116 *Legal briefing*

1 December 2020

Ruling the waves – regulating Australia's offshore waters

Sacha Moran
Senior General Counsel
T 02 6253 7403

Robyn Briese
Senior General Counsel
T 02 6253 7569

This briefing provides an overview of both the international and domestic law framework under which Commonwealth, state and territory laws can apply in Australia's offshore areas (the coastal sea, territorial sea, contiguous zone, exclusive economic zone (EEZ) and continental shelf) and in the high seas and the deep seabed. It also provides a checklist of issues to consider both when regulation in Australia's offshore areas or the high seas is under consideration and in the administration of such legislation.

The Commonwealth and the states have many important interests in the waters that surround Australia, also known as 'offshore' areas. A variety of laws can apply in different offshore areas, including Commonwealth, state and territory legislation, the common law, the international law of the sea, and specific treaty regimes on particular subject matters, such as the regulation of fishing.

This briefing discusses the laws that apply in Australia's offshore areas, including:

- the international law framework under which Australia asserts jurisdiction over offshore areas and the domestic implementation of this framework, including:
  - a brief outline of the development of the international law of the sea
  - a description of the core concepts and zones established by the *United Nations Convention on the Law of the Sea* (UNCLOS)[1] and how they are reflected in Australian domestic law

1 (Montego Bay, 10 December 1982) [1994] ATS 31.

In this issue

  - some examples of special international law zones and the modification of UNCLOS jurisdiction by treaty.
- the powers of the Commonwealth, the states and the Northern Territory to make laws that apply to offshore areas, including:
  - extraterritorial legislative power
  - the Offshore Constitutional Settlement (OCS)
- the principles and general legislative schemes relevant to determining whether domestic laws, including both the common law and statute, apply in an offshore area.

We also provide a checklist of issues to assist Commonwealth agencies that are developing legislation that will need to apply in Australia's offshore areas.

The relationship between the international law of the sea and domestic laws

The international law of the sea governs issues such as the sovereignty and sovereign rights of nations[2] over areas of the sea, the freedoms of ships to traverse the seas, a range of freedoms to engage in other activities in maritime areas, and maritime jurisdiction. A first attempt by nations to codify the law of the sea resulted in the adoption of several treaties under the auspices of the United Nations in 1958.[3]

In 1982 a new treaty – UNCLOS – was adopted. UNCLOS entered into force in 1994, replacing the previous UN conventions.[4] Australia has ratified UNCLOS, although some other nations have not and remain bound by the 1958 conventions and the customary international law of the sea (this includes the United States of America, for example).

At the core of UNCLOS is the recognition of:

- a coastal nation's sovereignty extending beyond its land and internal waters over 'an adjacent belt of sea', described as the territorial sea (UNCLOS, Art 2)
- the allocation of certain sovereign rights to a coastal nation in respect of a belt of sea and sea floor extending beyond the territorial sea, described as the EEZ and the continental shelf (UNCLOS, Arts 55 and 76)
- the allocation of rights to non-coastal nations to undertake certain activities in waters subject to the sovereignty or sovereign rights of a coastal nation (UNCLOS, Arts 17, 58 and 78)
- the freedom of the high seas (UNCLOS, Art 87).

This recognition forms the basis for Australia's authority to legislate in these areas as a matter of international law. As a matter of domestic law, these international rules do not directly affect the power of the Commonwealth or the states to make laws with respect to offshore areas (which is discussed further below). Nonetheless, several of the concepts developed in Commonwealth legislation have arisen from implementing international law rules. In particular, the provisions of the *Seas and Submerged Lands Act 1973* (Cth) (the SSL Act) declare that Australia's sovereignty and sovereign rights

2 To avoid confusion, in this briefing we use the word 'nation' to refer to an entity that constitutes a 'State' in the international law sense (for example, the United Kingdom), and the word 'state' to refer to the Australian states and the Northern Territory.

3 These were the Convention on the Territorial Sea and the Contiguous Zone, the *Convention on the High Seas*, the *Convention on Fishing and Conservation of the Living Resources of the High Seas*, the *Convention on the Continental Shelf* and the *Optional Protocol of Signature concerning the Compulsory Settlement of Disputes arising out of the Law of the Sea Conventions of 29 April 1958* (Geneva) (all of which share the Australian Treaties Series reference [1963] ATS 12).

4 Paragraph 1 of Art 311 of UNCLOS provides that 'This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958'.

according to the maritime zones established under UNCLOS are vested in the Crown in right of the Commonwealth. Accordingly, it is useful to refer to these international law rules in order to provide context to the SSL Act and other domestic laws.

Importantly though, even where an Australian law operates inconsistently with international law rules, it will remain valid and enforceable in Australian courts.

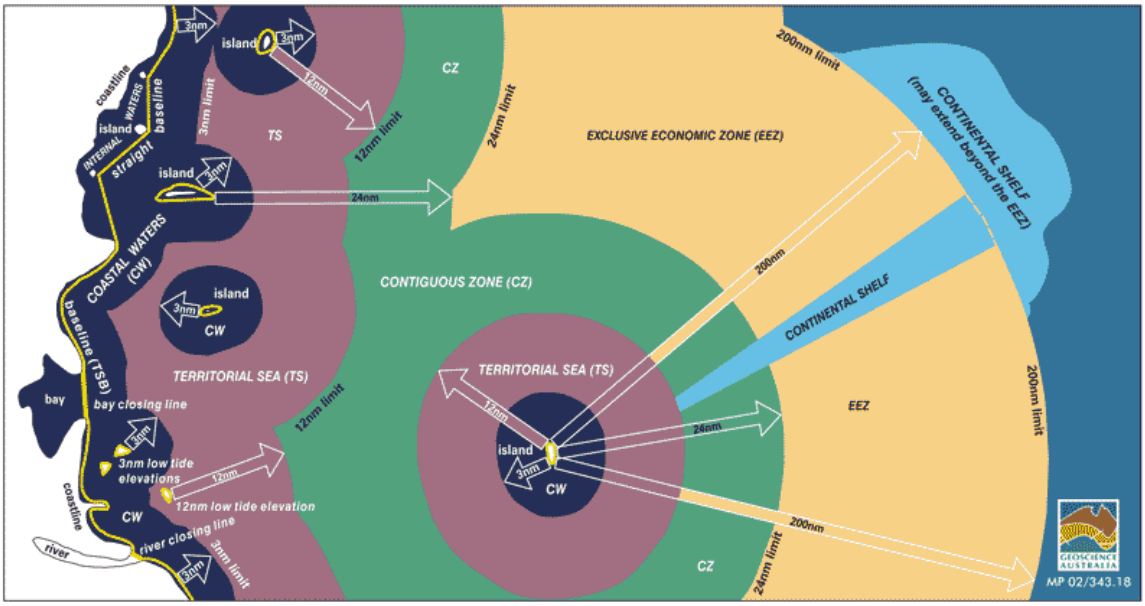
'...even where an Australian law operates inconsistently with international law rules, it will remain valid and enforceable in Australian courts.'

