

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

**FISHERIES LEGISLATION AMENDMENT
(NEW GOVERNANCE ARRANGEMENTS FOR THE
AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY AND
OTHER MATTERS) BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry,
the Hon. Tony Burke MP)

CONTENTS

GENERAL OUTLINE.....	3
FINANCIAL IMPACT STATEMENT	6
NOTES ON CLAUSES	7
SCHEDULE 1: NEW GOVERNANCE ARRANGEMENTS FOR AFMA.....	8
<i>Part 1: Amendments</i>	<i>8</i>
<i>Fisheries Administration Act 1991.....</i>	<i>8</i>
<i>Fisheries Management Act 1991.....</i>	<i>18</i>
<i>Torres Strait Fisheries Act 1984.....</i>	<i>21</i>
<i>Part 2 – Transitional Provisions</i>	<i>22</i>
SCHEDULE 2: FOREIGN BOATS EQUIPPED FOR FISHING.....	25
<i>Fisheries Management Act 1991.....</i>	<i>25</i>
<i>Torres Strait Fisheries Act 1984.....</i>	<i>27</i>
SCHEDULE 3: BOATS BEYOND THE AFZ	28
<i>Fisheries Management Act 1991.....</i>	<i>28</i>
<i>Migration Act 1958</i>	<i>42</i>
SCHEDULE 4: SUPPORT BOATS	42
<i>Fisheries Management Act 1991.....</i>	<i>42</i>
<i>Migration Act 1958</i>	<i>44</i>

FISHERIES LEGISLATION AMENDMENT (NEW GOVERNANCE ARRANGEMENTS FOR THE AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY AND OTHER MATTERS) BILL 2008

General Outline

The Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008 (the Bill) will amend the *Fisheries Administration Act 1991* (the FA Act), the *Fisheries Management Act 1991* (the FM Act) and make consequential amendments to the *Torres Strait Fisheries Act 1984* (TSF Act) and the *Migration Act 1958*.

The Bill improves governance of the Australian Fisheries Management Authority (AFMA) and ensures that measures to combat illegal, unregulated and unreported (IUU) fishing are tightened and strengthened, that they are consistent with the objectives of the FM Act and the TSF Act, and that they comply with the international agreements that Australia has ratified.

Schedule 1 of the Bill changes AFMA's accountability to government and puts in place new governance arrangements. The changes result from the review of AFMA in accordance with processes set out in the Uhrig Review of the Corporate Governance of Statutory Authorities and Office Holders of June 2003 (the Uhrig Review) and the "Governance Arrangements for Australian Government Bodies" document issued by the then Department of Finance and Administration in August 2005. Separate changes will also enable AFMA to become a prescribed agency under the *Financial Management and Accountability Act 1997* and a statutory agency under the *Public Service Act 1999* (PS Act).

The key changes to AFMA relate to five areas.

First, the Bill removes the AFMA directors, including the government director. A new commission will be established. The commission will have a chairperson and no more than eight other commissioners, including the CEO. The CEO will replace the position of the managing director. The CEO will be a commissioner and could be the chairperson. Neither the commission nor the CEO will be part of AFMA (as it exists as a body corporate). However, the commission and the CEO will be responsible for performing and exercising the functions and powers of AFMA under the FA Act.

Second, the Bill makes the Commission responsible for acting on AFMA's behalf in matters relating to domestic fisheries management.

Third, the Bill makes the CEO solely responsible for AFMA's foreign compliance activities, subject to direction from the Minister. Making the CEO report directly to the Minister on such matters rather than to the commission acknowledges the need for direct ministerial oversight of activities that may have foreign policy implications and that are an integrated part of Australia's border protection operations.

Fourth, the Bill provides for new eligibility criteria and conflicts of interest disclosure and reporting requirements for the commissioners. The commission will comprise persons with a similar range of skills and expertise to those currently specified for AFMA directors. However, minimising the potential for conflicts of interest amongst commissioners is an important part of the reforms. As noted in the Uhrig Review,

independence and objectivity are important attributes for good governance. Therefore, while it is possible to manage conflicts of interest, it is preferable to minimise the circumstances in which they could arise.

With this in mind, the Bill will establish eligibility criteria to exclude anyone who holds, or is an executive officer or majority shareholder in a company which holds, a Commonwealth concession, permit or licence or anyone who holds an executive position in a fishing industry association from being appointed as a commissioner. These requirements are strengthened by more detailed requirements to disclosure and report conflicts of interest prior to and following appointment as a commissioner.

Finally, the Bill removes statutory provisions for the selection procedure for commissioners. The current legislative selection process has proven to be time consuming, expensive and inflexible in some instances. The selection of the commissioners will now occur by an administrative process, in accordance with government policies on merit-based selection of statutory office holders.

In addition, as a function of transferring AFMA operations to governance under the *Financial Management and Accountability Act 1997* and the PS Act, the CEO will have sole responsibility for AFMA's financial and human resource management. Section 44 of the *Financial Management and Accountability Act 1997* requires that CEOs manage resources in a way that promotes their proper use.

The amendments will have minimal or no impact on the day-to-day operations of AFMA, Commonwealth fishers or stakeholders. AFMA will retain the existing objectives and functions conferred by legislation. AFMA's management of domestic fisheries and engagement with fishers and commercial fishing industry organisations will also be little affected. Fisheries management will still be enhanced by consultative decision-making through management advisory committees and resource assessment groups.

The Bill also amends Australia's fisheries legislation to strengthen the government's ability to combat IUU fishing and fulfil Australia's responsibilities and obligations under international law and agreements.

The FM Act and the TSF Act provide the statutory framework for managing Commonwealth fisheries as well as mechanisms to deter illegal foreign fishing. The FM Act includes obligations that foreign fishing vessels in the Australian Fishing Zone (AFZ) must comply with, and they give effect to Australia's international obligations, including those under regional fisheries management organisations, such as the Western and Central Pacific Fisheries Commission (WCPFC). The FM Act also covers the operation of Australian and other boats in high seas areas.

The remaining three schedules of the Bill provide for changes to these arrangements.

Schedule 2 of the Bill amends requirements in the FM Act and the TSF Act relating to foreign boats transiting through the AFZ. Current provisions require foreign boats equipped with fishing equipment, such as nets and traps, to have the fishing gear stored and secured whilst travelling through the AFZ. The Bill requires foreign fishing vessels to stow their equipment in a manner which does not allow for fishing gear to be readily deployed. This will make it more difficult for them to engage in illegal fishing in Australia's fishing zone.

Schedule 3 of the Bill restructures and strengthens the enforcement framework of the FM Act to enhance Australia's ability to give effect to rights and obligations under international law in relation to the conservation and management of fish stocks and

marine living resources. The amendments will enable Australia to enforce compliance with measures adopted by international fisheries management organisations and arrangements and to implement obligations under the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UNFSA).

Australia participates in a number of international fisheries management organisations and arrangements established to manage and conserve the fish stocks and marine living resources of the high seas. Australia has agreed to implement and enforce conservation and management measures in accord with decisions made by these organisations. In the case of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the WCPFC, this includes measures for the boarding and inspection of vessels to verify compliance with agreed fisheries management measures.

Australia, as a party to UNFSA, has rights and obligations under international law to ensure compliance by, and take enforcement action against, the vessels of any party to UNFSA in relation to measures agreed by international fisheries management organisations responsible for straddling or highly migratory fish stocks.

Schedule 3 of the Bill will also enable Australia to give effect to its ability, under international law, to take enforcement action against any foreign vessel contravening international fisheries management measures where such action is authorised by the country to which the vessel is flagged. Such authorisation could be given on an *ad hoc* basis or on the basis of a standing agreement or arrangement.

The FM Act currently contains surveillance and enforcement powers, including powers for officers to exercise in relation to the boarding and inspection of Australian-flagged boats, foreign-flagged boats and boats in the AFZ. Sections 87A to 87F of the FM Act currently give effect to Australia's enforcement powers under UNFSA, so officers can board and inspect boats flagged to parties to UNFSA that are operating in the AFZ or on the high seas. These powers do not extend to the boarding and inspection of foreign boats beyond the AFZ under regimes of international fisheries management organisations. In addition, there is no provision under the current legislation for the exercise of powers on foreign boats beyond the AFZ on the basis of *ad hoc* or standing consent given by the flag country.

The FM Act currently contains a range of offences beyond the AFZ. These offences relate to the breach of international fisheries management measures in relation to fish stocks managed by the WCPFC or fish stocks covered by UNFSA. The amendments provide for an improved scheme of offences for contravening agreed conservation and management measures or for fishing without authorisation. This will enable the exercise of enforcement powers by officers and allow for the prosecution of offences, applicable to both Australian nationals (persons and corporations) and foreigners.

Schedule 4 the Bill provides for enforcement measures against boats supporting illegal fishing in the AFZ. These amendments clarify the ability of fisheries officers to exercise powers under section 84 of the FM Act outside the AFZ, including in the waters of other countries' exclusive economic zones, following a pursuit of a boat that was in the AFZ or that has been providing support to foreign boats fishing illegally in the AFZ. This applies to both Australian and foreign boats which are supporting foreign boats in the AFZ.

Financial Impact Statement

The amendments are not expected to involve significant additional administrative costs to the Australian Government.

