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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**FISHERIES LEGISLATION AMENDMENT (COOPERATIVE FISHERIES  
MANAGEMENT ARRANGEMENTS AND OTHER MATTERS) BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Fisheries, Forestry and  
Conservation, Senator the Hon Ian Macdonald)

**CONTENTS**

**1. GENERAL OUTLINE .....3**  
**Financial Impact Statement.....4**  
**2. NOTES ON CLAUSES.....4**

## **FISHERIES LEGISLATION AMENDMENT (COOPERATIVE FISHERIES ARRANGEMENTS AND OTHER MATTERS) BILL 2005**

### **1. GENERAL OUTLINE**

- 2.1 The Bill clarifies the meaning of the Commonwealth's fisheries management objectives and enables cooperative fisheries management arrangements to operate with more flexibility and efficiency.
- 2.2 Schedule 1 of the Bill provides for a number of amendments to the *Fisheries Management Act 1991* (FMA) and the *Fisheries Administration Act 1991* (FAA) to clarify the meaning of two legislative objectives.
- 2.3 Under current legislation, the Commonwealth Minister and AFMA must pursue the objective of "*maximising economic efficiency in the exploitation of fisheries resources*". However, there is uncertainty within the Australian community, particularly the commercial fishing industry, about what this objective actually means.
- 2.4 The economic efficiency objective has been the subject of many different interpretations and several court cases over the years. Although the courts have arrived at an interpretation of the economic efficiency objective that is consistent with Government policy, the Government has decided to amend the FMA and FAA to express the objective in more simple terms.
- 2.5 In rewording the economic efficiency objective in the FMA and FAA, the Government is not attempting to change or otherwise influence the established judicial interpretation of the economic objective. In the Government's view, the new wording simply restates the objective in 'plain English' terms.
- 2.6 Schedule 1 of the Bill inserts into the FMA and FAA the principles of ecologically sustainable development (ESD) that complement those found in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- 2.7 The FMA and FAA require the Australian Fisheries Management Authority (AFMA) to ensure the exploitation of Australia's fisheries resources is conducted in a manner consistent with the principles of ESD, however, the legislation currently provides no guidance on how this objective should be interpreted. In the absence of an explicit articulation of the principles of ESD current case law requires the ESD objective to be interpreted quite narrowly.
- 2.8 The insertion of principles for ESD from the EPBC Act fulfils a commitment made in the 2003 Commonwealth Fisheries Policy Review (the Review), and will provide a more solid basis for environmental, economic and social factors affecting the fisheries to be considered in decisions relating to the management of Commonwealth fisheries.

- 2.9 Beyond clarifying the meaning of the objectives, the Government does not expect the amendments to the fisheries management objectives to have any significant impact on how the Commonwealth fisheries are managed.
- 2.10 Schedule 2 of the Bill addresses current inadequacies in the FMA and FAA in relation to Offshore Constitutional Settlement (OCS) fisheries arrangements. Specifically, the Bill contains amendments that enable the Government to adapt the OCS fisheries arrangements to reflect improved understanding of fish stocks and their dynamics, contemporary management issues and provide flexibility for cooperative agreements between the State/Northern Territory (NT) and Australian Governments.
- 2.11 The OCS fisheries arrangements were established in 1979 to allow the jurisdictional lines, which provide for state laws to apply inside three nautical miles and Commonwealth laws to apply from three to 200 nautical miles, to be overridden by agreement between the Australian Government and relevant governments.
- 2.12 The intention of OCS fisheries arrangements is to provide for the holistic management of fisheries – recognising that fisheries do not align with boundaries drawn on maps. Already, more than 50 active fisheries arrangements have been agreed between the Commonwealth and the states/NT. The FMA refers to these as “arrangements” but the term “OCS” is used colloquially.
- 2.13 The Australian Government’s 2003 Commonwealth Fisheries Policy Review (the Review) identified concerns with the current OCS fisheries arrangements. The Review highlighted that there is a general lack of consistency and effective cooperation on the management of some fish stocks straddling Commonwealth, State and NT jurisdictions. The Review committed the Government to progressively review OCS fisheries arrangements with the states and NT. The Bill will support the implementation of this commitment.
- 2.14 In particular, the Bill seeks to address a primary problem in the current legislation, which is that Governments have no power to amend or vary OCS fisheries arrangements.
- 2.15 At present, to correct any errors, clarify any ambiguities or vary a jurisdiction in an OCS fisheries arrangement, the original instrument must be terminated and an entirely new agreement created. This process impacts management plans, permits and other instruments which are established under an OCS fisheries arrangement. It is also inefficient and time and resource intensive.
- 2.16 This Bill provides a broad, express power in the FMA to change existing and future OCS fisheries arrangements. The power will be given to Commonwealth and State/NT Ministers. This is considered to be the most effective, flexible and time efficient process for amending OCS fisheries arrangements.
- 2.17 Schedule 2 also amends the FMA to give the powers to create and terminate OCS fisheries arrangements, which currently rest with the Governor-General