Maritime zones in UNCLOS

For international law purposes, UNCLOS divides the sea into a range of maritime zones, which are graphically represented in the diagram below.[5] A coastal nation's jurisdiction over conduct varies according to the zone in which the conduct takes place. The main maritime zones for which Australia is the coastal nation are:[6]

- the internal waters (UNCLOS, Pt II, Art 8), delimited by the yellow line on the diagram
- the territorial sea (UNCLOS, Pt II, Arts 3–32), being the waters seaward of the yellow line and shown in pink and blue on the diagram[7]
- the contiguous zone (UNCLOS, Pt II, Art 33), shown in green on the diagram
- the EEZ (UNCLOS, Pt V, Arts 55–75), covering the waters shown in green and yellow on the diagram
- the continental shelf (UNCLOS, Pt VI, Arts 76–85), including the seabed under the waters shown in green, yellow and blue on the diagram.

These zones are measured from the territorial sea 'baseline' (the yellow line).



Beyond these zones lie the high seas (UNCLOS, Pt VII, Arts 86–115) and the international seabed and ocean floor, which is defined in UNCLOS as 'the Area' (UNCLOS, Pt XI, Arts 133–191).

5 Image courtesy of Geoscience Australia.

6 UNCLOS makes specific provision for certain other maritime zones, such as straits used for international navigation (UNCLOS, Pt III, Arts 34–45) and the waters of archipelagic states (UNCLOS, Pt IV, Arts 46–54). The Torres Strait and Bass Strait are both regarded as straits used for international navigation, and other nearby coastal nations, such as Malaysia (in the Strait of Malacca) and Indonesia respectively, exercise jurisdiction over international straits and archipelagic waters.

7 The diagram shows 'coastal waters' in blue. Coastal waters are a domestic maritime zone identified in the OCS (discussed further below) but form part of the territorial sea at international law.

The measuring point – the territorial sea baseline

International law

Under UNCLOS, the outer limits of all the maritime zones (other than the high seas and the Area) are measured from the territorial sea 'baseline'. UNCLOS sets out several methods for determining the baseline. Under Art 14 of UNCLOS, each coastal nation is able to determine its own baseline in accordance with these methods.

Article 5 of UNCLOS provides that the 'normal baseline' is the low water line along the coast as marked on large-scale charts officially recognised by the coastal nation. Important exceptions to this general rule permit straight baselines to be drawn (UNCLOS, Arts 7, 9 and 10):

- across the mouths of certain bays and rivers
- between the mainland and adjacent islands in some circumstances.

'...the 'normal baseline' is the low water line along the coast as marked on large-scale charts officially recognised by the coastal nation.'

A baseline may be drawn for any coast in the relevant nation. For Australia, this includes the coast on the mainland, islands, and uninhabited rocks.[8]

Australian law

Under Australian law, the Governor-General is empowered under s 7(1) of the SSL Act to declare by proclamation the limits of the whole or of any part of the territorial sea. Section 7(2)(b) of the SSL Act permits the Governor-General to determine the baseline from which the breadth of the territorial sea, or of any part of the territorial sea, is to be measured.

The principal proclamation is the *Seas and Submerged Lands (Territorial Sea Baseline) Proclamation 2006*. Under that proclamation, the baseline is the low water line, except where a straight baseline may be drawn according to the principles set out in UNCLOS.

As a result, where the baseline is the low water line, its location moves with changes in the physical characteristics of the coastline and adjacent islands. For example, if a beach erodes or an island becomes submerged, the location of the baseline will shift accordingly.

Where the sea starts – internal waters

International law

Waters on the landward side of the baseline are described as 'internal waters' (UNCLOS, Art 8). UNCLOS recognises that a coastal nation has sovereignty over its internal waters (UNCLOS, Art 2, para 1).

Foreign vessels generally have no right of navigation through internal waters. An exception to this general principle is the 'right of innocent passage' over some internal waters. Under Art 8 of UNCLOS, when a straight baseline is established, which 'has the effect of enclosing as internal water areas which had not previously been considered as such', there is a right of innocent passage in those internal waters. The right of innocent passage is discussed in more detail below.

8 Rocks which cannot sustain human habitation or economic life of their own have a territorial sea and contiguous zone but do not have an EEZ or continental shelf (UNCLOS, Art 121).

Australian law

Section 10 of the SSL Act describes the internal waters of Australia as any waters of the sea on the landward side of the baseline of the territorial sea. This section declares that sovereignty vests in and is exercisable by the Crown in right of the Commonwealth in respect of:

- the internal waters, so far as they extend from time to time
- the airspace over the internal waters
- the seabed and subsoil beneath the internal waters.

However, the Commonwealth and the states have entered into an arrangement about jurisdiction over Australian waters known as the Offshore Constitutional Settlement, which is discussed further below. Relevantly, that arrangement gives the states non-exclusive jurisdiction over internal waters, over the first 3 nautical miles of the territorial sea, and in the 'adjacent area in respect of the State': see *Coastal Waters (State Powers) Act 1980* (Cth) s 5.

Sovereignty – the territorial sea

'...the sovereignty of a coastal nation extends to the territorial sea, the airspace above it and its bed and subsoil.'

International law

Article 3 of UNCLOS provides that nations can claim a territorial sea of up to 12 nautical miles measured seaward from the baseline.

Article 2 of UNCLOS provides that the sovereignty of a coastal nation extends to the territorial sea, the airspace above it and its bed and subsoil. This is subject to the right of innocent passage by foreign-flagged vessels and to the immunity of warships and other government ships.

Article 12 of UNCLOS provides that roadsteads, which are areas of water that are normally used for the loading, unloading and anchoring of ships, are part of a nation's territorial sea. Accordingly, where a roadstead would otherwise be outside a nation's territorial sea, the effect of Art 12 is to extend the territorial sea to include the roadstead.[9]

Where nations have opposite or adjacent coasts, under Art 15 of UNCLOS neither nation can extend its territorial sea beyond a line equidistant from each nation's respective territorial sea baseline unless:

- the nations agree to do otherwise, or
- the territorial seas of the 2 nations are otherwise delimited due to historical title or other special circumstances.

