



Fisheries Legislation Amendment Act 1997

No. 120, 1997

**An Act to amend the law relating to fisheries, and
for related purposes**

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An Act to amend the law relating to fisheries, and for related purposes

[Assented to 7 July 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment Act 1997*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Fisheries Administration Act 1991

1 Subsection 4(1)

Insert:

precautionary principle has the same meaning as in clause 3.5.1 of the Intergovernmental Agreement on the Environment, a copy of which is set out in the Schedule to the *National Environment Protection Council Act 1994*.

2 Paragraph 6(b)

Repeal the paragraph, substitute:

- (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 and the exercise of the precautionary principle, in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and

3 After paragraph 7(d)

Insert:

- (da) to manage and carry out programs devised in accordance with paragraphs (b) and (d);

4 Paragraph 7(g)

Repeal the paragraph, substitute:

- (g) to consult and exchange information with, and make its expertise in fisheries management available to, State, Territory or overseas bodies having functions similar to the Authority's functions;

5 Subsection 12(2)

Omit “more than 3 consecutive terms”, substitute “3 or more consecutive terms if the total of the terms is more than 9 years”.

6 After subsection 58(1)

Insert:

- (1A) Without limiting subsection (1), a management advisory committee:
- (a) may establish sub-committees, consisting of such persons (whether members of the management advisory committee or not) as the management advisory committee determines, to advise it in the performance of its functions and the exercise of its powers; and
 - (b) may abolish any such sub-committee.
- (1B) A management advisory committee may determine:
- (a) the manner in which a sub-committee established by the management advisory committee is to perform its functions; and
 - (b) the procedure to be followed at or in relation to meetings of the sub-committee, including matters with respect to:
 - (i) the convening of meetings of the sub-committee; and
 - (ii) the number of members of the sub-committee who are to constitute a quorum; and
 - (iii) the selection of a member of the sub-committee to preside at meetings of the sub-committee; and
 - (iv) the manner in which questions arising at a meeting of the sub-committee are to be decided.

7 Subsection 67(4)

Repeal the subsection, substitute:

- (4) A member of:
- (a) a committee established under section 54; or
 - (b) a sub-committee established under subsection 58(1A);
- (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 determined by the Remuneration Tribunal in relation to the performance of his or her duties as a member of the committee or sub-committee.

8 At the end of subsection 67(5)

Add:

; (c) member of a sub-committee established under subsection 58(1A).

9 Subsection 80(1A) (paragraph (a) of the definition of *Deductible component*)

After “an amount” (first occurring), insert “(the *research component*)”.

10 Subsection 80(1A) (paragraph (a) of the definition of *Deductible component*)

Omit “the amount so required to be paid”, substitute “the research component”.

11 At the end of section 91

Add:

- (5) If, in respect of a fishery, there is in force an arrangement under Division 3 of Part 5 of the *Fisheries Management Act 1991* under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the Commonwealth, references in this section to the Minister are taken, in relation to the fishery, to be references to the Joint Authority.

12 Transitional

- (1) A sub-committee that a management advisory committee purported to establish before the commencement of this item is taken to have at all times been validly established.
- (2) Any meetings of such a sub-committee held before the commencement of this item are taken to have been validly held and any travelling allowances paid to members of such a sub-committee before that commencement are taken to have been validly paid.
- (3) If a management advisory committee had not, before the commencement of this item, purported to abolish a sub-committee that it had purported to establish before that commencement, the sub-committee continues in existence as if it had been duly established under subsection 58(1A) of the *Fisheries Administration Act 1991*.

Schedule 2—Amendment of the Fisheries Management Act 1991

1 Paragraph 3(1)(b)

Repeal the paragraph, substitute:

- (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 and the exercise of the precautionary principle, in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and

2 Subsection 4(1)

Insert:

conveyance includes an aircraft, vehicle or vessel.

3 Subsection 4(1)

Insert:

evidential material means a thing relevant to an indictable offence, or a thing relevant to a summary offence, against this Act or the regulations, including such a thing in electronic form.

4 Subsection 4(1)

Insert:

executing officer, in relation to a warrant, means:

- (a) the officer named in the warrant by the magistrate who issued the warrant as being responsible for executing the warrant; or
- (b) if the officer so named does not intend to be present at the execution of the warrant—another officer whose name has been written in the warrant by the officer so named; or
- (c) another officer whose name has been written in the warrant by the officer last named in the warrant.

5 Subsection 4(1)

Insert:

magistrate includes a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants.

6 Subsection 4(1)

Insert:

precautionary principle has the same meaning as in clause 3.5.1 of the Intergovernmental Agreement on the Environment, a copy of which is set out in the Schedule to the *National Environment Protection Council Act 1994*.

7 Subsection 4(1)

Insert:

premises includes a place and a conveyance.

8 Subsection 4(1)

Insert:

receive, in relation to fish, means receive fish for any purpose other than:

- (a) personal or domestic consumption; or
- (b) solely for transportation.

