



# Fishing Legislation Amendment Act 1987

No. 176 of 1987

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# Fishing Legislation Amendment Act 1987

No. 176 of 1987

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**An Act to amend the *Continental Shelf (Living Natural Resources) Act 1968*, the *Fisheries Act 1952* and the *Torres Strait Fisheries Act 1984*, and for related purposes**

[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 Legislation Amendment Act 1987*.

### Commencement

2. (1) Subject to subsections (2) and (3), this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(2) Sections 20 and 21 shall come into operation on a day to be fixed by Proclamation.

(3) Subsections 27 (2) and (3), 32 (2) and 35 (2) shall come into operation on the sixtieth day after the day on which this Act receives the Royal Assent.

**PART II—AMENDMENTS OF THE CONTINENTAL SHELF  
(LIVING NATURAL RESOURCES) ACT 1968**

**Principal Act**

3. The *Continental Shelf (Living Natural Resources) Act 1968*<sup>1</sup> is in this Part referred to as the Principal Act.

**Notices by Minister**

4. (1) Section 12 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (c) “or equipment” and substituting “, equipment or ship”;
- (b) by omitting from paragraph (1) (da) “that searching or taking, as the case may be” and substituting “the searching or taking, as the case may be, to which the notice relates”;
- (c) by omitting from paragraph (1) (db) “that use” and substituting “the use to which the notice relates”;
- (d) by omitting from paragraph (1) (f) “and”;
- (e) by adding at the end of subsection (1) the following word and paragraph:
  - “; and (h) prohibit a person from using or having in the possession or under the control of the person, on a ship, equipment of a specified kind for taking sedentary organisms unless that equipment is marked or otherwise identified in a specified manner.”; and
- (f) by omitting subsections (2) and (3) and substituting the following subsections:

“(2) In a notice containing a prohibition under paragraph (1) (b), the Minister may also prohibit the cutting up or dismembering, on a ship in the area to which the prohibition relates, of sedentary organisms to which the prohibition relates that are taken from that area.

“(3) A notice under subsection (1) may do all or any of the following:

- (a) contain prohibitions under 2 or more paragraphs of that subsection;
- (b) specify the day on which the prohibition or a particular prohibition contained in the notice is to come into force (whether the same as, or different from, a day specified under this paragraph in relation to any other prohibition that may be contained in the notice);

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- (c) specify the period during which the prohibition or a particular prohibition contained in the notice is to have effect (whether the same as, or different from, a period specified under this paragraph in relation to any other prohibition that may be contained in the notice);
- (d) provide for exemptions from the prohibition or prohibitions contained in the notice.

“(4) A prohibition contained in a notice under subsection (1) comes into force on the day on which the notice is published or on such later day as is specified in the notice.

“(5) A prohibition contained in a notice under subsection (1) has effect:

- (a) if a period is specified in the notice as being the period during which the prohibition is to have effect—during that period; or
- (b) in any other case—at all times.

“(6) Where:

- (a) a prohibition contained in a notice (in this subsection referred to as the ‘subsequent notice’) under subsection (1) relates to matters referred to in paragraph (1) (da) or (db); and
- (b) the notice provides for the revocation of a previous notice under that subsection that contains a prohibition that relates to matters referred to in that paragraph;

the following provisions have effect:

- (c) the subsequent notice may provide that endorsements under subsection 13 (1A) or (2A), as the case requires, that would, but for the revocation of the previous notice, have extended licences to authorise the searching or taking, or the use, or both, as the case may be, to which the prohibition contained in the previous notice related are to extend the licences to authorise the searching or taking, or the use, or both, as the case may be, to which the prohibition contained in the subsequent notice relates;
- (d) where the subsequent notice so provides, any such endorsements extend the licences accordingly.”.

(2) The amendment made by paragraph (1) (f) applies in relation to the publication of notices under subsection 12 (1) of the *Continental Shelf (Living Natural Resources) Act 1968* on or after the day on which this section comes into operation.

## **Licences**

**5. Section 13 of the Principal Act is amended:**

- (a) by inserting in subsections (1A) and (2A) “a prohibition contained in” after “but for”;

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- (b) by omitting from subsections (1A) and (2A) “the notice” (wherever occurring) and substituting “the prohibition”;
- (c) by omitting from subsections (1A) and (2A) “it so as to extend it” and substituting “the licence so as to identify the notice and to extend the licence”;
- (d) by inserting after subsection (2) the following subsection:

“(2AA) Without otherwise limiting the generality of subsection (2), the Minister or the Secretary may refuse to grant a licence under that subsection in respect of a ship if the Minister or the Secretary, as the case may be, has reason to believe that a requirement of a law of the Commonwealth, or of a State or Territory, has not been complied with in relation to the ship.”; and

- (e) by adding at the end the following subsection:

“(13) Nothing in this Act prevents the exercise of any of the powers of a person under this section (other than powers of the Minister or the Secretary) by another person having authority as agent, trustee or otherwise to exercise that power or powers that include that power.”.

