

1996–97

The Parliament of the  
Commonwealth of Australia

THE SENATE

*As read a third time*

# **Fisheries Legislation Amendment Bill 1997**

**No.     , 1997**

**A Bill for an Act to amend the law relating to  
fisheries, and for related purposes**

9720840—798/29.5.1997—(208/96) Cat. No. 96 9057 0 ISBN 0644 504196



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1 THIS bill originated in the Senate; and,  
2 having this day passed, is now ready for  
3 presentation to the House of  
4 Representatives for its concurrence.

5 HARRY EVANS  
6 *Clerk of the Senate*  
7 The Senate  
8 29 May 1997

9 **A Bill for an Act to amend the law relating to**  
10 **fisheries, and for related purposes**

11 The Parliament of Australia enacts:

12 **1 Short title**

13 This Act may be cited as the *Fisheries Legislation Amendment Act*  
14 *1997*.

15 **2 Commencement**

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

2

3 **3 Schedule(s)**

4

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5 repealed as set out in the applicable items in the Schedule  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

5

6

7

1  
2 **Schedule 1—Amendment of the Fisheries**  
3 **Administration Act 1991**

4 **1 Subsection 4(1)**

5 Insert:

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

10 **2 Paragraph 6(b)**

11 Repeal the paragraph, substitute:

12 (b) ensuring that the exploitation of fisheries resources and the  
13 carrying on of any related activities are conducted in a  
14 manner consistent with the principles of ecologically  
15 sustainable development and the exercise of the  
16 precautionary principle, in particular the need to have regard  
17 to the impact of fishing activities on non-target species and  
18 the long term sustainability of the marine environment; and

19 **3 After paragraph 7(d)**

20 Insert:

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

23 **4 Paragraph 7(g)**

24 Repeal the paragraph, substitute:

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

29 **5 Subsection 12(2)**

30 Omit "more than 3 consecutive terms", substitute "3 or more  
31 consecutive terms if the total of the terms is more than 9 years".

32 **6 After subsection 58(1)**

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Insert:

(1A) Without limiting subsection (1), a management advisory committee:

- (a) may establish sub-committees, consisting of such persons (whether members of the management advisory committee or not) as the management advisory committee determines, to advise it in the performance of its functions and the exercise of its powers; and
- (b) may abolish any such sub-committee.

(1B) A management advisory committee may determine:

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

## 7 Subsection 67(4)

Repeal the subsection, substitute:

(4) A member of:

- (a) a committee established under section 54; or
  - (b) a sub-committee established under subsection 58(1A);
- (other than the Chairperson of a management advisory committee or a member who is a director or employee of the Authority) is to be paid such travelling allowance as is determined by the Remuneration Tribunal in relation to the performance of his or her duties as a member of the committee or sub-committee.

## 8 At the end of subsection 67(5)

Add:

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

3 **9 Subsection 80(1A) (paragraph (a) of the definition of**  
4 ***Deductible component*)**

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

6 **10 Subsection 80(1A) (paragraph (a) of the definition of**  
7 ***Deductible component*)**

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

10 **11 At the end of section 91**

11 Add:

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

19 **12 Transitional**

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

1  
2 **Schedule 2—Amendment of the Fisheries**  
3 **Management Act 1991**

4 **1 Paragraph 3(1)(b)**

5 Repeal the paragraph, substitute:

- 6 (b) ensuring that the exploitation of fisheries resources and the  
7 carrying on of any related activities are conducted in a  
8 manner consistent with the principles of ecologically  
9 sustainable development and the exercise of the  
10 precautionary principle, in particular the need to have regard  
11 to the impact of fishing activities on non-target species and  
12 the long term sustainability of the marine environment; and

13 **2 Subsection 4(1)**

14 Insert:

15 *conveyance* includes an aircraft, vehicle or vessel.

16 **3 Subsection 4(1)**

17 Insert:

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

21 **4 Subsection 4(1)**

22 Insert:

23 *executing officer*, in relation to a warrant, means:

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

31 **5 Subsection 4(1)**

32 Insert:

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

4                    **6 Subsection 4(1)**

5                    Insert:

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

10                  **7 Subsection 4(1)**

11                  Insert:

12                  *premises* includes a place and a conveyance.

