



# Fisheries Administration Act 1991

No. 161 of 1991

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# Fisheries Administration Act 1991

No. 161 of 1991

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## **An Act to establish an Australian Fisheries Management Authority and a Fishing Industry Policy Council, and for related purposes**

*[Assented to 10 November 1991]*

The Parliament of Australia enacts:

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Fisheries Administration Act 1991*.

#### **Commencement**

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

#### **Objects of Act**

3. The objects of this Act are:

(a) to establish an Australian Fisheries Management Authority with

functions and responsibilities relating to the management of fisheries on behalf of the Commonwealth; and

- (b) to establish a Fishing Industry Policy Council with a view to ensuring the participation by persons engaged in, or having an interest in, the fishing industry in the process of formulating government policy in relation to the management of fisheries.

### **Interpretation**

**4. (1)** In this Act, unless the contrary intention appears:

**“associated law”** means a law conferring powers and functions on the Authority;

**“Australian Fisheries Council”** means the body known by that name constituted by the Minister and Ministers of the States and certain of the Territories;

**“Authority”** means the Australian Fisheries Management Authority established by section 5;

**“borrowing”**, includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the Authority;

**“director”** means a director of the Authority and includes the Chairperson of the Authority;

**“fishery”** means a class of activities by way of fishing, including activities identified by reference to all or any of the following:

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

**“governing body”**, in relation to another body (whether incorporated or otherwise), means the persons having the management of the affairs of that other body;

**“industry”** means the fishing industry including the catching, processing and marketing sectors of that industry;

**“nominated director”** means a person appointed by the Minister under section 12 to be a nominated director of the Authority;

**“peak industry body”** means such body (whether incorporated or otherwise) representative generally of persons engaged in the industry as is prescribed for the purposes of this definition;

**“plan of management”** means a plan of management of a fishery determined by the Authority under an associated law;

**“Presiding Member”** means the Presiding Member of Australian Fisheries Management Authority Selection Committees appointed under section 25;

**“Selection Committee”** means an Australian Fisheries Management Authority Selection Committee established under section 28.

Note: Definitions relating only to Part 3 are in section 95.

(2) For the purposes of this Act:

- (a) in relation to a fishery or a managed fishery that is identified by reference to an area, a reference to activities in the fishery or in the managed fishery includes activities in that area; and
- (b) in relation to a fishery or a managed fishery that is identified by reference to any matter other than an area, a reference to activities in the fishery or in the managed fishery includes activities in relation to the fishery.

## **PART 2—AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY**

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

#### **Establishment**

5. An Australian Fisheries Management Authority is established.

#### **Objectives**

6. The Authority, in the performance of its functions, must pursue the objectives of:

- (a) implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and
- (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development, in particular the need to have regard to the impact of fishing activities on non-target species and the marine environment; and
- (c) maximising economic efficiency in the exploitation of fisheries resources; and
- (d) ensuring accountability to the fishing industry and to the Australian community in the Authority’s management of fisheries resources; and
- (e) achieving government targets in relation to the recovery of the costs of the Authority.

#### **Functions**

7. The Authority has the following functions:

- (a) to devise management regimes in relation to Australian fisheries;

- (b) to devise fisheries adjustment programs and fisheries restructuring programs;
- (c) to consult, and co-operate, with the industry and members of the public generally in relation to the activities of the Authority;
- (d) to devise exploratory and feasibility programs relating to fishing;
- (e) to establish priorities in respect of research relating to fisheries managed by the Authority and arrange for the undertaking of such research;
- (f) to consult, and negotiate, with foreign governments and foreign business interests in relation to access by foreign fishing vessels to Australian fisheries and Australian ports;
- (g) to consult, and exchange information, with overseas bodies having functions similar to the Authority's functions;
- (h) the functions specified in section 9 relating to consultation;
- (j) the functions specified in Division 7 relating to corporate plans and annual operational plans;
- (k) the functions specified in section 63H of the *Audit Act 1901*, and in this Part, relating to reporting;
- (m) as provided by an associated law:
  - (i) to establish and allocate fishing rights;
  - (ii) to establish and maintain a register of fishing rights;
  - (iii) functions relating to plans of management;
  - (iv) functions relating to recreational fishing;
  - (v) to undertake, on behalf of the Commonwealth, management responsibilities in relation to fisheries management arrangements entered into with the States and Territories;
  - (vi) to collect, on behalf of the Commonwealth, a payment in the nature of a community return payable by persons exploiting fisheries resources;
- (n) such other functions as are conferred on the Authority by or under this Act or an associated law.

### **Powers**

**8. (1)** The Authority may do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Without limiting the generality of subsection (1), the Authority may:

- (a) enter into agreements and contracts; and
- (b) acquire, hold and dispose of real and personal property; and
- (c) collect information and data relevant to the management of fisheries; and
- (d) charge such fees and impose such charges as are reasonable in



- respect of work done, services provided or information given by the Authority; and
- (e) accept gifts, grants, bequests and devises made to it, and act as trustee of money and other property vested in it on trust; and
  - (f) do anything incidental to any of its powers.

### **Consultation**

**9. (1)** The Authority, for the purpose of considering any matter, or obtaining information or advice, relating to the performance of its functions, may consult with persons, bodies or Governments, including:

- (a) persons or bodies representative of the whole or a part of the industry or recreational fishing; and
- (b) the Commonwealth Government or State or Territory Governments or Commonwealth, State or Territory authorities having functions relating to fisheries; and
- (c) persons (including members of the scientific community) having a particular interest in matters associated with the industry.

**(2)** The Authority may:

- (a) pay travel expenses reasonably incurred by a person in connection with consultations by the Authority; and
- (b) subject to written guidelines given to the Authority by the Minister, pay expenses (other than travel expenses) reasonably incurred by a body or person in connection with consultations by the Authority.

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

**Authority is body corporate etc.**

**10. (1)** The Authority:

- (a) is a body corporate with perpetual succession; and
- (b) is to have a common seal; and
- (c) may sue and be sued in its corporate name.

**(2)** The common seal of the Authority must be kept in such custody as the Authority directs and must not be used except as authorised by the Authority.

**(3)** All courts, judges and persons acting judicially must take judicial notice of the imprint of the common seal of the Authority appearing on a document and must presume that it was duly affixed.

### **Constitution of Authority**

**11.** The Authority consists of the following directors:

- (a) the Chairperson;
- (b) the Government Director;
- (c) the Managing Director;

(d) five nominated directors.

### **Appointment of directors**

**12. (1)** The directors (other than the Managing Director) are to be appointed by the Minister.

(2) A person may not be appointed as Chairperson of the Authority, or as a nominated director, for more than 3 consecutive terms.

(3) The Minister is to appoint a person to be the Government Director only if satisfied that the person has experience in public administration including the formulation of government policy.

(4) The nominated directors, other than the first 5 such directors, are to be appointed from persons nominated by a Selection Committee under section 31.

