



# Fishing Industry Research and Development Act 1987

No. 174 of 1987

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# Fishing Industry Research and Development Act 1987

No. 174 of 1987

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**An Act to make provision with respect to research and  
development in relation to the Australian fishing industry**

*[Assented to 26 December 1987]*

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 Industry Research and Development Act 1987*.

### **Commencement**

2. (1) Parts I, III and IV and section 64 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation.

### **Object**

3. The object of this Act is to make provision for the funding and administration of fisheries research and development, with a view to:

- (a) identifying more precisely the areas of fisheries research and development that are relevant to the needs of the Australian fishing industry;
- (b) improving the efficiency and effectiveness of fisheries research and development;
- (c) making more effective use of the resources available for fisheries research and development;
- (d) making more effective use of the skills available in the community in general, and in the scientific community in particular, for fisheries research and development; and
- (e) improving accountability for expenditure on fisheries research and development.

### **Interpretation**

4. In this Act, unless the contrary intention appears:

“appoint” includes re-appoint;

“Australian fishing industry”:

- (a) except in section 33, includes any industry carried on in or from Australia in connection with the culturing, taking, preserving, storing, transporting, processing or marketing of fish or fish products; and
- (b) in section 33, means any industry carried on in or from Australia in connection with the culturing or taking of fish;

“Chairperson” means:

- (a) in relation to the Council—the Chairperson of the Council; and
- (b) in relation to the Selection Committee—the Chairperson of the Committee;

“Council” means the Fishing Industry Research and Development Council;

“fish” means all the living natural resources of the sea and seabed and of waters within the limits of Australia;

“fisheries research and development” means:

- (a) systematic experimentation or analysis in any field of science, technology, marketing or economics carried out with the object of acquiring knowledge that might be useful in improving the efficiency and competitiveness of the Australian fishing industry;
- (b) the exploration of the sea or seabed for the purpose of locating, or determining the extent of, fish stocks; or

- (c) the application of knowledge (whether or not acquired by activities referred to in paragraph (a) or (b)) for the purpose of improving the efficiency and competitiveness of the Australian fishing industry;

and, without limiting the generality of paragraphs (a), (b) and (c), includes:

- (d) the development of equipment and techniques for culturing, taking, preserving, storing, transporting, processing or marketing fish or fish products;
- (e) the dissemination of information, and the provision of advice and assistance, to the Australian fishing industry for the purpose of encouraging the adoption of scientific and technological developments to improve its efficiency and competitiveness;
- (f) the publication of reports, periodicals, books and papers containing scientific, technical, marketing or economic information that might be useful in improving the efficiency and competitiveness of the Australian fishing industry;
- (g) employment and vocational training of persons engaged, or to be engaged, in the Australian fishing industry;
- (h) the establishment or development of the Australian fishing industry in a particular place or for a particular purpose;
- (j) the training of persons to do activities referred to in paragraphs (a), (b) and (c); and
- (k) any activity incidental to an activity referred to in paragraphs (a) to (j) (inclusive);

“government member” means the government member of the Council;

“member”:

- (a) in relation to the Council—means a member of the Council, and includes the Chairperson and, except in section 17, the government member;
- (b) in relation to the Selection Committee—means a member of the Selection Committee, and includes the Chairperson;

“Parliament”, in relation to the Northern Territory, means the Legislative Assembly of the Northern Territory;

“planning period” means:

- (a) the 5 year period commencing on 1 July next following the day fixed under subsection 2 (2); and
- (b) each subsequent 5 year period;

“processing”, in relation to fish, includes cutting up, dismembering, cleaning, sorting and packing fish;

“Selection Committee” means the Fishing Industry Research and Development Council Selection Committee;

“State” includes the Northern Territory;

“taking”, in relation to fish, includes catching or capturing fish;  
“Trust Fund” means the Fishing Industry Research and Development Trust Fund.