13                  **8 Subsection 4(1)**

14                  Insert:

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

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

19                  **9 Subsection 4(1) (definition of take)**

20                  After “catch,”, insert “capture,”.

21                  **10 Subsection 4(1)**

22                  Insert:

23                  *warrant* means a warrant under section 85 or 86.

24                  **11 Subsection 4(1)**

25                  Insert:

26                  *warrant premises* means premises in relation to which a warrant is  
27                  in force.

28                  **12 Subsections 13(1), (2) and (4)**

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

2 **13 Subsection 13(3)**

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

4 **14 Subsections 15(1) and (2)**

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

6 **15 Subsection 17(1)**

7 Repeal the subsection, substitute:

8 (1) Subject to subsection (1A), AFMA must, in writing, after  
9 consultation with such persons engaged in fishing as appear to  
10 AFMA to be appropriate and after giving due consideration to any  
11 representations mentioned in subsection (3), determine plans of  
12 management for all fisheries.

13 (1A) If, in all the circumstances, AFMA is of the view that a plan of  
14 management is not warranted for a particular fishery, AFMA may  
15 make a determination accordingly, including in the determination  
16 its reasons for making the determination.

17 (1B) A determination under subsection (1) must be notified:

18 (a) in the *Gazette*; and

19 (b) to all persons and organisations listed in the register  
20 established under section 17A, at their addresses as shown on  
21 the register.

22 **16 After subsection 17(2)**

23 (2A) In addition to issuing a public notice under subsection (2) and  
24 before determining a plan of management for a fishery, AFMA  
25 must notify the persons and organisations listed in the register  
26 established under section 17A, at their addresses as shown on the  
27 register, of the terms of the public notice.

28 **17 After subsection 17(6C)**

29 Insert:

- 1 (6D) A plan of management for a fishery must contain provisions for the  
2 incidental catch of non-target commercial and other species to be  
3 reduced to a minimum.

4 **18 After section 17**

5 Insert:

6 **17A Register of persons concerned about plans of management**

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

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

## 22 **19 Subsection 26(2)**

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

## 24 **20 After Division 4 of Part 3**

25 Insert:

## 26 **Division 4A—Statutory fishing rights options**

### 27 **31A Options arising when plan of management for fishery is** 28 **revoked**

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

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

3 (2) Subsection (1) does not apply if:

4 (a) a new plan of management is determined for the fishery  
5 immediately after the revocation of the former plan; and

6 (b) the new plan is in all substantial respects identical to the  
7 former plan; and

8 (c) the persons who held statutory fishing rights under the  
9 former plan are granted equivalent statutory fishing rights  
10 under the new plan.

11 (3) Subsection 21(1B) applies in determining the kinds of statutory  
12 fishing rights that together constitute a class of fishing rights in  
13 respect of a fishery for the purposes of this Division, except that  
14 fishing rights that, in AFMA's opinion, are substantially the same  
15 are taken to be identical for the purposes of that subsection.

16 (4) A *statutory fishing rights option* entitles the holder of the option to  
17 be granted statutory fishing rights of the relevant class under any  
18 plan of management (the *new plan*) determined for a fishery after  
19 the revocation of the former plan if section 31B or 31C applies to  
20 the new plan. The nature and extent of the entitlements are set out  
21 in subsection 31B(2) or 31C(2), as the case may be.

22 **31B Rights of option holder where the new plan of management is**  
23 **the same or substantially the same as the former plan of**  
24 **management**

25 (1) This section applies to the new plan if:

26 (a) the new plan applies to a geographical area that consists of or  
27 includes the whole or a part of the geographical area to which  
28 the former plan applied; and

29 (b) the description (other than the description of the geographical  
30 area) of the fishery to which the new plan applies is, in  
31 AFMA's opinion, the same, or substantially the same, as the  
32 description of the fishery to which the former plan applied;  
33 and

34 (c) the new plan provides for the granting of classes of statutory  
35 fishing rights that are the same, or substantially the same, as

1 the classes of statutory fishing rights provided for in the  
2 former plan; and  
3 (d) under the new plan the only persons who are entitled to be  
4 granted statutory fishing rights are persons who hold  
5 statutory fishing rights options in respect of statutory fishing  
6 rights under the new plan.