**Powers of officers**

**6. Section 14 of the Principal Act is amended:**

- (a) by omitting from paragraphs (1) (a), (b) and (ba) “he has reason” and substituting “the officer has reasonable grounds”;
- (b) by omitting from paragraph (1) (a) all the words from and including “may search” to and including the end of the paragraph and substituting “may:
  - (i) search the ship for equipment that has been used, is being used, is intended to be used or is capable of being used for searching for or taking sedentary organisms or for any document relating to the operations of the ship; and
  - (ii) break open any hold, compartment, container or other receptacle on the ship that the officer has reasonable grounds to believe contains any document, equipment or thing that may afford evidence as to the commission of an offence against this Act;”;
- (c) by inserting after paragraph (1) (a) the following paragraphs:
  - “(aa) examine any sedentary organisms, equipment or document found pursuant to powers exercised under paragraph (a);
  - (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 in pursuance of a warrant granted under subsection (4):

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- (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 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;
- (ac) where the officer has reasonable grounds to believe that there is in any vehicle any document, equipment or thing that may afford evidence as to the commission of an offence against this Act:
  - (i) stop and detain the vehicle;
  - (ii) enter and search the vehicle;
  - (iii) break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is a document, equipment or thing of that kind; and
  - (iv) 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;”;
- (d) by omitting paragraph (1) (c) and substituting the following paragraph:
  - “(c) seize, detain, remove or secure:
    - (i) any sedentary organism that the officer has reasonable grounds to believe has been taken in contravention of this Act;
    - (ii) any ship or equipment that the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Act; or
    - (iii) any document or other thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act;”;
- (e) by omitting from paragraphs (1) (d), (e) and (f) “has reason” and substituting “has reasonable grounds”;
- (f) by inserting after paragraph (1) (h) the following paragraph:
  - “(ha) where, for the purpose of ascertaining whether equipment that is on, or that is being used by or from, a ship is

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equipment of a kind specified in a notice that is in force under subsection 12 (1), it is necessary to ascertain the dimensions of the equipment—require the master or other person in charge of the ship to provide such reasonable assistance as is requested by the officer in order to ascertain the dimensions of the equipment (including, if the officer so requests, causing the equipment to be placed in the sea or on land, or to be removed from the sea and placed on the ship or on land);”;

(g) by inserting after paragraph (1) (i) the following paragraph:

“(ia) require a person found on or in any land or premises entered in pursuance of paragraph (ab) or in any vehicle detained or searched under paragraph (ac):

(i) to state the name and place of abode of the person;

(ii) to produce any documents in the possession, or under the control, of the person relating to any sedentary organisms found on the land or in the premises or vehicle; or

(iii) to give information concerning any such sedentary organisms;”;

(h) by adding at the end the following subsections:

“(3) 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 authorising 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.

“(4) If, on an application by an officer under subsection (3), the 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 authorising 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 any of the powers of the officer under paragraph (1) (ab).

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

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“(6) Where an officer (other than a force member who is in uniform) boards or enters upon a ship, the officer shall:

- (a) where the officer is a force member—produce, for inspection by the master or other person in charge of the ship, written evidence of the fact that the officer is a force member; or
  - (b) in any other case—produce, for inspection by the master or other person in charge of the ship, the officer’s identity card;
- and, if the officer fails to do so, the officer is not authorised to remain on board the ship.

“(7) Where an officer (other than a force member who is in uniform) proposes to enter and search, or to detain, a vehicle, the officer shall, if there is a person in charge of the vehicle:

- (a) where the officer is a force member—produce, for inspection by the person in charge of the vehicle, written evidence of the fact that the officer is a force member; or
  - (b) in any other case—produce, for inspection by the person in charge of the vehicle, the officer’s identity card;
- and, if the officer fails to do so, the officer is not authorised to enter and search, or to detain, the vehicle.

“(8) Where an officer (other than a force member who is in uniform) makes a requirement of another person under subsection (1) the officer shall:

- (a) where the officer is a force member—produce, for inspection by the other person, written evidence of the fact that the officer is a force member; or
  - (b) in any other case—produce, for inspection by the other person, the officer’s identity card;
- and, if the officer fails to do so, the other person is not obliged to comply with the requirement.

“(9) A reference in this section to an offence against, or a contravention of, this Act includes a reference to an offence against, or a contravention of:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or
  - (b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;
- that relates to this Act.

