

## **EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General

*Seas and Submerged Lands Act 1973*

*Seas and Submerged Lands (Historic Bays) Proclamation 2006*

Section 8 of the *Seas and Submerged Lands Act 1973* (the Act) provides that, where the Governor-General is satisfied that a bay is an historic bay, he may, by Proclamation, declare that bay to be an historic bay and shall by the same or another Proclamation, define the sea-ward limits of that bay. An historic bay is a bay which, by general acquiescence, has become part of internal waters although the sea-ward limit exceeds that which would otherwise be permitted under the Convention.

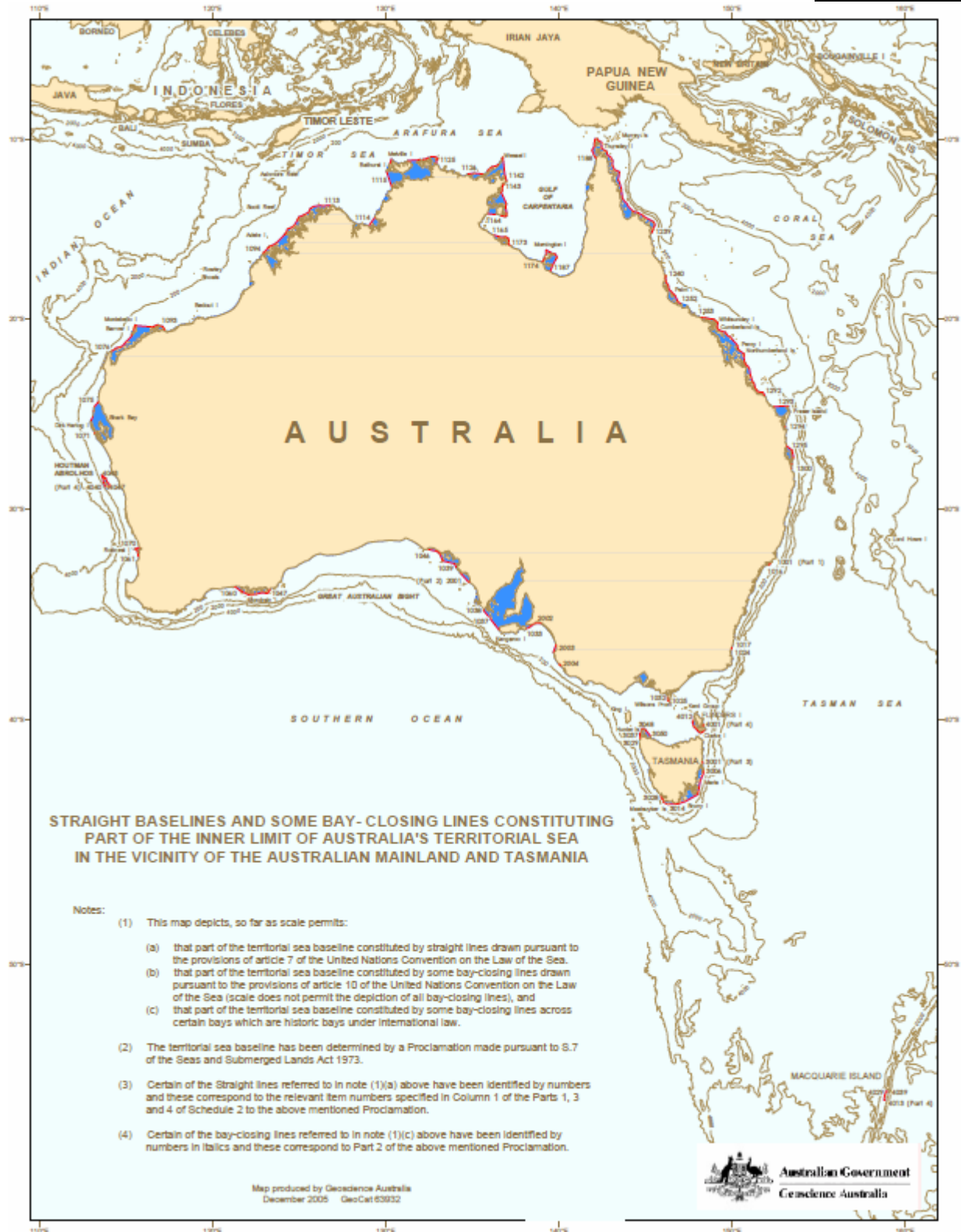
The *Seas and Submerged Lands (Historic Bays) Proclamation 2006* (the Proclamation) revokes a previous Proclamation made in 1987 which declared certain bays in South Australia – Anxious Bay, Encounter Bay, Lacepede Bay and Rivoli Bay – to be historic bays. The Proclamation again declares those bays to be historic bays and specified revised and updated geographic coordinates of the baselines and sea-ward limits of the bays to reflect information obtained from a survey of all territorial sea basepoints and baselines recently completed by Geoscience Australia in cooperation with the Australian Hydrographic Office and State and Territory mapping authorities. The Proclamation uses the Geocentric Datum of Australia, which is a coordinate reference system being progressively implemented throughout Australia as the preferred datum for all spatial information. The previous Proclamation used a different coordinate reference system called the Australian Geodetic Datum.