7 (2) If a person holds a statutory fishing rights option in respect of  
8 statutory fishing rights under the new plan, the option entitles the  
9 person, subject to subsections (3) and (4), to be granted under the  
10 new plan, to the extent to which the person exercises the option in  
11 accordance with subsection 31D(1), the number of statutory fishing  
12 rights of the relevant class worked out in accordance with the  
13 formula:

14 
$$\frac{\text{Person's previous rights}}{\text{Total previous rights}} \times \text{Total new rights}$$

15 where:

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

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

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

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

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



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

5 **31C Rights of option holder where new plan of management has**  
6 **some features in common with the former plan of**  
7 **management**

- 8 (1) This section applies to the new plan if:  
9 (a) in AFMA's opinion section 31B does not apply to the new  
10 plan; and  
11 (b) the new plan applies to a geographical area that consists of or  
12 includes the whole or a part of the geographical area to which  
13 the former plan applied; and  
14 (c) at least one of the species of fish in respect of which statutory  
15 fishing rights are available to be granted under the new plan  
16 (except any species that is a by-catch) was also a species of  
17 fish in respect of which statutory fishing rights were granted  
18 under the former plan immediately before it was revoked.
- 19 (2) If a person holds a statutory fishing rights option in respect of  
20 statutory fishing rights under the new plan, the option entitles the  
21 person to be granted such number of such classes of statutory  
22 fishing rights under the new plan as AFMA determines to be fair  
23 and equitable having particular regard to the number and classes of  
24 statutory fishing rights:  
25 (a) if the person was a former holder of fishing rights—held by  
26 the person; or  
27 (b) otherwise—held by the former holder of fishing rights from  
28 whose fishing rights under the former plan the person  
29 directly or indirectly became entitled to the option;  
30 under the former plan immediately before it was revoked.
- 31 (3) In determining the number of a class of statutory fishing rights to  
32 be granted to a person under the new plan in accordance with  
33 subsection (2), AFMA must take into account:  
34 (a) the extent to which the new plan applies to the fishery to  
35 which the former plan applied; and  
36 (b) the number and classes of statutory fishing rights:
-

- 1 (i) if the person was a former holder of fishing rights—held  
2 by the person; or  
3 (ii) otherwise—held by the former holder of fishing rights  
4 from whose fishing rights under the former plan the  
5 person directly or indirectly became entitled to the  
6 option;  
7 under the former plan immediately before it was revoked;  
8 and  
9 (c) the procedures to be followed under the new plan for the  
10 granting of fishing rights; and  
11 (d) the conditions relevant to the registration under the new plan  
12 of persons who are to be eligible for the grant of statutory  
13 fishing rights.

14 **31D Exercise and lapsing of option**

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

25 **31E The Register of Statutory Fishing Rights Options**

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

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

20 **31F Creation etc. of interests in statutory fishing rights options**

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

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

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

### 20 **31G Claims of interests in statutory fishing rights options**

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

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

3 (3) If:

4 (a) a claim to an interest in a statutory fishing rights option is  
5 registered; and

6 (b) an application is made to AFMA for registration of a dealing  
7 in respect of the option;

8 AFMA must not register the dealing unless:

9 (c) AFMA has given written notice of the application to the  
10 person whose name appears in the register in relation to the  
11 claim; and

12 (d) either:

13 (i) the person has withdrawn the claim under  
14 subsection (2); or

15 (ii) 21 days have elapsed since the notice was given to the  
16 person.

### 17 **31H Trusts not registrable**

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

### 21 **31J Power of holder of statutory fishing rights option to deal with** 22 **option**

23 (1) The holder of a statutory fishing rights option may, subject only to  
24 any rights appearing in the Register to be vested in another person,  
25 deal with the option, in respect of all or any of the statutory fishing  
26 rights to which the option relates, as absolute owner and give good  
27 discharges for any consideration for any such dealing.

28 (2) Subsection (1) only protects a person who deals with a holder of a  
29 statutory fishing rights option as a purchaser in good faith for value  
30 and without notice of any fraud on the part of the holder.

31 (3) Equities in relation to a statutory fishing rights option may be  
32 enforced against the holder of the option except to the prejudice of  
33 a person protected by subsection (2).