(5) The appointment of a person as a director is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

(6) The Minister must try, so far as the first 5 nominated directors are concerned, to appoint, so far as practicable, such persons as will ensure that the directors of the Authority collectively possess expertise in all the fields of activity referred to in subsection 30 (1).

### **Deputy Chairperson**

**13. (1)** The Minister is to appoint a nominated director to be the Deputy Chairperson of the Authority.

(2) The Minister must, before appointing a person to be the Deputy Chairperson, consult with the Chairperson of the Authority.

(3) The Minister may at any time terminate an appointment made under subsection (1).

(4) A person appointed as Deputy Chairperson ceases to hold the office if the person ceases to be a nominated director.

(5) A person appointed as Deputy Chairperson may resign by giving to the Minister a signed notice of resignation.

(6) During any period when:

- (a) the office of Chairperson of the Authority is vacant (whether or not an appointment has previously been made to the office); or
- (b) the Chairperson of the Authority is absent from Australia or is, for any reason, unable to perform the duties of the office;

the Deputy Chairperson is to act as Chairperson.

(7) The Deputy Chairperson has, when acting as Chairperson, all the powers, duties, rights and entitlements of the Chairperson of the Authority.

**(8)** Anything done by or in relation to a person purporting to act as Chairperson under subsection (6) is not invalid merely because:

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

**Certain members of peak industry body not eligible for appointment etc.**

**14.** A person who is a member of the governing body of the peak industry body must not be appointed as a director, and a director who becomes a member of the governing body of the peak industry body ceases to hold office as a director.

**Term of office**

**15.** A director (other than the Managing Director) holds office, subject to this Act:

- (a) in the case of a director other than the Government Director— 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
- (b) in the case of the Government Director—during the Minister's pleasure.

**Directors (other than Managing Director) hold office on part-time basis**

**16.** The directors (other than the Managing Director) hold office on a part-time basis.

**Remuneration and allowances**

**17. (1)** A director is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the director is to be paid such remuneration as is prescribed.

**(2)** A director is to be paid such allowances as are prescribed.

**(3)** Where:

- (a) a person who is a director 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 must not be paid remuneration or allowances under this Act, but is to be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.

**(4)** Where a director:

- (a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person; or
- (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) 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) This section has effect subject to the *Remuneration Tribunal Act 1973*.

(7) This section does not apply in relation to the Managing Director.

(8) In this section:

**“Parliament”** means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly for the Australian Capital Territory; and
- (b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory;

**“State”** includes the Australian Capital Territory and the Northern Territory.

### **Leave of absence**

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

(2) The Chairperson may grant leave of absence to another director (other than the Managing Director) on such terms and conditions as the Chairperson considers appropriate.

### **Resignation**

19. A director (other than the Managing Director) may resign by giving to the Minister a signed notice of resignation.

### **Disclosure of interests**

20. (1) Where:

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

the director must, as soon as practicable after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

#### **Termination of appointment**

21. (1) The Minister may terminate the appointment of the Chairperson of the Authority or a nominated director for:

- (a) misbehaviour or physical or mental incapacity; or
- (b) inefficiency or incompetence.

(2) If:

- (a) the Chairperson or a nominated director becomes bankrupt, applies to take the benefit of any 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; or
- (b) the Chairperson or a nominated director, without reasonable excuse, contravenes section 20; or
- (c) the Chairperson is absent, except with the leave of the Minister, from 3 consecutive meetings of the Authority; or
- (d) a nominated director is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Authority;

the Minister may terminate the appointment of the Chairperson or the nominated director.

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

22. A director (other than the Managing Director) 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.

#### **Meetings**

23. (1) Subject to subsection (2), meetings of the Authority are to be held at such times and places as the Authority from time to time determines.

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

(3) The Chairperson of the Authority is to preside at all meetings of the Authority at which the Chairperson is present.

(4) If the Chairperson and Deputy Chairperson of the Authority are not present at a meeting of the Authority the directors present are to appoint one of their number to preside at the meeting.

(5) At a meeting of the Authority:

- (a) 5 directors constitute a quorum; and
- (b) a question is to be decided by a majority of the votes of the directors present and voting; and
- (c) the director presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) The Authority must keep minutes of its proceedings.

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

#### **Resolutions without meetings**

24. (1) Where:

- (a) copies of a document setting out a proposed resolution of the Authority are received by at least 5 directors of the Authority; and
- (b) at least 5 such directors, being directors who would constitute a quorum at a meeting of the Authority, sign a copy of the document;

the Authority is taken to have passed such a resolution in the terms set out in the document at a meeting of the Authority.

(2) The resolution is taken to have been passed:

- (a) on the day on which copies of the document were signed by the directors; or
- (b) if the copies were signed on different days—on the latest of those days.

#### ***Division 3—Nomination and selection process for directors of Authority***

##### **Presiding Member**

25. (1) The Minister is to appoint a person to be the Presiding Member of Australian Fisheries Management Authority Selection Committees.

(2) The Presiding Member is to be appointed on a part-time basis.

(3) Subject to this Division, the Presiding Member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible to be re-appointed once in accordance with this Act.

##### **Acting Presiding Member**

26. (1) The Minister may appoint a person to act as Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Presiding

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Member is absent from Australia or is, for any other reason, unable to perform the duties of the office;  
but a person appointed to act during the vacancy must not continue to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:

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

**Request for nominations**

27. (1) The Minister may, by written notice given to the Presiding Member, request the Presiding Member to establish a Selection Committee for the purpose of:

- (a) nominating a person or persons for appointment as a nominated director or nominated directors of the Authority; or
- (b) if there is a vacancy caused by the resignation of, or the ending of the appointment of, any nominated director—nominating a person for appointment.

(2) The Minister is to specify in the notice a period within which the Selection Committee is to comply with the notice.

**Selection Committee**

28. (1) Where the Presiding Member receives a request under section 27, he or she must:

- (a) establish an Australian Fisheries Management Authority Selection Committee for the purpose of nominating a person or persons for appointment to the Authority; and
- (b) give to the peak industry body a written notice requesting the body to nominate to the Minister persons for appointment to the Selection Committee; and
- (c) give to the Australian Fisheries Council a written notice requesting the Council to nominate to the Minister a person for appointment to the Selection Committee; and
- (d) take reasonable steps to inform members of the public (which may consist of advertising in a newspaper circulating generally throughout the Commonwealth), and members of such groups of persons (if any) as the Presiding Member thinks appropriate, of the following matters:
  - (i) that nominations are being sought for appointment of a person or persons to the Authority; and
  - (ii) the qualifications for nomination required by a person under section 30.

(2) The function of the Selection Committee is, in accordance with the request of the Minister, to nominate a person or persons for appointment to the Authority.

(3) The Selection Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its function.

