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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fisheries Legislation Amendment Bill 2007

No. , 2007

(Agriculture, Fisheries and Forestry)

**A Bill for an Act to amend legislation about
fisheries, and for related purposes**

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1 **A Bill for an Act to amend legislation about**
2 **fisheries, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Fisheries Legislation Amendment Act*
6 2007.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

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

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Fisheries Administration Act**
3 **1991**
4

5 **1 After paragraph 7(1)(ab)**

6 Insert:

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

10 **2 Paragraph 7(1)(ea)**

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

12 **3 Paragraph 7(1)(gb)**

13 Repeal the paragraph, substitute:

14 (gaa) in addition to the collection of information in the exercise or
15 performance of its other powers and functions—to collect, as
16 authorised (within the meaning of subsection (4)),
17 information relating to the following:

- 18 (i) possible breaches of the laws of Australia or of a foreign
19 country;
20 (ii) the control and protection of Australia’s borders;
21 (iii) the administration and management of fisheries or
22 marine environments;
23 (iv) research or monitoring conducted, or proposed to be
24 conducted, into fisheries or marine environments;

25 (gb) to disclose, as authorised (within the meaning of
26 subsection (4)), information, including personal information,
27 relating to the following:

- 28 (i) possible breaches of the laws of Australia or of a foreign
29 country;
30 (ii) the control and protection of Australia’s borders;
31 (iii) the administration and management of fisheries or
32 marine environments;
33 (iv) research or monitoring conducted, or proposed to be
34 conducted, into fisheries or marine environments;

35 **4 Subsection 7(3)**

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

2 **5 Paragraph 7(3)(a)**

3 After “by the”, insert “person or”.

4 **6 Subsection 7(4)**

5 Repeal the subsection, substitute:

6 (4) Collection or disclosure of information is *authorised* for the
7 purposes of paragraph (1)(gaa) or (gb) if it is done in accordance
8 with:

9 (a) this Act, the *Fisheries Management Act 1991* or the *Torres*
10 *Strait Fisheries Act 1984*; or

11 (b) regulations made under an Act mentioned in paragraph (a).

12 **7 After subsection 12(4)**

13 Insert:

14 (4A) However, the requirements of subsection (4) do not have to be met
15 in relation to a director if the Minister appoints the director:

16 (a) in the period starting on 1 July 2008 and ending on 30 June
17 2009; and

18 (b) for a period not exceeding 9 months.

19 **8 After section 93**

20 Insert:

21 **93A Delegations under the *Torres Strait Fisheries Act 1984***

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

1
2
3

Schedule 2—Fisheries Management Act 1991

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

5 Repeal the definition.

6 **2 After paragraph 84(1)(ga)**

7 Insert:

8 (gb) seize all or any of the following that are forfeited to the
9 Commonwealth under section 106AA or that the officer has
10 reasonable grounds to believe are forfeited under that section:

11 (i) a net, trap or other equipment;

12 (ii) fish; and

13 (gc) seize any fish that are the property of the Commonwealth
14 because of the operation of section 106AC or that the officer
15 has reasonable grounds to believe are the property of the
16 Commonwealth because of the operation of that section; and

17 (gd) seize anything:

18 (i) that is on, in or attached to a boat and that forms part of
19 the boat; and

20 (ii) that is the property of the Commonwealth because of
21 the operation of section 106AD or that the officer has
22 reasonable grounds to believe is the property of the
23 Commonwealth because of the operation of that section;
24 and

25 **3 Subsection 84(1A) (at the end of the note)**

26 Add “, (gb), (gc) or (gd)”.

27 **4 Paragraph 100B(1)(d)**

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

29 **5 Before subsection 100B(2)**

30 Insert:

31 (1A) Strict liability applies to paragraph (1)(d).

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

33 **6 Paragraph 101AA(1)(d)**

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

2 **7 Before subsection 101AA(2)**

3 Insert:

4 (1A) Strict liability applies to paragraph (1)(d).

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

6 **8 Paragraphs 106(1)(a) to (c)**

7 Repeal the paragraphs, substitute:

8 (a) if a boat was used in the commission of the offence—that
9 boat; or

10 (b) a net, trap or equipment that was on board that boat at the
11 time of the commission of the offence, or that was used in the
12 commission of the offence; or

13 (c) fish on board that boat at that time or in relation to which the
14 offence was committed; or

15 (d) the proceeds of the sale of fish of the kind referred to in
16 paragraph (c).

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

19 **9 Subsection 106(3)**

20 Repeal the subsection.

21 **10 At the end of Subdivision A of Division 6 of Part 6**

22 Add:

23 **106AAA Forfeiture of additional things on forfeited boats**

24 (1) This section applies if:

25 (a) a court orders a boat to be forfeited under section 106
26 because:

27 (i) it was used in the commission of an offence (the
28 *relevant offence*) against section 13, subsection 95(5) or
29 section 105C or 105F; or

30 (ii) it is a boat in relation to which an offence (also referred
31 to as the *relevant offence*) against section 102, 103,
32 104, 105A, 105B or 105E was committed; and

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

4 *Forfeiture within 2 years*

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

8 *Things owned by the person who owned the boat*

9 (3) If the additional things are owned by the person who owned the
10 boat immediately before the relevant offence was committed, the
11 court may order the forfeiture of the additional things.

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

16 *Things owned by persons who commit offences*

17 (5) If the additional things are owned:

18 (a) by the person who committed the relevant offence; or

19 (b) by a person who committed an offence against:

20 (i) section 6 of the *Crimes Act 1914*; or

21 (ii) an ancillary offence (within the meaning of the *Criminal*
22 *Code*);

23 that relates to the relevant offence;

24 the court may order the forfeiture of the additional things.

25 (6) For the purposes of subsection (5), the additional things are taken,
26 unless the contrary is proved, to be owned:

27 (a) for the purposes of paragraph (5)(a)—by the person who
28 committed the relevant offence; and

29 (b) for the purposes of paragraph (5)(b)—by a person who
30 committed an offence against:

31 (i) section 6 of the *Crimes Act 1914*; or

32 (ii) an ancillary offence (within the meaning of the *Criminal*
33 *Code*);

34 that relates to the relevant offence.

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

3 **106AAB Forfeited things become the property of the**
4 **Commonwealth**

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

9 **106AAC Rights and interests of the Commonwealth not limited**

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

14 **11 Subdivision B of Division 6 of Part 6 (heading)**

15 Repeal the heading, substitute:

16 **Subdivision B—Automatic forfeiture of things**

17 **12 Section 106A**

18 Before “The”, insert “(1)”.

19 **13 At the end of section 106A (after the note)**

20 Add:

21 (2) If:

- 22 (a) a boat is forfeited to the Commonwealth under subsection (1)
23 because it was used in the commission of an offence; and
24 (b) the boat is seized under paragraph 84(1)(ga);
25 any nets, traps or equipment on the boat at the time it is seized are
26 taken, unless the contrary is proved:
27 (c) for the purposes of subparagraph (1)(c)(i)—to have been on
28 the boat at the time of the offence; and
29 (d) for the purposes of subparagraph (1)(c)(ii)—to have been
30 used in the commission of an offence against subsection
31 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or
32 101B.

- 1 (3) If:
2 (a) a boat is forfeited to the Commonwealth under subsection (1)
3 because it was used in the commission of an offence; and
4 (b) the boat is seized under paragraph 84(1)(ga);
5 any fish on the boat at the time it is seized are taken, unless the
6 contrary is proved:
7 (c) for the purposes of subparagraph (1)(d)(i)—to have been on
8 the boat at the time of the offence; and
9 (d) for the purposes of subparagraph (1)(d)(ii)—to have been
10 involved in the commission of an offence against subsection
11 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or
12 101B.

