



Fishing Legislation Amendment Act 1985

No. 29 of 1985

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Fishing Legislation Amendment Act 1985

No. 29 of 1985

An Act to amend the *Fisheries Act 1952* and the *Torres Strait Fisheries Act 1984*, and for related purposes

[Assented to 22 May 1985]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Fishing Legislation Amendment Act 1985*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

PART II—AMENDMENTS OF THE FISHERIES ACT 1952

Principal Act

3. The *Fisheries Act 1952*¹ is in this Part referred to as the Principal Act.

Interpretation

4. Section 4 of the Principal Act is amended—

(a) by inserting after the definition of “foreign boat” in sub-section (1) the following definition:

“‘managed fishery’ means a class of activities by way of fishing, being a class of such activities that is identified in a plan of management as a fishery to which the plan of management applies;” and

(b) by inserting after the definition of “officer” in sub-section (1) the following definition:

“‘plan of management’ means a plan of management determined under sub-section 7B (1);”.

Delegation

5. Section 6A of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(5) The Minister shall not delegate to a person other than the Secretary—

- (a) the Minister’s powers to make, vary and revoke determinations under sub-section 7B (1); or
- (b) the Minister’s function under sub-section 7C (1).”.

6. After section 7A of the Principal Act the following sections are inserted:

Management plans

“7B. (1) The Minister may, by instrument in writing, determine a plan of management for a fishery in proclaimed waters.

“(2) A plan of management for a fishery shall set out—

- (a) the objective of the plan of management; and
- (b) measures by which the objective is to be attained.

“(3) Without limiting the generality of sub-section (2), the Minister may, in a plan of management for a fishery—

- (a) determine the manner in which the fishing capacity of the fishery is to be measured; and
- (b) determine the fishing capacity, measured in that manner, permitted for the fishery.

“(4) Without limiting the generality of sub-section (2), a plan of management for a fishery may make provision for and in relation to—

- (a) the granting of licences under sub-sections 9 (2) and (3) in relation to the fishery;
- (b) the conditions to which licences granted under sub-sections 9 (2) and (3) in relation to the fishery are to be subject; and
- (c) the duration, transfer, renewal and variation of licences granted under sub-sections 9 (2) and (3) in relation to the fishery.

“(5) Where, in a plan of management for a fishery, the Minister determines the fishing capacity permitted for the fishery, then, without limiting the generality of sub-section (2), the plan of management may make provision for and in relation to—

- (a) the division of the fishing capacity permitted for the fishery into units (in this section referred to as ‘units of fishing capacity’);
- (b) the allocation to persons of units of fishing capacity in the fishery;
- (c) the assignment of units of fishing capacity to boats, and the holding, and cessation of holding, of units of fishing capacity in relation to boats;
- (d) requiring units of fishing capacity to be held in relation to boats;
- (e) the determination of the number of units of fishing capacity to be held in relation to boats;
- (f) the holding of units of fishing capacity that are not assigned to a boat, including the number of such units of fishing capacity that may be held by a person and the period during which such units of fishing capacity may be held;
- (g) the duration, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units of fishing capacity;
- (h) the recording of the allocation, assignment, holding, cessation of holding, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units of fishing capacity and the manner in which such recording is to be evidenced, including the issue, recall and replacement of certificates and other documents evidencing such recording; and
- (j) the reconsideration of decisions made under the plan of management.

“(6) Such fees (if any) as are prescribed are payable in respect of the allocation, assignment, variation, re-assignment, transfer, replacement, and renewal of allocation, of units of fishing capacity and the issue and replacement of certificates and other documents evidencing the recording of the allocation, assignment, holding, cessation of holding, variation, re-assignment, transfer, replacement, and renewal of allocation, of units of fishing capacity.

“(7) Regulations made for the purposes of sub-section (6) may specify different fees, or prescribe different methods of calculating fees, in respect of units of fishing capacity included in different classes of units of fishing capacity.

“(8) While a plan of management is in force for a fishery, the Minister and the Secretary shall perform their functions, and exercise their powers, under this Act in relation to the fishery in accordance with the plan of management, and not otherwise.

“(9) In this section—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

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‘fishery’ means a class of activities by way of fishing, being a class of such activities that is identified in a plan of management as a fishery to which the plan of management applies.

“(10) Without limiting the matters by reference to which a fishery may be identified in a plan of management, 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 class of boats;
- (f) a class of persons;
- (g) a purpose of activities.

Tabling, disallowance, &c., of determinations under sub-section 7B (1)

“7C. (1) The Minister shall cause to be published in the *Gazette*, in respect of each determination, notice of—

- (a) the fact that the determination has been made; and
- (b) the place or places where copies of the determination can be obtained.

“(2) A determination may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification—

- (a) a provision of any Act or any regulation made under an Act, of any notice published under section 8 or of any other determination as in force at a particular time or as in force from time to time; or
- (b) any matter contained in any other instrument or writing as in force or existing at the time when the determination takes effect.

“(3) Sections 48 (other than paragraph (1) (a)), 49 and 50 of the *Acts Interpretation Act 1901* apply to determinations as if, in those sections, references to regulations were references to determinations and references to a regulation were references to a provision of a determination.

“(4) Determinations are not statutory rules within the meaning of the *Statutory Rules Publication Act 1903*.

“(5) For the purposes of section 5 of the *Evidence Act 1905*, a determination shall be deemed to be an order made by a Minister.