“(10) In this section:

‘examine’ includes count, measure, weigh, grade or gauge;

‘force member’ 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.”

**Offences in relation to licences and unlicensed operations**

**7. Section 15 of the Principal Act is amended:**

(a) by inserting after subsection (3) the following subsection:

“(3AA) A person who contravenes subsection (1), (2) or (3) 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.”;

(b) by inserting after subsection (3B) the following subsection:

“(3BA) A person who contravenes subsection (3A) or (3B) is guilty of an offence punishable:

- (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.”; and

(c) by inserting after subsection (5) the following subsections:

“(5A) A person who contravenes subsection (3C), (4) or (5) in circumstances in which the person is not guilty of an offence under subsection (5B) 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.

“(5B) A person who contravenes subsection (3C), (4) or (5) with the use of a foreign ship is guilty of an offence punishable:

- (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.”.

**Offences in relation to notices under section 12**

**8. Section 16 of the Principal Act is amended by inserting after subsection (1) the following subsections:**

“(1A) A person who contravenes subsection (1) in circumstances in which the person is not guilty of an offence under subsection (1B) 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.

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“(1B) A person who contravenes subsection (1) with the use of a foreign ship is guilty of an offence punishable:

- (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.”.

**Obstruction of officers etc.**

9. Section 17 of the Principal Act is amended:

- (a) by omitting from paragraph (e) “false or misleading information to the officer” and substituting “information to the officer that is, to the knowledge of the person, false or misleading”;
- (b) by omitting from paragraph (h) “or”;
- (c) by omitting from paragraph (i) “which is false or misleading in any particular.” and substituting “that is, to the knowledge of the person, false or misleading in any particular; or”; and
- (d) by adding at the end the following paragraph and subsections:

“(j) in a record, report, return or other document relating to the taking of sedentary organisms made, given or furnished, or purporting to be made, given or furnished, under this Act or the regulations—make a statement or furnish information that is, to the knowledge of the person, false or misleading in a material particular.

“(2) A person who contravenes subsection (1) (other than paragraph (1) (j)) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 12 months, or both.

“(3) A person who contravenes paragraph (1) (j) is guilty of an offence punishable, on conviction, by:

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

10. After section 17 of the Principal Act the following section is inserted:

**Taking of sedentary organisms not an offence in certain circumstances**

“17AA. Where:

- (a) but for this section, a person would, by reason of the taking or removing of a sedentary organism (whether or not by reason also of any other act or any failure to act), be guilty of an offence against this Part; and

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(b) the sedentary organism was returned to the water as soon as was reasonably practicable after being taken or removed; the person is not guilty of the offence.”.

**Liability of master or person in charge of ship**

**11.** Section 17A of the Principal Act is amended:

- (a) by adding at the end of subsection (1) “punishable, on conviction, as if it were the primary offence”; and
- (b) by omitting from subsection (3) “section 18” and substituting “section 18A”.

**12.** (1) After section 17A of the Principal Act the following section is inserted:

**Conduct by directors, servants or agents of bodies corporate**

“17B. (1) Where, in proceedings for an offence against this Act or the regulations in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate.

“(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the intention, opinion, belief or purpose.”.

(2) Subsections 17B (1) and (2) of the Principal Act as amended by this Act apply respectively in relation to offences alleged to have been committed, and conduct engaged in, after the commencement of this section.

**13.** (1) Section 18 of the Principal Act is repealed and the following sections are substituted:

**Certain offences to be indictable offences**

“18. (1) An offence to which subsection 15 (3BA) or (5B) or 16 (1B) applies is an indictable offence.

“(2) Notwithstanding that an offence referred to in subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine

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proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(3) An offence against this Act other than an offence referred to in subsection (1) is punishable summarily.

**Forfeiture**

“18A. (1) Where a person is convicted of an offence against section 15 or 16, the court may order the forfeiture of any ship used or otherwise involved in the commission of the offence, and of its equipment and contents (other than the personal effects of members of the crew) and of any sedentary organisms found on the ship or the proceeds of the sale of any sedentary organisms so found.

“(2) A ship or goods ordered by a court to be forfeited under this section becomes the property of the Commonwealth and shall be dealt with or disposed of in accordance with the directions of the Secretary.”.

(2) Notwithstanding the repeal of section 18 of the Principal Act, that section continues to apply in relation to offences committed before the commencement of this section as if that section had not been repealed.

