



Fisheries Legislation Amendment Act 2007

No. 104, 2007

**An Act to amend legislation about fisheries, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 104, 2007

An Act to amend legislation about fisheries, and for related purposes

[Assented to 28 June 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	28 June 2007
2. Schedules 1 and 2	The 28th day after the day on which this Act receives the Royal Assent.	26 July 2007
3. Schedule 3, Part 1	The 28th day after the day on which this Act receives the Royal Assent.	26 July 2007
4. Schedule 3, Part 2	On the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	28 June 2008
5. Schedule 4	The 28th day after the day on which this Act receives the Royal Assent.	26 July 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Fisheries Administration Act 1991

1 After paragraph 7(1)(ab)

Insert:

- (ac) to advise and assist in relation to the exercise of powers and the performance of functions under the *Torres Strait Fisheries Act 1984*;

2 Paragraph 7(1)(ea)

After “on board”, insert “boats used for commercial fishing, including”.

3 Paragraph 7(1)(gb)

Repeal the paragraph, substitute:

- (gaa) in addition to the collection of information in the exercise or performance of its other powers and functions—to collect, as authorised (within the meaning of subsection (4)), information relating to the following:
 - (i) possible breaches of the laws of Australia or of a foreign country;
 - (ii) the control and protection of Australia’s borders;
 - (iii) the administration and management of fisheries or marine environments;
 - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments;
- (gb) to disclose, as authorised (within the meaning of subsection (4)), information, including personal information, relating to the following:
 - (i) possible breaches of the laws of Australia or of a foreign country;
 - (ii) the control and protection of Australia’s borders;
 - (iii) the administration and management of fisheries or marine environments;
 - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments;

4 Subsection 7(3)

Omit “or in authorising the disclosure of such information,”.

5 Paragraph 7(3)(a)

After “by the”, insert “person or”.

6 Subsection 7(4)

Repeal the subsection, substitute:

- (4) Collection or disclosure of information is *authorised* for the purposes of paragraph (1)(gaa) or (gb) if it is done in accordance with:
- (a) this Act, the *Fisheries Management Act 1991* or the *Torres Strait Fisheries Act 1984*; or
 - (b) regulations made under an Act mentioned in paragraph (a).

7 After subsection 12(4)

Insert:

- (4A) However, the requirements of subsection (4) do not have to be met in relation to a director if the Minister appoints the director:
- (a) in the period starting on 1 July 2008 and ending on 30 June 2009; and
 - (b) for a period not exceeding 9 months.

8 After section 93

Insert:

93A Delegations under the *Torres Strait Fisheries Act 1984*

The Managing Director may arrange for a person employed by the Authority to exercise powers and perform functions under a delegation under the *Torres Strait Fisheries Act 1984*.

Schedule 2—Fisheries Management Act 1991

1 Subsection 4(1) (definition of *observer*)

Repeal the definition.

2 After paragraph 84(1)(ga)

Insert:

- (gb) seize all or any of the following that are forfeited to the Commonwealth under section 106AA or that the officer has reasonable grounds to believe are forfeited under that section:
 - (i) a net, trap or other equipment;
 - (ii) fish; and
- (gc) seize any fish that are the property of the Commonwealth because of the operation of section 106AC or that the officer has reasonable grounds to believe are the property of the Commonwealth because of the operation of that section; and
- (gd) seize anything:
 - (i) that is on, in or attached to a boat and that forms part of the boat; and
 - (ii) that is the property of the Commonwealth because of the operation of section 106AD or that the officer has reasonable grounds to believe is the property of the Commonwealth because of the operation of that section; and

3 Subsection 84(1A) (at the end of the note)

Add “, (gb), (gc) or (gd)”.

4 Paragraph 100B(1)(d)

Omit “, and the person is reckless as to that fact”.

5 Before subsection 100B(2)

Insert:

(1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

6 Paragraph 101AA(1)(d)

Omit “, and the person is reckless as to that fact”.

7 Before subsection 101AA(2)

Insert:

(1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

8 Paragraphs 106(1)(a) to (c)

Repeal the paragraphs, substitute:

- (a) if a boat was used in the commission of the offence—that boat; or
- (b) a net, trap or equipment that was on board that boat at the time of the commission of the offence, or that was used in the commission of the offence; or
- (c) fish on board that boat at that time or in relation to which the offence was committed; or
- (d) the proceeds of the sale of fish of the kind referred to in paragraph (c).

Note: The heading to section 106 is altered by adding at the end “**of things used in certain offences**”.

9 Subsection 106(3)

Repeal the subsection.

10 At the end of Subdivision A of Division 6 of Part 6

Add:

106AAA Forfeiture of additional things on forfeited boats

- (1) This section applies if:
 - (a) a court orders a boat to be forfeited under section 106 because:
 - (i) it was used in the commission of an offence (the *relevant offence*) against section 13, subsection 95(5) or section 105C or 105F; or
 - (ii) it is a boat in relation to which an offence (also referred to as the *relevant offence*) against section 102, 103, 104, 105A, 105B or 105E was committed; and

- (b) at the time the court makes the order, there are nets, traps, equipment or fish (the *additional things*) on the boat that the court cannot order to be forfeited under section 106.

Forfeiture within 2 years

- (2) If the order for the boat to be forfeited is made within 2 years after the commission of the relevant offence, the court may order the forfeiture of the additional things.

Things owned by the person who owned the boat

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the court may order the forfeiture of the additional things.
- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

Things owned by persons who commit offences

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
 - (b) by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the court may order the forfeiture of the additional things.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
 - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.

- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.

106AAB Forfeited things become the property of the Commonwealth

Any boat or other property (including fish) ordered by a court to be forfeited under this Subdivision becomes the property of the Commonwealth and must be dealt with or disposed of in accordance with the directions of the Minister.

106AAC Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

11 Subdivision B of Division 6 of Part 6 (heading)

Repeal the heading, substitute:

Subdivision B—Automatic forfeiture of things

12 Section 106A

Before “The”, insert “(1)”.

13 At the end of section 106A (after the note)

Add:

(2) If:

- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
- (b) the boat is seized under paragraph 84(1)(ga);
any nets, traps or equipment on the boat at the time it is seized are taken, unless the contrary is proved:
- (c) for the purposes of subparagraph (1)(c)(i)—to have been on the boat at the time of the offence; and
- (d) for the purposes of subparagraph (1)(c)(ii)—to have been used in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

- (3) If:
- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
 - (b) the boat is seized under paragraph 84(1)(ga);
- any fish on the boat at the time it is seized are taken, unless the contrary is proved:
- (c) for the purposes of subparagraph (1)(d)(i)—to have been on the boat at the time of the offence; and
 - (d) for the purposes of subparagraph (1)(d)(ii)—to have been involved in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

14 After section 106A

Insert:

106AA Forfeiture of additional things on seized boats

- (1) This section applies if:
- (a) a boat is forfeited to the Commonwealth under section 106A because it was used in the commission of an offence (the *relevant offence*); and
 - (b) the boat is seized under paragraph 84(1)(ga); and
 - (c) at the time the boat is seized, there are nets, traps, equipment or fish (the *additional things*) on the boat that have not been forfeited under section 106A.

Seizure within 2 years

- (2) If the boat is seized within 2 years after it is forfeited, the additional things are forfeited to the Commonwealth at the time the boat is seized.

Things owned by the person who owned the boat

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the additional things are forfeited to the Commonwealth at the time the boat is seized.

- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

Things owned by persons who commit offences

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
 - (b) by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the additional things are forfeited to the Commonwealth at the time the boat is seized.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
 - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.
- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.

106AB Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

15 After Subdivision B of Division 6 of Part 6

Insert:

Subdivision BA—Automatic ownership of things

106AC Fish taken with Commonwealth property

If:

- (a) a thing is forfeited to the Commonwealth under section 106 or 106A; and
- (b) the thing is used for, or in the taking of, fish:
 - (i) after it is forfeited; and
 - (ii) without the written permission of the Minister for such use;

the fish are the property of the Commonwealth.

