



# **Fisheries Legislation Amendment Act (No. 1) 2013**

**No. 27, 2013**

**An Act to amend various Acts relating to 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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## **An Act to amend various Acts relating to fisheries, and for related purposes**

*[Assented to 28 March 2013]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Fisheries Legislation Amendment Act (No. 1) 2013*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 March 2013
2. Schedule 1, Parts 1 and 2	The 28th day after this Act receives the Royal Assent.	25 April 2013
3. Schedule 1, Part 3	The later of: (a) the commencement of Part 1 of Schedule 1 to this Act; and (b) immediately after the commencement of Schedule 3 to the <i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2013</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	25 April 2013
4. Schedules 2 and 3	The 28th day after this Act receives the Royal Assent.	25 April 2013
5. Schedule 4, items 1 to 10	The 28th day after this Act receives the Royal Assent.	25 April 2013
6. Schedule 4, items 11 and 12	The day after this Act receives the Royal Assent.	29 March 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### Part 1—Main amendments

#### *Fisheries Management Act 1991*

##### 1 Subsection 4(1)

Insert:

*e-monitoring* means electronic monitoring.

##### 2 Subsection 4(1)

Insert:

*e-monitoring data* means any data (whether or not that data is also personal information, within the meaning of the *Privacy Act 1988*) that is, or was:

- (a) generated by; or
- (b) transmitted by; or
- (c) stored by;

e-monitoring equipment installed, carried or used in compliance with a condition imposed under section 40C of this Act on a fishing concession or scientific permit.

##### 3 Subsection 4(1)

Insert:

*e-monitoring equipment* means:

- (a) a thing used for, intended to be used for, or capable of being used for, generating, transmitting or storing data; or
- (b) a thing that makes, is intended to make, or is capable of making, a thing covered by paragraph (a) operational.

##### 4 Subsection 4(1)

Insert:

*fishing-related activity* means any of the following:

- (a) searching for, or taking, fish;
- (b) attempting to search for, or take, fish;



- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) the processing, carrying or transshipping of fish that have been taken;
- (f) the discarding from a boat of fish, marine mammals, marine reptiles or seabirds;
- (g) any other activity prescribed by the regulations for the purposes of this definition;
- (h) any operations on a boat directly in support of, or in preparation for, any activity covered by another paragraph of this definition;
- (i) any other encounters with fish, marine mammals, marine reptiles or seabirds while engaging in any activity or operation covered by another paragraph of this definition;
- (j) any other encounters with the marine environment while engaging in any activity or operation covered by another paragraph of this definition.

Note: If an activity is prescribed by the regulations under paragraph (g) it is an activity covered by paragraph (g) for the purposes of paragraphs (h), (i) and (j). So, for example, an encounter with the marine environment while engaging in an activity prescribed under paragraph (g) is also a fishing-related activity.

## **5 After Division 9 of Part 3**

Insert:

### **Division 9A—E-monitoring of fishing-related activity**

#### **40A Directions to classes of concession and permit holders**

##### *Directions power*

- (1) AFMA may make a written direction requiring any person who holds a fishing concession, or a scientific permit, of a class prescribed in the direction, to comply with:
  - (a) obligations that are prescribed in the direction relating to the e-monitoring of fishing-related activity; or

- (b) prescribed restrictions on engaging in fishing if any obligation prescribed under paragraph (a) in the direction has not been, or is not being, complied with.

Note: See section 97A for offences relating to e-monitoring equipment and e-monitoring data.

- (2) Without limiting the operation of paragraph (1)(a), examples of obligations that may be prescribed in a direction made under subsection (1) include obligations relating to:
  - (a) installing, carrying, using, handling, maintaining or monitoring the use of, prescribed e-monitoring equipment; and
  - (b) the circumstances, times, places or methods for giving AFMA e-monitoring data; and
  - (c) the circumstances, times, places or methods for giving AFMA e-monitoring equipment on which e-monitoring data is stored; and
  - (d) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring data (including statements about its circumstance, time, place or manner of generation, transmission or storage); and
  - (e) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring equipment (including statements about its circumstance, time, place or manner of installation, carriage, use, handling, maintenance or monitoring of use).
- (3) A direction made under subsection (1) must prescribe, in respect of each prescribed obligation or restriction, a day, which is a reasonable period after the direction is made, by which compliance with the obligation or restriction must occur or commence.

*Consultation and notification requirements for making directions*

- (4) Before making a direction under subsection (1) in relation to fishing concessions or scientific permits that relate to a particular fishery, AFMA must consult with:
  - (a) the management advisory committee for the fishery; or
  - (b) if there is no management advisory committee for the fishery—the holders of fishing concessions or scientific permits for the fishery.

- (5) At least 7 days before a direction made under subsection (1) takes effect, AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession or scientific permit to which the direction relates.
- (6) However, in an emergency:
- (a) a direction may be made under subsection (1) without any consultation; and
  - (b) subsection (5) does not apply in respect of the direction; and
  - (c) AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession or scientific permit to which the direction relates as soon as possible.

*Variation and revocation*

- (7) AFMA may, at any time, by a further direction in writing, vary or revoke a direction made under subsection (1).