9 Subsection 4(1) (definition of take)

After “catch,”, insert “capture,”.

10 Subsection 4(1)

Insert:

warrant means a warrant under section 85 or 86.

11 Subsection 4(1)

Insert:

warrant premises means premises in relation to which a warrant is in force.

12 Subsections 13(1), (2) and (4)

Omit “\$50,000”, substitute “500 penalty units”.

13 Subsection 13(3)

Omit “\$250,000”, substitute “2,500 penalty units”.

14 Subsections 15(1) and (2)

Omit “\$5,000”, substitute “125 penalty units”.

15 Subsection 17(1)

Repeal the subsection, substitute:

- (1) Subject to subsection (1A), AFMA must, in writing, after consultation with such persons engaged in fishing as appear to AFMA to be appropriate and after giving due consideration to any representations mentioned in subsection (3), determine plans of management for all fisheries.
- (1A) If, in all the circumstances, AFMA is of the view that a plan of management is not warranted for a particular fishery, AFMA may make a determination accordingly, including in the determination its reasons for making the determination.
- (1B) A determination under subsection (1) must be notified:
 - (a) in the *Gazette*; and
 - (b) to all persons and organisations listed in the register established under section 17A, at their addresses as shown on the register.

16 After subsection 17(2)

- (2A) In addition to issuing a public notice under subsection (2) and before determining a plan of management for a fishery, AFMA must notify the persons and organisations listed in the register established under section 17A, at their addresses as shown on the register, of the terms of the public notice.

17 After subsection 17(6C)

Insert:

- (6D) A plan of management for a fishery must contain provisions for the incidental catch of non-target commercial and other species to be reduced to a minimum.

18 After section 17

Insert:

17A Register of persons concerned about plans of management

- (1) AFMA must maintain a register containing a list of the names and postal addresses of persons and organisations who are to be notified of draft plans of management.
- (2) As soon as is practicable after the commencement of this section and on each anniversary of that commencement, AFMA must give public notice:
 - (a) inviting persons and organisations to have their names and postal addresses entered on the register; and
 - (b) in the case of the second or a later notice—inviting persons and organisations on the register (if any) to have their names and postal addresses left on the register.
- (3) A notice must state that the acceptance of an invitation:
 - (a) is to be in writing, sent to AFMA at a place specified in the notice and accompanied by particulars of the name and postal address of the acceptor; and
 - (b) is to be given:
 - (i) in the case of a person, or organisation, in existence on the publication of the notice—within one month after that publication; and
 - (ii) in any other case—within 12 months after that publication.
- (4) Where a person or organisation accepts an invitation in the way required by the notice, AFMA is to enter, or retain, the name and postal address of the person or organisation on the register.
- (5) AFMA may vary the address on the register of a person or organisation at the written request of the person or organisation.

- (6) AFMA must remove the name and address of a person or organisation from the register if:
- (a) in the case of a name and address that was on the register before the most recent notice under subsection (2)—the invitation to keep that name and address on the register was not accepted within one month after the publication of that notice; or
 - (b) the person or organisation makes a written request for the removal; or
 - (c) AFMA becomes satisfied that:
 - (i) in the case of a natural person—the person has died; or
 - (ii) in any other case—the person or organisation has ceased to exist.
- (7) In subsection (2), a reference to public notice is a reference to a notice published:
- (a) in the *Gazette*; and
 - (b) in each State and internal Territory in a newspaper circulating generally in that State or Territory; and
 - (c) in each external Territory that the Minister considers appropriate (if any) in a newspaper circulating generally in that external Territory.

19 Subsection 26(2)

Before “AFMA”, insert “Subject to section 31K,”.

20 After Division 4 of Part 3

Insert:

Division 4A—Statutory fishing rights options

31A Options arising when plan of management for fishery is revoked

- (1) Subject to subsection (2), if a plan of management for a fishery (the *former plan*) is revoked, each person (a *former holder of fishing rights*) who held statutory fishing rights of a particular class of fishing rights (the *relevant class*) in respect of the fishery under the former plan immediately before it was revoked holds a

statutory fishing rights option in respect of fishing rights of the relevant class.

- (2) Subsection (1) does not apply if:
 - (a) a new plan of management is determined for the fishery immediately after the revocation of the former plan; and
 - (b) the new plan is in all substantial respects identical to the former plan; and
 - (c) the persons who held statutory fishing rights under the former plan are granted equivalent statutory fishing rights under the new plan.
- (3) Subsection 21(1B) applies in determining the kinds of statutory fishing rights that together constitute a class of fishing rights in respect of a fishery for the purposes of this Division, except that fishing rights that, in AFMA's opinion, are substantially the same are taken to be identical for the purposes of that subsection.
- (4) A *statutory fishing rights option* entitles the holder of the option to be granted statutory fishing rights of the relevant class under any plan of management (the *new plan*) determined for a fishery after the revocation of the former plan if section 31B or 31C applies to the new plan. The nature and extent of the entitlements are set out in subsection 31B(2) or 31C(2), as the case may be.

