



Fisheries Legislation (Consequential Provisions) Act 1991

No. 163 of 1991

An Act to make provision consequent upon, or associated with, the enactment of the *Fisheries Administration Act 1991*, the *Fisheries Management Act 1991* and other related legislation, and for other 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 Legislation (Consequential Provisions) Act 1991*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(3) If a provision mentioned in subsection (2) does not commence under that subsection within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Repeals

3. (1) The following Acts are repealed:

(a) *Continental Shelf (Living Natural Resources) Act 1968*;

(b) *Fisheries Agreements (Payments) Act 1981*.

(2) The *Fisheries Act 1952*, other than Part IVA, is repealed.

Interpretation

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

“AFMA” means the Australian Fisheries Management Authority.

PART 2—SAVING AND TRANSITIONAL PROVISIONS

Saving—permits for scientific purposes

5. (1) Despite the repeal of the *Fisheries Act 1952*, other than Part IVA, by this Act, a permit granted to a person under section 6B of that Act that was in force immediately before the commencement of this section continues in force after that commencement until its date of expiry, or until it is revoked, as if the *Fisheries Act 1952*, other than Part IVA, had not been repealed and that Act and instruments made or determined under that Act (including regulations, Proclamations, orders, plans of management or notices) as in force immediately before the commencement of this section continue to apply in relation to the permit, the holder of the permit or a person acting on behalf of the holder of the permit to the extent that they are capable of so applying.

(2) Nothing in subsection (1) prevents the repeal, rescission, revocation, amendment or variation, under the *Fisheries Act 1952* in its continued application, of an instrument mentioned in that subsection.

(3) A person is not guilty of an offence against the *Fisheries Management Act 1991*, or regulations under that Act, because of anything done by the person that is authorised by a permit continued in force under subsection (1).

Saving of licences

6. (1) Despite the repeal of the *Fisheries Act 1952*, other than Part IVA, by this Act, a licence granted to a person under section 9 of that Act that was in force immediately before the commencement of this section continues in force after that commencement until its date of expiry, or until it is surrendered or cancelled, as if the *Fisheries Act 1952*, other than Part IVA, had not been repealed and that Act and instruments made or determined under that Act (including regulations, Proclamations, orders, plans of management or notices) as in force immediately before the commencement of this section continue to apply in relation to the licence, the holder of the licence or a person acting on behalf of the holder of the licence to the extent that they are capable of so applying.

(2) Nothing in subsection (1) prevents the repeal, rescission, revocation, amendment or variation, under the *Fisheries Act 1952* in its continued application, of an instrument mentioned in that subsection.

(3) A person is not guilty of an offence against the *Fisheries Management Act 1991*, or regulations under that Act, because of anything done by the person that is authorised by a licence continued in force under subsection (1).

Saving and transitional—arrangements etc. with States and Territories

7. (1) Despite the repeal of the *Fisheries Act 1952*, other than Part IVA, by this Act, that Act and instruments made or determined under that Act (including regulations, Proclamations, orders, plans of management or notices) as in force immediately before that repeal continue in force after that repeal to the extent necessary for the continuing operation of that Part.

(2) Nothing in subsection (1) prevents the repeal, rescission, revocation, amendment or variation, under the *Fisheries Act 1952* in its continued operation, of an instrument mentioned in that subsection or the making or determination of such an instrument under that Act in its continued operation.

(3) Part IVA of the *Fisheries Act 1952*, unless sooner repealed, ceases to have effect at the end of the period of 2 years beginning on the day on which this section commences.

(4) Upon the commencement of Part 5 of the *Fisheries Management Act 1991*:

- (a)** the Northern Territory Fisheries Joint Authority and the Western Australian Fisheries Joint Authority established under section 12D of the *Fisheries Act 1952* continue in existence as if they had been established under Part 5 of the *Fisheries Management Act 1991*; and
- (b)** any arrangement made with a State or Territory under subsection 12H (1) or (4) of the *Fisheries Act 1952* that was in force immediately before that commencement continues in force

as if it had been made under Part 5 of the *Fisheries Management Act 1991*.

