed on voyages between two ports in one State, or where a particular voyage began and ended at the same port in a State.

An Australian ship engaged in an interstate voyage would be subject to the law of the State where the ship was registered. The Attorney-General said this should facilitate law enforcement and would resolve in a practical way the uncertainties and doubts that had existed. He said: 'It is a practical solution that fits in with our federal system'.

The Act did affect the application of existing specific federal criminal laws. 'Specific federal offences will continue to be dealt with, as now, under the special Commonwealth legislation in question, for example the Customs Act. However, the application of State criminal laws by the Act will help law enforcement generally on matters such as drug offences', he said.

Explaining the overall scope of the Act, Senator Durack said that from 1 November it would apply to offences committed on or from Australian

ships which were on overseas, interstate or on Territory voyages. For these purposes the Northern Territory was treated as if it were a State.

The Act would also apply to offences on Australian ships in foreign ports and to offences by Australian citizens on foreign ships where they are not members of the crew.

The Attorney-General said that in certain limited cases the Act could also be supplied to offences committed on or from foreign ships. The consent of the Commonwealth Attorney-General was required and was only to be given if the consent of the foreign State was obtained. This special jurisdiction would only be resorted to where necessary to ensure that serious criminal offences did not go scot-free for lack of an applicable law.

Provision was also made in the Act for the applications of the criminal laws of an appropriate State or Territory in relation to other activities coming under Australian jurisdiction outside the territorial sea. For example, activities on petroleum rigs of the Australian Continental Shelf would, as at present, continue to be subject to the law of the adjacent State or Territory.

Provision could also be made in relation to any offences by Australian citizens or residents in adjacent areas outside the territorial sea, but it was not proposed to use this power at present.

Senator Durack said the Act contained innovative provisions which allowed for the removal of proceedings from a Court in one part of Australia to a Court in another part of Australia where that would be expedient to avoid hardship on the accused or to promote a speedy trial.

'Care has been taken to fashion a system of criminal administration that will function smoothly, fairly and expeditiously.' He said that it was a significant example of corporative federalism and acknowledged the co-operation of the States in the matter.

Townsville

26 October 1979

## Offshore Constitutional Responsibilities— Historic Shipwrecks and the proposed use of section 51 (38) of the Constitution

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*Letter by the Commonwealth Attorney-General,  
Senator the Hon. Peter Durack, Q.C.*  
(published in 54 ALJ 49)

Dear Sir,

Your September number (53 ALJ 605) drew attention to the important decisions made at the Premiers' Conference on 29 June 1979 for a practicable and workable distribution of offshore constitutional responsibilities between the Commonwealth and the States. The note gives an excellent summary of the decisions (now in the course of being implemented), and I want to comment on only two things.

The reference to the *Historic Shipwrecks Act 1976* is possibly capable of giving a misleading impression of what is proposed in that regard. To understand the proposal, it is necessary to appreciate the present position. The *Historic Shipwrecks Act* as presently drafted does not apply in relation to waters adjacent to the coast of any State until a proclamation has been made declaring that the Act so applies. In practice, proclamations have only been made where the adjacent State requested it. The result to date is that the Act applies to the waters adjacent to Western Australia, Queensland and New South Wales. The Act applies automatically to waters adjacent to the Territories. The present position is therefore that the Act is applicable to historic shipwrecks in the waters around most, but not all, of the Australian coast.

Under the offshore settlement agreed to at the Premiers' Conference the Act is to be amended so that it will expressly state that it will only be applied, or continue to be applied, to the waters adjacent to a State with the consent of that State. However, this general principal, now to be spelt out in the Act, is qualified in relation to old Dutch shipwrecks off Western Australia. These shipwrecks are the subject of a special agreement between the Commonwealth and the Netherlands. They are covered by the *Historic Shipwrecks Act* at the moment, and are to continue to remain under the Commonwealth Act until satisfactory alternative arrangements are made with Western Australia. Western Australia has already proposed discussions for such arrangements. Its State authorities of course have a fine record in taking steps to protect

these shipwrecks and the relics from them, notwithstanding the legal difficulties illustrated by *Robinson v. Western Australia Museum* (1977) 51 ALJR 806 referred to in your note.

'Reservations' are expressed in your note concerning the proposed use of section 51 (38) of the Constitution to extend State powers in the 3 mile territorial sea and to give the States powers, in addition, in respect of port-type facilities, underground mining and fisheries outside the territorial sea limits. (The proposed extra-territorial power with respect to fisheries, it should be noted, applies only to those fisheries that are, under an arrangement to which the Commonwealth and the States are parties, to be managed in accordance with the laws of the State concerned.)

It is true that section 51 (38) is an untested power. However, it appears to enable Commonwealth and State Parliaments, acting in unison, to exercise all the powers that at the establishment of the Constitution could be exercised only by the British Parliament. Sir Samuel Griffith had this to say at the 1891 Convention (*Debates*, p. 524) on the provision that now appears as section 51 (38):

We are aware, sir, that there are many things now upon which the legislatures and governments of the several Australian colonies may agree, and upon which they may desire to see a law established; but we are obliged, if we want that law made, to go to the Parliament of the United Kingdom, and ask them to be good enough to make the law for us; and when it is made we will obey it. I contend, for myself, as I have had an opportunity of saying before, that after the federal parliament is established anything which the legislatures of Australia want done in the way of legislation should be done within Australia, and the Parliament of the Commonwealth should have that power.

Yours sincerely,  
PETER DURACK

General Editor  
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