1 **31K Obligations of AFMA in respect of granting statutory fishing**  
2 **rights under the new plan**

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

20 **31L Administrative provisions**

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

25 **21 At the end of section 38**

26 Add:

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

29 **22 At the end of section 39**

30 Add:

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

1 **23 After subsection 46(3)**

2 Insert:

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

7 **24 Subsection 46(4)**

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

13 **25 Subsection 46(5)**

14 Repeal the subsection, substitute:

15 (4A) If a person lodges with AFMA a notice, in the form approved by  
16 AFMA:

- 17 (a) stating that a dealing of a kind referred to in subsection (1)  
18 that is described in the statement has taken place; and  
19 (b) claiming that, if the dealing were registered, the person  
20 would have an interest in a fishing right; and  
21 (c) setting out particulars of the interest; and  
22 (d) requesting AFMA to register the claim;

23 AFMA must register the claim by entering in the register the  
24 person’s name and particulars of the interest claimed.

25 (4B) If, after the registration of a claim to an interest in a fishing right,  
26 the claimant, by notice lodged with AFMA in the form approved  
27 by AFMA, withdraws the claim, AFMA must cancel the  
28 registration by omitting from the register the entry relating to the  
29 claim.

30 (4C) If:

- 31 (a) a claim to an interest in a fishing right is registered; and  
32 (b) an application is made to AFMA for registration of a dealing  
33 in respect of the fishing right;

34 AFMA must not register the dealing unless:

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

30 **26 Subsection 49(1)**

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

33 **27 Subsection 49(2)**

34 Omit "or the Joint Authority".

35 **28 Subsection 65(1)**

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1 Repeal the subsection, substitute:

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

6 **29 Saving**

7 A delegation under subsection 65(1) of the *Fisheries Management Act*  
8 *1991* to an officer or employee of a State or of an authority of a State  
9 that was in force immediately before the commencement of item 28  
10 continues in force as if it had been made under the subsection  
11 substituted by that item.

12 **30 Subsection 65(2)**

13 Omit “AFMA or the Department or in”.

14 **31 Section 78**

15 Repeal the section, substitute:

16 **78 Effect of arrangement**

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

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

26 **32 Sections 79 and 80**

27 Repeal the sections.

28 **33 Section 82**

29 Repeal the section.

30 **34 Paragraphs 84(1)(h) and (i)**

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Repeal the paragraphs, substitute:

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

**35 Paragraph 84(7)(a)**

Omit “5,”.

**36 Sections 85 and 86**

Repeal the sections, substitute:

**85 When search warrants can be issued**

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

- 1 (3) If a magistrate issues a warrant, the magistrate is to set out in the  
2 warrant:
- 3 (a) the offence to which the warrant relates; and  
4 (b) a description of the premises to which the warrant relates;  
5 and  
6 (c) the kinds of evidential material that are to be searched for  
7 under the warrant; and  
8 (d) the name of the officer who, unless he or she inserts the name  
9 of another officer in the warrant, is to be responsible for  
10 executing the warrant; and  
11 (e) the period for which the warrant remains in force, which  
12 must not be more than 7 days; and  
13 (f) whether the warrant may be executed at any time or only  
14 during particular hours.
- 15 (4) The magistrate is also to state that the warrant authorises the  
16 seizure of a thing (other than evidential material of the kind  
17 referred to in paragraph (3)(c)) found at the premises in the course  
18 of the search that the executing officer or a person helping believes  
19 on reasonable grounds to be:
- 20 (a) evidential material in relation to an offence to which the  
21 warrant relates; or  
22 (b) a thing relevant to another offence against this Act or the  
23 regulations that is an indictable offence;  
24 if the executing officer or a person helping believes on reasonable  
25 grounds that seizure of the thing is necessary to prevent its  
26 concealment, loss or destruction or its use in committing an  
27 offence against this Act or the regulations.
- 28 (5) Paragraph (3)(e) does not prevent the issue of successive warrants  
29 in relation to the same premises.
- 30 (6) If the application for the warrant is made under section 86, this  
31 section applies as if:
- 32 (a) subsection (1) referred to 48 hours rather than 72 hours; and  
33 (b) paragraph (3)(e) referred to 48 hours rather than 7 days.
- 34 (7) A magistrate in New South Wales or the Australian Capital  
35 Territory may issue a warrant in relation to premises in the Jervis  
36 Bay Territory.
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- 1 (8) A magistrate in a State or internal Territory may:  
2 (a) issue a warrant in relation to premises in that State or  
3 Territory; or  
4 (b) issue a warrant in relation to premises in an external  
5 Territory; or  
6 (c) issue a warrant in relation to premises in another State or  
7 internal Territory (including the Jervis Bay Territory) if he or  
8 she is satisfied that there are special circumstances that make  
9 the issue of the warrant appropriate.

