



# **Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Act 2004**

**No. 28, 2004**

**An Act to amend legislation about fisheries, and for  
related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## **An Act to amend legislation about fisheries, and for related purposes**

*[Assented to 1 April 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Fisheries Legislation Amendment  
(Compliance and Deterrence Measures and Other Matters) Act  
2004*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	1 April 2004
2. Schedule 1	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	6 August 2004 ( <i>Gazette</i> 2004, S321)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of fisheries legislation**

### ***Fisheries Administration Act 1991***

#### **1 Subsection 67(1)**

Omit “of a management advisory committee is”, substitute “and other members of a management advisory committee are”.

#### **2 Subsection 67(1)**

Omit “the Chairperson is”, substitute “they are”.

#### **3 Subsection 67(2)**

Omit “of a management advisory committee is”, substitute “and other members of a management advisory committee are”.

#### **4 Subsection 67(4)**

After “the Chairperson”, insert “or other member”.

#### **5 Paragraphs 67(5)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) member of any committee established under section 54 other than a management advisory committee.

#### **6 Saving provision**

Despite the amendment of the *Fisheries Administration Act 1991* made by item 4 of this Schedule, any determination by the Remuneration Tribunal of the rate of travelling allowance payable to a member of a management advisory committee that is in force immediately before the day of commencement of that amendment continues in force on and after that day in relation to that member until a new rate is prescribed.

### ***Fisheries Management Act 1991***

#### **7 At the end of section 22**

Add:

- (7) The holder of a fishing right must, at the time of giving the written notice referred to in subsection (6) or as soon as practicable after that time, return the original certificate evidencing the fishing right to AFMA.

**8 After subsection 32(7)**

Insert:

(7A) If:

- (a) AFMA has granted a fishing permit under this section in respect of a particular fishery; and
- (b) that fishery is a fishery to which subsection 41A(1) applies; and
- (c) AFMA subsequently, under section 41A, gives a direction in respect of that fishery to the effect that fishing is not to be engaged in in any part of the fishery, or in a particular area of the fishery, during a period or periods specified in the direction;

it is a condition of the permit that the holder of the permit comply with the terms of the direction.

**9 Subsection 32(8)**

After “subsection (5)”, insert “or (7A)”.

**10 After subsection 32(9)**

Insert:

- (9A) The holder of a permit must, at the time of giving the written notice referred to in subsection (9) or as soon as practicable after that time, return the original permit to AFMA.

**11 After subsection 33(5)**

Insert:

(5A) If:

- (a) AFMA has granted a scientific permit under this section in respect of a particular fishery; and
  - (b) that fishery is a fishery to which subsection 41A(1) applies; and
  - (c) AFMA subsequently, under section 41A, gives a direction in respect of that fishery to the effect that fishing is not to be
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engaged in in any part of the fishery, or in a particular area of the fishery, during a period or periods specified in the direction;

it is a condition of the permit that the holder of the permit comply with the terms of the direction.

**12 Paragraph 33(6)(b)**

After “is subject”, insert “(not being a condition mentioned in subsection (5A))”.

**13 After subsection 33(7)**

Insert:

(7A) The holder of a scientific permit must, at the time of giving the written notice referred to in subsection (7) or as soon as practicable after that time, return the original permit to AFMA.

**14 After subsection 34(6)**

Insert:

(6A) If:

- (a) AFMA has granted a foreign fishing licence under this section in respect of a particular fishery; and
- (b) that fishery is a fishery to which subsection 41A(1) applies; and
- (c) AFMA subsequently, under section 41A, gives a direction in respect of that fishery to the effect that fishing is not to be engaged in in any part of the fishery, or in a particular area of the fishery, during a period or periods specified in the direction;

it is a condition of the licence that the holder of the licence comply with the terms of the direction.

**15 Subsection 34(9)**

After “subsection (4)”, insert “or (6A)”.

**16 After subsection 34(10)**

Insert:

- (10A) The holder of a licence must, at the time of giving the written notice referred to in subsection (10) or as soon as practicable after that time, return the original licence to AFMA.