### **Membership of Selection Committee**

29. (1) A Selection Committee is to consist of the following members:

- (a) the Presiding Member;
- (b) 2 members determined by the Minister, one of whom has knowledge of environmental conservation issues;
- (c) 2 members nominated by the peak industry body;
- (d) a member nominated by the Australian Fisheries Council.

(2) A Selection Committee member referred to in paragraph (1) (b), (c) or (d) is to be appointed by the Minister in writing and holds office on a part-time basis.

### **Selection of nominees**

30. (1) A Selection Committee must only nominate for appointment as directors of the Authority persons who have expertise in one or more of the following fields:

- (a) commercial fishing;
- (b) fishing industry operations other than commercial fishing;
- (c) fisheries science;
- (d) natural resource management;
- (e) marine ecology;
- (f) economics;
- (g) business management;
- (h) such other fields (if any) as are prescribed.

(2) In selecting persons for nomination, a Selection Committee must try to choose such persons as will ensure, as far as practicable, that the directors of the Authority collectively possess expertise in all of the fields referred to in subsection (1).

(3) A Selection Committee must not nominate a person:

- (a) who is a member of the Committee; or
- (b) whose appointment would result in the Authority having more than 2 directors currently engaged in a field of activity referred to in paragraph (1) (a) or (b); or
- (c) who, under subsection 12 (2), would not, in the particular case, be eligible for appointment.



**Nomination**

- 31. (1)** Within the period specified in a notice under section 27:
- (a) the Selection Committee must select a person or persons for nomination according to the request; and
  - (b) the Presiding Member must, on behalf of the Committee, nominate the person or persons selected by the Committee.
- (2)** A nomination must:
- (a) be in writing; and
  - (b) be given to the Minister.
- (3)** A Selection Committee must select only one person in respect of each appointment to be made by the Minister.
- (4)** Where a person is nominated for appointment, the Presiding Member must attach to the nomination a statement setting out:
- (a) details of the person's qualifications and experience; and
  - (b) any other information regarding the person that the Committee considers will assist the Minister in deciding whether to appoint the person.

**Rejection of nominations**

- 32. (1)** If the Minister is not satisfied that a person nominated by a Selection Committee is suitable for appointment, the Minister may give the Presiding Member written notice that he or she rejects the nomination of the person.
- (2)** The Minister may include in a notice of rejection a further request under section 27 for a nomination of a person for appointment to the position concerned.

**Meetings of a Selection Committee**

- 33. (1)** Meetings of a Selection Committee are to be held at such times and places as the Committee determines.
- (2)** The Presiding Member may convene a meeting of a Committee.
- (3)** At a meeting, the following persons constitute a quorum:
- (a) the Presiding Member;
  - (b) a member referred to in paragraph 29 (1) (b);
  - (c) a member referred to in paragraph 29 (1) (c);
  - (d) one other member who may also be a member referred to in one of those paragraphs.
- (4)** The Presiding Member is to preside at all meetings of a Committee.
- (5)** A question arising at a meeting of a Committee is to be decided by a majority of the votes of the members present and voting.

(6) At a meeting of a Committee, the Presiding Member has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(7) A Committee must keep a record of its proceedings.

(8) The procedure of a Committee is to be as determined by the Committee.

#### **Remuneration and allowances**

34. (1) The Presiding Member of a Selection Committee is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the Presiding Member is to be paid such remuneration as is prescribed.

(2) The Presiding Member is to be paid such allowances as are prescribed.

(3) A member (other than the Presiding Member) is to be paid such travelling allowance as is prescribed.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **Leave of absence**

35. (1) The Minister may grant to the Presiding Member leave of absence from a meeting of a Selection Committee.

(2) The Presiding Member may grant to another member of a Committee leave of absence from a meeting of the Committee.

#### **Resignation**

36. A member of a Selection Committee may resign by giving to the Minister a signed notice of resignation.

#### **Termination of appointment of member of Selection Committee**

37. (1) The Minister may terminate the appointment of a member of a Selection Committee for:

- (a) misbehaviour or physical or mental incapacity; or
- (b) inefficiency or incompetence.

(2) If a member of a Committee:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit; or
- (b) fails, without reasonable excuse, to comply with his or her obligations under section 38; or
- (c) is absent, without leave of absence, from 3 consecutive meetings of the Committee;

the Minister may terminate the appointment of the member.

**Disclosure of interests by members of Selection Committees**

**38. (1)** Where:

- (a) a member of a Selection Committee has a direct or indirect interest in a matter being considered, or about to be considered, by the Committee; 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 must, 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 Committee.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

**Resolutions without meetings**

**39. (1)** Where:

- (a) copies of a document setting out a proposed resolution of a Selection Committee are received by at least 4 members of the Committee, of whom one is the Presiding Member; and
- (b) at least 4 such members, being members who would constitute a quorum at a meeting of the Committee, sign a copy of the document;

the Committee is taken to have passed a resolution in the terms set out in the document at a meeting of the Committee.

(2) The resolution is taken to have been passed:

- (a) on the day on which copies of the document were signed by members; or
- (b) if the copies were signed on different days—on the latest of those days.

**Consultants etc.**

**40. (1)** The Presiding Member may, on behalf of a Selection Committee, engage persons as consultants to assist the Committee in the performance of its functions.

(2) The Presiding Member may only engage persons who have suitable qualifications and experience.

(3) The Presiding Member may, on behalf of a Selection Committee, engage persons to perform clerical or administrative services in connection with the performance of the Committee's functions.

(4) The terms and conditions of engagement of persons under subsection (1) or (3) are to be determined by the Committee.

**Presiding Member to abolish Selection Committee**

**41.** Where:

- (a) the Minister has appointed to the Authority a person or persons nominated by a Selection Committee; and
- (b) the Committee has not made any nominations for appointment that have yet to be accepted or rejected by the Minister; and
- (c) there are no matters in a request by the Minister under section 27 or 32 that are still to be dealt with by the Committee;

the Presiding Member must abolish the Committee.

**Annual reports of Selection Committees**

**42. (1)** The Presiding Member must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operations, during the immediately preceding financial year, of Selection Committees (if any) established by the Presiding Member or any other Presiding Member.

**(2)** Where the first appointment of a Presiding Member does not begin on 1 July, subsection (1) has effect in relation to the period beginning on the day the appointment begins and ending on the next 30 June as if:

- (a) if the period is less than 3 months—the period were included in the next financial year; or
- (b) in any other case—the period were a financial year.

**(3)** A report for a financial year may, subject to agreement between the Presiding Member and the Chairperson of the Authority, be included, as a discrete part, in the annual report of the Authority for that financial year.

**(4)** If subsection (3) does not apply to a report under this section, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

***Division 4—Managing Director***

**Managing Director**

**43.** There is to be a Managing Director of the Authority.

**Duties**

**44. (1)** The Managing Director is to conduct the affairs of the Authority.

**(2)** The Managing Director must act in accordance with any policies determined by, and any directions given by, the Authority.