13 **14 After section 106A**

14 Insert:

15 **106AA Forfeiture of additional things on seized boats**

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

24 *Seizure within 2 years*

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

28 *Things owned by the person who owned the boat*

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

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

5 *Things owned by persons who commit offences*

- 6 (5) If the additional things are owned:
7 (a) by the person who committed the relevant offence; or
8 (b) by a person who committed an offence against:
9 (i) section 6 of the *Crimes Act 1914*; or
10 (ii) an ancillary offence (within the meaning of the *Criminal*
11 *Code*);
12 that relates to the relevant offence;
13 the additional things are forfeited to the Commonwealth at the time
14 the boat is seized.
- 15 (6) For the purposes of subsection (5), the additional things are taken,
16 unless the contrary is proved, to be owned:
17 (a) for the purposes of paragraph (5)(a)—by the person who
18 committed the relevant offence; and
19 (b) for the purposes of paragraph (5)(b)—by a person who
20 committed an offence against:
21 (i) section 6 of the *Crimes Act 1914*; or
22 (ii) an ancillary offence (within the meaning of the *Criminal*
23 *Code*);
24 that relates to the relevant offence.
- 25 (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the
26 operation of another subsection of this section.

27 **106AB Rights and interests of the Commonwealth not limited**

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

32 **15 After Subdivision B of Division 6 of Part 6**

33 Insert:

1 **Subdivision BA—Automatic ownership of things**

2 **106AC Fish taken with Commonwealth property**

3 If:

4 (a) a thing is forfeited to the Commonwealth under section 106
5 or 106A; and

6 (b) the thing is used for, or in the taking of, fish:

7 (i) after it is forfeited; and

8 (ii) without the written permission of the Minister for such
9 use;

10 the fish are the property of the Commonwealth.

11 **106AD Things on, in or attached to boats**

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

14 (a) the court has ordered the forfeiture of the boat under
15 section 106; or

16 (b) the boat is forfeited under section 106A;

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

19 **106AE Rights and interests of the Commonwealth not limited**

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

24 **16 Subdivision C of Division 3 of Part 6 (heading)**

25 Repeal the heading, substitute:

26 **Subdivision C—Dealing with things seized**

27 **17 Section 106B**

28 Repeal the section, substitute:

1 **106B Application of this Subdivision**

2 This Subdivision sets out rules about the following:

- 3 (a) a thing that an officer seizes under paragraph 84(1)(ga) or
4 (gb):
5 (i) because the thing is forfeited under Subdivision B; or
6 (ii) because the officer has reasonable grounds to believe
7 the thing is forfeited under Subdivision B;
8 (b) a thing that an officer seizes under paragraph 84(1)(gc) or
9 (gd):
10 (i) because the thing is the property of the Commonwealth
11 because of the operation of Subdivision BA; or
12 (ii) because the officer has reasonable grounds to believe
13 the thing is the property of the Commonwealth because
14 of the operation of Subdivision BA.

15 **18 Subsection 106C(1)**

16 Repeal the subsection, substitute:

17 *Giving notice*

- 18 (1) The officer must give written notice of the seizure of the thing:
19 (a) if the thing is, or was on, a boat, or was used in connection
20 with a boat:
21 (i) to the person who was the master of the boat
22 immediately before the seizure; or
23 (ii) to the person whom the officer has reasonable grounds
24 to believe was the master of the boat immediately before
25 the seizure; or
26 (b) in a case not covered by paragraph (a):
27 (i) to the owner of the thing; or
28 (ii) to the person who had possession, custody or control of
29 the thing immediately before it was seized.
30 (1A) However, if the officer cannot conveniently give the notice to the
31 person in person, the officer may give written notice of the seizure
32 of the thing by fixing the notice to a prominent part of the thing,
33 unless the thing is a fish.

34 **19 At the end of Subdivision C of Division 6 of Part 6**

1 Add:

2 **106HA Evidence**

3 (1) For the purposes of proceedings taken:
4 (a) to recover a thing forfeited under Subdivision B; or
5 (b) for a declaration that a thing seized under paragraph
6 84(1)(ga) or (gb) is not forfeited under Subdivision B;
7 if a person has been convicted of an offence mentioned in
8 paragraph 106A(1)(a) or (b), the person is taken, unless the
9 contrary is proved, to have committed the offence.

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

15 **20 After paragraph 168(2)(ha)**

16 Insert:

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

19 **21 At the end of subsection 168(2)**

20 Add:

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

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

1
2 **Schedule 3—Torres Strait Fisheries Act 1984**

3 **Part 1—Amendments commencing 28 days after**
4 **Royal Assent**

5 **1 Subsection 3(1) (definition of *Australian boat*)**

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

8 **2 Subsection 3(1) (definition of *Chairperson*)**

9 Repeal the definition.

10 **3 Subsection 3(1)**

11 Insert:

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

15 **4 Subsection 3(1)**

16 Insert:

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

- 18 (a) the officer named in the warrant by the magistrate who issued
19 the warrant as being responsible for executing the warrant; or
20 (b) if the officer so named does not intend to be present at the
21 execution of the warrant—another officer whose name has
22 been written in the warrant by the officer so named; or
23 (c) another officer whose name has been written in the warrant
24 by the officer last named in the warrant.

25 **5 Subsection 3(1) (definition of *fishing*)**

26 Repeal the definition, substitute:

27 *fishing* means:

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

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

10 **6 Subsection 3(1) (paragraph (a) of the definition of *officer*)**

11 Omit “authorized”, substitute “authorised”.

12 **7 Subsection 3(1) (at the end of the definition of *officer*)**

13 Add:

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

15 **8 Subsection 3(1) (definition of *Papua New Guinea licence*)**

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

17 **9 Subsection 3(1)**

18 Insert:

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

20 **10 Subsection 3(1) (definition of *traditional fishing*)**

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

22 **11 Subsection 3(1)**

23 Insert:

24 *traditional inhabitant* means:

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

29 **12 Subsection 3(1) (definition of *traditional inhabitants*)**

30 Repeal the definition.

1 **13 Subsection 3(1)**

2 Insert:

3 *warrant premises* means premises in relation to which a warrant is
4 in force.

5 **14 Subsection 3(2)**

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

8 **15 Subsection 3(2)**

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

10 **16 Paragraph 3(3)(a)**

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

13 **17 Paragraph 3(3)(b)**

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

16 **18 Subsection 3(4)**

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

18 **19 Section 8**

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

20 following management priorities:

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

- 1 prejudice the achievement of the purposes of Part 4 of the
2 Torres Strait Treaty in regard to traditional fishing;
3 (e) to manage commercial fisheries for optimum utilisation;
4 (f) to share the allowable catch of relevant Protected Zone
5 commercial fisheries with Papua New Guinea in accordance
6 with the Torres Strait Treaty;
7 (g) to have regard, in developing and implementing licensing
8 policy, to the desirability of promoting economic
9 development in the Torres Strait area and employment
10 opportunities for traditional inhabitants.