**17 After subsection 40(4)**

Insert:

(4A) If:

- (a) AFMA has granted a foreign master fishing licence under this section in respect of a particular fishery; and
- (b) that fishery is a fishery to which subsection 41A(1) applies; and
- (c) AFMA subsequently, under section 41A, gives a direction in respect of that fishery to the effect that fishing is not to be engaged in in any part of the fishery, or in a particular area of the fishery, during a period or periods specified in the direction;

it is a condition of the licence that the holder of the licence comply with the terms of the direction.

**18 Subsection 40(5)**

After “subsection (3)”, insert “or (4A)”.

**19 After subsection 40(6)**

Insert:

- (6A) The holder of a licence must, at the time of giving the written notice referred to in subsection (6) or as soon as practicable after that time, return the original licence to AFMA.

**20 After section 41**

Insert:

**41A AFMA may give directions in relation to closure or partial closure of fishery**

- (1) This section applies to a fishery in respect of which:
  - (a) there is no plan of management; and
  - (b) there are in force fishing permits, scientific permits, foreign fishing licences or foreign master fishing licences entitling

the holders of such permits or licences to participate in that fishery.

- (2) If, after consultation:
- (a) with the management advisory committee for a fishery to which this section applies; and
  - (b) with all holders of fishing permits, scientific permits, foreign fishing licences or foreign master fishing licences entitling the holders to participate in the fishery;
- AFMA is satisfied that it is necessary, in pursuit of its objectives, to direct that fishing not be engaged in in any part of the fishery, or in a particular area of the fishery, during a period or periods specified in the direction, AFMA may, by notice in writing published in the *Gazette*, give a direction to that effect.
- (3) AFMA may, at any time, by a further direction in writing, vary or revoke a direction given under subsection (2).
- (4) If AFMA gives a direction under subsection (2), or varies or revokes such a direction, it must ensure that a copy of the direction is sent to each holder of a fishing permit, a scientific permit, a foreign fishing licence or a foreign master fishing licence, in respect of the fishery to which the direction, or direction as varied or revoked, relates.
- (5) A direction under subsection (2), or a variation or revocation of such a direction, is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **21 Before Part 5**

Insert:

## **Part 4B—Fishing Permits Register**

### **57G The Fishing Permits Register**

- (1) AFMA must establish and maintain a Register relating to fishing permits granted under section 32 to be called the Fishing Permits Register.

- (2) The Fishing Permits Register may be kept wholly or partly by use of a computer.
- (3) If the Fishing Permits Register is kept wholly or partly by use of a computer:
  - (a) references in this Act to an entry in the Fishing Permits Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Fishing Permits Register or a part of the Register; and
  - (b) references in this Act to particulars being entered in the Fishing Permits Register are to be read as including references to the keeping of a record of those particulars as part of the Fishing Permits Register by use of the computer; and
  - (c) references in this Act to the rectification of the Fishing Permits Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Fishing Permits Register or part of the Register.

**57H Information to be included in the Fishing Permits Register**

- (1) AFMA must register each fishing permit that it grants under section 32 by entering in the Fishing Permits Register:
  - (a) the name of the person to whom the permit is granted; and
  - (b) the area of the AFZ, or the fishery, that is specified in the permit; and
  - (c) the period for which the permit remains in force; and
  - (d) if the permit is granted in respect of a nominated boat or if, after the grant of the permit, a boat is nominated—the name and distinguishing symbols for the nominated boat; and
  - (e) such other particulars (if any) as are prescribed.
- (2) Subject to subsections (3) and (4), if any of the particulars required to be recorded under subsection (1) changes, AFMA must, as soon as it becomes aware of that change, alter the Fishing Permits Register to record that change.
- (3) If, in relation to a boat particulars of which are included in the Fishing Permits Register:

- (a) the fishing permit covering that boat is suspended or the suspension is revoked; or
- (b) the fishing permit covering that boat is cancelled or ceases to have effect;

AFMA must record in the Fishing Permits Register the fact of that suspension, revocation, cancellation or cessation and also the reason for it.