(3) All acts and things done in the name of, or on behalf of, the Authority by the Managing Director are taken to have been done by the Authority.

#### **Appointment**

45. (1) The Managing Director is to be appointed by the Authority.

(2) The Chairperson, the Government Director or a nominated director of the Authority must not be appointed as the Managing Director.

(3) The appointment of a person as Managing Director is not invalid because of a defect or irregularity in connection with the person's appointment.

#### **Term of appointment etc.**

46. The Managing Director holds office during the Authority's pleasure.

#### **Terms and conditions of appointment**

47. The Managing Director holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Authority with the written approval of the Minister.

#### **Application of Remuneration Tribunal Act**

48. The office of Managing Director is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

#### **Managing Director not to engage in other paid employment**

49. The Managing Director must not engage in paid employment outside the duties of the office except with the approval of the Authority.

#### **Leave of absence**

50. The Chairperson of the Authority may grant leave of absence to the Managing Director on such terms and conditions, whether as to remuneration or otherwise, as are determined by the Authority with the written approval of the Minister.

#### **Resignation**

51. The Managing Director may resign by giving to the Chairperson of the Authority a signed notice of resignation.

#### **Disclosure of interests**

52. The Managing Director must give written notice to the Chairperson of the Authority of all direct or indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.

**Acting Managing Director**

**53. (1)** The Authority may, by resolution, appoint a person to act as Managing Director:

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

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

**(2)** Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:

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

***Division 5—Committees***

**Committees**

**54.** The Authority may establish committees to assist it in the performance of its functions and the exercise of its powers, and, subject to subsection 56 (4), may abolish any such committee.

**Committees other than management advisory committees**

**55. (1)** A committee (other than a management advisory committee) may be constituted wholly by members of the Authority or partly by members of the Authority and partly by other persons.

**(2)** The Authority may determine:

- (a) the manner in which the committee is to perform its functions; and
- (b) the procedure to be followed at or in relation to meetings of the committee, including matters with respect to:
  - (i) the convening of meetings of the committee; and
  - (ii) the number of members of the committee who are to constitute a quorum; and
  - (iii) the selection of a member of the committee to preside at meetings of the committee; and
  - (iv) the manner in which questions arising at a meeting of the committee are to be decided.

**(3)** Where:

- (a) a member of such a committee has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the committee; 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 must, 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 committee.

(4) A disclosure under subsection (3) must be recorded in the minutes of the meeting.

#### **Management advisory committees**

56. (1) Without limiting the power of the Authority to establish committees under section 54, the Authority may, under that section, establish management advisory committees to assist it in the performance of its functions and the exercise of its powers in relation to a fishery.

(2) Where a plan of management makes provision for the performance of functions, or the exercise of powers, by a management advisory committee, the Authority is to establish such a committee for the purposes of that plan.

(3) The Authority may, after consultation with the members of a management advisory committee, vary the committee's functions and powers.

(4) The Authority must not abolish a management advisory committee referred to in subsection (2) while the plan of management makes provision as mentioned in that subsection.

#### **Functions of management advisory committees**

57. (1) A management advisory committee has such functions as the Authority from time to time determines.

(2) Without limiting the generality of subsection (1), the Authority may determine any of the following functions in relation to a management advisory committee:

- (a) the function of being a liaison body between the Authority and persons engaged in a fishery;
- (b) the function of providing advice to the Authority in relation to the preparation and operation of a plan of management;
- (c) the function of monitoring, and reporting to the Authority in relation to, scientific, economic and other information relating to a fishery.

**Powers of management advisory committee etc.**

**58. (1)** Subject to section 59, a management advisory committee has power to do, on behalf of the Authority, all things necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** All acts and things properly done in the name of, or on behalf of, the Authority by a management advisory committee are taken to have been done by the Authority.

**Management advisory committee to act in accordance with policies etc. of Authority**

**59.** A management advisory committee must act in accordance with any policies determined by, and any directions given by, the Authority.

**Constitution of management advisory committees**

**60. (1)** A management advisory committee consists of the following members:

- (a) the Chairperson;
- (b) the officer of the Authority who is responsible to the Authority for the management of the fishery in relation to which the committee has been established;
- (c) such number of other members (not exceeding 7) as the Authority determines from time to time after consultation with the industry, the States and Territories and persons engaged in research who, in the opinion of the Authority, have an interest in matters in relation to which the committee is established.

**(2)** The performance of the functions, and the exercise of the powers, of a management advisory committee are not affected by reason only of vacancies in the membership of the committee.

**Acting Chairperson**

**61. (1)** The Authority may appoint a person to act as the Chairperson of a management advisory committee:

- (a) during a vacancy in the office of Chairperson of the committee (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chairperson of the committee 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 must not continue so to act for more than 12 months.

**(2)** Anything done by or in relation to a person purporting to act as Chairperson of a management advisory committee is not invalid merely because:

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



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

#### **Appointment of members**

**62. (1)** The members of a management advisory committee are to be appointed by the Authority.

(2) The appointment of a person as a member of a management advisory committee is not invalid because of a defect or irregularity in connection with the person's appointment.

(3) The Authority must try, as far as practicable, to ensure that the membership of a management advisory committee includes an appropriate number of members engaged in, or with experience in, the industry in the fishery in relation to which the management advisory committee is established.

(4) Nothing in this Division requires the Authority to appoint a particular person or a representative of a particular group of persons, or of a State or Territory, to be a member of a management advisory committee referred to in paragraph 60 (1) (c).

#### **Term of office**

**63. (1)** A member of a management advisory committee holds office, subject to this Division, for such term (not exceeding 3 years) as is specified in the instrument of appointment but is eligible for reappointment in accordance with this Act.

(2) If a member of a management advisory committee (other than the Chairperson) 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.

#### **Application of certain provisions to members of management advisory committees**

**64.** Sections 18 to 21 (inclusive) and section 24 apply to a management advisory committee as if:

- (a) a reference to a director of the Authority were a reference to a member of the committee (whether or not the member of the committee is also a director of the Authority); and
- (b) a reference to the Minister were a reference to the Authority; and
- (c) a reference to the Chairperson of the Authority were a reference to the Chairperson of the committee; and
- (d) a reference to a nominated director of the Authority were a

reference to a member of the committee referred to in paragraph 60 (1) (c); and

(e) a reference to the Authority were a reference to the committee.

### **Meetings**

**65. (1)** The Authority may from time to time determine the procedure to be followed at or in relation to meetings of a management advisory committee, including matters with respect to:

- (a) the convening of meetings of the committee; and
- (b) the quorum for meetings of the committee (including requirements that particular members be present); and
- (c) the member of the committee to preside at meetings of the committee at which the Chairperson of the committee is not present; and
- (d) the manner in which questions arising at meetings are to be determined; and
- (e) the keeping of minutes; and
- (f) the inviting of persons to attend meetings of the committee for the purpose of advising or informing the committee on any matter.