11 **20 Section 9**

12 Repeal the section, substitute:

13 **9 Delegation**

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

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

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

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

30 **21 Section 10**

31 Before “The Minister”, insert “(1)”.

32 **22 Section 10**

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

1 **23 At the end of section 10**

2 Add:

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

10 **24 Subsection 12(1)**

11 Omit “authorizing”, substitute “authorising”.

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

13 **25 Subsection 12(1)**

14 After “scientific”, insert “or developmental”.

15 **26 Subsection 12(2)**

16 Omit “authorized”, substitute “authorised”.

17 **27 At the end of section 12**

18 Add:

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

25 **28 Subsection 14(1)**

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

28 **29 Subsection 14(1)**

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

30 **30 Subsection 14(2)**

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

3 **31 Subsection 14(2)**

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

5 **32 Subsection 14(2A)**

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

8 **33 Subsection 14(2A)**

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

10 **34 Subsection 14(3)**

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

13 **35 Paragraph 14(3)(a)**

14 Repeal the paragraph, substitute:

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

17 **36 Subsection 14(3)**

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

19 **37 Subsection 14(6)**

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

21 **38 Subsection 14(6)**

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

24 **39 Subsection 14(6)**

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

26 **40 Subsection 14(7)**

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

28 **41 Subsection 14(7)**

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

3 **42 Subsection 14(7)**

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

5 **43 Subsection 14(8)**

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

7 **44 Subsection 14(8)**

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

10 **45 Subsection 14(8)**

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

12 **46 Subsection 14(9)**

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

14 **47 Subsection 14(9)**

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

18 **48 Subsection 14(10)**

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

20 **49 Subsection 14(10)**

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

24 **50 Subsection 14(10)**

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

27 **51 Subsection 14(11)**

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

1 **52 Subsection 14(11)**

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

3 **53 Subsection 14(12)**

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

5 **54 Subsection 14(12)**

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

7 **55 Subsection 14(12)**

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

9 **56 Subsection 14(13)**

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

11 **57 Subsection 14(13)**

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

13 **58 Subsection 14(14)**

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

15 **59 Paragraph 14(14)(a)**

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

17 **60 Paragraph 14(14)(b)**

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

19 **61 Subsection 14(14A)**

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

21 **62 Paragraph 14(14A)(a)**

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

23 **63 Paragraph 14(14A)(b)**

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

25 **64 Subsection 15A(1)**

26 Omit “writing”, substitute “legislative instrument”.

1 **65 At the end of subsection 15A(2)**

2 Add:

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

6 **66 After subsection 15A(2)**

7 Insert:

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

11 **67 Paragraph 15A(4)(b)**

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

14 **68 Subsection 15A(5)**

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

17 **69 Paragraphs 15A(5)(a) to (c)**

18 Repeal the paragraphs, substitute:

- 19 (a) the granting of permits under section 12;
20 (b) the conditions to which permits granted under section 12 are
21 to be subject;
22 (c) the duration, renewal, variation and revocation of permits
23 granted under section 12;
24 (d) the making of instruments under section 14;
25 (e) the making of instruments under section 16;
26 (f) the making of declarations under section 17;
27 (g) the granting of licences under section 19;
28 (h) the conditions to which licences granted under section 19 are
29 to be subject;
30 (i) the duration, transfer, renewal and variation of licences
31 granted under section 19;
32 (j) the making of Treaty endorsements under section 20;
33 (k) the conditions to which Treaty endorsements made under
34 section 20 are to be subject;
-

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

7 **70 Subsection 15A(6)**

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

11 **71 Paragraph 15A(6)(a)**

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

13 **72 Paragraph 15A(6)(b)**

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

16 **73 After paragraph 15A(6)(g)**

17 Insert:

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

20 **74 Paragraph 15A(6)(h)**

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

22 **75 After paragraph 15A(6)(h)**

23 Insert:

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

27 **76 Subsection 15A(9)**

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

31 **77 Subsection 15A(9)**

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

2 **78 Subsection 15A(10)**

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

6 **79 Subsection 15A(10)**

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

8 **80 Subsection 15A(12)**

9 Repeal the subsection.

10 **81 Subsection 16(1)**

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

13 **82 Paragraph 16(1)(a)**

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

15 **83 At the end of paragraph 16(1)(a)**

16 Add “or”.

17 **84 Paragraph 16(1)(b)**

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

19 **85 Subparagraph 16(1)(b)(i)**

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

21 **86 At the end of subparagraph 16(1)(b)(i)**

22 Add “or”.

23 **87 Subparagraph 16(1)(b)(ii)**

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

25 **88 At the end of subparagraph 16(1)(b)(ii)**

26 Add “or”.

27 **89 Subparagraph 16(1)(b)(iii)**

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

2 **90 At the end of subparagraph 16(1)(b)(iii)**

3 Add “or”.

4 **91 Subparagraph 16(1)(b)(iv)**

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

6 **92 At the end of subparagraph 16(1)(b)(iv)**

7 Add “or”.

8 **93 Subparagraph 16(1)(b)(v)**

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

10 **94 Subparagraph 16(1)(b)(vi)**

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

12 **95 At the end of paragraph 16(1)(b)**

13 Add “or”.

14 **96 Paragraph 16(1)(c)**

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

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

17 Add “or”.

18 **98 Paragraph 16(1)(d)**

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

20 **99 At the end of paragraph 16(1)(d)**

21 Add “or”.

22 **100 Paragraph 16(1)(e)**

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

24 **101 At the end of paragraph 16(1)(e)**

25 Add “or”.

26 **102 Paragraph 16(1)(f)**

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

2 **103 At the end of paragraph 16(1)(f)**

3 Add “or”.

4 **104 Paragraph 16(1)(g)**

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

6 **105 At the end of paragraph 16(1)(g)**

7 Add “or”.

8 **106 Paragraph 16(1)(h)**

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

10 **107 At the end of paragraph 16(1)(h)**

11 Add “or”.

12 **108 Paragraph 16(1)(j)**

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

14 **109 At the end of paragraph 16(1)(j)**

15 Add “or”.

16 **110 Paragraph 16(1)(k)**

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

18 **111 At the end of paragraph 16(1)(k)**

19 Add “or”.

20 **112 Paragraph 16(1)(m)**

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

22 **113 At the end of paragraph 16(1)(m)**

23 Add “or”.

24 **114 Paragraph 16(1)(n)**

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

26 **115 At the end of paragraph 16(1)(n)**

1 Add “or”.

2 **116 Paragraphs 16(1)(o) and (p)**

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

4 **117 Subsection 16(1A)**

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

6 **118 Paragraphs 16(1A)(b) to (d)**

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

8 **119 Subsection 16(2)**

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

10 **120 Paragraph 16(2)(a)**

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

12 **121 Subsection 16(3)**

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

14 **122 Paragraphs 16(3)(a) and (b)**

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

16 **123 Subsection 16(4)**

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

18 **124 Subsection 16(4)**

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

21 **125 Subsection 16(4)**

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

23 **126 Subsection 16(5)**

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

25 **127 Paragraph 16(5)(a)**

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

1 **128 Subsection 16(7)**

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

3 **129 Subsection 16(7)**

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

5 **130 Subsection 16(7A)**

6 Repeal the subsection, substitute:

7 (7A) Where:

8 (a) an instrument (the *subsequent instrument*) under
9 subsection (1) revokes a previous instrument under that
10 subsection; and

11 (b) the subsequent instrument provides that the activities to
12 which a prohibition contained in the subsequent instrument
13 relates are activities in respect of which an entry may be
14 made under subsection 21(1);

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

22 **131 Paragraph 16(8)(a)**

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

24 **132 Paragraph 16(8)(a)**

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

26 **133 Subsection 16(8A)**

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

28 **134 Subsection 16(8A)**

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

30 **135 Subsection 16(9)**

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

1 **136 Subsection 16(9)**

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

3 **137 Before subsection 17(1)**

4 Insert:

5 (1AA) The Minister may, by legislative instrument, declare that a person
6 must hold a master fisherman’s licence if:

7 (a) the person is in charge of a boat, or of a boat included in a
8 class of boats specified in the instrument; and

9 (b) the boat is being used for the purpose of the taking, in the
10 course of community fishing, of fish, or fish included in a
11 class of fish specified in the instrument, from any area of
12 Australian jurisdiction or from an area of Australian
13 jurisdiction specified in the instrument.

14 **138 Subsection 17(1)**

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

17 **139 Subsection 17(1)**

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

19 **140 Subsection 17(2)**

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

22 **141 Subsection 17(2)**

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

24 **142 Subsection 17(2)**

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

27 **143 Subsection 17(3)**

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

30 **144 Subsection 17(3)**

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

2 **145 Subsection 19(1)**

3 Omit “authorizing”, substitute “authorising”.

4 **146 Subsection 19(1)**

5 Omit “(other than community fishing)”.

6 **147 Subsections 19(2) and (3)**

7 Omit “authorizing”, substitute “authorising”.

8 **148 Subsection 20(1)**

9 Omit “authorize”, substitute “authorise”.

10 **149 Subsection 21(1)**

11 Omit “authorize”, substitute “authorise”.

12 **150 Subsection 21(1)**

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

14 **151 Subsection 21(2)**

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

16 **152 Subsection 24(1)**

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

19 **153 After subsection 25(1)**

20 Insert:

21 (1A) The Minister may, under subsection (1), make a temporary transfer
22 of a licence.

23 **154 Subparagraph 26(1)(aa)(i)**

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

25 **155 Subparagraph 26(1)(aa)(i)**

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

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

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

3 **157 Paragraph 26(1)(b)**

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

5 **158 Paragraph 26(4)(a)**

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

7 **159 Paragraph 26(4)(b)**

8 Repeal the paragraph, substitute:

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

13 **160 At the end of section 26**

14 Add:

15 (5) The Minister may, in his or her discretion, by notice in writing
16 given to the holder of a licence granted under section 19, cancel or
17 suspend the licence if, within such period as is specified in the
18 notice:

- 19 (a) payment of a fee, levy or other money relating to the licence
20 is not made; or
21 (b) the holder of the licence does not enter into an arrangement
22 satisfactory to the Minister in relation to payment of a fee,
23 levy or other money.

