

# Constitutional Powers (Coastal Waters) Act 1979 No 138

[1979-138]



New South Wales

## Status Information

### Currency of version

Current version for 28 November 1979 to date (accessed 19 May 2024 at 6:03)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Constitutional Powers (Coastal Waters) Act 1979 No 138



New South Wales

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.

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 Name of Act

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

## 2 Request for enactment of Commonwealth Act

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.

## Schedule 1

Section 2

### 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:

## 1. Short title

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

## 2. Commencement

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

## 3. Interpretation

### (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.

## 4. Extent of territorial sea and coastal waters

### (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.

## 5. Legislative powers of States

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
  - (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. International status of territorial sea**

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.

## **7. Savings**

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.