The amendments to AFMA's governance arrangements will not reduce the net funding of AFMA or its cash reserves. Changes to AFMA's tax liabilities will save AFMA approximately \$900,000 per annum. According to AFMA's cost-recovery policy, some of these savings will be passed on to fishers through reduced annual levies. AFMA estimates that the additional reporting requirements placed on AFMA by the *Financial Management and Accountability Act 1997* and the PS Act will cost it \$250,000 annually.

There are no known direct additional financial implications involved in the amendments to deter IUU fishing. AFMA will fund the costs of any additional apprehensions or prosecutions as a result of these amendments from within its existing compliance budget for the foreseeable future.

Notes on Clauses

Clause 1: Short title

Clause 1 provides for the Act to be cited as the *Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008*.

Clause 2: Commencement

Clause 2 provides for the commencement of the Act.

Subclause 2(1) provides that each provision of the Act specified in column 1 of the table set out in the subclause commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The note at the end of the table explains that the table relates only to the provisions of the Act as originally passed by both Houses of the Parliament and assented to.

Subclause 2(2) provides that column 3 of the table contains additional information that is not part of the Act. It also clarifies that information in column 3 may be added or edited in any published version of the Act.

Sections 1 to 3 and anything in the Act not elsewhere covered by the table in subclause 2(1) are taken to have commenced on the day on which that Act received the Royal Assent.

The items in Schedule 1 to the Bill, which change the governance arrangements of AFMA, commence on 1 July 2008.

The items in Schedules 2 and 4 to the Bill relate to the new requirements for the stowage of equipment by foreign boats and enforcement measures against boats supporting illegal fishing in the AFZ. The commencement of these items is on the 28th day after the day on which the Act receives Royal Assent. The delay is consistent with criminal law policy that offence-related provisions commence at least 28 days after Royal Assent.

The items in Schedule 3 to the Bill commence on Proclamation. If the provisions are not proclaimed, such provisions will commence a year and a day after the Act receives Royal Assent. This delay is to allow time for the necessary regulations underpinning those items to be prepared and put in place. Without these regulations, the provisions have no practical effect.

Clause 3: Schedule(s)

Clause 3 provides that each Act specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in the Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1: New Governance arrangements for AFMA

Part 1: Amendments

Fisheries Administration Act 1991

Item 1: Subsection 4(1)

This item inserts the definition of AFMA staff member. Staff will be employed by the Commonwealth and engaged under the PS Act by the chief executive officer. Staff will not be employed by AFMA itself.

Item 2: Subsection 4(1)

This item inserts a definition of Australian fishing zone which is the same as the definition of Australian fishing zone in the FM Act.

Item 3: Subsection 4(1) (definition of borrowing)

This item repeals the definition of borrowing. Item 72 repeals AFMA's power to borrow money.

Item 4: Subsection 4(1)

This item inserts a definition of a CEO. The position of the CEO is created under subsection 10B(1) of the FA Act.

Item 5: Subsection 4(1)

This item inserts a definition of a Commission. The Commission is established under subsection 10B(1) of the FA Act.

Item 6: Subsection 4(1)

This item inserts a definition of a commissioner. The Commission, established under subsection 10B(1) of the FA Act, consists of commissioners.

Item 7: Subsection 4(1) (definition of director)

This item repeals the definition of a director as the position is abolished by Item 26.

Item 8: Subsection 4(1)

This item defines domestic fisheries management functions and powers for the purpose of distributing the powers of AFMA between the CEO and the Commission under Section 10B of the FA Act.

Item 9: Subsection 4(1) (definition of Finance Minister)

This item repeals the definition of Finance Minister. The term is redundant as it is no longer used in the FA Act. Item 72 repeals AFMA's power to borrow money and the Finance Minister's authority to delegate related powers to an official.

Item 10: Subsection 4(1)

This item inserts a definition of fishing concession which is the same as the definition of fishing concession in the FM Act. This is a consequential amendment resulting from eligibility criteria in paragraph 12(3)(b) in Item 26.

Item 11: Subsection 4(1)

The definition of a foreign boat is inserted which is the same as the definition of a foreign boat in the FM Act. This is a consequential amendment resulting from the definition of domestic fisheries management functions and powers being inserted into the FA Act. Refer to item 12.

Item 12: Subsection 4(1)

This item defines foreign compliance functions and powers for the purpose of distributing the powers of AFMA between the CEO and the Commission under Section 10B of the FA Act.

Item 13: Subsection 4(1) (definition of Ministerial Council)

This item repeals the definition of 'Ministerial Council'. The term is redundant. The Ministerial Council was responsible for nominating one person to the Minister for appointment to the AFMA Selection Committee. All provisions in the FA Act which relate to the AFMA Selection Committee and the nomination and selection process for directors are repealed by Item 57.

Item 14: Subsection 4(1) (definition of nominated director)

This item repeals the definition of a nominated director as the position of a director is abolished by Item 26.

Item 15: Subsection 4(1)

This item inserts a definition of a part-time commissioner created by subsection 12(1) of the FA Act. Under subsection 11 of the FA Act, the part-time commissioners include the Chairperson and will be part of the Commission.

Item 16: Subsection 4(1)

A definition of a port permit is inserted which is the same as the definition of a port permit in the FM Act. This is a consequential amendment resulting from the definition of domestic fisheries management functions and powers being inserted into the FA Act. Refer to item 12.

Item 17: Subsection 4(1) (definition of Presiding Member)

This item repeals the definition of 'Presiding Member'. The term is redundant. The Presiding Member established the AFMA Selection Committee to nominate persons for appointment as a nominated director of AFMA. All provisions in the FA Act relating to the Presiding Member and AFMA Selection Committee and the nomination and selection process for directors are repealed by Item 57.

Item 18: Subsection 4(1)(before the note)

A definition of a scientific permit is inserted which is the same as the definition of a scientific permit in the FM Act. This is a consequential amendment resulting from the definition of domestic fisheries management functions and powers being inserted into the FA Act. Refer to item 12.

Item 19: Subsection 4(1) (definition of Selection Committee)

This item repeals the definition of Selection Committee. The term is redundant. All provisions in the FA Act relating to the AFMA Selection Committee and the nomination and selection process for directors are repealed by Item 57.

Item 20: Subsection 7(1) (note)

This is a consequential amendment to remove the note, which is redundant. Once AFMA is a prescribed agency under the *Financial Management and Accountability Act 1991*, it will no longer be regulated by the *Commonwealth Authorities and Companies Act 1997*.

Item 21: Subsection 8(2)

This item amends and restricts AFMA's powers under subsection 8(2). It clarifies that AFMA no longer has the power to acquire, hold or dispose of real or personal property, to enter into contracts or to lease land or buildings in its own right. This change is required as a consequence of the application of the *Financial Management and Accountability Act 1997* to AFMA.

Item 22: Subsection 9(1)

This item is a consequential amendment resulting from subsection 9(2) being repealed by item 23. It removes the number 1 from the classification of the first sub-paragraph of section 9.

Item 23: Subsection 9(2)

This item repeals subsection 9(2). Once AFMA becomes a prescribed agency under the *Financial Management and Accountability Act 1997*, the CEO will be responsible for managing AFMA's resources on behalf of the Commonwealth. Under subsection 8(2) in Item 21 AFMA will no longer have the power to acquire, hold and dispose of real or personal property or enter into contracts.

Item 24: Division 2 of Part 2 (heading)

This item repeals the heading, 'Constitution and meetings of the Authority'.

Item 25: Sections 10 and 11

This item abolishes the board of eight directors. Under subsection 10(1), AFMA is a body corporate. Although AFMA will no longer hold property, it will be able to take legal action in its own name. AFMA, as a legal entity, continues without interruption.

AFMA's seal will be kept in the custody of the CEO. It may only be exercised by the CEO in relation to AFMA's foreign compliance functions and the powers. The seal can only be used by the Commission in relation to AFMA's domestic fisheries management powers and functions.

Section 10A states the Commonwealth will be responsible for all of AFMA's financial liabilities.

Section 10B establishes the Commission and the position of the CEO. The CEO is also a member of the Commission. The Commission is responsible for performing and exercising AFMA's domestic fisheries management powers and functions. These cover all fishing operations in the AFZ other than illegal fishing undertaken by foreign boats, and also cover all fishing outside the AFZ that is licensed by AFMA. The CEO will be responsible for assisting the Commission, including giving effect to its decisions.

The CEO is responsible for performing and exercising AFMA's foreign compliance functions and powers. These cover all illegal fishing by foreign boats in the AFZ, and all fishing beyond the AFZ that is not licensed by AFMA.

The Commission can not direct the CEO on foreign compliance functions and powers or in relation to the CEO's separate responsibilities under the *Financial Management and Accountability Act 1997* and the PS Act.

Any actions undertaken by the CEO or the Commission in performing their defined functions or exercising their defined powers are considered actions of AFMA.

Section 10C inserts a power to permit the Minister to give written directions to the CEO in relation to AFMA's foreign compliance powers and functions. This power is intended as a general power of direction. It is to be exercised independently of directions made under section 91 of the FA Act, which are issued to AFMA in exceptional circumstances. Similar to the requirements set out in section 91 of the FA Act, the Minister is required to table directions in Parliament except when the Minister determines that it would be prejudicial to the national interest of Australia. For the avoidance of doubt, any direction or determination made under section 10C is not legislative in character and is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Section 11 establishes the Commission. It consists of a maximum of eight part-time commissioners, including the Chairperson. The CEO is also a member of the Commission. AFMA is not constituted by the Commission. The Authority is a body corporate existing in its own right by virtue of section 10.