24 (6) If a cheque is tendered to the Minister as payment of all or part of a
25 fee, levy or other money relating to a licence, payment is taken not
26 to have been made unless the cheque is honoured on presentation.

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

30 **161 Part V (heading)**

31 Repeal the heading, substitute:

1 **Part V—Protected Zone Joint Authority**

2 **162 Subsection 28(1) (paragraph (a) of the definition of**
3 **Chairperson of the TSRA)**

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

5 **163 Subsection 28(1) (definition of TSRA)**

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

7 **164 Subsection 32(7)**

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

10 **165 Subsection 32(7)**

11 Omit “or notice”.

12 **166 Subsection 32(8)**

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

15 **167 Subsection 32(9)**

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

18 **168 Subsection 32(9)**

19 Omit “or notice”.

20 **169 Before paragraph 35(1)(a)**

21 Insert:

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

23 **170 Paragraph 35(1)(a)**

24 After “14,”, insert “15A,”.

25 **171 Before paragraph 35(2)(a)**

26 Insert:

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

1 **172 Paragraph 35(2)(a)**

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

3 **173 Paragraph 35(2)(a)**

4 After “14,”, insert “15A,”.

5 **174 Subsection 36(1)**

6 Omit “authorize”, substitute “authorise”.

7 **175 Paragraph 37(b)**

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

9 **176 Subsections 38(1) to (6)**

10 Repeal the subsections, substitute:

11 (1) The Protected Zone Joint Authority may, in writing, delegate any
12 or all of its functions or powers under this Act, other than the
13 powers mentioned in subsection 35(1), to:

14 (a) an APS employee in the Department; or

15 (b) a person employed by AFMA; or

16 (c) a person from time to time holding, or performing the duties
17 of, a specified office in the service of Queensland or an
18 authority of Queensland or under the law of Queensland; or

19 (d) an APS employee in the TSRA.

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

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

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

26 **177 Paragraph 42(1)(b)**

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

28 **178 Paragraph 42(1)(b)**

29 Omit “land or” (second occurring).

30 **179 Paragraph 42(1)(b)**

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

2 **180 Subparagraph 42(1)(b)(i)**

3 Omit “land or”.

4 **181 Subparagraph 42(1)(b)(ii)**

5 Omit “land or”.

6 **182 Paragraph 42(1)(ba)**

7 Repeal the paragraph, substitute:

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

22 **183 After paragraph 42(1)(ea)**

23 Insert:

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

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

6 **184 After paragraph 42(1)(ha)**

7 Insert:

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

15 **185 Paragraph 42(1)(ka)**

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

19 **186 Subparagraph 42(1)(ka)(ii)**

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

22 **187 Paragraph 42(1)(oa)**

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

24 **188 Subsection 42(2A)**

25 Omit “authorized”, substitute “authorised”.

26 **189 Subsections 42(3) to (6AA)**

27 Repeal the subsections, substitute:

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

- 1 (b) the obtaining of a warrant under section 43C or 43P
2 authorising the exercise of those powers.
- 3 (4) If:
- 4 (a) the owner or person in charge of a vehicle or aircraft referred
5 to in subsection (3) refuses to consent to the exercise by an
6 officer of powers under paragraph (1)(ba); and
- 7 (b) an officer seeking to exercise those powers believes, on
8 reasonable grounds:
- 9 (i) that there is in the vehicle or aircraft anything that may
10 afford evidence of an offence against this Act or the
11 regulations; and
- 12 (ii) that the delay that would occur if an application for a
13 warrant were made (either in person or under
14 section 43P) would frustrate the effective execution of
15 the warrant;
- 16 those powers may be exercised without a warrant but, if that is
17 done, the officer must:
- 18 (c) if it is practicable to do so, notify the owner or person in
19 charge of a vehicle or aircraft that the officer will be
20 exercising powers under paragraph (1)(ba) without a warrant
21 and that the reasons for the exercise of those powers may be
22 requested; and
- 23 (d) as soon as reasonably practicable, record the reasons for the
24 exercise of those powers without a warrant; and
- 25 (e) upon request by the owner or person in charge of the vehicle
26 or aircraft—provide the record of those reasons to the person
27 affected by the exercise of those powers.

28 **190 Subsection 42(7) (at the end of the definition of**
29 ***prescribed person*)**

30 Add:

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

35 **191 After section 42**

36 Insert:

1 **42AA Identity cards**

- 2 (1) The Minister must cause an identity card to be issued to an officer
3 other than a prescribed person (within the meaning of subsection
4 42(7)).
- 5 (2) An identity card must:
- 6 (a) contain a recent photograph of the officer to whom it is
7 issued; and
8 (b) be in the form approved by the Minister.

9 **42AB Offence for failure to return identity card**

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

16 Penalty: 2 penalty units.

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

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

19 **192 Paragraph 43(1)(b)**

20 Omit “authorized”, substitute “authorised”.

21 **193 Subsection 43(1) (penalty)**

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

23 **194 At the end of Division 1 of Part VI**

24 Add:

25 **43A Use of force to exercise powers**

26 *Force to be used only in limited circumstances*

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

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

4 *Force used must be reasonable*

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

7 **43B Officer etc. not liable to certain actions**

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

13 **Division 1A—Search warrants**

14 **43C When search warrants can be issued**

- 15 (1) A magistrate may, upon application by an officer, issue a warrant
16 to search premises if the magistrate is satisfied by information on
17 oath or affirmation that there are reasonable grounds for suspecting
18 that there is, or there will be within the next 72 hours, any
19 evidential material at the premises.
- 20 (2) If a magistrate issues a warrant, the magistrate is to set out in the
21 warrant:
- 22 (a) the offence to which the warrant relates; and
23 (b) a description of the premises to which the warrant relates;
24 and
25 (c) the kinds of evidential material that are to be searched for
26 under the warrant; and
27 (d) the name of the officer who, unless he or she inserts the name
28 of another officer in the warrant, is to be responsible for
29 executing the warrant; and
30 (e) the period for which the warrant remains in force, which
31 must not be more than 7 days; and
32 (f) whether the warrant may be executed at any time or only
33 during particular hours.

- 1 (3) The magistrate is also to state that the warrant authorises the
2 seizure of a thing (other than evidential material of the kind
3 referred to in paragraph (2)(c)) found at the premises in the course
4 of the search that the executing officer or a person helping believes
5 on reasonable grounds to be:
- 6 (a) evidential material in relation to an offence to which the
7 warrant relates; or
- 8 (b) a thing relevant to another offence against this Act or the
9 regulations that is an indictable offence;
- 10 if the executing officer or a person helping believes on reasonable
11 grounds that seizure of the thing is necessary to prevent its
12 concealment, loss or destruction or its use in committing an
13 offence against this Act or the regulations.
- 14 (4) Paragraph (2)(e) does not prevent the issue of successive warrants
15 in relation to the same premises.
- 16 (5) If the application for the warrant is made under section 43P, this
17 section applies as if:
- 18 (a) subsection (1) referred to 48 hours rather than 72 hours; and
19 (b) paragraph (2)(e) referred to 48 hours rather than 7 days.

20 **43D The things that are authorised by a search warrant**

- 21 (1) A warrant authorises the executing officer or a person helping:
- 22 (a) to enter the warrant premises and, if the premises are a
23 vehicle or an aircraft, to enter the vehicle or aircraft,
24 wherever it is; and
- 25 (b) to search for and record fingerprints found at the premises
26 and to take samples of things found at the premises for
27 forensic purposes; and
- 28 (c) to search the premises for the kinds of evidential material
29 specified in the warrant, and to seize things of that kind
30 found at the premises; and
- 31 (d) to seize other things found at the premises in the course of
32 the search that the executing officer or a person helping
33 believes on reasonable grounds to be:
- 34 (i) evidential material in relation to an offence to which the
35 warrant relates; or
- 36 (ii) evidential material in relation to another offence against
37 this Act or the regulations that is an indictable offence;

1 if the executing officer or a person helping believes on reasonable
2 grounds that seizure of the things is necessary to prevent their
3 concealment, loss or destruction or their use in committing an
4 offence against this Act or the regulations.