Officers

8. Without limiting the operation of section 5, 6 or 7, a person who, immediately before the repeal of the *Fisheries Act 1952*, other than Part IVA, was a person mentioned in paragraph (a) of the definition of “officer” in subsection 4(1) of that Act is taken, after the commencement of section 83 of the *Fisheries Management Act 1991*, to be an officer appointed under that section.

Saving—licences and permits under the *Continental Shelf (Living Natural Resources) Act 1968*

9. (1) Despite the repeal of the *Continental Shelf (Living Natural Resources) Act 1968* by this Act, a prescribed concession that was in force immediately before the commencement of this section continues in force after that commencement until its date of expiry, or until it otherwise ceases to have effect, as if the *Continental Shelf (Living Natural Resources) Act 1968* had not been repealed and that Act and instruments made or determined under that Act (including regulations or notices) as in force immediately before the commencement of this section continue to apply in relation to the prescribed concession, the holder of the concession or a person acting on behalf of the holder of the concession to the extent that they are capable of so applying.

(2) Nothing in subsection (1) prevents the repeal, rescission, revocation, amendment or variation under the *Continental Shelf (Living Natural Resources) Act 1968* in its continued application, of an instrument mentioned in that subsection.

(3) A person is not guilty of an offence against the *Fisheries Management Act 1991*, or regulations under that Act, because of anything done by the person that is authorised by a prescribed concession continued in force under subsection (1).

(4) In this section:

“prescribed concession” means:

- (a) a licence granted to a person under section 13 of the *Continental Shelf (Living Natural Resources) Act 1968*; or
- (b) a permit granted to a person under section 23 of that Act.

Transitional arrangements—staff of AFMA

10. (1) A person who:

- (a) immediately before the commencement of the *Fisheries Administration Act 1991* was employed under the *Public Service Act 1922*; and
- (b) from and including that commencement is employed by AFMA;

is taken, until AFMA determines otherwise, to be engaged on the same terms and conditions, and to be subject to the same industrial award, as in force from time to time, as applied to the person immediately before that commencement.

(2) Before making a determination under subsection 68 (2) of the *Fisheries Administration Act 1991* affecting persons mentioned in subsection (1), AFMA must consult fully with organisations representing such persons for industrial relations purposes.

Transfers of certain assets to AFMA

11. (1) The Minister may, after the commencement of the *Fisheries Administration Act 1991*, cause to be transferred to AFMA any assets held by the Commonwealth that the Minister considers appropriate to be transferred to AFMA for the performance of its functions and the exercise of its powers.

(2) Subsection (1) does not prevent the Commonwealth from transferring any asset to AFMA otherwise than under that subsection.

(3) Where, immediately before the transfer:

- (a) a right of the Commonwealth arising out of a debt, liability or obligation of any other person in favour of the Commonwealth existed in respect of the assets; or
- (b) a debt, liability or obligation of the Commonwealth existed in respect of the assets;

the right, debt, liability or obligation, as the case may be, of the Commonwealth is, by force of this section, transferred to AFMA.

(4) Where, immediately before the transfer:

- (a) proceedings by the Commonwealth were pending in a court; and
- (b) the proceedings related to such a debt, liability or obligation;

then, to the extent that the proceedings so relate, they may be continued by AFMA and AFMA is to be substituted for the Commonwealth.

Agreements etc.—Minister may make arrangements

12. (1) The Minister may, by writing signed by him or her, declare that a specified agreement or a specified instrument:

- (a) to which the Commonwealth or the Commonwealth Government is a party; and
- (b) that immediately before the commencement of the *Fisheries Administration Act 1991* related to fisheries;

has effect, after that commencement, as if:

- (c) AFMA were substituted for the Commonwealth or the Commonwealth Government, as the case may be, as a party to the agreement or instrument; and

- (d) any reference in the agreement or instrument to the Commonwealth or the Commonwealth Government were (except in relation to matters that occurred before that commencement) a reference to AFMA;

and, where the Minister makes such a declaration, it has effect accordingly.

PART 3—AMENDMENT OF THE PRIMARY INDUSTRIES AND ENERGY RESEARCH AND DEVELOPMENT ACT 1989

Principal Act

13. In this Part, “**Principal Act**” means the *Primary Industries and Energy Research and Development Act 1989*¹.

Definitions

14. Section 4 of the Principal Act is amended by inserting “or 30A (1) (a)” after “paragraph 30 (1) (a)” in paragraph (a) of the definition of “refund” in subsection (1).