“(6) A determination shall be deemed to be an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*.

“(7) In this section, ‘determination’ means a determination under sub-section 7B (1).”.

Regulation of fishing

7. Section 8 of the Principal Act is amended—

(a) by inserting after paragraph (1) (d) the following paragraph:

“(da) prohibit a person from having in the person’s possession or in the person’s charge in a boat equipment of a specified kind for taking fish;”;

(b) by adding at the end of paragraph (1) (e) “or carried in a specified manner”; and

(c) by omitting sub-section (4D) and substituting the following sub-sections:

“(4D) A notice under sub-section (1) may provide that the activities prohibited by the notice are—

(a) activities in relation to a managed fishery specified in the notice that would be authorized by a licence granted by virtue of paragraph 9 (2) (b) or (3) (b) in relation to the managed fishery; or

(b) activities in respect of which an endorsement may be made under sub-section 9 (4).

“(4DA) Where—

(a) a notice under sub-section (1) provides that the activities prohibited by the notice are activities in relation to a managed fishery specified in the notice that would be authorized by a licence granted by virtue of paragraph 9 (2) (b) or (3) (b) in relation to the managed fishery; and

(b) such a licence is granted in respect of a boat, the prohibition contained in the notice does not apply in relation to the use of the boat during any period during which the licence is in force.”.

Tabling, disallowance, &c., of notices under section 8

8. Section 8A of the Principal Act is amended—

(a) by omitting from sub-section (1) “a reference” and substituting “references”; and

(b) by inserting after sub-section (1) the following sub-section:

“(1A) A notice published under section 8 may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification—

(a) a provision of any Act or any regulation made under an Act, of any determination made under sub-section 7B (1) or of any other notice published under section 8 as in force at a particular time or as in force from time to time; or

(b) any matter contained in any other instrument or writing as in force or existing when the notice comes into force.”.

Licences

9. (1) Section 9 of the Principal Act is amended—

(a) by omitting from sub-section (2) all the words after “on” and substituting the following words and paragraphs:

“that person’s behalf, for—

(a) taking fish in proclaimed waters or a specified area of the proclaimed waters; or

(b) a specified managed fishery,

and for processing and carrying fish that have been taken as a result of that use of the boat”;

(b) by omitting from sub-section (3) all the words after “on” and substituting the following words and paragraphs:

“that person’s behalf, for—

(a) carrying, or processing and carrying, in proclaimed waters, or a specified area of proclaimed waters, fish that have been taken with the use of another boat; or

(b) carrying, or processing and carrying, in proclaimed waters, or a specified area of proclaimed waters, fish that have been taken with the use of another boat for a specified managed fishery”;

(c) by omitting from sub-section (4) “under sub-section (2) or (3)” and substituting “by virtue of paragraph (2) (a) or (3) (a)”;

(d) by omitting sub-section (5) and substituting the following sub-section:

“(5) A licence granted under this section—

(a) is subject to such conditions as are—

(i) specified in the licence;

(ii) prescribed in relation to—

(A) all licences granted under this section;

(B) a class of licences granted under this section in which the licence is included; and

(iii) in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b)—specified in the plan of management for the managed fishery in relation to which the licence has been granted;

(b) comes into force on the day specified for the purpose in the licence or, if no day is so specified, on the day on which it is granted; and

(c) remains in force, subject to sub-section (6A) and section 9A, until the day specified for the purpose in the licence, being—

(i) in the case of a licence granted under sub-section (1) or by virtue of paragraph (2) (a) or (3) (a)—a day in the period of 12 months commencing on the day on which the licence came into force; or

(ii) in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b)—a day in the period of 12 months

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commencing on the day on which the licence came into force or, if a different period is specified for the purpose in the plan of management for the managed fishery in relation to which the licence has been granted, a day in the period so specified.”;

- (e) by omitting from sub-section (5A) “in respect of a boat” and substituting “, or, in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b), in the plan of management for the managed fishery in relation to which the licence has been granted,”;

- (f) by omitting sub-section (6) and substituting the following sub-sections:

“(6) Where a licence granted under this section is renewed under sub-section (6B) (whether or not the licence has previously been renewed), the licence remains in force, subject to sub-section (6A) and section 9A, until the day specified for the purpose in the renewal, being—

(a) in the case of a licence granted under sub-section (1) or by virtue of paragraph (2) (a) or (3) (a)—a day in the period of 12 months commencing on the day on which the licence, the renewal of the licence or the last renewal of the licence, as the case requires, ceased to be in force; or

(b) in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b)—a day in the period of 12 months commencing on the day on which the licence, the renewal of the licence or the last renewal of the licence, as the case requires, ceased to be in force or, if a different period is specified for the purpose in the plan of management for the managed fishery in relation to which the licence has been granted, a day in the period so specified.

“(6A) A licence granted under this section ceases to be in force if the holder of the licence, by notice in writing given to the Minister, surrenders the licence.