Limitation – right of innocent passage

Article 17 of UNCLOS ensures that ships of all nations have a right of innocent passage through the territorial seas of other nations. This means that in general, under international law, Australia cannot preclude the innocent passage of vessels through Australia's territorial sea.[10]

9 Australia has declared one roadstead in the southern waters of the Gulf of Carpentaria.

10 However, Australia may temporarily suspend innocent passage in specified areas of the territorial sea 'if such suspension is essential for the protection of its security, including weapons exercises' and notice of the suspension has been duly published (UNCLOS, Art 25(3)).

Article 18 of UNCLOS defines 'passage', and Art 19 defines 'innocent passage'. 'Passage' is essentially traversing the territorial sea without entering internal waters; calling at a port or roadstead; or proceeding to or from internal waters, a port or roadstead. It must be continuous and expeditious, with stops only as are incidental to ordinary navigation, rendered necessary by weather or made to assist persons or vessels in danger or distress.

Passage that is prejudicial to the peace, good order or security of the coastal nation, or that is not in conformity with UNCLOS and other rules of international law, is not innocent passage (Art 19(1)). An activity is 'prejudicial to the peace, good order or security of the coastal nation' where it does not have a direct bearing on passage (Art 19(2)(l)) or fits one of the other categories listed in Art 19(2) of UNCLOS, such as:

- certain military and intelligence activities, including any threat or use of force, or the exercise or practice with weapons of any kind (see Art 19(2)(a)–(d) and (f))
- loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal nation (Art 19(2)(g))
- wilful and serious pollution contrary to UNCLOS (Art 19(2)(h))
- fishing (Art 19(2)(i))
- research or survey activities (Art 19(2)(j)).

Article 25 of UNCLOS permits a coastal nation to take 'the necessary steps' in its territorial sea to prevent passage that is not innocent.

Under Art 21 of UNCLOS, even where a vessel is engaged in innocent passage through the territorial sea, Australia may adopt and enforce laws and regulations in respect of:

(a) the safety of navigation and the regulation of maritime traffic;

(b) the protection of navigational aids and facilities and other facilities or installations

(c) the protection of cables or pipelines

This is subject to the limitation that such laws and regulations cannot apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

Limitation – immunities of warships and other government ships

Article 32 of UNCLOS provides that warships and other government ships operated for non-commercial purposes have immunity subject to:

- the coastal nation being able to require such a ship to leave its territorial sea if it does not comply with the laws and regulations of the coastal nation and disregards any request for compliance therewith (Art 30), and
- the flag nation bearing international responsibility for any loss or damage caused by such noncompliance (Art 32).

Australian law

Section 6 of the SSL Act declares that sovereignty vests in and is exercisable by the Crown in right of the Commonwealth in respect of:

- the territorial sea
- the airspace over the territorial sea
- the bed and subsoil of the territorial sea.

Section 7 of the SSL Act permits the Governor-General to declare by proclamation the limits of the whole or of any part of the territorial sea. The *Seas and Submerged Lands Act 1973 – Proclamation under section 7 (9/11/1990)* asserts a 12 nautical mile territorial sea, except for parts of the Torres Strait, where the territorial sea is reduced to about 3 nautical miles. Australia's territorial sea includes a territorial sea around each of the external territories.

As noted above, the effect of the OCS is that the states have non-exclusive jurisdiction over the first 3 nautical miles of the territorial sea and in the 'adjacent area in respect of the State' (see *Coastal Waters (State Powers) Act 1980* (Cth) s 5).

As discussed further below, unless a contrary intention appears, Commonwealth legislation will generally apply in the territorial sea.

Enforcing control – the contiguous zone

'The principal purpose of the contiguous zone is to help coastal nations to enforce their control over the territorial sea'

International law

Article 33 of UNCLOS provides for a zone adjacent to a coastal nation's territorial sea known as the 'contiguous zone'. The contiguous zone can extend to a maximum of 24 nautical miles from the territorial sea baseline (UNCLOS, Art 33(2)).

The principal purpose of the contiguous zone is to help coastal nations to enforce their control over the territorial sea. A coastal nation does not have sovereignty over the contiguous zone. However, under para 1 of Art 33 of UNCLOS, within the contiguous zone a coastal nation can exercise the control necessary to:

- prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea
- punish infringements of those laws and regulations that are committed within its territory or territorial sea.

Australian law

Section 13A of the SSL Act declares that Australia has a contiguous zone. Section 13B permits the Governor-General to declare by proclamation the limits of the whole or of any part of the contiguous zone. This declaration cannot be inconsistent with either UNCLOS or any other relevant international agreement to which Australia is a party.

The current proclamation is the *Seas and Submerged Lands (Limits of Contiguous Zone) Proclamation 1999*. This proclamation declares a contiguous zone with an outer limit of 24 nautical miles seaward from the territorial sea baseline, with the exception of the area around the Torres Strait.

The *Maritime Powers Act 2013* (Cth) allows for the taking of enforcement action in accordance with UNCLOS in Australia's contiguous zone to be authorised by regulation (see s 41).

Limited economic rights and enforcement – the exclusive economic zone

International law

Part V of UNCLOS provides for the EEZ. This is an area from the outer edge of the territorial sea (UNCLOS, Art 55) and extending up to 200 nautical miles from the territorial sea baseline (UNCLOS, Art 57). The EEZ overlaps with the contiguous zone.

Under UNCLOS, a coastal nation does not have full sovereignty in its EEZ, so it cannot apply its own laws generally in the EEZ to foreign persons and vessels. Also, it cannot exercise the control that it can exercise within the contiguous zone relating to enforcement of its customs, fiscal, immigration and sanitary laws as applicable within its territory or territorial sea.

'...a coastal nation does not have full sovereignty in its EEZ, so it cannot apply its own laws generally in the EEZ to foreign persons and vessels.'

Coastal nations have limited rights in the EEZ and these are set out at Arts 56 and 58 of UNCLOS. The coastal nation has:

- the exclusive right to authorise and regulate the construction of installations, structures and artificial islands
- sovereign rights to exploit the living and non-living resources of the EEZ
- sovereign rights to regulate marine scientific research and the protection of the marine environment.

The rules of innocent passage have no relevance in the EEZ (or on the high seas).

It is also important to note that a coastal nation's right to regulate in the EEZ (prescriptive jurisdiction) and its right to take enforcement action against foreign vessels that contravene such regulations (enforcement jurisdiction) are not always coextensive.