**(2)** Except in relation to matters determined by the Authority under subsection (1), the committee may determine the procedure to be followed at or in relation to its meetings.

### **Arrangements relating to staff etc.**

**66.** The Chairperson of a management advisory committee is to arrange with the Chairperson of the Authority for the services of employees of, and consultants to, the Authority, and for facilities of the Authority, to be made available to the committee.

### **Remuneration and allowances**

**67. (1)** The Chairperson of a management advisory committee is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the Chairperson is to be paid such remuneration as is prescribed.

**(2)** The Chairperson of a management advisory committee is to be paid such allowances as are prescribed.

**(3)** Subsections (1), (2) and (4) have effect subject to the *Remuneration Tribunal Act 1973*.

**(4)** A member of a committee established under section 54 (other than the Chairperson of a management advisory committee or a member who is a director or employee of the Authority) is to be paid such travelling allowance as is prescribed in relation to the performance of his or her duties as a member of the committee.

(5) The following offices are not public offices within the meaning of the *Remuneration Tribunal Act 1973*:

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

***Division 6—Employees and consultants***

**Employees**

68. (1) The Authority may engage such employees as it considers necessary for the performance of its functions and the exercise of its powers.

(2) The terms and conditions of employment are to be determined by the Authority.

(3) A person must not be employed by the Authority on terms and conditions more favourable than those applying to the Managing Director.

**Consultants**

69. (1) The Authority may engage persons having suitable qualifications and experience as consultants to the Authority.

(2) The terms and conditions of engagement are to be determined by the Authority.

**Human resources development program**

70. (1) The Authority is to develop and implement a human resources development program (including an equal employment opportunity program) for the Authority.

(2) The Authority must take whatever action is necessary to give effect to the human resources development program, and any person who exercises powers in relation to employment matters in the Authority must have regard to the program in exercising those powers.

**Merit principle to apply**

71. Nothing in this Act requires anyone to do anything incompatible with the principle that employment matters should be dealt with on the basis of merit.

***Division 7—Corporate and annual operational plans***

**Development of corporate plan**

72. (1) The Authority must give to the Minister a corporate plan before 1 May 1992 and before 1 May in each subsequent calendar year.

(2) A corporate plan is to be prepared after consultation with the peak industry body and with any other person or body considered by the Authority to be appropriate.

(3) A corporate plan is to relate to a period commencing on the following 1 July and extending for 3, 4 or 5 years, as the Authority chooses.

(4) A corporate plan must:

- (a) define what the Authority considers should be its principal goals during the period to which the plan relates; and
- (b) give a broad outline of the strategies that the Authority considers should be pursued during that period for achieving those goals; and
- (c) set out the Authority's assessment of the factors that will affect the operations of the Authority during the period of the plan in giving effect to the objectives set out in section 6; and
- (d) include such performance indicators as the Authority considers appropriate against which the performance of the Authority can be assessed during the period of the plan; and
- (e) include the human resources development program developed under section 70.

#### **Approval of corporate plan**

73. (1) The Minister may, by written notice given to the Authority:

- (a) approve the corporate plan; or
- (b) if the Minister thinks that the interests of fisheries management, or any matter relating to fisheries management, so require—request the Authority to revise the plan appropriately.

(2) If the Minister makes a request under paragraph (1) (b), the Minister is to set out the reasons for the request in the notice.

(3) The Authority must consider a request for the revision of a corporate plan and the reasons for the request, make such revision of the plan as it considers appropriate and submit the revised plan to the Minister for approval.

(4) A corporate plan comes into force:

- (a) at the commencement of the period to which the plan relates; or
- (b) on the day on which the Authority receives notice of the Minister's approval;

whichever is the later.

#### **Variation of corporate plan by Authority**

74. (1) Subject to subsection (4), the Authority must not vary a corporate plan except with the agreement of the Minister.

(2) Where the Authority wishes to vary a corporate plan, the Authority must prepare written proposals for the variations and give a copy of the proposals to the Minister together with a statement setting out the Authority's reasons for making the proposals.

(3) The Minister may, after considering proposals for the variation of a corporate plan and the reason for making those proposals, by written notice given to the Authority, agree with or reject the proposals.

(4) Nothing in this section prevents the Authority making variations of a minor nature to a corporate plan without the agreement of the Minister but the Authority must inform the Minister of the variation as soon as practicable after making it.

#### **Variation at request of Minister**

75. (1) The Minister may, at any time, give the Authority written notice requesting it to vary a corporate plan in the manner set out in the notice.

(2) The Minister is to set out in the notice the reasons for the request.

(3) The Authority must consider the request and reasons, prepare written proposals for such variations of the plan as the Authority considers appropriate and submit those proposals to the Minister.

(4) The Minister is to give the Authority written notice approving or rejecting the proposals.

#### **Date of effect of variations**

76. Where:

- (a) a corporate plan has come into force; and
- (b) a variation of the plan is approved by the Minister under section 74 or 75 or the Authority makes a variation of a minor nature;

the variation takes effect on the day on which the Authority receives notice of the Minister's approval or makes the variation of a minor nature, as the case may be.

#### **Development of annual operational plan**

77. (1) The Authority must, before 1 June 1992 and before 1 June in each subsequent calendar year or such later date as the Minister in the particular case allows, give to the Minister an annual operational plan relating to the period of 12 months commencing on the following 1 July.

(2) An annual operational plan must:

- (a) set out particulars of the action that the Authority intends to take in order to give effect to, or further, during the period to which the plan relates, the goals set out in the corporate plan applicable to the period; and
- (b) indicate whether the Authority intends to determine, or otherwise institute, a plan of management during the period to

- which the annual operational plan relates and, if so, provide an outline of the nature and object of any such plan; and
- (c) include such performance indicators as the Authority considers appropriate against which the performance of the Authority can be assessed during the period to which the plan relates; and
  - (d) propose action to implement the human resources development program developed under section 70.

**Approval of annual operational plan**

- 78. (1)** The Minister may, by written notice given to the Authority:
- (a) approve an annual operational plan; or
  - (b) if the Minister thinks that the plan is inconsistent with the provisions of the relevant corporate plan—request the Authority to revise the annual operational plan appropriately.
- (2)** If the Minister makes a request under paragraph (1) (b), the Minister is to set out the reasons for the request in the notice.
- (3)** The Authority must consider a request under paragraph (1) (b) and the statement of reasons, make such revision of the annual operational plan as it considers appropriate and submit the revised plan to the Minister for approval.
- (4)** An annual operational plan comes into force:
- (a) at the commencement of the period to which the plan relates; or
  - (b) on the day on which the Authority receives notice of the Minister's approval;
- whichever is the later.

**Variation of annual operational plan**

- 79. (1)** Sections 74, 75 and 76 apply to annual operational plans in the same way as they apply to corporate plans.
- (2)** When submitting to the Minister proposals for variation of a corporate plan, the Authority must also submit to the Minister proposals for any consequential variations of a relevant annual operational plan.