**Regulations**

14. Section 25 of the Principal Act is amended:

(a) by inserting after paragraph (e) the following paragraph:

“(ea) for facilitating the exercise by officers of their powers under section 14;”; and

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

**PART III—AMENDMENTS OF THE FISHERIES ACT 1952**

**Principal Act**

15. The *Fisheries Act 1952*<sup>2</sup> is in this Part referred to as the Principal Act.

**Management plans**

16. Section 7B of the Principal Act is amended by inserting after subsection (8) the following subsection:

“(8A) The Minister and the Secretary shall, in the performance of their functions and the exercise of their powers generally under this Act, have regard to the effects, either direct or indirect, that the performance of the functions and exercise of the powers may have in relation to any plan or plans of management.”.

**Regulation of fishing**

17. (1) Section 8 of the Principal Act is amended:
- (a) by omitting from paragraph (1) (c) “or equipment” and substituting “, equipment or boat of a kind”;
  - (b) by inserting after paragraph (1) (d) the following paragraph:
    - “(daa) prohibit a person from using, or having in the person’s possession or charge in a boat, equipment of a specified kind for taking fish unless that equipment is marked or otherwise identified in a specified manner.”;
  - (c) by omitting subsections (1A) and (2) and substituting the following subsection:
    - “(2) A notice under subsection (1) may do all or any of the following:
      - (a) contain prohibitions under 2 or more paragraphs of that subsection;
      - (b) specify the day on which the prohibition or a particular prohibition contained in the notice is to come into force (whether the same as, or different from, a day specified under this paragraph in relation to any other prohibition that may be contained in the notice);
      - (c) specify the period during which the prohibition or a particular prohibition contained in the notice is to have effect (whether the same as, or different from, a period specified under this paragraph in relation to any other prohibition that may be contained in the notice);
      - (d) provide for exemptions from the prohibition or prohibitions contained in the notice.”;
  - (d) by inserting in subsection (4) “containing a prohibition” after “a notice”;
  - (e) by omitting from subsection (4) “notice” (last occurring) and substituting “prohibition”;
  - (f) by omitting from subsections (4A) and (4B) “A notice” and substituting “A prohibition contained in a notice”;
  - (g) by omitting from paragraph (4B) (a) “notice” (last occurring) and substituting “prohibition”;
  - (h) by omitting from subsection (4D) “prohibited by the notice” and substituting “to which a prohibition contained in the notice relates”;
  - (j) by inserting after subsection (4D) the following subsection:
    - “(4DAA) Where:
      - (a) a notice (in this subsection referred to as the ‘subsequent notice’) under subsection (1) revokes a previous notice under that subsection; and
      - (b) the subsequent notice provides that the activities to which a prohibition contained in the notice relates are activities in

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respect of which an endorsement may be made under subsection 9 (4);

the subsequent notice may also provide that endorsements made under subsection 9 (4) that would, but for the revocation of the previous notice, have had effect in relation to a specified prohibition contained in the previous notice during any period or periods after the revocation are to have effect during that period or those periods in relation to the prohibition contained in the subsequent notice.”;

- (k) by omitting from paragraphs (4DA) (a) and (4E) (a) “prohibited by the notice” and substituting “to which a prohibition contained in the notice relates”;
- (m) by omitting from subsection (4DA) “the prohibition contained in the notice” and substituting “the prohibition”;
- (n) by omitting from subsection (4E) “contained in that notice under subsection (1)”;
- (o) by inserting after subsection (4E) the following subsection:

“(4F) Where a notice makes provision as mentioned in subsection (4DAA), the endorsements referred to in the notice have effect in accordance with the notice.”.

(2) The amendments made by paragraphs (1) (c) to (o) (inclusive) apply in relation to the publication of notices under subsection 8 (1) of the *Fisheries Act 1952* on or after the day on which this section comes into operation.

### **Licences**

18. Section 9 of the Principal Act is amended:

- (a) by inserting after subsection (3) the following subsection:

“(3AA) Without otherwise limiting the generality of subsections (2) and (3), the Minister or the Secretary may refuse to grant a licence under either of those subsections in respect of a boat if the Minister or the Secretary, as the case may be, has reason to believe that a requirement of a law of the Commonwealth, or of a State or Territory, has not been complied with in relation to the boat.”;
- (b) by inserting in subsection (4) “a prohibition contained in” after “prohibited by”;
- (c) by adding at the end of subparagraph (5) (c) (i) “or, if regulations for the purposes of this subparagraph specify a different period in relation to all licences to which this subparagraph applies, or in relation to a class of those licences that includes the licence, a day in the period so specified”;
- (d) by adding at the end of paragraph (6) (a) “or, if regulations for the purposes of this paragraph specify a different period in relation to all licences to which this paragraph applies, or in relation to a class of those licences that includes the licence, a day in the period so specified”; and

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- (e) by adding at the end the following subsection:

“(12) Nothing in this Act prevents the exercise of any of the powers, whether express or implied, of a person under this section (other than powers of the Minister or the Secretary) by another person having authority as agent, trustee or otherwise to exercise that power or powers that include that power.”.

