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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FISHERIES LEGISLATION AMENDMENT
1 BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Fisheries, Forestry and Conservation,

1.1.1 CONTENTS

General Outline.....1
Financial Impact Statement.....2
Notes on Clauses.....2

FISHERIES LEGISLATION AMENDMENT BILL 2007

GENERAL OUTLINE

1.2

The Bill will amend the *Fisheries Management Act 1991*(FMA), the *Fisheries Administration Act 1991* (FAA), the *Torres Strait Fisheries Act 1984* (TSFA) and the *Surveillance Devices Act 2004* (SDA).

The Bill primarily focuses on amending the TSFA to ensure that Torres Strait fisheries can be managed consistent with contemporary Australian Government fisheries policy, to better position Australia to meet its rights and obligations under the Torres Strait Treaty with Papua New Guinea (the Treaty) and to assist resolving the conflict between Torres Strait Islanders and non-indigenous commercial fishers. The key amendments to the TSFA are to:

- Streamline delegation powers of the Minister and the Torres Strait Protected Zone Joint Authority;
- improve the management of Australia's rights and obligations under the Treaty;
- facilitate the introduction of output controls and better fisheries management practices;
- improve operational and administrative effectiveness;
- improve consistency with other legislative regimes; and
- bolster compliance and enforcement procedures.

The Bill will also introduce amendments flowing on from the successful implementation of the *Securing our Fishing Future* initiative and assist the Australian Fisheries Management Authority (AFMA) to implement the Ministerial Direction made in November 2005 under section 91 of the FAA. This will include measures to enhance the monitoring of fishing activity so that fisheries can be managed more sustainably and the introduction of further measures to deter illegal, unreported and unregulated fishing. Specifically, these amendments will:

- clarify the role of the Australian Fisheries Management Authority (AFMA) in the management of the Torres Strait fisheries
- clarify AFMA's functions regarding the placement of observers on both Australian and foreign commercial fishing boats;
- widen AFMA's functions to enable it to collect information in addition to that required for the management of fisheries and as an adjunct to AFMA's vessel monitoring systems, observer and compliance enforcement activities. This will facilitate information sharing with other agencies, investigation of serious crime, border control and the management of marine resources;
- strengthen forfeiture provisions to make it more difficult for foreign fishing boats to profit from illegally fishing in the Australian Fishing Zone (AFZ); and
- refine foreign fishing offences to facilitate the enforcement of these provisions.

Finally, the Bill will facilitate the transition of AFMA to a commission by providing the Minister with a power to temporarily appoint AFMA directors without running a selection process.

The Fisheries Levy Amendment Bill 2007 (concurrently before Parliament) contains minor amendments to the *Fisheries Levy Act 1984*, consequential to this Bill, to ensure that levies can be collected in Torres Strait fisheries under new arrangements. As levies are a form of taxation, these amendments appear in a separate bill as required by the Constitution.

1.3

1.4 FINANCIAL IMPACT STATEMENT

The amendments are expected to involve additional administrative costs to the Australian Government. Those costs relating to the Torres Strait fisheries are subject to cost-sharing arrangements with the Queensland Government. No additional costs will be imposed on the Torres Strait fishers as a result of the amendments.

There will be both some additional costs and savings to fishers in the Australian fishing industry.

- Where it is practical and cost effective to do so, AFMA recovers observer costs on a fee for service basis from individual operators. Those fishers in fisheries for which observer coverage will be introduced or increased will incur this fee. As is the current practice, the fees will be based on budgeted unit costs, for example, the budgeted cost per observer sea day.
- It is intended that, where AFMA provides information to other organisations, AFMA will charge those organisations the appropriate cost, including allocated overheads, where it is possible and cost-effective to do so. Costs recovered in this manner will be credited to the cost of the relevant activities before calculating the relevant fishing industry levies or fees. The streamlining of information sharing provisions will improve administration, reduce duplication and avoid additional costs associated with the establishment of marine parks.

1.5 NOTES ON CLAUSES

Clause 1, Short title

Clause 1 is a formal provision specifying the short title of the Act. The Act will be called the *Fisheries Legislation Amendment Act 2007*.

Clause 2, Commencement

Clause 2 provides for the Act to commence as outlined in the commencement table. The Act will commence on royal assent except for Schedules 1, 2 and 4 which commence 28 days after royal assent and Schedule 3 which commences on 12 months and one day after royal assent.

Clause 3, Schedule(s)

Clause 3 states that the FAA, the FMA, the TSFA and the SDA are amended or repealed as set out in the items in the Schedules.

Schedule 1 Fisheries Administration Act 1991

Item 1, After paragraph 7(1)(ab)

This item inserts a new paragraph clarifying AFMA's function in relation to the Torres Strait Protected Zone fisheries (Torres Strait fisheries). AFMA plays a critical role in the management of the Torres Strait fisheries under cost sharing arrangements with the Queensland Government. The TSFA provides for certain functions to be delegated to employees of AFMA. The FMA applies in all Commonwealth waters except for the Torres Strait Protected Zone and this amendment clarifies beyond doubt the existing role of AFMA to advise and assist in relation to the exercise of powers and the performance of functions under the TSFA.

Item 2, Paragraph 7(1)(ea)

This item inserts additional words into this paragraph to revise and clarify AFMA's functions in relation to the placement of persons as observers on all types of commercial Australian and foreign fishing boats. This amendment will improve AFMA's legislative basis for placement of observers to monitor fishing activities.

Item 3, Paragraph 7(1)(gb)

This item repeals the existing paragraph and inserts a new provision which clarifies and expands AFMA's functions relating to the collection of information. Previously, AFMA was only able to collect information for fisheries management purposes. This new provision will enable AFMA to be a collector of information required for purposes other than that of fisheries management. This will facilitate effective and efficient data collection, particularly for border and other general law enforcement agencies and also to support research. Regulations, as provided for in Schedule 2 Item 21, will define to whom, how and for what purposes the information can be provided. The additional information would be an adjunct to information collected from boats authorised by AFMA to engage in

fishing activities and will facilitate the investigation of serious crime, border security, fisheries and wider marine environmental monitoring and enforcement.

Item 4, Subsection 7(3) and Item 5, Paragraph 7(3)(a)

These items are technical amendments consistent with current drafting practice. They will clarify the provision relating to conditions on persons and bodies to whom information has been collected and is being disclosed. This will support the amendments contained in Item 3.

Item 6, Subsection 7 (4)

This item repeals and replaces the existing provision which provides for regulations to prescribe to whom AFMA can disclose information. This new provision expands AFMA's existing functions in this regard to include AFMA's activities under the TSFA. This will support the amendments contained in Item 3.

Item 7, After subsection 12(4)

This item inserts a new subsection and provides the Minister with a short-term power to appoint directors of AFMA for up to nine months without going through the prescribed selection and appointment processes. The existing directors' terms of appointment expire on 30 June 2008. The Government intends for AFMA to become a commission on 1 July 2008. If the establishment of a commission is delayed, a board will need to be retained beyond 30 June 2008 but appointment processes can take up to six months. The current legislation does not provide for the reappointment of directors.

Item 8, After section 93

This item inserts text to clarify the capacity for AFMA employees to accept delegations to exercise powers and functions under the TSFA. This supports the amendments contained in Item 1.

Schedule 2 Fisheries Management Act 1991

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

This item repeals the definition of an observer for the purposes of the FMA. The definition had been misleading and could be construed to imply that observers could only be placed on United States fishing boats under a treaty arrangement. In fact, AFMA places observers on foreign and Australian boats. Schedule 1 Item 2 complements this amendment by clarifying that AFMA has the function of placing persons as observers on all boats (foreign and Australian) used for commercial fishing, the detail of which is to be covered by regulations (see Schedule 2 Item 20).