For example, while the coastal nation can take enforcement measures, including boarding, inspection, arrest and judicial proceedings to ensure compliance with laws relating to the exploration, exploitation, conservation and management of living resources (UNCLOS Art 73), its right to take enforcement action in respect of a suspected breach in the EEZ of the laws and regulations adopted in accordance with UNCLOS for the prevention, reduction and control of pollution from vessels is limited while the vessel is at sea, unless there are clear grounds for believing that a violation has occurred and that violation has resulted in a substantial discharge causing or threatening significant pollution of the marine environment (UNCLOS, Art 220).[11]

In addition, Section 7 of Pt XII of UNCLOS sets out a range of procedural requirements and safeguards that must be adhered to when undertaking enforcement action for violations of regulations to protect and preserve the marine environment. Generally speaking, the primary responsibility for enforcement of a breach of such laws lies with the nation to which the vessel suspected of a violation is flagged (UNCLOS, Art 217).

Australian law

Section 10A of the SSL Act vests the rights and jurisdiction of Australia concerning its EEZ in the Crown in right of the Commonwealth.

Section 10B permits the Governor-General to declare by proclamation the limits of the whole or of any part of Australia's EEZ. The declaration cannot be inconsistent with Arts 55 or 57 of UNCLOS or with any relevant international agreement to which Australia is a party.

11 However, if the vessel enters the coastal nation's port or an offshore terminal, the coastal nation can exercise full enforcement jurisdiction.

The current proclamation is the *Seas and Submerged Lands Act 1973 – Proclamation under section 10B (26/07/1994)*. The effect of that proclamation is to establish an EEZ that is generally 200 nautical miles from the territorial sea baseline of both the Australian mainland and the external territories. However, where Australia's proximity to another nation (for example, Papua New Guinea (PNG)) requires a reduced EEZ, the extent of the EEZ is fixed by reference to specified geographical coordinates.

The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) provides a good example of how international law limitations and procedural requirements are given effect to in domestic legislation. The Act includes a range of pollution offences related to the discharge of oil, noxious substances, sewage and so on by ships. Part IV of the Act sets out powers to require information and inspect and detain vessels in respect of suspected offences which are limited in respect of foreign vessels where the suspected offence occurred in the EEZ consistently with the requirements of UNCLOS. Part IV also sets out procedural requirements, such as notification to the flag nation of measures taken in relation to foreign ships, as required by UNCLOS (see s 27B).

Extension of some economic rights – the continental shelf

International law

A continental shelf is a geological feature comprising the 'natural prolongation of [the] land territory' of the coastal nation beyond its territorial sea (UNCLOS, Art 76). It consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor, its oceanic ridges or its subsoil, which are instead part of the international seabed (the Area).

Article 76(1) of UNCLOS accords a coastal nation a 200 nautical mile continental shelf, whether or not it actually possesses a geological continental shelf.

Where a coastal nation has a geological continental shelf that extends more than 200 nautical miles from the territorial sea baseline, under UNCLOS it can claim a continental shelf that is up to 350 nautical miles from the baseline by submitting information on the areas of continental shelf that extend beyond 200 nautical miles to the UN Commission on the Limits of the Continental Shelf (UNCLOS, Art 76, paras 4–7).[12] The Commission examines this information and then makes recommendations on establishing the limits of the continental shelf. The limits of the continental shelf established by the coastal nation based on the Commission's recommendations are final and binding.

A coastal nation has exclusive rights over its continental shelf for the purposes of:

- exploring it and exploiting its natural resources (UNCLOS, Art 77)
- authorising and regulating the construction of installations, structures and artificial islands (UNCLOS, Art 80)
- authorising and regulating drilling on the continental shelf (UNCLOS, Art 81).

12 Note that, under para 5 of Art 75 of UNCLOS, the continental shelf can extend beyond 350 nautical miles in certain circumstances.

Australian law

Section 11 of the SSL Act vests in the Crown in right of the Commonwealth the sovereign rights of Australia over the continental shelf of Australia for the purposes of exploring it and exploiting its natural resources.

Section 12 permits the Governor-General to declare by proclamation the limits of the whole of or of any part of Australia's continental shelf. The declaration cannot be inconsistent with Art 76 of UNCLOS or any relevant international agreement to which Australia is a party.

In 2004 Australia submitted a claim to the UN Commission on the Limits of the Continental Shelf for an extended continental shelf. The Commission approved the claim in 2008. Subsequently, the outer limits of most of Australia's continental shelf were proclaimed in the *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012*. The effect of that proclamation is to establish a continental shelf that is generally 200 nautical miles from the territorial sea baseline of both the Australian mainland and the external territories. Where the continental shelf is less than 200 nautical miles (due to proximity to another nation) or more than 200 nautical miles (because of Australia's extended continental shelf), the extent of the continental shelf is fixed by reference to specified geographical coordinates.

An example of Australian law the application of which extends to the continental shelf is the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth), which regulates exploration for and the recovery of petroleum, exploration for and use of greenhouse gas storage formations, and the construction and operation of infrastructure facilities for the above activities in offshore areas.

Beyond the limits of national jurisdiction – the high seas and the Area

International law

'No nation has sovereignty over the high seas...'

The high seas consist of all parts of the sea that are not included in the EEZ, the territorial sea or the internal waters of a nation or in the archipelagic waters of an archipelagic nation (UNCLOS, Art 86). In the high seas, subject to the proviso that the high seas be used for peaceful purposes and the requirement to have due regard to the interests of other nations, there is freedom of navigation and overflight and, subject to conditions specified in UNCLOS, freedom to lay submarine cables and pipelines, to construct artificial islands and other installations, of fishing and of scientific research for all nations (UNCLOS, Arts 87 and 88).

No nation has sovereignty over the high seas (UNCLOS, Art 89). This means that, although Australia has full prescriptive jurisdiction over Australian nationals and vessels wherever their location and may exercise jurisdiction over ships flying its flag on the high seas (UNCLOS, Art 94), it generally could not apply its laws to foreign vessels on the high seas or foreign persons not on an Australian vessel. The jurisdiction exercisable over Australian vessels and nationals is known as nationality jurisdiction and can also be exercised over Australian vessels and nationals when they are located in a foreign nation or a foreign nation's maritime zones. It is important to note, however, that, while Australia has full prescriptive jurisdiction (the jurisdiction to make laws) over Australian nationals and vessels wherever their location, it will generally not have enforcement jurisdiction where such nationals or vessels are located in an area under another nation's jurisdiction, unless that nation has consented to the exercise of such enforcement jurisdiction.