## **PART II—THE FISHING INDUSTRY RESEARCH AND DEVELOPMENT COUNCIL**

### ***Division 1—Establishment, functions and powers of Council***

#### **Establishment**

5. A council by the name of the Fishing Industry Research and Development Council is established by this section.

#### **Functions**

6. The functions of the Council are:
- (a) to investigate and evaluate the requirements for fisheries research and development and, on the basis of such investigation and evaluation, to prepare research and development plans under section 22;
  - (b) to prepare a research and development program under section 23 for each financial year;
  - (c) to enter into agreements under section 63 for the carrying out of fisheries research and development projects;
  - (d) to approve the payment of money from the Trust Fund;
  - (e) to monitor, and to report to the Parliament, the Minister and the Fishing Industry Policy Council of Australia on, fisheries research and development projects that are funded, in whole or in part, from the Trust Fund; and
  - (f) such other functions in relation to the Australian fishing industry as are conferred on the Council by or under this Act or any other Act.

#### **Powers**

7. The Council has power to do, on behalf of the Commonwealth, all things necessary or convenient to be done for, or in connection with, the performance of its functions.

### ***Division 2—Constitution and meetings of Council***

#### **Constitution of Council**

8. (1) The Council consists of the following members:
- (a) the Chairperson;
  - (b) the government member; and
  - (c) such number of other members (not fewer than 3 or more than 7) as the Minister determines in writing.

(2) The Minister shall not make a determination under paragraph (1) (c) unless the Minister has consulted with the Australian Fisheries Council and the National Fishing Industry Council.

(3) The performance of the functions, and the exercise of the powers, of the Council are not affected by reason only of vacancies in the membership of the Council.

#### **Role of Chairperson etc.**

9. (1) The Chairperson of the Council is the principal spokesperson of the Council and is responsible for its overall operations and performance.

(2) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

#### **Appointment of members**

10. (1) The members of the Council shall be appointed by the Minister.

(2) The Minister shall not appoint a person to be the government member unless the Minister is satisfied that the person has experience in, and a knowledge of:

- (a) the formulation of government policy; and
- (b) public administration.

(3) The members, other than the Chairperson and the government member, shall be appointed from persons nominated by the Selection Committee under section 41.

(4) A person who has attained 65 years of age shall not be appointed as a member.

(5) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's selection or appointment.

#### **Term of office of members**

11. (1) A member of the Council:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office, subject to this Act:
  - (i) in the case of a member other than the government member— for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Act; and
  - (ii) in the case of the government member—during the Minister's pleasure.

(2) If a member (other than the government member) ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in the member's place until the end of the term.



(3) A member ceases to hold office on attaining 65 years of age.

**Members hold office on part time basis**

12. The members of the Council hold office on a part time basis.

**Remuneration and allowances**

13. (1) A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member of the Council shall be paid such allowances as are prescribed.

(3) Where:

(a) a person who is a member of the Council is a member of, or a candidate for election to, the Parliament of a State; and

(b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;

the person shall not be paid remuneration or allowances under this Act, but shall be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.

(4) Where a person who is a member of the Council:

(a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person;

(b) is in the service or employment of a State, or an authority of a State, on a full time basis; or

(c) holds or performs the duties of an office or position established by or under a law of a State on a full time basis;

it is a condition of the person's holding office under this Act that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of remuneration.

(5) An amount payable under subsection (4) to a State by a person is a debt due to the State, and the State may recover the amount by action against the person in a court of competent jurisdiction.

(6) Subject to subsection (7), this section has effect subject to the *Remuneration Tribunals Act 1973*.

(7) Subsection 7 (9) of the *Remuneration Tribunals Act 1973* does not apply in relation to a member of the Council.

**Leave of absence**

14. (1) The Minister may grant leave of absence to the Chairperson of the Council on such terms and conditions as the Minister considers appropriate.

(2) The Chairperson may grant leave of absence to another member of the Council on such terms and conditions as the Chairperson considers appropriate.

### **Resignation**

15. A member of the Council may resign his or her office by writing signed by the member and delivered to the Minister.

### **Disclosure of interests**

16. (1) Where:

- (a) a member of the Council has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Council (whether at a meeting or otherwise); and
- (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Council.

### **Termination of appointment**

17. (1) The Minister may terminate the appointment of a member of the Council for misbehaviour or physical or mental incapacity.

(2) If:

- (a) a member of the Council becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) a member of the Council, without reasonable excuse, contravenes section 16;
- (c) the Chairperson of the Council is absent, except with the leave of the Minister, from 3 consecutive meetings of the Council; or
- (d) a member of the Council (other than the Chairperson) is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Council;

the Minister shall terminate the person's appointment under this Act.