106AD Things on, in or attached to boats

At any time during which a boat is the property of the Commonwealth because:

- (a) the court has ordered the forfeiture of the boat under section 106; or
- (b) the boat is forfeited under section 106A;

anything on, in or attached to the boat that forms part of the boat is also the property of the Commonwealth.

106AE Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

16 Subdivision C of Division 3 of Part 6 (heading)

Repeal the heading, substitute:

Subdivision C—Dealing with things seized

17 Section 106B

Repeal the section, substitute:

106B Application of this Subdivision

This Subdivision sets out rules about the following:

- (a) a thing that an officer seizes under paragraph 84(1)(ga) or (gb):
 - (i) because the thing is forfeited under Subdivision B; or
 - (ii) because the officer has reasonable grounds to believe the thing is forfeited under Subdivision B;
- (b) a thing that an officer seizes under paragraph 84(1)(gc) or (gd):
 - (i) because the thing is the property of the Commonwealth because of the operation of Subdivision BA; or
 - (ii) because the officer has reasonable grounds to believe the thing is the property of the Commonwealth because of the operation of Subdivision BA.

18 Subsection 106C(1)

Repeal the subsection, substitute:

Giving notice

- (1) The officer must give written notice of the seizure of the thing:
 - (a) if the thing is, or was on, a boat, or was used in connection with a boat:
 - (i) to the person who was the master of the boat immediately before the seizure; or
 - (ii) to the person whom the officer has reasonable grounds to believe was the master of the boat immediately before the seizure; or
 - (b) in a case not covered by paragraph (a):
 - (i) to the owner of the thing; or
 - (ii) to the person who had possession, custody or control of the thing immediately before it was seized.
- (1A) However, if the officer cannot conveniently give the notice to the person in person, the officer may give written notice of the seizure of the thing by fixing the notice to a prominent part of the thing, unless the thing is a fish.

19 At the end of Subdivision C of Division 6 of Part 6

Add:

106HA Evidence

- (1) For the purposes of proceedings taken:
 - (a) to recover a thing forfeited under Subdivision B; or
 - (b) for a declaration that a thing seized under paragraph 84(1)(ga) or (gb) is not forfeited under Subdivision B;if a person has been convicted of an offence mentioned in paragraph 106A(1)(a) or (b), the person is taken, unless the contrary is proved, to have committed the offence.
- (2) Subsection (1) does not apply in relation to a conviction:
 - (a) in respect of which a review or appeal (however described) has been instituted but not finally determined; or
 - (b) that has been quashed or set aside; or
 - (c) in respect of which a pardon has been given.

20 After paragraph 168(2)(ha)

Insert:

- (hb) subject to section 8A, providing for the placement of persons as observers on board boats used for commercial fishing; and

21 At the end of subsection 168(2)

Add:

- ; and (u) providing (in addition to the collection of information in the exercise or performance of its other powers and functions under this Act) for the collection by AFMA of information relating to:
 - (i) possible breaches of the laws of Australia or of a foreign country; or
 - (ii) the control and protection of Australia's borders; or
 - (iii) the administration and management of fisheries or marine environments; or
 - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments; and
- (v) providing for the disclosure by AFMA of information, including personal information, relating to:

- (i) possible breaches of the laws of Australia or of a foreign country; or
- (ii) the control and protection of Australia's borders; or
- (iii) the administration and management of fisheries or marine environments; or
- (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments.

Schedule 3—Torres Strait Fisheries Act 1984

Part 1—Amendments commencing 28 days after Royal Assent

1 Subsection 3(1) (definition of *Australian boat*)

After “a boat” (first occurring), insert “that is not a Papua New Guinea boat and”.

2 Subsection 3(1) (definition of *Chairperson*)

Repeal the definition.

3 Subsection 3(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 3(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 3(1) (definition of *fishing*)

Repeal the definition, substitute:

fishing means:

- (a) searching for, or taking, fish; or
- (b) attempting to search for, or take, fish; or
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish; or

- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; or
- (e) any operations at sea directly in support of, or in preparation for, any activity described in this definition; or
- (f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat; or
- (g) the processing, carrying or transshipping of fish that have been taken.

6 Subsection 3(1) (paragraph (a) of the definition of *officer*)

Omit “authorized”, substitute “authorised”.

7 Subsection 3(1) (at the end of the definition of *officer*)

Add:

; or (d) an officer of Customs (as defined in the *Customs Act 1901*).

8 Subsection 3(1) (definition of *Papua New Guinea licence*)

Omit “authorizes” (wherever occurring), substitute “authorises”.

9 Subsection 3(1)

Insert:

premises includes any land, place, vehicle, vessel or aircraft.

10 Subsection 3(1) (definition of *traditional fishing*)

Omit “a notice”, substitute “an instrument”.

11 Subsection 3(1)

Insert:

traditional inhabitant means:

- (a) a person covered by the definition of *traditional inhabitants* in Article 1 of the Torres Strait Treaty (as affected by subsection (3)); or
- (b) a person prescribed by the regulations.

12 Subsection 3(1) (definition of *traditional inhabitants*)

Repeal the definition.

13 Subsection 3(1)

Insert:

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

14 Subsection 3(2)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

15 Subsection 3(2)

Omit “the notice”, substitute “the instrument”.

16 Paragraph 3(3)(a)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

17 Paragraph 3(3)(b)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

18 Subsection 3(4)

Omit “authorize” (wherever occurring), substitute “authorise”.

19 Section 8

Omit all the words after “particular to the”, substitute:

following management priorities:

- (a) to acknowledge and protect the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing;
- (b) to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone;
- (c) to adopt conservation measures necessary for the conservation of a species in such a way as to minimise any restrictive effects of the measures on traditional fishing;
- (d) to administer the provisions of Part 5 of the Torres Strait Treaty (relating to commercial fisheries) so as not to

prejudice the achievement of the purposes of Part 4 of the Torres Strait Treaty in regard to traditional fishing;

- (e) to manage commercial fisheries for optimum utilisation;
- (f) to share the allowable catch of relevant Protected Zone commercial fisheries with Papua New Guinea in accordance with the Torres Strait Treaty;
- (g) to have regard, in developing and implementing licensing policy, to the desirability of promoting economic development in the Torres Strait area and employment opportunities for traditional inhabitants.

20 Section 9

Repeal the section, substitute:

9 Delegation

- (1) The Minister may, by writing signed by him or her, delegate any or all of his or her functions or powers under this Act, other than his or her powers under subsection 3(3) or section 14, 15A, 16 or 17, to:
 - (a) an APS employee in the Department; or
 - (b) a person employed by AFMA; or
 - (c) a person from time to time holding, or performing the duties of, a specified office in the service of Queensland or an authority of Queensland or under the law of Queensland; or
 - (d) an APS employee in the TSRA.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) In performing functions and exercising powers under the delegation, the delegate must comply with any directions of the Minister.

Note: See sections 34AA to 34A of the *Acts Interpretation Act 1901*.

21 Section 10

Before “The Minister”, insert “(1)”.

22 Section 10

Omit “showing particulars of licences and Treaty endorsements in force from time to time under this Act”.

23 At the end of section 10

Add:

- (2) The registers must show particulars of:
 - (a) licences and Treaty endorsements in force from time to time under this Act; and
 - (b) the allocation of units of fishing capacity (within the meaning or paragraph 15A(6)(a)) from time to time under this Act.
- (3) The Minister may cause the contents of part or all of the Register to be made available to the public by electronic or other means.

24 Subsection 12(1)

Omit “authorizing”, substitute “authorising”.

Note: The heading to section 12 is altered by inserting “or developmental” after “scientific”.

25 Subsection 12(1)

After “scientific”, insert “or developmental”.