Item 2, After paragraph 84(1)(ga)

This item inserts three paragraphs into the subsection which extend the powers of officers to seize fish, nets, traps or other equipment on a foreign fishing boat that has engaged in illegal foreign fishing in the AFZ. These are consequential amendments which will complement the new forfeiture provisions inserted by Items 14 and 15.

The FMA provides officers with the power to seize a boat, net, trap, other equipment or fish forfeited under automatic forfeiture provisions. The extension of officers' powers are required so that officers can seize all items forfeited to the Commonwealth and all items that are the property of the Commonwealth and all items they reasonably believe should be seized. This amendment removes the need for AFMA to determine at the time of seizure whether individual items are forfeited or are the property of the Commonwealth under the new forfeiture provisions and where and how individual fish were caught.

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

This item inserts a reference to the new paragraphs introduced at Item 2. This item is a consequential amendment, necessary due to the extension of officers' seizure powers and will provide that Subdivision C of Division 6 (which sets out the rules about things seized by officers) will apply to the new powers introduced by Item 2.

Items 4 to 7, Paragraph 100B(1)(d), before subsection 100B(2), paragraph 101AA(1)(d) and before subsection 101AA(2)

These items remove a number of words and insert a new paragraph to make one of the elements of a foreign fishing offence, namely the provision regarding the location of a foreign boat (paragraph 100B(1)(d) and 101AA(1)(d)), one of strict liability. To prove this element of the offence, the prosecution will only have to establish that fishers were in the territorial sea of Australia, not that they intended to be in such waters.

The offences were established in the *Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006*. The Commonwealth Director of Public Prosecutions has not been able to prosecute people for these offences because there have been difficulties collecting sufficient evidence to prove that the people intended to be in the territorial sea. The amendment is required to ensure that Australia can prosecute and imprison persons guilty of committing a foreign fishing offence in Australia's territorial sea. The amendments do not alter the other elements of the offence provisions, with the overall offence remaining one in which fault must be proven.

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

This item repeals the existing provision and inserts new paragraphs which extend the things over which a court may order forfeiture. The FMA provides that the court could order the forfeiture of: a boat, net, trap or equipment used in the commission of the offence; fish on board the boat at the time of the offence; and the proceeds of the sale of any such fish. This provision extends the court's powers, consistent with the automatic forfeiture powers. The insertion of these paragraphs is also necessary to clarify the items of which a court may order forfeiture and to maintain consistency with the TSFA.

In addition, this item alters the heading to section 106 by adding at the end, "of things used in certain offences". This item is a consequential technical amendment and is necessary to maintain consistency with the similar section in the automatic forfeiture subdivision.

Item 9, Subsection 106(3)

This item repeals subsection 106(3). The provision previously contained in subsection 106(3) will now be inserted in a new section 106AAB. This is a technical amendment

placing the provision within a separate section and reflecting the reordering of Subdivision A of Division 6 of Part 6.

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

This item inserts a new section which provides for the forfeiture of additional things on forfeited boats. This section broadens the court-ordered forfeiture provisions, so that a court can order the forfeiture of additional things (nets, traps, equipment or fish) on a boat that has been forfeited under the existing provisions. The court may order the forfeiture of these additional things if the boat is seized within two years after the commission of the relevant offence. The court may order the forfeiture of these additional things if owned by the person who owned the boat immediately before the relevant offence was committed. The court may order the forfeiture of these additional things if owned by the person who committed the offence or committed a secondary offence.

This provision also provides that, unless the contrary is proved, the additional things on a court ordered forfeited boat are assumed to be owned by the person who owned the boat immediately before the relevant offence was committed, or by the person who committed the offence or committed a secondary offence. In practice, the person opposing forfeiture would need to prove that any items do not fall within the new forfeiture provisions. This will prevent the costly and time-consuming process of the prosecution having to prove whether the things were used in the commission of the offence.

This item also inserts the repealed section from Item 9. This is a technical amendment placing the provision within a separate section and reflecting the reordering of Subdivision A of Division 6 of Part 6.

This item inserts another new section providing that the rights and interests of the Commonwealth are not limited. The intent of this section is to avoid any implication that the extended forfeiture provisions in Subdivision A of Division 6 of Part 6 operate as a full statement of the Commonwealth's rights or interests.

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

This item is a consequential technical amendment which renames a heading to reflect the broader nature of the forfeiture provisions inserted into the subdivision by Items 13 and 14.

Item 12, Section 106A

This is a technical amendment allowing for further subsections to be inserted at Item 13.

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

This item inserts two additional subsections at the end of section 106A. These subsections provide that, unless the contrary is proved, if a boat is forfeited to the Commonwealth because it was used in the commission of a foreign fishing offence and the boat is seized, any fish, nets, traps or equipment on the boat at the time it is seized are assumed to have been on the boat at the time of the offence or, in the alternative, to have been used in the commission of an offence. The effect is that these items will also be automatically forfeited to the Commonwealth. These amendments are consistent with those introduced at Item 10 in that the person opposing forfeiture would need to prove that any items do not fall within the new forfeiture provisions.

Item 14, After section 106A

This item inserts a new section providing for the forfeiture of additional things on seized boats. This section broadens the automatic forfeiture provisions, so that the additional things (nets, traps, equipment or fish) on a boat that have been automatically forfeited and seized by the Commonwealth, are forfeited to the Commonwealth at the time the boat is seized. These additional things will be automatically forfeited to the Commonwealth if the boat is seized within two years after the commission of the relevant offence. These additional things will also be automatically forfeited to the Commonwealth if owned by the person who owned the boat immediately before the relevant offence was committed. These additional things will also be automatically forfeited to the Commonwealth if owned by the person who committed the offence or committed a secondary offence. The provisions operate simultaneously; nothing in the subsections discussed above limits the operation of another of the provisions.

This provision also provides that, unless the contrary is proved, the additional things on an automatically forfeited and seized boat are assumed to be owned by the person who owned the boat immediately before the relevant offence was committed, or by the person who committed the offence or committed a secondary offence. This is consistent with the amendments introduced at Item 10.

This item inserts another new section. The intent of this section is to avoid any implication that the extended forfeiture provisions in Subdivision B of Division 6 of Part 6 operate as a full statement of the Commonwealth's rights or interests.

Item 15, After Subdivision B of Division 6 of Part 6

This item inserts three new sections. The first two provisions broaden the forfeiture provisions. If a boat, nets, traps and equipment are used in the commission of a foreign fishing offence, they are forfeited to the Commonwealth at that time and ownership passes to the Commonwealth. The intent of the first provision is that if fish are caught using the Commonwealth's boat and equipment, without the Commonwealth's permission, they are also automatically the property of the Commonwealth. The intent of the second provision is that if things are added, attached or placed on the Commonwealth's boat, these things are also the property of the Commonwealth. The effect will be that any fish caught and anything that becomes part of the boat between the time of the commission of the offence and the apprehension of the illegal foreign fishing boat becomes the property of the Commonwealth.

This item inserts a third section which avoids any implication that the extended forfeiture provisions in Subdivision BA of Division 6 of Part 6 operate as a full statement of the Commonwealth's rights or interests.

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

This item is a consequential technical amendment which renames a heading to reflect the broader nature of the forfeiture provisions inserted into the subdivision by Items 15 and 17.

Item 17, Section 106B

This item repeals section 106B and substitutes a new section. This item is a consequential amendment, necessary due to the extension of officers' powers outlined in Item 2.

Item 18, Subsection 106C(1)

This item repeals subsection 106C(1) and substitutes a new subsection regarding the requirements for officers to give notice of the seizure of a thing. This item is a consequential amendment required as a result of the new extended forfeiture provisions. It is necessary in order to enable officers to give notice of the seizure of a thing to the appropriate person.