- (4) Where, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a record made by AFMA under subsection (3) is no longer correct, AFMA must rectify the Fishing Permits Register accordingly.

### **57J Inspection of the Fishing Permits Register**

- (1) The Fishing Permits Register must be available for inspection in accordance with the regulations and on payment of the prescribed fee by any person during the hours that AFMA is open for business.
- (2) If the Fishing Permits Register is kept wholly or partly by use of a computer, subsection (1) is taken to have been complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal so that they can inspect the Register, either on a screen or in the form of a computer print-out.

### **57K Application of sections 53 to 56**

Sections 53, 54, 55 and 56 apply to the Fishing Permits Register in like manner as they apply to the Register established and maintained under Part 4.

### **57L Offence**

A person is guilty of an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) the document falsely purports to be:
  - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or

- (ii) a copy of or extract from an entry in the Fishing Permits Register.

Maximum penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

## 22 Subsection 84(6)

Omit “(except paragraph (1)(aa)), the officer must”, substitute “the officer must make all reasonable efforts to identify himself or herself and must, unless subsection (6A) applies”.

## 23 After subsection 84(6)

Insert:

- (6A) If the requirement under subsection (1) is made in such circumstances that it is impossible to produce the written evidence referred to in paragraph (6)(a) or the identity card referred to in paragraph (6)(b), as the case requires, at the time of making the requirement, that evidence or identity card must be produced for inspection by the relevant person at the first available opportunity after the making of the requirement.

## 24 Subsection 88(1)

Omit all the words after paragraph (b), substitute:

on such conditions (if any) as AFMA thinks fit, including conditions as to the giving of security:

- (c) for payment of the value of the property if it is forfeited; and
- (d) for the payment of any fines that may be imposed under this Act in respect of offences that AFMA has reason to believe have been committed with the use of, or in relation to, that property; and
- (e) if the property is a foreign boat in respect of which the Commonwealth has incurred pursuit costs in the circumstances set out in section 106L—for the pursuit costs in respect of that boat as notified in accordance with Subdivision CA of Division 6.

**25 At the end of subsection 88(2)**

Add:

- ; and (c) a reference to pursuit costs, in respect of a foreign boat, has the same meaning as in Subdivision CA of Division 6.

**26 Subsection 100A(2)**

Repeal the subsection, substitute:

- (2) The offence is punishable on conviction:
  - (a) if the boat involved in the offence has a length of, or exceeding, 24 metres—by a fine of not more than 7,500 penalty units; and
  - (b) if the boat involved in the offence has a length of less than 24 metres—by a fine of not more than 5,000 penalty units.

- (2A) For the purposes of subsection (2), the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981*.

**27 After Subdivision C of Division 6 of Part 6**

Insert:

**Subdivision CA—Recovery of pursuit costs in relation to certain foreign boats**

**106J Preliminary**

In this Subdivision:

*costs reasonably incurred by or on behalf of the Commonwealth*, in respect of pursuit activities conducted in respect of a foreign boat, means all costs:

- (a) that the Commonwealth is liable to pay in respect of such activities; and
- (b) that are directly attributable to the conduct of those activities; and, without limiting the generality of the above, includes:
  - (c) costs incurred by any Commonwealth agency or body in respect of such activities; and
  - (d) costs incurred by any arm of the Australian Defence Force that provides assistance in respect of such activities; and

- (e) costs incurred by the government of any foreign country that provides assistance or facilities in respect of such activities, being costs so incurred on the basis that those costs will be reimbursed by the Commonwealth.

*Federal Court* means the Federal Court of Australia.

*foreign boat to which this Subdivision applies* has the meaning given by subsection 106L(1).

*processing place*, in respect of a foreign boat to which this Subdivision applies, means the place in Australia or in an external Territory that is determined by AFMA under section 106L to be the processing place in relation to that boat.

*pursuit activities*, in respect of a foreign boat, means the activities of pursuing and apprehending the boat and bringing the boat, or causing the boat to be brought, with or without an escort, to its processing place.