26 Subsection 12(2)

Omit “authorized”, substitute “authorised”.

27 At the end of section 12

Add:

- (5) Without limiting subsection (1), the activities authorised by a permit granted under that subsection for developmental purposes may include the following:
 - (a) assessing the commercial viability of a fishery;
 - (b) assessing the commercial viability of kinds of fishing activities, boats or equipment specified in the permit.

28 Subsection 14(1)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

29 Subsection 14(1)

Omit “the notice” (wherever occurring), substitute “the instrument”.

30 Subsection 14(2)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

31 Subsection 14(2)

Omit “the notice” (wherever occurring), substitute “the instrument”.

32 Subsection 14(2A)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

33 Subsection 14(2A)

Omit “the notice” (wherever occurring), substitute “the instrument”.

34 Subsection 14(3)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

35 Paragraph 14(3)(a)

Repeal the paragraph, substitute:

- (a) takes delivery of fish included in a class of fish specified in the instrument from another person; and

36 Subsection 14(3)

Omit “notice, information”, substitute “instrument, information”.

37 Subsection 14(6)

Omit “a notice”, substitute “an instrument”.

38 Subsection 14(6)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

39 Subsection 14(6)

Omit “notice has”, substitute “instrument has”.

40 Subsection 14(7)

Omit “a notice”, substitute “an instrument”.

41 Subsection 14(7)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

42 Subsection 14(7)

Omit “notice has”, substitute “instrument has”.

43 Subsection 14(8)

Omit “a notice”, substitute “an instrument”.

44 Subsection 14(8)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

45 Subsection 14(8)

Omit “notice has”, substitute “instrument has”.

46 Subsection 14(9)

Omit “A notice”, substitute “An instrument”.

47 Subsection 14(9)

Omit “notice, being a day not earlier than one month after the publication of the notice in the *Gazette*”, substitute “instrument, being a day not earlier than one month after the making of the instrument”.

48 Subsection 14(10)

Omit “A notice”, substitute “An instrument”.

49 Subsection 14(10)

Omit “notice, being a day not earlier than 7 days after the publication of the notice in the *Gazette*,”, substitute “instrument, being a day not earlier than 7 days after the making of the instrument”.

50 Subsection 14(10)

Omit “notice” (fourth, fifth and sixth occurring), substitute “instrument”.

51 Subsection 14(11)

Omit “a notice”, substitute “an instrument”.

52 Subsection 14(11)

Omit “(otherwise than by publication of the notice in the *Gazette*)”.

53 Subsection 14(12)

Omit “a notice”, substitute “an instrument”.

54 Subsection 14(12)

Omit “the notice”, substitute “the instrument”.

55 Subsection 14(12)

Omit “\$5,000”, substitute “50 penalty units”.

56 Subsection 14(13)

Omit “a notice”, substitute “an instrument”.

57 Subsection 14(13)

Omit “\$5,000”, substitute “50 penalty units”.

58 Subsection 14(14)

Omit “a notice”, substitute “an instrument”.

59 Paragraph 14(14)(a)

Omit “\$5,000”, substitute “50 penalty units”.

60 Paragraph 14(14)(b)

Omit “\$25,000”, substitute “250 penalty units”.

61 Subsection 14(14A)

Omit “a notice”, substitute “an instrument”.

62 Paragraph 14(14A)(a)

Omit “\$5,000”, substitute “50 penalty units”.

63 Paragraph 14(14A)(b)

Omit “\$25,000”, substitute “250 penalty units”.

64 Subsection 15A(1)

Omit “writing”, substitute “legislative instrument”.

65 At the end of subsection 15A(2)

Add:

- ; and (c) performance criteria against which, and time frames within which, the measures taken under the plan of management may be assessed.

66 After subsection 15A(2)

Insert:

- (2A) The objectives to be set out under paragraph (2)(a) must be consistent with, but are not limited to, the objectives set out in section 8.

67 Paragraph 15A(4)(b)

Omit “determine”, substitute “provide for the periodic determination of”.

68 Subsection 15A(5)

After “and in relation to”, insert “the following in respect of the fishery”.

69 Paragraphs 15A(5)(a) to (c)

Repeal the paragraphs, substitute:

- (a) the granting of permits under section 12;
- (b) the conditions to which permits granted under section 12 are to be subject;
- (c) the duration, renewal, variation and revocation of permits granted under section 12;
- (d) the making of instruments under section 14;
- (e) the making of instruments under section 16;
- (f) the making of declarations under section 17;
- (g) the granting of licences under section 19;
- (h) the conditions to which licences granted under section 19 are to be subject;
- (i) the duration, transfer, renewal and variation of licences granted under section 19;
- (j) the making of Treaty endorsements under section 20;
- (k) the conditions to which Treaty endorsements made under section 20 are to be subject;

- (l) the duration, transfer, renewal, variation and revocation of Treaty endorsements made under section 20;
- (m) the making of entries under section 21 in licences or Treaty endorsements;
- (n) the suspension, variation and revocation of entries made under section 21 in licences or Treaty endorsements.

70 Subsection 15A(6)

Omit “, in a plan of management for a fishery, the Minister determines”, substitute “a plan of management for a fishery provides for the determination of”.

71 Paragraph 15A(6)(a)

After “fishing capacity”, insert “, or a part of the fishing capacity,”.

72 Paragraph 15A(6)(b)

After “allocation to”, insert “holders of licences under section 19 or other”.

73 After paragraph 15A(6)(g)

Insert:

- (ga) the translation of units of fishing capacity into catch or use entitlements, and the transfer of these entitlements;

74 Paragraph 15A(6)(h)

After “the recording”, insert “on a register kept under section 10”.

75 After paragraph 15A(6)(h)

Insert:

- (ha) the recording on a register kept under section 10 of the catch or use entitlements applying to particular units of fishing capacity;

76 Subsection 15A(9)

Omit “Minister and the Chairperson must perform their functions, and exercise their powers,”, substitute “performance of functions and the exercise of powers”.

77 Subsection 15A(9)

After “the fishery”, insert “must be”.

78 Subsection 15A(10)

Omit “The Minister and the Chairperson must, in the performance of their functions and the exercise of their”, substitute “In the performance of functions and the exercise of”.

79 Subsection 15A(10)

Omit “have regard”, substitute “regard must be had”.

80 Subsection 15A(12)

Repeal the subsection.

81 Subsection 16(1)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

82 Paragraph 16(1)(a)

Omit “the notice”, substitute “the instrument”.

83 At the end of paragraph 16(1)(a)

Add “or”.

84 Paragraph 16(1)(b)

Omit “the notice” (first occurring), substitute “the instrument”.

85 Subparagraph 16(1)(b)(i)

Omit “the notice”, substitute “the instrument”.

86 At the end of subparagraph 16(1)(b)(i)

Add “or”.

87 Subparagraph 16(1)(b)(ii)

Omit “the notice”, substitute “the instrument”.

88 At the end of subparagraph 16(1)(b)(ii)

Add “or”.

89 Subparagraph 16(1)(b)(iii)

Omit “the notice”, substitute “the instrument”.

90 At the end of subparagraph 16(1)(b)(iii)

Add “or”.

91 Subparagraph 16(1)(b)(iv)

Omit “the notice”, substitute “the instrument”.

92 At the end of subparagraph 16(1)(b)(iv)

Add “or”.

93 Subparagraph 16(1)(b)(v)

Omit “the notice”, substitute “the instrument”.

94 Subparagraph 16(1)(b)(vi)

Omit “the notice”, substitute “the instrument”.

95 At the end of paragraph 16(1)(b)

Add “or”.

96 Paragraph 16(1)(c)

Omit “the notice” (wherever occurring), substitute “the instrument”.

97 At the end of paragraph 16(1)(c)

Add “or”.

98 Paragraph 16(1)(d)

Omit “the notice” (wherever occurring), substitute “the instrument”.