Item 26: Section 12

This item repeals section 12. It inserts a power for the Minister to appoint, by written instrument, the Chairperson, other part-time commissioners and the CEO. The positions of CEO and Chairperson may simultaneously be held by the same person. Paragraph 12(3)(a) establishes mandated fields of expertise for persons seeking appointment as a commissioner. These fields are similar to those that were required of the AFMA directors.

Paragraph 12(3)(b) inserts additional mandatory eligibility criteria for commissioners. An individual, at the time of appointment, must not hold an executive position in a fishing industry association however named. This provision excludes persons in the executive of such associations as the Commonwealth Fisheries Association, RecFish Australia or any other state or territory based fishing industry association.

This paragraph further excludes anyone who holds a Commonwealth concession issued under the FM Act or a permit or licence issued under the TSF Act. It also excludes a person with the majority of voting shares in a company or in an executive position in a company holding a Commonwealth concession, permit or licence. The intention of this section is to exclude persons who have a direct financial interest in Commonwealth fisheries.

Commissioners are to be appointed for terms not exceeding five years. Only the CEO will be appointed on a full-time basis.

Item 27: Subsection 13(1)

This item amends the FA Act so that the Minister selects a part-time commissioner to be appointed as the Deputy Chairperson of the Commission.

Item 28: Subsection 13(2)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission.

Item 29: Subsection 13(4)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 30: Subsection 13(6)(a) and (b)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission.

Item 31: Subsection 13(7)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission.

Item 32: Sections 14 to 16

The position of Acting CEO is created by section 14 of the FA Act. The Minister may appoint an Acting CEO if at any time there is a vacancy in the CEO position. An Acting CEO may be appointed even if an appointment to that position has not previously been made. The first CEO may be an acting CEO.

The item also inserts section 15 of the FA Act which requires a part-time commissioner to obtain the Minister's approval before engaging in paid employment that may conflict with the proper performance of his or her duties. It also requires the CEO to obtain the Minister's approval before engaging in any paid employment outside the CEO's duties. Under subsection 21(2), the Minister may terminate the appointment of a part-time commissioner or the CEO for failing to comply with this requirement.

Item 33: Subsection 17(1)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners. The commissioners will also have their terms of remuneration and allowances determined by the Remuneration Tribunal.

Item 34: Subsection 17(2)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners. Commissioners will be paid such allowances as prescribed.

Item 35: Paragraph 17(3)(a)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 36: Subsection 17(4)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 37: Subsection 17(7)

This item is a consequential amendment resulting from the abolition of the Managing Director position by item 57.

Item 38: Subsection 18(1)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 39: Subsection 18(2)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 40: At the end of section 18

This is a consequential amendment resulting from the abolition of the Managing Director position by item 57 and the creation of the CEO position by section 10B of the FA Act.

Item 41: Section 19

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 42: After section 19

This item inserts section 20 which requires commissioners to disclose certain interests, pecuniary or otherwise, prior to and during their terms of appointment.

Interests disclosed by a commissioner will be recorded on a register maintained by the Commission in accordance with Commonwealth privacy requirements.

Item 43: Subsection 21(1)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 44: Subsection 21(2)

This item repeals the old subsection 21(2) of the FA Act and substitutes it with additional reasons for which the Minister may terminate the appointment of a commissioner. Standard termination provisions will apply and these make provision, among other things, for the Minister to terminate the appointment of a commissioner for failure to comply with the disclosure requirement. The capacity that currently exists for the Minister to terminate the appointment of a director on grounds of inefficiency or incompetence will be retained. In addition to the standard grounds for termination, commissioners will also have their appointments terminated by force of law if they take up an interest or position of the kind mentioned in paragraph 12(3)(b).

Item 45: Section 22

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 46: After section 22

This item inserts the title of the new Division 4.

Item 47: Subsections 23(1) and (2)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 48: At the end of subsection 23(2)

This item ensures that Section 338 B of the *Acts Interpretation Act 1901* is noted. It enables meetings to be held via telephone and other electronic means.

Item 49: Subsections 23(3) and (4)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 50: Subsection 23(4)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 51: Subsection 23(5)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 52: Paragraph 23(5)(a)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners. It also specifies that, at meetings of the Commission, a quorum will be achieved by a simple majority of commissioners who are appointed at the time the meeting is held.

Item 53: Paragraph 23(5)(b)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 54: Paragraph 23(5)(c)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, who were members of the Authority, and the creation of the Commission and commissioners.

Item 55: Subsections 23(6) and (7)

This item repeals the existing subsections 23(6) and (7). The new subsection 23(6) allow for a reduction in the number of commissioners needed for a quorum in circumstances where one or more commissioners are unable to participate because of a potential conflict of interest.

The Commission will be required to keep minutes of all meetings and may also invite persons to attend meetings for the purpose of advising or informing it on any matter.

Item 56: Section 24

This item repeals the previous section 24. Commissioners will be required to disclose potential conflicts of interest to meetings of the Commission and will not be able to participate in related deliberations or decision making without the Commission's consent. All such disclosures must be recorded in the minutes of the meeting.

The item also inserts procedures for achieving resolutions without meetings of the Commission. The Commission can make decisions without meetings if it has decided beforehand that decisions of that kind may be made without meeting and the commissioners use a previously agreed method for doing so. Records of all decisions without meetings are to be kept.

Item 57: Divisions 3 and 4 of Part 2

This item repeals Divisions 3 and 4 of Part 2. These Divisions related to the nomination and selection process for AFMA directors and the Managing Director. The provisions relating to the AFMA Selection Committee and associated processes also applied to the nomination and selection process for members of the Statutory Fishing Rights Allocation Review Panel, established under section 124 of the FM Act. Items 86 to 88 and item 111 moves these provisions to Part 8 of the FM Act. The position of Managing Director is abolished.

Item58: Subsection 55(1)

This item is a consequential amendment resulting from the abolition of the position of AFMA directors, who were the members of the Authority, and the creation of the Commission and commissioners.

Item 59: At the end of paragraph 60(1)(a)

This item clarifies that the Chairperson is the Chairperson of the management advisory committee and not, for example, the Chairperson of the Commission.

Item 60: Paragraph 60(1)(b)

This item is a consequential amendment. Staff will be employed by the Commonwealth and engaged under the PS Act by the chief executive officer. Staff will not be employed by AFMA itself.

Item 61: Section 64 and 64A

This item is a consequential amendment. New provisions have been inserted to replace provisions that pick up the effects of sections relating to commissioners' leave of absence, resignation, terms of appointment and disclosures of interest. Unlike the commissioners, the management advisory committee members will not be required to seek the prior approval of AFMA before engaging in paid employment outside the duties of his or her office. Similarly, the provisions relating to the disclosure of interests of the management advisory committee members are less onerous than those

relating to the commissioners. These changes ensure that Division 5 of the FA Act continues to operate properly within the context of AFMA's new governance arrangements.

Item 62: After section 65

This item is a consequential amendment to enable management advisory committees to make certain decisions without meeting. It mirrors the guidelines established for the Commission under section 25.

Item 63: Section 66

This item is a consequential amendment as a result of amendments to subsection 8(2).

Item 64: Subsection 67(4)

This is a consequential amendment resulting from the abolition of the position of AFMA directors, the creation of the Commission and commissioners, and the employment of AFMA staff members under the PS Act. AFMA can no longer engage employees in its own right.

Item 65: Division 6 of Part 2 (heading)

The heading, 'Employees and consultants' is repealed and substituted for 'Staff and consultants'. This is a consequential amendment resulting from AFMA no longer being able to engage employees in its own right.

Item 66: Section 68

This item repeals the existing provisions that allowed AFMA to engage employees on such terms and conditions as it determines. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer. The CEO and the staff constitute a Statutory Agency for the purpose of the PS Act and the CEO is the Head of that Agency.

Item 67: Subsection 69(1)

This item is a consequential amendment. The CEO, as Agency Head under the PS Act, has sole authority to engage consultants on behalf of the Commonwealth to assist AFMA.

Item 68: Subsection 69(2)

This item is a consequential amendment. The CEO, as Agency Head under the PS Act, has sole authority to engage consultants to assist in the performance and exercise of AFMA's functions and powers. The CEO will also have the power to determine their terms and conditions.

Item 69: Sections 70 and 71

This item repeals the requirement for AFMA to have a specific human resource development program and that employment matters should be dealt with on the basis of merit. Such matters are dealt with under the PS Act, under which the AFMA staff and the CEO will be regulated.

Item 70: Paragraph 72(4)(e)

This item repeals the requirement for the corporate plan to include the human resources development program and requires both the Chairperson and CEO to sign the corporate plan.

Item 71: Paragraph 77(2)(d)

This item repeals the requirement for the annual operating plan to include the human resources development program and requires both the Chairperson and CEO to sign the annual operating plan.

Item 72: Division 8 of Part 2

This item repeals the Division relating to financial matters.

Item 73: Before section 89

This item is a consequential amendment. It replicates the section dealing with extra matters to be included in the annual report which is repealed by item 72.

Item 79: Sections 92 to 94

This item indicates that the Commission may delegate by writing any of the domestic fisheries management functions or powers of the Authority to the CEO. The CEO will remain under the direction of the commissioners when performing a delegated function. CEO has the power to sub-delegate any delegated power from the Commission to an AFMA staff member or person specified under section 92 of the FA Act. When a delegate is acting upon a sub-delegation, he or she is under the direction of the CEO.

