

# Fisheries Amendment Act 1980

No. 86 of 1980

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## An Act to amend the *Fisheries Act 1952*

[Assented to 29 May 1980]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### Short title, &c.

1. (1) This Act may be cited as the *Fisheries Amendment Act 1980*.
- (2) The *Fisheries Act 1952*<sup>1</sup> is in this Act referred to as the Principal Act.

### Commencement

2. (1) Except as provided by sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Sections 12 and 13 shall come into operation on a date to be fixed by Proclamation.

### Interpretation

3. Section 4 of the Principal Act is amended—
  - (a) by omitting “international nautical miles” from paragraphs (a) and (b) of the definition of “Australian fishing zone” and substituting “nautical miles”;
  - (b) by omitting the definition of “Australian waters”;
  - (c) by omitting the definition of “proclaimed waters” and substituting the following definition:

“ ‘proclaimed waters’ means waters declared by a Proclamation in force under section 7 to be proclaimed waters, and includes, for the purposes referred to in section 12K, waters deemed by that section to be proclaimed waters;”;

and
  - (d) by adding at the end thereof the following sub-sections:

“(2) Where a boat has been lawfully imported into Australia for a limited period and the Minister is satisfied that the extent of participation by citizens or residents of Australia, either directly or through the holding of shares in a company or otherwise indirectly, in the control of the operations of the boat in proclaimed waters during that

period, and the nature of those operations, will be such as to justify him in so doing, he may, in his discretion, by instrument published in the *Gazette*, declare that, during that period, the boat is to be deemed to be an Australian boat for the purposes of this Act and, while such an instrument is in force in respect of a boat, the boat shall be deemed to be an Australian boat for the purposes of this Act.

“(3) The Minister may—

- (a) by reason of a change in circumstances, by instrument published in the *Gazette*, at any time revoke an instrument under sub-section (2); or
- (b) by instrument published in the *Gazette*, extend the period for which an instrument under sub-section (2) is to remain in force.”.

4. After section 4 of the Principal Act the following section is inserted:

#### **Coastal waters**

“4A. (1) For the purposes of this Act, the coastal waters of a State or internal Territory are—

- (a) the part or parts of the territorial sea of Australia that is or are adjacent to that State or Territory, other than any part referred to in sub-section (2); and
- (b) any marine or tidal waters that are on the landward side of any part of the territorial sea of Australia and are adjacent to that State or Territory but are not within the limits of a State or Territory.

“(2) If at any time the breadth of the territorial sea of Australia is determined or declared to be greater than 3 nautical miles, the coastal waters of a State or internal Territory do not include, for the purposes of this Act, any part of the territorial sea of Australia that would not be within the limits of that territorial sea if the breadth of that territorial sea had continued to be 3 nautical miles.

“(3) Any part of the territorial sea of Australia that is adjacent to the Jervis Bay Territory shall, for the purposes of sub-section (1), be deemed to be adjacent to New South Wales.”.

#### **Application**

5. Section 5 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) This Act extends to all of the Territories and has extra-territorial operation according to its tenor.”.

#### **Operation of certain State and Territory laws**

6. Section 5A of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) It is the intention of the Parliament that this Act shall apply to the exclusion of any law of a State or Territory relating to the taking, catching, capturing, processing or carrying of fish so far as that law would, but for this Act, apply to—

- (a) activities in waters declared by Proclamation in force under section 7 to be proclaimed waters, not being—
  - (i) activities carried on for private purposes otherwise than by the use of a foreign boat; or
  - (ii) activities to which, by reason of section 12L, this Act does not apply; or
- (b) activities in the coastal waters of a State or Territory in respect of a fishery to which an arrangement referred to in section 12K relates, not being activities carried on for private purposes otherwise than by the use of a foreign boat.”.

### **Delegation**

**7. (1)** Section 6A of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-section:

“(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties, of, a specified office in the Department or a specified office in the service of, in the service of an authority of, or under the law of, a State or the Northern Territory.”;

(b) by omitting from sub-section (4) so much of the sub-section as precedes paragraph (a) and substituting:

“(4) The following powers are not exercisable by a delegate other than a person holding, or performing the duties of, an office in the Department.”; and

(c) by omitting sub-section (5).

(2) A delegation given, or purporting to have been given, under section 6A of the Principal Act after 24 August 1978 and before the commencement of this section shall be deemed to have been at all times, and to be, as valid and effectual as if the amendments made by this section had come into operation on that date.

**8. (1)** Section 7 of the Principal Act is repealed and the following section substituted:

### **Proclaimed waters**

“7. (1) Subject to sub-section (2), the Governor-General may, by Proclamation, declare any marine or tidal waters to be proclaimed waters for the purposes of this Act.