5 (2) If the warrant states that it may be executed only during particular
6 hours, the warrant must not be executed outside those hours.

7 (3) If things are seized under a warrant, the warrant authorises the
8 executing officer to make the things available to officers of other
9 agencies if it is necessary to do so for the purpose of investigating
10 or prosecuting an offence to which the things relate.

11 **43E Availability of assistance and use of force in executing a**
12 **warrant**

13 In executing a warrant:

14 (a) the executing officer may obtain such help; and

15 (b) the executing officer, or a person who is an officer and is
16 helping in executing the warrant may use such force against
17 persons and things; and

18 (c) a person who is not an officer and has been authorised to help
19 in executing the warrant may use such force against things;

20 as is necessary and reasonable in the circumstances.

21 **43F Copy of warrant to be given to occupier etc.**

22 (1) If a warrant is being executed and the occupier of the premises or
23 another person who apparently represents the occupier is present at
24 the premises, the executing officer or a person helping must make
25 available to that person a copy of the warrant.

26 (2) The executing officer must produce his or her identity card to the
27 person at the premises.

28 (3) The copy of the warrant referred to in subsection (1) need not
29 include the signature of the magistrate or the seal of the relevant
30 court.

31 **43G Specific powers available to officer executing warrant**

32 (1) In executing a warrant, the executing officer or a person helping
33 may:

- 1 (a) for a purpose incidental to the execution of the warrant; or
2 (b) if the occupier of the premises consents in writing;
3 take photographs (including video recordings) of the premises or of
4 things at the premises.
- 5 (2) If a warrant is being executed, the executing officer or a person
6 helping may, if the warrant is still in force, complete the execution
7 of the warrant after the officer and all persons helping temporarily
8 cease its execution and leave the premises:
9 (a) for not more than one hour; or
10 (b) for a longer period if the occupier of the premises consents in
11 writing.
- 12 (3) If:
13 (a) the execution of a warrant is stopped by an order of a court;
14 and
15 (b) the order is later revoked or reversed on appeal; and
16 (c) the warrant is still in force;
17 the execution of the warrant may be completed.

18 **43H Use of equipment to examine or process things**

- 19 (1) The executing officer or a person helping may bring to the warrant
20 premises any equipment reasonably necessary for the examination
21 or processing of things found at the premises in order to determine
22 whether they are things that may be seized under the warrant.
- 23 (2) If:
24 (a) it is not practicable to examine or process the things at the
25 warrant premises; or
26 (b) the occupier of the premises consents in writing;
27 the things may be moved to another place so that the examination
28 or processing can be carried out in order to determine whether they
29 are things that may be seized under the warrant.
- 30 (3) If things are moved to another place for the purpose of examination
31 or processing under subsection (2), the executing officer must, if it
32 is practicable to do so:
33 (a) inform the occupier of the address of the place, and the time,
34 at which the examination or processing will be carried out;
35 and

- 1 (b) allow the occupier or his or her representative to be present
2 during the examination or processing.
- 3 (4) The executing officer or a person helping may operate equipment
4 already at the warrant premises to carry out the examination or
5 processing of a thing found at the premises in order to determine
6 whether it is a thing that may be seized under the warrant if the
7 executing officer or person believes on reasonable grounds that:
8 (a) the equipment is suitable for the examination or processing;
9 and
10 (b) the examination or processing can be carried out without
11 damage to the equipment or the thing.

12 **43J Use of electronic equipment at premises**

- 13 (1) The executing officer or a person helping may operate electronic
14 equipment at the premises to see whether evidential material is
15 accessible by doing so if he or she believes on reasonable grounds
16 that the operation of the equipment can be carried out without
17 damage to the equipment.
- 18 (2) If the executing officer or a person helping, after operating the
19 equipment, finds that evidential material is accessible by doing so,
20 he or she may:
21 (a) seize the equipment and any disk, tape or other associated
22 device; or
23 (b) if the material can, by using facilities at the premises, be put
24 in documentary form—operate the facilities to put the
25 material in that form and seize the documentation so
26 produced; or
27 (c) if the material can be transferred to a disk, tape or other
28 storage device that:
29 (i) is brought to the premises; or
30 (ii) is at the premises and the use of which for the purpose
31 has been agreed to in writing by the occupier of the
32 premises;
33 operate the equipment or other facilities to copy the material to the
34 storage device and take the storage device from the premises.
- 35 (3) A person may seize equipment under paragraph (2)(a) only if:

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

1 **43K Compensation for damage to electronic equipment**

2 (1) This section applies if:

3 (a) as a result of equipment being operated as mentioned in
4 sections 43H and 43J:

5 (i) damage is caused to the equipment; or

6 (ii) the data recorded on the equipment is damaged; or

7 (iii) programs associated with the use of the equipment, or
8 with the use of the data, are damaged or corrupted; and

9 (b) the damage or corruption occurs because:

10 (i) insufficient care was exercised in selecting the person
11 who was to operate the equipment; or

12 (ii) insufficient care was exercised by the person operating
13 the equipment.

14 (2) The Commonwealth must pay the owner of the equipment, or the
15 user of the data or programs, such reasonable compensation for the
16 damage or corruption as the Commonwealth and the owner or user
17 agree on.

18 (3) However, if the owner or user and the Commonwealth fail to
19 agree, the owner or user may institute proceedings in the Federal
20 Court of Australia for such reasonable amount of compensation as
21 the Court determines.

22 (4) In determining the amount of compensation payable, regard is to
23 be had to whether the occupier of the premises, or the occupier's
24 employees or agents, if they were available at the time, provided
25 any appropriate warning or guidance on the operation of the
26 equipment.

27 (5) Compensation is payable out of money appropriated by the
28 Parliament.

29 (6) For the purposes of subsection (1):

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

32 **43L Copies of seized things to be provided**

33 (1) Subject to subsection (2), if a person seizes, under a warrant:

- 1 (a) a document, film, computer file or other thing that can be
2 readily copied; or
3 (b) a storage device the information in which can be readily
4 copied;
5 the person must, if requested to do so by the occupier of the
6 premises or by another person who apparently represents the
7 occupier and is present when the warrant is executed, give a copy
8 of the thing or the information to the person who made the request
9 as soon as practicable after the seizure.

- 10 (2) Subsection (1) does not apply if:
11 (a) the thing that has been seized was seized under paragraph
12 43J(2)(b) or (c); or
13 (b) possession by the occupier of the document, film, computer
14 file, thing or information could constitute an offence.

15 **43M Occupier entitled to be present during search**

- 16 (1) If a warrant is being executed and the occupier of the premises or
17 another person who apparently represents the occupier is present at
18 the premises, the person is, subject to Part IC of the *Crimes Act*
19 *1914*, entitled to observe the search being conducted.
20 (2) The right to observe the search being conducted ceases if the
21 person impedes the search.
22 (3) This section does not prevent 2 or more areas of the premises being
23 searched at the same time.

24 **43N Receipts for things seized under warrant**

- 25 (1) If a thing is seized under a warrant or moved under subsection
26 43H(2), the executing officer or a person helping must provide a
27 receipt for the thing.
28 (2) If 2 or more things are seized or moved, they may be covered in
29 the one receipt.