This item also substitutes a new subsection 106C(1A). This item is a technical amendment, placing the repealed paragraph from the end of subsection 106C(1) within a separate subsection as a result of the insertion of the new subsection above.

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

This item inserts a new section at the end of Subdivision C of Division 6 of Part 6 dealing with evidence. This provides that, in proceedings relating to automatic forfeiture, if a person is convicted of a relevant offence in criminal proceedings the conviction is evidence, unless the contrary is proved, that the offence was committed and that the person committed the offence. The provision provides for the exceptional circumstance where the person bringing the civil proceedings has further overriding evidence to show that the offence was not committed. The effect would be that if the Commonwealth proved the commission of the foreign fishing offence in criminal proceedings and the claimant did not produce evidence to prove to the contrary in the civil proceedings, the court would find the person convicted had committed the offence.

Previously, the fact that a person had been convicted of the offence would not be sufficient to prove in civil proceedings that the offence had been committed or who had committed it. Moreover, evidence of a criminal conviction may not be admissible in civil proceedings. The intention of the provision is that it should not be necessary for the Commonwealth to reprove the commission of the offence in civil proceedings.

This item also inserts a second subsection to maintain consistency with the general principles under the *Evidence Act 1995*. This will mean that in civil proceedings relating to automatic forfeiture, evidence can be admitted that a person has been convicted of an offence, not being a conviction that has been quashed, set aside, or where a pardon has been given or a review or appeal has not been finally determined.

Item 20, After paragraph 168(2)(ha)

This item inserts a new regulation-making power into the provision to enable the details associated with placement of observers on Australian and foreign commercial fishing boats to be set in regulation. Regulations for observer placement on foreign boats outside the AFZ are addressed through section 8A of the FMA.

Item 21, At the end of subsection 168(2)

This item inserts a new regulation-making power so details regarding the collection and sharing of information may be prescribed. This will facilitate the amendments introduced by Schedule 1 Item 3. Regulations will cover the details of this collection and sharing process and will cover matters such as the information that can be collected, to whom it can be disclosed and for what purposes it can be used.

Schedule 3 Torres Strait Fisheries Act 1984

Part 1 – Amendments commencing 28 days after Royal Assent

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

This item amends the definition of an Australian boat. There are situations where a boat may be considered both an Australian boat and a Papua New Guinea (PNG) boat. For example, boats can be owned, built and operated out of Australia (consistent with the definition of an Australian boat) but hold a PNG licence. This situation can create a control problem in that boats can operate within the Torres Strait Protected Zone and officers may have difficulty determining under which flag a boat is operating. To avoid continued border control problems, this item amends the definition so that an Australian boat is a boat that is not a PNG boat (as defined elsewhere in this subsection).

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

This item removes the definition of the “Chairperson”. This is a consequential amendment due to the streamlining of delegations provisions under Item 20.

Item 3, Subsection 3(1)

This item inserts a new definition, “evidential material”. This is a consequential amendment required to support the introduction of new warrants provisions outlined at Item 194.

Item 4, Subsection 3(1)

This item inserts a new definition “executing officer”. This is a consequential amendment required to support the introduction of new warrants provisions outlined at Item 194.

Item 5, Subsection 3(1) (definition of *fishing*)

This item amends the definition of “fishing” to provide greater consistency with that contained in the FMA. The current definition of fishing is not as broad as the definition contained in the FMA. This had the potential to hamper enforcement agencies’ capacity to prosecute offences, particularly if fishers are searching for fish but have not yet taken fish on board a boat. This amendment will ensure these loopholes are closed and the scope of activity considered to be fishing is consistent with the FMA. This amendment will have the effect of broadening the reach of some offence provisions in which the word “fishing” is used (including sections 14, 16, 44, 45, 46B and 54).

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

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 7, At the end of subsection 3(1) (definition of *officer*)

This item inserts a new paragraph which provides for an officer of the Australian Customs Service, as defined by the *Customs Act 1901*, to be recognised as an officer under the TSFA. Currently, Customs officers, who play an important enforcement role in the Torres Strait Protected Zone in relation to illegal foreign fishing vessels, can only be made officers under the TSFA by a delegation from the Minister.

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

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 9, Subsection 3(1) (definition of *premises*)

This item inserts a new definition of premises to support new warrants provisions introduced at Item 194.

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

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003*. Under this legislation, fisheries management notices and regulations are required to be registered on the Federal Register of Legislative Instruments (FRLI). In order to streamline publication requirements, and given the ease of access to FRLI, it is current drafting practice to replace references to notices and gazettal with language that is consistent with these requirements. The Minister may, by policy decision, continue to use the gazettal mechanism for publishing notices, however, this instrument will only require registration on FRLI.

Item 11, Subsection 3(1) (definition of *traditional inhabitant*)

This item inserts a new paragraph to allow the definition of “traditional inhabitant” to be prescribed by regulations. A significant amount of administrative licensing policy has arisen to permit a broader range of people to qualify as traditional inhabitants than the current definition permits. This issue is important as it is the basis for qualifying to hold an indigenous (community) commercial fishing licence. These additional categories of people include former PNG nationals who obtained Australian citizenship through a Department of Immigration amnesty in 1978/1979, children of these traditional inhabitants and Aboriginal people living in the Australian coastal area adjacent to the Torres Strait on Cape York. This item provides a clearer legislative basis as the Torres Strait fisheries move to output controls to ensure that current fishers do not lose entitlements.

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

This item repeals the existing definition of “traditional inhabitant” to be replaced with the definition under Item 11.

Item 13, Subsection 3(1)

This item inserts a new definition “warrant premises” This is a consequential amendment required to support the introduction of new warrants provisions outlined at Item 194.

Items 14 - 17, Subsection 3(2) and paragraphs 3(3)(a) and (b)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as discussed at Item 10.

Item 18, Subsection 3(4)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 19, Section 8

This item inserts additional management priorities into the objectives of the TSFA to provide clearer guidance on the range of rights and obligations conferred on Australia by the Torres Strait Treaty.

Item 20, Section 9

This item substitutes the current provision dealing with delegations and inserts a new provision. The item streamlines and facilitates consistency between the Ministers and the Protected Zone Joint Authority’s (PZJA) powers of delegation under Item 176. Currently there are a number of differences between the entities to whom the Minister and the PZJA can delegate their powers and functions. For example, powers which the Minister can only delegate to the Chairman of AFMA under section 9 can be delegated by the PZJA to any AFMA officer. This item also clarifies and ensures consistency between powers that cannot be delegated by either the Minister or the PZJA, including the power to make management plans under section 15A.

Finally, this amendment will clarify to whom the Minister can delegate his or her functions and powers. The references to the Chairman of AMFA in the TSFA have been deleted as, in practice, delegations are administered by senior AFMA employees. Torres Strait fisheries are now largely administered by four agencies: the Department of Agriculture, Fisheries and Forestry; AFMA; the Queensland Department of Primary Industries and Fisheries; and the Torres Strait Regional Authority. The ability to effectively manage fisheries is hampered by existing restrictions on the entities capable of holding delegations. This amendment reflects current practice and administrative processes and will ensure that all agencies are able to effectively operate in their current roles.

Item 21, Section 10

This is a technical amendment which inserts a paragraph number to account for the new paragraphs to be inserted into this section by Item 23.

Item 22, Section 10

This item deletes text about the particulars to be held on a statutory register. A new paragraph articulating what information must be recorded on a register is provided at Item 23.