“(6B) Subject to sub-section (8ABA), the Minister may, upon application being made by the holder of a licence granted under this section not earlier than 2 months, or later than one month, before the expiration of the period for which the licence was granted, renewed or last renewed, as the case requires, renew the licence with effect from the expiration of the last-mentioned period.”;

- (g) by inserting after sub-section (7) the following sub-section:

“(7A) Subject to sub-section (8AD), the Minister or the Secretary may, on the application of the holder of a licence granted under this section in respect of a boat, vary the licence by omitting the name of the boat and substituting the name of another boat.”;

- (h) by omitting from sub-section (8) “or”;

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- (j) by inserting in sub-section (8) “or the variation of a licence,” after “licence,” (last occurring);
- (k) by omitting sub-section (8A) and substituting the following sub-section:

“(8A) Regulations made for the purposes of sub-section (8) may prescribe different fees, or prescribe different methods of calculating fees, in respect of—

- (a) licences included in different classes of licences; or
- (b) endorsements of licences included in different classes of endorsements of licences.”;

- (m) by omitting from sub-sections (8AA) and (8AB) “*Licences*”;
- (n) by inserting after sub-section (8AB) the following sub-section:

“(8ABA) Where levy is payable under the *Fisheries Levy Act 1984*, or a fee is payable under this Act, on or in respect of the renewal under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not renew the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.”;

- (p) by inserting after sub-section (8AC) the following sub-sections:

“(8AD) Where levy is payable under the *Fisheries Levy Act 1984*, or a fee is payable under this Act, on or in respect of the variation under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not vary the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.

“(8AE) Where—

- (a) a person has, under sub-section (6A), surrendered a licence granted under this section in respect of a boat; and
 - (b) the person had, at the time when the person surrendered the licence, notified the Minister that the person intended to apply for another licence under this section in respect of another boat,
- the Minister may direct, in writing, that the fee that would be payable in respect of the grant of the other licence is to be reduced by an amount that, in the opinion of the Minister, is appropriate, and, where the Minister gives such a direction, the fee shall be reduced by that amount.”; and

- (q) by inserting in sub-section (11) “, or a licence under this section and another licence under this section,” after “Territory”.

(2) Section 9 of the Principal Act as amended by sub-section (1) of this section applies to licences granted, before the commencement of this Act, under section 9 of the Principal Act and to licences granted, after the commencement of this Act, under section 9 of the *Fisheries Act 1952*.

Suspension and cancellation of licences

10. (1) Section 9A of the Principal Act is amended—

(a) by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:

“(1) The Minister or the Secretary may, by notice in writing given to the holder of a licence granted under section 9, suspend the licence if the Minister or the Secretary, as the case may be, has reasonable grounds to believe that—

- (a) there has been a contravention of, or a failure to comply with, a condition to which the licence is subject;
- (b) a person, being the holder of the licence or a person acting on behalf of the holder of the licence, has done an act that the person was prohibited from doing by a notice in force under sub-section 8 (1); or
- (c) in an application under this Act, the regulations or a plan of management relating to the licence, the holder of the licence made a statement or furnished information that was, to the holder’s knowledge, false or misleading in a material particular,

not being an act or omission in relation to which the Minister or the Secretary, as the case may be, has previously exercised powers under this sub-section.

“(2) Where a licence is suspended under sub-section (1), the suspension, unless it is sooner revoked, ceases—

- (a) if proceedings for an offence against this Act in relation to the alleged act or omission by reason of which the licence was suspended are instituted against the holder of the licence, or a person who acted on behalf of the holder of the licence, within one month after suspension—on completion of the proceedings; or
- (b) in any other case—on the expiration of one month after the suspension.

“(3) The Minister may, at any time, by notice in writing given to the holder of a licence suspended under sub-section (1), revoke the suspension.

“(3A) The Minister may, by notice in writing given to the holder of a licence granted under section 9, cancel the licence if—

- (a) in the case of a master fisherman’s licence—the holder of the licence is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of Papua New Guinea or a State or Territory relating to fishing; and

- (b) in the case of a licence granted under sub-section 9 (2) or (3) in respect of a boat—
 - (i) the holder of the licence is convicted of an offence of a kind referred to in paragraph (a); or
 - (ii) during any period during which the holder of the licence held a licence in respect of the boat—another person is convicted of an offence of a kind referred to in paragraph (a) in relation to the use of the boat.”; and
- (b) by omitting from sub-section (5) “(2)” and substituting “(1)”.

(2) Where, immediately before the commencement of this Act, a licence granted under section 9 of the Principal Act was suspended under sub-section 9A (2) of the Principal Act, section 9A of the Principal Act as amended by this Act has effect in relation to the licence as if, on the commencement of this Act, the licence had been suspended under sub-section 9A (1) of the Principal Act as amended by this Act.

Powers of officers

11. Section 10 of the Principal Act is amended—

- (a) by omitting paragraph (ab) and substituting the following paragraph:
 - “(ab) where the officer has reasonable grounds to believe that there is on any land or in any premises any document, equipment or thing that may afford evidence as to the commission of an offence against this Act, with the consent of the owner or occupier of the land or premises or pursuant to a warrant issued under sub-section (4A)—
 - (i) enter the land or premises using such force as is necessary for the purpose;
 - (ii) search the land or premises and break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the officer has reasonable grounds to believe that there is a document, equipment or thing of that kind; and
 - (iii) examine and take possession of, or secure against interference, any document, equipment or thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act;”;
- (b) by omitting from paragraph (1) (cb) “*Licences*”;
- (c) by inserting after paragraph (h) the following paragraph:
 - “(ha) require the master of a boat to cause to be lifted from the sea any equipment that the officer has reason to believe is being, or has been, used by a person on board the boat in contravention of this Act;”;

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- (d) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

“(2) Where an officer (other than a prescribed person who is in uniform) boards or enters upon a boat, the officer shall—

- (a) in the case of a prescribed person—produce, for inspection by the master of the boat, written evidence of the fact that the officer is a prescribed person; or
- (b) in any other case—produce, for inspection by the master of the boat, the officer’s identity card,

and, if the officer fails to do so, the officer is not authorized to remain on board the boat.