**Powers of officers**

- 19.** Section 10 of the Principal Act is amended:

- (a) by omitting from paragraphs (1) (a), (aa), (b), (ba) and (ca) “he has reason” and substituting “the officer has reasonable grounds”;
- (b) by omitting from paragraph (1) (a) all the words from and including “may search” to and including the end of the paragraph and substituting “may:
- (i) search the boat for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for fishing or for any document relating to the operations of the boat; and
  - (ii) break open any hold, compartment, container or other receptacle on the boat that the officer has reasonable grounds to believe contains any document, equipment or thing that may afford evidence as to the commission of an offence against this Act;”;
- (c) by omitting from paragraph (1) (aa) all the words from and including “may search” to and including the end of the paragraph and substituting “may:
- (iii) search the boat for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for the taking, catching, capturing, processing or carrying of fish or for any document relating to the operations of the boat; and
  - (iv) break open any hold, compartment, container or other receptacle on the boat that the officer has reasonable grounds to believe contains any document, equipment or thing that may afford evidence as to the commission of an offence against this Act;”;
- (d) by inserting after paragraph (1) (aa) the following paragraph:
- “(aaa) examine any fish, equipment, document or thing found pursuant to powers exercised under paragraph (a) or (aa);”;
- (e) by inserting after paragraph (1) (ab) the following paragraph:
- “(ac) where the officer has reasonable grounds to believe that there is in any vehicle any document, equipment or thing that may afford evidence as to the commission of an offence against this Act:

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- (i) stop and detain the vehicle;
  - (ii) enter and search the vehicle;
  - (iii) break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is a document, equipment or thing of that kind; and
  - (iv) 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;”;
- (f) by omitting from paragraphs (1) (c), (cb), (d), (e), (f) and (ha) “has reason” (wherever occurring) and substituting “has reasonable grounds”;
- (g) by omitting from subparagraph (1) (c) (i) “or” (last occurring);
- (h) by adding at the end of paragraph (1) (c) the following word and subparagraph:  
“or (iii) any document or other thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act;”;
- (j) by inserting after paragraph (1) (ha) the following paragraph:  
“(hb) where, for the purpose of ascertaining whether equipment that is on, or that is being used by or from, a boat is equipment of a kind specified in a notice that is in force under subsection 8 (1), it is necessary to ascertain the dimensions of the equipment—require the master of the boat to provide such reasonable assistance as is requested by the officer in order to ascertain the dimensions of the equipment (including, if the officer so requests, causing the equipment to be placed in the sea or on land, or to be removed from the sea and placed on the boat or on land);”;
- (k) by omitting from paragraph (1) (ia) “inspected in pursuance of that paragraph” and substituting “detained or searched under paragraph (ac)”;
- (m) by inserting after subsection (2) the following subsection:  
“(2A) Where an officer (other than a prescribed person who is in uniform) proposes to enter and search, or to detain, a vehicle, the officer shall, if there is a person in charge of the vehicle:  
(a) where the officer is a prescribed person—produce, for inspection by the person in charge of the vehicle, written evidence of the fact that the officer is a prescribed person;  
or  
(b) in any other case—produce, for inspection by the person in charge of the vehicle, the officer’s identity card;

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and, if the officer fails to do so, the officer is not authorised to enter and search, or to detain, the vehicle.”;

(n) by inserting after subsection (5) the following subsection:

“(5A) A reference in this section to an offence against, or a contravention of, this Act includes a reference to an offence against, or a contravention of:

(a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

that relates to this Act.”; and

(o) by inserting before the definition of “prescribed person” in subsection (6) the following definition:

“‘examine’ includes count, measure, weigh, grade or gauge.”

**Establishment of Joint Authorities**

20. Section 12D of the Principal Act is amended by inserting in subsection (3) “, Western Australia” after “Queensland”.

**Arrangements with States**

21. Section 12H of the Principal Act is amended:

(a) by omitting from subsection (1) “The” and substituting “Subject to subsection (1A), the”; and

(b) by inserting after subsection (1) the following subsection:

“(1A) An arrangement shall not be made under subsection (1) with the States represented on the Northern Australian Fisheries Joint Authority if the arrangement relates to the management of a fishery wholly or partly in waters adjacent to the State of Western Australia that are south of the parallel of latitude 16 degrees south.”.

22. After section 13BAA of the Principal Act the following section is inserted:

**Taking etc. of fish not an offence in certain circumstances**

“13BAB. Where:

(a) but for this section, a person would, by reason of the taking, capturing or catching of fish (whether or not by reason also of any other act or any failure to act), be guilty of an offence against this Act; and

(b) the fish was or were returned to the water as soon as was reasonably practicable after being taken, captured or caught;

the person is not guilty of the offence.”.