Item 23, At the end section 10

This item inserts a new paragraph which articulates the information that may be held on the statutory register of fishing interests. PZJA agencies have identified that registers, consistent with those in the FMA and the *Fisheries Act 1994* (Qld), are needed in order to properly manage an output control system in the Torres Strait fisheries. Information to be made public on such a register is to be collected consistent with Information Privacy Principle 2 (*Privacy Act 1988*).

Item 24, Subsection 12(1)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice. This item also changes the name of this section to “Issue of permits for scientific or developmental purposes” as outlined in Item 27.

Item 25, Subsection 12(1)

This item inserts a new reference to developmental permits as further defined at Item 27.

Item 26, Subsection 12(2)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 27, At the end of section 12

This item inserts new definitional information about developmental permits. The current “scientific permit” only provides for permits to be issued for scientific purposes. There are a range of developmental activities such as assessing the commercial viability of a fishery or the viability of certain fishing gear, for which it would be useful to issue “developmental permits” similar to provisions contained in the *Fisheries Act 1994* (Qld). This item expands the types of permits that may be issued under this section so that, in addition to scientific permits, permits may be issued for activities that may lead to an economic outcome.

Items 28 and 29, Subsection 14(1)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined in Item 10.

Items 30 - 34, Subsection 14(2), (2A) and (3)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined in Item 10.

Item 35, Paragraph 14(3)(a)

This item replaces the existing paragraph with a new one that allows the Minister to require the receiver of fish caught in the Torres Strait Protected Zone and the area outside but near to the Zone to furnish information. In order to effectively manage a quota system, it will be important that the Minister has the power to require reporting of harvest within

the Torres Strait Protected Zone and harvest from the “outside but near area”, managed under the TSFA. This provision will make it clear that any instruments requiring information to be furnished under this subsection will also apply to fish caught in the outside but near the area of the Torres Strait Protected Zone established under section 15 of the TSFA.

Items 36 to 54, Subsection 14(3) and (6) – (12)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined in Item 10.

Item 55, Subsection 14(12)

This is a technical amendment, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 56, Subsection 14(13)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined in Item 10.

Item 57, Subsection 14(13)

This is a technical amendment, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 58, Subsection 14(14)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as introduced at Item 10.

Item 59 and 60, Paragraph 14(14)(a) and (b)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 61, Subsection 14(14A)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as introduced at Item 10.

Items 62 and 63, Paragraph 14(14A)(a) and (b)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 64, Subsection 15A(1)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as introduced at Item 10.

Item 65, At the end of subsection 15A(2)

This item inserts a new paragraph so that a plan of management may be assessed against performance criteria and timeframes. This policy is being implemented in Commonwealth fisheries and advocated in joint authority fisheries such as the Torres Strait fisheries. The measures introduced by this item are consistent with the provisions of the FMA.

Item 66, At the end of subsection 15A(2)

This item inserts a new paragraph to ensure that objectives of a management plan are consistent with the objectives of the TSFA and with the rights and obligations conferred on Australia under the Torres Strait Treaty with PNG.

Item 67, Paragraph 15A(4)(b)

This item replaces a word with a new phrase so that the fishing capacity of a specific fishery can be determined on a periodic (usually annual) basis. This will ensure that this provision facilitates the setting of a total allowable catch, a prerequisite for an output control system.

This section of the TSFA did not provide a basis for fisheries managers to establish an output control (quota) system under plans of management. This is the first in a series of amendments to this section that will articulate a process for determining the fishing capacity for fishers (measured in either catch or effort) and how part or all of that capacity can be allocated in units.

Item 68, Subsection 15A(5)

This is a technical amendment consistent with current drafting practice.

Item 69, Subsection 15A(5)

This item will delete the existing matters to be included in a plan of management and replaces them with the full suite of management tools available under the TSFA. This amendment will provide for a management plan to govern how instruments made under the referenced sections are to be used in relation to the operation of a relevant fishery.

Item 70, Subsection 15A(6)

This item is a technical amendment consistent with current drafting practice

Item 71, Paragraph 15A(6)(a)

This item inserts the words “or a part of the fishing capacity,” to this paragraph so that, if necessary, a part of the total fishing capacity of a fishery can be allocated to, for example, the commercial fishing sector. This will facilitate the introduction of output controls under plans of management.

Item 72, Paragraph 15A(6)(b)

This item inserts the words “holders of licences under section 19 or other” to this paragraph. This ensures that units of fishing capacity can be allocated to entities such as the Australian Government to provide for its role, for example, in facilitating catch sharing arrangements with PNG under the Torres Strait Treaty.

Item 73, After paragraph 15A(6)(g)

This item inserts a new paragraph which allows for the translation of units of fishing capacity into a catch or use entitlement in the context of the periodically determined fishing capacity for the fishery. For example, if the total fishing capacity for a fishery is 100 tonnes, and 80 per cent of that capacity is allocated in units, then the catch entitlement would be 80 tonnes. This could also apply at the level of individual units and would permit deduction of catch on partial use of a unit in a season.

Item 74, After paragraph 15A(6)(g)

This item inserts a new paragraph that provides for entitlements to be kept on a register as outlined at Item 23.

Item 75, Paragraph 15A(6)(h)

This item replaces references to “recording” with the word “register” so that a register of interests under the management plan may be kept, consistent with measures introduced at Item 23.

Item 76, Subsection 15A(9)

This item deletes reference to the Minister and the Chairperson. This is consistent with the changes to the powers which must only be exercised by the Minister or the PZJA under Items 30 and 173.

Item 77, Subsection 15A(9)

This item is a technical amendment which inserts the phrase “must be” to this provision and is consequential to amendments made at Item 76.

Item 78, Subsection 15A(10)

This item deletes a reference to the Minister and the Chairperson for same reasons outlined in Item 76.

Item 79, Subsection 15A(10)

This item is a technical amendment which repeals and replaces a phrase in this provision and is consequential to amendments made at Item 76.

Item 80 - 82, Subsections 15A(12), 16(1) and paragraph 16(1)(a)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 83, Paragraph 16(1)(a)

This is a technical amendment which inserts the word “or” consistent with current drafting practice.

Item 84 and 85, Paragraph 16(1)(b) and subparagraph 16(1)(b)(i)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 86, At the end of paragraph 16(1)(b)(i)

This item is a technical amendment, inserting the word “or” at the end this paragraph consistent with current drafting practice.

Item 87, At the end of paragraph 16(1)(b)(ii)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 88, At the end of paragraph 16(1)(b)(ii)

This item is a technical amendment, inserting the word “or” at the end each paragraph consistent with current drafting practice.

Item 89, At the end of paragraph 16(1)(b)(iii)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end each paragraph consistent with current drafting practice.

Item 91 At the end of subparagraph 16(1)(b)(iv)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end each paragraph in accordance with current drafting practice.

Items 93 and 94, Subparagraphs 16(1)(b)(v) and 16(1)(b)(vi)

These items are technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 96, Paragraph 16(1)(c)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the consistent with current drafting practice.

Item 98, Paragraph 16(1)(d)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 100, Paragraph 16(1)(e)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the consistent with current drafting practice.

Item 102, Paragraph 16(1)(f)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 104, Paragraph 16(1)(g)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 106, After paragraph 16(1)(h)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 108, Paragraph 16(1)(j)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 110, Paragraph 16(1)(k)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 112, Paragraph 16(1)(m)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 114, Paragraph 16(1)(n)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

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

This item is a technical amendment, inserting the word “or” at the end the paragraph consistent with current drafting practice.

Item 116 to Item 136, Paragraph 16(1)(o) and (p), Subsection 16(1A), (2), (3), (4), (5), (7), (7A), (8), (8A) and (9)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 137, Before subsection 17(1)

This item inserts a subsection which gives the Minister the power to require (by legislative instrument) that community fishers hold a master fisherman's licence so that output controls can be effectively monitored by recording catch or use against a single licence number. These amendments retain the position that community fishers do not need to comply with this requirement unless a specific declaration has been made. It is envisaged that declarations would only be made where output controls are in place.

