

EXPLANATORY STATEMENT

Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012

Issued by the Authority of the Attorney-General

This explanatory statement relates to the *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012* made by the Governor-General on 24 May 2012 under section 12 of the *Seas and Submerged Lands Act 1973* (the Act).

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

Authority

Section 12 of the Act provides that the Governor-General may, from time to time, by Proclamation declare, not inconsistently with Article 76 of the *United Nations Convention on the Law of the Sea* (UNCLOS) or any relevant international agreement to which Australia is a party, the limits of the whole or any part of the continental shelf of Australia.

Purpose

The purpose of the Proclamation is to confirm the outer limits of a considerable area of the Australian continental shelf. This includes those areas of continental shelf beyond 200 nautical miles from the territorial sea baseline (the extended continental shelf) based upon the recommendations of the United Nations Commission on the Limits of the Continental Shelf (the Commission) established under Annex II to UNCLOS. As a matter of both international law and Australian law, the continental shelf inures to Australia irrespective of the Proclamation of its outer limits. However, the Proclamation will serve to provide certainty as to the location of those limits.

Legislation affected by the Proclamation

The Proclamation repeals the *Seas and Submerged Lands (Limits of Continental Shelf in the Tasman Sea and South Pacific Ocean) Proclamation 2005*. The boundary declared by the repealed Proclamation is incorporated in the Proclamation.

Background

Article 76 of UNCLOS provides that the continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory either to the outer edge of the continental margin or to a distance of 200 nautical miles from the territorial sea baseline, whichever is the greater.

Article 76 further provides that in the former case, the extended continental shelf claimed by a coastal State may not exceed the most distant of a line which is 350 nautical miles from the territorial sea baseline or a line which is 100 nautical miles from the 2,500 metre isobath. The 2,500 metre isobath is a line connecting sea depths of 2,500 metres.

On November 2004, in accordance with paragraph 8 of article 76 of UNCLOS, Australia submitted scientific data and information on its extended continental shelf to the Commission. On 9 April 2008, the Commission adopted recommendations in response to Australia's submission. On the basis of those recommendations, Australia is now able to declare the outer limit of most of its continental shelf. Therefore, in addition to those areas of continental shelf within 200 nautical miles, the Proclamation will confirm Australia's jurisdiction over an extended continental shelf of approximately 2.56 million square kilometres in nine discrete areas:

- (i) Lord Howe Rise, east of Lord Howe Island and west of Norfolk Island;
- (ii) Three Kings Ridge, east of Norfolk Island;
- (iii) South Tasman Rise, south of Tasmania;
- (iv) Macquarie Ridge, south of Macquarie Island;
- (v) Great Australian Bight off South Australia;
- (vi) Kerguelen Plateau, south east of Heard Island and the McDonald Islands;
- (vii) Naturaliste Plateau, off the south west coast of Western Australia and west of Cape Leeuwin;
- (viii) Wallaby Exmouth Plateaus off the mid west coast of Western Australia; and
- (ix) the Argo area off the northwest coast of Western Australia.

Contents of the Proclamation

The limits of the continental shelf are defined using geographic coordinates set out in Schedules appended to the Proclamation. Further detail on the content of the Proclamation and its six Schedules is set out in the Attachment.

Authority: Section 12 of the *Seas and Submerged Lands Act 1973*

Details of the *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012*

Sections 1 and 2 provide for the name and commencement date of the Proclamation.

Section 3 repeals the *Seas and Submerged Lands (Limits of Continental Shelf in the Tasman Sea and South Pacific Ocean) Proclamation 2005*. The boundary that is the subject of the repealed proclamation is incorporated into the Proclamation.

Sections 4 to 8 define the outer limit of Australia's continental shelf, as follows:

- (i) section 4 provides that the continental shelf limit around mainland Australia (including Tasmania, other than Macquarie Island), Lord Howe Island and Norfolk Island is the line defined in Part 1 of Schedule 1;
- (ii) section 5 provides that the continental shelf limit adjacent to Macquarie Island is the line defined in Schedule 2;
- (iii) section 6 provides that the continental shelf limit adjacent to Heard Island and the McDonald Islands is the line defined in Part 1 of Schedule 3;
- (iv) section 7 provides that the continental shelf limit adjacent to Cocos (Keeling) Islands is the line defined in Schedule 4; and
- (v) section 8 provides that the continental shelf limit adjacent to Christmas Island is the line defined in Schedule 5.

Section 9 describes the operation of Schedules 1 to 5. Subsection 9(1) explains that the lines in Schedules 1 to 5 are defined by a series of points. Each point is described by a unique identifier, such that the points are numbered consecutively as follows:

- (i) AUS-CS-1 to AUS-CS-7530 in Schedule 1;
- (ii) MAC-CS-1 to MAC-CS-1095 in Schedule 2;
- (iii) HMI-CS-1 to HMI-CS-1736 in Schedule 3;
- (iv) COC-CS-1 to COC-CS-1444 in Schedule 4; and
- (v) CHR-CS-1 to CHR-CS-769 in Schedule 5.