and State/NT Governors, to Commonwealth and State/NT Ministers. Approval through the Governor-General and State/NT Governors is considered to be a formality and creates an additional administrative step. The power to create, vary and terminate an OCS should be provided as a package to a single level of administration.

- 2.18 Aside from the administrative amendments to OCS fisheries arrangements, the Bill also introduces a new and innovative option for the management of fisheries resources by the Commonwealth and State/NT governments. At present, the FMA limits the legal jurisdiction of Joint Authority cooperative fisheries arrangements that involve the Commonwealth and more than one State to being managed under Commonwealth law. In practice, this model is restrictive as there will be multi-jurisdictional arrangements where it is most appropriate, and desired by all parties, to apply State laws. The Natural Resources Management Ministerial Council has agreed to the proposed amendment at its meeting of 3 December 2004. This means that the States and NT are committed to amending relevant legislation to reflect the Australian Governments legislative changes and ensure that the FMA amendments will be effective.
- 2.19 The Bill addresses this limitation by introducing the concept of regional fisheries arrangements. Regional fisheries arrangements will be similar to existing Joint Authority arrangements in that they will allow the Commonwealth and one or more States to enter into a single OCS arrangement for a fishery. However, these arrangements can be distinguished from Joint Authority arrangements in two important ways. Firstly, State laws could be applied under an arrangement involving the Commonwealth and more than one State. Secondly, regional fisheries arrangements would allow more than one law to be applied in a fishery under a single OCS. This will work in practice by defining the areas in which each law would apply, with these areas most likely next to each other but not overlapping. This option provides for greater flexibility for cooperative management arrangements and the ability to rationalise existing OCS fisheries arrangements.
- 2.20 Australia's fishing industry will benefit from the amendments to OCS fisheries arrangements as they will provide for better and more flexible management of Australia's important fisheries resources. These changes are essential to ensure that our marine resources are managed in the most efficient and effective manner possible.

## **Financial Impact Statement**

The Bill is not intended to have any financial impact on the fishing industry or AFMA. The only cost to the Australian Government associated with the legislative amendments is the usual costs of developing and implementing the legislation.

## 2 NOTES ON CLAUSES

### *Clause 1: Short title*

- 2.1 Clause 1 is a formal provision specifying the short title of the Act. The Act will be called the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2005*.

### *Clause 2: Commencement*

- 2.2 Clause 2 provides that this Act will commence on the day on which the Act receives the Royal Assent.

### *Clause 3: Schedule(s)*

- 2.3 Clause 3 provides that the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991* are amended or repealed as set out in the Items in Schedule 1 and 2 of the Bill.

## **Schedule 1: Objectives**

### ***Fisheries Administration Act 1991***

#### *Item 1: Subsection 4(1)*

- 2.4 Item 1 inserts a definition of the ‘principles of ecologically sustainable development’ which is consistent with the definition of ecologically sustainable development (ESD) in section 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- 2.5 This definition of ESD is referenced to the definition of ESD in section 6A of the *Fisheries Administration Act 1991*, which is inserted by item 4.
- 2.6 In administering the *Fisheries Administration Act 1991*, the Australian Fisheries Management Authority (AFMA) must pursue ESD. In the absence of an explicit articulation of the principles of ESD, current case law requires the ESD objective to be interpreted quite narrowly. The amendment will provide AFMA with guidance on how its decisions relating to the management of Commonwealth fisheries must attempt to balance the “triple bottom line” of economic, environmental and social outcomes for fisheries

#### *Item 2: Paragraph 6(b)*

- 2.7 This item omits ‘and the exercise of the precautionary principle’ from paragraph 6(b), and substitutes it with ‘which include the exercise of the precautionary principle’.