*pursuit costs*, in respect of a foreign boat, means the costs reasonably incurred by or on behalf of the Commonwealth in respect of pursuit activities conducted in respect of the boat.

#### **106K Working out pursuit costs**

The regulations may set out principles for working out the costs incurred by or on behalf of the Commonwealth that are directly attributable to the conduct of pursuit activities.

#### **106L Debt in relation to pursuit costs**

- (1) This Subdivision applies to a foreign boat if:
    - (a) the foreign boat is forfeited to the Commonwealth under section 106A; and
    - (b) the master of the boat fails:
      - (i) to stop the boat in accordance with the requirement under paragraph 84(1)(aa); or
      - (ii) to bring the boat to a place and to remain in control of the boat at that place in accordance with a requirement under paragraph 84(1)(k) or (l); and
    - (c) as a result of that failure, pursuit activities are taken in respect of the boat culminating in its arrival at a place in
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Australia or an external Territory that is determined by AFMA to be the processing place in relation to that boat.

- (2) Subject to the operation of this Subdivision, the owner of a foreign boat to which this Subdivision applies is liable to pay to the Commonwealth, by way of penalty, all pursuit costs incurred in respect of that boat.
- (3) If a foreign boat has more than one owner, then the owners are jointly and severally liable to pay the pursuit costs incurred in respect of the boat.
- (4) Costs payable by an owner of a foreign boat to the Commonwealth under this Subdivision may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

### **106M Preliminary notice of debt**

- (1) As soon as practicable after bringing a foreign boat to which this Subdivision applies to its processing place and after notice of seizure of the boat has been given under section 106C, an officer of AFMA must give written notice to the person:
  - (a) who was the master of the boat immediately before its apprehension; or
  - (b) whom the officer has reasonable grounds to believe was the master of the boat immediately before its apprehension;of the fact that a debt for the pursuit costs has been incurred in respect of that boat.

However, if the officer cannot conveniently give the notice to the person in person, the officer may give notice of the debt in respect of the boat by fixing the notice to a prominent part of the boat.
- (2) The notice must:
  - (a) state that a debt for pursuit costs has been incurred; and
  - (b) specify the circumstances in which the debt has been incurred; and
  - (c) state that full particulars of the pursuit costs will be provided in accordance with section 106N as soon as they are available and not later than 10 days after the date of giving the notice; and

- (d) indicate that, on provision of full particulars of the debt, the debt is required to be paid unless the owner of the boat informs the Managing Director of AFMA, within 30 days of those full particulars being provided under section 106N, that the owner will institute proceedings in the Federal Court to contest the debt; and
- (e) specify the address of the Managing Director of AFMA.

#### **106N Full particulars of the pursuit costs**

- (1) Within 10 days of the giving of a preliminary notice of debt in relation to pursuit costs in respect of a foreign boat, an officer of AFMA must give a further notice setting out full particulars of the debt and the means of its calculation.
- (2) The notice must be given to the person referred to in subsection 106M(1) or, if the officer cannot conveniently give the notice to the person in person, the officer may give the notice by fixing it to a prominent part of the boat.

#### **106P Debt for pursuit costs payable if no notification of intention to contest debt**

- (1) By force of this section, if the owner of a foreign boat in respect of which full particulars of pursuit costs have been provided under a notice under section 106N does not, within 30 days after the giving of that notice, inform the Managing Director of AFMA, by notice in writing, of an intention to contest the debt, the debt is due and payable at the expiration of that period.
- (2) For the purposes of subsection (1), the notice of intention to contest the debt:
  - (a) must be in English; and
  - (b) must set out an address for service for the person proposing to contest the debt.

