

Chapter 3

The National Legal Framework

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3.1 Introduction

Australia's maritime domain is vast. As an island continent with a long coastline, Australia also benefits from its geographical location which enables it to claim the full extent of maritime zones allowed under the LOSC, subject to its settled maritime boundaries with neighbouring states.¹ Australia's rights over this maritime domain are predicated upon legal rights that it enjoys under international law, as principally reflected in the international law of the sea. However, the management of Australia's maritime zones is overshadowed by complex constitutional arrangements between the Commonwealth and the States and Territories. This arrangement provides for a domestic legal framework through which Commonwealth, State and local laws apply to the coastal and marine area. Unravelling these regulatory layers can assist in understanding the interrelationship between the different jurisdictions that exist in the offshore area.

This chapter provides a brief account of the history of coastal and marine management since Federation. This is followed by a review of the implementation of the Offshore Constitutional Settlement (OCS) as a practical solution to the outcome of the *Seas and Submerged Lands Act 1973* (Cth) litigation with respect to the application of laws in the maritime domain. Attention is then given to the management of Australia's maritime domain as between the Commonwealth and the States and the recognition by the High Court of the Commonwealth's role in adopting and implementing international treaty obligations.

3.2 Offshore Management Before the Seas and Submerged Lands Act

A brief examination of coastal management since Federation in 1901 reveals that it was initially understood to be primarily the purview of the States

¹ See discussion Chapter 5.

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