### **Terms and conditions of appointment not provided for by Act**

18. A member of the Council holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

**Acting Chairperson**

**19. (1)** The Minister may appoint a person (other than a member of the Council or Selection Committee) to act as Chairperson of the Council:

- (a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

**(2)** The appointment may be expressed to have effect only in specified circumstances.

**(3)** Where:

- (a) a person is acting under paragraph (1) (b); and
- (b) the office of Chairperson becomes vacant;

then, subject to subsection (2) and paragraph (5) (b), the person may continue to act until:

- (c) the vacancy is filled; or
- (d) a period of 12 months from the day on which the vacancy occurred expires;

whichever happens first.

**(4)** A person acting as Chairperson has all the powers and duties of the Chairperson.

**(5)** The Minister may:

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Chairperson; and
- (b) terminate the appointment at any time.

**(6)** A person appointed to act as Chairperson may resign the appointment by writing signed by the person and delivered to the Minister.

**(7)** Anything done by or in relation to a person purporting to act as Chairperson is not invalid because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act as Chairperson had not arisen or had ceased.

### **Meetings**

20. (1) Subject to subsection (2), meetings of the Council shall be held at such times and places as the Council from time to time determines.

(2) The Chairperson may at any time convene a meeting of the Council.

(3) The Chairperson shall preside at all meetings of the Council at which the Chairperson is present.

(4) If the Chairperson is not present at a meeting of the Council, the members present shall appoint one of their number to preside at the meeting.

(5) At a meeting of the Council:

(a) a majority of the members in office constitute a quorum;

(b) a question shall be decided by a majority of the votes of the members present and voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) The Council shall keep minutes of its proceedings.

(7) The Council may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

### **Resolutions without meetings**

21. (1) Where a majority of the members of the Council in office sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a duly convened meeting of the Council on the day on which the document is signed, or, if the members who sign the document do not sign it on the same day, on the day on which a majority of the members in office had signed the document.

(2) Two or more separate but identical documents, each of which is signed by one or more members, shall be deemed, for the purposes of subsection (1), to constitute the one document.

### ***Division 3—Research and development plans and annual programs***

#### **Research and development plans**

22. (1) The Council shall, not later than 3 months before the commencement of each planning period (or such lesser period as the Minister in special circumstances approves in writing in relation to the planning period), prepare a research and development plan for the planning period, setting out:

(a) the broad objectives of the Council in performing its functions during the planning period; and

(b) a broad outline of the policies and strategies to be pursued by the Council to achieve those objectives.

**(2) The Council:**

- (a) shall, in preparing a research and development program under section 23 for a financial year in the planning period to which a research and development plan applies (other than the program for the first financial year in the planning period), review the plan and consider whether revision of the plan is desirable;
- (b) may, at any time, revise a research and development plan; and
- (c) shall revise a research and development plan if the Minister requests it, in writing, to revise the plan and gives reasons for the request.

**(3) A research and development plan, and a revision of a research and development plan:**

- (a) shall be submitted to the Minister as soon as practicable after it is prepared; and
- (b) has no effect until it is approved, in writing, by the Minister.

**(4) Before preparing or revising a research and development plan, the Council shall consult with the Australian Fisheries Council and the National Fishing Industry Council.**

**Annual research and development programs**

**23. (1) The Council shall, not later than 2 months before the commencement of each financial year in the planning period to which a research and development plan applies (or such lesser period as the Minister in special circumstances approves in writing in relation to the financial year), prepare a research and development program for the financial year, setting out:**

- (a) the kinds of fisheries research and development that the Council proposes to fund, in whole or in part, from the Trust Fund during the financial year;
- (b) an estimate of the amount likely to be paid out of the Trust Fund during the financial year in respect of fisheries research and development of each of those kinds; and
- (c) an estimate of the total amount likely to be paid out of the Trust Fund during the financial year.

**(2) If the Minister is of the opinion that the research and development program is inconsistent with the research and development plan, the Minister may, in writing, request the Council to revise the program.**

**(3) The Council shall revise the research and development program if the Minister requests it under subsection (2) to do so and gives reasons for the request.**

**(4) A research and development program, and a revision of a research and development program:**

- (a) shall be submitted to the Minister as soon as practicable after it is prepared; and
- (b) has no effect until it is approved, in writing, by the Minister.