31B Rights of option holder where the new plan of management is the same or substantially the same as the former plan of management

- (1) This section applies to the new plan if:
 - (a) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
 - (b) the description (other than the description of the geographical area) of the fishery to which the new plan applies is, in AFMA's opinion, the same, or substantially the same, as the description of the fishery to which the former plan applied; and
 - (c) the new plan provides for the granting of classes of statutory fishing rights that are the same, or substantially the same, as

the classes of statutory fishing rights provided for in the former plan; and

- (d) under the new plan the only persons who are entitled to be granted statutory fishing rights are persons who hold statutory fishing rights options in respect of statutory fishing rights under the new plan.
- (2) If a person holds a statutory fishing rights option in respect of statutory fishing rights under the new plan, the option entitles the person, subject to subsections (3) and (4), to be granted under the new plan, to the extent to which the person exercises the option in accordance with subsection 31D(1), the number of statutory fishing rights of the relevant class worked out in accordance with the formula:

$$\frac{\text{Person's previous rights}}{\text{Total previous rights}} \times \text{Total new rights}$$

where:

person's previous rights means the number of statutory fishing rights of the relevant class held by:

- (a) if the person was a former holder of fishing rights—the person; or
- (b) otherwise—the former holder of fishing rights from whose statutory fishing rights under the former plan the person directly or indirectly became entitled to the option; under the former plan immediately before it was revoked.

total previous rights means the total number of statutory fishing rights of the relevant class held by all persons under the former plan immediately before it was revoked.

total new rights means the total number of statutory fishing rights of the relevant class that are available to be granted under the new plan.

- (3) If the number of statutory fishing rights worked out under subsection (2) includes a fraction, the number is to be rounded off to the next highest or lowest whole number, as AFMA determines to be reasonable in the circumstances.

- (4) In making a determination under subsection (3), AFMA may have regard to any matters that it considers appropriate, including the total number of statutory fishing rights of the relevant class that are available to be granted under the new plan.

31C Rights of option holder where new plan of management has some features in common with the former plan of management

- (1) This section applies to the new plan if:
- (a) in AFMA's opinion section 31B does not apply to the new plan; and
 - (b) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
 - (c) at least one of the species of fish in respect of which statutory fishing rights are available to be granted under the new plan (except any species that is a by-catch) was also a species of fish in respect of which statutory fishing rights were granted under the former plan immediately before it was revoked.
- (2) If a person holds a statutory fishing rights option in respect of statutory fishing rights under the new plan, the option entitles the person to be granted such number of such classes of statutory fishing rights under the new plan as AFMA determines to be fair and equitable having particular regard to the number and classes of statutory fishing rights:
- (a) if the person was a former holder of fishing rights—held by the person; or
 - (b) otherwise—held by the former holder of fishing rights from whose fishing rights under the former plan the person directly or indirectly became entitled to the option;
- under the former plan immediately before it was revoked.
- (3) In determining the number of a class of statutory fishing rights to be granted to a person under the new plan in accordance with subsection (2), AFMA must take into account:
- (a) the extent to which the new plan applies to the fishery to which the former plan applied; and

- (b) the number and classes of statutory fishing rights:
 - (i) if the person was a former holder of fishing rights—held by the person; or
 - (ii) otherwise—held by the former holder of fishing rights from whose fishing rights under the former plan the person directly or indirectly became entitled to the option;
under the former plan immediately before it was revoked;
and
- (c) the procedures to be followed under the new plan for the granting of fishing rights; and
- (d) the conditions relevant to the registration under the new plan of persons who are to be eligible for the grant of statutory fishing rights.

31D Exercise and lapsing of option

- (1) A person who holds a statutory fishing rights option is taken to exercise the option if the person has received a notice under paragraph 31K(1)(a) and, within the period stated in the notice, notifies AFMA, by writing signed by the person, that the person exercises the option in respect of all, or a stated number, of the statutory fishing rights to which the option relates.
- (2) If a person does not exercise a statutory fishing rights option in respect of all or some of the statutory fishing rights to which the option relates, the option lapses in respect of the statutory fishing rights in respect of which the option is not exercised.

31E The Register of Statutory Fishing Rights Options

- (1) AFMA is to keep a Register of Statutory Fishing Rights Options (the *Register*).
- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
 - (a) references in this Act to an entry in the Register include references to a record of particulars kept by use of a computer and comprising the Register or part of the Register;
and

- (b) references in this Act to particulars being registered, or entered in the Register, include references to the keeping of a record of those particulars as part of the Register by use of the computer.
- (4) The Register must, in relation to each statutory fishing rights option:
 - (a) set out the name and address of the person who for the time being holds the option; and
 - (b) contain such particulars as are necessary to identify the former plan whose revocation gave rise to the option; and
 - (c) set out the number and class of statutory fishing rights to which the option relates; and
 - (d) if the option has been exercised in respect of any statutory fishing rights—state the date of the exercise and the number and class of rights in respect of which the option has been exercised; and
 - (e) if the option has lapsed in respect of any statutory fishing rights—state the date of the lapse and the number and class of rights in respect of which the option has lapsed.