The CEO may delegate by signed writing any of his or her powers to an AFMA staff member or any other person or party specified in section 93 of the FA Act. When a delegate is acting upon a delegation, he or she is under the direction of the CEO.

AFMA will be able to charge fees for work done, services provided or information given.

This item specifically exempts the AFMA from paying tax under any law of the Commonwealth or of a State or Territory, including State payroll tax.

Item 72 repeals the special appropriation in section 80 of the FA Act. This item establishes the AFMA Special Account for the purposes of the *Financial Management and Accountability Act 1997*. Money that was previously held by AFMA will be credited to this account. This item also states the purposes of the account, what can be credited to the account and how the adjusted levy amounts that will be calculated and credited to the account.

Item 80: Paragraph 102(1)(b)

This item is a consequential amendment. The Chairperson of the Commission will be a member of the Council.

Item 81: Paragraph 102(4)(a)

This item is a consequential amendment resulting from the abolition of the position of AFMA directors, the creation of the Commission and commissioners.

Item 82: Subsection 111(4)

This item is a consequential amendment resulting from the abolition of the position of AFMA directors, the creation of the Commission and commissioners.

Fisheries Management Act 1991

Item 83: Subsection 4(1)

This item inserts the definition of AFMA staff member which is the same as the definition in the FA Act. Staff will be employed by the Commonwealth and engaged under the PS Act by the chief executive officer. Staff will not be employed by AFMA itself.

Item 84: Subsection 4(1)

This inserts a definition of CEO which is the same as the definition of the CEO in the FA Act. The position of CEO is created under Section 10B(1) of the FA Act.

Item 85: Subsection 4(1)

This inserts a definition of Commission which is the same as the definition in the FA Act. The Commission is being established under subsection 10B(1) of the FA Act.

Item 86: Subsection 4(1)

This item is a consequential amendment. It inserts the definition of Ministerial Council because a Ministerial Council nominee is required for the Australian Fisheries Management Authority Selection Committee (the AFMA Selection Committee), tasked with nominating members of the Statutory Fishing Rights Allocation Review Panel to the Minister for appointment.

Item 87: Subsection 4(1)

This item is a consequential amendment. It inserts the definition of Presiding Member for the purpose of the AFMA Selection Committee.

Item 88: Subsection 4(1)

This item is a consequential amendment. It inserts a definition of Selection Committee because the AFMA Selection Committee is responsible for nominating members of the Statutory Fishing Rights Allocation Review Panel for appointment by the Minister.

Item 89: Subsection 17(11)

This item reflects amendments to the FA Act which abolish the position of Managing Director. The duties of the Managing Director will be exercised by the CEO.

Item 90: Subsection 43(8)

This item reflects amendments to the FA Act which abolish the position of Managing Director. The duties of the Managing Director will be exercised by the CEO.

Item 91: Paragraph 54(3)(c)

This item is a consequential amendment because AFMA can no longer employ people in its own right.

Item 92: Section 56

This item is a consequential amendment because AFMA can no longer employ people in its own right.

Item 93: Subsection 69(2)

This item is a consequential amendment. AFMA no longer has employees. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer.

Item 94: paragraph 83(1)(a)

This item is a consequential amendment. AFMA no longer has employees. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer.

Item 95: Subsection 89(1) and (3)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 96: Paragraphs 106C(2)(c) and (d)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 97: Paragraph 106E(1)(a)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 98: Paragraph 106F(1)(b)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 99: Subsection 106F(1)(note 1)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 100: Subsection 106F(1) (note2)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 101: Subsection 106F(2)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 102: Subsection 106(2)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 103: Subsection 106F(2)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 104: Subsection 106G(1)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 105: Section 106M(1)

This item is a consequential amendment. AFMA no longer has employees. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer.

Item 106: Paragraphs 106M(2)(d) and (e)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 107: Subsection 106N(1)

This item is a consequential amendment. AFMA no longer has employees. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer.

Item 108: Subsection 106P(1)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 109: Subsection 106Q(1)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 110: paragraphs 106R(2)(a) and (d)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 111: Division 2 of Part 8

This item is a consequential amendment. The provisions that were previously in Division 3 of the FA Act relating to the AFMA Selection Committee have been moved to the FM Act as they have no further use under the FA Act but remain relevant to the process for nominating members for the Minister to appoint to the Statutory Fishing Rights Allocation Review Panel. The legislative process for making appointments to the Panel does not change. As the Panel appointment process is administered by the Department, Committee reports will be produced by the Presiding Member and may be included as a discreet item in the Department's annual report.

Item 112: Paragraphs 163(a) and (b)

This item is a consequential amendment resulting from the abolition of the position of AFMA directors, the creation of the Commission and commissioners.

Item 113: Paragraph 166(3)(c)

This item is a consequential amendment. AFMA no longer has employees. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer.

Item 114: Subparagraph 17(3)(c)(i) of Schedule 1A

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 115: Paragraph 38(3)(b) of Schedule 1A

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 116: Subclause 38(4) of Schedule 1A

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 117: Subclause 38(11) of Schedule 1A

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Torres Strait Fisheries Act 1984

Item 118: Subsection 3(1)

This item inserts the definition of AFMA staff member that is the same as the definition in the FA Act.

Item 119: Subsection 3(1)

This inserts a definition of CEO which is the same as the definition of the CEO in the FA Act. The position of CEO is created under Section 10B(1) of the FA Act.

Item 120: Paragraph 9(1)(b)

This item is a consequential amendment. AFMA no longer has employees. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer.

Item 121: Paragraph 38(1)(b)

This item is a consequential amendment. AFMA no longer has employees. Staff are employed by the Commonwealth and engaged under the PS Act by the chief executive officer.

Item 122: Paragraphs 52C(2)(c) and (d)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 123: Paragraph 52E(1)(a)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 124: Paragraph 52F(1)(b)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 125: Subsection 52F(1) (note1)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 126: Subsection 52F(1) (note2)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 127: Subsection 53F(2)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 128: Subsection 52F(2)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 129: Subsection 52F(4)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 130: Subsection 52G(1)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 131: Subparagraph 17(3)(c)(i) of Schedule 2

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 132: Paragraph 38(3)(b) of Schedule 2

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 133: Subclause 38(4) of Schedule 2

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Item 134: Subclause 38(11) of Schedule 2 (paragraph (b) of the definition of senior authorising officer)

This is a consequential amendment giving the CEO the role of the now abolished Managing Director.

Part 2 – Transitional Provisions

Item 135: Definitions

This item lists the definitions of relevant terms contained within the savings and transitional provisions in Part 2 of Schedule 1 of the Bill.

Item 136: AFMA staffing processes to continue

This item states that staffing activities such as terms of engagement, recruitment processes, promotions and disciplinary actions continue unaffected by the

amendments made to AFMA's structure and governance. It is intended that AFMA employees become Australian Public Service employees by way of a determination under paragraph 72(1)(c) of the PS ACT.

Item 137: Australian Fisheries Management Selection Committees to continue

This item ensures that the appointment of the Presiding Member of the AFMA Selection Committee or a Deputy Presiding Member will remain unaffected by the changes to AFMA's governance arrangements and the movement of the provisions relating to the AFMA selection Committee from the FA Act to the FM Act. Any activities by the AFMA Selection Committee relating to the appointment of persons to the Statutory Fishing Rights Allocation Review Panel that is in process at the commencement time.

Item 138: Vesting of property and money

This item automatically transfers all property held by AFMA to the Commonwealth upon the commencement time. The Commonwealth is now AFMA's successor in law in relation to that property.

Item 139: Vesting of financial liabilities

This item specifies that all of AFMA's financial liabilities cease to be liabilities of the Authority and become liabilities of the Commonwealth, subject to assets being held under trust arrangements upon the commencement time. The Commonwealth is now AFMA's successor in law in relation to those liabilities.

Item 140: Vesting of assets held on trust

This item states that assets held by AFMA on trust will be held by the Commonwealth on trust upon the commencement time. The Commonwealth is now AFMA's successor in law in relation to those assets.

Item 141: Vesting of liabilities relating to assets held on trust.

This item states that the Commonwealth will assume all liabilities relating to assets held on trust by AFMA upon the commencement time. The Commonwealth is now AFMA's successor in law in relation to those liabilities.

Item 142: Contracts

This item states that any contract entered into with AFMA and still in force upon the commencement time is deemed to have been entered into by the Commonwealth. The intention of this section is not to create an agency arrangement between AFMA and the Commonwealth. AFMA is unable to enter contracts by virtue of section 8(2)(b). Contracts, therefore, will be treated as if they had originally been made with the Commonwealth.

Item 143: Instruments relating to transferred assets and liabilities

This item ensures that instruments made in the name of AFMA which relates to assets or liabilities transferred to the Commonwealth will be treated as if they were originally made in the name of the Commonwealth.

Item 144: References to Managing Director and directors of AFMA

This item is a consequential amendment resulting from the abolition of the position of Managing Director. Any reference to the Managing Director will be read as a

reference to the CEO to preserve the instrument and reflect that the duties of the Managing Director will be exercised by the CEO.

Item 145: Proceedings relating to transferred assets and liabilities

This item states that if there are any court or tribunal proceedings pending immediately before commencement time that relate to property held by AFMA to which AFMA was a party, then at the commencement time, the Commonwealth will be substituted for AFMA as a party to the proceedings.