(5) The Minister shall approve a research and development program, or a revision of a research and development program, unless the Minister is of the opinion that the program or revised program, as the case may be, is inconsistent with the research and development plan to which the program or revised program, as the case may be, relates.

#### **Council to comply with plans and programs**

24. To the extent that it is practicable to do so, the Council shall ensure that the performance of its functions, and the exercise of its powers, is consistent with, and designed to give effect to, the applicable research and development plan and research and development program.

#### ***Division 4—Employees, consultants and sub-committees of Council***

##### **Employees**

25. (1) Subject to subsections (2), (3) and (4), the Council may, on behalf of the Commonwealth, employ such persons as it considers necessary to perform administrative and clerical services in connection with the performance of its functions and the exercise of its powers.

(2) A person shall not be employed for the performance of a service referred to in subsection (1) unless the Minister has approved, in writing, the employment of persons to perform services of that kind.

(3) The terms and conditions of employment of persons employed under subsection (1) shall be determined by the Council.

(4) In exercising its powers under this section, the Council shall comply with any written directions given to it by the Minister.

##### **Consultants**

26. (1) The Council may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Council.

(2) The terms and conditions of engagement shall be determined by the Council.

##### **Sub-committees**

27. (1) The Council may establish sub-committees to assist it in the performance of its functions and the exercise of its powers.

(2) The Council may appoint members of the Council and persons engaged as consultants to the Council as members of a sub-committee.

(3) The Council may fix the number of members of a sub-committee required to constitute a quorum at a meeting of the sub-committee.

**Division 5—Miscellaneous**

**Delegation**

28. (1) The Council may, by resolution, either generally or as otherwise provided by the resolution, delegate to a member of the Council, a sub-committee of the Council or the person occupying an office in the Department all or any of its powers under this Act, other than this power of delegation.

(2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Council.

(3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Council.

(4) A delegation of a power under subsection (1):

- (a) may be revoked by resolution of the Council (whether or not constituted by the persons who constituted the Council at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Council; and
- (c) continues in force notwithstanding a change in the membership of the Council.

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

(6) A certificate signed by the Chairperson stating any matter with respect to a delegation of a power under subsection (1) is *prima facie* evidence of the matter.

(7) A document purporting to be a certificate referred to in subsection (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

**Annual report**

29. (1) The Council shall, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of its operations during that year.

(2) Without limiting the generality of subsection (1), the Council shall include in the report an assessment of the extent to which its operations during the year have:

- (a) achieved the objectives set out in the research and development plan applicable to the year; and
- (b) implemented the research and development program applicable to the year.

(3) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(4) The Chairperson shall, as soon as practicable after the report has been given to the Minister, provide copies of the report to the Fishing Industry Policy Council of Australia, and meet with that Council in order to receive its views on the report.

(5) If this Part does not commence at the beginning of a financial year, subsections (1) and (2) have effect in relation to the period commencing on the commencement of this Part and ending on the next 30 June as if:

- (a) in a case where the period is less than 6 months—the period were included in the next financial year; or
- (b) in any other case—the period were a financial year.

### **PART III—THE FISHING INDUSTRY RESEARCH AND DEVELOPMENT TRUST FUND**

#### **Establishment etc.**

30. (1) An account by the name of the Fishing Industry Research and Development Trust Fund is established by this subsection.

(2) The Trust Fund is a Trust Account for the purposes of section 62A of the *Audit Act 1901*.

#### **Approved research funds**

31. (1) Subject to subsection (2), the Minister may determine that a fund or account established by or under a law of a State with respect to fisheries is to be the approved research fund for the State for the purposes of section 33.

(2) There shall not at any time be more than one approved research fund for a State.

#### **Approved money**

32. The Minister may determine that money of a kind specified in the determination is to be approved money for the purposes of section 33.

#### **Appropriation**

33. (1) Subject to subsection (2), there shall be paid into the Trust Fund out of the Consolidated Revenue Fund, which is appropriated accordingly, an amount equal to each amount of approved money paid out of the approved research fund of a State.

(2) The amount provided for by subsection (1) shall not, in any financial year, exceed 1% of the average annual Gross Value of Production of the Australian fishing industry for the immediately preceding 3 financial years, as determined by the Minister.