***Division 8—Finance***

**Payment of amounts of levy etc.**

- 80. (1)** There are to be paid to the Authority amounts equal to:
- (a) such percentage as is prescribed of amounts received by the Commonwealth as levy imposed by the *Foreign Fishing Boats Levy Act 1981*; and
  - (b) such percentage as is prescribed of amounts received by the Commonwealth as levy imposed by the *Fisheries Levy Act 1984*; and

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- (c) such percentage as is prescribed of amounts received by the Commonwealth as levy imposed by the *Fishing Levy Act 1991*; and
- (d) such percentage as is prescribed of amounts received by the Commonwealth as levy imposed by the *Foreign Fishing Licences Levy Act 1991*; and
- (e) such percentage as is prescribed of amounts received by the Commonwealth as charge imposed by the *Statutory Fishing Rights Charge Act 1991*; and
- (f) such percentage as is prescribed of amounts received by the Commonwealth mentioned in the *Fisheries Agreements (Payments) Act 1991*.

(2) Amounts payable under subsection (1) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

**Money of the Authority**

81. Money of the Authority consists of:

- (a) amounts payable to the Authority under section 80; and
- (b) such money as is appropriated by the Parliament for the purposes of the Authority; and
- (c) any other amounts payable to, or received by, the Authority under this Act or an associated law.

**Expenditure of money of the Authority**

82. Money of the Authority may only be expended:

- (a) in payment or discharge of expenses and liabilities incurred by the Authority in the performance of its functions; and
- (b) in payment of remuneration and allowances payable under this Act; and
- (c) in payment or discharge of expenses or liabilities incurred in connection with the operations of a Selection Committee; and
- (d) in making any other payments that the Authority is authorised or required to make by or under this Act or an associated law.

**Borrowing of money**

83. (1) Subject to subsection (2), the Authority may borrow money for the performance of its functions.

(2) Except with the written approval of the Treasurer, the Authority must not borrow money so that the total amount borrowed at any time exceeds \$500,000.

(3) An approval may be given in relation to a particular transaction or a class of transactions.

(4) A borrowing of money under an approval must be on such terms and conditions as are specified in, or are consistent with, the approval.

(5) Money may be borrowed wholly or partly in foreign currency.

#### **Guarantee of borrowings**

**84. (1)** The Treasurer may, on behalf of the Commonwealth, enter into a contract guaranteeing the performance by the Authority of obligations incurred by it under section 83.

(2) If the Treasurer determines in writing that obligations incurred by the Authority under that section are guaranteed by the Commonwealth, the obligations are so guaranteed by force of this subsection.

(3) A contract under subsection (1) may include:

- (a) a provision agreeing that proceedings under the contract may be taken in courts of a foreign country; or
- (b) a provision waiving the immunity of the Commonwealth from suit in courts of a foreign country.

#### **Borrowing not otherwise permitted**

**85.** The Authority must not borrow money except under this Division.

#### **Authority may give security**

**86.** The Authority may give security over the whole or part of its assets for:

- (a) the performance by the Authority of any obligation incurred under section 83; or
- (b) the payment to the Commonwealth of amounts equal to amounts paid by the Commonwealth under a guarantee under section 84.

#### **Exemption from tax**

**87. (1)** The Authority is not liable to pay tax under any law of the Commonwealth or of a State or Territory.

(2) Subsection (1) does not apply to:

- (a) customs duties; or
- (b) a law of the Commonwealth relating to sales tax; or
- (c) a law of a State or Territory relating to payroll tax.

#### **Provisions relating to Division 2 of Part XI of Audit Act**

**88. (1)** In the application of section 63H of the *Audit Act 1901* in relation to the Authority, the period beginning on the day on which this Act commences and ending on 30 June next following that day is



to be treated, for the purposes of preparing and submitting the first report and financial statements referred to in that section, as if it were a period of one year ending on that 30 June.

(2) Without limiting the generality of subsection 63H(1) of the *Audit Act 1901* in its application in relation to the Authority, the Authority must include in each report referred to in that subsection:

- (a) an assessment of the extent to which the operations of the Authority during the year to which the report relates have contributed:
  - (i) to the objectives set out in section 6 and, in particular, to the objective set out in paragraph (b) of that section; and
  - (ii) to the goals set out in the corporate plan applicable to the period; and
  - (iii) to the objectives set out in the annual operational plan that relates to a period corresponding to that year; and
- (b) particulars of:
  - (i) variations (if any) of the corporate plan and the annual operational plan taking effect during that year; and
  - (ii) significant purchases and dispositions of real property by the Authority during that year; and
  - (iii) borrowings made by the Authority during that year; and
  - (iv) significant changes to plans of management and the introduction of new plans of management during that year; and
  - (v) the effectiveness or otherwise of the operation of plans of management during that year; and
  - (vi) any directions given to the Authority by the Minister during that year; and
  - (vii) the action taken by the Authority to develop and implement its human resources development program; and
- (c) an evaluation of its overall performance against the performance indicators set out in the corporate plan applicable to the period and the annual operational plan that came into force at the beginning of that year.

Note: Because of subsection 63CA(1) of the *Audit Act 1901*, Division 2 of Part XI of that Act applies to the Australian Fisheries Management Authority. That Division provides, among other things, for the preparation of annual reports.

### ***Division 9—Miscellaneous***

#### **Peak industry body to be given copy of report etc.**

89. (1) Where a report of the Authority's operations during a year has been laid before each House of the Parliament, the Chairperson of the Authority is to:

- (a) give to the peak industry body a copy of the report; and
- (b) request a meeting with the governing body of the peak industry body.

(2) The purpose of meeting with that governing body is to enable the Chairperson:

- (a) to address the members of the governing body on the Authority's activities during the period covered by the report and on any other matters relating to fisheries management that the Chairperson regards as relevant; and
- (b) to give any additional information to those members in relation to the Authority's activities as the Chairperson believes to be appropriate.

### **Public meetings**

90. (1) For the purpose of consulting with the industry and the public generally, the Authority is to hold public meetings at intervals of not greater than one year and is to take such steps as are reasonably necessary to bring the holding of a proposed meeting to the notice of persons engaged in the industry and members of the public.

(2) If the Minister believes that additional consultation by the Authority would be beneficial, the Minister may direct the Authority to conduct an additional public meeting.

(3) The Authority must comply with such a direction.

### **Minister may give directions in exceptional circumstances**

91. (1) Subject to subsection (2), the Minister may give directions in writing to the Authority concerning the performance of its functions and the exercise of its powers, and the Authority must comply with those directions.