- 2.8 This slight change has been made because the principles of ESD that is being inserted into the legislation virtually replicates the meaning of the precautionary principle, as defined in the Fisheries legislation.
- 2.9 The change ensures that no one interprets the insertion of the principles of ESD as giving more or less emphasis to the precautionary principle than is currently required under the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991*.

*Item 3: Paragraph 6(c)*

- 2.10 Item 3 repeals the current definition of the ‘economic efficiency’ objective in paragraph 6(c) the *Fisheries Administration Act 1991*. It then substitutes a new definition of the ‘economic efficiency’ objective, which is expressed as ‘maximising the net economic returns to the Australian community from the management of Australian fisheries. The economic efficiency objective encourages AFMA to make decisions that will improve the net economic return to the Australian community from allowing private access to a public resource.
- 2.11 In the Government’s view, the new definition is entirely consistent with previous court decisions of the meaning of economic efficiency and simply restates the objective in more simple terms. Beyond clarifying the issue the amendment is not expected to have any impact on how the Australian fisheries are managed.

*Item 4: After section 6*

- 2.12 Item 4 inserts the definition of the principles of ESD. This definition of ESD is consistent with the definition in the EPBC Act.

***Fisheries Management Act 1991***

*Item 5: Paragraph 3(1)(b))*

- 2.13 This item omits ‘and the exercise of the precautionary principle’ from paragraph 3(1)(b), and substitutes it with ‘which include the exercise of the precautionary principle’.
- 2.14 The inclusion of reference to the precautionary principle in the objectives of the *Fisheries Management Act 1991* does not give more weight to the precautionary principle than the other objectives of ESD.

*Item 6: Paragraph 3(1)(c)*

- 2.15 Item 2 repeals the current definition of ‘economic efficiency’ in paragraph 3(1)(c) the *Fisheries Management Act 1991*. It then substitutes a new definition of ‘economic efficiency’ which is expressed as ‘maximising the net economic returns to the Australian community from the management of Australian fisheries. The economic efficiency objective encourages AFMA to make

decisions that will improve the net economic return to the Australian community from allowing private access to a public resource.

- 2.16 In the Government's view, the new definition is entirely consistent with previous court decisions of the meaning of economic efficiency and simply restates the objective in more simple terms. Beyond clarifying the issue the amendment is not expected to have any impact on how the Australian fisheries are managed.

*Item 7: After section 3*

- 2.17 This Item inserts a definition of the 'principles of ecologically sustainable development' after section 3 of the *Fisheries Management Act 1991* which is consistent with the definition of ecologically sustainable development (ESD) in section 3A of the *Environment Protection and Biodiversity Conservation Act 1999*.

- 2.18 The inclusion of the definition of ecologically sustainable development after section 3 in the *Fisheries Administration Act 1991* provides the Australian Fisheries Management Authority (AFMA) with additional guidance on how its decisions must attempt to balance the 'triple bottom line' of economic, environmental and social outcomes.

- 2.19 The inclusion of two references to the precautionary principle in the objectives of the *Fisheries Management Act 1991* does not give more weight to the precautionary principle than other principles of ESD.

*Item 8: Subsection 4(1)*

- 2.20 Item 8 inserts the definition of the principles of ecologically sustainable development (ESD) in subsection 4(1) of the *Fisheries Management Act 1991*. This definition of ESD is entirely consistent and cross referenced with the definition of ESD in section 3A.

- 2.21 The inclusion of the definition of ecologically sustainable development after section 3 in the *Fisheries Administration Act 1991* provides the Australian Fisheries Management Authority (AFMA) with additional guidance on how its decisions must attempt to balance the 'triple bottom line' of economic, environmental and social outcomes.

## **Schedule 2: Amendments**

### ***Fisheries Administration Act 1991***

*Item 1: At the end of section 4*

- 2.22 This item inserts a new subsection (3) in section 4 of the FAA.

- 2.23 This is a consequential amendment to the FAA, as the Bill creates a new power to vary OCS fisheries arrangements. The new subsection ensures that the FAA



recognises that an OCS fisheries arrangement established under Division 3 of Part 5 of the FMA can be varied. It also ensures that any reference in the FAA to the arrangement recognises that the arrangement has been varied.