Item 146: Certificates relating to vesting of land

This item states that if land vests in the Commonwealth under this Schedule, and a certificate signed by the Minister is lodged with the appropriate land registration official, then the land registration official may register the matter and deal with, and give effect to, the certificate.

Item 147: Certificates relating to the vesting of assets other than land

This item states that if assets other than land vest in the Commonwealth under this Schedule, and a certificate is lodged with the appropriate assets official, then the assets official may deal with, and give effect to, the certificate and make entries in the register as are necessary.

Item 148: Appropriations

This item states that if the Consolidated Revenue Fund is appropriated under any Act for the purposes of the performance or exercise of AFMA's functions or powers, that Act continues to apply in relation to AFMA after the commencement time.

Item 149: Exemptions from stamp duty and other State or Territory taxes

This item ensures that no stamp duty or any other tax is payable under a law of a State or Territory on any transfer of assets or liabilities arising in relation to the operation of this Part.

Item 150: Reporting requirements

If any law requires AFMA or a director to make a report for a period immediately prior to the commencement date then AFMA must still meet that requirement. Likewise, if a report is required by law to be made and it related to a period immediately prior to commencement but was not provided by the commencement time then AFMA must provide the report as required.

Item 151: Access to records

This item states that, in relation to the books of AFMA, references to a Commonwealth authority under subsection 27L of the *Commonwealth Authorities and Companies Act 1997* are to be read, after the commencement time, as a reference to AFMA.

Item 152: Continuing obligation to keep records

This item states that AFMA will continue to be obliged to retain records generated during the time it was subject to the reporting requirements of the *Commonwealth Authorities and Companies Act 1997*.

Item 153: Compensation for acquisition of property

This item states that if property is acquired under this Part otherwise than on just terms, the Commonwealth will be liable to pay a reasonable amount of compensation to the person. If agreement cannot be reached, proceedings can be instituted in the Federal Court to determine a reasonable amount of compensation.

Item 154: Certificates taken to be authentic

This item states that certificates made or issued under this Part will be considered to be properly given and authentic unless established contrary.

Item 155: Delegation by Minister

The Minister may delegate any or all of his or her functions under this Part to the Secretary of the Department, a Senior Executive Service (SES) employee or acting SES employee of the Department or the CEO of AFMA. Any delegate acting in accordance with the section is subject to the direction of the Minister when exercising powers delegated.

Item 156: Regulations

This item stipulates that regulations can be made by the Governor-General to assist the operation of this Part.

Schedule 2: Foreign boats equipped for fishing

Fisheries Management Act 1991

Item 1: Subsection 101(1)

This item removes the words ‘with nets, traps or other equipment’ in order to make clear the subsection’s intention to refer to a broader concept of ‘fishing equipment’ which is defined by the insertion of a new subsection 101(1A) (item 4).

The heading to section 101 is also altered by omitting “with nets etc.” and substituting “for fishing”.

Item 2: Paragraph 101(1)(c)

This item omits the words ‘nets, traps or other equipment for fishing are stored and secured’ and substitutes the words ‘fishing equipment is stowed’ in order to put it beyond doubt that the reference to ‘fishing equipment’ is a broad one as described in the new subsection 101(1A) (see item 4 below). Further, the reference to ‘stowed’ is to encompass all situations where it is practicable to stow equipment as described in the new subsection 101(1A) (see item 4 below). This is more demanding than the previous requirement that the equipment merely be ‘stored and secured’. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 3: Paragraph 101(1)(d)

This item omits the words ‘nets, traps or other equipment for fishing are stored and secured’ and substitutes the words ‘fishing equipment is stowed’ in order to put it beyond doubt that the reference to ‘fishing equipment’ is a broad one as described in the new subsection 101(1A) (see item 4 below). Further, the reference to ‘stowed’ is to encompass all situations where it is practicable to stow equipment as described in the new subsection 101(1A) (see item 4 below). This is more demanding than the

previous requirement that the equipment merely be ‘stored and secured’. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 4: After subsection 101(1)

This item inserts a new subsection 101(1A) which stipulates how fishing equipment must be stowed in order to comply with the legislation. It requires that a boat’s fishing equipment be disengaged and secured in a manner as not to be readily deployable for fishing. This addresses a potential loophole in the Act and will assist compliance officers in determining when the Act has been breached.

Further, this item defines the relevant fishing equipment that must be stowed – a much broader and clearer definition than the omitted ‘nets, traps or other equipment’.

Item 5: Paragraph 101A(1)(c)

This item removes the words ‘with nets, traps or other equipment’ in order to make clear the subsection’s intention is to refer to a broader concept of ‘fishing equipment’ which is defined by the insertion of a new subsection 101A(5) (item 8).

Item 6: Paragraph 101A(4)(c)

This item omits the words ‘nets, traps or other equipment for fishing are stored and secured’ and substitutes the words ‘fishing equipment is stowed’ in order to put it beyond doubt that the reference to ‘fishing equipment’ is a broad one as described in the new subsection 101A(5) (see item 8 below). Further, the reference to ‘stowed’ is to encompass all situations where it is practicable to stow equipment as described in the new subsection 101A(5) (see item 8 below). This is more demanding than the previous requirement that the equipment merely be ‘stored and secured’. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 7: Paragraph 101A(4)(d)

This item omits the words ‘nets, traps or other equipment for fishing are stored and secured’ and substitutes the words ‘fishing equipment is stowed’ in order to put it beyond doubt that the reference to ‘fishing equipment’ is a broad one as described in the new subsection 101A(5) (see item 8 below). Further, the reference to ‘stowed’ is to encompass all situations where it is practicable to stow equipment as described in the new subsection 101A(5) (see item 8 below). This is more demanding than the previous requirement that the equipment merely be ‘stored and secured’. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 8: At the end of section 101A (after the note)

This item inserts a new subsection 101A(5) which stipulates how fishing equipment must be stowed in order to comply with the legislation. It requires that a boat’s fishing equipment be disengaged and secured in a manner as not to be readily deployable for fishing. This addresses a potential loophole in the Act and will assist compliance officers in determining when the Act has been breached.

Further, this item defines the relevant fishing equipment that must be stowed – a much broader and clearer definition than the omitted ‘nets, traps or other equipment’.

Item 9: Paragraph 101AA(1)(c)

This item removes the words ‘with nets, traps or other equipment’ in order to make clear the subsection’s intention is to refer to a broader concept of ‘fishing equipment’ which is defined by the insertion of a new subsection 101AA(2A) (item 12).

Item 10: Paragraph 101AA(2)(c)

This item omits the words ‘nets, traps or other equipment for fishing are stored and secured’ and substitutes the words ‘fishing equipment is stowed’ in order to put it beyond doubt that the reference to ‘fishing equipment’ is a broad one as described in the new subsection 101AA(2A) (see item 12 below). Further, the reference to ‘stowed’ is to encompass all situations where it is practicable to stow equipment as described in the new subsection 101AA(2A) (see item 12 below). This is more demanding than the previous requirement that the equipment merely be ‘stored and secured’. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 11: Paragraph 101AA(2)(d)

This item omits the words ‘nets, traps or other equipment for fishing are stored and secured’ and substitutes the words ‘fishing equipment is stowed’ in order to put it beyond doubt that the reference to ‘fishing equipment’ is a broad one as described in the new subsection 101AA(2A) (see item 12 below). Further, the reference to ‘stowed’ is to encompass all situations where it is practicable to stow equipment as described in the new subsection 101AA(2A) (see item 12 below). This is more demanding than the previous requirement that the equipment merely be ‘stored and secured’. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 12: After subsection 101AA(2) (after the note)

This item inserts a new subsection 101AA(2A) which stipulates how fishing equipment must be stowed in order to comply with the legislation. It requires that a boat’s fishing equipment be disengaged and secured in a manner as not to be readily deployable for fishing. This addresses a potential loophole in the Act and will assist compliance officers in determining when the Act has been breached.

Further, this item defines the relevant fishing equipment that must be stowed – a much broader and clearer definition than the omitted ‘nets, traps or other equipment’.

Torres Strait Fisheries Act 1984

Item 13: Subsection 51(1)

This item removes the words ‘with nets, traps or other equipment’ in order to make clear the subsection’s intention is to refer to a broader concept of ‘fishing equipment’ which is defined by the insertion of a new subsection 51(4AA) (item 15).

Item 14: Paragraph 51(4)(a)

This item omits the words ‘nets, traps or other equipment for taking fish were stowed and secured’ and substitutes the words ‘the boat’s equipment for taking fish was stowed’ in order to put it beyond doubt that the reference to ‘equipment for taking fish’ is a broad one as described in the new subsection 51(4AA) (see item 15 below). Further, the reference to ‘stowed’ is to encompass all situations where it is practicable to stow equipment as described in the new subsection 51(4AA) (see item 15 below). This is more demanding than the previous requirement that the equipment merely be ‘stowed and secured’. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 15: After subsection 51(4) (after the note)

This item inserts a new subsection 51(4AA) which stipulates how fishing equipment must be stowed in order to comply with the legislation. It requires that a boat's fishing equipment be disengaged and secured in a manner as not to be readily deployable for fishing. This addresses a potential loophole in the Act and will assist compliance officers in determining when the Act has been breached.

Further, this item defines the relevant fishing equipment that must be stowed – a much broader and clearer definition than the omitted 'nets, traps or other equipment'.

Item 16: Paragraph 51A(1)(c)

This item removes the words 'with nets, traps or other equipment' in order to make clear the subsection's intention is to refer to a broader concept of 'fishing equipment' which is defined by the insertion of a new subsection 51A(2A) (item 18).