(2) The Minister must not give a direction to the Authority unless:

- (a) the Minister is satisfied that, because of the existence of exceptional circumstances, it is necessary to give the direction to the Authority in order to ensure that the performance of the functions, or the exercise of the powers, of the Authority does not conflict with major government policies; and
- (b) the Minister has given to the Authority a written notice stating that the Minister is considering giving the direction; and
- (c) the Minister has given to the Chairperson of the Authority an adequate opportunity to discuss with the Minister the need for the proposed direction.

(3) Subject to subsection (4), where the Minister gives a direction to the Authority:

- (a) the Minister must:
  - (i) cause a notice setting out particulars of the direction to

be published in the *Gazette* as soon as practicable after giving the direction; and

- (ii) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*; and
- (b) the annual report for the year in which the direction was given must include:
- (i) particulars of the direction; and
  - (ii) particulars of the impact of that direction on the operations of the Authority.

(4) Subsection (3) does not apply in relation to a particular direction if the Minister determines, in writing, that compliance with the subsection is undesirable because compliance would, or would be likely to, be prejudicial to the national interest of Australia.

#### **Delegation by the Authority**

92. (1) The Authority may, by writing under its common seal, delegate to:

- (a) a director of the Authority; or
  - (b) a committee established by the Authority under section 54; or
  - (c) a person employed by the Authority; or
  - (d) a person engaged by the Authority under a contract;
- any of the Authority's powers and functions.

(2) A delegate of the Authority is, in the exercise of the delegate's delegated powers, subject to the directions of the Authority.

#### **Delegation by the Managing Director**

93. The Managing Director may, by signed instrument, delegate to a person employed by the Authority any of the powers and functions of the Managing Director under this Act.

#### **Limit—fees and charges**

94. The amount or rate of a charge or fee imposed or charged under this Act must not be such as to amount to taxation.

## **PART 3—THE FISHING INDUSTRY POLICY COUNCIL**

### ***Division 1—Preliminary***

#### **Interpretation**

95. In this Part, unless the contrary intention appears:  
“body” includes any body of persons whether incorporated or otherwise;  
“Chairperson” means the Chairperson of the Council;  
“Council” means the Fishing Industry Policy Council established by section 96;

**“Council report”** means a report given to the Minister in the performance of a function referred to in section 98;

**“member”** means a member of the Council and includes the Chairperson and a Deputy of a member of the Council;

**“working group”** means a working group of the Council established under section 109.

### ***Division 2—Establishment, functions and powers of Council***

#### **Establishment of Council**

**96.** A Fishing Industry Policy Council is established.

#### **Objectives**

**97.** The Council, in the performance of its functions, must pursue the objectives of:

- (a) facilitating an exchange of views between persons having an interest in the industry on matters affecting the industry; and
- (b) developing a unified approach to matters affecting the industry.

#### **Functions of Council**

**98. (1)** The functions of the Council are:

- (a) to inquire into, and to report to the Minister on, matters affecting the well-being of the industry; and
- (b) to inquire into, and to report to the Minister on, matters referred to it by the Minister in relation to the industry; and
- (c) to develop, and to submit to the Minister, recommendations, guidelines and plans for measures consistent with the principles of ecologically sustainable development designed to safeguard or further the interests of the industry; and
- (d) to consult, and co-operate, with other persons and organisations in matters affecting the industry; and
- (e) such other functions (if any) as are conferred upon the Council by the regulations.

**(2)** Where a report of a working group is submitted to the Council under subsection 109 (7), the Council may adopt the report, with or without amendments, as the report of the Council for the purposes of paragraph (1) (a) or (b).

**(3)** Without limiting the generality of subsection (1), the Council, in the performance of its functions, may take into account any matter raised at an industry conference convened under section 100.

#### **Powers of Council**

**99.** The Council has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

**Industry conferences**

**100. (1)** The Chairperson may, from time to time as he or she considers appropriate, convene conferences of persons concerned with the industry.

**(2)** The Chairperson must convene a conference under subsection (1) whenever he or she is directed to do so by the Council.

**(3)** The purpose of convening a conference is:

- (a)** to assist the Council in identifying matters of concern to the industry; and
- (b)** to promote a better understanding of problems within the industry; and
- (c)** to foster a consensus on policies to be instituted to safeguard the interests of the industry.

**(4)** A conference is to be convened at a time and place determined by the Chairperson.

**(5)** Persons entitled to attend a conference are:

- (a)** the members of the Council; and
- (b)** such other persons concerned with the industry as the Chairperson invites.

**(6)** The Chairperson is to preside at all conferences.

**Publication of Council reports**

**101. (1)** Where a Council report is given to the Minister, the Minister is to cause it to be made public in such a way or in such ways as he or she considers appropriate.

**(2)** Without limiting the generality of subsection (1), the Minister, in his or her discretion, may cause a Council report to be made public by causing it to be laid before each House of the Parliament.

**(3)** Where the Minister is satisfied that the publication of a Council report would be contrary to the public interest, the Minister may, in his or her discretion:

- (a)** refrain from publication of the report until the Minister is satisfied that the publication would not be contrary to the public interest; or
- (b)** if the Minister is satisfied it is possible to do so without the report being misleading—publish the report with such deletions as he or she considers necessary to protect the public interest.

**(4)** Where the Minister publishes a Council report with deletions, the Minister must make it publicly known that the report was published with deletions.

**(5)** Where the Minister has published a Council report with deletions, the Minister must publish the report without those deletions

by causing it to be made public in such a way, or in such ways, as the Minister considers appropriate, if and when the Minister becomes satisfied that the publication of the report without deletions would not be contrary to the public interest.

(6) The Council must not:

- (a) make public a Council report that has not been published by the Minister under subsection (1), paragraph (3) (b) or subsection (5); or
- (b) make public a draft of a Council report that has not been so published or that was last so published with deletions; or
- (c) if a Council report was last published by the Minister with deletions—make a report public without those deletions.

(7) Where a member disagrees with a finding or recommendation to be included in a Council report, the report must include a statement of the views of that member in respect of that finding or recommendation and must identify the member holding those views.

(8) In subsection (6):

“report” includes part of a report.

### *Division 3—Constitution and meetings of Council*

#### **Constitution of Council**

102. (1) The Council is to consist of the following members:

- (a) the Chairperson;
- (b) the Chairperson of the Authority;
- (c) the Chairperson of the Fisheries Research and Development Corporation;
- (d) a representative of National Fishing Industry Training Council Limited nominated by that body;
- (e) a representative of the fish catching sector of the industry nominated by the peak industry body;
- (f) a representative of the fish processing and fish marketing sectors of the industry nominated by the peak industry body;
- (g) a person representing persons who engage in recreational fishing;
- (h) a person representing persons having an interest in environmental aspects of the industry;
- (i) a person representing persons having an interest in consumer aspects of the industry;
- (j) such other persons (if any) as represent such other bodies or organisations connected with the industry as are specified by the Minister in the instrument of appointment.

(2) The members hold office on a part-time basis.