30 **43P Warrants by telephone or other electronic means**

- 31 (1) An officer may make an application to a magistrate for a warrant
32 by telephone, telex, fax or other electronic means:

- 1 (a) in an urgent case; or
2 (b) if the delay that would occur if an application were made in
3 person would frustrate the effective execution of the warrant.
- 4 (2) The magistrate may require communication by voice to the extent
5 that is practicable in the circumstances.
- 6 (3) An application under this section must include all information
7 required to be provided in an ordinary application for a warrant,
8 but the application may, if necessary, be made before the
9 information is sworn.
- 10 (4) If an application is made to a magistrate under this section and the
11 magistrate, after considering the information and having received
12 and considered such further information (if any) as the magistrate
13 required, is satisfied that:
14 (a) a warrant in the terms of the application should be issued
15 urgently; or
16 (b) the delay that would occur if an application were made in
17 person would frustrate the effective execution of the warrant;
18 the magistrate may complete and sign the same form of warrant as
19 would be issued under section 43C.
- 20 (5) If the magistrate decides to issue the warrant, the magistrate is to
21 tell the applicant, by telephone, telex, fax or other electronic
22 means, of the terms of the warrant and the day on which and the
23 time at which it was signed.
- 24 (6) The applicant must then complete a form of warrant in terms
25 substantially corresponding to those given to the magistrate, stating
26 on the form the magistrate's name and the day on which and the
27 time at which the warrant was signed.
- 28 (7) The applicant must, not later than the day after the day of expiry of
29 the warrant or the day after the day on which the warrant was
30 executed, whichever is the earlier, give or send to the magistrate
31 the form of warrant completed by the applicant and, if the
32 information referred to in subsection (3) was not sworn, that
33 information duly sworn.
- 34 (8) The magistrate is to attach to the documents provided under
35 subsection (7) the form of warrant completed by the magistrate.
- 36 (9) If:
-

- 1 (a) it is material, in any proceedings, for a court to be satisfied
2 that the exercise of a power under a warrant issued under this
3 section was duly authorised; and
4 (b) the form of warrant signed by the magistrate is not produced
5 in evidence;
6 the court is to assume, unless the contrary is proved, that the
7 exercise of the power was not duly authorised.

8 **195 Paragraph 44(1)(a)**

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

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

12 **196 Paragraph 44(1)(b)**

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

14 **197 Paragraph 44(1)(b)**

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

16 **198 Paragraph 44(1)(c)**

17 Omit “use a boat to”.

18 **199 Paragraph 44(1)(c)**

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

20 **200 Paragraph 44(1)(c)**

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

22 **201 Paragraph 44(2)(a)**

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

24 **202 Paragraph 44(2)(b)**

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

26 **203 Subparagraph 44(3)(a)(i)**

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

28 **204 Subparagraph 44(3)(a)(ii)**

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

1 **205 Subparagraph 44(3)(b)(i)**

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

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

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

5 **207 Paragraph 44(3AB)(b)**

6 Omit "notice", substitute "instrument".

7 **208 Sub-subparagraph 44(3A)(b)(ii)(B)**

8 Omit "authorize", substitute "authorise".

9 **209 Paragraph 44(3A)(c)**

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

11 **210 Sub-subparagraph 44(3B)(b)(ii)(B)**

12 Omit "authorize", substitute "authorise".

13 **211 Paragraph 44(3B)(c)**

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

15 **212 Subsection 44(5)**

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

17 **213 Paragraph 44(5)(a)**

18 Omit "notice", substitute "instrument".

19 **214 Paragraph 45(1)(a)**

20 Omit "taking fish in the course of".

21 **215 At the end of paragraph 45(1)(a)**

22 Add "or".

23 **216 At the end of paragraph 45(1)(b)**

24 Add "or".

25 **217 At the end of paragraph 45(1)(c)**

26 Add "or".

1 **218 After paragraph 45(1)(c)**

2 Insert:

3 (ca) be in charge of a boat (other than a boat in respect of which a
4 Treaty endorsement is in force) that is being used for
5 community fishing:

6 (i) in an area of Australian jurisdiction; and

7 (ii) in respect of which there is in force a declaration under
8 subsection 17(1AA);

9 unless the person is the holder of a master fisherman's
10 licence that is in force; or

11 **219 At the end of paragraph 45(1)(d)**

12 Add "or".

13 **220 At the end of paragraph 45(1)(e)**

14 Add "or".

15 **221 At the end of paragraphs 45(1)(f) to (j)**

16 Add "or".

17 **222 Paragraph 45(1)(k)**

18 Omit "authorizes", substitute "authorises".

19 **223 Subparagraph 45(1)(m)(ii)**

20 Omit "authorizes", substitute "authorises".

21 **224 Subparagraph 45(2)(a)(i)**

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

23 **225 Subparagraph 45(2)(a)(ii)**

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

25 **226 Subparagraph 45(2)(b)(i)**

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

27 **227 Subparagraph 45(2)(b)(ii)**

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

1 **228 Subparagraph 45(3)(a)(i)**

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

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

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

5 **230 Subparagraph 45(3)(b)(i)**

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

7 **231 Subparagraph 45(3)(b)(ii)**

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

9 **232 Paragraph 45(4)(a)**

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

11 **233 Paragraph 45(4)(b)**

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

13 **234 Sub-subparagraph 45(4A)(b)(ii)(B)**

14 Omit "authorize", substitute "authorise".

15 **235 Paragraph 45(4A)(c)**

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

17 **236 Subsection 46(2)**

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

19 **237 Before subsection 46A(2)**

20 Insert:

21 (1A) Strict liability applies to paragraph (1)(d).

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

23 **238 Before subsection 46B(2)**

24 Insert:

25 (1A) Strict liability applies to paragraph (1)(d).

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

1 **239 Before subsection 46C(2)**

2 Insert:

3 (1A) Strict liability applies to paragraph (1)(e).

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

5 **240 Before subsection 46D(2)**

6 Insert:

7 (1A) Strict liability applies to paragraph (1)(d).

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

9 **241 Subsection 47(1) (penalty)**

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

11 **242 Subsection 48(1) (penalty)**

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

13 **243 Paragraph 49(1)(a)**

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

15 **244 Paragraph 49(1)(b)**

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

17 **245 Before subsection 49A(2)**

18 Insert:

19 (1A) Strict liability applies to paragraph (1)(e).

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

21 **246 Paragraph 50(1)(a)**

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

23 **247 Paragraph 50(1)(b)**

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

25 **248 Subparagraph 51(2)(a)(i)**

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

1 **249 Subparagraph 51(2)(a)(ii)**

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

3 **250 Paragraph 51(2)(b)**

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

5 **251 Paragraph 51(3)(a)**

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

7 **252 Paragraph 51(3)(b)**

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

9 **253 Before subsection 51A(2)**

10 Insert:

11 (1A) Strict liability applies to paragraph (1)(d).

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

13 **254 Subsection 52(3)**

14 Repeal the subsection.

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

17 **255 At the end of Subdivision A of Division 3 of Part VI**

18 Add:

19 **52AAA Forfeiture of additional things on forfeited boats**

20 (1) This section applies if:

21 (a) a court orders a boat to be forfeited under section 52 because
22 it was used in the commission of an offence (the *relevant*
23 *offence*); and

24 (b) at the time the court makes the order, there are nets, traps,
25 equipment or fish (the *additional things*) on the boat that the
26 court cannot order to be forfeited under section 52.

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

5 *Things owned by the person who owned the boat*

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

13 *Things owned by persons who commit offences*

- 14 (5) If the additional things are owned:
- 15 (a) by the person who committed the relevant offence; or
- 16 (b) by a person who committed an offence against:
- 17 (i) section 6 of the *Crimes Act 1914*; or
- 18 (ii) an ancillary offence (within the meaning of the *Criminal*
- 19 *Code*);
- 20 that relates to the relevant offence;
- 21 the court may order the forfeiture of the additional things.
- 22 (6) For the purposes of subsection (5), the additional things are taken,
- 23 unless the contrary is proved, to be owned:
- 24 (a) for the purposes of paragraph (5)(a)—by the person who
- 25 committed the relevant offence; and
- 26 (b) for the purposes of paragraph (5)(b)—by a person who
- 27 committed an offence against:
- 28 (i) section 6 of the *Crimes Act 1914*; or
- 29 (ii) an ancillary offence (within the meaning of the *Criminal*
- 30 *Code*);
- 31 that relates to the relevant offence.
- 32 (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the
- 33 operation of another subsection of this section.

