Short Digest of Bill

Purpose

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

Background

The extent of Commonwealth and State powers in the off-shore area was uncertain for many years. Following the passage of the Seas and Submerged Lands Act 1973 and the subsequent decision of the High Court in 1975 upholding its validity (New South Wales v Commonwealth 135 C.L.R. 337) it was established that the sovereignty and sovereign rights in the territorial sea and continental shelf areas respectively, conferred under international Conventions, were exercisable by the Commonwealth and not by the States. This led to challenges to the validity of State legislation operating in the coastal area; although it was decided that State laws could operate extra-territorially, in the off-shore area, if they displayed a necessary connection with the State, any law which purported to claim sovereignty was invalid because of inconsistency with the Commonwealth Act.

A series of Premier's Conferences in 1977, 1978 and 1979 agreed on a complete reorganization of constitutional arrangements in the offshore area. This Bill is one of thirteen giving effect to various aspects of the new arrangements.

Under the new arrangements the States (and the Northern Territory) are to be given legislative powers in relation to the three mile territorial sea and sea-bed as if it were within State limits. The States are also to be given limited legislative powers beyond the territorial sea. To effect this conferral of legislative powers on the States, each State has legislated requesting the Commonwealth Parliament to enact a Act substantially in accordance with an Act set out in a Schedule to the State Act. This Bill is in the terms of the proposed Act. The
power relied on in the preamble to the Bill is section 51 (xxxviii) of the Constitution.

Another important part of the new arrangements is the conferral of rights and title in the sea-bed of the three mile territorial sea and rights in the space above it as if the sea-bed were within the limits of the State. This is conferred, for the States, by the Coastal Waters (State Title) Bill 1980. This Bill is not enacted pursuant to a request from the States under section 51 (xxxviii) but by virtue of the external affairs power and Commonwealth sovereignty. By vesting title in the States it is intended that any subsequent Commonwealth law abolishing or diminishing the title would constitute an acquisition of property which under section 51 (xxxi) of the Constitution could only be made on just terms (See Second Reading Speech of the Victorian Attorney-General on the Victorian request Bill as set out in the information kit circulated with the Bill).

Other aspects involve the amendment of the Petroleum (Submerged Lands) Act 1967 so that it ceases to apply to the three mile territorial sea, with provision for joint administration in the continental shelf area; and amendments to Commonwealth Fisheries and Historic Shipwrecks legislation.

Main Provisions

Clause 5 provides that State legislative powers extend to making such laws as could be made if the coastal waters of the State, including the sea-bed and sub-soil, and the airspace above, were within the limits of the State. Coastal waters means the territorial sea adjacent to the State (limited to three miles) and any sea on the landward side that is not within the limits of the State.

The legislative powers also extend to making laws in the continental shelf area for subterranean mining from land within the limits of the State and for ports, harbours and other coastal works; and to laws for fisheries in Australian waters beyond the three mile territorial sea where under an agreement with the Commonwealth the fisheries are to be managed under State laws.

Clause 6 preserves the international status of the territorial sea.

Clause 7 provides that the limits of the States are not extended; that there is no derogation from any power to make laws having extra-territorial effect; and that State
laws will not operate to the extent of any inconsistency with Commonwealth laws or the Constitution.