10 **85A The things that are authorised by a search warrant**

- 11 (1) A warrant authorises the executing officer or a person helping:  
12 (a) to enter the warrant premises and, if the premises are a  
13 conveyance, to enter the conveyance, wherever it is; and  
14 (b) to search for and record fingerprints found at the premises  
15 and to take samples of things found at the premises for  
16 forensic purposes; and  
17 (c) to search the premises for the kinds of evidential material  
18 specified in the warrant, and to seize things of that kind  
19 found at the premises; and  
20 (d) to seize other things found at the premises in the course of  
21 the search that the executing officer or a person helping  
22 believes on reasonable grounds to be:  
23 (i) evidential material in relation to an offence to which the  
24 warrant relates; or  
25 (ii) evidential material in relation to another offence against  
26 this Act or the regulations that is an indictable offence;  
27 if the executing officer or a person helping believes on  
28 reasonable grounds that seizure of the things is necessary to  
29 prevent their concealment, loss or destruction or their use in  
30 committing an offence against this Act or the regulations.
- 31 (2) If the warrant states that it may be executed only during particular  
32 hours, the warrant must not be executed outside those hours.
- 33 (3) If things are seized under a warrant, the warrant authorises the  
34 executing officer to make the things available to officers of other  
35 agencies if it is necessary to do so for the purpose of investigating  
36 or prosecuting an offence to which the things relate.
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1 **85B Availability of assistance and use of force in executing a**  
2 **warrant**

3 In executing a warrant:

- 4 (a) the executing officer may obtain such help; and  
5 (b) the executing officer, or a person who is an officer and is  
6 helping in executing the warrant may use such force against  
7 persons and things; and  
8 (c) a person who is not an officer and has been authorised to help  
9 in executing the warrant may use such force against things;  
10 as is necessary and reasonable in the circumstances.

11 **85C Copy of warrant to be given to occupier etc.**

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

21 **85D Specific powers available to officer executing warrant**

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

1 (b) for a longer period if the occupier of the premises consents in  
2 writing.

3 (3) If:

4 (a) the execution of a warrant is stopped by an order of a court;  
5 and

6 (b) the order is later revoked or reversed on appeal; and

7 (c) the warrant is still in force;

8 the execution of the warrant may be completed.

9 **85E Use of equipment to examine or process things**

10 (1) The executing officer or a person helping may bring to the warrant  
11 premises any equipment reasonably necessary for the examination  
12 or processing of things found at the premises in order to determine  
13 whether they are things that may be seized under the warrant.

14 (2) If:

15 (a) it is not practicable to examine or process the things at the  
16 warrant premises; or

17 (b) the occupier of the premises consents in writing;  
18 the things may be moved to another place so that the examination  
19 or processing can be carried out in order to determine whether they  
20 are things that may be seized under the warrant.

21 (3) If things are moved to another place for the purpose of examination  
22 or processing under subsection (2), the executing officer must, if it  
23 is practicable to do so:

24 (a) inform the occupier of the address of the place, and the time,  
25 at which the examination or processing will be carried out;  
26 and

27 (b) allow the occupier or his or her representative to be present  
28 during the examination or processing.

29 (4) The executing officer or a person helping may operate equipment  
30 already at the warrant premises to carry out the examination or  
31 processing of a thing found at the premises in order to determine  
32 whether it is a thing that may be seized under the warrant if the  
33 executing officer or person believes on reasonable grounds that:

- 1 (a) the equipment is suitable for the examination or processing;  
2 and  
3 (b) the examination or processing can be carried out without  
4 damage to the equipment or the thing.