Items 138 and 144, Subsection 17(1), (2) and (3)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 145, Subsection 19(1)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 146, Subsection 19(1)

This item deletes the text "(other than community fishing)" so that the Minister can issue a master fisherman's licence to a community fisher. This item is a consequential amendment brought about by Item 137.

Items 147 to 149, Subsections 19(2) and (3), 20(1) and 21(1)

These items are technical amendments to correct the spelling of a word consistent with current drafting practice.

Item 150, Subsection 21(1)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 151, Subsection 21(2)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 152, Subsection 24(1)

This item extends the timeframe in which licence renewal can occur. The new timeframe is consistent with the established practice of the Queensland Department of Primary Industries and Fisheries (which administers licensing on behalf of the Minister and the PZJA).

This item amends the current restrictive timeframe for licence renewal and allows licenses to be renewed from two months prior to the expiry of the licence to up until three months after the licence expires. Renewals will be made for a period from the day after expiry of the previous licence, no matter when it is renewed within the renewal period.

Item 153, After subsection 25(1)

This item inserts a new subsection to allow the Minister to authorise the temporary transfer of a licence to enable operators to maximise the economic returns from their entitlements.

Items 154 to 157, Subparagraph 26(1)(aa)(i), (ii) and paragraph 26(1)(b)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 158, Paragraphs 26(4)(a)

This item omits the text “in the case of a master fisherman’s licence,” from this paragraph so that the Minister may cancel any licence where the holder of a licence has committed an offence against the TSFA. This provides for uniform application of the cancellation provisions, a consequence of the introduction of a broader range of licence under the TSFA (see Part 2 of Schedule 3).

Item 159, Paragraph 24(4)(b)

This item is consequential to changes introduced at Item 158 to account for circumstances where the offence is committed by a master fisherman or the relevant boat and repeals the paragraph which is now redundant.

Item 160, At the end of section 26

This item introduces a new power for the Minister to cancel or suspend a licence if payment of a fee, levy or other money relating to the licence is not made or when a payment made is later dishonoured. The previous licensing requirements did not permit a licence to be issued until a licence fee and or levy has been “tendered”. Occasionally, a cheque is tendered in payment and it is subsequently not honored. This provision will ensure that incorrectly issued licences can be appropriately dealt with.

Item 161, Part V (heading)

This item replaces the name “Part V – Arrangements with Queensland” with the heading “Part V – Protected Zone Joint Authority” to reflect the current membership of the PZJA. Since the inclusion of the Chair of the Torres Strait Regional Authority as a member of the PZJA in 2002, the Part is more accurately described as relating to the “Protected Zone Joint Authority”.

Item 162 and 163, Subsection 28(1) (paragraph (a) of the definition of *Chairperson of the TSRA*) and definition of *TSRA*

These are technical amendments, amending references to the repealed *Aboriginal and Torres Strait Islander Commission Act 1989* so that the definitions in this subsection now refer to the *Aboriginal and Torres Strait Islander Act 2005*.

Item 164-168, Subsections 32(7) to (9)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 169, Before paragraph 35(1)(a)

This item inserts a new paragraph which confers the subsection 3(2) powers of the Minister to the PZJA where an arrangement with Queensland is in place under section 31 of the TSFA. The subsection 3(2) powers enable the Minister to declare the use of certain

equipment or boats to be not traditional fishing. Traditional fishing occurs primarily, but not exclusively, in the waters of Queensland and the PZJA. This amendment will ensure the PZJA also has the power to restrict gear in respect of traditional harvest, should the Commonwealth and Queensland agree that traditional fishing should be managed under the laws of the Commonwealth.

Item 170, Paragraph 35(1)(a)

This item inserts a reference to section “15A” and confers on the PZJA the powers of the Minister to determine a plan of management for a fishery in respect of PZJA fisheries. Currently only the Minister can determine a plan of management for a fishery but, under section 31 arrangements with Queensland, all commercial fisheries in the Torres Strait Protected Zone are managed by the PZJA. This item will ensure the PZJA can manage fisheries for which it has responsibility and enable the effective introduction of output controls.

Item 171, Before paragraph 35(2)(a)

This item inserts a new paragraph 35(2)(aa) and determines that should traditional fishing become subject to a section 31 arrangements, any instruments made by the Minister in relation to traditional fishing are revoked. This is consistent with the framework for other instruments made under the TSFA. This will complement the amendments introduced at Item 170.

Item 172, Paragraph 35(2)(a)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 173, Paragraph 35(2)(a)

This item inserts reference to section 15A so that a plan of management determined by the Minister in respect of a fishery ceases to apply when the fishery become a PZJA fishery under section 31 arrangements. This is consistent with the framework for other instruments made under the TSFA. This will complement the amendments introduced at Item 170.

Item 174, Subsection 36(1)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 175 Paragraph 37(b)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 176, Subsections 38(1) to (6)

This item substitutes the current provision dealing with delegations and inserts a new provision so that, for section 31 arrangements, the PZJA can delegate its functions and powers to the same persons as the Minister (as set out at Item 20). This amendment reflects current practice and administrative processes and will ensure that all agencies and

personnel can effectively undertake their current roles and responsibilities to support the day-to-day functioning of the PZJA.

Items 177 to 178, Paragraph 42(1)(b)

These are consequential amendments consistent with a new definition of “premises” at Item 194 and deletes reference to “land” which is now defined in subsection 3(1).

Item 179, Paragraph 42(1)(b)

This item deletes reference to the existing subsection (4) and replaces it with reference to the new section 43C “When Search Warrants can be issued” introduced at Item 194.

While the current TSFA warrants provisions are broadly consistent with those in the FMA, the procedures for obtaining a warrant and the procedures for entering a premises (should a warrant not be obtainable) are not well articulated in the TSFA. This item is aimed both at providing guidance to officers and improving regard for civil liberties in implementing compliance functions.

Item 180 and 181, Subparagraph 42(1)(b)(i) and (ii)

These items remove the text to “land or”, consistent with the new warrant provisions being introduced in the TSFA as outlined at Item 194.

Item 182, Paragraph 42(1)(ba)

This item repeals the existing paragraph and replaces it with a new paragraph that better outlines procedures whereby an officer may enter a vehicle (without a warrant) when the officer has reasonable grounds to believe that the vehicle may afford evidence relating to the commission of an offence. The new paragraph will specify that officers must first take reasonable steps to obtain permission from the owner of the vehicle or aircraft or obtain a warrant from a magistrate by making reference to the amended subsections (3) and (4) in Item 189.

To achieve consistency with the FMA, the application of this provision includes aircraft, an important form of transportation in the Torres Strait Protected Zone. The new paragraph also specifies that this provision applies, in addition to the TSFA, to regulations made pursuant to the TSFA.

This item is consistent with a suite of amendments to the search warrant provisions as articulated in Item 194.

Item 183, After paragraph 42(1)(ea)

This item inserts three paragraphs into the subsection which extend officers’ powers to seize fish and nets, traps or other equipment, on a foreign fishing boat engaged in illegal foreign fishing in the AFZ. These are consequential amendments in line with the new provisions introduced into the FMA in Schedule 2 Items 14 and 15. They mirror the new provisions in Schedule 2 Item 2 so that a consistent approach to forfeiture applies in all Commonwealth fisheries.