Subsection 9(1) also notes that the Schedules provide the geographic coordinates (latitude and longitude) of each point, the geodetic datum by which these coordinates were derived and treaty point references, where relevant. A treaty point is the primary reference for the definition of the limit of the continental shelf agreed in a treaty between Australia and another country. The treaty point reference is the identifier given to the point in the relevant treaty. Where more than one treaty is relevant, treaty point references are provided for each relevant treaty.

Section 10 lists the treaties between Australia and another country that are relevant in establishing the outer limit. The list comprises one treaty with each of Papua New Guinea, the Solomon Islands, France and New Zealand.

Geodetic datums are coordinate reference systems that permit the precise location on the Earth's surface of the geographic co-ordinates set out in the Schedules.

Section 11 sets out the four different datums which are utilised in the Proclamation to derive the geographic coordinates of points, namely the Australian Geodetic Datum 1966 (AGD66), the International Terrestrial Reference Frame 2000 (ITRF 2000) and the World Geodetic Systems 1972 and 1984 (WGS72 and WGS84 respectively). The datum most commonly used throughout the Proclamation is the ITRF2000. However, where a particular point in the Schedules is sourced in a bilateral treaty which utilises a different datum, the latter datum is used as the coordinates specified in the treaty are determinative of the location of the point.

Schedules 1 and 3 have two Parts. Part 1 of each Schedule includes certain points which are derived by reference to the AGD66 or WGS72. Part 2 of each Schedule provides additional geographic coordinates based on the ITRF 2000 for the same points. These additional coordinates represent the authoritative conversion into the ITRF 2000 and are provided for information only.

Additional coordinates based on the ITRF2000 are not provided for points determined by reference to the WGS84. Section 11 provides that for the purposes of the Proclamation, the ITRF2000 is taken to be equivalent to the WGS84.

Schedule 6 is a map depicting the limits defined in Schedules 1 to 5.

Areas not included in the Proclamation

Three areas of Australian continental shelf are not covered by the Proclamation. In the first two of these areas, not all of the boundary between Australia's continental shelf and that of the opposite States has been formally agreed.

First, the Proclamation does not cover the outer limit of the continental shelf to the north of Australia between (in the west) the northern most point of the extended continental shelf in the Argo area and (in the east) the westerly end of the seabed boundary agreed with Papua New Guinea (Treaty with the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, Including the area known as Torres Strait and Related Matters, [1985] Australian Treaty Series (ATS) 4).

The Government decided not to proclaim the outer limit in this area until the totality of the boundary between those two points has been agreed. The area in question is the subject of a number of treaties between Australia and Indonesia and Australia and East Timor. The western part of this area is covered by the seabed element of the 1997 Maritime Delimitation Treaty with Indonesia (Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries [1997] Australian Treaties Not In Force 4). While that Treaty has been signed, it has not yet been brought into force.

The middle part of the area is the subject of a number of treaties with East Timor and, in particular, the Timor Sea Treaty (Timor Sea Treaty between the Government of East Timor

and the Government of Australia, [2003] ATS 13 and the Treaty Between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea, [2007] ATS 12. These treaties put in place provisional arrangements concerning the continental shelf, including the Joint Petroleum Development Area, and a moratorium on the assertion of maritime claims between the Parties.

The unproclaimed area also includes the 1971 and 1972 seabed treaties with Indonesia (Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing Certain Seabed Boundaries [1973] ATS 31 and the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, supplementary to the Agreement of 18 May 1971 [1973] ATS 32).

Secondly, the Proclamation does not define the outer limit of the continental shelf in the Three Kings Ridge area in the New Caledonia region. This is because there is potential overlap between the extended continental shelf of Australia and that of France in this region. The limit of the continental shelf in this area may be the subject of discussions between France and Australia, and possibly New Zealand, at a later date.

The third area is that adjacent to the Australian Antarctic Territory (AAT). Due to the special political and legal status of Antarctica, and in light of the Commission's acceptance of Australia's request to the Commission not to consider for the time being the data submitted on the continental shelf adjacent to the AAT, the Proclamation does not define the limits of Australia's continental shelf adjacent to the AAT.

The absence of a proclamation for these areas does not affect the legal status of the continental shelf. As a matter of both international law and Australian law, the continental shelf inures to Australia irrespective of the Proclamation of its outer limits. However, the Proclamation will serve to provide certainty as to the location of those limits.

Additionally, two small areas of continental shelf examined by the Commission remain outstanding. One of these areas is located in the north western part of the Wallaby Exmouth Plateaus submission area and the other in the eastern part of the Kerguelen Plateau submission area. Their total area is approximately 80,000 square kilometres. Securing these areas will require a new or revised submission to the Commission that addresses specific matters raised by the Commission in its recommendations.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012

The *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

Section 12 of the *Seas and Submerged Lands Act 1973* provides that the Governor-General may, from time to time, by Proclamation declare, not inconsistently with Article 76 of the United Nations Convention on the Law of the Sea or any relevant international agreement to which Australia is a party, the limits of the whole or any part of the continental shelf. The *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012* confirms the outer limit of a considerable area of the Australian continental shelf.

Human rights implications

The *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012* does not engage any of the applicable rights or freedoms.

Conclusion

The *Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012* is compatible with human rights as it does not raise any human rights issues.