Item 17: Paragraph 51A(2)(a)

This item omits the words 'nets, traps and other equipment for taking fish were stowed and secured' and substitutes the words 'equipment for taking fish was stowed' in order to put it beyond doubt that the reference to 'equipment for taking fish' is a broad one as described in the new subsection 51A(2A) (see item 18 below). Further, the reference to 'stowed' is to encompass all situations where it is practicable to stow equipment as described in the new subsection 51A(2A) (see item 18 below). This is more demanding than the previous requirement that the equipment merely be 'stowed and secured'. This is aimed at not permitting the equipment to be readily deployable for fishing.

Item 18: After subsection 51A(2) (after the note)

This item inserts a new subsection 51A(2A) which stipulates how fishing equipment must be stowed in order to comply with the legislation. It requires that a boat's fishing equipment be disengaged and secured in a manner as not to be readily deployable for fishing. This addresses a potential loophole in the Act and will assist compliance officers in determining when the Act has been breached.

Further, this item defines the relevant fishing equipment that must be stowed – a much broader and clearer definition than the omitted 'nets, traps or other equipment'.

Schedule 3: Boats beyond the AFZ

Fisheries Management Act 1991

Item 1: Subsection 4(1)

This item inserts a definition of Australian national for the purposes of Item 52. Item 52 introduces offence provisions applicable to Australian nationals that contravene international fisheries management measures.

Item 2: Subsection 4(1) (definition of Australian regional management measure)

This item repeals the definition of Australian regional management measure. This definition is to be replaced with a new definition for international fisheries management measure under Item 7. The existing definition is too narrow as it only covers measures adopted with respect to fish stocks covered by UNFSA (highly

migratory and straddling stocks) and not those (such as discrete high seas stocks) covered by other international fisheries management organisations.

Item 3: Subsection 4(1)

This item inserts a definition of conservation area. This definition replaces the definition of Convention area repealed under Item 5. This item provides that a conservation area for a conserved fish stock is the area that applies in relation to the international fisheries management measure that covers that fish stock.

Item 4: Subsection 4(1)

This item inserts a definition of conserved fish stock. This item replaces the definition repealed under Item 22. The existing definition in subsection 16A(4) is too narrow, as it only covers fish stocks covered by UNFSA. This item extends the meaning of conserved fish stock to include fish stocks covered by any prescribed international fisheries management measure.

Item 5: Subsection 4(1) (definition of Convention area)

This item repeals the definition of Convention area. The FM Act currently contains a number of provisions which apply expressly to the WCPFC. The framework introduced by this amendment Bill will remove references to specific international fisheries management organisations and instead will extend the general enforcement framework of the FM Act to give effect to UNFSA and any prescribed international fisheries management organisation. Accordingly, rights and obligations under the WCPFC will be given effect under this general enforcement framework.

Item 6: Subsection 4(1) (definition of FSA boat)

This item repeals the definition of FSA boat. The FM Act currently contains a number of provisions which apply expressly to UNFSA. The amendment will restructure and extend the general enforcement framework so it applies to all foreign boats, not just those flagged to parties to UNFSA, as well as any prescribed international fisheries management organisation.

Item 7: Subsection 4(1)

This item inserts a definition of international fisheries management measure. This item replaces the definitions repealed under Items 2, 10 and 16. The existing definitions are too narrow. This item provides that an international fisheries management measure covers measures adopted with respect to fish stocks covered by UNFSA and those covered by other international fisheries management organisations.

For the purpose of Parliamentary scrutiny and public availability, the appropriate measures agreed by the international fisheries management organisation will be prescribed in regulations. The prescribed regulations provide greater clarity for the exercise of powers by officers under Item 32 and to the scheme of offences relating to the contravention of international fisheries management measures introduced in Item 52.

Item 8: Subsection 4(1)

This item inserts a definition of international fisheries management organisation. This replaces the definition repealed under Item 11. The existing definition is too narrow as it only covers organisations or arrangements which deal with fish stocks covered by UNFSA. The new definition covers global, regional and subregional fisheries management organisations and arrangements, including those to which UNFSA

refers. This is consistent with the intention of this amendment Bill to restructure and extend the general enforcement framework to give effect to all prescribed global, regional and subregional fisheries organisations and arrangements.

For the purpose of Parliamentary scrutiny and public availability, the international fisheries management organisations will be prescribed in the regulations.

Item 9: Subsection 4(1) (definition of party to the WCPFC)

This item repeals the definition of party to the WCPFC. The FM Act currently contains a number of provisions which apply expressly to the WCPFC. The amendments will delete all specific references to the WCPFC and restructure and extend the general enforcement framework so it applies to all international fisheries management organisations and UNFSA.

Item 10: Subsection 4(1) (definition of regional management measure)

This item repeals the definition of regional management measure. This definition is to be replaced with a new definition under Item 7. The existing definition is too narrow as it only covers measures adopted with respect to fish stocks covered by UNFSA and not those covered by other international fisheries management organisations.

Item 11: Subsection 4(1) (definition of regional organisation or arrangement)

This item repeals the definition of regional organisation or arrangement. This definition is to be replaced with a new definition under Item 8. The existing definition is too narrow as it only covers organisations or arrangements which deal with fish stocks covered by UNFSA. The new definition covers global, regional and subregional fisheries management organisations and arrangements, including those to which UNFSA refers.

Item 12: Subsection 4(1) (definition of seriously violate)

This item repeals the definition of seriously violate. The existing term, which derives from UNFSA, is used in provisions of the FM Act giving additional investigatory powers for officers where there is evidence of a serious violation of an Australian regional management measure. This item is consequential to provisions repealed under Item 28 and introduced under Item 32. Item 32 provides that the exercise of powers by officers is conditional on authorisation from the appropriate authority of the country to which the boat is flagged.

Item 13: Subsection 4(1) (definition of Treaty licensing area)

This item repeals the definition of Treaty licensing area. The term is redundant as it is no longer used in the FM Act.

Item 14: Subsection 4(1) (definition of WCPFC)

This item repeals the definition of WCPFC. The FM Act currently contains a number of provisions which apply expressly to the WCPFC. The amendments will delete all specific references to the WCPFC and restructure and extend the general enforcement framework so it applies to all international fisheries management organisations.

Item 15: Subsection 4(1) (definition of WCPFC boat)

This item repeals the definition of WCPFC boat. The FM Act currently contains a number of provisions which apply expressly to WCPFC boats. The amendment will

delete all specific references to the WCPFC and restructure and extend the general enforcement framework so it applies to all foreign boats.

Item 16: Subsection 4(1) (definition of WCPFC conservation and management measure)

This item repeals the definition of WCPFC conservation and management measure. This definition is to be replaced with a new definition under Item 7. This current definition is too narrow as the definition only covers measures adopted by the WCPFC and not those covered by other international fisheries management organisations.

Item 17: Subsection 4(1) (definition of WCPFC fish stock)

This item repeals the definition of WCPFC fish stock. The FM Act currently contains a number of provisions which apply expressly to the WCPFC. The amendment will delete all specific references to the WCPFC and restructure and extend the general enforcement framework so it applies to fish stocks covered by all international fisheries management organisations.

Item 18: Subsection 7(1) (note)

This item repeals the note. This is a consequential amendment required as a result of the deletion and insertion of a number of express provisions that have extra-territorial application and Item 19.

Item 19: At the end of Subsection 7(3)

This item adds the words ‘or express provisions that extend the application of this Act’ to the end of the subsection. This is a consequential amendment required as a result of the deletion and insertion of a number of express provisions that have extra-territorial application. This item provides that in relation to fishing activities on waters outside the AFZ the FM Act also applies to provisions that expressly extend the application of the Act.

Item 20: Subsection 16A(1)

This item replaces a reference to ‘straddling fish stock or highly migratory’ fish stock with ‘conserved’ fish stock. This reference to straddling fish stock or highly migratory fish stock requires AFMA to meet international obligations only in relation to those fish stocks. This amendment is necessary to enable AFMA to meet obligations in relation to fish stocks covered by any prescribed international fisheries management organisation.

The heading to section 16A is amended to cover obligations under any prescribed international fisheries management organisation that AFMA is required to give effect to. The existing heading is too narrow as it only requires AFMA to meet obligations under UNFSA.

The heading to subsection 16A(1) is amended to cover all international fisheries management measures. This item is a consequential amendment required as Item 10 repeals the definition of regional management measure and Item 7 inserts a new definition of international fisheries management measure.

Item 21: After paragraph 16A(3)(b)

This item inserts a paragraph with references to existing sections 105AA and 105AB. This requires AFMA to limit authorisation of an Australian-flagged boat if the boat

has previously been used to fish on the high seas for a conserved stock without a concession.

Item 22: Subsection 16A (4)

This item repeals the definition of conserved fish stock. This is a consequential amendment required as Item 4 inserts a new definition for conserved fish stock. The existing definition is too narrow as it only covers fish stocks covered by UNFSA.

Item 23: Subsection 32(ID) (note)

This item replaces a reference to ‘straddling fish stock or highly migratory’ fish stock with a reference to a ‘conserved’ fish stock. This is a consequential amendment required due to the extension of the scope of section 16A, by Items 4, 20 and 22, so that AFMA is able to meet its obligations in relation to fish stocks under any prescribed international fisheries management organisation as well as UNFSA.