Note: Requirements like those in subsections (4) and (5) do not apply in relation to directions made under this subsection.

- (8) If AFMA varies or revokes a direction made under subsection (1) it must ensure that a copy of the direction made under subsection (7) is sent to each holder of a fishing concession or scientific permit to which the direction as varied or revoked, relates or related, as soon as possible.

*Directions are legislative instruments*

- (9) A direction made under subsection (1), or a variation or revocation of such a direction, is a legislative instrument.

## **40B Directions to specific concession and permit holders**

*Directions power*

- (1) AFMA may, by written notice given to the holder of a fishing concession or a scientific permit, direct the holder of the fishing concession or scientific permit to comply with:
- (a) obligations that relate to the e-monitoring of fishing-related activity and that:
    - (i) are prescribed in the direction; and

- (ii) are not inconsistent with an obligation prescribed in a direction made under section 40A that the holder is required to comply with; and
- (b) prescribed restrictions on engaging in fishing if any obligations prescribed under paragraph (a) in the direction have not been, or are not being, complied with.

Note 1: See section 97A for offences relating to e-monitoring equipment and e-monitoring data.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Without limiting the operation of paragraph (1)(a), examples of obligations that may be prescribed in a direction under subsection (1) include obligations relating to:
  - (a) installing, carrying, using, handling, maintaining or monitoring the use of, prescribed e-monitoring equipment; and
  - (b) the circumstances, times, places or methods for giving AFMA e-monitoring data; and
  - (c) the circumstances, times, places or methods for giving AFMA e-monitoring equipment on which e-monitoring data is stored; and
  - (d) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring data (including statements about its circumstance, time, place or manner of generation, transmission or storage); and
  - (e) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring equipment (including statements about its circumstance, time, place or manner of installation, carriage, use, handling, maintenance or monitoring of use).
- (3) A direction made under subsection (1) must prescribe, in respect of each prescribed obligation or restriction, a day, which is a reasonable period after the direction is made, by which compliance with the obligation or restriction must occur or commence.

*Directions are not legislative instruments*

- (4) A direction made under subsection (1) is not a legislative instrument.

#### **40C Conditions of fishing concessions and scientific permits**

It is a condition of a fishing concession or scientific permit that the holder of the concession or permit will comply with each obligation and restriction that is validly prescribed in a direction in force under this Division in relation to the concession or permit by the day prescribed in the direction for compliance with that obligation or restriction.

Note: For offences relating to contravention of licence conditions, see section 95.

#### **6 After paragraph 77(e)**

Insert:

(ea) e-monitoring by AFMA of fishing-related activity; and

#### **7 After section 97**

Insert:

#### **97A E-monitoring equipment and e-monitoring data offences**

##### *E-monitoring equipment*

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the person does not have written authority from AFMA to engage in the conduct; and
  - (c) the conduct directly or indirectly prevents or hinders the operation of e-monitoring equipment installed, carried or used in compliance with a condition of a fishing concession or scientific permit.

Penalty: Imprisonment for 2 years or 250 penalty units, or both.

##### *E-monitoring data*

- (2) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the person does not have written authority from AFMA to engage in the conduct; and
  - (c) the conduct directly or indirectly results in modification of, damage to, or destruction of, e-monitoring data.

Penalty: Imprisonment for 2 years or 250 penalty units, or both.

**8 At the end of subsection 166(2)**

Add:

- ; or (l) that, at a time or during a period specified in the certificate, a person specified in the certificate was subject to a direction under section 40A or 40B and that a document attached to the certificate is a copy of the direction; or
- (m) that, at a time or during a period specified in the certificate, AFMA received e-monitoring data specified in the certificate; or
- (n) that, at a time or during a period specified in the certificate, AFMA received e-monitoring equipment specified in the certificate, on which e-monitoring data was stored; or
- (o) that, at a time specified in the certificate, AFMA received a statement provided in compliance with a condition of a fishing concession or scientific permit and that a document attached to the certificate is a copy of the statement.

**9 Paragraph 168(2)(v)**

After “information, including”, insert “e-monitoring data and”.

## **Part 2—Consequential amendments of the Fisheries Administration Act 1991**

### *Fisheries Administration Act 1991*

#### **10 Subsection 4(1)**

Insert:

*e-monitoring data* has the same meaning as in the *Fisheries  
Management Act 1991*.

#### **11 Paragraph 7(1)(gb)**

After “information, including”, insert “e-monitoring data and”.

## **Part 3—Consequential amendments of the Fisheries Management Act 1991**

### ***Fisheries Management Act 1991***

#### **12 Subsection 22(3) (note)**

After “sections”, insert “40C,”.

#### **13 Subsection 32(5) (note)**

After “sections”, insert “40C,”.

#### **14 Subsection 33(3) (note)**

Omit “section 42A”, substitute “sections 40C and 42A”.

#### **15 Subsection 34(4) (note)**

After “sections”, insert “40C,”.



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## **Schedule 2—Closure etc. of fishery**

### ***Fisheries Management Act 1991***

#### **1 After subsection 41A(2)**

Insert:

- (2AA) To avoid doubt, a direction given under subsection (2) in relation to a part of a fishery may identify the part concerned in any way or ways.