“(2) A Proclamation under sub-section (1) shall not extend to the coastal waters of, or waters within the limits of, a State or internal Territory.”.

(2) Notwithstanding the amendment made by this section, a Proclamation in force, or purporting to be in force, under section 7 of the Principal Act immediately before the commencement of this section continues in force as if made under the section substituted by this section to the extent that it applies to waters other than waters referred to in sub-section (2) of the section so substituted.

### **Regulation of fishing**

9. Section 8 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(5) For the purposes of section 5 of the *Evidence Act 1905*, a notice under this section shall be deemed to be an order within the meaning of that section.”.

### **Exploratory operations**

10. Section 11 of the Principal Act is amended by omitting “Australian waters” (wherever occurring) and substituting “proclaimed waters”.

### **Investigations**

11. Section 12 of the Principal Act is amended by omitting “Australian waters” and substituting “proclaimed waters”.

12. After Part IV of the Principal Act the following Part is inserted:

## **“PART IVA—CO-OPERATION WITH STATES AND NORTHERN TERRITORY IN MANAGEMENT OF FISHERIES**

### **“Division 1—Preliminary**

#### **Interpretation**

“12A. (1) In this Part, unless the contrary intention appears—

‘appropriate Minister’, in relation to a State, means the Minister of the State for the time being administering the laws of the State relating to marine fishing;

‘Commonwealth Minister’ means the Minister for the time being administering this Act;

‘fishery’ means a class of activities by way of fishing, being a class of such activities that is identified in an arrangement under this Part as a fishery to which the arrangement applies;

‘Joint Authority’ means an authority established by or under section 12D;

‘Joint Authority fishery’ means a fishery in respect of which there is in force an arrangement under this Part under which the fishery is to be under the management of a Joint Authority.

“(2) References in this Part to the waters adjacent to a State or States shall be read as references to the coastal waters of the State or States and waters within the Australian fishing zone that are adjacent to the coastal waters of the State or States.

“(3) Without limiting the matters by reference to which a fishery may be identified in an arrangement under this Part, those matters include all or any of the following:

- (a) a species of fish;
- (b) a description of fish by reference to sex or any other characteristic;
- (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a kind or class of vessels;
- (f) a class of persons;
- (g) a purpose of activities.

#### **Application of Part in relation to Northern Territory**

“12B. (1) This Part has effect as if the Northern Territory were a State and references in this Part to the States shall be construed accordingly.

“(2) A reference in this Part to the Governor of a State shall be read, in relation to the Northern Territory, as a reference to the Administrator of the Territory.

#### **Acting Ministers**

“12C. (1) The functions and powers of the Commonwealth Minister under this Part, including his functions and powers as a member of a Joint Authority, may be performed and exercised by another Minister of the Commonwealth acting for and on behalf of the Commonwealth Minister, and references in this Part to the Commonwealth Minister shall be read as including references to a Minister so acting.

“(2) The functions and powers of the appropriate Minister of a State under this Part as a member of a Joint Authority, may be performed and exercised by a Minister of the State acting for and on behalf of the appropriate Minister, and references in this Part to the appropriate Minister of a State shall be read as including references to a Minister so acting.

### ***“Division 2—Establishment and procedure of Joint Authorities***

#### **Establishment of Joint Authorities**

“12D. (1) For the purposes of this Act, there are established 4 authorities, to be known as the South Eastern Fisheries Joint Authority, the Northern Australian Fisheries Joint Authority, the Northern Territory Fisheries Joint Authority and the Western Australian Fisheries Joint Authority.

“(2) The South Eastern Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Ministers of New South Wales, Victoria, South Australia and Tasmania.

“(3) The Northern Australian Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Ministers of Queensland and the Northern Territory.

“(4) The Northern Territory Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Minister of the Northern Territory.

“(5) The Western Australian Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Minister of Western Australia.

“(6) The Commonwealth may at any time make an arrangement with a State or States for the establishment of a Joint Authority, consisting of the Commonwealth Minister together with the appropriate Minister or Ministers of that State or those States.

“(7) Each arrangement under sub-section (6) for the establishment of a Joint Authority shall be made by instrument in writing approved by the Governor-General and the Governor or Governors of the State or States represented on the Joint Authority, and the Joint Authority may be abolished by a further such instrument, but an instrument abolishing a Joint Authority shall not take effect while there is in operation an arrangement under Division 3 which provides that the Joint Authority is to have the management of a particular fishery.

“(8) The Commonwealth Minister shall cause a copy of every instrument approved in accordance with sub-section (7) to be published in the *Gazette*, and, subject to that sub-section, such an instrument takes effect on the date of publication.