Item 184, After paragraph 42(1)(ha)

This item inserts a new paragraph, 42(1)(ha), which provides a procedure for officers to follow when requiring a boat to stop. The TSFA provides that officers can require a boat to stop but does not articulate what an officer may do should a boat refuse to stop. The new paragraph provides that, in the case of foreign and PNG boats, an officer may use reasonable force consistent with international law. The new paragraph is consistent with paragraph 84(1)(aa) of the FMA and ensures that consistent procedures for requiring a boat to stop apply for officers enforcing both the FMA and the TSFA.

Item 185 and 186, Paragraphs 42(1)(ka) and 42(1)(ka)(ii)

These items removes the reference to land or premises and replaces it with a reference to premises or vehicle or aircraft, consistent with the new search warrant provisions being introduced in the TSFA as outlined at Item 194.

Item 187, Paragraph 42(1)(oa)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 188, Subsection 42(2A)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 189, Subsections 42(3) to (6AA)

This item repeals the existing subsections relating to procedures for requesting and issuing a warrant and replaces them with new procedures for searching a vehicle or aircraft without a warrant.

When offences are detected, it is important for officers to have the capacity to search vehicles and aircraft, which can be used to transport evidence. The remote location of the Torres Strait fisheries may make obtaining a warrant from a magistrate difficult before a vehicle or aircraft has been used to transport evidence to another location.

Powers conferred on officers under these new subsections are not new under the TSFA, however, to clarify these powers and procedures for exercising the powers, these new subsections articulate provisions which are consistent with the FMA.

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

This item inserts new paragraphs (c) and (d), which allow for officers of the Australian Customs Service and an inspector appointed under the *Fisheries Act 1994* (Qld) to be prescribed persons under this section of the TSFA.

Officers from a range of agencies undertake management, surveillance and enforcement roles in the Torres Strait fisheries. Sections 42(2A), (2AA) and (2B) of the TSFA requires identity cards to be produced in certain circumstances (for example, boarding or entry upon a boat). The TSFA provides that prescribed persons in uniform (for example, police and members of the Defence Force) are not required to produce an identity card issued by the Minister where they are in uniform and carry their own identification. This amendment

will recognise Customs Officers and specified Queensland Fishing Boating Patrol officers as prescribed persons so that they do not require an identity card when in uniform and carrying their own identification.

Item 191, after Section 42

This item introduces two new sections relating to identity cards. The first (42AA) establishes that the Minister may issue an identity card and the second (42AB) establishes an offence for the failure to return an identity card and is consistent with the FMA. The TSFA currently requires that identity cards be produced in certain circumstances. These amendments clarify how the cards are issued and returned. The new offence provision is required as a deterrent to fraudulent use of a card after an officer ceases to have powers and functions under the TSFA.

Item 192, Paragraph 43(1)(b)

This item is a technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 193, Paragraph 43(1) (penalty)

This is a technical amendment, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 194, At the end of Division 1 of Part VI

This item inserts two new paragraphs that provide for the use of force by officers and for officers liability for certain actions. It further inserts a new Division (Division 1A) on search warrants. This item aims to better articulate officers' powers in the current TSFA so that they are consistent with the FMA.

Use of force

The new section 43A will clarify that an officer must not use force in the exercise of the officer's powers unless it is necessary to ensure the safety of an officer or to overcome obstruction of an officer in the exercise of his or her power.

Officer not liable to certain actions

The new section 43B clarifies that an officer is not liable to an action, suit or proceeding in the exercise of powers for a matter done or omitted to be done in good faith consistent with the TSFA or the regulations.

Warrants

Officers can obtain warrants from a Justice of the Peace authorising entry to land or premises under certain circumstances (section 42). This item will update these provisions to achieve greater consistency with Commonwealth criminal law policy. Search warrant provisions based on the provisions in the FMA are used as the basis for this new Division, with the exception of the new section 43K which is based on Office of Parliamentary Counsel drafting direction 3.5 "Offences, penalties, self incrimination, secrecy provision and enforcement powers". This will provide both greater controls and protections including in circumstances when a warrant can be issued (that is, it must be issued by a magistrate rather than a Justice of the Peace) and how a warrant is executed. It will also

assist officers operating under both the FMA and the TSFA to apply a consistent regime in all Commonwealth waters. Officers are already appropriately trained and qualified to execute FMA warrants. Consistent with the FMA, the regime includes telephone warrants to assist officers in the remote Torres Strait to operate effectively.

Item 195, Paragraph 44(1)(a)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Items 196, Paragraph 44(1)(b)

This item inserts the words “by the person” to clarify that the operation of an instrument under section 16 does not apply to a person who holds an exemption from these prohibitions (for instance a section 19 licence condition).

Item 197, Paragraph 44(1)(b)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 198, Paragraph 44(1)(c)

This item removes the text “use a boat to” so that prohibitions made under section 16 apply to activities in respect of a boat and without a boat. This is a consequential amendment in response to the new licence provisions introduced at Item 297.

Item 199, Paragraph 44(1)(c)

This item inserts the text “by the person” and follows on from the amendment made at Item 198 (consequent to the provisions introduced at Item 297).

Item 200, Paragraph 44(1)(c)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Items 201 – 206, Paragraphs 44(2) – 44(3)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 207, Paragraph 44(3AB)(b)

This item is a technical amendment to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Items 208 to 211, Subsection 44(3A) to (3B)

These items are technical amendments to correct the spelling of a word consistent with current drafting practice.

Items 212 and 213, Subsection 44(5) and paragraph 44(5)(a)

These items are technical amendments to achieve consistency with the *Legislative Instruments Act 2003* as outlined at Item 10.

Item 214, Paragraph 45(1)(a)

This item deletes the words “taking fish in the course of” which are now made redundant consequential to the new definition of fishing introduced at Item 5.

Items 215 to 217, At the end of paragraph 45(1)(a) to (c)

These are technical amendments, adding the word “or” at the end of the paragraph, consistent with current drafting practice.

Item 218, After paragraph 45(1)(c)

This item introduces a new paragraph, 45(1)(ca), which makes it an offence to be in charge of a boat in respect of which there is a declaration in force requiring that a person must hold a master fisherman’s licence for the purposes of community fishing. This item is consequential to the amendments at Item 137.

Items 219 to 221, At the end of paragraphs 45(1)(d) to (j)

These are technical amendments adding the word “or” at the end of the paragraphs, consistent with current drafting practice.

Items 222 and 223, Paragraph 45(1)(k) and Subparagraph 45(1)(m)(ii)

These items are technical amendments to correct the spelling of a word consistent with current drafting practice.

Items 224 – 233, Subparagraphs 45(2)(a)(i) to paragraph 45(4)(b)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Items 234 and 235, Sub-subparagraph 45(4A)(b)(ii)(B) and paragraph 45(4A)(c)

These items are technical amendment to correct the spelling of a word consistent with current drafting practice.

Item 236, Subsection 46(2)

This is a technical amendment, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Items 237 to 240, Before subsections 46A(2), 46B(2), 46C(2) and 46D(2)

These items insert new paragraphs which makes one of the elements of a foreign fishing offence, namely the provision regarding the location of a foreign boat

(paragraphs 46A(1)(d), 46B(1)(d)), 46C(1)(e) and 46D(1)(d))), one of strict liability. These are consequential amendments in line with the amendments to the FMA contained in Schedule 2 Items 4 to 7 and ensure a consistent approach to custodial penalties for foreign fishing offences applies in Australian territorial waters.

Item 241 – 244B, Subsection 47(1) (penalty) – paragraph 49(1)(b)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 245, Before subsection 49A(2)

This item inserts a new paragraph which makes one of the elements of a foreign fishing offence, namely the provision regarding the location of a foreign boat (paragraph 49A(1)(e)), one of strict liability, consistent with the reasons described at Items 237 to 240.