There are exceptions to the inability to exercise jurisdiction over foreign vessels in the high seas. These are:

- *The 'right of visit'* (UNCLOS, Art 110): A warship is permitted to board a ship in some circumstances, including if there are reasonable grounds for suspecting that the ship is engaged in piracy, the slave trade or unauthorised broadcasting; or if the ship is without nationality.
- *The 'right of hot pursuit'* (UNCLOS, Art 111): A coastal nation may exercise this right when it has good reason to believe that the ship it is pursuing has violated its laws and regulations. The pursuit must commence when the foreign ship is within a maritime zone within the pursuing nation's jurisdiction and may only be continued so long as the pursuit is not interrupted. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own nation or of another nation.[13]

The seabed underneath the high seas that is not part of a continental shelf forms the Area. The Area and its resources are the common heritage of mankind (UNCLOS, Art 136), and no nation has sovereignty over the Area (UNCLOS, Art 137(1)). Certain activities in the Area – in particular, deep sea mining activities – are to be organised and controlled by the International Seabed Authority (UNCLOS, Arts 156–157), subject to review 15 years after the year in which the earliest approved commercial production commences (UNCLOS, Art 155).[14]

'The seabed underneath the high seas that is not part of a continental shelf forms the Area.'

Australian law

An example of a Commonwealth law that applies to Australian-flagged vessels on the high seas is the *Navigation Act 2012* (Cth). The Navigation Act and other Australian laws can only regulate foreign-flagged vessels when they are in engaged in an activity over which Australia has sovereign rights in the EEZ or continental shelf, in Australian waters or in port.

Australia exercised the right of hot pursuit in 2003, when a Uruguayan-flagged ship, the *Viarsa* – accused of illegally catching 94 tonnes of Patagonian toothfish – was pursued by an Australian fisheries patrol ship from the Australian EEZ around Heard Island in the Southern Ocean. The vessel was pursued over 7,000 kilometres until it was arrested south-west of South Africa. Australia undertook the pursuit with the cooperation of the UK and South African governments.

Special international law zones

Nations can agree to modify or establish new international law obligations with each other or to resolve boundary disputes. Australia is a party to several agreements that establish specific treaty zones in Australia's offshore area, including:

- the Torres Strait Protected Zone
- the Greater Sunrise Special Regime Area.

'Nations can agree to modify or establish new international law obligations with each other or to resolve boundary disputes.'

13 Australia has established agreements on this issue – for example, the *Agreement on the Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic* (Australia–France, signed 8 January 2007, [2011] ATS 1 (entered into force 7 January 2011).

14 Commercial mining of the deep sea bed is not yet occurring. However, the Authority has issued 30 exploration licences, 25 of which are in the Pacific Ocean – 18 of those 25 licences are in the Clarion Clipperton Zone, which stretches from Kiribati to Mexico. One Australian company, Bluewater Metals, and one Canadian company based in Australia, Nautilus Minerals, are currently involved in deep sea mining exploration.

The Torres Strait Protected Zone

Article 10 of the Torres Strait Treaty[15] establishes a 'Protected Zone' to:

- acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants of the Torres Strait and of the adjacent coastal areas of PNG, including their traditional fishing and free movement
- protect and preserve the marine environment and indigenous fauna and flora in, and in the vicinity of, the Protected Zone.

Article 3 of the Torres Strait Treaty delineates the boundaries of the territorial sea between Australia and PNG in the region of the Torres Strait. However, in the Protected Zone which spans both parties' territorial seas, the traditional inhabitants of both Australia and PNG are permitted to move freely and undertake lawful traditional activities, including traditional fishing (Art 11). The parties also undertake other obligations such as a moratorium of mining and drilling of the seabed (Art 15), and a commitment to setting and sharing the allowable catch of the protected zone commercial fisheries (Art 23).

The Torres Strait Treaty is implemented in Australia through various pieces of legislation, including the *Torres Strait Fisheries Act 1984* (Cth).

The Greater Sunrise Special Regime Area

The maritime boundary between Australia and Timor-Leste was delimited in 2018 when both nations entered into the Timor Sea Treaty.[16] The Timor Sea Treaty replaced an earlier *Timor Sea Treaty between the Government of East Timor and the Government of Australia*,[17] which allowed for the development of the petroleum resources of the Timor Gap pending any final delimitation of the Timor Sea.

Among other things, Art 7 and Annexure B of the Timor Sea Treaty establish the Greater Sunrise Special Regime for the joint development, exploitation and management of petroleum in the Greater Sunrise Special Regime Area in the Timor Sea.

The Timor Sea Treaty is implemented in Australia through various pieces of legislation – in particular, the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth).

Other modifications of UNCLOS jurisdiction by treaty

Australia is also a party to a number of treaties, particularly regulating fishing but also other areas, which extend to some degree the rights it has under UNCLOS to regulate and/or take enforcement action against vessels flagged to other nations. Two examples of such regimes are:

- the 1995 *United Nations Agreement for the Implementation of the Provisions of UNCLOS of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*[18] (UN Fish Stocks Agreement), which allows parties to take specified enforcement action against another party's vessel on the high seas if the vessel has contravened certain regional fisheries management measures.

---

15 *Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as the Torres Strait, and Related Matters* (Sydney, 18 December 1978) [1985] ATS 4; entered into force 15 February 1985.

16 *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (New York, 6 March 2018) [2019] ATS 16.

17 (Dili, 20 May 2002) [2003] ATS 13.

18 Opened for signature 4 December 1995 (entered into force 21 December 2001).

- the Radio Regulations made under the *Convention of the International Telecommunication Union*,[19] which expand Australia's jurisdiction to regulate the use of certain radiocommunications services by foreign vessels beyond the territorial sea.

The boundaries of the states under domestic law

In the case of a federation, such as Australia, the international agreements discussed above do not resolve the question of sovereignty over offshore lands and waters as between the bodies politic that make up the federation. This is a question of domestic law.

The primary means of determining which waters form part of the territory of an Australian state is to look at the instruments that constituted the relevant colony and that determined its extent at the time of federation.[20]

'The general position ... is that the territory of the states ends at the low water mark'

The general position, decided by the *High Court in New South Wales v The Commonwealth*[21] (the *Seas and Submerged Lands Case*), is that the territory of the states ends at the low water mark.[22] The territory of a state also includes waters within any bay, gulf, estuary, river, creek, inlet, port or harbour that was, on 1 January 1901, within the limits of a state and remains within the limits of the state.[23]

What power do the Commonwealth and the states have to make laws with respect to offshore areas?

The Commonwealth has the power to make laws that apply extraterritorially

Section 51(xxix) of the Constitution allows the Commonwealth Parliament to make laws with respect to 'external affairs'. The High Court has stated that this provision supports laws with respect to 'places, persons, matters or things physically external to Australia' – that is, outside the boundaries of the states.[24] Other heads of power in s 51 may also provide constitutional support for the application of Australian laws extraterritorially (for example, the trade and commerce power in s 51(i) and the fisheries power in s 51(x)).