#### **106Q Debt for pursuit costs payable if no action taken to contest debt**

- (1) If the owner of a foreign boat gives a notice of intention to contest a debt for pursuit costs in respect of a foreign boat as described in section 106N, the Managing Director of AFMA must inform the
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owner that the debt for those costs will become due and payable at the end of the period of 2 months after the giving of the notice of intention unless the owner institutes proceedings against the Commonwealth in the Federal Court, not later than the end of that period, for an order that:

- (a) the debt is not payable because the boat was not forfeited to the Commonwealth; or
  - (b) the debt, or a part of the debt, was not reasonably incurred.
- (2) If the owner does not institute the proceedings referred to in subsection (1) before the end of the period of 2 months referred to in that subsection, the debt is due and payable at the expiration of that period.
- (3) For the avoidance of doubt, the reference in subsection (1) to proceedings instituted against the Commonwealth for an order that the debt for pursuit costs payable in respect of a foreign boat is not payable because the boat was not forfeited to the Commonwealth is taken to include a reference to any proceedings instituted in accordance with section 106F for a declaration that the boat is not forfeited, even if those proceedings do not directly relate to the liability for pursuit costs.

#### **106R Federal Court may determine contested debt**

- (1) Jurisdiction is conferred on the Federal Court to hear and determine any proceedings to contest a debt for pursuit costs.
- (2) The Federal Court may, if it is satisfied that:
  - (a) the owner was not informed, and did not otherwise become aware, of the particulars of the pursuit costs provided under section 106N within such time as to afford the owner a reasonable opportunity to give the Managing Director of AFMA, under subsection 106P(1), notice of its intention to contest the debt; and
  - (b) in all the circumstances of the case, the owner should be permitted to contest the debt even though the owner did not give that notice;make an order that:
  - (c) the owner may contest the debt; and

- (d) if the Court is satisfied that the owner still does not have full particulars of the pursuit costs—that the Managing Director of AFMA provide those particulars to the owner.
- (3) If the Federal Court makes an order under subsection (2):
- (a) sections 106P and 106Q cease to apply; and
  - (b) unless the owner institutes proceedings against the Commonwealth of the kind described in subsection 106Q(1) within the period of 2 months after the making of the order, or the provision of full particulars of pursuit costs in accordance with the order—the debt becomes due and payable at the expiration of that period.
- (4) If the owner of a foreign boat institutes proceedings of the kind referred to in subsection 106Q(1) either:
- (a) under that subsection; or
  - (b) under this section;
- to contest a debt for pursuit costs in respect of that boat before the end of the period of 2 months referred to in subsection 106Q(1) or in subsection (3) of this section, as the case requires, the Federal Court may:
- (c) if the Court is satisfied that the boat is not forfeited to the Commonwealth—make an order that the pursuit costs are not payable to the Commonwealth; and
  - (d) if the Court is satisfied, having regard to the circumstances of the case, that the pursuit costs, or any particular part of the pursuit costs, claimed in respect of the boat are not costs reasonably incurred—make an order that the pursuit costs, or that particular part of the pursuit costs, are not so payable to the Commonwealth.

### **106S Burden of proof**

In any proceedings of the kind referred to in subsection 106Q(1) that are brought by the owner of a foreign boat against the Commonwealth to contest a debt for pursuit costs:

- (a) the onus lies on the owner to establish, on the balance of probabilities, that the boat is not forfeited to the Commonwealth; and
- (b) the onus lies on the Commonwealth to establish, on the balance of probabilities:

- (i) that the circumstances set out in subparagraph 106L(1)(b)(i) or (ii) and in paragraph 106L(1)(c) apply in relation to the boat; and
- (ii) that the pursuit costs notified in relation to the boat are reasonable and have been correctly worked out.

## **28 At the end of section 113**

Add:

(2) If:

- (a) levy is due and payable in respect of a fishing permit granted under section 32; and
- (b) that permit is surrendered before any fishing activities are undertaken under the permit;

AFMA may, on behalf of the Commonwealth, by written notice given to the holder of the permit, waive:

- (c) the levy payable in respect of that permit; and
  - (d) if any amount is payable under section 112 in respect of that levy—the amount so payable.
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*[Minister's second reading speech made in—  
Senate on 4 December 2003  
House of Representatives on 11 March 2004]*

(201/03)

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