“(3) Where an officer (other than a prescribed person who is in uniform) makes a requirement of a person (in this sub-section referred to as the ‘relevant person’) under sub-section (1), the officer shall—

- (a) in the case of a prescribed person—produce, for inspection by the relevant person, written evidence of the fact that the officer is a prescribed person; or
- (b) in any other case—produce, for inspection by the relevant person, the officer’s identity card,

and, if the officer fails to do so, the relevant person is not obliged to comply with the requirement.

“(4) Where an officer has reasonable grounds to believe that there is on any land or in any premises any document, equipment or thing that may afford evidence as to the commission of an offence against this Act, the officer may make application to a Justice of the Peace for a warrant authorizing the officer to enter the land or premises for the purpose of ascertaining whether there is on that land or in those premises any such document, equipment or thing.

“(4A) If, on application by an officer under sub-section (4), a Justice of the Peace is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, on the land or in the premises to which the application relates, any document, equipment or thing that may afford evidence as to the commission of an offence against this Act, the Justice of the Peace may issue a warrant authorizing the officer, together with any other person named in the warrant, to enter that land or those premises, during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time, and to exercise the powers referred to in sub-paragraphs (1) (ab) (ii) and (iii).

“(4B) A warrant issued under sub-section (4A) shall specify a day, being a day not later than 7 days after the day on which the warrant is issued, as the day on which the warrant ceases to have effect, and the warrant shall cease to have effect on the day so specified.”; and

- (e) by adding at the end the following sub-section:

“(6) In this section—

‘prescribed person’ means—

- (a) a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; or
- (b) a member of the Defence Force;

‘this Act’ includes the regulations.”.

Interpretation

12. Section 12A of the Principal Act is amended—

- (a) by omitting paragraph (3) (e) and substituting the following paragraph:

“(e) a class of boats;”;

- (b) by adding at the end the following sub-section:

“(4) A reference in this Part to units of fishing capacity is a reference to the units into which, under a plan of management for a fishery, the fishing capacity permitted for the fishing is divided.”.

Delegation

13. Section 12E of the Principal Act is amended by adding at the end of sub-section (1) “and its powers to make, vary and revoke determinations under sub-section 7B (1)”.

Arrangements

14. Section 12J of the Principal Act is amended—

- (a) by inserting in sub-section (7) “units of fishing capacity may be allocated,” after “executed,”;
- (b) by inserting in sub-section (7) “, unit” after “instrument”;
- (c) by inserting in sub-section (8) “, and units of fishing capacity allocated,” after “published”;
- (d) by inserting in sub-section (9) “units of fishing capacity may be allocated,” after “executed,”; and
- (e) by inserting in sub-section (9) “, unit” after “instrument”.

15. After section 12M of the Principal Act the following section is inserted:

Powers of Joint Authority to determine plans of management

“12MA. (1) In respect of a Joint Authority fishery, the powers otherwise exercisable by the Minister under sub-section 7B (1) to make, vary or revoke determinations are exercisable by the Joint Authority.

“(2) Where a fishery becomes a Joint Authority fishery, plans of management determined by the Minister under sub-section 7B (1) cease to apply to the fishery.”.

Powers of Joint Authority with respect to licences

16. Section 12P of the Principal Act is amended—

- (a) by inserting in sub-section (2) “renewal, variation,” after “endorsement,”; and
- (b) by omitting from sub-section (5A) “*Licences*”.

Reconsideration and review of decisions by Joint Authority

17. Section 12S of the Principal Act is amended by omitting “9A (1)” from the definition of “relevant decision” in sub-section (1) and substituting “9A (3A)”.

Offences

18. Section 13 of the Principal Act is amended—

- (a) by adding at the end of paragraph (1) (a) “in relation to the area”;
- (b) by omitting from paragraph (1) (b) “for taking fish” (last occurring);
- (c) by omitting from paragraph (1) (c) “for that processing or for that carrying, as the case may be,”;
- (d) by inserting in paragraphs (1) (f), (g) and (h) “or fail to comply with” after “contravene”;
- (e) by omitting from sub-section (2) “or (3)”;
- (f) by omitting from sub-section (2) all the words after “fine” and substituting the following words and paragraphs:
 - “not exceeding—
 - (a) if the person is a natural person—\$5,000; or
 - (b) if the person is a body corporate—\$25,000”;
- (g) by omitting paragraphs (2A) (a) and (b) and substituting the following paragraphs:
 - “(a) on summary conviction—by a fine not exceeding—
 - (i) if the person is a natural person—\$5,000; or
 - (ii) if the person is a body corporate—\$25,000; and
 - (b) on conviction on indictment—by a fine not exceeding—
 - (i) if the person is a natural person—\$50,000; or
 - (ii) if the person is a body corporate—\$250,000”;
- (h) by omitting sub-sections (3) and (3A) and substituting the following sub-section:
 - “(3) Where—
 - (a) a person is convicted of an offence against sub-section (2) or (2A) arising out of a contravention of paragraph (1) (b), (c), (e) or (i);