**Other payments into Trust Fund**

**34.** There shall be paid into the Trust Fund:

- (a) amounts received by the Commonwealth:
  - (i) from the sale of any property paid for with money from the Trust Fund;
  - (ii) from the sale of property produced, or from dealing with patents in respect of inventions made, in the course of fishing research and development projects funded, in whole or in part, by money from the Trust Fund; and
  - (iii) in respect of any work paid for with money from the Trust Fund;
- (b) any other amounts received by the Commonwealth under an agreement made under section 63; and
- (c) amounts received by the Commonwealth as interest from the investment of money standing to the credit of the Trust Fund.

**Payments out of Trust Fund**

**35. (1)** Money may, with the approval of the Council, be paid out of the Trust Fund:

- (a) in payment or discharge of the expenses and liabilities incurred by the Council or Selection Committee on behalf of the Commonwealth;
- (b) in payment of remuneration, allowances and expenses payable under this Act; and
- (c) in payment of any expenses incurred by the Commonwealth in the management of the investment of money standing to the credit of the Trust Fund.

**(2)** Until the commencement of Part II, the first reference in subsection (1) to the Council shall be read as a reference to the Selection Committee.

**Determinations by Minister to be tabled in the Parliament and disallowable**

**36. (1)** Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to a determination made by the Minister under this Part as if references to regulations were references to such determinations, references to a regulation were references to a provision of such a determination and references to repeal were references to revocation.

**(2)** Determinations made by the Minister under this Part shall be taken not to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5 (3) to (3C) (inclusive) of that Act apply in relation to such determinations as they apply in relation to statutory rules.

**(3)** For the purposes of the application of subsection 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (2) of

this section, the reference in the first-mentioned subsection to the Minister specified in that subsection shall be read as a reference to the Minister administering this Act.

(4) Section 5 of the *Evidence Act 1905* applies to a determination made by the Minister under this Part as that section applies to an order made by the Minister.

## **PART IV—THE FISHING INDUSTRY RESEARCH AND DEVELOPMENT COUNCIL SELECTION COMMITTEE**

### ***Division 1—Establishment, functions and powers of Selection Committee***

#### **Establishment**

37. A committee by the name of the Fishing Industry Research and Development Council Selection Committee is established by this section.

#### **Function**

38. The function of the Selection Committee is to nominate to the Minister, at the request of the Minister, persons for appointment as members of the Council (other than the Chairperson or government member).

#### **Powers**

39. The Selection Committee has power to do, on behalf of the Commonwealth, all things necessary or convenient to be done for, or in connection with, the performance of its function.

### ***Division 2—Nominations for membership of Council***

#### **Minister may request nomination from Selection Committee**

40. The Minister may, by notice in writing given to the Chairperson of the Selection Committee, request the Selection Committee to nominate to the Minister, within the period specified in the notice, a person for appointment as a member of the Council (other than the Chairperson or government member).

#### **Nominations**

41. (1) Where the Minister requests the Selection Committee to nominate a person for appointment as a member of the Council, the Selection Committee shall, within the period specified in the request, nominate a person, in writing, to the Minister.

(2) The nomination shall be accompanied by a statement setting out:

- (a) details of the person's qualifications and experience; and
- (b) such other information relating to the person as the Selection Committee considers will assist the Minister in considering whether or not to appoint the person.

(3) The Selection Committee shall nominate only one person for each appointment.

(4) The Selection Committee may nominate a person for appointment even though the Minister has previously rejected a nomination of that person for another appointment or the Selection Committee has previously decided not to nominate the person for appointment.

#### **Selection of persons by Selection Committee**

**42. (1)** The Selection Committee shall not nominate a person unless the person has:

- (a) experience in fisheries administration or management at a senior level;
- (b) experience in, and a broad knowledge of, the Australian fishing industry and, in particular, the taking, processing or marketing of fish or fish products;
- (c) experience in, and a broad knowledge of, fisheries research and development; or
- (d) general administrative or management ability of a high order (whether or not in the Australian fishing industry).

**(2)** The Selection Committee shall not nominate a person if:

- (a) the person is a member of the Selection Committee; or
- (b) the person was a member of the Selection Committee during the year immediately preceding the making of the nomination.