*Item 2: Subsection 91(5)*

- 2.24 Item 2 amends subsection 91(5) of the FAA to insert the concept of “part of a fishery” in relation to OCS fisheries arrangements. The new subsection will ensure that the Commonwealth’s management powers will still apply, even if they relate to only part of a fishery. Currently, the arrangements can relate to only an entire fishery.
- 2.25 The Bill inserts an option in the FMA for more than one law to be applied in a fishery under a single OCS by identifying the part of the fishery to which each law must apply. This option provides for greater flexibility in establishing cooperative management arrangements and the ability to rationalise existing OCS fisheries arrangements. In doing so, the concept of “part of a fishery” is created and must be recognised in the FAA.

***Fisheries Management Act 1991***

*Item 3: At the end of section 4*

- 2.26 This item adds a new subsection (8) in section 4 of the FMA. It clarifies that when an OCS fisheries arrangement is varied, any reference in the FMA to the arrangement recognises that the arrangement has been varied.

*Item 4: Subsection 45(1)*

- 2.27 This item amends subsection 45(1) to allow for the concept of “part of a fishery” to be included in the Joint Authority management arrangements under Commonwealth law.
- 2.28 This is a consequential amendment as the Bill amends the FMA to allow more than one law to be applied in a fishery under a single OCS by identifying the part of the fishery which each law is to apply. In doing so, the concept of “part of a fishery” is created and is new to the FMA, so must be recognised. Multi-jurisdictional arrangements are desirable, as they can provide for cohesive and coordinated management of fisheries across a number of jurisdictions. This will work in practice by defining the areas to which each law will apply, with these areas most likely flanking, but not overlapping, each other.

*Item 5: Subsection 60(2)*

- 2.29 This item is consequential amendment to take into consideration the inclusion of the concept of “part of a fishery” into the FMA.
- 2.30 This amendment will ensure that a Minister acting on behalf of the Commonwealth Minister will still have the same powers of authority over the

fishery even if those powers relate to only part of a fishery under Commonwealth law.

*Item 6: Subsections 71(2) and (3)*

- 2.31 Item 6 inserts two new options for OCS fisheries arrangements into the FMA.
- 2.32 Currently under subsection 71(2) of the FMA, a fishery can only be managed in accordance with the law of the Commonwealth *or* the law of the State. The addition of subsection (c) allows for a fishery to be managed in accordance with the law of the Commonwealth *and* the law of the State.
- 2.33 This amendment allows for multi-jurisdictional arrangements which can be more desirable in some circumstances as they can provide for the cohesive and coordinated management of fisheries in which both the Commonwealth and State have an interest.
- 2.34 Similarly, in the current legislation under subsection 71(3), an OCS fisheries arrangement involving two or more States can only be managed in accordance with the law of the Commonwealth. The amendment will allow for a fishery involving two or more States to be managed in accordance with the law of the Commonwealth *and* the law of one or more particular States that are parties to the arrangements.
- 2.35 The inclusion of these two new OCS fisheries arrangements will provide greater flexibility in establishing cooperative management arrangements and the ability to rationalise existing OCS fisheries arrangements.
- 2.36 Item 6 also inserts subsections (4) and (5). Subsection (4) clarifies that when an arrangement provides for the fishery to be managed by more than one jurisdiction, the geographical areas for which each jurisdiction has management responsibility must be identified. The intention of this amendment is to ensure that laws do not overlap each other thereby causing jurisdictional inconsistencies and potential conflicts.
- 2.37 The addition of subsection (5) clarifies that when a fishery, or part of a fishery, is to be managed in accordance with the law of a State, the arrangement may, if required by the Commonwealth, provide for giving effect to Australia's obligations under international law (including international agreements).
- 2.38 This intention of this provision is to act as a "trigger". It draws attention to the Commonwealth's existing international obligations that need to be considered when creating or varying an OCS fisheries arrangement and any corresponding measures the Commonwealth may need to impose.
- 2.39 This provision is not imposing a new obligation on the States/NT, it is merely intended ensure that any OCS fisheries arrangements or variations which the Australian Government agrees are done so with regard to the Commonwealth's international obligations. This is because, while passing jurisdiction to the State

for a particular fishery, the Commonwealth may still have international responsibility in relation to species contained in the area of the fishery.