'The Constitution thus allows Commonwealth laws to apply extraterritorially, including laws applying to offshore areas.'

The Constitution thus allows Commonwealth laws to apply extraterritorially, including laws applying to offshore areas.

This position is not affected by the international law rules that govern the ways in which nations can apply their laws abroad. Of course, Australia could potentially breach these international law rules by making or seeking to enforce certain kinds of exterritorial

19 Opened for signature 9 December 1932, [1934] ATS 10 (entered into force 1 January 1934).

20 *Raptis v South Australia* 1975) 138 CLR 346 at 352 (Barwick CJ), 359–60 (Gibbs J), 366–72 (Stephen J) and 390–91 (Jacobs J). In the case of the Northern Territory, it would be necessary to consider the instruments that constituted South Australia. At the time of federation, the Northern Territory was part of South Australia (it had been annexed to the colony of South Australia in 1863). It was ceded to the Commonwealth in 1911 see Northern Territory Surrender Act 1908 (SA); *Northern Territory Acceptance Act 1910* (Cth).

21 (1975) 135 CLR 337.

22 *New South Wales v The Commonwealth* (1975) 135 CLR 337 at 371 (Barwick CJ), 378 (McTiernan J), 461, 468, 470 (Mason J), 491 (Jacobs J); see also 415 (Gibbs J).

23 The *Seas and Submerged Lands Case* upheld the validity of the *Seas and Submerged Lands Act 1973* (Cth). Section 14 of this Act ensures that, under Australian law, the Crown in right of a particular state retains sovereignty over these waters. This sovereignty extends to the airspace over, as well as the seabed or subsoil beneath, those waters.

24 *XYZ v The Commonwealth* (2006) 227 CLR 532 at 538–39 (Gleeson CJ) and 546–51 (Gummow, Hayne and Crennan JJ); and *Polyukhovich v The Commonwealth* (1991) 172 CLR 501 (*Polyukhovich*) at 638 (Dawson J). In *Polyukhovich*, Brennan and Toohey JJ qualified this approach by requiring some further connection between Australia and the matter that is geographically outside Australia. Brennan J said (at 551) that there must be 'some nexus, not necessarily substantial' between Australia and the relevant matter that the law purports to affect. Toohey J said (at 654) that the relevant matter must be one that 'the Parliament recognises as touching or concerning Australia in some way'.

laws. However, even where such a breach occurs, the law would remain constitutionally valid and enforceable in an Australian court.

The states may make laws with respect to their 'coastal waters'

Under their respective constitutions, the states are empowered to pass laws that have extraterritorial effect so long as they are sufficiently related to the peace, order and good government of the state.[25] Following the decision in the *Seas and Submerged Lands Case*, which effectively held that the states' territories ended at the low water mark, it became more difficult for states to make laws which extended beyond the low water mark because it was necessary to show a relevant connection with the state.[26]

'...the states are empowered to pass laws that have extraterritorial effect so long as they are sufficiently related to the peace, order and good government of the state'

This issue (among others) was at least partially resolved through the OCS – an agreement between the Commonwealth and the states that was concluded at a Premiers Conference on 29 June 1979.

The OCS was implemented through Commonwealth and state legislation. One of the Commonwealth statutes enacted in this context was the *Coastal Waters (State Powers) Act 1980* (the State Powers Act).[27] Section 5(a) of the State Powers Act extends the 'legislative powers exercisable from time to time under the constitution of each State' to the making of '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'.

Subsections 5(b) and (c) extend the states' powers to make certain kinds of laws (for example, those relating to mining, shipping facilities and fisheries under an arrangement with the Commonwealth) beyond their 'coastal waters' into their respective 'adjacent areas', which are essentially those waters offshore from the respective state coastline out to the edge of the continental shelf.[28]

The expression 'coastal waters of the State' is defined (in ss 3 and 4(2)) to include:

- the part or parts of the territorial sea of Australia that is or are within the adjacent area of the state, but only to the extent that they are no greater than 3 nautical miles in breadth
- any sea that is on the landward side of any part of the territorial sea of Australia and is within the adjacent area of the state but is not within the limits of the state (that is, waters recognised at international law as 'internal waters').

The basic position, therefore, is that the states have legislative power in relation to all waters landward of a line that is 3 nautical miles seaward of the territorial sea baseline (that is, the pre-UNCLOS territorial sea and any waters landward of it).

The operation of such state legislation is, of course, subject to any inconsistent Commonwealth legislation by virtue of s 109 of the Constitution (see s 7(c) of the State Powers Act).

---

25 *Pearce v Florenca* (1976) 135 CLR 507 at 517–18 (Gibbs J); *Union Steamship Co of Australia Pty Ltd v King* (1988) 166 CLR 1 at 14 (the Court); and *Port MacDonnell Professional Fishermen's Association Inc v South Australia* (1989) CLR 340 at 372 (the Court). We note also that s 3 of the *Statute of Westminster, adopted by the Statute of Westminster Adoption Act 1942*, provided for the power of a Dominion Parliament to legislate extraterritorially. Section 2 of the *Australia Act 1986* also provided for the state parliaments to make laws having extraterritorial effect.

26 In *Robinson v Western Australian Museum* (1977) 138 CLR 283, for example, some judges found that Western Australian legislation purporting to vest in the Western Australian Maritime Museum all offshore historic shipwrecks found off the coast of Western Australia was invalid, as there was no sufficient nexus.

27 The State Powers Act was enacted as a result of a request from the states under s 51(xxxviii) of the Constitution. The *Coastal Waters (Northern Territory Powers Act) 1980* contains equivalent provisions with respect to the Northern Territory.

28 The 'adjacent area in respect of the State' is defined (in s 3 of the State Powers Act) as the area the boundary of which was described under the heading referring to that state in Sch 2 to the (now repealed) *Petroleum (Submerged Lands) Act 1967* as in force immediately before the commencement of the State Powers Act (that is, 1 January 1982).

When does a domestic law apply in an offshore area?