Annual operational plans

15. Section 25 of the Principal Act is amended by inserting in subparagraph (1) (c) (iv) “or 30A” after “section 30”.

Payments to R & D Corporations—general

16. Section 30 of the Principal Act is amended by adding at the end, the following subsection:

“(5) This section does not apply in relation to an R & D Corporation established in respect of the fishing industry.”.

17. After section 30 of the Principal Act the following section is inserted:

Payments to an R & D Corporation established in respect of the fishing industry

“30A. (1) There are to be paid to an R & D Corporation established in respect of the fishing industry amounts equal to:

- (a) where a levy is attached to the Corporation—the amounts from time to time received by the Commonwealth, under the Collection Act, as:
- (i) the research component of that levy; and
 - (ii) amounts (if any) paid, on behalf of a person liable to pay that levy, by another person, in respect of the research component of that levy; and
 - (iii) amounts of penalty for non-payment of that levy, to the extent that the penalty is attributable to the non-payment of the research component of that levy; and
- (b) amounts worked out under subsection (2).

“(2) The amounts to be paid to the Corporation under paragraph (1) (b), during a particular financial year, are as follows:

- (a) an amount equal to 0.5% of total GVP for that year or, if the amount spent or required to be spent by the Corporation under section 33 (other than paragraph 33 (1) (d)) for that financial year is less than 0.5% of that total GVP, an amount equal to that lesser amount;
- (b) where the amount so spent or required to be spent by the Corporation for that financial year is more than 0.5% of total GVP for that year:
 - (i) if that amount is not less than 1% of that total GVP—
an amount equal to 0.25% of Commonwealth GVP for that year; or
 - (ii) if that amount is more than 0.5%, but less than 1%, of that total GVP—half of the amount equal to the percentage of Commonwealth GVP for that year by which the amount so required to be spent was more than 0.5% of that total GVP;

reduced by the amount (if any) by which the amount worked out under subparagraph (i) or (ii) (as the case may be) exceeds the total of the amounts paid to the Corporation during the year under subparagraphs (1) (a) (i) and (ii) (less the sum of any refunds in relation to levies attached to the Corporation):

- (c) where the amount so spent or required to be spent by the Corporation for that financial year is more than 0.5% of total GVP for that year and a State or Territory has made a payment to the Corporation in respect of research and development in respect of the fishing industry:
 - (i) if the amount so required to be spent by the Corporation is not less than 1% of that total GVP—an amount equal to 0.25% of that State or Territory GVP for that year; or
 - (ii) if that amount is more than 0.5%, but less than 1%, of that total GVP—half of the amount equal to the percentage of that State or Territory GVP for that year by which the amount so required to be spent was more than 0.5% of that total GVP;

reduced by the amount (if any) by which the amount worked out under subparagraph (i) or (ii) (as the case may be) exceeds the amount of the payment made by the State or Territory to the Commonwealth in respect of research and development in respect of the fishing industry.

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

“(4) In this section:

‘Commonwealth GVP’, in relation to a financial year, means the amount that the Minister determines to be the gross value of production for that financial year of the goods that are the produce of that part of the fishing industry that is managed by or on behalf of the Commonwealth;

‘State or Territory GVP’, in relation to a financial year, means the amount that the Minister determines to be the gross value of production for that financial year of the goods that are the produce of that part of the fishing industry that is managed by or on behalf of the particular State or Territory;

‘total GVP’, in relation to a financial year, means the amount that the Minister determines to be the gross value of production for that financial year of the goods that are the produce of all parts of the fishing industry, whether managed by or on behalf of the Commonwealth, a State or a Territory.

“(5) The regulations may provide for the manner in which the Minister is to determine the amount of the Commonwealth GVP, a State or Territory GVP or a total GVP for a financial year.”.

Commonwealth to be paid levy expenses from R & D Corporations

18. Section 34 of the Principal Act is amended by inserting in paragraphs (a) and (b) “or 30A (1) (a)” after “paragraph 30 (1) (a)”.