A map depicting the straight baselines drawn pursuant to the Proclamation and to the *Seas and Submerged Lands (Territorial Sea) Proclamation 2006*, so far as scale permits, is at Attachment A. Details of the Proclamation are set out in Attachment B.

The Proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

No public consultation was undertaken in relation to the Proclamation, as it merely makes minor changes to the previous Proclamation.

The Proclamation commences the day after it is registered in the Federal Register of Legislative Instruments.



## **Attachment B**

### ***Details of the Seas and Submerged Lands (Historic Bays) Proclamation 2006***

#### **Section 1 – Name of Proclamation**

Section 1 gives the name of the Proclamation as the *Seas and Submerged Lands (Historic Bays) Proclamation 2006*.

#### **Section 2 - Commencement**

Section 2 provides that the Proclamation commences on the day after it is registered on the Federal Register of Legislative Instruments.

#### **Section 3 – Revocation of previous Proclamation**

Section 3 revokes the Proclamation of 19 March 1987 made under section 8 of the Act.

#### **Proposed section 4 - Definitions**

Subsection 4(1) defines particular terms that are used in the proposed Proclamation as follows:

“Geocentric Datum of Australia” refers to the matters specified in proposed Schedule 1;

“low-water” refers to Lowest Astronomical Tide. Lowest Astronomical Tide is the lowest level to which the sea can be predicted to fall under normal meteorological conditions, and is usually estimated by reference to charts, geospatial imagery and other sources; and

“straight line” refers to a geodesic line, being the shortest possible line between two points on a curved surface.

Subsection 4(2) provides that the position on the surface of the Earth of a point, line or area is determined by reference to the Geocentric Datum of Australia.

#### **Section 5 – Declaration of Historic Bays**

Article 10 of the United Nations Convention on the Law of the Sea [Australian Treaty Series 1994 31], which describes juridical bays for the purposes of international law, does not apply in relation to “historic bays”. The elements of an historic claim to waters under customary international law are the exercise of continuous sovereignty over a long period of time with the toleration or acquiescence of other States.

As part of the Offshore Constitutional Settlement, territorial sea baselines for Australia were proclaimed in 1983. In the area of South Australia, these baselines had the effect of enclosing, as Australian internal waters for the purposes of international law Spencer Gulf, Gulf St Vincent, Investigator Strait and certain bays including Coffin Bay, Streaky Bay and Fowlers Bay. However it was agreed between the Commonwealth and South Australia that a joint committee be established to examine whether certain bays in South Australia were historic bays or historic waters. The

Committee examined historical and other evidence and concluded that Encounter Bay, Lacepede Bay, Rivoli Bay and Anxious Bay met the criteria for being considered as historic bays, and recommended the making of a Proclamation under the Act declaring these bays to be historic bays.

Section 5 again declares the specified bays to be historic bays.

#### Section 6 – Sea-ward limits – Anxious Bay

Subsection 6(1) specifies that the sea-ward limits of Anxious Bay are defined by straight lines joining the low-water line of the coast that are closest to the geographic coordinates specified in proposed subsection 6(2).

#### Section 7 – Sea-ward limits – Encounter Bay

Subsection 7(1) specifies that the sea-ward limits of Encounter Bay are defined by straight lines joining the low-water lines of the coast that are closest to the geographic coordinates specified in proposed subsection 7(2).

#### Section 8 – Sea-ward limits – Lacepede Bay

Subsection 8(1) specifies that the sea-ward limits of Lacepede Bay are defined by straight lines joining the low-water lines of the coast that are closest to the geographic coordinates specified in proposed subsection 8(2).

#### Section 9 – Sea-ward limits – Rivoli Bay

Subsection 9(1) specifies that the sea-ward limits of Rivoli Bay are defined by straight lines joining the low-water lines of the coast that are closest to the geographic coordinates specified in proposed subsection 9(2).

#### Section 10 – Low-water line of the same island

Section 10 makes provision for where a bay closing line provided for by any of proposed sections 6, 7, 8 or 9 would pass through an island at two different points. In that case, the bay closing line is taken to be along the low-water line of the island on the sea-ward side of the points of intersection of the straight line and the island's coast.

#### Schedule 1 – Geocentric Datum of Australia

The Geocentric Datum of Australia (GDA) is a coordinate reference system that best fits the shape of the earth as a whole. It has an origin that coincides with the centre of mass of the earth, hence the term 'geocentric'. Its purpose is to place the geographical coordinates specified in the proposed Proclamation on the surface of the Earth.

Following a resolution of the Intergovernmental Committee on Surveying and Mapping in 1988, GDA is being progressively implemented throughout Australia as the preferred datum for all spatial information.

It is considered to be the most effective datum as it provides:

- compatibility with satellite navigation systems, such as the Global Positioning System;
- compatibility with national mapping programmes already carried out on a geocentric datum; and
- a single standard for the collection, storage and dissemination of spatial information at global, national and local levels.

#### Item 1 – Reference ellipsoid

The reference ellipsoid is the Geodetic Reference System 1980 ellipsoid with a semi-major axis of 6,378,137 metres and an inverse flattening of 298.257222101.

#### Item 2 – Reference Frame

The item explains how the GDA is realised.