“(9) A Joint Authority has such functions in relation to fisheries in respect of which arrangements are made under Division 3 as are conferred on it by this Part or a law of a State that is represented on the Joint Authority.

“(10) A member of a Joint Authority may, by writing under his hand, appoint a person or persons to be his deputy or deputies.

“(11) A deputy of a member of a Joint Authority is entitled, in the absence from a meeting of the Joint Authority of the member and of the other deputy or deputies (if any) of the member, to attend that meeting and, when so attending, shall be deemed to be a member.

“(12) For the purposes of this Part, a State shall be taken to be represented on a Joint Authority if the appropriate Minister of the State is a member of the Joint Authority.

“(13) All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

### **Delegation**

“12E. (1) A Joint Authority may, by instrument, either generally or as otherwise provided by the instrument, delegate to a person any of its powers

under this Act, other than this power of delegation and its powers under section 9A.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Joint Authority.

“(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office in the Department or a specified office in the service of a State or an authority of a State or under the law of a State.

“(4) A delegate of a Joint Authority is, in the exercise of his delegated powers, subject to the directions of the Joint Authority.

“(5) A delegation of a power under this section—

- (a) may be revoked, by instrument, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Joint Authority; and
- (c) continues in force notwithstanding any change in the membership of the Joint Authority.

“(6) Section 34A of the *Acts Interpretation Act* 1901 applies in relation to a delegation under this section as if the Joint Authority were a person.

“(7) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation of a power under this section by the Joint Authority is *prima facie* evidence of that matter.

“(8) A document purporting to be a certificate mentioned in sub-section (7) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

“(9) Nothing in this Part is intended to prevent the delegation by a Joint Authority, in accordance with the law of a State, of powers conferred on the Joint Authority by the law of that State.

### **Procedure of Joint Authorities**

“12F. (1) At a meeting of a Joint Authority—

- (a) the Commonwealth Minister shall preside, if he is present;
- (b) if deputies of members only are present, the Deputy of the Commonwealth Minister shall preside; and
- (c) if neither paragraph (a) nor paragraph (b) is applicable, the members present shall select one of their number, being a Minister, to preside.

“(2) Meetings of a Joint Authority shall be convened by the Commonwealth Minister, and he shall convene such a meeting at the request of any other member.

“(3) The quorum for a meeting of a Joint Authority is—

- (a) if there are 2 members—2 members; or

- (b) if there are more than 2 members—the Commonwealth Minister or his deputy and other members not less in number than 2 and not less in number than half the number of States represented on the Joint Authority.

“(4) If, at a meeting of a Joint Authority, the members present are not agreed as to the decision to be made on a matter, the Commonwealth Minister may, subject to sub-section (5), decide that matter and his decision shall have effect as the decision of the Joint Authority.

“(5) Before deciding a matter in accordance with sub-section (4), the Commonwealth Minister shall submit the matter for consideration by the members of the body of Commonwealth and State Ministers known as the Australian Fisheries Council and shall, for that purpose, if so requested by a member of that Council, convene a meeting of that Council, but a decision of the Commonwealth Minister shall not be called in question in any legal proceedings on a ground arising out of this sub-section.

“(6) A member of a Joint Authority may, by written or other communication, submit a matter within the functions of the Joint Authority for consideration by the other member, or each of the other members, of the Joint Authority and, if all the members of the Joint Authority are agreed as to the decision to be made on the matter, the Joint Authority shall be taken to have made a decision accordingly and the Commonwealth Minister shall, upon being satisfied that the members are so agreed, record the decision as a decision of the Joint Authority.

“(7) A Joint Authority may establish advisory committees, consisting of such persons as it thinks fit, to provide information and advice to the Joint Authority on scientific, economic and technical matters related to any fishery.

“(8) Subject to this section, a Joint Authority may adopt its own rules of procedure.

“(9) The Commonwealth Minister shall, in respect of each Joint Authority, appoint a person to be the Secretary of the Authority and make arrangements for the provision of appropriate services in respect of the Authority.

“(10) The Commonwealth Minister shall cause written records to be kept of the decisions of a Joint Authority and such a record, if signed by the Commonwealth Minister, or deputy of the Commonwealth Minister, who took part in or made the decision, is *prima facie* evidence that the decision, as recorded, was duly made.

“(11) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of that Joint Authority, shall be deemed to be duly executed by the Joint Authority and, unless the contrary is proved, shall be deemed to be in accordance with a decision of the Joint Authority.