1 **52AAB Forfeited things become the property of the Commonwealth**

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

6 **52AAC Rights and interests of the Commonwealth not limited**

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

11 **256 Subdivision B of Division 3 of Part VI (heading)**

12 Repeal the heading, substitute:

13 **Subdivision B—Automatic forfeiture of things**

14 **257 Section 52A**

15 Before “The”, insert “(1)”.

16 **258 At the end of section 52A (after the note)**

17 Add:

18 (2) If:

19 (a) a boat is forfeited to the Commonwealth under subsection (1)
20 because it was used in the commission of an offence; and

21 (b) the boat is seized under paragraph 42(1)(ea);
22 any nets, traps or equipment on the boat at the time it is seized are
23 taken, unless the contrary is proved:

24 (c) for the purposes of subparagraph (1)(b)(i)—to have been on
25 the boat at the time of the offence; and

26 (d) for the purposes of subparagraph (1)(b)(ii)—to have been
27 used in the commission of an offence against subsection
28 45(2) or section 46A, 48, 49, 49A, 51 or 51A.

29 (3) If:

30 (a) a boat is forfeited to the Commonwealth under subsection (1)
31 because it was used in the commission of an offence; and

32 (b) the boat is seized under paragraph 42(1)(ea);

- 1 any fish on the boat at the time it is seized are taken, unless the
2 contrary is proved:
- 3 (c) for the purposes of subparagraph (1)(c)(i)—to have been on
4 the boat at the time of the offence; and
- 5 (d) for the purposes of subparagraph (1)(c)(ii)—to have been
6 involved in the commission of an offence against subsection
7 45(2) or section 46A, 48, 49, 49A, 51 or 51A.

8 **259 After section 52A**

9 Insert:

10 **52AA Forfeiture of additional things on seized boats**

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

19 *Seizure within 2 years*

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

23 *Things owned by the person who owned the boat*

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

1 *Things owned by persons who commit offences*

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

23 **52AB Rights and interests of the Commonwealth not limited**

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

28 **260 After Subdivision B of Division 6 of Part VI**

29 Insert:

30 **Subdivision BA—Automatic ownership of things**

31 **52AC Fish taken with Commonwealth property**

32 If:

- 1 (a) a thing is forfeited to the Commonwealth under section 52 or
2 52A; and
3 (b) the thing is used for, or in the taking of, fish:
4 (i) after it is forfeited; and
5 (ii) without the written permission of the Minister for such
6 use;
7 the fish are the property of the Commonwealth.

8 **52AD Things on, in or attached to boats**

- 9 At any time during which a boat is the property of the
10 Commonwealth because:
11 (a) the court has ordered the forfeiture of the boat under
12 section 52; or
13 (b) the boat is forfeited under section 52A;
14 anything on, in or attached to the boat that forms part of the boat is
15 also the property of the Commonwealth.

16 **52AE Rights and interests of the Commonwealth not limited**

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

21 **261 Subdivision C of Division 3 of Part VI (heading)**

- 22 Repeal the heading, substitute:

23 **Subdivision C—Dealing with things seized**

24 **262 Section 52B**

- 25 Repeal the section, substitute:

26 **52B Application of this Subdivision**

- 27 This Subdivision sets out rules about the following:
28 (a) a thing that an officer seizes under paragraph 42(1)(ea) or
29 (eb):
30 (i) because the thing is forfeited under Subdivision B; or

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

10 **263 Subsection 52C(1)**

11 Repeal the subsection, substitute:

12 *Giving notice*

- 13 (1) The officer must give written notice of the seizure of the thing:
14 (a) if the thing is, or was on, a boat, or was used in connection
15 with a boat:
16 (i) to the person who was the master of the boat
17 immediately before the seizure; or
18 (ii) to the person whom the officer has reasonable grounds
19 to believe was the master of the boat immediately before
20 the seizure; or
21 (b) in a case not covered by paragraph (a):
22 (i) to the owner of the thing; or
23 (ii) to the person who had possession, custody or control of
24 the thing immediately before it was seized.
25 (1A) However, if the officer cannot conveniently give the notice to the
26 person in person, the officer may give written notice of the seizure
27 of the thing by fixing the notice to a prominent part of the thing,
28 unless the thing is a fish.

29 **264 At the end of Subdivision C of Division 3 of Part VI**

30 Add:

31 **52HA Evidence**

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

1 (b) for a declaration that a thing seized under paragraph
2 42(1)(ea) or (eb) is not forfeited under Subdivision B;
3 if a person has been convicted of an offence mentioned in
4 paragraph 52A(1)(a), the person is taken, unless the contrary is
5 proved, to have committed the offence.

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

11 **265 Subsection 54(2)**

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

13 **266 At the end of Part VI**

14 Add:

15 **Division 8—Alternative enforcement processes**

16 **54B Infringement notices**

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

23 **54C Demerit points system**

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

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

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

7 **267 Subsection 55A(2)**

8 Omit “to the Chairperson”.

9 **268 Subsection 57(2)**

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

11 **269 Subparagraph 57(2)(d)(i)**

12 Omit “authorized”, substitute “authorised”.

13 **270 Subparagraph 57(2)(d)(i)**

14 Omit “authorize”, substitute “authorise”.

15 **271 Subparagraph 57(2)(d)(ii)**

16 Omit “authorized”, substitute “authorised”.

17 **272 Subparagraph 57(2)(d)(ii)**

18 Omit “authorize”, substitute “authorise”.

19 **273 Paragraph 57(2)(e)**

20 Omit “authorization”, substitute “authorisation”.

21 **274 Paragraph 57(2)(f)**

22 Omit “authorizing”, substitute “authorising”.

23 **275 Subsection 57(3)**

24 Omit “authorized”, substitute “authorised”.

25 **276 Subsection 58(2)**

26 Omit “authorized”, substitute “authorised”.

27 **277 Subsection 58(5)**

1 Omit “authorized”, substitute “authorised”.

2 **278 Paragraph 60(1)(c)**

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

4 **279 Paragraph 60(1)(c)**

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

6 **280 At the end of paragraphs 60(1)(c) to (k)**

7 Add “and”.

8 **281 Paragraph 60(1)(m)**

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

11 **282 At the end of paragraphs 60(1)(m) and (n)**

12 Add “and”.

13 **283 At the end of subsection 60(1)**

14 Add:

15 ; and (q) providing (in addition to the collection of information in the
16 exercise or performance of other powers and functions under
17 this Act) for the collection, by a person exercising powers or
18 performing functions under this Act, of information relating
19 to:

20 (i) possible breaches of the laws of Australia or of a foreign
21 country; or

22 (ii) the control and protection of Australia’s borders; or

23 (iii) the administration and management of fisheries or
24 marine environments; or

25 (iv) research or monitoring conducted, or proposed to be
26 conducted, into fisheries or marine environments; and

27 (r) providing for the disclosure, by a person exercising powers
28 or performing functions under this Act, of information,
29 including personal information, relating to:

30 (i) possible breaches of the laws of Australia or of a foreign
31 country; or

32 (ii) the control and protection of Australia’s borders; or

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

5 **284 At the end of subsection 60(3)**

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

1

2 **Part 2—Amendments commencing 12 months after**
3 **Royal Assent**

4 **285 After subsection 14(1)**

5 Insert:

6 (1A) The Minister may, by legislative instrument, require the holder of a
7 licence in force under subsection 19(4A) that authorises the taking
8 of fish included in a class of fish specified in the instrument in the
9 course of commercial fishing (other than community fishing)
10 without the use of a boat, in any area of Australian jurisdiction or
11 in an area of Australian jurisdiction specified in the instrument, to
12 furnish to the Minister, at such times as are and in such manner as
13 is specified in the instrument, information relating to the taking, in
14 the course of that fishing, of fish of that kind.

15 **286 After subsection 14(6)**

16 Insert:

17 (6A) Where there is in force an instrument under subsection (1A) in
18 relation to any fish, the Minister may, by legislative instrument,
19 prohibit the taking, in the course of commercial fishing (other than
20 community fishing) without the use of a boat, from the area in
21 relation to which the first-mentioned instrument has effect, of fish
22 of that kind.