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- (b) the court before which the person is convicted is satisfied that—
 - (i) the person contravened paragraph (1) (b), (c), (e) or (i), as the case may be, in an area of proclaimed waters at a particular time by—
 - (A) using a boat for a particular purpose; or
 - (B) having in the person's possession, or in the person's charge, a boat for a particular purpose; and
 - (ii) either of the following sub-sub-paragraphs apply:
 - (A) a licence under this Act was not in force in respect of the boat at that time;
 - (B) a licence under this Act was in force in respect of the boat at that time, but the licence did not authorize the use of the boat in that area for that purpose; and
- (c) the court is also satisfied that—
 - (i) in a case to which sub-sub-paragraph (b) (ii) (A) applies—if a licence under this Act had been in force at that time authorizing the use of the boat in that area for that purpose, the licence would have been a leviable licence; and
 - (ii) in a case to which sub-sub-paragraph (b) (ii) (B) applies—if the licence under this Act in force in respect of the boat had not been in force at that time, but another licence under this Act had been in force authorizing the use of the boat in that area for that purpose, the other licence would have been a leviable licence,

the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in sub-paragraph (c) (i) or the other licence referred to in sub-paragraph (c) (ii), as the case may be.”;

- (j) by omitting from sub-section (7) “*Licences*”;
- (k) by omitting from sub-section (7) “, or endorsement,” and substituting “, renewal, variation or endorsement”;
- (m) by inserting in paragraph (7) (b) “payable with respect to the licence” after “requires,”.

Removing fish from traps, &c.

19. Section 13A of the Principal Act is amended by omitting “\$1,000” and substituting “\$5,000 or imprisonment for 2 years, or both”.

Using foreign boat for fishing for private purposes

20. Section 13AA of the Principal Act is amended by omitting “\$1,000” and substituting “\$5,000”.

Having foreign boat equipped with nets, &c.

21. Section 13AB of the Principal Act is amended—

- (a) by inserting in sub-section (1) “in an area of proclaimed waters comprised” after “not,”;
- (b) by omitting from sub-section (1) “for fishing”; and
- (c) by omitting paragraph (1A) (a) and substituting the following paragraph:
 - “(a) on summary conviction—by a fine not exceeding—
 - (i) if the person is a natural person—\$5,000; or
 - (ii) if the person is a body corporate—\$25,000; and”.

Using foreign boat for fishing in Australian fishing zone

22. Section 13B of the Principal Act is amended—

- (a) by omitting from sub-section (2) “for that processing or for that carrying, as the case may be,”; and
- (b) by omitting paragraphs (5) (a) and (b) and substituting the following paragraphs:
 - “(a) on summary conviction—by a fine not exceeding \$5,000; and
 - (b) on conviction on indictment—by a fine not exceeding \$250,000”.

Foreign boats not to land fish in Australia

23. Section 13BB of the Principal Act is amended by omitting from paragraph (1) (b) “\$10,000” and substituting “\$50,000”.

Court may make certain orders

24. Section 13E of the Principal Act is amended by omitting from sub-section (2) “6” and substituting “12”.

Obstruction of officers, &c.

25. Section 14 of the Principal Act is amended—

- (a) by inserting in paragraphs (b), (c) and (ca) “without reasonable excuse,” before “refuse”;
- (b) by omitting paragraph (e);
- (c) by adding at the end of paragraph (g) “or”;
- (d) by omitting from paragraph (h) “or”;
- (e) by omitting paragraph (i);
- (f) by omitting “\$1,000 or imprisonment for 6 months” and substituting “\$2,000 or imprisonment for 12 months, or both”; and

(g) by adding at the end the following sub-section:

“(2) A person who—

(a) when lawfully required by an officer to give information, gives information to the officer that is, to the knowledge of the person, false or misleading in a material particular; or

(b) in an application under this Act, the regulations or a plan of management, makes a statement or furnishes information that is, to the knowledge of the person, false or misleading in a material particular,

is guilty of an offence punishable, on conviction, by—

(c) if the person is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or

(d) if the person is a body corporate—a fine not exceeding \$25,000.”.

Certain offences to be indictable offences

26. Section 15 of the Principal Act is amended—

(a) by inserting in sub-section (1) “section 13A or sub-section,” after “13 (2A),”; and

(b) by omitting from sub-section (1) “or 13BB (1)” and substituting “, 13BB (1) or 14 (2)”.

Enforcement of orders for payment

27. Section 15A of the Principal Act is amended—

(a) by omitting from paragraphs (1) (a) and (2) (a) “13 (3)” and substituting “13 (2) or (2A)”; and

(b) by omitting sub-paragraph (2) (b) (ii) and substituting the following sub-paragraph:

“(ii) has civil jurisdiction, but—

(A) does not have civil jurisdiction to the extent of the amount; or

(B) it is more appropriate for the order to be enforceable as a final judgment of another court,”.

Reconsideration and review of decisions by the Minister or Secretary

28. Section 16A of the Principal Act is amended by omitting from sub-section (1) “9A (1)” (wherever occurring) and substituting “9A (3A)”.