Item 24: Paragraph 38(3A)(a)

This item replaces a reference to a ‘serious violation of a WCFPC conservation and management measure to extend the provision to apply to a contravention of any prescribed international fisheries management measure. The existing subsection allows AFMA to suspend fishing concessions if the concession holder has seriously violated a WCPFC conservation and management measure and this violation has led to sanctions being applied by Australia or a foreign country. The fishing concession can be suspended until compliance with the sanctions is fully demonstrated. This item extends the subsection to allow AFMA to suspend fishing concessions if the concession holder has contravened any prescribed international fisheries management measure, including WCPFC agreed measures.

This item fulfils Australia’s obligations under all prescribed international fisheries management organisations that require parties to take action against boats that contravene international fisheries management measures adopted by that organisation. In particular, this ensures that the boats cease to fish in the area in which the measure applies until compliance with all sanctions has been demonstrated.

Item 25: Subparagraph 39(1)(d)(i)

This item replaces the words ‘regional organisation or arrangement’ with ‘global, regional or subregional fisheries organisation or arrangement’. Currently, section 39 provides for the cancellation of a fishing concession that authorises fishing in a fishery in which Australia is not involved in the regional organisation or arrangement within the meaning of UNFSA. This would enable cancellation of a fishing concession if it was issued in error, through AFMA being unaware of the existence of the regional organisation or arrangement. This item and Item 26 extend the provision to cover all global, regional or subregional fisheries management organisations or arrangements, including those within the meaning of UNFSA.

Item 26: Subparagraph 39(1)(d)(ii)

This item repeals the existing provision and inserts a new extended provision. This is consistent with the approach and reasoning provided in Item 25 above.

Item 27: At the end of section 42A

This item inserts a reference to measures established by an international fisheries management organisation. This item extends the provision so it is a condition of a high seas fishing concession to facilitate boarding and inspection by foreign fisheries

officers for the purpose of checking compliance with UNFSA or a measure agreed by an international fisheries management organisation. The inspecting officers should act in accordance with the procedures outlined in UNFSA or the international fisheries management measure. Following instruction from AFMA to cooperate and facilitate an inspection by foreign officials, failure to comply can lead to suspension of the fishing concession.

For the purpose of Parliamentary scrutiny and public availability, relevant international fisheries management measures will be prescribed in regulations as outlined in Item 7.

Item 28: Sections 87A to 87F

This item repeals the existing provisions. The existing provisions to be repealed are too narrow as they only provide for boarding and inspection powers in relation to 'FSA boats.' Sections 87A to 87F of the FM Act currently give effect to Australia's obligations under UNFSA, so officers can board and inspect boats flagged to parties to UNFSA. These powers do not extend to the boarding and inspection of foreign boats beyond the AFZ under regimes of international fisheries management organisations. In addition, there is no provision under the current legislation for the exercise of powers on foreign boats beyond the AFZ on the basis of *ad hoc* or standing consent given by the flag country.

The framework introduced by this amendment Bill will restructure and extend the general enforcement framework of the FM Act to give effect to UNFSA and any prescribed international fisheries management organisation. Accordingly, rights and obligations under UNFSA will be given effect under this general enforcement framework, introduced under item 32.

Item 29: Subsection 87H(1) (note)

This item repeals the note. The note was limited to Australian-flagged boats and UNFSA boats. This is a consequential amendment due to the repeal of a referenced section at Item 28. The framework introduced by this amendment Bill will restructure and extend the general enforcement framework of the FM Act to give effect to UNFSA and any prescribed international fisheries management organisation. If the officer discovers after boarding that the boat is in fact an Australian flagged boat or an international fisheries management organisation boat sections 87G or 87HA will allow the officer to exercise powers on the boat.

Item 30: Paragraph 87H(5)(b)

This item removes the reference to section 87F and substitutes the phrase 'another provision of the Act or the regulations requires'. This item is a consequential amendment required due to the repeal of section 87F by Item 28 and Item 32 providing for regulations that will set out the procedural requirements officers will need to follow (if any) in exercising boarding and inspection powers. Regulations may require a report to be issued, if so a further report should not be issued.

Item 31: Subsection 87H(5) (note)

This item repeals the note to subsection 87H(5). This is a consequential amendment due to the repeal of the referenced section at Item 28.

Item 32: After section 87H

This item inserts a comprehensive new framework for the boarding and inspection of foreign vessels replacing those repealed under Item 28. The existing provisions are too narrow as they only provide for the boarding and inspection of boats flagged to countries that are parties to UNFSA. This item provides a restructured and simplified cohesive provision extending officers' powers to board and inspect to give effect to UNFSA, prescribed international fisheries management organisations and any bilateral agreement or arrangement into which Australia enters. In addition, this item allows for the exercise of boarding and inspection powers on foreign boats on the basis of *ad hoc* or standing consent given by the flag country. This item implements Australia's rights and obligations under international law in relation to the conservation and management of fish stocks and marine living resources.

This item enables officers to exercise the powers fully set out in section 84 of the FM Act for the purposes of verifying compliance with measures agreed by an international fisheries management organisation. These powers may be exercised in relation to:

- foreign boats in Australia or Australian waters after contraventions on the high seas;
- foreign boats on the high seas; and
- foreign boats in foreign countries or waters after the boat has been brought or directed there.

Subsection 1 of this item provides a right for Australian officers, as officers of the inspecting country, to board and inspect a foreign boat in Australia or Australian waters when an officer has reason to believe that the boat has contravened a measure agreed by an international fisheries management organisation on the high seas and such boat has subsequently, during the same fishing trip, entered Australian waters.

Subsection 2 of this item provides a right for Australian officers, as officers of the inspecting country, to board and inspect a foreign boat on the high seas.

Subsection 3 of this item provides for the continued operation of officers' powers when a boat has been brought or directed to a foreign country or waters under this item. Where the powers are exercised in a foreign country, internal waters, territorial sea or archipelagic waters, the consent of the foreign country is required before the enforcement action can be taken. This is a requirement as those areas are under the sovereignty of that foreign country.

Under international law Australia has the right to take surveillance and enforcement action against foreign vessels in relation to breaches of international fisheries management measures as are authorised by the country to which the vessel concerned is flagged. Subsections 1 to 3 of this item provide officers with powers to board and inspect, investigate (including taking the boat to the nearest appropriate port) and arrest a person on a foreign boat if the exercise of the powers is authorised by the appropriate authority of the country to which the boat is flagged. Such authorisation may be provided:

- through the UNFSA if the country to which the vessel is flagged is a party to UNFSA;
- through the relevant international fisheries management organisation or other arrangement, if that organisation or arrangement has adopted boarding and

inspection procedures and the procedures are binding on the country to which the vessel is flagged; or

- on the basis of *ad hoc* or standing consent given by the flag country.

Officers' powers to detain are provided for in relation to foreign offences in Schedule 1A of the FMA as amended by Items 61-66.

It would be possible for a flag country, following authorising Australia to board and inspect, to decide at any time to take control and undertake its own investigative and enforcement action.

Subsection 4 of this item provides for a number of modifications to the area of operation of section 84 under subsections (1) to (3) of this item.

Subsection 5 and 6 of this item provide for the procedural requirements (if any) of a boarding and inspection procedure to be set out in regulations. The international agreements and arrangements to which Australia is a party or a participant that provide non-flag country (inspecting country) members with a right to board and inspect may determine a prescribed boarding and inspection process to protect the interests of the fishing boat, the flag country and the inspecting country. Officers exercising powers under this item will be required to follow the procedures (if any) set out in the regulations.

Item 33: Subsection 87J(1)

This item replaces references to sections in the FM Act with updated references. This item is a consequential amendment, necessary due to the deletion of the referenced sections by Item 28 and the insertion of a new section under Item 32. The amendment will provide that an officer can use reasonable force if it is necessary to ensure the safety of an officer or to overcome obstruction of an officer in the exercise of an officer's duties when boarding, inspecting and investigating a boat.

Item 34: Subsection 88(1)

This item replaces references to sections in the FM Act with updated references. This item is a consequential amendment, necessary due to the deletion of the referenced sections by Item 28 and the insertion of a new section under Item 32. The amendment will allow the officer to release property that has been seized by an officer under Item 32.

Item 35: Section 88A

This item repeals the section and inserts a new section. The existing section limits the seizure and forfeiture provisions of the FM Act to provide for the release to the flag country of a UNFSA boat that is under the control of an officer because the boat is believed to have committed a contravention of a high seas offence. This item allows for regulations to provide that some or all of the seizure and forfeiture provisions of the FM Act do not apply to a foreign boat in specified circumstances. This provides for different arrangements under the international fisheries management organisations, measures and UNFSA in relation to the seizure of boats (including nets, traps, equipment or fish) by, and forfeiture of boats (including nets, traps, equipment or fish) to, non-flag country (the inspecting country) members.

Item 36: Paragraph 98(1A)(b)

This item inserts references to sections 105AA and 105AB and updates the existing references. This item provides that a court may order a person (including a foreigner)

not to be on any Australian-flagged boat outside the AFZ for the purposes of commercial fishing during a period specified by the court if the court convicted the person of an offence under sections 105AA or 105AB. Offences under these sections apply to Australian-flagged boats fishing for a conserved stock on the high seas without a concession.