23 **287 Subsection 14(9)**

24 After “(1),” insert “(1A),”.

25 **288 Subsection 14(10)**

26 After “(6),” insert “(6A),”.

27 **289 Subsection 14(12)**

28 After “(1),” insert “(1A),”.

29 **290 Subsection 14(13)**

30 After “(1),” insert “(1A),”.

31 **291 Subsection 14(14)**

1 After “(6),” insert “(6A),”.

2 **292 Subsection 14(14A)**

3 After “(6),” insert “, (6A)”.

4 **293 After paragraph 16(1)(g)**

5 Insert:

6 (ga) prohibit the taking, processing or carrying of fish, or fish
7 included in a class of fish specified in the instrument, in the
8 course of commercial fishing without the use of a boat; or

9 (gb) prohibit a person from using, or having in his or her
10 possession or under his or her control, in the course of
11 commercial fishing without the use of a boat, a quantity of
12 equipment of a specified kind that is in excess of a quantity
13 specified in, or ascertainable as provided by, the instrument;
14 or

15 (gc) prohibit a person from using, or having in his or her
16 possession or under his or her control, in the course of
17 commercial fishing without the use of a boat, equipment of a
18 kind specified in an instrument in force under paragraph (gb)
19 unless that equipment is registered, or there is a licence in
20 force in respect of that equipment, under the law of
21 Queensland or of Papua New Guinea; or

22 **294 At the end of subsection 16(7)**

23 Add “or (1A)”.

24 **295 After subsection 16(8)**

25 Insert:

26 (8AA) Where:

27 (a) an instrument under subsection (1) provides that the activities
28 to which a prohibition contained in the instrument relates are
29 activities in respect of which an entry may be made under
30 subsection 21(1A); and

31 (b) an entry is made pursuant to subsection 21(1A) in a licence
32 granted under subsection 19(4A) authorising activities in the
33 course of commercial fishing without the use of a boat;

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

4 **296 After subsection 17(1)**

5 Insert:

6 (1A) The Minister may, by legislative instrument, declare that a licence
7 under subsection 19(4A) is required for the purpose of the taking,
8 in the course of community fishing without the use of a boat, of
9 fish, or fish included in a class of fish specified in the instrument,
10 from any area of Australian jurisdiction or from an area of
11 Australian jurisdiction specified in the instrument.

12 **297 After subsection 19(4)**

13 Insert:

14 (4A) Subject to subsection (5), the Minister may, upon application being
15 made in accordance with the appropriate form, grant to a person a
16 licence authorising the taking of fish in the course of commercial
17 fishing without the use of a boat in areas of Australian jurisdiction
18 and for carrying, or for processing and carrying, in areas of
19 Australian jurisdiction, fish so taken.

20 (4B) Subject to subsection (5), the Minister may, upon application being
21 made in accordance with the appropriate form, grant a person a
22 licence to receive fish, the taking of which required a licence under
23 subsection 19(2) or (4A) or a Treaty endorsement.

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

25 **298 Paragraphs 19(5)(a) and (b)**

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

27 **299 After subsection 21(1)**

28 Insert:

29 (1A) Subject to subsection (3A), the Minister may, upon application
30 being made in accordance with the appropriate form, make an
31 entry in a licence granted under subsection 19(4A) so as to extend
32 the licence to authorise, at any time or during a period specified in
33 the entry, activities in the course of commercial fishing without the
34 use of a boat that are prohibited by a prohibition contained in an

1 instrument in force under subsection 16(1) to which subsection
2 16(7) relates, being an instrument identified in the entry.

3 **300 Paragraph 21(3A)(a)**

4 After “(1)”, insert “, (1A)”.

5 **301 Paragraph 21(3A)(a)**

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

7 **302 Paragraph 21(3A)(b)**

8 After “(1)”, insert “or (1A)”.

9 **303 Paragraph 21(3A)(b)**

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

11 **304 Paragraph 24(2)(b)**

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

13 **305 Subsection 25(1)**

14 Omit “section 19 in respect of a boat”, substitute “subsection 19(2), (3),
15 (4A) or (4B)”.

16 **306 Subsection 25(1)**

17 Omit “in respect of the boat”.

18 **307 Subparagraph 26(1)(aa)(i)**

19 After “14(1),”, insert “(1A),”.

20 **308 Subparagraph 26(1)(aa)(ii)**

21 After “14(1),”, insert “(1A),”.

22 **309 Paragraph 26(1)(b)**

23 After “14(6),”, insert “(6A),”.

24 **310 Paragraph 36(5A)(b)**

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

26 **311 After paragraph 42(1)(d)**

27 Insert:

- 1 (da) if premises are specified in a licence under subsection 19(4B)
2 as premises on which fish are to be kept—enter the premises
3 for the purpose of finding out whether a condition of the
4 licence is being, or has been, complied with or whether a
5 person is contravening or has contravened a provision of this
6 Act and, in furtherance of that purpose:
7 (i) search the premises for, and examine, fish; and
8 (ii) search the premises for, inspect, take extracts from, and
9 make copies of, any documents relating to the receiving
10 of fish; and
11 (iii) if the officer finds, during the course of the search, any
12 thing that he or she believes, on reasonable grounds,
13 may provide evidence of a contravention of a provision
14 of this Act, secure the thing pending the obtaining of a
15 warrant to seize it; and
16 (db) with the consent of the holder of a licence under subsection
17 19(4B) or under a warrant issued under section 43C, seize
18 any thing found during the course of a search that the officer
19 believes, on reasonable grounds, may provide evidence of a
20 contravention of this Act; and

21 **312 After paragraph 42(1)(p)**

22 Insert:

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

33 **313 After subsection 44(3A)**

34 Insert:

- 35 (3BA) Where:

- 1 (a) a person is convicted of an offence against subsection (2)
2 because the person engaged in activities in contravention of
3 paragraph (1)(a) at a particular time; and
4 (b) the court before which the person is convicted is satisfied that
5 if a licence under subsection 19(4A) authorising the activities
6 had been in force at that time, the licence would have been a
7 leviable licence;
8 the court may, in addition to imposing a penalty on the person,
9 order the person to pay to the Commonwealth an amount not
10 exceeding the amount that is the relevant levy amount in relation to
11 the licence.

12 **314 After paragraph 45(1)(a)**

13 Insert:

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

18 **315 After paragraph 45(1)(b)**

19 Insert:

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

26 **316 Paragraph 45(1)(e)**

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

29 **317 Paragraph 45(1)(f)**

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

32 **318 After subsection 45(4A)**

33 Insert:

- 34 (4B) Where:
-

- 1 (a) a person is convicted of an offence against subsection (4)
2 because the person engaged in activities in contravention of
3 paragraph (1)(aa) or (ba) at a particular time; and
4 (b) the court before which the person is convicted is satisfied that
5 if a licence under subsection 19(4A) authorising the activities
6 had been in force at that time, the licence would have been a
7 leviable licence;
8 the court may, in addition to imposing a penalty on the person,
9 order the person to pay to the Commonwealth an amount not
10 exceeding the amount that is the relevant levy amount in relation to
11 the licence.

12 **319 After section 46**

13 Insert:

14 **46AA Receiving fish without a licence**

- 15 A person (the *fish receiver*) commits an offence if:
16 (a) the fish receiver has possession or control of fish which were
17 taken by another person; and
18 (b) the possession or control is not authorised by a licence under
19 subsection 19(3); and
20 (c) the taking of the fish by the other person required a licence
21 under subsection 19(2) or (4A) or a Treaty endorsement; and
22 (d) the fish are to be sold; and
23 (e) the fish receiver does not have a licence under subsection
24 19(4B).

25 Penalty: 50 penalty units.

26 **320 After paragraph 57(2)(c)**

27 Insert:

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

1
2
3
Schedule 4—Surveillance Devices Act 2004

4
5
1 Subsection 6(1) (paragraph (d) of the definition of *relevant offence*)

6 After “100A,”, insert “100B,”.

7
8
2 Subsection 6(1) (paragraph (d) of the definition of *relevant offence*)

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

10
11
3 Subsection 6(1) (after paragraph (d) of the definition of *relevant offence*)

12 Insert:

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

15
4 Paragraph 42(5)(b)

16 After “100A,”, insert “100B,”.

17
5 Paragraph 42(5)(b)

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

19
6 Paragraph 42(5)(b)

20 After “*Fisheries Management Act 1991*”, insert “or section 46A, 46B,
21 46C, 46D, 49A or 51A of the *Torres Strait Fisheries Act 1984*”.