**(3)** In selecting a person for nomination, the Selection Committee shall choose from the available candidates the person who will best ensure that the members of the Council collectively possess qualifications in all of the fields described in paragraphs (1) (a) to (d) (inclusive).

#### **Minister may request further information**

**43.** Where the Minister considers the information contained in the statement accompanying a nomination by the Selection Committee to be inadequate, the Minister may, by notice in writing given to the Chairperson, request the Selection Committee, within the period specified in the notice, to provide the Minister with further specified information relating to the person.

#### **Minister may reject nomination**

**44.** Where the Minister is not satisfied that a person nominated by the Selection Committee should be appointed as a member of the Council, the Minister may, by notice in writing given to the Chairperson, reject the nomination and request the nomination of another person.

**Division 3—Constitution and meetings of Selection Committee**

**Constitution of Selection Committee**

**45. (1)** The Selection Committee consists of the following members:

- (a) the Chairperson;
- (b) a member with experience in fisheries administration or management;
- (c) a member with experience in fisheries research and development;
- (d) a member nominated by the Australian Fisheries Council; and
- (e) 3 members nominated by the National Fishing Industry Council.

**(2)** The performance of the functions, and the exercise of the powers, of the Selection Committee are not affected by reason only of vacancies in the membership of the Selection Committee.

**Role of Chairperson etc.**

**46. (1)** The Chairperson of the Selection Committee is the principal spokesperson of the Selection Committee and is responsible for its overall operations and performance.

**(2)** The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

**Appointment of members**

**47. (1)** The members of the Selection Committee shall be appointed by the Minister.

**(2)** The Minister shall not appoint a person to be the member referred to in paragraph 45 (1) (b) unless the Minister is satisfied that the person has experience in fisheries administration or management at a senior level.

**(3)** The Minister shall not appoint a person to be the member referred to in paragraph 45 (1) (c) unless the Minister is satisfied that the person has experience in, and a broad knowledge of, fisheries research and development.

**(4)** Where the Minister is not satisfied that a person nominated by the Australian Fisheries Council or National Fishing Industry Council should be appointed as a member of the Selection Committee, the Minister may reject the nomination and request the nomination of another person.

**(5)** The Minister shall not appoint a member of the Council as a member of the Selection Committee.

**(6)** A person who has attained 65 years of age shall not be appointed as a member.

**(7)** The appointment of a member is not invalid because of a defect or irregularity in connection with the member's nomination or appointment.

**Term of office of members**

**48. (1)** A member of the Selection Committee:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office, subject to this Act, for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Act.

(2) If the member ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in the member's place until the end of the term.

(3) A member ceases to hold office on attaining 65 years of age.

**Members to hold office on part time basis**

**49.** The members of the Selection Committee hold office on a part time basis.

**Remuneration and allowances**

**50. (1)** A member of the Selection Committee shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member of the Selection Committee shall be paid such allowances as are prescribed.

(3) Where:

- (a) a person who is a member of the Selection Committee is also a member of, or a candidate for election to, the Parliament of a State; and
- (b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;

the person shall not be paid remuneration or allowances under this Act, but shall be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.

(4) Where a person who is a member of the Selection Committee:

- (a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person;
- (b) is in the service or employment of a State or an authority of a State on a full time basis; or
- (c) holds or performs the duties of an office or position established by or under a law of a State on a full time basis;

it is a condition of the person's holding office under this Act that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of remuneration.

(5) An amount payable under subsection (4) to a State by a person is a debt due to the State, and the State may recover the amount by action against the person in a court of competent jurisdiction.

(6) Subject to subsection (7), this section has effect subject to the *Remuneration Tribunals Act 1973*.

(7) Subsection 7 (9) of the *Remuneration Tribunals Act 1973* does not apply in relation to a member of the Selection Committee.

#### **Leave of absence**

51. (1) The Minister may grant leave of absence to the Chairperson of the Selection Committee on such terms and conditions as the Minister considers appropriate.

(2) The Chairperson may grant leave of absence to another member of the Selection Committee on such terms and conditions as the Chairperson considers appropriate.

#### **Resignation**

52. A member of the Selection Committee may resign his or her office by writing signed by the member and delivered to the Minister.

#### **Disclosure of interests**

53. (1) Where:

(a) a member of the Selection Committee who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Selection Committee (whether at a meeting or otherwise); and

(b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Selection Committee.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Selection Committee.

