

## Discussion of Offshore Mining and Petroleum — Constitutional Issues

1. The panel was asked to elaborate on the question of whether a subsequent Commonwealth Parliament could amend or repeal the State Powers Act.

Dr. Crommelin responded that the difficulty is to identify the head of power under the Constitution that gives the Commonwealth Parliament the power to do so. He considered that s.51(38) may not support an amendment or repeal. He pointed out that there is also the external affairs power, s.51(29). The interpretation of this power which would allow the Commonwealth Parliament to pass laws on any matters geographically external to Australia has not been established conclusively — although there is support from three members of the High Court in the *Seas & Submerged Lands Act Case* (1975) 135 C.L.R. 507.

So far as future amendment or repeal of the State Titles Act is concerned, Dr. Crommelin considered that this would give rise to the issue of 'just terms', because it is very likely that there would be 'an acquisition of property' within s.51(31) of the Constitution.

2. In answer to a series of questions as to comments made in paragraph 3.4. of his commentary on Dr. Crommelin's paper, Mr. Brazil made the following points:

- (a) It is clear beyond doubt that the States at present are in a position of having substantial extra territorial power, which power encompasses a number of things that happen in the extra territorial sea. Nevertheless, a nexus with the relevant State must be shown if such power is to be exercised.
- (b) The State Powers Act removes the necessity for the States to establish a nexus between their exercise of legislative power in circumstances contemplated in that Act and the legislative act resulting from such exercise. After the passage of the State Powers Act, if one can show that the State law deals with a certain matter within that Act, then ipso facto the State law is within power.
- (c) His remarks had been addressed to the argument in Dr. Crommelin's paper:
  - (i) The States could make a law conferring upon themselves the power to make laws extending to coastal waters.
  - (ii) Therefore the enactment of the State Powers Act was not the exercise of a power which could on the establishment of the Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia, and
  - (iii) thus the State Powers Act was beyond the powers conferred by s.57(38) of the Constitution.

3. Attention was drawn to the fact that although significant achievements had been made at a political level between the Commonwealth and the States, there had not been a bi-partisan approach to the problems at a federal level. Recent statements in Commonwealth Parliament were a continuing cause for concern for the petroleum industry.

4. The panel was also asked as to what steps were being taken to standardise the approach of the States to the industry and what steps was the Commonwealth

taking to ensure that its approach outside the State areas was uniform with the approach taken by the States.

Mr. Freeman advised that he believed the position to be that by the end of 1981 all States will have enacted the necessary legislation to give effect to the 'package' and that there should not be any problems.