5 **85F Use of electronic equipment at premises**

- 6 (1) The executing officer or a person helping may operate electronic  
7 equipment at the premises to see whether evidential material is  
8 accessible by doing so if he or she believes on reasonable grounds  
9 that the operation of the equipment can be carried out without  
10 damage to the equipment.
- 11 (2) If the executing officer or a person helping, after operating the  
12 equipment, finds that evidential material is accessible by doing so,  
13 he or she may:
- 14 (a) seize the equipment and any disk, tape or other associated  
15 device; or  
16 (b) if the material can, by using facilities at the premises, be put  
17 in documentary form—operate the facilities to put the  
18 material in that form and seize the documentation so  
19 produced; or  
20 (c) if the material can be transferred to a disk, tape or other  
21 storage device that:
- 22 (i) is brought to the premises; or  
23 (ii) is at the premises and the use of which for the purpose  
24 has been agreed to in writing by the occupier of the  
25 premises;  
26 operate the equipment or other facilities to copy the material  
27 to the storage device and take the storage device from the  
28 premises.
- 29 (3) A person may seize equipment under paragraph (2)(a) only if:
- 30 (a) it is not practicable to put the material in documentary form  
31 as mentioned in paragraph (2)(b) or to copy the material as  
32 mentioned in paragraph (2)(c); or  
33 (b) possession by the occupier of the equipment could constitute  
34 an offence against this Act or the regulations.



- 1 (4) If the executing officer or a person helping believes on reasonable  
2 grounds that:  
3 (a) evidential material may be accessible by operating electronic  
4 equipment at the premises; and  
5 (b) expert assistance is required to operate the equipment; and  
6 (c) if he or she does not take action under this subsection, the  
7 material may be destroyed, altered or otherwise interfered  
8 with;  
9 he or she may do whatever is necessary to secure the equipment,  
10 whether by locking it up, placing a guard or otherwise.
- 11 (5) The executing officer or a person helping must give notice to the  
12 occupier of the premises of his or her intention to secure equipment  
13 and of the fact that the equipment may be secured for up to 24  
14 hours.
- 15 (6) The equipment may be secured until:  
16 (a) the end of a period of not more than 24 hours; or  
17 (b) the equipment has been operated by the expert;  
18 whichever happens first.
- 19 (7) If the executing officer or a person helping believes on reasonable  
20 grounds that the expert assistance will not be available within 24  
21 hours, he or she may apply to the magistrate for an extension of  
22 that period.
- 23 (8) The executing officer or a person helping must give notice to the  
24 occupier of the premises of his or her intention to apply for an  
25 extension, and the occupier is entitled to be heard in relation to the  
26 application.
- 27 (9) The provisions of this Division relating to the issue of warrants  
28 apply, with any modifications that are necessary, to the issuing of  
29 an extension.

30 **85G Compensation for damage to electronic equipment**

- 31 (1) If:  
32 (a) damage is caused to equipment as a result of being operated  
33 as mentioned in section 85E or 85F; and  
34 (b) the damage was caused as a result of:
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- 1 (i) insufficient care being exercised in selecting the person  
2 who was to operate the equipment; or  
3 (ii) insufficient care being exercised by the person operating  
4 the equipment;  
5 compensation for the damage is payable to the owner of the  
6 equipment.
- 7 (2) Compensation is payable out of money appropriated by the  
8 Parliament for the purpose.
- 9 (3) In determining the amount of compensation payable, regard is to  
10 be had to whether the occupier of the premises and his or her  
11 employees and agents, if they were available at the time, had  
12 provided any warning or guidance as to the operation of the  
13 equipment that was appropriate in the circumstances.

#### 14 **85H Copies of seized things to be provided**

- 15 (1) Subject to subsection (2), if a person seizes, under a warrant:  
16 (a) a document, film, computer file or other thing that can be  
17 readily copied; or  
18 (b) a storage device the information in which can be readily  
19 copied;  
20 the person must, if requested to do so by the occupier of the  
21 premises or by another person who apparently represents the  
22 occupier and is present when the warrant is executed, give a copy  
23 of the thing or the information to the person who made the request  
24 as soon as practicable after the seizure.
- 25 (2) Subsection (1) does not apply if:  
26 (a) the thing that has been seized was seized under  
27 paragraph 85F(2)(b) or (c); or  
28 (b) possession by the occupier of the document, film, computer  
29 file, thing or information could constitute an offence.

#### 30 **85J Occupier entitled to be present during search**

- 31 (1) If a warrant is being executed and the occupier of the premises or  
32 another person who apparently represents the occupier is present at  
33 the premises, the person is, subject to Part IC of the *Crimes Act*  
34 *1914*, entitled to observe the search being conducted.
-

- 1 (2) The right to observe the search being conducted ceases if the  
2 person impedes the search.
- 3 (3) This section does not prevent 2 or more areas of the premises being  
4 searched at the same time.