#### **Termination of appointment**

54. (1) The Minister may terminate the appointment of a member of the Selection Committee for misbehaviour or physical or mental incapacity.

(2) If:

(a) a member of the Selection Committee becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(b) a member of the Selection Committee, without reasonable excuse, contravenes section 53;

- (c) the Chairperson of the Selection Committee is absent, except with the leave of the Minister, from 3 consecutive meetings of the Selection Committee; or
- (d) a member of the Selection Committee (other than the Chairperson) is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Selection Committee;

the Minister shall terminate the member's appointment.

(3) The Minister shall, at the request of the Australian Fisheries Council, terminate the appointment of the member of the Selection Committee appointed on the nomination of that Council.

(4) The Minister shall, at the request of the National Fishing Industry Council, terminate the appointment of a member of the Selection Committee appointed on the nomination of that Council.

**Terms and conditions of appointment not provided for by Act**

55. A member of the Selection Committee holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

**Acting Chairperson**

56. (1) The Minister may appoint a person (other than a member of the Council or the Selection Committee) to act as Chairperson of the Selection Committee:

- (a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) The appointment may be expressed to have effect only in specified circumstances.

(3) Where:

- (a) a person is acting under paragraph (1) (b); and
- (b) the office of Chairperson becomes vacant;

then, subject to subsection (2) and paragraph (5) (b), the person may continue to act until:

- (c) the vacancy is filled; or
- (d) a period of 12 months from the day on which the vacancy occurred expires;

whichever happens first.

(4) A person acting as Chairperson has all the powers and duties of the Chairperson.

(5) The Minister may:

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Chairperson; and

(b) terminate the appointment at any time.

(6) A person appointed to act as Chairperson may resign the appointment by writing signed by the person and delivered to the Minister.

(7) Anything done by or in relation to a person purporting to act as Chairperson is not invalid because:

(a) the occasion for the appointment had not arisen;

(b) there was a defect or irregularity in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

#### **Deputies of members**

57. (1) Subject to subsections (2) and (3), the Minister may appoint a person to be the deputy of a member referred to in paragraph 45 (1) (b) or (c).

(2) The Minister shall not appoint a person to be the deputy of the member referred to in paragraph 45 (1) (b) unless the Minister is satisfied that the person has experience in fisheries administration or management at a senior level.

(3) The Minister shall not appoint a person to be the deputy of the member referred to in paragraph 45 (1) (c) unless the Minister is satisfied that the person has experience in, and a broad knowledge of, fisheries research and development.

(4) The Minister may, on the nomination of the Australian Fisheries Council, appoint a person to be the deputy of the member referred to in paragraph 45 (1) (d).

(5) The Minister may, on the nomination of the National Fishing Industry Council, appoint a person to be the deputy of a member referred to in paragraph 45 (1) (e).

(6) The deputy of a member holds office during the Minister's pleasure.

(7) If the Australian Fisheries Council requests the Minister to terminate the appointment of a person appointed under subsection (2), the Minister shall terminate the appointment.

(8) If the National Fishing Industry Council requests the Minister to terminate the appointment of a person appointed under subsection (3), the Minister shall terminate the appointment.



(9) The deputy of a member may attend meetings of the Selection Committee that the member does not attend and shall, while attending such a meeting of the Selection Committee, be deemed to be a member of the Selection Committee.

(10) The appointment of the deputy of a member is not invalid because of a defect or irregularity in connection with the deputy's nomination or appointment.

### **Meetings**

58. (1) Subject to subsection (2), meetings of the Selection Committee shall be held at such times and places as the Selection Committee from time to time determines.

(2) The Chairperson may at any time convene a meeting of the Selection Committee.

(3) The Chairperson shall preside at all meetings of the Selection Committee at which the Chairperson is present.

(4) If the Chairperson is not present at a meeting of the Selection Committee, the members present shall appoint one of their number to preside at the meeting.

(5) At a meeting of the Selection Committee:

(a) 4 members constitute a quorum;

(b) a question shall be decided by a majority of the votes of the members present and voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) The Selection Committee shall keep minutes of its proceedings.

(7) The Selection Committee may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

### **Resolutions without meetings**

59. (1) Where 4 or more members of the Selection Committee sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a duly convened meeting of the Selection Committee on the day on which the document is signed, or, if the members who sign the document do not sign it on the same day, on the day on which 4 members have signed the document.