99 At the end of paragraph 16(1)(d)

Add “or”.

100 Paragraph 16(1)(e)

Omit “the notice”, substitute “the instrument”.

101 At the end of paragraph 16(1)(e)

Add “or”.

102 Paragraph 16(1)(f)

Omit “the notice”, substitute “the instrument”.

103 At the end of paragraph 16(1)(f)

Add “or”.

104 Paragraph 16(1)(g)

Omit “a notice”, substitute “an instrument”.

105 At the end of paragraph 16(1)(g)

Add “or”.

106 Paragraph 16(1)(h)

Omit “the notice”, substitute “the instrument”.

107 At the end of paragraph 16(1)(h)

Add “or”.

108 Paragraph 16(1)(j)

Omit “the notice” (wherever occurring), substitute “the instrument”.

109 At the end of paragraph 16(1)(j)

Add “or”.

110 Paragraph 16(1)(k)

Omit “the notice” (wherever occurring), substitute “the instrument”.

111 At the end of paragraph 16(1)(k)

Add “or”.

112 Paragraph 16(1)(m)

Omit “the notice”, substitute “the instrument”.

113 At the end of paragraph 16(1)(m)

Add “or”.

114 Paragraph 16(1)(n)

Omit “a notice”, substitute “an instrument”.

115 At the end of paragraph 16(1)(n)

Add “or”.

116 Paragraphs 16(1)(o) and (p)

Omit “the notice” (wherever occurring), substitute “the instrument”.

117 Subsection 16(1A)

Omit “A notice”, substitute “An instrument”.

118 Paragraphs 16(1A)(b) to (d)

Omit “the notice” (wherever occurring), substitute “the instrument”.

119 Subsection 16(2)

Omit “a notice”, substitute “an instrument”.

120 Paragraph 16(2)(a)

Omit “the notice”, substitute “the instrument”.

121 Subsection 16(3)

Omit “a notice”, substitute “an instrument”.

122 Paragraphs 16(3)(a) and (b)

Omit “the notice”, substitute “the instrument”.

123 Subsection 16(4)

Omit “a notice”, substitute “an instrument”.

124 Subsection 16(4)

Omit “notice is published”, substitute “instrument is published under subsection (9)”.

125 Subsection 16(4)

Omit “in the notice”, substitute “in the instrument”.

126 Subsection 16(5)

Omit “a notice”, substitute “an instrument”.

127 Paragraph 16(5)(a)

Omit “the notice”, substitute “the instrument”.

128 Subsection 16(7)

Omit “A notice”, substitute “An instrument”.

129 Subsection 16(7)

Omit “the notice”, substitute “the instrument”.

130 Subsection 16(7A)

Repeal the subsection, substitute:

(7A) Where:

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

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

131 Paragraph 16(8)(a)

Omit “a notice”, substitute “an instrument”.

132 Paragraph 16(8)(a)

Omit “the notice”, substitute “the instrument”.

133 Subsection 16(8A)

Omit “a notice”, substitute “an instrument”.

134 Subsection 16(8A)

Omit “the notice” (wherever occurring), substitute “the instrument”.

135 Subsection 16(9)

Omit “a notice”, substitute “an instrument”.

136 Subsection 16(9)

Omit “(otherwise than by publication of the notice in the *Gazette*)”.

137 Before subsection 17(1)

Insert:

(1AA) The Minister may, by legislative instrument, declare that a person must hold a master fisherman’s licence if:

- (a) the person is in charge of a boat, or of a boat included in a class of boats specified in the instrument; and
- (b) the boat is being used for the purpose of the taking, in the course of community fishing, of fish, or fish included in a class of fish specified in the instrument, from any area of Australian jurisdiction or from an area of Australian jurisdiction specified in the instrument.

138 Subsection 17(1)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

139 Subsection 17(1)

Omit “the notice” (wherever occurring), substitute “the instrument”.

140 Subsection 17(2)

Omit “A notice under subsection (1)”, substitute “An instrument made under this section”.

141 Subsection 17(2)

Omit “the notice” (first occurring), substitute “the instrument”.

142 Subsection 17(2)

Omit “publication of the notice in the *Gazette*”, substitute “making of the instrument”.

143 Subsection 17(3)

Omit “a notice under subsection (1)”, substitute “an instrument made under this section”.

144 Subsection 17(3)

Omit “(otherwise than by publication of the notice in the *Gazette*)”.

145 Subsection 19(1)

Omit “authorizing”, substitute “authorising”.

146 Subsection 19(1)

Omit “(other than community fishing)”.

147 Subsections 19(2) and (3)

Omit “authorizing”, substitute “authorising”.

148 Subsection 20(1)

Omit “authorize”, substitute “authorise”.

149 Subsection 21(1)

Omit “authorize”, substitute “authorise”.

150 Subsection 21(1)

Omit “a notice” (wherever occurring), substitute “an instrument”.

151 Subsection 21(2)

Omit “authorize” (wherever occurring), substitute “authorise”.

152 Subsection 24(1)

Omit “or later than one month before”, substitute “before or later than 3 months after”.

153 After subsection 25(1)

Insert:

(1A) The Minister may, under subsection (1), make a temporary transfer of a licence.

154 Subparagraph 26(1)(aa)(i)

Omit “a notice”, substitute “an instrument”.

155 Subparagraph 26(1)(aa)(i)

Omit “the notice”, substitute “the instrument”.

156 Subparagraph 26(1)(aa)(ii)

Omit “a notice”, substitute “an instrument”.

157 Paragraph 26(1)(b)

Omit “a notice”, substitute “an instrument”.

158 Paragraph 26(4)(a)

Omit “in the case of a master fisherman’s licence—”.

159 Paragraph 26(4)(b)

Repeal the paragraph, substitute:

- (b) in the case of a licence in respect of a boat—during any period during which the holder held the licence in respect of the boat another person is convicted of an offence of a kind referred to in paragraph (a) in relation to the use of the boat.

160 At the end of section 26

Add:

- (5) The Minister may, in his or her discretion, by notice in writing given to the holder of a licence granted under section 19, cancel or suspend the licence if, within such period as is specified in the notice:
 - (a) payment of a fee, levy or other money relating to the licence is not made; or
 - (b) the holder of the licence does not enter into an arrangement satisfactory to the Minister in relation to payment of a fee, levy or other money.
- (6) If a cheque is tendered to the Minister as payment of all or part of a fee, levy or other money relating to a licence, payment is taken not to have been made unless the cheque is honoured on presentation.

Note: Licences may also be suspended or revoked if the licensee accrues a prescribed number of demerit points under a demerits points system established under section 54C.

161 Part V (heading)

Repeal the heading, substitute:

Part V—Protected Zone Joint Authority

162 Subsection 28(1) (paragraph (a) of the definition of Chairperson of the TSRA)

Omit “*Commission Act 1989*”, substitute “*Act 2005*”.

163 Subsection 28(1) (definition of TSRA)

Omit “*Commission Act 1989*”, substitute “*Act 2005*”.

164 Subsection 32(7)

Omit “granted or executed, and notices may be published,”, substitute “made, granted, executed or published”.

165 Subsection 32(7)

Omit “or notice”.

166 Subsection 32(8)

Omit “, notices and other instruments”, substitute “and other instruments made,”.

167 Subsection 32(9)

Omit “granted or executed, and notices may be published,”, substitute “made, granted, executed or published”.

168 Subsection 32(9)

Omit “or notice”.

169 Before paragraph 35(1)(a)

Insert:

(aa) the powers of the Minister under subsection 3(2); and

170 Paragraph 35(1)(a)

After “14,”, insert “15A,”.

171 Before paragraph 35(2)(a)

Insert:

(aa) instruments made by the Minister under subsection 3(2) cease to apply in relation to that fishery; and

172 Paragraph 35(2)(a)

Omit “notices published”, substitute “instruments made”.