Regulations

29. Section 17 of the Principal Act is amended—

(a) by omitting from paragraph (1) (a) “\$200” and substituting “\$2,000 in the case of a natural person and \$10,000 in the case of a body corporate”;

(b) by omitting from paragraph (1) (aa) “*Licences*”;

(c) by inserting after paragraph (1) (aa) the following paragraph:

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- “(ab) providing for the replacement of licences, permits and other instruments granted or executed under this Act or the regulations and prescribing fees for such replacement;”;
- (d) by omitting from sub-paragraph (1) (f) (i) “or”;
- (e) by inserting after sub-paragraph (1) (f) (i) the following paragraph:
 - “(ia) the carrying and transshipping of fish taken in Australian waters; or”;and
- (f) by inserting after sub-section (4) the following sub-section:
 - “(4A) Notwithstanding section 49A of the *Acts Interpretation Act 1901*, the regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a plan of management, being a plan of management as in force at a particular time or as in force from time to time.”.

PART III—AMENDMENTS OF THE TORRES STRAIT FISHERIES ACT 1984

Principal Act

30. The *Torres Strait Fisheries Act 1984*² is in this Part referred to as the Principal Act.

Minister may require information to be furnished

- 31.** Section 14 of the Principal Act is amended—
- (a) by omitting from paragraph (5) (a) “or” (last occurring);
 - (b) by inserting after paragraph (5) (a) the following paragraph:
 - “(aa) the pilot of, or a person on board, an aircraft; or”;
 - (c) by omitting from sub-section (12) “\$1,000” and substituting “\$5,000”;
 - (d) by omitting from sub-section (14) all the words after “fine” and substituting the following words and paragraphs:
 - “not exceeding—
 - (a) if the person is a natural person—\$5,000; or
 - (b) if the person is a body corporate—\$25,000”;
 - (e) by inserting after sub-section (14) the following sub-section:
 - “(14A) A person who purchases fish that the person knows have been taken in contravention of a notice in force under sub-section (6) or (7) is guilty of an offence punishable, on conviction, by a fine not exceeding—
 - (a) if the person is a natural person—\$5,000; or
 - (b) if the person is a body corporate—\$25,000.”;
 - (f) by omitting from sub-section (15) “5” and substituting “15”;
 - (g) by omitting from sub-section (15) “Penalty: \$1,000.”; and
 - (h) by inserting after sub-section (15) the following sub-section:

“(15A) A person who contravenes sub-section (15) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the person is a natural person—\$5,000; or
- (b) if the person is a body corporate—\$25,000.”.

Commercial fishing licences

32. Section 19 of the Principal Act is amended by omitting from paragraph (5) (b) “*Licences*”.

Entries in licences and endorsements

33. Section 21 of the Principal Act is amended by omitting from paragraph (3A) (b) “*Licences*”.

Terms of licences

34. Section 23 of the Principal Act is amended by inserting in sub-section (2) “, the renewal of the licence” after “on which the licence”.

Renewal of licences

35. Section 24 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “or renewed” and substituting “, renewed or last renewed”; and
- (b) by omitting from paragraph (2) (b) “*Licences*”.

36. After section 25 of the Principal Act the following section is inserted:

Variation of licences

“25A. (1) Subject to sub-section (2) and to any condition of a licence relating to the variation of the licence, the Minister may, in the Minister’s discretion, upon application being made in accordance with the appropriate form by the holder of a licence granted under section 19 in respect of a boat, vary the licence by omitting the name of the boat and substituting the name of another boat.

“(2) Where—

- (a) a fee is payable under this Act in respect of the variation under sub-section (1) of a licence granted under section 19; or
- (b) levy is payable under the *Fisheries Levy Act 1984* on the variation under sub-section (1) of this section of a licence granted under sub-section 19 (2) or (3),

the Minister shall not vary the licence unless the holder of the licence tenders the amount of the fee or levy, as the case may be.”.

Fees

37. Section 27 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (c) the following paragraph:
 - “(ca) the variation of a licence of that kind;”;and
- (b) by omitting sub-section (3) and substituting the following sub-section:

“(3) Regulations made for the purpose of sub-section (1) may prescribe different fees, or prescribe different methods of calculating fees, in respect of—

- (a) licences included in different classes of licences; and
- (b) entries in licences included in different classes of entries in licences.”.

Powers of Protected Zone Joint Authority with respect to licences, &c.

38. Section 36 of the Principal Act is amended by omitting from paragraph (5A) (b) “*Licences*”.

Powers of officers

39. Section 42 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (ha) “*Licences*”;
- (b) by inserting in paragraph (1) (o) “, or has been,” after “is being”;
- (c) by inserting after sub-section (2) the following sub-sections:

“(2A) Where an officer (other than a prescribed person who is in uniform) boards or enters upon a boat, the officer shall—

- (a) in the case of a prescribed person—produce, for inspection by the master of the boat, written evidence of the fact that the officer is a prescribed person; or
- (b) in any other case—produce, for inspection by the master of the boat, the officer’s identity card,

and, if the officer fails to do so, the officer is not authorized to remain on board the boat.

“(2B) Where an officer (other than a prescribed person who is in uniform) makes a requirement of a person (in this sub-section referred to as the ‘relevant person’) under sub-section (1), the officer shall—

- (a) in the case of a prescribed person—produce, for inspection by the relevant person, written evidence of the fact that the officer is a prescribed person; or
- (b) in any other case—produce, for inspection by the relevant person, the officer’s identity card,

and, if the officer fails to do so, the relevant person is not obliged to comply with the requirement.”; and

- (d) by adding at the end the following sub-section:

“(7) In this section—

‘prescribed person’ means—

- (a) a member or special member of the Australian Federal Police or a member of the Police Force of Queensland; or

- (b) a member of the Defence Force;

‘this Act’ includes the regulations.”.