31F Creation etc. of interests in statutory fishing rights options

- (1) This section applies to a dealing that would, apart from subsection (2), have the effect of creating, assigning, transmitting or extinguishing an interest in a statutory fishing rights option.
- (2) The dealing has no effect of a kind mentioned in subsection (1) until it is registered under this section.
- (3) A party to the dealing may lodge with AFMA:
 - (a) an application, in the form approved by AFMA, for registration of the dealing; and
 - (b) the instrument evidencing the dealing; and
 - (c) an instrument setting out such particulars (if any) as are prescribed for the purposes of an application for registration of the dealing; and
 - (d) one copy each of the application and of the instruments mentioned in paragraphs (b) and (c).

- (4) A party to the dealing may, instead of lodging the instrument evidencing the dealing, lodge with AFMA a summary of that instrument containing the particulars required by AFMA for the purposes of this subsection.
- (5) Subject to subsections (6) and (7), if an application for registration of the dealing, either the instrument evidencing the dealing or a summary of that instrument that complies with subsection (4), and the other documents referred to in paragraphs (3)(c) and (d), are lodged with AFMA, AFMA must:
 - (a) register the dealing by entering in the Register the following particulars:
 - (i) the name and address of the person acquiring the interest in the option;
 - (ii) the number and class of statutory fishing rights to which the dealing relates; and
 - (b) endorse on the instrument evidencing the dealing and the copy of that instrument the fact of the entry having been made together with the date and time of the making of the entry.
- (6) For the purposes of this Division, if a statutory fishing rights option is assigned to a person in respect of some only of the statutory fishing rights to which the option relates:
 - (a) the assignee is taken to hold a new statutory fishing rights option in respect of the statutory fishing rights assigned to the assignee; and
 - (b) the assignor continues to hold the first-mentioned option in respect of such of the statutory fishing rights as have not been assigned.
- (7) AFMA may only refuse to register a dealing if the registration of the dealing would be contrary to the requirements of the new plan or a condition of statutory fishing rights in respect of which the option is held.
- (8) If a dealing is registered:
 - (a) the copies referred to in paragraph (3)(d) and the summary (if any) lodged under subsection (4) are to be kept by AFMA; and

- (b) if a summary is not lodged under subsection (4), the copy of the instrument evidencing the dealing is to be made available for inspection in accordance with this Division; and
 - (c) if a summary is lodged under subsection (4), the summary is to be made available for inspection in accordance with this Division; and
 - (d) the original instrument is to be returned to the person who made the application for registration.
- (9) If a dealing creates a charge over some or all of a body corporate's assets, the party to the dealing who lodged the application for registration of the dealing is taken to have complied with paragraph (3)(b), and with paragraph (3)(d) in so far as that paragraph requires a copy of the instrument evidencing the dealing to be lodged with AFMA, if the party has lodged with AFMA 2 copies of each document required to be lodged with the Australian Securities Commission relating to the creation of that charge under section 263 of the Corporations Law.
- (10) AFMA is not concerned with the effect in law of any instrument lodged under this section.

31G Claims of interests in statutory fishing rights options

- (1) If a person lodges with AFMA a notice, in the form approved by AFMA:
- (a) stating that a dealing of a kind referred to in subsection 31F(1) that is described in the statement has taken place; and
 - (b) claiming that, if the dealing were registered, the person would have an interest in a statutory fishing rights option; and
 - (c) setting out particulars of the interest; and
 - (d) requesting AFMA to register the claim;
- AFMA must register the claim by entering in the register the person's name and particulars of the interest claimed.
- (2) If, after the registration of a claim to an interest in a statutory fishing rights option, the claimant, by notice lodged with AFMA in the form approved by AFMA, withdraws the claim, AFMA must

cancel the registration by omitting from the register the entry relating to the claim.

(3) If:

- (a) a claim to an interest in a statutory fishing rights option is registered; and
- (b) an application is made to AFMA for registration of a dealing in respect of the option;

AFMA must not register the dealing unless:

- (c) AFMA has given written notice of the application to the person whose name appears in the register in relation to the claim; and
- (d) either:
 - (i) the person has withdrawn the claim under subsection (2); or
 - (ii) 21 days have elapsed since the notice was given to the person.

31H Trusts not registrable

Notice of any kind of trust relating to a statutory fishing rights option is not receivable by AFMA and must not be entered in the Register.