**Obstruction of officers etc.**

**23.** Section 14 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (a) “or” (last occurring); and
- (b) by inserting after paragraph (2) (b) the following word and paragraph:

“; or (ba) in a record, report, return or other document relating to fishing made, given or furnished, or purporting to be made, given or furnished, 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;”.

**24.** (1) After section 14A of the Principal Act the following section is inserted:

**Conduct by directors, servants or agents of bodies corporate**

“14B. (1) Where, in proceedings for an offence against this Act or the regulations in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate.

“(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the intention, opinion, belief or purpose.”.

(2) Subsections 14B (1) and (2) of the Principal Act as amended by this Act apply respectively in relation to offences alleged to have been committed, and conduct engaged in, after the commencement of this section.

**Regulations**

**25.** Section 17 of the Principal Act is amended by inserting after paragraph (1) (e) the following paragraph:

- “(ea) for facilitating the exercise by officers of their powers under section 10;”.

**PART IV—AMENDMENTS OF THE TORRES STRAIT FISHERIES  
ACT 1984**

**Principal Act**

**26.** The *Torres Strait Fisheries Act 1984*<sup>3</sup> is in this Part referred to as the Principal Act.

**Minister may require information to be furnished**

**27. (1)** Section 14 of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsection:

“(2A) The Minister may, by notice published in the *Gazette*, require, at such time and in such manner as is specified in the notice:

(a) the person who is the master of any boat in respect of which a licence is in force under section 19, or of any such boat that is included in a class of boats specified in the notice, to notify the Minister of:

(i) where the boat is in an area of Australian jurisdiction at the time at which the notice comes into force—the fact that the person is the master of the boat and that the boat is in the area of Australian jurisdiction; and

(ii) where the boat enters or leaves an area of Australian jurisdiction (regardless of its location at the time at which the notice comes into force)—the fact that the person is the master of the boat and that the boat has entered or left the area of Australian jurisdiction; and

(b) a person who becomes or ceases to be the master of a boat to which the notice relates at a time when the boat is in an area of Australian jurisdiction to notify the Minister of the fact that the person has become or ceased to be the master of the boat.”; and

(b) by inserting in subsections (9), (12) and (13) “, (2A)” after “(2)”.

**(2)** Section 14 of the Principal Act is amended:

(a) by omitting subsections (3), (4) and (5) and substituting the following subsections:

“(3) The Minister may, by notice published in the *Gazette*, require a relevant person who:

(a) in:

(i) if an area of the Protected Zone is specified in the notice—that area of the Protected Zone; and

(ii) in any other case—any area of the Protected Zone; takes delivery of fish included in a class of fish specified in the notice from another person; and

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- (b) knows, or has reasonable grounds to believe, that the other person is both a traditional inhabitant and an Australian citizen;

to furnish to the Minister, at such time and in such manner as is specified in the notice, information relating to the quantity of fish so delivered.

“(4) In subsection (3):

‘Protected Zone’ includes any area referred to in paragraph (a) of the definition of ‘Protected Zone’ in subsection 3 (1);

‘relevant person’ means a person:

- (a) who is not both a traditional inhabitant and an Australian citizen; and
- (b) who is:
  - (i) the master of, or a person on board, a boat;
  - (ii) the pilot of, or a person on board, an aircraft; or
  - (iii) the operator of a fish processing facility that is in Australia.”;

- (b) by omitting from subsection (8) “or (4)”;
  - (c) by omitting from subsections (9), (12) and (13) “(2A), (3) or (4)” and substituting “(2A) or (3)”;
  - (d) by omitting from subsection (10) “(2), (3) or (4)” and substituting “(2) or (3)”;
  - (e) by omitting subsections (15) and (15A).
- (3) Where, immediately before the commencement of this subsection:
- (a) a person was required by subsection 14 (15) of the Principal Act as then in force to furnish information; and
  - (b) the time by which the person was required to furnish the information had not expired;

then, notwithstanding the amendments made by subsection (2), subsections 14 (15) and (15A) of the Principal Act as in force immediately before the commencement of this subsection continue to apply in relation to the person in relation to the furnishing of the information as if those amendments had not been made.