173 Paragraph 35(2)(a)

After “14,”, insert “15A,”.

174 Subsection 36(1)

Omit “authorize”, substitute “authorise”.

175 Paragraph 37(b)

Omit “a notice” (wherever occurring), substitute “an instrument”.

176 Subsections 38(1) to (6)

Repeal the subsections, substitute:

- (1) The Protected Zone Joint Authority may, in writing, delegate any or all of its functions or powers under this Act, other than the powers mentioned in subsection 35(1), to:
 - (a) an APS employee in the Department; or
 - (b) a person employed by AFMA; or
 - (c) a person from time to time holding, or performing the duties of, a specified office in the service of Queensland or an authority of Queensland or under the law of Queensland; or
 - (d) an APS employee in the TSRA.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) In performing functions and exercising powers under the delegation, the delegate must comply with any directions of the Protected Zone Joint Authority.

Note: See sections 34AA to 34A of the *Acts Interpretation Act 1901*.

177 Paragraph 42(1)(b)

Omit “on any land or premises”, substitute “on any premises”.

178 Paragraph 42(1)(b)

Omit “land or” (second occurring).

179 Paragraph 42(1)(b)

Omit “subsection (4)”, substitute “section 43C”.

180 Subparagraph 42(1)(b)(i)

Omit “land or”.

181 Subparagraph 42(1)(b)(ii)

Omit “land or”.

182 Paragraph 42(1)(ba)

Repeal the paragraph, substitute:

- (ba) where the officer has reasonable grounds to believe that there is in any vehicle or aircraft anything that may afford evidence as to the commission of an offence against this Act, and subject to subsections (3) and (4):
 - (i) stop and detain the vehicle or detain the aircraft, as the case may be; and
 - (ii) enter and search the vehicle or aircraft; and
 - (iii) break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is any such thing; and
 - (iv) examine and take possession of, or secure against interference, any such thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act; and

183 After paragraph 42(1)(ea)

Insert:

- (eb) seize all or any of the following that are forfeited to the Commonwealth under section 52AA or that the officer has reasonable grounds to believe are forfeited under that section:
 - (i) a net, trap or other equipment;
 - (ii) fish; and
- (ec) seize any fish that are the property of the Commonwealth because of the operation of section 52AC or that the officer has reasonable grounds to believe are the property of the Commonwealth because of the operation of that section; and
- (ed) seize anything:
 - (i) that is on, in or attached to a boat and that forms part of the boat; and

- (ii) that is the property of the Commonwealth because of the operation of section 52AD or that the officer has reasonable grounds to believe is the property of the Commonwealth because of the operation of that section; and

184 After paragraph 42(1)(ha)

Insert:

- (hb) for the purposes of boarding a boat under paragraph (a) or (ha):
 - (i) require the master to stop the boat to allow the officer to board it; and
 - (ii) if the master does not stop the boat as required and the boat is not an Australian boat, use any reasonable means consistent with international law to stop the boat; and

185 Paragraph 42(1)(ka)

Omit “on or in any land or premises entered in pursuance of paragraph (b) or in any vehicle ”, substitute “any premises entered in pursuance of paragraph (b) or in any vehicle or aircraft”.

186 Subparagraph 42(1)(ka)(ii)

Omit “land or in the premises or vehicle”, substitute “premises or in the vehicle or aircraft”.

187 Paragraph 42(1)(oa)

Omit “a notice”, substitute “an instrument”.

188 Subsection 42(2A)

Omit “authorized”, substitute “authorised”.

189 Subsections 42(3) to (6AA)

Repeal the subsections, substitute:

- (3) Subject to subsection (4), the powers of an officer under paragraph (1)(ba) in respect of any vehicle or aircraft must not be exercised without either:
 - (a) the consent of the owner or person in charge of the vehicle or aircraft to the exercise of those powers; or

- (b) the obtaining of a warrant under section 43C or 43P authorising the exercise of those powers.

(4) If:

- (a) the owner or person in charge of a vehicle or aircraft referred to in subsection (3) refuses to consent to the exercise by an officer of powers under paragraph (1)(ba); and
- (b) an officer seeking to exercise those powers believes, on reasonable grounds:
 - (i) that there is in the vehicle or aircraft anything that may afford evidence of an offence against this Act or the regulations; and
 - (ii) that the delay that would occur if an application for a warrant were made (either in person or under section 43P) would frustrate the effective execution of the warrant;

those powers may be exercised without a warrant but, if that is done, the officer must:

- (c) if it is practicable to do so, notify the owner or person in charge of a vehicle or aircraft that the officer will be exercising powers under paragraph (1)(ba) without a warrant and that the reasons for the exercise of those powers may be requested; and
- (d) as soon as reasonably practicable, record the reasons for the exercise of those powers without a warrant; and
- (e) upon request by the owner or person in charge of the vehicle or aircraft—provide the record of those reasons to the person affected by the exercise of those powers.

190 Subsection 42(7) (at the end of the definition of *prescribed person*)

Add:

- ; or (c) an officer of Customs (as defined in the *Customs Act 1901*);
or
- (d) an inspector appointed under the *Fisheries Act 1994* of Queensland.

191 After section 42

Insert:

42AA Identity cards

- (1) The Minister must cause an identity card to be issued to an officer other than a prescribed person (within the meaning of subsection 42(7)).
- (2) An identity card must:
 - (a) contain a recent photograph of the officer to whom it is issued; and
 - (b) be in the form approved by the Minister.

42AB Offence for failure to return identity card

- (1) A person commits an offence if:
 - (a) the person has been issued with an identity card under section 42AA; and
 - (b) the person ceases to be an officer; and
 - (c) the person does not, as soon as is practicable after so ceasing, return the identity card to the Minister.

Penalty: 2 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

192 Paragraph 43(1)(b)

Omit “authorized”, substitute “authorised”.

193 Subsection 43(1) (penalty)

Omit “\$2,000”, substitute “20 penalty units”.

194 At the end of Division 1 of Part VI

Add:

43A Use of force to exercise powers

Force to be used only in limited circumstances

- (1) An officer must not use force in the exercise of the officer’s powers under a provision of section 42 unless it is necessary to do so:

- (a) to ensure the safety of an officer; or
- (b) to overcome obstruction of an officer in the exercise of that officer's powers.

Force used must be reasonable

- (2) The force used must not be more than is reasonably required for the relevant purpose described in paragraph (1)(a) or (b).

43B Officer etc. not liable to certain actions

An officer or a person assisting an officer in the exercise of powers under this Act or the regulations, is not liable to an action, suit or proceeding for, or in respect of, anything done in good faith or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Act or the regulations.

Division 1A—Search warrants

43C 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 or affirmation 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 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.

- (3) 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 (2)(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.
- (4) Paragraph (2)(e) does not prevent the issue of successive warrants in relation to the same premises.
- (5) If the application for the warrant is made under section 43P, this section applies as if:
- (a) subsection (1) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (2)(e) referred to 48 hours rather than 7 days.

43D 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 vehicle or an aircraft, to enter the vehicle or aircraft, 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.

43E 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.

43F 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.

43G 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.

43H 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.

43J 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.

43K Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of equipment being operated as mentioned in sections 43H and 43J:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

43L 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 43J(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

43M 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.

43N Receipts for things seized under warrant

- (1) If a thing is seized under a warrant or moved under subsection 43H(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.

43P Warrants by telephone or other electronic means

- (1) An officer may make an application to a magistrate for a warrant by telephone, telex, fax 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 43C.
- (5) If the magistrate decides to issue the warrant, the magistrate is to tell the applicant, by telephone, telex, fax 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.

195 Paragraph 44(1)(a)

Omit “a notice”, substitute “an instrument”.

Note: The heading to section 44 is altered by omitting “**notices**” and substituting “**instruments**”.

196 Paragraph 44(1)(b)

After “which”, insert “by the person”.