5 **85K Receipts for things seized under warrant**

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

11 **86 Warrants by telephone or other electronic means**

- 12 (1) An officer may make an application to a magistrate for a warrant  
13 by telephone, telex, facsimile or other electronic means:  
14 (a) in an urgent case; or  
15 (b) if the delay that would occur if an application were made in  
16 person would frustrate the effective execution of the warrant.
- 17 (2) The magistrate may require communication by voice to the extent  
18 that is practicable in the circumstances.
- 19 (3) An application under this section must include all information  
20 required to be provided in an ordinary application for a warrant,  
21 but the application may, if necessary, be made before the  
22 information is sworn.
- 23 (4) If an application is made to a magistrate under this section and the  
24 magistrate, after considering the information and having received  
25 and considered such further information (if any) as the magistrate  
26 required, is satisfied that:  
27 (a) a warrant in the terms of the application should be issued  
28 urgently; or  
29 (b) the delay that would occur if an application were made in  
30 person would frustrate the effective execution of the warrant;  
31 the magistrate may complete and sign the same form of warrant as  
32 would be issued under section 85.

- 1 (5) If the magistrate decides to issue the warrant, the magistrate is to  
2 tell the applicant, by telephone, facsimile or other electronic  
3 means, of the terms of the warrant and the day on which and the  
4 time at which it was signed.
- 5 (6) The applicant must then complete a form of warrant in terms  
6 substantially corresponding to those given to the magistrate, stating  
7 on the form the magistrate's name and the day on which and the  
8 time at which the warrant was signed.
- 9 (7) The applicant must, not later than the day after the day of expiry of  
10 the warrant or the day after the day on which the warrant was  
11 executed, whichever is the earlier, give or send to the magistrate  
12 the form of warrant completed by the applicant and, if the  
13 information referred to in subsection (3) was not sworn, that  
14 information duly sworn.
- 15 (8) The magistrate is to attach to the documents provided under  
16 subsection (7) the form of warrant completed by the magistrate.
- 17 (9) If:
- 18 (a) it is material, in any proceedings, for a court to be satisfied  
19 that the exercise of a power under a warrant issued under this  
20 section was duly authorised; and
- 21 (b) the form of warrant signed by the magistrate is not produced  
22 in evidence;
- 23 the court is to assume, unless the contrary is proved, that the  
24 exercise of the power was not duly authorised.

25 **37 After subsection 88(1)**

26 Insert:

- 27 (1A) If:
- 28 (a) any property referred to in subsection (1):
- 29 (i) is also property referred to in section 106; and
- 30 (ii) was under the control of an officer because an offence  
31 referred to in that section is alleged to have been  
32 committed in respect of the property; and
- 33 (b) were the person to be convicted of the offence an order could  
34 be made by the court directing the person to pay the costs of  
35 the prosecution;
-

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

4 **38 Subsection 89(4)**

5 Omit "\$100", substitute "2 penalty units".

6 **39 After subsection 95(1)**

7 Insert:

8 (1A) A person does not contravene subsection (1) because of an act or  
9 omission that the person is authorised to do, or not to do, as the  
10 case may be:

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

15 **40 Subsection 95(2)**

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

17 **41 Subsection 95(4)**

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

19 **42 Subsection 95(5)**

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

21 **43 Section 96**

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

23 **44 Subsection 97(1)**

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

25 **45 At the end of section 98**

26 Add:

27 (3) If:

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

- 1 (b) the offence was committed while the person was doing  
2 something authorised by a fishing concession held by the  
3 person;  
4 the court may, in addition to imposing a penalty in respect of the  
5 offence or making any other order, make an order:  
6 (c) cancelling the fishing concession; or  
7 (d) suspending the operation of the fishing concession for a  
8 period stated in the order.