Obstruction of officers, &c.

40. Section 43 of the Principal Act is amended—

- (a) by inserting in paragraphs (1) (b), (c) and (ca) “, without reasonable excuse,” after “shall not”;
- (b) by omitting from sub-section (1) “\$1,000 or imprisonment for 6 months” and substituting “\$2,000 or imprisonment for 12 months, or both”; and
- (c) by omitting from sub-section (2) all the words after “conviction,” and substituting the following word and paragraphs:
 - “by—
 - (c) if the person is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
 - (d) if the person is a body corporate—a fine not exceeding \$25,000”.

Contravention of notices under section 16

41. Section 44 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “, (3A) or (3B)”;
- (b) by omitting from sub-section (2) all the words after “fine” and substituting the following words and paragraphs:
 - “not exceeding—
 - (a) if the person is a natural person—\$5,000; or
 - (b) if the person is a body corporate—\$25,000”;
- (c) by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs:
 - “(a) on summary conviction—by a fine not exceeding—
 - (i) if the person is a natural person—\$5,000; or
 - (ii) if the person is a body corporate—\$25,000; and
 - (b) on conviction on indictment—by a fine not exceeding—
 - (i) if the person is a natural person—\$50,000; or
 - (ii) if the person is a body corporate—\$250,000”;
- (d) by omitting sub-sections (3A), (3B) and (3C) and substituting the following sub-sections:
 - “(3A) Where—
 - (a) a person is convicted of an offence against sub-section (2) or (3) arising out of a contravention of paragraph (1) (a);
 - (b) the court before which the person is convicted is satisfied that—
 - (i) the person contravened paragraph (1) (a) in an area of Australian jurisdiction at a particular time by using a boat (other than a Papua New Guinea boat) for a particular purpose; and
 - (ii) either of the following sub-sub-paragraphs apply:

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- (A) a licence under this Act was not in force in respect of the boat at that time;
 - (B) a licence under this Act was in force in respect of the boat at that time, but the licence did not authorize the use of the boat in that area for that purpose; and
- (c) the court is also satisfied that—
- (i) in a case to which sub-sub-paragraph (b) (ii) (A) applies—if a licence under this Act had been in force at that time authorizing the use of the boat in that area for that purpose, the licence would have been a leviable licence; or
 - (ii) in a case to which sub-sub-paragraph (b) (ii) (B) applies—if the licence under this Act in force in respect of the boat had not been in force at that time, but another licence under this Act had been in force authorizing the use of the boat in that area for that purpose, the other licence would have been a leviable licence,

the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in sub-paragraph (c) (i) or the other licence referred to in sub-paragraph (c) (ii), as the case may be.

“(3B) Where—

- (a) a person is convicted of an offence against sub-section (2) or (3) arising out of a contravention of paragraph (1) (c);
- (b) the court before which the person is convicted is satisfied that—
 - (i) the person contravened paragraph (1) (c) in an area of Australian jurisdiction at a particular time by using a boat (other than a Papua New Guinea boat) to search for fish; and
 - (ii) either of the following sub-sub-paragraphs apply:
 - (A) a licence under this Act was not in force in respect of the boat at that time;
 - (B) a licence under this Act was in force in respect of the boat at that time, but the licence did not authorize the use of the boat for taking fish of that kind in that area in the course of commercial fishing; and
- (c) the court is also satisfied that—
 - (i) in a case to which sub-sub-paragraph (b) (ii) (A) applies—if a licence under this Act had been in force at that time authorizing the use of the boat for taking fish

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of that kind in that area in the course of commercial fishing, the licence would have been a leviable licence;
or

- (ii) in a case to which sub-sub-paragraph (b) (ii) (B) applies—if the licence under this Act in force in respect of the boat had not been in force at that time, but another licence under this Act had been in force authorizing the use of the boat for taking fish of that kind in that area in the course of commercial fishing, the other licence would have been a leviable licence,

the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in sub-paragraph (c) (i) or the other licence referred to in sub-paragraph (c) (ii), as the case may be.”;

- (e) by omitting from sub-section (6) “*Licences*”;
- (f) by inserting in sub-section (6) “, the variation of” after “the renewal of”; and
- (g) by inserting in paragraph (6) (b) “payable with respect to the licence” after “requires,”.

Offences relating to commercial fishing

42. Section 45 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (2) (b) (i) “\$2,000” and substituting “\$5,000”;
- (b) by omitting from sub-paragraph (2) (b) (ii) “\$10,000” and substituting “\$50,000”;
- (c) by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs:
 - “(a) on summary conviction—by a fine not exceeding—
 - (i) if the person is a natural person—\$5,000; or
 - (ii) if the person is a body corporate—\$25,000; and
 - (b) on conviction on indictment—by a fine not exceeding—
 - (i) if the person is a natural person—\$50,000; or
 - (ii) if the person is a body corporate—\$250,000”;
- (d) by omitting sub-sections (3A) and (3B);
- (e) by omitting from sub-section (4) “, (3) or (3A)” and substituting “or (3)”;
- (f) by omitting from sub-section (4) all the words after “fine” and substituting the following words and paragraphs:
 - “not exceeding—
 - (a) if the person is a natural person—\$5,000; or
 - (b) if the person is a body corporate—\$25,000”;