197 Paragraph 44(1)(b)

Omit “a notice”, substitute “an instrument”.

198 Paragraph 44(1)(c)

Omit “use a boat to”.

199 Paragraph 44(1)(c)

After “which”, insert “by the person”.

200 Paragraph 44(1)(c)

Omit “a notice”, substitute “an instrument”.

201 Paragraph 44(2)(a)

Omit “\$5,000”, substitute “50 penalty units”.

202 Paragraph 44(2)(b)

Omit “\$25,000”, substitute “250 penalty units”.

203 Subparagraph 44(3)(a)(i)

Omit “\$5,000”, substitute “50 penalty units”.

204 Subparagraph 44(3)(a)(ii)

Omit “\$25,000”, substitute “250 penalty units”.

205 Subparagraph 44(3)(b)(i)

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

206 Subparagraph 44(3)(b)(ii)

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

207 Paragraph 44(3AB)(b)

Omit "notice", substitute "instrument".

208 Sub-subparagraph 44(3A)(b)(ii)(B)

Omit "authorize", substitute "authorise".

209 Paragraph 44(3A)(c)

Omit "authorizing" (wherever occurring), substitute "authorising".

210 Sub-subparagraph 44(3B)(b)(ii)(B)

Omit "authorize", substitute "authorise".

211 Paragraph 44(3B)(c)

Omit "authorizing" (wherever occurring), substitute "authorising".

212 Subsection 44(5)

Omit "a notice", substitute "an instrument".

213 Paragraph 44(5)(a)

Omit "notice", substitute "instrument".

214 Paragraph 45(1)(a)

Omit "taking fish in the course of".

215 At the end of paragraph 45(1)(a)

Add "or".

216 At the end of paragraph 45(1)(b)

Add "or".

217 At the end of paragraph 45(1)(c)

Add "or".

218 After paragraph 45(1)(c)

Insert:

- (ca) be in charge of a boat (other than a boat in respect of which a Treaty endorsement is in force) that is being used for community fishing:
 - (i) in an area of Australian jurisdiction; and
 - (ii) in respect of which there is in force a declaration under subsection 17(1AA);unless the person is the holder of a master fisherman's licence that is in force; or

219 At the end of paragraph 45(1)(d)

Add "or".

220 At the end of paragraph 45(1)(e)

Add "or".

221 At the end of paragraphs 45(1)(f) to (j)

Add "or".

222 Paragraph 45(1)(k)

Omit "authorizes", substitute "authorises".

223 Subparagraph 45(1)(m)(ii)

Omit "authorizes", substitute "authorises".

224 Subparagraph 45(2)(a)(i)

Omit "\$5,000", substitute "50 penalty units".

225 Subparagraph 45(2)(a)(ii)

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

226 Subparagraph 45(2)(b)(i)

Omit "\$5,000", substitute "50 penalty units".

227 Subparagraph 45(2)(b)(ii)

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

228 Subparagraph 45(3)(a)(i)

Omit "\$5,000", substitute "50 penalty units".

229 Subparagraph 45(3)(a)(ii)

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

230 Subparagraph 45(3)(b)(i)

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

231 Subparagraph 45(3)(b)(ii)

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

232 Paragraph 45(4)(a)

Omit "\$5,000", substitute "50 penalty units".

233 Paragraph 45(4)(b)

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

234 Sub-subparagraph 45(4A)(b)(ii)(B)

Omit "authorize", substitute "authorise".

235 Paragraph 45(4A)(c)

Omit "authorizing" (wherever occurring), substitute "authorising".

236 Subsection 46(2)

Omit "\$2,000", substitute "20 penalty units".

237 Before subsection 46A(2)

Insert:

(1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

238 Before subsection 46B(2)

Insert:

(1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

239 Before subsection 46C(2)

Insert:

(1A) Strict liability applies to paragraph (1)(e).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

240 Before subsection 46D(2)

Insert:

(1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

241 Subsection 47(1) (penalty)

Omit "\$5,000", substitute "50 penalty units".

242 Subsection 48(1) (penalty)

Omit "\$5,000", substitute "50 penalty units".

243 Paragraph 49(1)(a)

Omit "\$5,000", substitute "50 penalty units".

244 Paragraph 49(1)(b)

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

245 Before subsection 49A(2)

Insert:

(1A) Strict liability applies to paragraph (1)(e).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

246 Paragraph 50(1)(a)

Omit "\$5,000", substitute "50 penalty units".

247 Paragraph 50(1)(b)

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

248 Subparagraph 51(2)(a)(i)

Omit "\$5,000", substitute "50 penalty units".

249 Subparagraph 51(2)(a)(ii)

Omit “\$25,000”, substitute “250 penalty units”.

250 Paragraph 51(2)(b)

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

251 Paragraph 51(3)(a)

Omit “\$5,000”, substitute “50 penalty units”.

252 Paragraph 51(3)(b)

Omit “\$25,000”, substitute “250 penalty units”.

253 Before subsection 51A(2)

Insert:

(1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

254 Subsection 52(3)

Repeal the subsection.

Note: The heading to section 52 is altered by adding at the end “**of things used in certain offences**”.

255 At the end of Subdivision A of Division 3 of Part VI

Add:

52AAA Forfeiture of additional things on forfeited boats

(1) This section applies if:

- (a) a court orders a boat to be forfeited under section 52 because it was used in the commission of an offence (the *relevant offence*); and
- (b) at the time the court makes the order, there are nets, traps, equipment or fish (the *additional things*) on the boat that the court cannot order to be forfeited under section 52.

Forfeiture within 2 years

- (2) If the order for the boat to be forfeited is made within 2 years after the commission of the relevant offence, the court may order the forfeiture of the additional things.

Things owned by the person who owned the boat

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the court may order the forfeiture of the additional things.
- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

Things owned by persons who commit offences

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
 - (b) by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the court may order the forfeiture of the additional things.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
 - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.
- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.
-

52AAB Forfeited things become the property of the Commonwealth

Any boat or other property (including fish) ordered by a court to be forfeited under this Subdivision becomes the property of the Commonwealth and must be dealt with or disposed of in accordance with the directions of the Minister.

52AAC Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

256 Subdivision B of Division 3 of Part VI (heading)

Repeal the heading, substitute:

Subdivision B—Automatic forfeiture of things

257 Section 52A

Before “The”, insert “(1)”.

258 At the end of section 52A (after the note)

Add:

- (2) If:
- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
 - (b) the boat is seized under paragraph 42(1)(ea);
- any nets, traps or equipment on the boat at the time it is seized are taken, unless the contrary is proved:
- (c) for the purposes of subparagraph (1)(b)(i)—to have been on the boat at the time of the offence; and
 - (d) for the purposes of subparagraph (1)(b)(ii)—to have been used in the commission of an offence against subsection 45(2) or section 46A, 48, 49, 49A, 51 or 51A.
- (3) If:
- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
 - (b) the boat is seized under paragraph 42(1)(ea);

any fish on the boat at the time it is seized are taken, unless the contrary is proved:

- (c) for the purposes of subparagraph (1)(c)(i)—to have been on the boat at the time of the offence; and
- (d) for the purposes of subparagraph (1)(c)(ii)—to have been involved in the commission of an offence against subsection 45(2) or section 46A, 48, 49, 49A, 51 or 51A.

259 After section 52A

Insert:

52AA Forfeiture of additional things on seized boats

- (1) This section applies if:
 - (a) a boat is forfeited to the Commonwealth under section 52A because it was used in the commission of an offence (the *relevant offence*); and
 - (b) the boat is seized under paragraph 42(1)(ea); and
 - (c) at the time the boat is seized, there are nets, traps, equipment or fish (the *additional things*) on the boat that have not been forfeited under section 52A.

Seizure within 2 years

- (2) If the boat is seized within 2 years after it is forfeited, the additional things are forfeited to the Commonwealth at the time the boat is seized.