(2) Two or more separate but identical documents, each of which is signed by one or more members, shall be deemed, for the purposes of subsection (1), to constitute the one document.

***Division 4—Employees and consultants***

**Employees**

**60. (1)** Subject to subsections (2), (3) and (4), the Selection Committee may, on behalf of the Commonwealth, employ such persons as it considers necessary to perform administrative and clerical services in connection with the performance of its functions and the exercise of its powers.

**(2)** A person shall not be employed for the performance of a service referred to in subsection (1) unless the Minister has approved, in writing, the employment of persons to perform services of that kind.

**(3)** The terms and conditions of employment of persons employed under subsection (1) shall be determined by the Selection Committee.

**(4)** In exercising its powers under this section, the Selection Committee shall comply with any written directions given to it by the Minister.

**Consultants**

**61. (1)** The Selection Committee may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Selection Committee.

**(2)** The terms and conditions of engagement shall be determined by the Selection Committee.

***Division 5—Miscellaneous***

**Delegation**

**62. (1)** The Selection Committee may, by resolution, either generally or as otherwise provided by the resolution, delegate to a member of the Selection Committee or the person occupying an office in the Department all or any of its powers under Division 4.

**(2)** A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Selection Committee.

**(3)** The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Selection Committee.

**(4)** A delegation of a power under subsection (1):

- (a)** may be revoked by resolution of the Selection Committee (whether or not constituted by the persons who constituted the Selection Committee at the time the power was delegated);
- (b)** does not prevent the exercise of the power by the Selection Committee; and
- (c)** continues in force notwithstanding a change in the membership of the Selection Committee.

(5) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Selection Committee were a person.

(6) A certificate signed by the Chairperson stating any matter with respect to a delegation of a power under subsection (1) is *prima facie* evidence of the matter.

(7) A document purporting to be a certificate referred to in subsection (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

## **PART V—MISCELLANEOUS**

### **Agreements relating to fisheries research and development**

63. (1) Subject to subsection (2), the Council may, on behalf of the Commonwealth, enter into an agreement with a person, authority or organisation for the carrying out of a fisheries research and development project by the person, authority or organisation.

(2) Without limiting the matters that may be included in the agreement, the agreement may:

(a) provide for:

- (i) the money provided under the agreement, and any property acquired or goods produced with that money, or with money that includes that money, to be used for the purposes specified in the agreement; and
- (ii) the payment by the person, authority or organisation to the Commonwealth of an amount equal to the whole, or such part as the Council determines, of the money provided under the agreement if any of the money provided under the agreement, or any of the property or goods referred to in subparagraph (i), is or are used for a purpose not specified in the agreement;

(b) make provision with respect to:

- (i) the assigning of inventions and interests in inventions;
  - (ii) the applying for patents for inventions;
  - (iii) the making, using, exercising and vending of patented inventions; and
  - (iv) the granting of licences under patented inventions;
- being inventions made in the course of undertaking the fisheries research and development project or doing any other act or thing with that money or with money that includes that money;

(c) provide for the payment by the person, authority or organisation to the Commonwealth of an amount equal to the whole, or such part

as the Council determines, of any net income derived by the person, authority or organisation from:

- (i) property acquired or goods produced with money provided under the agreement or with money that includes that money; or
  - (ii) patents for, or interests in, inventions made, or interests in any other property acquired, in the course of undertaking the fisheries research and development project or doing any other act or thing with that money or with money that includes that money;
- (d) provide for the assignment by the person, authority or organisation to the Commonwealth of any property or goods referred to in subparagraph (c) (i) or of any patents or other interests referred to in subparagraph (c) (ii); and
- (e) provide for the payment by the person, authority or organisation to the Commonwealth, in the event of the disposal (otherwise than to the Commonwealth) of any property, goods, patents or interests referred to in paragraph (c), of an amount equal to the whole, or such part as the Council determines, of:
- (i) in the case of a disposal by way of sale or assignment for value—the net proceeds of the sale or assignment; and
  - (ii) in any other case—the value of the property, goods, patents or interests as determined by the Council.

### **Regulations**

**64.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 18 September 1987  
Senate on 27 October 1987]*