(3) The members, other than a member referred to in paragraph (1) (b) or (c), are to be appointed by the Minister and hold office for such period, not exceeding 3 years, as is specified in the instrument of appointment but are eligible for re-appointment in accordance with this Act.

(4) The following persons are not eligible for appointment to the Council:

- (a) directors of the Authority other than the Chairperson of the Authority;
- (b) persons (other than a person referred to in paragraph (1) (b) or (c)) who, if appointed, would hold office for more than 3 consecutive terms.

(5) The members hold 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.

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

#### **Acting Chairperson**

103. (1) The Minister may appoint a person to act in the office of Chairperson:

- (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 must not continue so to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:

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

#### **Deputies of members**

104. (1) The Minister may, if requested by a person, body or organisation referred to in paragraph 102 (1) (b), (c), (d), (e), (f), (g), (h), (i) or (j), appoint a person to be the Deputy of a member referred to in that paragraph.

(2) The Minister must, if requested by the person or body that nominated a person to be the Deputy of a member, terminate the appointment of that person.

(3) A Deputy of a member may resign by giving to the Minister a signed notice of resignation.

(4) The Deputy of a member is entitled to attend a meeting of the Council that is not attended by the member of whom he or she is the Deputy and, while so attending, is taken to be a member.

(5) The appointment of a Deputy of a member, and anything done by or in relation to a Deputy of a member, is not invalid merely because:

- (a) there is a defect or irregularity in connection with the Deputy's appointment; or
- (b) the occasion for the person to act under this section had not arisen or had ceased.

### **Resignation of members**

**105.** A member may resign by giving to the Minister a signed notice of resignation.

### **Termination of appointments etc.**

**106. (1)** The Minister must, at the request of the body concerned, terminate the appointment of a member referred to in paragraph 102 (1) (d), (e) or (f) nominated to represent the body.

(2) The Minister may:

- (a) terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity; or
- (b) on the ground of misbehaviour or physical or mental incapacity—give a written direction that a member, other than an appointed member, is not entitled to attend meetings of the Council or receive allowances under section 111.

(3) If:

- (a) a member becomes bankrupt, applies to take the benefit of any 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; or
- (b) a member fails, without reasonable excuse, to comply with section 107; or
- (c) the Chairperson is absent except with the leave of the Minister from 3 consecutive meetings of the Council; or
- (d) a member other than the Chairperson is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Council;

the Minister must:



- (e) in the case of an appointed member—terminate the appointment of the member concerned; or
- (f) in the case of a member other than an appointed member—give a written direction that the member is not entitled to attend meetings of the Council or receive allowances under section 111.

(4) In this section:

“**appointed member**” means a member other than a member referred to in paragraph 102 (1) (b) or (c).

### **Disclosure of interests**

**107. (1) Where:**

- (a) a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Council; 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 must, 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) must be recorded in the minutes of the meeting.

### **Meetings**

**108. (1) The Chairperson:**

- (a) may convene such meetings of the Council as he or she considers necessary for the efficient performance of its functions; and
  - (b) must convene a meeting of the Council on receipt of a written request signed by at least 4 members.
- (2) Meetings of the Council are to be held at such places and at such times as the Chairperson determines.
- (3) The Chairperson is to preside at all meetings of the Council at which he or she is present.
- (4) If the Chairperson is not present at a meeting of the Council, the members present are to appoint one of their number to preside at the meeting.
- (5) At a meeting of the Council, a quorum is constituted by 5 members.
- (6) A question arising at a meeting of the Council is to be decided by a majority of the votes of the members present and voting.
- (7) At a meeting of the Council, the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) The Council must keep minutes of its proceedings.

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

***Division 4—Working groups of Council***

**Working groups of Council**

109. (1) Subject to this section, the Council may establish such working groups as it considers necessary for the performance of its functions to provide advice to it upon such matters as are specified by the Council.

(2) A working group is to consist of such persons, whether members or not, as the Council considers fit.

(3) The Chairperson of the Council is to appoint one of the persons on each working group to be the Chairperson of that working group.

(4) The Council may determine:

(a) the manner in which a working group is to perform its functions; and

(b) the procedure to be followed at or in relation to meetings of a working group, including matters with respect to:

(i) the convening of meetings of the working group; and

(ii) the number of members of the working group who are to constitute a quorum; and

(iii) the selection of a member of the working group to preside at meetings of the working group at which the Chairperson of the working group is not present; and

(iv) the manner in which questions arising at a meeting of the working group are to be decided.

(5) A working group is to continue in existence, if it is not earlier dissolved by the Council, for the period of 6 months after its establishment or for that period as extended under subsection (6).

(6) Where the Council considers it desirable to do so, the Council may, by resolution, determine that the period of 6 months, or that period as previously extended by virtue of the operation of this subsection, is to be extended or further extended by a period of 6 months immediately following the period so referred to or that period as previously so extended.

(7) Where the Council establishes a working group to provide advice to it on a matter, the working group must prepare a written report and, as soon as practicable, submit that report to the Council for its consideration.

(8) Where a member of a working group disagrees with a finding or recommendation of the majority of the working group, the report of

the working group must include a statement of the views of that member.

**Disclosure of interests of members of working groups**

**110. (1)** Where:

(a) a member of a working group has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the working group; 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 must, 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 working group.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

***Division 5—Miscellaneous***

**Remuneration and allowances**

**111. (1)** The Chairperson is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination is in operation, the Chairperson is to be paid such remuneration as is prescribed.

(2) The Chairperson is to be paid such allowances as are prescribed.

(3) Subsections (1), (2), (4) and (5) have effect subject to the *Remuneration Tribunal Act 1973*.

(4) A member (other than the Chairperson of the Council or the Chairperson of the Authority) is to be paid such travelling allowance as is prescribed in relation to the performance of his or her duties as a member.

(5) A member of a working group (including the Chairperson of the working group) is to be paid such travelling allowance as is prescribed in relation to the performance of his or her duties as a member of the working group.

(6) The following offices are not public offices within the meaning of the *Remuneration Tribunal Act 1973*:

(a) member of the Council (other than the Chairperson);

(b) member of a working group.

**Arrangements relating to staff etc.**

**112. (1)** The Chairperson of the Council is to arrange with the Secretary of the Department for the services of officers and employees of the Department, and for facilities of the Department, to be made available to the Council.

(2) While a person is performing services for the Council under such an arrangement, that person is to perform his or her functions and duties in accordance with the directions of the Council and not otherwise.

#### **Annual report**

113. (1) The Council must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report of its operations during the year that ended on that 30 June.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(3) For the purposes of subsection (1), if this section does not come into operation on 1 July in any year, that subsection has effect in relation to the period commencing on the day on which this section comes into operation and ending on the 30 June next following that day as if that period were a period of one year ending on that 30 June.

### **PART 4—MISCELLANEOUS**

#### **Regulations**

114. 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 in carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 6 December 1990  
Senate on 6 June 1991]*