31J Power of holder of statutory fishing rights option to deal with option

- (1) The holder of a statutory fishing rights option may, subject only to any rights appearing in the Register to be vested in another person, deal with the option, in respect of all or any of the statutory fishing rights to which the option relates, as absolute owner and give good discharges for any consideration for any such dealing.
- (2) Subsection (1) only protects a person who deals with a holder of a statutory fishing rights option as a purchaser in good faith for value and without notice of any fraud on the part of the holder.
- (3) Equities in relation to a statutory fishing rights option may be enforced against the holder of the option except to the prejudice of a person protected by subsection (2).

31K Obligations of AFMA in respect of granting statutory fishing rights under the new plan

- (1) AFMA must not grant any statutory fishing rights under the new plan unless:
 - (a) it has given written notice to each person who holds a statutory fishing rights option in relation to the plan asking the person to tell AFMA in writing within the period of 30 days after a date stated in the notice (being a date not earlier than 2 days after the day on which the notice is sent):
 - (i) whether the person wishes to exercise the option; and
 - (ii) if so, the number of fishing rights in respect of which the person exercises the option; and
 - (b) that period has elapsed.
- (2) AFMA must develop procedures that will ensure that the holders of options that are exercised are granted the statutory fishing rights under the new plan to which they are entitled.
- (3) AFMA may remove particulars of an option from the Register when all the statutory fishing rights to which the option relates have been granted or the option has lapsed.

31L Administrative provisions

Sections 52 to 57 apply to the Register of Statutory Fishing Rights Options and documents subject to inspection under this Division in the same way as those sections apply to the Register of Statutory Fishing Rights and documents subject to inspection under Part 4.

21 At the end of section 38

Add:

Note: Section 98 authorises a court in certain circumstances to suspend a fishing concession.

22 At the end of section 39

Add:

Note: Section 98 authorises a court in certain circumstances to cancel a fishing concession.

23 After subsection 46(3)

Insert:

- (3A) A party to the dealing may, instead of lodging the instrument evidencing the dealing, lodge with AFMA a summary of that instrument containing the particulars required by AFMA for the purposes of this subsection.

24 Subsection 46(4)

Omit “Where an application to AFMA is so made”, substitute “Subject to subsection (4C), if an application for registration of the dealing, either the instrument evidencing the dealing or a summary of that instrument that complies with subsection (3A), and the other documents referred to in paragraphs (3)(c) and (d), are lodged with AFMA”.

25 Subsection 46(5)

Repeal the subsection, substitute:

- (4A) If a person lodges with AFMA a notice, in the form approved by AFMA:
- (a) stating that a dealing of a kind referred to in subsection (1) that is described in the statement has taken place; and
 - (b) claiming that, if the dealing were registered, the person would have an interest in a fishing right; and
 - (c) setting out particulars of the interest; and
 - (d) requesting AFMA to register the claim;
- AFMA must register the claim by entering in the register the person’s name and particulars of the interest claimed.
- (4B) If, after the registration of a claim to an interest in a fishing right, the claimant, by notice lodged with AFMA in the form approved by AFMA, withdraws the claim, AFMA must cancel the registration by omitting from the register the entry relating to the claim.
- (4C) If:
- (a) a claim to an interest in a fishing right is registered; and
 - (b) an application is made to AFMA for registration of a dealing in respect of the fishing right;
- AFMA must not register the dealing unless:

- (c) AFMA has given written notice of the application to the person whose name appears in the register in relation to the claim; and
 - (d) either:
 - (i) the person has withdrawn the claim under subsection (4B); or
 - (ii) 21 days have elapsed since the notice was given to the person.
- (5) If a dealing is registered:
- (a) the copies referred to in paragraph (3)(d) and the summary (if any) lodged under subsection (3A) are to be kept by AFMA; and
 - (b) if a summary is not lodged under subsection (3A), the copy of the instrument evidencing the dealing is to be made available for inspection in accordance with this Part; and
 - (c) if a summary is lodged under subsection (3A), the summary is to be made available for inspection in accordance with this Part; and
 - (d) the original instrument is to be returned to the person who made the application for registration.
- (6) If a dealing creates a charge over some or all of a body corporate's assets, the party to the dealing who lodged the application for registration of the dealing is taken to have complied with paragraph (3)(b), and with paragraph (3)(d) in so far as that paragraph requires a copy of the instrument evidencing the dealing to be lodged with AFMA, if the party has lodged with AFMA 2 copies of each document required to be lodged with the Australian Securities Commission relating to the creation of that charge under section 263 of the Corporations Law.

26 Subsection 49(1)

Omit "or, if the fishing right was granted by a Joint Authority, the Joint Authority".

27 Subsection 49(2)

Omit "or the Joint Authority".

28 Subsection 65(1)

Repeal the subsection, substitute:

- (1) Subject to this section, a Joint Authority may, by writing, delegate to an officer or employee of a State or of an authority of a State any of its powers under this Act, other than its powers under sections 18 and 20.

29 Saving

A delegation under subsection 65(1) of the *Fisheries Management Act 1991* to an officer or employee of a State or of an authority of a State that was in force immediately before the commencement of item 28 continues in force as if it had been made under the subsection substituted by that item.