Things owned by the person who owned the boat

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the additional things are forfeited to the Commonwealth at the time the boat is seized.
- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

Things owned by persons who commit offences

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
 - (b) by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the additional things are forfeited to the Commonwealth at the time the boat is seized.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
 - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.
- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.

52AB Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

260 After Subdivision B of Division 6 of Part VI

Insert:

Subdivision BA—Automatic ownership of things

52AC Fish taken with Commonwealth property

If:

- (a) a thing is forfeited to the Commonwealth under section 52 or 52A; and
 - (b) the thing is used for, or in the taking of, fish:
 - (i) after it is forfeited; and
 - (ii) without the written permission of the Minister for such use;
- the fish are the property of the Commonwealth.

52AD Things on, in or attached to boats

At any time during which a boat is the property of the Commonwealth because:

- (a) the court has ordered the forfeiture of the boat under section 52; or
 - (b) the boat is forfeited under section 52A;
- anything on, in or attached to the boat that forms part of the boat is also the property of the Commonwealth.

52AE Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

261 Subdivision C of Division 3 of Part VI (heading)

Repeal the heading, substitute:

Subdivision C—Dealing with things seized

262 Section 52B

Repeal the section, substitute:

52B Application of this Subdivision

This Subdivision sets out rules about the following:

- (a) a thing that an officer seizes under paragraph 42(1)(ea) or (eb):
 - (i) because the thing is forfeited under Subdivision B; or

- (ii) because the officer has reasonable grounds to believe the thing is forfeited under Subdivision B;
- (b) a thing that an officer seizes under paragraph 42(1)(ec) or (ed):
 - (i) because the thing is the property of the Commonwealth because of the operation of Subdivision BA; or
 - (ii) because the officer has reasonable grounds to believe the thing is the property of the Commonwealth because of the operation of Subdivision BA.

263 Subsection 52C(1)

Repeal the subsection, substitute:

Giving notice

- (1) The officer must give written notice of the seizure of the thing:
 - (a) if the thing is, or was on, a boat, or was used in connection with a boat:
 - (i) to the person who was the master of the boat immediately before the seizure; or
 - (ii) to the person whom the officer has reasonable grounds to believe was the master of the boat immediately before the seizure; or
 - (b) in a case not covered by paragraph (a):
 - (i) to the owner of the thing; or
 - (ii) to the person who had possession, custody or control of the thing immediately before it was seized.
- (1A) However, if the officer cannot conveniently give the notice to the person in person, the officer may give written notice of the seizure of the thing by fixing the notice to a prominent part of the thing, unless the thing is a fish.

264 At the end of Subdivision C of Division 3 of Part VI

Add:

52HA Evidence

- (1) For the purposes of proceedings taken:
 - (a) to recover a thing forfeited under Subdivision B; or

(b) for a declaration that a thing seized under paragraph 42(1)(ea) or (eb) is not forfeited under Subdivision B; if a person has been convicted of an offence mentioned in paragraph 52A(1)(a), the person is taken, unless the contrary is proved, to have committed the offence.

- (2) Subsection (1) does not apply in relation to a conviction:
- (a) in respect of which a review or appeal (however described) has been instituted but not finally determined; or
 - (b) that has been quashed or set aside; or
 - (c) in respect of which a pardon has been given.

265 Subsection 54(2)

Omit “\$5,000”, substitute “50 penalty units”.

266 At the end of Part VI

Add:

Division 8—Alternative enforcement processes

54B Infringement notices

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against section 14 or Division 2 of Part VI to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

54C Demerit points system

- (1) The regulations may establish a demerit points system under which a licence granted under section 19 may be suspended or revoked if the licensee accrues a prescribed number of demerit points.
- (2) Demerit points may be accrued only if the licensee:
 - (a) is convicted or found guilty of an offence against section 14 or Division 2 of Part VI; or

(b) under a scheme established under regulations made under section 54B, pays a penalty to the Commonwealth as an alternative to prosecution.

(3) Without limiting subsection (1), the scheme may provide that different provisions apply to different kinds of licensees or to different classes of licensees within a kind of licensee.

267 Subsection 55A(2)

Omit “to the Chairperson”.

268 Subsection 57(2)

Omit “authorized” (first occurring), substitute “authorised”.

269 Subparagraph 57(2)(d)(i)

Omit “authorized”, substitute “authorised”.

270 Subparagraph 57(2)(d)(i)

Omit “authorize”, substitute “authorise”.

271 Subparagraph 57(2)(d)(ii)

Omit “authorized”, substitute “authorised”.

272 Subparagraph 57(2)(d)(ii)

Omit “authorize”, substitute “authorise”.

273 Paragraph 57(2)(e)

Omit “authorization”, substitute “authorisation”.

274 Paragraph 57(2)(f)

Omit “authorizing”, substitute “authorising”.

275 Subsection 57(3)

Omit “authorized”, substitute “authorised”.

276 Subsection 58(2)

Omit “authorized”, substitute “authorised”.

277 Subsection 58(5)

Omit “authorized”, substitute “authorised”.

278 Paragraph 60(1)(c)

Omit “\$2,000”, substitute “20 penalty units”.

279 Paragraph 60(1)(c)

Omit “\$10,000”, substitute “100 penalty units”.

280 At the end of paragraphs 60(1)(c) to (k)

Add “and”.

281 Paragraph 60(1)(m)

Omit “person nominated by the Chairperson”, substitute “prescribed person or a person included in a prescribed class of persons”.

282 At the end of paragraphs 60(1)(m) and (n)

Add “and”.

283 At the end of subsection 60(1)

Add:

- ; and (q) providing (in addition to the collection of information in the exercise or performance of other powers and functions under this Act) for the collection, by a person exercising powers or performing functions under this Act, of information relating to:
 - (i) possible breaches of the laws of Australia or of a foreign country; or
 - (ii) the control and protection of Australia’s borders; or
 - (iii) the administration and management of fisheries or marine environments; or
 - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments; and
- (r) providing for the disclosure, by a person exercising powers or performing functions under this Act, of information, including personal information, relating to:
 - (i) possible breaches of the laws of Australia or of a foreign country; or
 - (ii) the control and protection of Australia’s borders; or

- (iii) the administration and management of fisheries or marine environments; or
- (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments.

284 At the end of subsection 60(3)

Add “and purposes set out in subparagraphs (1)(q)(i) to (iv)”.

Part 2—Amendments commencing 12 months after Royal Assent

285 After subsection 14(1)

Insert:

- (1A) The Minister may, by legislative instrument, require the holder of a licence in force under subsection 19(4A) that authorises the taking of fish included in a class of fish specified in the instrument in the course of commercial fishing (other than community fishing) without the use of a boat, in any area of Australian jurisdiction or in an area of Australian jurisdiction specified in the instrument, to furnish to the Minister, at such times as are and in such manner as is specified in the instrument, information relating to the taking, in the course of that fishing, of fish of that kind.

286 After subsection 14(6)

Insert:

- (6A) Where there is in force an instrument under subsection (1A) in relation to any fish, the Minister may, by legislative instrument, prohibit the taking, in the course of commercial fishing (other than community fishing) without the use of a boat, from the area in relation to which the first-mentioned instrument has effect, of fish of that kind.

287 Subsection 14(9)

After “(1),” insert “(1A),”.

288 Subsection 14(10)

After “(6),” insert “(6A),”.

289 Subsection 14(12)

After “(1),” insert “(1A),”.

290 Subsection 14(13)

After “(1),” insert “(1A),”.

291 Subsection 14(14)

After “(6),” insert “(6A),”.

292 Subsection 14(14A)

After “(6),” insert “, (6A)”.