**Annual Reports**

“12G. (1) A Joint Authority shall, as soon as practicable after 31 December in each year, prepare a report on the activities of the Joint Authority in that year and on the condition during that year of the fisheries to which the functions of the Joint Authority apply.

“(2) The Commonwealth Minister shall cause a copy of every report under this section to be laid before each House of the Parliament as soon as practicable after the preparation of the report.

**“Division 3—Arrangements with respect to management of particular fisheries**

**Arrangements with States**

“12H. (1) The Commonwealth may make an arrangement with the State or States that is or are represented on a Joint Authority that the Joint Authority is to have the management of a particular fishery in waters adjacent to that State or to those States or any of those States.

“(2) An arrangement under sub-section (1) with only one State shall provide either that—

- (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
- (b) the fishery is to be managed in accordance with the law of that State.

“(3) An arrangement under sub-section (1) with 2 or more States shall provide that the fishery is to be managed in accordance with the law of the Commonwealth.

“(4) The Commonwealth may make an arrangement with a State with respect to a particular fishery in waters adjacent to the State, not being a fishery to which an arrangement under sub-section (1) applies—

- (a) that the fishery (being a fishery wholly or partly in the coastal waters of the State) is to be managed in accordance with the law of the Commonwealth; or
- (b) that the fishery (being a fishery wholly or partly in waters on the seaward side of the coastal waters of the State) is to be managed in accordance with the law of the State.

“(5) An arrangement under this Division may define the fishery in respect of which it is to apply by reference to an organism that is a sedentary organism for the purposes of the *Continental Shelf (Living Natural Resources) Act 1968* as if that organism were included in the definition of ‘fish’ in section 4 and, where such an arrangement is in force—

- (a) that organism, to the extent that it is the subject of the fishery defined in the arrangement, shall be deemed to be included in the definition of ‘fish’ in section 4; and

- (b) the *Continental Shelf (Living Natural Resources) Act 1968* does not apply to or in relation to that organism, to the extent that that organism is the subject of that fishery.

**Procedure for making and termination of arrangements**

“12J. (1) An arrangement under this Division shall be made by instrument in writing approved by the Governor-General and the Governor or Governors of the State or States concerned.

“(2) An arrangement under this Division may be terminated by instrument in writing approved by the Governor-General and the Governor or Governors of the State or States concerned.

“(3) The Commonwealth Minister shall cause a copy of every instrument approved in accordance with sub-section (1) or (2) to be published in the *Gazette*, and such an instrument takes effect on the date of publication or on a later date specified in the instrument.

“(4) A party to an arrangement under this section may—

- (a) in the case of the Commonwealth—with the approval of the Governor-General; or
- (b) in the case of a State—with the approval of the Governor of the State, give notice in writing to the other party or parties that the party giving the notice desires the arrangement to terminate upon a date specified in the notice or notices, not being earlier than 6 months after the day on which the notice, or the last of the notices, is given.

“(5) Where a party has duly given a notice or notices in accordance with sub-section (4), the Commonwealth Minister shall, not less than 3 months before the date specified in the notice or notices, cause to be published in the *Gazette* a notice stating that, by reason of notice of termination given by that party, the arrangement concerned will cease to have effect on the date specified in the notice or notices given under sub-section (4), and, where the Commonwealth Minister has caused a notice to be so published, the arrangement ceases to have effect on the specified date.

“(6) An arrangement under this Division may provide that, for the purposes of the application of sub-section (4) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 6 months referred to in that sub-section and may further provide that, for the purposes of the application of sub-section (5) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 3 months referred to in that sub-section.

“(7) After an arrangement under this Division has been made but before the arrangement takes effect, licences, endorsements or other instruments may be granted or executed, and notices may be published, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect, but such an instrument or notice does not have effect before the arrangement takes effect.

“(8) Upon the termination of an arrangement under this Division, licences, endorsements, notices and other instruments granted, executed or published for the purposes of the operation of this Act as affected by the arrangement cease to have effect.

“(9) After action for the purpose of the termination of an arrangement under this Division has been taken, but before the termination takes effect, licences, endorsements or other instruments may be granted or executed, and notices may be published, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such an instrument or notice does not have effect before the termination of the arrangement takes effect.

#### **Extension of operation of this Act in accordance with arrangement**

“12K. Where there is in force an arrangement under this Division that provides that a particular fishery, being a fishery that is so defined that it is or may be carried on partly within the coastal waters of a State, is to be managed in accordance with the law of the Commonwealth, the coastal waters of that State shall, for the purposes of the application of this Act to and in relation to that fishery, be deemed to be proclaimed waters.