30 Subsection 65(2)

Omit “AFMA or the Department or in”.

31 Section 78

Repeal the section, substitute:

78 Effect of arrangement

If, in respect of a fishery, there is in force an arrangement under this Division under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the Commonwealth:

- (a) AFMA has the same powers in relation to the fishery as it would have if the fishery were under the management of AFMA; and
- (b) references in sections 18 and 20 to the Minister are taken, in relation to the fishery, to be references to the Joint Authority.

32 Sections 79 and 80

Repeal the sections.

33 Section 82

Repeal the section.

34 Paragraphs 84(1)(h) and (i)

Repeal the paragraphs, substitute:

- (h) enter on land or premises specified in a fish receiver permit for the purpose of finding out whether a condition of the permit is being, or has been, complied with or whether a person is contravening or has contravened a provision of this Act and, in furtherance of that purpose:
 - (i) search the land or premises for, and examine, fish; and
 - (ii) search the land or premises for, inspect, take extracts from, and make copies of, any documents relating to the receiving of fish; and
 - (iii) if the officer finds, during the course of the search, any thing that he or she believes, on reasonable grounds, may provide evidence of a contravention of a provision of this Act, secure the thing pending the obtaining of a warrant to seize it; and
- (i) with the consent of the holder of a fish receiver permit or under a warrant issued under section 85, seize any thing found during the course of a search that the officer believes, on reasonable grounds, may provide evidence of a contravention of this Act; and

35 Paragraph 84(7)(a)

Omit “5,”.

36 Sections 85 and 86

Repeal the sections, substitute:

85 When search warrants can be issued

- (1) A magistrate may, upon application by an officer, issue a warrant to search premises if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.
- (2) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person must state the suspicion, and the grounds for the suspicion, in the information.
- (3) If a magistrate issues a warrant, the magistrate is to set out in the warrant:

- (a) the offence to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the officer who, unless he or she inserts the name of another officer in the warrant, is to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) whether the warrant may be executed at any time or only during particular hours.
- (4) The magistrate is also to state that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (3)(c)) found at the premises in the course of the search that the executing officer or a person helping believes on reasonable grounds to be:
- (a) evidential material in relation to an offence to which the warrant relates; or
 - (b) a thing relevant to another offence against this Act or the regulations that is an indictable offence;
- if the executing officer or a person helping believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations.
- (5) Paragraph (3)(e) does not prevent the issue of successive warrants in relation to the same premises.
- (6) If the application for the warrant is made under section 86, this section applies as if:
- (a) subsection (1) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (3)(e) referred to 48 hours rather than 7 days.
- (7) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises in the Jervis Bay Territory.
- (8) A magistrate in a State or internal Territory may:

- (a) issue a warrant in relation to premises in that State or Territory; or
- (b) issue a warrant in relation to premises in an external Territory; or
- (c) issue a warrant in relation to premises in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate.

85A The things that are authorised by a search warrant

- (1) A warrant authorises the executing officer or a person helping:
 - (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and
 - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
 - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
 - (d) to seize other things found at the premises in the course of the search that the executing officer or a person helping believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) evidential material in relation to another offence against this Act or the regulations that is an indictable offence; if the executing officer or a person helping believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence against this Act or the regulations.
- (2) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.
- (3) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

85B Availability of assistance and use of force in executing a warrant

In executing a warrant:

- (a) the executing officer may obtain such help; and
- (b) the executing officer, or a person who is an officer and is helping in executing the warrant may use such force against persons and things; and
- (c) a person who is not an officer and has been authorised to help in executing the warrant may use such force against things;

as is necessary and reasonable in the circumstances.

85C Copy of warrant to be given to occupier etc.

- (1) If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or a person helping must make available to that person a copy of the warrant.
- (2) The executing officer must produce his or her identity card to the person at the premises.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate or the seal of the relevant court.

85D Specific powers available to officer executing warrant

- (1) In executing a warrant, the executing officer or a person helping may:
 - (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing;take photographs (including video recordings) of the premises or of things at the premises.
- (2) If a warrant is being executed, the executing officer or a person helping may, if the warrant is still in force, complete the execution of the warrant after the officer and all persons helping temporarily cease its execution and leave the premises:
 - (a) for not more than one hour; or

- (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:
 - (a) the execution of a warrant is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant is still in force;the execution of the warrant may be completed.

85E Use of equipment to examine or process things

- (1) The executing officer or a person helping may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
 - (a) it is not practicable to examine or process the things at the warrant premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:
 - (a) inform the occupier of the address of the place, and the time, at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or a person helping may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person believes on reasonable grounds that:
 - (a) the equipment is suitable for the examination or processing; and

- (b) the examination or processing can be carried out without damage to the equipment or the thing.