### **Regulation of fishing**

**28. (1) Section 16 of the Principal Act is amended:**

- (a) by omitting from paragraph (1) (n) “or” (last occurring);
- (b) by adding at the end of paragraph (1) (o) “, or carried, in a manner specified in the notice; or”;
- (c) by adding at the end of subsection (1) the following paragraph:
  - “(p) prohibit a person from using or having in the possession or under the control of the person, on a boat, equipment of a kind specified in the notice for taking fish unless that

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equipment is marked or otherwise identified in a manner specified in the notice.”;

(d) by inserting after subsection (1) the following subsection:

“(1A) A notice under subsection (1) may do all or any of the following:

- (a) contain prohibitions under 2 or more paragraphs of that subsection;
  - (b) specify the day on which the prohibition or a particular prohibition contained in the notice is to come into force (whether the same as, or different from, a day specified under this paragraph in relation to any other prohibition that may be contained in the notice);
  - (c) specify the period during which the prohibition or a particular prohibition contained in the notice is to have effect (whether the same as, or different from, a period specified under this paragraph in relation to any other prohibition that may be contained in the notice);
  - (d) provide for exemptions from the prohibition or prohibitions contained in the notice.”;
- (e) by omitting from subsections (2), (3) and (4) “A notice” and substituting “A prohibition contained in a notice”;
- (f) by omitting from subsection (2) “other than a notice under” and substituting “other than”;
- (g) by omitting from paragraphs (2) (a), (3) (a) and (3) (b) “notice” (last occurring) and substituting “prohibition”;
- (h) by omitting subsection (6);
- (j) by omitting from subsection (7) “prohibited by the notice” and substituting “to which a prohibition contained in the notice relates”;
- (k) by inserting after subsection (7) the following subsection:

“(7A) Where:

- (a) a notice (in this subsection referred to as the ‘subsequent notice’) under subsection (1) revokes a previous notice under that subsection; and
- (b) the subsequent notice provides that the activities to which a prohibition contained in the notice relates are activities in respect of which an entry may be made under subsection 21 (1);

the subsequent notice may also provide that entries made under subsection 21 (1) that would, but for the revocation of the previous notice, have had effect in relation to a specified prohibition contained in the previous notice during any period or periods after the revocation are to have effect during that period or those periods in relation to the prohibition contained in the subsequent notice.”;

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- (m) by omitting from paragraph (8) (a) “prohibited by the notice” and substituting “to which a prohibition contained in the notice relates”;
- (n) by omitting from subsection (8) “contained in that notice under subsection (1)”; and
- (o) by inserting after subsection (8) the following subsection:

“(8A) Where a notice makes provision as mentioned in subsection (7A), the entries referred to in the notice have effect in accordance with the notice.”.

(2) The amendments made by paragraphs (1) (d) to (o) (inclusive) apply in relation to the publication of notices under subsection 16 (1) of the *Torres Strait Fisheries Act 1984* on or after the day on which this section comes into operation.

**Commercial fishing licences**

29. Section 19 of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) Without otherwise limiting the generality of subsections (2) and (3), the Minister may refuse to grant a licence under either of those subsections in respect of a boat if the Minister has reason to believe that a requirement of a law of the Commonwealth, or of a State or Territory, has not been complied with in relation to the boat.”.

**Entries in licenses and endorsements**

30. Section 21 of the Principal Act is amended by inserting in subsection (1) “a prohibition contained in” after “prohibited by”.

**Term of licences**

31. Section 23 of the Principal Act is amended by adding at the end of subsections (1) and (2) “or, if regulations for the purposes of this subsection specify a different period in relation to all licences to which this subsection applies, or in relation to a class of those licences that includes the licence, a day in the period so specified”.

**Suspension and cancellation of licences**

32. (1) Section 26 of the Principal Act is amended:

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

“(aa) a person, being the holder of the licence or a person acting on behalf of the holder of the licence, has, after the commencement of subsection 32 (1) of the *Fishing Legislation Amendment Act 1987*:

- (i) refused or failed to provide information required by a notice under subsection 14 (1), (2), (2A), (3) or (4) to be provided by that person in the manner in which the information was required by the notice to be provided; or

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- (ii) in purported compliance with a notice under subsection 14 (1), (2), (2A), (3) or (4), provided information that was, to the knowledge of the person, false or misleading in a material particular;"; and
- (b) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) if proceedings for an offence against this Act in relation to the alleged act or omission referred to in paragraph (1) (a), (aa), (b) or (c), as the case may be, are instituted against the holder of the licence or a person acting on behalf of the holder of the licence within one month after the suspension—on completion of the proceedings; or”.

(2) Section 26 of the Principal Act is amended by omitting from subparagraphs (1) (aa) (i) and (ii) “(2A), (3) or (4)” and substituting “(2A) or (3)”.

33. After section 27 of the Principal Act the following section is inserted in Part IV:

**Exercise of powers by agent etc.**

“27A. Nothing in this Act prevents the exercise of any of the powers of a person under this Part (other than powers of the Minister) by another person having authority as agent, trustee or otherwise to exercise that power or powers that include that power.”.