- 2.40 For clarification purposes, the OCS fisheries arrangements referred to in section 71 are not legislative instruments for the purposes of the *Legislative Instruments Act 2003 (the LIA)*. These arrangements apply the law rather than determining it or altering its content. The purpose of an arrangement is to state which law applies, rather than to determine what the law is.

*Item 7: Section 72*

- 2.41 This item inserts a (1) into section 72 for the purposes of inserting a new subsection 2.

*Item 8: At the end of section 72*

- 2.42 Item 8 inserts a new subsection into section 72.
- 2.43 The addition of subsection (2) clarifies that when a fishery, or part of a fishery, is to be managed in accordance with the law of a State, the arrangement may, if required by the Commonwealth, provide for giving effect to Australia's obligations under international law (including international agreements).
- 2.44 This intention of this provision is to act as a "trigger". It draws attention to the Commonwealth's existing international obligations that need to be considered when creating or varying an OCS fisheries arrangement and any corresponding measures the Commonwealth may need to impose.
- 2.45 This provision is not imposing a new obligation on the States/NT, it is merely intended ensure that arrangements which the Australian Government agrees are done so with regard to the Commonwealth's international obligations. This is because, while passing jurisdiction to the State for a particular fishery, the Commonwealth may still have international responsibility in relation to species contained in the area of the fishery.

*Item 9: Subsection 74(1)*

- 2.46 This item repeals existing subsection 74(1) and substitutes with a new subsection which allows Commonwealth Ministers and State/NT Ministers, rather than the Governor-General and State/NT Governors, to create OCS fisheries arrangements.
- 2.47 Ministers currently approve all OCS arrangements before seeking further approval from the Governor-General through Executive Council, with State/NT Governor/s applying similar State/NT processes. This procedure is essentially a formality and creates an additional administrative step.
- 2.48 This amendment will provide a more flexible process for creating OCS fisheries arrangements. Further, simplifying the administrative process will help ensure

effective management regimes that reflect contemporary fisheries management issues are implemented in a timely and efficient manner.

*Item 10: At the end of section 74*

- 2.49 This item inserts a new subsection in section 74 to clarify that the instruments referred to in section 74 are not legislative instruments. The instrument referred to in section 74 is to allow the Commonwealth Minister to issue the notice. It does not itself determine the law or vary the content of the law, and does not affect any privileges, interests, obligations or rights within the meaning of section 5 of the LIA.

*Item 11: After section 74*

- 2.50 This item inserts a new subsection (section 74A) into section 74 of the FMA. This new section will enable existing and future OCS fisheries arrangements to be varied by the Commonwealth Minister and appropriate State/NT Minister/s.
- 2.51 Currently, the FMA does not provide a legislative power to vary OCS fisheries arrangements. To vary an arrangement, to correct any errors or ambiguities or implement new policy, the original instrument must be terminated and an entirely new agreement created. This process impacts management plans, permits and other instruments established under an OCS arrangements and is time and resource intensive. The addition of section 74A will provide Commonwealth a broad, express power in the FMA to vary existing and future OCS fisheries arrangements.
- 2.52 The ability to amend OCS is critical to ensure that fisheries arrangements are current, accurate and in line with developments in fisheries management. It will also provide opportunities to better align jurisdictional arrangements with natural boundaries of fisheries and ensure improved management arrangements are quickly implemented.
- 2.53 For clarification purposes, subsection 5 of section 74A clarifies that as arrangements under sections 61, 71 and 72 are not legislative instruments for the purposes of the LIA, the instrument by which these arrangements are varied are therefore not legislative instruments for the purposes of the LIA. The instrument referred to in section 74A is to allow the Minister to issue the notice. It does not itself determine the law or vary the content of the law, and does not affect any privileges, interests, obligations or rights within the meaning of section 5 of the LIA.

*Item 12: Subsection 75(1)*

- 2.54 Item 12 amends subsection 75(1) to confer powers to terminate OCS fisheries arrangements on the Commonwealth and State/NT Ministers as opposed to the Governor-General and State/NT Governor/s. This amendment is in line with the amendment in section 74.