85F Use of electronic equipment at premises

- (1) The executing officer or a person helping may operate electronic equipment at the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
 - (2) If the executing officer or a person helping, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documentation so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;
operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
 - (3) A person may seize equipment under paragraph (2)(a) only if:
 - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence against this Act or the regulations.
 - (4) If the executing officer or a person helping believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment at the premises; and
-

- (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The executing officer or a person helping must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
 - (6) The equipment may be secured until:
 - (a) the end of a period of not more than 24 hours; or
 - (b) the equipment has been operated by the expert;whichever happens first.
 - (7) If the executing officer or a person helping believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate for an extension of that period.
 - (8) The executing officer or a person helping must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
 - (9) The provisions of this Division relating to the issue of warrants apply, with any modifications that are necessary, to the issuing of an extension.

85G Compensation for damage to electronic equipment

- (1) If:
 - (a) damage is caused to equipment as a result of being operated as mentioned in section 85E or 85F; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

85H Copies of seized things to be provided

- (1) Subject to subsection (2), if a person seizes, under a warrant:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;

the person must, if requested to do so by the occupier of the premises or by another person who apparently represents the occupier and is present when the warrant is executed, give a copy of the thing or the information to the person who made the request as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under paragraph 85F(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

85J Occupier entitled to be present during search

- (1) If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

85K Receipts for things seized under warrant

- (1) If a thing is seized under a warrant or moved under subsection 85E(2), the executing officer or a person helping must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

86 Warrants by telephone or other electronic means

- (1) An officer may make an application to a magistrate for a warrant by telephone, telex, facsimile or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.
- (3) An application under this section must include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn.
- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
 - (a) a warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the magistrate may complete and sign the same form of warrant as would be issued under section 85.
- (5) If the magistrate decides to issue the warrant, the magistrate is to tell the applicant, by telephone, facsimile or other electronic

means, of the terms of the warrant and the day on which and the time at which it was signed.

- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given to the magistrate, stating on the form the magistrate's name and the day on which and the time at which the warrant was signed.
- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or send to the magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.
- (8) The magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.
- (9) If:
 - (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
 - (b) the form of warrant signed by the magistrate is not produced in evidence;the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

37 After subsection 88(1)

Insert:

- (1A) If:
 - (a) any property referred to in subsection (1):
 - (i) is also property referred to in section 106; and
 - (ii) was under the control of an officer because an offence referred to in that section is alleged to have been committed in respect of the property; and
 - (b) were the person to be convicted of the offence an order could be made by the court directing the person to pay the costs of the prosecution;

the conditions on which the property may be released under subsection (1) include a condition as to the giving of security for payment of those costs if the person is convicted of the offence.

38 Subsection 89(4)

Omit “\$100”, substitute “2 penalty units”.

39 After subsection 95(1)

Insert:

(1A) A person does not contravene subsection (1) because of an act or omission that the person is authorised to do, or not to do, as the case may be:

- (a) under the management plan for the relevant fishery; or
- (b) under regulations made for the relevant fishery; or
- (c) in relation to a by-catch under regulations made for the purposes of paragraph 14(2)(c).

40 Subsection 95(2)

Omit “\$50,000”, substitute “500 penalty units”.

41 Subsection 95(4)

Omit “\$10,000”, substitute “250 penalty units”.

42 Subsection 95(5)

Omit “\$10,000”, substitute “250 penalty units”.

43 Section 96

Omit “\$5,000”, substitute “125 penalty units”.

44 Subsection 97(1)

Omit “\$5,000”, substitute “125 penalty units”.

45 At the end of section 98

Add:

(3) If:

- (a) a court convicts a person of an offence against this Act or any other Act; and

(b) the offence was committed while the person was doing something authorised by a fishing concession held by the person;

the court may, in addition to imposing a penalty in respect of the offence or making any other order, make an order:

(c) cancelling the fishing concession; or

(d) suspending the operation of the fishing concession for a period stated in the order.

46 Section 99

Omit "\$5,000", substitute "125 penalty units".

47 Subsection 100(2)

Omit "\$250,000", substitute "2,500 penalty units".

48 Subsection 100(4)

Omit "\$25,000", substitute "250 penalty units".

49 Subsection 101(2)

Omit "\$250,000", substitute "2,500 penalty units".

50 Subsection 101(4)

Omit "\$25,000", substitute "250 penalty units".

51 Subsection 102(1)

Omit "\$50,000", substitute "500 penalty units".

52 Subsection 102(2)

Omit "\$50,000", substitute "500 penalty units".

53 Subsection 102(5)

Omit "\$10,000", substitute "250 penalty units".

54 Subsection 103(1)

Omit "\$50,000", substitute "500 penalty units".

55 Subsection 103(3)

Omit "\$10,000", substitute "250 penalty units".

56 Subsection 104(2)

Omit “\$50,000”, substitute “500 penalty units”.

57 Subsection 104(4)

Omit “\$10,000”, substitute “250 penalty units”.

58 Subsection 104(7)

Omit “\$2,000”, substitute “50 penalty units”.

59 Subsection 106(1)

After “against section”, insert “13,”.