**Powers of officers**

34. Section 42 of the Principal Act is amended:

- (a) by inserting after paragraph (1) (b) the following paragraph:

“(ba) where the officer has reasonable grounds to believe that there is in any vehicle any document, equipment or thing that may afford evidence as to the commission of an offence against this Act:

- (i) stop and detain the vehicle;
- (ii) enter and search the vehicle;
- (iii) break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is a document, equipment or thing of that kind; and
- (iv) 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 inserting after paragraph (1) (k) the following paragraph:

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- “(ka) require a person found on or in any land or premises entered in pursuance of paragraph (b) or in any vehicle detained or searched under paragraph (ba):
- (i) to state the full name and usual place of residence of the person;
  - (ii) to produce any documents in the possession, or under the control, of the person relating to any fish found on the land or in the premises or vehicle; or
  - (iii) to give information concerning any such fish;”;
- (c) by inserting after paragraph (1) (o) the following paragraph:
- “(oa) where, for the purpose of ascertaining whether equipment that is on, or that is being used by or from, a boat is equipment of a kind specified in a notice that is in force under subsection 16 (1), it is necessary to ascertain the dimensions of the equipment—require the master of the boat to provide such reasonable assistance as is requested by the officer in order to ascertain the dimensions of the equipment (including, if the officer so requests, causing the equipment to be placed in the sea or on land, or to be removed from the sea and placed on the boat or on land);”;
- (d) by inserting after subsection (2A) the following subsection:
- “(2AA) Where an officer (other than a prescribed person who is in uniform) proposes to enter and search, or to detain, a vehicle, the officer shall, if there is a person in charge of the vehicle:
- (a) where the officer is a prescribed person—produce, for inspection by the person in charge of the vehicle, written evidence of the fact that the officer is a prescribed person; or
  - (b) in any other case—produce, for inspection by the person in charge of the vehicle, the officer’s identity card;
- and, if the officer fails to do so, the officer is not authorised to enter and search, or to detain, the vehicle.”;
- (e) by inserting after subsection (6) the following subsection:
- “(6A) A reference in this section to an offence against, or a contravention of, this Act includes a reference to an offence against, or a contravention of:
- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or
  - (b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;
- that relates to this Act.”; and
- (f) by inserting before the definition of “prescribed person” in subsection (7) the following definition:
- “‘examine’ includes count, measure, weigh, grade or gauge;”.

**Obstruction of officers etc.**

**35. (1)** Section 43 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (a) “or” (last occurring); and
- (b) by inserting after paragraph (2) (b) the following word and paragraph:

“; or (ba) in a record, report, return or other document relating to fishing made, given or furnished, or purporting to be made, given or furnished, under this Act (other than in purported compliance with a notice under subsection 14 (1), (2), (2A), (3) or (4)) or under the regulations, makes a statement or furnishes information that is, to the knowledge of the person, false or misleading in a material particular;”.

(2) Section 43 of the Principal Act is amended by omitting from paragraph (2) (ba) “(2A), (3) or (4)” and substituting “(2A) or (3)”.

**36. (1)** After section 53 of the Principal Act the following section is inserted:

**Conduct by directors, servants or agents of bodies corporate**

“53A. (1) Where, in proceedings for an offence against this Act or the regulations in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate.

“(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the intention, opinion, belief or purpose.”.

(2) Subsections 53A (1) and (2) of the Principal Act as amended by this Act apply respectively in relation to offences alleged to have been committed, and conduct engaged in, after the commencement of this section.

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37. After section 56 of the Principal Act the following section is inserted:

**Taking etc. of fish not an offence in certain circumstances**

“56A. Where:

- (a) but for this section, a person would, by reason of the taking, capturing or catching of fish (whether or not by reason also of any other act or any failure to act), be guilty of an offence against this Act; and
  - (b) the fish was or were returned to the water as soon as was reasonably practicable after being taken, captured or caught;
- the person is not guilty of the offence.”
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**NOTES**

1. No. 149, 1968, as amended. For previous amendments, see No. 219, 1973; No. 91, 1976; No. 100, 1978; No. 155, 1979; Nos. 70 and 94, 1980; No. 182, 1981; No. 80, 1982; and Nos. 22 and 30, 1984.
2. 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 (as amended by No. 7, 1974); No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 155, 1979; Nos. 70, 86 and 93, 1980; No. 181, 1981; No. 80, 1982; Nos. 22, 30 and 152, 1984; and No. 29, 1985.
3. No. 23, 1984, as amended. For previous amendments, see No. 152, 1984; and No. 29, 1985.

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