Item 246 - 252, Paragraphs 50(1)(a), Paragraph 51(3)(b)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 253, Before subsection 51A(2)

This item inserts a new paragraph which makes one of the elements of a foreign fishing offence, namely the provision regarding the location of a foreign boat (paragraph 51A(1)(d)), one of strict liability, consistent with the reasons described at Items 237 to 240.

Item 254, Subsection 52(3)

This item repeals this subsection which is made redundant by the new section inserted by Item 255. This item also changes the name of section 52 to “Forfeiture of things used in certain offences”.

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

This item inserts a new section dealing with the forfeiture of additional things on forfeited boats. These are consequential amendments in line with the new provisions introduced into the FMA in Schedule 2 Items 14 and 15 and mirror the new provision in Schedule 2 Item 2 so that a consistent approach to forfeiture applies in all Commonwealth fisheries.

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

This item repeals the heading and replaces it with “Automatic forfeiture of things” consistent with the structure of these provisions in the FMA as introduced by Schedule 2 Item 11.

Item 257, Section 52A

This item is a technical amendment which inserts a paragraph number consequential to Item 258.

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

This item inserts two additional subsections at the end of section 52A. These are consequential amendments in line with the new provisions introduced into the FMA in Schedule 2 Items 14 and 15 and mirror the new provision in Schedule 2 Item 13 so that a consistent approach to forfeiture applies in all Commonwealth fisheries.

Item 259, After section 52A

This item inserts a new section covering the forfeiture of additional things on seized boats. These are consequential amendments in line with the new provisions introduced into the FMA in Schedule 2 Items 14 and 15 so that a consistent approach to forfeiture applies in all Commonwealth fisheries.

Item 260, After Subdivision B of Division 6 of Part VI

This item inserts three new sections. These are consequential amendments in line with the new provisions introduced into the FMA in Schedule 2 Items 14 and 15 so that a consistent approach to forfeiture applies in all Commonwealth fisheries.

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

This item repeals the heading and replaces it with “Automatic forfeiture of things” consistent with the structure of these provisions in the FMA as introduced by Schedule 2 Item 16.

Item 262, Section 52B

This item repeals section 52B and substitutes a new section. This item is a consequential amendment and is consistent with the structure of these provisions in the FMA as introduced by Schedule 2 Item 17.

Item 263, Subsection 52C(1)

This item repeals subsection 52C(1) and substitutes a new subsection on the requirements for officers to give notice of the seizure of a thing. This item is a consequential amendment and is consistent with the structure of these provisions in the FMA as introduced by Schedule 2 Item 18.

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

This item inserts a new section at the end of Subdivision C of Division 3 of Part VI dealing with evidence. This item is a consequential amendment and is consistent with the structure of these provisions in the FMA as introduced by Schedule 2 Item 19.

Item 265, Subsection 54(2)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

Item 266, At the end of Part VI

This item inserts a new Division “Alternative enforcement processes” which provides power to the Minister to implement alternatives to prosecution for breaches of offences under the TSFA. This new Division provides for two mechanisms – infringement notices and a demerit points system – to give enforcement agencies effective and efficient tools to deter and handle offences committed under the TSFA.

Infringement notices

This item introduces an infringement notice scheme to be implemented by regulation. This will provide a more efficient mechanism for deterring breaches of licence conditions and arrangements under the new output control system than is currently available. While infringement notices can only impose a penalty of up to one-fifth of the maximum penalty a court could impose, issuance of infringement notices avoids the need for time consuming prosecution of offences in the court system. This provides benefits both for compliance officers and operators and is consistent with the policy position under the FMA.

Demerit points system

To discourage repeat offenders under an infringement notice scheme, this item also provides the power for the Minister to introduce a demerit point system by regulation. An infringement notice system will provide for lighter penalties than those applied under a court prosecution. The demerits points system would provide additional deterrence for habitual offenders in lieu of higher penalties per prosecuted offence.

Item 267, Subsection 55A(2)

This item omits reference to the Chairperson of AFMA in light of streamlined delegations capacities for the Minister and the Protected Zone Joint Authority introduced at Items 20 and 176.

Items 268 to 277, Subsection 57(2), (3), 58(2) and (5)

These items are technical amendments to correct the spelling of a word consistent with current drafting practice.

Items 278– 279, Paragraph 60(1)(c)

These are technical amendments, converting the existing penalty, expressed as a dollar value, into an equivalent penalty unit amount, as per the formula expressed in subsection 4B(2) of the *Crimes Act 1914*.

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

This is a technical amendment adding the word “and” at the end of each paragraph, consistent with current drafting practice.

Item 281, Paragraph 60(1)(m)

This item deletes reference to the Chairperson of AFMA and replaces it with “prescribed person or a person included in a prescribed class of persons.” This amendment is consistent with improved delegations capacities for the Minister and the PZJA as introduced at Items 20 and 176.

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

This is a technical amendment adding the word “and” at the end of each paragraph, consistent with current drafting practice.

Item 283, At the end of subsection 60(1)

This item inserts a new paragraph which provides for the making of regulations in relation to the collection and disclosure of information by persons exercising powers and functions under the TSFA. This item is consequential to amendments introduced by Schedule 1 Item 3 and ensures that the provisions of the FAA and the TSFA are consistent.

Item 284, At the end of subsection 60(3)

This item is a consequential amendment and inserts reference to the new paragraph 60(1)(q) introduced by Item 235.

Part 2 – Amendments commencing 12 months after Royal Assent

Item 285, After subsection 14(1)

A licence without a boat is a new form of licence introduced by this Bill. This amendment is consequential to Item 297 and mirrors existing powers in respect of other forms of licenses. This item inserts a new subsection (14(1A)) and provides the Minister with the power to require information be provided by holders of licenses issued without a boat.

The current licensing regime permits a person to commercially fish “in respect of a boat”. There are a number of commercial fishing activities that may be undertaken without a boat. This amendment will enable greater flexibility and a more comprehensive tool kit to ensure the total allowable catch (TAC) of a fishery is maintained under output controls, such as permitting regulation of people who hand fish from shore. The provision also enables operators to retain their valuable licences when they lose their boat through misadventure at sea. Current arrangements rely on policy decisions to address these matters on a case-by-case basis. The requirements to hold a licence would not commence for at least 12 months to permit further consultation on the form of licences that operators would hold under the new regime.

Item 286, After subsection 14(6)

This item inserts a new subsection (14(6A)) which provides the Minister with the power to prohibit commercial fishing without a boat as introduced at Item 285.

Item 287, Subsection 14(9)

This item inserts a reference to the new subsection 14(1A) as introduced at Item 285.

Item 288, Subsection 14(10)

This item is a consequential amendment, inserting a reference to the new subsection 14(6A) introduced at Item 285.

Item 289 and 290, Subsection 14(12) and (13)

These items insert a reference to the new subsection 14(1A) as introduced at Item 285.

Item 291 and 292, Subsection 14(14) and (14A)

This item is a consequential amendment, inserting a reference to the new subsection 14(6A) introduced at Item 286.

Item 293, After paragraph 16(1)(g)

This item inserts three new paragraphs which extend the provisions in subsections 16(d)-(f) so that they may applied to the new licence without a boat as introduced at Item 285.

Item 294, At the end of subsection 16(7)

This item inserts a reference to the new subsection 14(1A) as introduced at Item 285.

Item 295, After subsection 16(8)

This item inserts a new subsection to ensure that exemptions to prohibitions for commercial fishing in respect of a boat can also be applied to new licenses without a boat introduced at Item 285.

Item 296, After subsection 17(1)

This item introduces a new subsection (17(1A)) to give the Minister power to apply, by instrument, the new licences introduced at Item 285 to community fishers.

Item 297, After subsection 19(4)

This item inserts two new subsections which will allow the Minister to introduce two new licence types: a licence for a person to go fishing without a boat as introduced at Item 285; and a licence for receiving fish for commercial purposes. This item also changes the name of this section to “Commercial fishing and receiver’s licences”.