293 After paragraph 16(1)(g)

Insert:

- (ga) prohibit the taking, processing or carrying of fish, or fish included in a class of fish specified in the instrument, in the course of commercial fishing without the use of a boat; or
- (gb) prohibit a person from using, or having in his or her possession or under his or her control, in the course of commercial fishing without the use of a boat, a quantity of equipment of a specified kind that is in excess of a quantity specified in, or ascertainable as provided by, the instrument; or
- (gc) prohibit a person from using, or having in his or her possession or under his or her control, in the course of commercial fishing without the use of a boat, equipment of a kind specified in an instrument in force under paragraph (gb) unless that equipment is registered, or there is a licence in force in respect of that equipment, under the law of Queensland or of Papua New Guinea; or

294 At the end of subsection 16(7)

Add “or (1A)”.

295 After subsection 16(8)

Insert:

(8AA) Where:

- (a) an instrument under subsection (1) provides that the activities to which a prohibition contained in the instrument relates are activities in respect of which an entry may be made under subsection 21(1A); and
- (b) an entry is made pursuant to subsection 21(1A) in a licence granted under subsection 19(4A) authorising activities in the course of commercial fishing without the use of a boat;

the prohibition does not apply in relation to authorised activities engaged in under the licence during any period in which the entry has effect.

296 After subsection 17(1)

Insert:

- (1A) The Minister may, by legislative instrument, declare that a licence under subsection 19(4A) is required for the purpose of the taking, in the course of community fishing without the use of a boat, of fish, or fish included in a class of fish specified in the instrument, from any area of Australian jurisdiction or from an area of Australian jurisdiction specified in the instrument.

297 After subsection 19(4)

Insert:

- (4A) Subject to subsection (5), the Minister may, upon application being made in accordance with the appropriate form, grant to a person a licence authorising the taking of fish in the course of commercial fishing without the use of a boat in areas of Australian jurisdiction and for carrying, or for processing and carrying, in areas of Australian jurisdiction, fish so taken.
- (4B) Subject to subsection (5), the Minister may, upon application being made in accordance with the appropriate form, grant a person a licence to receive fish, the taking of which required a licence under subsection 19(2) or (4A) or a Treaty endorsement.

Note: The heading to section 19 is altered by inserting “**and fish receivers**” after “**fishing**”.

298 Paragraphs 19(5)(a) and (b)

Omit “or (3)”, substitute “, (3) or (4A)”.

299 After subsection 21(1)

Insert:

- (1A) Subject to subsection (3A), the Minister may, upon application being made in accordance with the appropriate form, make an entry in a licence granted under subsection 19(4A) so as to extend the licence to authorise, at any time or during a period specified in the entry, activities in the course of commercial fishing without the use of a boat that are prohibited by a prohibition contained in an

instrument in force under subsection 16(1) to which subsection 16(7) relates, being an instrument identified in the entry.

300 Paragraph 21(3A)(a)

After “(1)”, insert “, (1A)”.

301 Paragraph 21(3A)(a)

Omit “or (3)”, substitute “, (3) or (4A)”.

302 Paragraph 21(3A)(b)

After “(1)”, insert “or (1A)”.

303 Paragraph 21(3A)(b)

Omit “or (3)”, substitute “, (3) or (4A)”.

304 Paragraph 24(2)(b)

Omit “or (3)”, substitute “, (3) or (4A)”.

305 Subsection 25(1)

Omit “section 19 in respect of a boat”, substitute “subsection 19(2), (3), (4A) or (4B)”.

306 Subsection 25(1)

Omit “in respect of the boat”.

307 Subparagraph 26(1)(aa)(i)

After “14(1),”, insert “(1A),”.

308 Subparagraph 26(1)(aa)(ii)

After “14(1),”, insert “(1A),”.

309 Paragraph 26(1)(b)

After “14(6),”, insert “(6A),”.

310 Paragraph 36(5A)(b)

Omit “or (3)”, substitute “, (3) or (4A)”.

311 After paragraph 42(1)(d)

Insert:

- (da) if premises are specified in a licence under subsection 19(4B) as premises on which fish are to be kept—enter the premises for the purpose of finding out whether a condition of the licence 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 premises for, and examine, fish; and
 - (ii) search the 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
- (db) with the consent of the holder of a licence under subsection 19(4B) or under a warrant issued under section 43C, 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

312 After paragraph 42(1)(p)

Insert:

- (pa) require a person engaged in commercial fishing without the use of a boat, being fishing in respect of which a licence under section 19 is required to be in force under this Act, to give information concerning the fishing, or to state his or her full name and usual place of residence; and
- (pb) require a person in charge of commercial fishing without the use of a boat, being fishing in respect of which a licence under section 19 is required to be in force under this Act, to produce the licence and permit the officer to make copies of, or take extracts from, the licence; and

313 After subsection 44(3A)

Insert:

(3BA) Where:

- (a) a person is convicted of an offence against subsection (2) because the person engaged in activities in contravention of paragraph (1)(a) at a particular time; and
- (b) the court before which the person is convicted is satisfied that if a licence under subsection 19(4A) authorising the activities had been in force at that time, the licence would have been a leviable licence;

the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence.

314 After paragraph 45(1)(a)

Insert:

- (aa) engage in commercial fishing (other than community fishing) without the use of a boat in an area of Australian jurisdiction unless the person does so under a licence in force under subsection 19(4A); or

315 After paragraph 45(1)(b)

Insert:

- (ba) being a traditional inhabitant, engage in activities by way of community fishing without the use of a boat in an area of Australian jurisdiction, being activities in respect of which there is in force a declaration under subsection 17(1A), unless the person does so under a licence in force under subsection 19(4A); or

316 Paragraph 45(1)(e)

Omit “in force under section 19 in respect of a boat”, substitute “(other than a master fisherman’s licence) in force under section 19”.

317 Paragraph 45(1)(f)

Omit “in force under section 19 in respect of a boat”, substitute “(other than a master fisherman’s licence) in force under section 19”.

318 After subsection 45(4A)

Insert:

- (4B) Where:

- (a) a person is convicted of an offence against subsection (4) because the person engaged in activities in contravention of paragraph (1)(aa) or (ba) at a particular time; and
- (b) the court before which the person is convicted is satisfied that if a licence under subsection 19(4A) authorising the activities had been in force at that time, the licence would have been a leviable licence;

the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence.

319 After section 46

Insert:

46AA Receiving fish without a licence

A person (the *fish receiver*) commits an offence if:

- (a) the fish receiver has possession or control of fish which were taken by another person; and
- (b) the possession or control is not authorised by a licence under subsection 19(3); and
- (c) the taking of the fish by the other person required a licence under subsection 19(2) or (4A) or a Treaty endorsement; and
- (d) the fish are to be sold; and
- (e) the fish receiver does not have a licence under subsection 19(4B).

Penalty: 50 penalty units.

320 After paragraph 57(2)(c)

Insert:

- (ca) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a licence in force under subsection 19(4A) or (4B) that authorised activities specified in the certificate; or

Schedule 4—Surveillance Devices Act 2004

1 Subsection 6(1) (paragraph (d) of the definition of *relevant offence*)

After “100A,”, insert “100B,”.

2 Subsection 6(1) (paragraph (d) of the definition of *relevant offence*)

Omit “or 101A”, substitute “101A or 101AA”.

3 Subsection 6(1) (after paragraph (d) of the definition of *relevant offence*)

Insert:

(da) an offence against section 46A, 46C, 46D, 49A or 51A of the *Torres Strait Fisheries Act 1984*; or

4 Paragraph 42(5)(b)

After “100A,”, insert “100B,”.

5 Paragraph 42(5)(b)

Omit “or 101A”, substitute “, 101A or 101AA”.

6 Paragraph 42(5)(b)

After “*Fisheries Management Act 1991*”, insert “or section 46A, 46B, 46C, 46D, 49A or 51A of the *Torres Strait Fisheries Act 1984*”.

*[Minister's second reading speech made in—
House of Representatives on 23 May 2007
Senate on 13 June 2007]*

(81/07)

72 *Fisheries Legislation Amendment Act 2007* No. 104, 2007