Common law

Following the OCS, the states legislated to give effect to their laws, except for their criminal laws, in their coastal waters. In doing so, each jurisdiction expressly applied the non-criminal aspects of the common law to its coastal waters.[29] It follows that the non-criminal aspects of the Australian common law apply in waters that are up to 3 nautical miles from the territorial sea baseline.[30]

The states enacted separate legislation to apply their criminal laws in the offshore area pursuant to the crimes at sea federal cooperative scheme. Under this scheme, the criminal law aspects of the common law apply in the 'inner adjacent area' of the state[31] by force of state law and in the 'outer adjacent area' of the state by force of Commonwealth law.[32] The 'inner adjacent area' is the area adjacent to the state for a distance of 12 nautical miles from the baseline. The 'outer adjacent area' is the area beyond 12 nautical miles from the baseline up to a distance of 200 nautical miles from the baseline or the outer limit of the continental shelf (whichever is the greater distance).[33]

The waters seaward of 'coastal waters'

There is some uncertainty about whether the Australian common law (other than criminal law) applies, in the absence of legislation, beyond 3 nautical miles from the territorial sea baseline, and hence in the waters that are seaward of 'coastal waters' as defined in the State Powers Act (as there is presently no legislation, state or Commonwealth, that purports to apply the common law generally in these waters).

The traditional view, which was expressed by the High Court in the *Seas and Submerged Lands Case*, was that, unless legislation provided otherwise, the common law did not apply beyond the low water mark.[34]

In *Commonwealth v Yarmirr*[35] (*Yarmirr*), the Commonwealth sought to rely on that view to argue that the common law could not recognise any native title rights over land and waters seaward of the low water mark (in this case, the sea and seabed in the Croker Island region of the Northern Territory).

However, the High Court held:

> If the contention that the common law does not 'extend', 'apply', or 'operate' beyond low-water mark is intended to mean, or imply, that, absent statute, no rights deriving from or relating to events occurring or places lying beyond low-water mark can be enforced in Australian courts, it is altogether too large a proposition and it is wrong. The territorial sea is not and never has been a lawless province. ...

---

29 See *Off-shore Waters (Application of Laws) Act 1976* (SA), s 3, noting that the definition of 'law of the State' in s 2 includes unwritten laws; *Application of Laws (Coastal Sea) Act 1980* (NSW), s 4; *Off-shore (Application of Laws) Act 1982* (WA), s 3, noting that the definition of 'law of the State' in s 2 includes unwritten laws; *Coastal and Other Waters (Application of State Laws Act) 1982* (Tas), s 3, noting that the definition of 'law of Tasmania' in s 2 includes unwritten laws; *Offshore Waters (Application of Territory Laws) Act 1985* (NT), s 3, noting that the definition of 'law of the Territory' in s 2 includes unwritten laws; *Acts Interpretation Act 1954* (Qld), s 47A, noting that the definition of 'laws of the State' in s 47 includes unwritten laws; *Interpretation of Legislation Act 1984* (Vic), s 57(1), which applies both the written and unwritten provisions of the laws in force in Victoria.

30 See the definition of 'coastal waters' discussed above.

31 Note: 'State' is defined to include the Northern Territory: *Crimes at Sea Act 2000* (Cth), Sch 1, cl 1.

32 See *Crimes at Sea Act 2000* (Cth), Sch 1, cl 2, noting that the definition of 'substantive criminal law' in Sch 1, cl 1, includes 'unwritten law'. See also state and territory mirror legislation.

33 *See Crimes at Sea Act 2000* (Cth), Preamble; Sch 1, cl 14. See also state and territory mirror legislation.

34 *New South Wales v The Commonwealth* (1975) 135 CLR 337 (*Seas and Submerged Lands Case*) at 337, 367–68 (Barwick CJ), 378 (McTiernan J), 462 (Mason J) and 485–6 (Jacobs J). But cf the judgments of Gibbs and Stephen JJ at 396, 400 (Gibbs J) and 419, 427 (Stephen J).

35 (2001) 208 CLR 1.

> Even the more limited proposition, that so much of the unwritten law as was administered in the common law courts does not extend beyond low-water mark, may well be too broad … the fact (if it be the fact) that events occurred outside Australia does not of itself, and without more, bar relief … the common law does not have only a limited territorial operation.[36]

Therefore, the current position appears to be that the common law may apply beyond the low water mark in the absence of legislation.[37] However, it was unnecessary for the High Court in *Yarmirr* to determine the circumstances in which the common law will, in fact, apply beyond the low water mark. Accordingly, the most that can be said at this stage is that it can no longer be assumed that the common law does not apply beyond a state's coastal waters.[38]

'…it can no longer be assumed that the common law does not apply beyond a state's coastal waters.'

Statute

There is a common law presumption that legislation does not have extraterritorial effect.[39] Further, the interpretation Acts of a number of jurisdictions provide that references in legislation to 'localities, jurisdictions and other matters and things' are to be taken to refer to those matters in and of the enacting jurisdiction.[40]

Accordingly, Commonwealth and state laws are presumed not to apply extraterritorially. In other words, the application of these laws is presumed to end at the low water mark. However, the presumption may be rebutted by express words or necessary implication.

'…Commonwealth and state laws are presumed not to apply extraterritorially… However, the presumption may be rebutted by express words or necessary implication'

General rebuttals in interpretation Acts and offshore waters Acts

Subject to a contrary intention, s 15B of the *Acts Interpretation Act 1901* (Cth) applies to all Commonwealth laws. Section 15B provides:

- Commonwealth legislation is taken to have effect in and in relation to the 'coastal sea' of Australia as if that coastal sea were part of Australia (s 15B(1))
- a reference to Australia or to the Commonwealth in Commonwealth legislation is taken to include a reference to the 'coastal sea' of Australia (s 15B(2))
- Commonwealth legislation in force in an external territory is taken to have effect in and in relation to the 'coastal sea' of the territory as if the coastal sea were part of the territory (s 15B(3))[41]
- a reference to all or any of the external territories is taken to include the 'coastal sea' of any territory to which the reference relates (s 15B(3A)).

---

36 *Commonwealth v Yarmirr* (2001) 208 CLR 1 (Yarmirr) at 45–6 (Gleeson CJ, Gaudron, Gummow and Hayne JJ).

37 The exception to this is that common law criminal laws are not capable of operating beyond the low water mark in the absence of legislation. The High Court's view in the *Seas and Submerged Lands Case* that the common law did not apply beyond the low water mark was based upon the decision in *R v Keyn* (1876) 3 Ex D 63 (*Keyn*). In *Yarmirr*, the Court rejected the broad reading of Keyn by the majority in the *Seas and Submerged Lands Case*, instead holding that the decision in *Keyn* was about the reach of the criminal law.

38 See commentary in Damien J Cremean, 'The common law of the realm: *Commonwealth of Australia v Yarmirr*' (2002) 2 Oxford University Commonwealth Law Journal 257.

39 *Jumbunna Coal Mine NL v Victorian Coal Miners' Assoc* (1908) 6 CLR 309 at 363.