Fish Receiver’s Licence

These amendments will allow the Minister to regulate fish receivers to ensure the TAC is maintained under the output controls. This is consistent with the requirements of the FMA for output controls to function effectively. Receivers of Torres Strait fish currently comply with a voluntary system of information provision to AFMA and they were regulated, until recently, as fish buyers under Queensland law. The requirements for fish receivers to hold a licence would not commence for at least 12 months to permit further consultation on the form of licences that they would hold under this new regime.

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

This item inserts reference to the new subsection 21(4A) so that this paragraph, which requires that the Minister not grant a licence where there is a fee or levy owed, applies to the new forms of licences, introduced at Items 285 and 297.

Item 299, After subsection 21(1)

This item is consequential, introducing a new subsection (21(1A)) that mirrors provisions that apply to existing licenses in subsection 21(1) and gives the Minister power to make an entry on a licence without a boat introduced by Items 285 and 297.

Item 300, Paragraph 21(3A)(a)

This item is consequential, inserting reference to the new subsection (1A) introduced at Item 299 and mirrors provisions that the Minister shall not make an entry on a license without a boat introduced by Items 285 and 297 where a fee is payable.

Item 301, Paragraph 21(3A)(a)

This item is consequential, inserting reference so that this provision applies to the new license without a boat introduced at Items 285 and 297.

Item 302, Paragraph 21(3A)(b)

This item is consequential, inserting reference to the new subsection (1A) introduced at Item 299 and mirrors provisions that the Minister shall not make an entry on a license without a boat introduced by Items 285 and 297 where a levy is payable.

Item 303, Paragraph 21(3A)(b)

This item is consequential, inserting reference so that this provision applies to new types of license without a boat introduced at Item 285.

Item 304, Paragraph 24(2)(b)

This inserts reference to the new license without a boat introduced by Item 285 so that the same renewals provisions apply.

Items 305 and 306, Subsection 25(1)

These items delete the text “section 19 in respect of a boat”, replacing it with “subsection 19(2), (3), (4A), and (4B)” and delete a second reference “in respect of a boat” to ensure consistency in dealing with all forms of transfer of section 19 licences. These items are consequential the new forms of licensing introduced at Item 285 and 297.

Items 307 and 308, Subparagraph 26(1)(aa)(i) and (ii)

These items insert reference to the new section 14(1A), introduced by Item 285, so that this subsection, which allows the Minister to suspend a licence if the licensee fails to provide information as required or knowingly providing false information when required, applies to a licence without a boat.

Item 309, Paragraph 26(1)(b)

This item inserts reference to the new subsection 14(6A) introduced by Item 286 so that this provision, which allows the Minister to suspend a licence if a licence holder is found to be in contravention of various prohibitions, includes prohibitions made under the new subsection. This is a consequential amendment to the new license without a boat introduced by Item 285.

Item 310, Paragraph 36(5A)(b)

This item inserts a reference to the new subsection 19(4A), requiring a licence without a boat, so that this provision (that the PZJA shall not make an entry on a licence until the holder of the licence tenders the amount of the fee or levy) applies to the new form of license.

Item 311, After paragraph 42(1)(d)

This item inserts a new paragraph (42(1)(da)), and provides officers with the power to enter a premises on which fish are being kept, in accordance with the new 19(4B) fish receiver's licences introduced at Item 297. The powers provided to officers by this new paragraph are consistent with powers in the FMA.

Item 312, After paragraph 42(1)(p)

This item inserts two new paragraphs into the subsection that require a person engaged in commercial fishing with one of the new licence without a boat introduced at Item 285 to give information including his or her name and address and produce a licence and permit to an officer to make copies. These paragraphs are consistent with existing provisions affecting existing licence types at 42(j) and (n).

Item 313, After subsection 44(3A)

This item inserts a new subsection, 44(3BA) so that existing provisions, where, in addition to a penalty a court may impose an amount equivalent to any levies or fees owed against a licence, can be applied consistently to the new license without a boat introduced at Item 285.

Item 314, After paragraph 45(1)(a)

This item extends the existing offence to engage in commercial fishing, other than community fishing (on a boat), to commercial fishing without a boat and is consequential to the new licence without a boat introduced at Item 285.

Item 315, At the end of paragraph 45(1)(b)

This item inserts a new paragraph, 45(1)(ba), so that the prohibition against community fishing with the use of a boat is also applicable without a boat when an instrument is made under the new Section 17(1A) introduced at Item 296.

Item 316, Paragraph 45 (1)(e)

This item deletes the text "in respect of a boat" and replaces it with "(other than a master fisherman's licence)" so that this provision applies to all section 19 licences except for

holders of a master fisherman's licence who are exempt from this provision because a person cannot act on behalf of a master fisherman. This amendment is consequential to the new forms of licenses introduced by Items 285 and 297.

Item 317, Paragraph 45(1)(f)

This item deletes the text "in force under section 19 in respect of a boat" and replaces it with "(other than a master fisherman's licence) in force under section 19" so that this provision applies to all section 19 licences except for holders of a master fisherman's licence who are exempt from this provision because a person cannot act on behalf of a master fisherman. This amendment is consequential to the new forms of licenses introduced by Items 285 and 297.

Item 318, After subsection 45(4A)

This item inserts a new subsection, 44(4B) so that existing provisions, where, in addition to a penalty, a court may impose an amount equivalent to any levies owed against a licence, can be applied consistently to the new license without a boat introduced at Item 285.

Item 319, After section 46

This item inserts a new offence for receiving fish for commercial purposes without being a holder of a fish receiver's licence. This complements the introduction of a new licensing regime for fish receivers introduced at Item 297 to ensure effective compliance with output controls.

Item 320, After paragraph 57(2)(c)

This item introduces a new paragraph to allow the Minister to issue a certificate that states whether a person was, or was not, the holder of one of the new forms of licences made available by the new subsections 19(4A) and (4B) for the purpose of proceedings. This is consequential to the new licenses introduced at Items 285 and 297 and provides for a consistency with other forms of licenses.

Schedule 4 Surveillance Devices Act 2004

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

This item inserts a reference to section 100B of the FMA in the list of existing offences which are defined as a 'relevant offence' in the SDA. Section 100B of the FMA is a new foreign fishing offence for Australia's territorial sea carrying a custodial penalty and was introduced by the *Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006*. However, at the time of its introduction, the SDA was not amended to ensure that this new offence can be investigated and prosecuted effectively using surveillance devices. This item will ensure that information obtained from the use of a surveillance device can be used to investigate or prosecute the new offence.

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

This item removes a reference and replaces it with a reference to section 101AA of the FMA in the list of existing offences which are defined as a “relevant offence” in the SDA consistent with the amendment at Item 1.

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

This item inserts a reference to sections 46A, 46B, 46C, 46D, 49A and 51A of the TSFA to the existing list of foreign fishing offences which are defined as a “relevant offence” in the SDA consistent with the amendment at Item 1.

Item 4, Paragraph 42(5)(b)

This item inserts a reference to section 100B of the FMA to the existing list of FMA offences which are exempted in the SDA from an obligation to obtain foreign country consent to conduct surveillance of a vessel.

Item 5, Paragraph 42(5)(b)

This item inserts a reference to section 101AA of the FMA to the existing list of offences which are exempted in the SDA from an obligation to obtain foreign country consent to conduct surveillance of a vessel.

Item 6, Paragraph 42(5)(b)

This item inserts a reference to sections 46A, 46B, 46C, 46D, 49A and 51A of the TSFA to the existing list of foreign fishing offences which are exempted to conduct surveillance of a vessel.