Payment of amounts of levy where levies redirected

19. Section 37 of the Principal Act is amended:

- (a) by inserting in paragraph (c) “or 30A (1) (a)” after “paragraph 30 (1) (a)”;
- (b) by inserting in paragraph (f) “, 30A (1) (a)” after “paragraph 30 (1) (a)”.

Payment of matching contributions where levies redirected

20. Section 38 of the Principal Act is amended by inserting in paragraphs (d) and (g) “or 30A (1) (b)” after “paragraph 30 (1) (b)”.

Payment of amounts of levy where levies redirected

21. Section 116 of the Principal Act is amended by inserting in paragraphs (c) and (f) “, 30A (1) (a)” after “paragraph 30 (1) (a)”.

PART 4—AMENDMENTS OF OTHER ACTS

Amendments of other Acts

22. The Acts specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

AMENDMENTS OF OTHER ACTS

Antarctic Marine Living Resources Conservation Act 1981

Subsection 3 (1) (definition of “Australian fishing zone”):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

Paragraph 12 (d):

Insert “, the *Fisheries Management Act 1991*” after “*Whale Protection Act 1980*”.

Crimes at Sea Act 1979

Subsection 3 (1) (definition of “Australian fishing zone”):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

Subsection 3 (1) (definition of “fishing”):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

Subparagraph 7 (1) (a) (ii):

Insert “or a foreign fishing licence or a port permit is in force under the *Fisheries Management Act 1991*” after “*Fisheries Act 1952*”.

Paragraph 7 (1) (c):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Act 1952* or a foreign fishing licence or a port permit was in force in respect of the ship under the *Fisheries Management Act 1991*”.

Navigation Act 1912

Subsection 6 (1) (definition of “Australian fishing vessel”):

Omit the definition, substitute:

“ ‘**Australian fishing vessel**’ means a fishing vessel that is registered, or entitled to be registered, in Australia or in relation to which an instrument under subsection 4 (2) of the *Fisheries Management Act 1991* is in force;”.

Radiocommunications Act 1983

Subsection 3 (1) (paragraph (a) of the definition of “Australian vessel”):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

SCHEDULE—continued

Sea Installations Act 1987

Subsection 4 (1) (definition of “Australian fishing zone”):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

Torres Strait Fisheries Act 1984

Subsection 3 (1) (definition of “Secretary”):

Omit the definition.

Subsection 3 (1):

Insert the following definitions:

“‘**AFMA**’ means the Australian Fisheries Management Authority;
‘**Chairperson**’ means the Chairperson of AFMA;”.

Subsection 9 (6):

Omit “Secretary”, substitute “Chairperson”.

Subsection 9 (7):

Omit “holding or performing the duties of, an office in the Department”, substitute “employed by AFMA”.

Subparagraph 34 (c) (ii):

Insert “or the *Fisheries Management Act 1991*” after “*Fisheries Act 1952*”.

Subsection 38 (3):

Omit “the person from time to time holding, or performing the duties of, a specified office in the Department”, substitute “a person employed by AFMA or the person from time to time holding, or performing the duties of,”.

Paragraph 42 (2) (a):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

Subsection 50 (1):

Insert “or a foreign fishing licence granted under the *Fisheries Management Act 1991*” after “*Fisheries Act 1952*”.

Paragraph 55A (2) (b):

Omit “Secretary”, substitute “Chairperson”.

Paragraph 60 (m):

Omit “Secretary”, substitute “Chairperson”.

SCHEDULE—continued
Whale Protection Act 1980

Subsection 3 (1) (definition of “Australian fishing zone”):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

Subsection 3 (1) (paragraph (a) of the definition of “Australian vessel”):

Omit “*Fisheries Act 1952*”, substitute “*Fisheries Management Act 1991*”.

Subparagraph 17 (c) (i):

Insert “, the *Fisheries Management Act 1991*” after “*Continental Shelf (Living Natural Resources) Act 1968*”.

NOTE

1. No. 17, 1990 as amended. For previous amendments, see No. 134, 1990 and Nos. 26 and 31, 1991.

[*Minister's second reading speech made in—
House of Representatives on 31 May 1991 a.m.
Senate on 6 June 1991*]