#### **2 Subsections 41A(2A) and (2B)**

Repeal the subsections, substitute:

- (2A) At least 7 days before a direction given under subsection (2) takes effect, AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence in respect of the fishery, or part of the fishery, to which the direction relates.
- (2B) However, in an emergency:
- (a) a direction may be given under subsection (2) without any consultation; and
  - (b) subsection (2A) does not apply in respect of the direction; and
  - (c) AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence in respect of the fishery, or part of the fishery, to which the direction relates as soon as possible.

#### **3 At the end of subsection 41A(3)**

Add:

- Note: Requirements like those in subsections (2) and (2A) do not apply in relation to directions given under this subsection.

#### **4 Subsection 41A(4)**

Repeal the subsection, substitute:

- (4) If AFMA varies or revokes a direction given under subsection (2) it must ensure that a copy of the direction given under subsection (3) is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence, in respect of the fishery, or part of the fishery, to which the direction as varied or revoked, relates or related, as soon as possible.

**5 Subsection 41A(5)**

Omit “disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*”, substitute “legislative instrument”.

**6 Application of amendments made by items 1 to 5**

The amendments made by items 1 to 5 of this Schedule apply in respect of the following:

- (a) a direction given on or after the commencement of this item;
- (b) a variation or revocation on or after the commencement of this item of a direction given on or after the commencement of this item.

## **Schedule 3—Waiver of levy**

### ***Fisheries Management Act 1991***

#### **1 After subsection 113(1)**

Insert:

(1A) If:

- (a) levy is due and payable in respect of a statutory fishing right in respect of a period; and
- (b) that statutory fishing right is surrendered before any fishing activities are undertaken under the statutory fishing right during that period;

AFMA may, on behalf of the Commonwealth, by written notice given to the holder of the statutory fishing right, waive:

- (c) the levy payable in respect of that statutory fishing right in respect of the period; and
- (d) if any amount is payable under section 112 in respect of that levy—the amount so payable.

#### **2 Application of amendment made by item 1**

The amendment made by item 1 of this Schedule applies in relation to levies that are due and payable on the commencement of that item and levies that become due and payable after the commencement of that item.

## Schedule 4—Conduct of directors etc.

### *Fisheries Management Act 1991*

#### **1 Subsection 97(2)**

Omit “servant”, substitute “employee”.

#### **2 Section 164 (heading)**

Repeal the heading, substitute:

#### **164 Conduct of directors, employees and agents**

#### **3 Paragraph 164(1)(a)**

Omit “servant”, substitute “employee”.

#### **4 Paragraph 164(1)(a)**

Omit “within the scope of his or her actual or apparent authority”.

#### **5 Paragraph 164(1)(b)**

Omit “servant”, substitute “employee”.

#### **6 Subsection 164(2)**

Repeal the subsection, substitute:

- (2) Any conduct engaged in by a director, employee or agent of a body corporate is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to prevent the conduct.
- (2A) For the purposes of subsection (2), in determining whether a body corporate took reasonable precautions and exercised due diligence to prevent conduct engaged in by a director, employee or agent of the body corporate, the matters to which regard is to be had include:
  - (a) any action the body corporate took to inform the director, employee or agent of the legal obligations of the body

corporate, director, employee or agent, in relation to the conduct; and

- (b) any action the body corporate took to ensure that those obligations were understood and complied with by the director, employee or agent; and
- (c) when any such action was taken; and
- (d) whether there were any other actions that the body corporate could reasonably have taken that may have prevented the conduct.

**7 Paragraph 164(3)(a)**

Omit “a servant”, substitute “an employee”.

**8 Paragraph 164(3)(a)**

Omit “within the scope of his or her actual or apparent authority”.

**9 Paragraph 164(3)(b)**

Omit “servant”, substitute “employee”.

**10 Subsection 164(4)**

Repeal the subsection, substitute:

- (4) Any conduct engaged in by an employee or agent of a person other than a body corporate is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the person unless the person establishes that the person took reasonable precautions and exercised due diligence to prevent the conduct.
- (4A) For the purposes of subsection (4), in determining whether a person took reasonable precautions and exercised due diligence to prevent conduct engaged in by an employee or agent of the person, the matters to which regard is to be had include:
  - (a) any action the person took to inform the employee or agent of the legal obligations of the person, employee or agent, in relation to the conduct; and
  - (b) any action the person took to ensure that those obligations were understood and complied with by the employee or agent; and
  - (c) when any such action was taken; and

- (d) whether there were any other actions that the person could reasonably have taken that may have prevented the conduct.

**11 Paragraph 164(5)(b)**

After “had”, insert “not”.

**12 Application**

- (1) The amendments made by items 4, 6, 8 and 10 of this Schedule apply in relation to conduct that occurs on or after the commencement of those items.
- (2) The amendment made by item 11 of this Schedule applies in relation to convictions that occur on or after the commencement of that item.
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*[Minister’s second reading speech made in—  
House of Representatives on 27 June 2012  
Senate on 20 August 2012]*

(126/12)

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