40 See *Acts Interpretation Act 1901* (Cth), s 21; *Interpretation of Legislation Act 1984* (Vic), s 48; *Interpretation Act 1987* (NSW), s 12; *Acts Interpretation Act 1954* (Qld), s 35; *Interpretation Act 1978* (NT), s 38; *Acts Interpretation Act 1931* (Tas), s 26.

41 Whether and how Commonwealth laws apply in the external territories can be a complex issue: see *Norfolk Island Act 1979* (Cth), s 18; *Heard and McDonald Islands Act 1953* (Cth), s 5; *Australian Antarctic Territory Act 1954* (Cth), ss 6, 8 and 9; *Coral Sea Islands Act 1969* (Cth), s 6; *Christmas Island Act 1958* (Cth), s 7; *Cocos (Keeling) Islands Act 1955* (Cth), ss 7A, 8A and 8E; *Ashmore and Cartier Islands Acceptance Act 1933* (Cth), ss 6 and 8.

The term 'coastal sea' covers:

- the territorial sea
- the sea on the landward side of the territorial sea that is not within the limits of a state (or external territory)
- the airspace over and the seabed and subsoil beneath that sea.

Accordingly, subject to a contrary intention, all Commonwealth laws apply in the territorial sea of Australia and, to the extent that the law applies or refers to an external territory, in the territorial sea of the external territory in question and to the airspace over it and the seabed and subsoil below it.

As for the states, each jurisdiction has enacted legislation providing that its laws generally apply to the coastal waters of the state, either as part of their interpretation Acts or through separate primary legislation.[42] The scope of these provisions do differ, though, in relation to the application of laws in related areas, such as whether this includes the airspace above the coastal waters.

Specific legislation may rebut the presumption against extraterritoriality

Whether a law is intended to operate extraterritorially is a matter of statutory interpretation. The Commonwealth and the states have all enacted legislation rebutting the presumption by expressly or impliedly extending offshore the operation of particular laws in relation to particular subject matters or generally.

In the Commonwealth sphere, an example of a total rebuttal of the presumption is s 6 of the *Navigation Act 2012*.[43] An example of a partial rebuttal of the presumption are the provisions of the *Criminal Code* that provide that the Commonwealth's criminal jurisdiction can extend where specified to do so to conduct constituting an offence that occurs wholly outside Australia – in particular, ss 15.1–15.4.

Summary checklist for legislating offshore

When developing regulatory regimes that will have effect in offshore areas, the following are issues which should be considered:

- To whom and what will the law apply?
  - If the law is limited in its application to Australian nationals and Australian vessels, Australia's prescriptive jurisdiction to enact the law will not be limited. However, enforcement action will generally not be possible where the Australian national or vessel is located in an area under the jurisdiction of another nation.
  - If the law is to apply generally, to both Australian and foreign nationals and to Australian and foreign vessels, the scope of Australia's prescriptive jurisdiction will be affected by the offshore area in which the law is intended to apply.
- In what offshore area will the law apply?
  - If only in coastal waters, would it be more appropriate for the states and the Northern Territory to regulate?
  - If including coastal waters, are there any interactions with state and Northern Territory law that need to be managed?

42 *Interpretation Act 1987* (NSW) Pt 10; *Interpretation of Legislation Act 1984* (Vic) s 57; *Acts Interpretation Act 1954* (Qld) Pt 12; *Off-shore Waters (Application of Laws) Act 1976* (SA) s 3; *Off-shore (Application of Laws) Act 1982* (WA) s 3; *Off-shore Waters (Application of Territory Laws) Act 1985* (NT) s 3; *Coastal and Other Waters (Application of State Laws) Act 1982* (Tas) s 3.

43 Section 6 provides: 'This Act applies both within and outside Australia.'.

  - If it is to apply in the territorial sea, is the right of innocent passage being respected?
  - If it includes the EEZ and/or the continental shelf, does Australia have prescriptive jurisdiction to regulate? In other words, is the law one that relates to the management of the living or non-living natural resources of the EEZ and/or continental shelf, to the regulation of installations/structures/artificial islands or drilling, or to the regulation of marine scientific research and the protection of the marine environment?
- In all offshore areas:
  - Will the law apply in a special international law zone and, if so, does this need to be managed to ensure consistency with the treaties establishing such zones?
  - Will the law apply in an area or in relation to a subject matter covered by another treaty regime which modifies the standard UNCLOS jurisdiction?
- Are the proposed enforcement powers consistent with the various international law limitations on the types of enforcement that can be undertaken, and where enforcement can be undertaken, for breaches of laws in the territorial sea, in the EEZ and on the continental shelf?
- Is there a need to consider the interaction of any proposed offences in the proposed law with the cooperative scheme under the *Crimes at Sea Act 2000* (Cth) and related state and territory laws?
- Where the law is intended to apply beyond the territorial sea, has the geographical scope of its application been expressly set out in the legislation in order to rebut the presumption against extraterritoriality?

Many of the issues above will also be relevant to the administration of existing laws applying in offshore areas.

This Legal briefing was prepared with the assistance of Robert Orr, Special Counsel and Yvonne Whittaker-Rush, Counsel.

AGS contacts

AGS has a large national team of lawyers with expertise in advising and assisting with all matters related to regulating Australia's offshore waters. For further information please contact any of our lawyers listed below.

Sacha Moran CANBERRA
Senior General Counsel
T 02 6253 7403
sacha.moran@ags.gov.au

Helen Chisholm CANBERRA
Senior General Counsel
T 02 6253 7588
helen.chisholm@ags.gov.au

Michael Bussing CANBERRA
Counsel
T 02 6253 7473
michael.bussing@ags.gov.au

Robyn Briese CANBERRA
Senior General Counsel
T 02 6253 7569
robyn.briese@ags.gov.au

Thea Lau CANBERRA
Counsel
T 02 6253 7334
thea.lau@ags.gov.au

Offices

Canberra	*4 National Circuit, Barton ACT 2600*
Sydney	*Level 42, 19 Martin Place, Sydney NSW 2000*
Melbourne	*Level 34, 600 Bourke Street, Melbourne VIC 3000*
Brisbane	*Level 11, 145 Ann Street, Brisbane QLD 4000*
Perth	*Level 21, 2 The Esplanade, Perth WA 6000*
Adelaide	*Level 5, 101 Pirie Street, Adelaide SA 5000*
Hobart	*Level 8, 188 Collins Street, Hobart TAS 7000*
Darwin	*Level 10, TIO Centre, 24 Mitchell Street, Darwin NT 0800*

www.ags.gov.au

General enquiries and subscriptions:
T 02 6253 7246
E ags@ags.gov.au

ISSN 1443-9549 (Print)
ISSN 2204-6550 (Online)

Client Services 213–2020 11/20