2.55 For clarification purposes, a note has been added that as the OCS fisheries arrangements under sections 61, 71 and 72 are not legislative instruments for the purposes of the LIA, the instrument by which these arrangements are terminated is not a legislative instrument for the purposes of the LIA.

*Item 13: Paragraph 75(3)(a)*

2.56 This item removes the reference to the Governor-General and substitutes it with “Commonwealth Minister” to ensure consistency with the amendments in section 74 and the new section 74A.

*Item 14: Paragraph 75(3)(b)*

2.57 This item removes the reference to the Governor of the State and substitutes it with “appropriate Minister of the State” to ensure consistency with the amendments in section 74, section 74A and section 75(1)

*Item 15: At the end of section 75*

2.58 This item inserts a new subsection in section 75 to clarify that the instruments referred to in section 75 are not legislative instruments. The instrument referred to in section 75 is to allow the Minister to issue the notice. It does not itself determine the law or vary the content of the law, and does not affect any privileges, interests, obligations or rights within the meaning of section 5 of the LIA.

*Item 16: Section 76*

2.59 Item 16 amends section 76 to cause the existing paragraph to become subsection (1) for the purposes of item 17.

*Item 17: At the end of section 76*

2.60 Item 17 adds a new subsection into section 76 of the FMA.

2.61 This amendment clarifies that when part of a fishery is to be managed by the Commonwealth and it is identified to be partly in the coastal waters of the State, then those coastal waters are to be included in the Australian Fisheries Zone for the purposes of the FMA.

2.62 This is a consequential amendment to the FMA to recognise the new concept of “part of a fishery.”

*Item 18: Section 77*

2.63 Item 18 repeals the existing provision and replaces it with a provision that includes the new concept of “part of a fishery.” This ensures that when part of a

particular fishery is to be managed in accordance with the law of the State, it is clear that the FMA does not apply to that fishery, except in relation to foreign matters such as foreign boats, persons on foreign boats and operations on and from foreign boats.

*Item 19: Section 78*

2.64 This item inserts a (1) into section 78 for the purposes of inserting a new subsection into the paragraph.

*Item 20: At the end of section 78*

2.65 Item 20 inserts a new subsection in section 78 of the FMA.

2.66 This item ensures that where the Commonwealth has management responsibility for part of a fishery, AFMA has the same powers in relation to the part of the fishery as it would have if the part of the fishery were under the management of AFMA.

2.67 The amendment also ensures that the reference to the Minister in section 18 and section 20, in relation to part of the fishery, are references to the Joint Authority.

2.68 This is a consequential amendment to the FMA to recognise the new concept of “part of a fishery.”

*Item 21: Section 163*

2.69 Item 21 amends section 163 by including reference to section 74, 74A and 75. This amendment ensures that the new Ministerial powers to create, vary and terminate OCS fisheries arrangements provided by the Bill cannot be delegated to any of the listed persons in section 163.

*Item 22: Savings and application provision*

2.70 Item 22 clarifies that existing OCS fisheries arrangements will continue after the commencement of the Bill. This amendment also clarifies that existing OCS fisheries arrangements will be able to be varied or terminated in the same way as an OCS fisheries arrangement made under the new amendments to the FMA.

2.71 This provision also deals with the staggered implementation of the new OCS fisheries arrangements. At present, the states/NT have complementary legislation that reflect the OCS fisheries arrangements provisions in the FMA. If the new provisions were to be implemented immediately it would cause inconsistencies between the Commonwealth and State/NT legislation.

2.72 The intention of this provision is to permit the amendments in Schedule 2 to apply to a particular State/NT once that State/NT has enacted the necessary legislation, rather than delay the application of the amendments until all the States/NT have enacted their legislation.

- 2.73 This is considered to be a more efficient and effective means of implementing the new OCS fisheries arrangements compared with delaying the implementation of the Bill until all States/NT have amended their legislation.
- 2.74 This provision will allow for the option of new cooperative fisheries arrangements to be considered by the States as soon as they amend their respective legislation.
- 2.75 For clarification purposes, subsections (6) and (7) clarify that the declaration and notice referred to in the savings and application provision are not legislative instruments for the purposes of the LIA.
- 2.76 The effect of the declaration is to be merely to allow the Minister to issue the notice. It does not itself determine the law or vary the content of the law, and does not affect any privileges, interests, obligations or rights within the meaning of section 5 of the LIA.