9 **46 Section 99**

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

11 **47 Subsection 100(2)**

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

13 **48 Subsection 100(4)**

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

15 **49 Subsection 101(2)**

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

17 **50 Subsection 101(4)**

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

19 **51 Subsection 102(1)**

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

21 **52 Subsection 102(2)**

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

23 **53 Subsection 102(5)**

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

25 **54 Subsection 103(1)**

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

27 **55 Subsection 103(3)**

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

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1 **56 Subsection 104(2)**

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

3 **57 Subsection 104(4)**

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

5 **58 Subsection 104(7)**

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

7 **59 Subsection 106(1)**

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

9 **60 Subsections 153(1) and (2)**

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

11 **61 Section 156**

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

13 **62 Paragraph 164(9)(b)**

14 Repeal the paragraph, substitute:

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

18 **63 Subsection 165(1) (definition of *relevant decision*)**

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

21 **64 Subsection 166(4)**

22 Repeal the subsection.

23 **65 Subsection 166(5)**

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

26 **66 Paragraph 168(2)(a)**

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

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2 **Schedule 3—Amendment of the Torres Strait**  
3 **Fisheries Act 1984**

4 **1 Before section 16**

5 Insert:

6 **15A Management plans**

- 7 (1) The Minister may, by writing, determine a plan of management for  
8 a fishery in an area of Australian jurisdiction.
- 9 (2) A plan of management for a fishery must set out:  
10 (a) the objectives of the plan of management; and  
11 (b) measures by which the objectives are to be attained.
- 12 (3) Subsections (4), (5) and (6) do not limit, by implication, the  
13 matters required by subsection (2) to be set out in a plan of  
14 management for a fishery.
- 15 (4) The Minister may, in a plan of management for a fishery:  
16 (a) determine the manner in which the fishing capacity of the  
17 fishery is to be measured; and  
18 (b) determine the fishing capacity, measured in that manner,  
19 permitted for the fishery.
- 20 (5) A plan of management for a fishery may make provision for and in  
21 relation to:  
22 (a) the granting of licences under section 19 in relation to the  
23 fishery; and  
24 (b) the conditions to which licences granted under section 19 in  
25 relation to the fishery are to be subject; and  
26 (c) the duration, transfer, renewal and variation of licences  
27 granted under section 19 in relation to the fishery.
- 28 (6) If, in a plan of management for a fishery, the Minister determines  
29 the fishing capacity permitted for the fishery, the plan of  
30 management may make provision for and in relation to the  
31 following:  
32 (a) the division of the fishing capacity permitted for the fishery  
33 into units (the *units of fishing capacity*);
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- 1 (b) the allocation to persons of units of fishing capacity in the  
2 fishery;
- 3 (c) the assignment of units of fishing capacity to boats, and the  
4 holding, and cessation of holding, of units of fishing capacity  
5 in relation to boats;
- 6 (d) requiring units of fishing capacity to be held in relation to  
7 boats;
- 8 (e) the determination of the number of units of fishing capacity  
9 to be held in relation to boats;
- 10 (f) the holding of units of fishing capacity that are not assigned  
11 to a boat, including the number of such units of fishing  
12 capacity that may be held by a person and the period during  
13 which such units of fishing capacity may be held;
- 14 (g) the duration, variation, re-assignment, transfer, surrender,  
15 replacement, renewal of allocation, suspension and  
16 cancellation of units of fishing capacity;
- 17 (h) the recording of the allocation, assignment, holding,  
18 cessation of holding, variation, re-assignment, transfer,  
19 surrender, replacement, renewal of allocation, suspension and  
20 cancellation of units of fishing capacity and the manner in  
21 which such recording is to be evidenced, including the issue,  
22 recall and replacement of certificates and other documents  
23 evidencing such recording;
- 24 (i) the reconsideration of decisions made under the plan of  
25 management.
- 26 (7) The prescribed fees (if any) are payable in respect of the allocation,  
27 assignment, variation, re-assignment, transfer, replacement, and  
28 renewal of allocation, of units of fishing capacity and the issue and  
29 replacement of certificates and other documents evidencing the  
30 recording of the allocation, assignment, holding, cessation of  
31 holding, variation, re-assignment, transfer, replacement, and  
32 renewal of allocation, of units of fishing capacity.
- 33 (8) Regulations made for the purposes of subsection (7) may state  
34 different fees, or prescribe different methods of calculating fees, in  
35 respect of units of fishing capacity included in different classes of  
36 units of fishing capacity.

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

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## **Schedule 4—Amendment of the Remuneration Tribunal Act 1973**

### **1 After subsection 7(4)**

Insert:

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