(g) by inserting after sub-section (4) the following sub-section:

“(4A) Where—

(a) a person is convicted of an offence against sub-section (2) or (4) arising out of a contravention of paragraph (1) (a), (b) or (k);

(b) the court before which the person is convicted is satisfied that—

(i) the person contravened paragraph (1) (a), (b) or (k), as the case may be, in an area of Australian jurisdiction at a particular time by using a boat (other than a Papua New Guinea boat) for a particular purpose; and

(ii) either of the following sub-sub-paragraphs apply:

(A) a licence under this Act was not in force in respect of the boat at that time;

(B) a licence under this Act was in force in respect of the boat at that time, but the licence did not authorize the use of the boat in that area for that purpose; and

(c) the court is also satisfied that—

(i) in a case to which sub-sub-paragraph (b) (ii) (A) applies—if a licence under this Act had been in force at that time authorizing the use of the boat in that area for that purpose, the licence would have been a leviable licence; or

(ii) in a case to which sub-sub-paragraph (b) (ii) (B) applies—if the licence under this Act in force in respect of the boat had not been in force at that time, but another licence under this Act had been in force authorizing the use of the boat in that area for that purpose, the other licence would have been a leviable licence,

the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in sub-paragraph (c) (i) or the other licence referred to in sub-paragraph (c) (ii), as the case may be.”;

(h) by omitting from sub-section (5) “*Licences*”;

(j) by inserting in sub-section (5) “, the variation of” after “renewal of”; and

(k) by inserting in paragraph (5) (b) “payable with respect to the licence” after “requires,”.

Court may make certain orders

43. Section 46 of the Principal Act is amended by omitting from sub-section (2) “6” and substituting “12”.

Removing fish from traps, &c.

44. Section 47 of the Principal Act is amended by omitting “\$2,000 or imprisonment for a period not exceeding 6 months” and substituting “\$5,000 or imprisonment for 2 years, or both”.

Using foreign boat for fishing for private purposes

45. Section 48 of the Principal Act is amended by omitting “\$1,000” and substituting “\$5,000”.

Certain boats not to be brought to certain places

46. Section 49 of the Principal Act is amended by omitting from paragraph (1) (b) “\$10,000” and substituting “\$50,000”.

Certain boats not to land fish at certain places

47. Section 50 of the Principal Act is amended by omitting from paragraph (1) (b) “\$10,000” and substituting “\$50,000”.

Having boat equipped with nets, &c.

48. Section 51 of the Principal Act is amended—

(a) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) on summary conviction—by a fine not exceeding—

(i) if the person is a natural person—\$5,000; or

(ii) if the person is a body corporate—\$25,000; and”;

(b) by omitting from sub-section (3) all the words after “fine” and substituting the following words and paragraphs:

“not exceeding—

(a) if the person is a natural person—\$5,000; or

(b) if the person is a body corporate—\$25,000”.

Offences against Papua New Guinea law

49. Section 54 of the Principal Act is amended by omitting from sub-section (2) “\$1,000” and substituting “\$5,000”.

Certain offences to be indictable offences

50. Section 55 of the Principal Act is amended by omitting from sub-section (1) “section” (last occurring) and substituting “sub-section 43 (2) or section 47,”.

Enforcement of orders for payment

51. Section 55A of the Principal Act is amended—

(a) by omitting from paragraphs (1) (a) and (2) (a) “44 (3A) or (3B) or 45 (3A)” and substituting “44 (2) or (3) or 45 (2) or (4)”;

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- (b) by omitting sub-paragraph (2) (b) (ii) and substituting the following sub-paragraph:
- “(ii) has civil jurisdiction, but—
 - (A) does not have civil jurisdiction to the extent of the amount; or
 - (B) it is more appropriate for the order to be enforceable as a final judgment of another court.”

Regulations

52. Section 60 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (c) “\$500” and substituting “\$2,000 in the case of a natural person and \$10,000 in the case of a body corporate”;
- (b) by omitting from paragraph (1) (ca) “*Licences*”;
- (c) by inserting after paragraph (1) (d) the following paragraph:
 - “(da) providing for the replacement of licences and other instruments granted or executed under this Act or the regulations and prescribing fees for such replacement;”;
- (d) by inserting after sub-paragraph (1) (n) (ii) the following sub-paragraph:
 - “(iia) the carrying and transhipping of fish taken in areas of Australian jurisdiction;”;
- (e) by omitting from sub-paragraph (1) (n) (iii) “or” (last occurring); and
- (f) by adding at the end of paragraph (1) (n) the following word and sub-paragraph:
 - “or (v) the carrying and transhipping of fish taken with the use of Australian boats in areas of Papua New Guinea jurisdiction;”.

NOTES

1. No. 7, 1952, as amended. For previous amendments, see No. 3, 1953; No. 4, 1956; No. 48, 1959; No. 93, 1966; No. 116, 1967; No. 150, 1968; No. 93, 1970; No. 218, 1973; No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 155, 1979; Nos. 70, 86 and 93, 1980; No. 181, 1981; No. 80, 1982; and Nos. 22, 30 and 152, 1984.
2. No. 23, 1984, as amended. For previous amendments, see No. 152, 1984.

[*Minister's second reading speech made in—
House of Representatives on 17 April 1985
Senate on 14 May 1985*]