#### **Exclusion of this Act in accordance with arrangement**

“12L. Where there is in force an arrangement under this Division that provides that a particular fishery is to be managed in accordance with the law of a State, the provisions of this Act other than this Division do not apply to or in relation to that fishery except in relation to foreign boats in proclaimed waters and operations on and from foreign boats, and persons on foreign boats, in proclaimed waters, and in relation to matters that occurred in or in relation to proclaimed waters before the arrangement took effect.

#### **Functions of Joint Authorities under this Act**

“12M. Where, in respect of a fishery, there is in force an arrangement under this Division under which a Joint Authority has the management of a fishery and the fishery is to be managed in accordance with the law of the Commonwealth, the Joint Authority has the functions of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Division and co-operating and consulting with other authorities (including other Joint Authorities) in matters of common concern.

#### **Powers of Joint Authority to regulate fishing**

“12N. (1) In respect of a Joint Authority fishery, the powers otherwise exercisable by the Minister under section 8 to publish, amend or revoke notices are exercisable under that section by the Joint Authority, and the powers so exercisable by the Joint Authority, so far as they relate to equipment, shall be taken to extend to any equipment of a kind capable of use for the taking of fish in that fishery.

“(2) Where a fishery becomes a Joint Authority fishery, notices published by the Minister under section 8 cease to apply to that fishery.

**Powers of Joint Authority with respect to licences**

“12P. (1) Subject to this section, a licence or endorsement granted or made under this Act otherwise than by virtue of this section does not authorize the doing of any act or thing in or in relation to a Joint Authority fishery.

“(2) In relation to a Joint Authority fishery that is to be managed in accordance with the law of the Commonwealth, the powers otherwise exercisable under a provision in Part III by the Minister or the Secretary in relation to the grant, endorsement, transfer, suspension, cancellation or form of licences are exercisable under that provision by the relevant Joint Authority as if references to the Minister in the relevant provisions of that Part were references to the Joint Authority.

“(3) A licence granted under this Act by a Joint Authority shall contain such conditions or limitations that it applies only in relation to a Joint Authority fishery or Joint Authority fisheries managed by that Joint Authority.

“(4) A Joint Authority may endorse a licence granted under this Act (including a licence granted by that Joint Authority or another Joint Authority) so as to extend the operation of the licence to matters to which the licensing powers of the Joint Authority under this Act are applicable and, where such an endorsement is made—

- (a) the endorsement ceases to have effect if the licence ceases to have effect; and
- (b) the Joint Authority may suspend or cancel the endorsement as if it were a licence granted by the Joint Authority.

“(5) Such fee (if any) as is prescribed is payable in respect of the endorsement of a licence under sub-section (4).

“(6) This section does not—

- (a) empower a Joint Authority to grant, or to take other action in respect of, a licence in respect of a foreign boat or to endorse such a licence; or
- (b) affect the operation of a licence or endorsement granted or made by the Minister or the Secretary in respect of a foreign boat or the power of the Minister or the Secretary to grant, or to take other action in respect of, such a licence or endorsement.

**Application of provisions relating to offences**

“12Q. For the purposes of the prosecution of a person for an offence against section 13 in respect of anything done in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery—

- (a) any reference in that section to a licence shall be read as a reference to a licence, or an endorsement of a licence, granted or made by the relevant Joint Authority; and

- (b) any reference to fish shall be read as a reference to fish to which he Joint Authority fishery relates.

**Evidentiary provision**

"12R. A statement in an arrangement made under this Division that specified waters—

- (a) in the case of an arrangement between the Commonwealth and one State—are waters adjacent to that State; or
- (b) in the case of any other arrangement—are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States,

shall, for all purposes of this Act, be conclusively presumed to be correct."

**Evidence**

13. Section 16 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

"(2A) Without limiting the operation of sub-section (2), the Minister or a person authorized in writing by him to give certificates under this section may give a certificate certifying as to any matter relating to the making of decisions by a Joint Authority established under Part IVA or relating to instruments (including endorsements) executed by such a Joint Authority."

**Regulations**

14. Section 17 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-section:

"(5) In this section 'Australian waters' means Australian waters, whether within or beyond the outer limits of the territorial sea of Australia, other than waters within the limits of a State or internal Territory, and includes waters adjacent to an external Territory, whether within or beyond the territorial sea adjacent to the Territory."

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**NOTE**

1. No. 7, 1952, as amended. For previous amendments, see No. 3, 1953; No. 4, 1956; No. 48, 1959; No. 93, 1966 (as amended by No. 3, 1967); No. 116, 1967; No. 150, 1968; No. 93, 1970; No. 218, 1973 (as amended by No. 7, 1974); No. 3, 1975; No. 91, 1976; and No. 99, 1978.