60 Subsections 153(1) and (2)

Omit “\$3,000”, substitute “30 penalty units”.

61 Section 156

Omit “\$3,000”, substitute “30 penalty units”.

62 Paragraph 164(9)(b)

Repeal the paragraph, substitute:

- (b) an offence created by section 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914*, being an offence that relates to an offence created by this Act or the regulations.

63 Subsection 165(1) (definition of *relevant decision*)

Before “section 32”, insert “paragraph 31B(1)(b), section 31C, subsection 31F(7),”.

64 Subsection 166(4)

Repeal the subsection.

65 Subsection 166(5)

Omit “Without limiting the operation of subsection (4), the”, substitute “The”.

66 Paragraph 168(2)(a)

Omit “\$1,000”, substitute “10 penalty units”.

Schedule 3—Amendment of the Torres Strait Fisheries Act 1984

1 Before section 16

Insert:

15A Management plans

- (1) The Minister may, by writing, determine a plan of management for a fishery in an area of Australian jurisdiction.
- (2) A plan of management for a fishery must set out:
 - (a) the objectives of the plan of management; and
 - (b) measures by which the objectives are to be attained.
- (3) Subsections (4), (5) and (6) do not limit, by implication, the matters required by subsection (2) to be set out in a plan of management for a fishery.
- (4) The Minister may, in a plan of management for a fishery:
 - (a) determine the manner in which the fishing capacity of the fishery is to be measured; and
 - (b) determine the fishing capacity, measured in that manner, permitted for the fishery.
- (5) A plan of management for a fishery may make provision for and in relation to:
 - (a) the granting of licences under section 19 in relation to the fishery; and
 - (b) the conditions to which licences granted under section 19 in relation to the fishery are to be subject; and
 - (c) the duration, transfer, renewal and variation of licences granted under section 19 in relation to the fishery.
- (6) If, in a plan of management for a fishery, the Minister determines the fishing capacity permitted for the fishery, the plan of management may make provision for and in relation to the following:
 - (a) the division of the fishing capacity permitted for the fishery into units (the *units of fishing capacity*);

- (b) the allocation to persons of units of fishing capacity in the fishery;
 - (c) the assignment of units of fishing capacity to boats, and the holding, and cessation of holding, of units of fishing capacity in relation to boats;
 - (d) requiring units of fishing capacity to be held in relation to boats;
 - (e) the determination of the number of units of fishing capacity to be held in relation to boats;
 - (f) the holding of units of fishing capacity that are not assigned to a boat, including the number of such units of fishing capacity that may be held by a person and the period during which such units of fishing capacity may be held;
 - (g) the duration, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units of fishing capacity;
 - (h) the recording of the allocation, assignment, holding, cessation of holding, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units of fishing capacity and the manner in which such recording is to be evidenced, including the issue, recall and replacement of certificates and other documents evidencing such recording;
 - (i) the reconsideration of decisions made under the plan of management.
- (7) The prescribed fees (if any) are payable in respect of the allocation, assignment, variation, re-assignment, transfer, replacement, and renewal of allocation, of units of fishing capacity and the issue and replacement of certificates and other documents evidencing the recording of the allocation, assignment, holding, cessation of holding, variation, re-assignment, transfer, replacement, and renewal of allocation, of units of fishing capacity.
- (8) Regulations made for the purposes of subsection (7) may state different fees, or prescribe different methods of calculating fees, in respect of units of fishing capacity included in different classes of units of fishing capacity.

- (9) While a plan of management is in force for a fishery, the Minister and the Chairperson must perform their functions, and exercise their powers, under this Act in relation to the fishery in accordance with the plan of management, and not otherwise.
- (10) The Minister and the Chairperson must, in the performance of their functions and the exercise of their powers generally under this Act, have regard to the effects, either direct or indirect, that the performance of the functions and exercise of the powers may have in relation to any plan or plans of management.
- (11) Without limiting the matters by reference to which a fishery may be identified in a plan of management, those matters include all or any of the following:
- (a) a species of fish;
 - (b) a description of fish by reference to sex or any other characteristic;
 - (c) an area of waters or of seabed;
 - (d) a method of fishing;
 - (e) a class of boats;
 - (f) a class of persons;
 - (g) a purpose of activities.
- (12) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (13) In this section:
- decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.
- fishery** means a class of activities by way of fishing, being a class of such activities that is identified in a plan of management as a fishery to which the plan of management applies.

Schedule 4—Amendment of the Remuneration Tribunal Act 1973

1 After subsection 7(4)

Insert:

- (4A) The Tribunal may inquire into and determine the travelling allowances to be paid to members of committees established under section 54, and members of sub-committees established under subsection 58(1A), of the *Fisheries Administration Act 1991* in relation to the performance of their duties as members of the committees or sub-committees.

*[Minister's second reading speech made in—
Senate on 12 December 1996
House of Representatives on 25 June 1997]*

(208/96)