Item 37: At the end of subsection 98(1A)

This item inserts a new paragraph referring to sections 105E, 105EA, 105F, 105FA, 105H and 105I. This item updates the existing references as a result of Item 52. This item provides that a court may order a person (including a foreigner) not to be on any Australian-flagged boat outside the AFZ for the purposes of commercial fishing during a period specified by the court if the court convicted the person of an offence under sections 105E, 105EA, 105F, 105FA, 105H or 105I. Offences under these sections apply to foreign boats fishing on the high seas or foreign waters contravening an international fisheries management measure or fishing on the high seas without an appropriate authorisation.

Item 38: Paragraph 102(1)(c)

This item replaces references to sections in the FM Act with updated references. This item is a consequential amendment necessary due to the deletion of the referenced sections by Item 28 and the insertion of a new section under Item 32.

Item 39: Paragraph 105AA(1)(b)

This item removes a reference to ‘WCPFC’ fish stock and replaces it with a reference to ‘conserved’ fish stock. The reference to WCPFC constrains section 105AA too narrowly. This item extends the application of section 105AA to cover any conserved fish stock as defined in Item 4 to include fish stocks covered by any prescribed international fisheries management measure.

Item 40: Paragraph 105AA(1)(d)

This item removes a reference to ‘Convention area’ and replaces it with a reference to ‘conservation area for the fish stock’. The reference to Convention area constrains section 105AA too narrowly to the WCPFC convention area only. This item extends the application of section 105AA to apply to the conservation area for the conserved fish stock as defined in Item 3.

Item 41: Paragraph 105AB(1)(b)

This item removes a reference to ‘WCPFC’ fish stock and replaces it with a reference to ‘conserved’ fish stock. The reference to WCPFC constrains section 105AB too narrowly. This item extends the application of section 105AB to cover any conserved fish stock as defined in Item 4 to include fish stocks covered by any prescribed international fisheries management organisation.

Item 42: Paragraph 105AB (1)(d)

This item removes a reference to ‘Convention area’ and replaces it with a reference to ‘conservation area for the fish stock’. The reference to Convention area constrains section 105AB too narrowly to the WCPFC convention area only. This item extends the application of section 105AB to apply to the conservation area for the conserved fish stock as defined in Item 3.

Item 43: Subsection 105D(1)

This item inserts the words ‘or that participates in an international fisheries management organisation’. The FM Act currently contains a number of provisions which apply expressly to UNFSA. The amendment will restructure and extend the general enforcement framework so it applies to UNFSA and any prescribed international fisheries management organisation.

Item 44: At the end of paragraph 105D(1)(c)

This item inserts the words ‘or measures established by the international fisheries management organisation’. The FM Act currently contains a number of provisions which apply expressly to UNFSA. The amendment will restructure and extend the general enforcement framework so it applies to UNFSA and any prescribed international fisheries management organisation.

Item 45: Subsection 105D(2)

This item inserts the words ‘or that participates in an international fisheries management organisation’. The FM Act currently contains a number of provisions which apply expressly to UNFSA. The amendment will restructure and extend the general enforcement framework so it applies to UNFSA and any prescribed international fisheries management organisation.

Item 46: Subsection 105D(2)

This item removes a reference to a regional management measure and replaces it with a reference to an international fisheries management measure. This is a consequential amendment as a result of Items 7 and 10 which replace the definition of regional management measure.

Item 47: Paragraph 105D(2)(a)

This item removes a reference to a regional organisation or arrangement and replaces it with a reference to an international fisheries management organisation. This is a consequential amendment as a result of Items 8 and 11 which replace the definition of regional organisation or arrangement.

Item 48: Paragraph 105D(2)(b)

This item removes a reference to a ‘regional’ management measure and replaces it with a reference to an ‘international fisheries’ management measure. This is a consequential amendment as a result of Items 7 and 10 which replace the definition of regional management measure.

Item 49: At the end of paragraph 105D(2)(c)

This item inserts the words ‘or measures established by the international fisheries management organisation’. The FM Act currently contains a number of provisions which apply expressly to UNFSA. The amendment will restructure and extend the general enforcement framework so it applies to UNFSA and any prescribed international fisheries management organisation.

Item 50: Subsection 105D(5)

This item removes a reference to a regional management measure and replaces it with a reference to an international fisheries management measure. This is a consequential amendment as a result of Items 7 and 10 which replace the definition of regional management measure.

Item 51: At the end of paragraph 105D(5)(c)

This item inserts the words ‘or measures established by the international fisheries management organisation’. The FM Act currently contains a number of provisions which apply expressly to UNFSA. The amendment will restructure and extend the general enforcement framework so it applies to UNFSA and any prescribed international fisheries management organisation.

Item 52: Subdivisions AA, B and C of Division 5A of Part 6

This item repeals subdivisions AA, B and C of Division 5A of Part 6 and replaces them with new subdivisions B and C. The existing offence provisions in subdivisions AA, B and C of Division 5A of Part 6 are too narrow as they apply expressly to the WCPFC or UNFSA. The framework introduced by this amendment Bill will remove references to specific international fisheries management organisations and instead will restructure and extend the general enforcement framework of the FM Act to give full effect to Australia’s rights and obligations under international law in a legally comprehensive and practically effective manner.

Sections 105E and 105EA make it an offence for a person (either an Australian national or a foreigner) to contravene an international fisheries management measure on the high seas. This item strengthens the general enforcement framework to enable the prosecution of offences in accordance with:

- all international fisheries management organisations or arrangements to which Australia is or may become a party;
- UNFSA; and
- on the basis of *ad hoc* or standing consent from the flag country.

The item also inserts, via subsections 105E(3) and 105EA(3), an explanation to the effect that if fishing activities which would otherwise constitute a breach of an international fisheries management measure, and therefore an offence under the FM Act, have been authorised by the country of nationality of the boat, then they are not an offence for the purposes of Australian law.

Sections 105F and 105FA makes it an offence for an Australian national on a foreign boat to breach an international fisheries management measure in foreign waters. These two offences expands on the existing capacity to only prosecute persons who engage in fishing for WCPFC fish stocks or those who use a boat whose nationality is that of a foreign country that is party to UNFSA.

The item also inserts, via subsections 105F(3) and 105FA(3), an explanation to the effect that if fishing activities which would otherwise constitute a breach of an international fishing measure if they were not appropriately authorised, and therefore an offence under the FM Act, have been authorised by the country within whose jurisdiction the activity took place, then they are not an offence for the purposes of Australian law.

Sections 105H and 105I make it an offence for a person (either an Australian national or a foreigner) to fish on the high seas without authorisation. This applies to areas of the high seas both where an international fisheries management organisation exists and where there is no management body in place. Any unauthorised fishing has the potential to undermine the work of international fisheries management organisations and arrangements which aim to ensure the long term conservation and sustainable use of fish stocks.

Sections 105E and 105EA, 105F and 105FA and 105H and 105I provide two-tiered offence regimes, with sections 105E, 105F and 105H being strict liability offences. The two-tiered system provides flexibility in the prosecution of such offences and will enhance the integrity and effectiveness of the regulatory regime for Australian international obligations.

A strict liability offence is considered appropriate in these situations as it allows Australia to more effectively regulate activities by foreign flagged boats fishing both in foreign waters and on the high seas and enhance the effectiveness of the enforcement regime in deterring offences. The requirement to prove all fault elements as part of an offence can create a substantial impediment to the prosecution of such offences. Evidence of intention and recklessness is often very difficult to obtain in the absence of admissions or independent evidence. However, where such evidence is available it would be desirable to prosecute for the full offence that carries a much greater penalty. The strict liability offence is drafted consistently with the Section 6.1 of the Criminal Code.

Sections 105E, 105F and 105H carry maximum penalties of 60 penalty units. This is consistent with Commonwealth policy and principles on strict liability offences. The offence is not punishable by imprisonment.

Subsections 105EA(2) and 105FA(2) make two elements of the offence, namely the provisions regarding the location of the foreign boat (paragraphs 105EA(1)(c) and 105FA (1)(d)) and that the boat is a foreign boat (paragraphs 105EA(1)(d) and 105FA(1)(e)), strict liability. To prove the elements, the prosecution will only have to establish the location of the boat and that the boat was a foreign boat, not that they intended to be in such waters or the boat to be a foreign boat. The Commonwealth Director of Public Prosecutions has not been able to prosecute people for similar offences in the FM Act because there have been difficulties collecting sufficient evidence to prove that the defendants intended, for instance, to be in the location. The amendment is required to ensure that Australia can prosecute and imprison Australian nationals guilty of committing such a fishing offence. The amendments do not alter the other elements of the offence provisions, with the overall offence remaining one in which fault must be proven.

Sections 105EA and 105FA carry maximum penalties of 500 penalty units, which is greater than subsection 105E and 105F as it is not an overall strict liability offence. The full offence is not punishable by imprisonment.

Under section 105EB, in relation to sections 105E and 105EA, and section 105J, in relation to sections 105H and 105I, the consent to proceed to a hearing and determination rests with the Attorney-General in the case of a foreign person. This is to allow for the authority to be given to prosecute within Australian jurisdiction and to ensure that such prosecution action is consistent with international law, such as UNFSA and any relevant international fisheries management organisation. The Attorney-General must take into account views expressed by either the foreign government or the fishing entity whose boat is alleged to be involved in the offence. It is an opportunity for the Attorney-General to consider the relevant international law which underlies the particular offence.

The item installs a simplified regime, applicable to both Australian nationals and foreigners. The simplified regime for Australian nationals will encompass both persons and corporations. These amendments to control Australian nationals are a response by Australia to increased international calls for each nation to exercise

control over their own nationals as part of a broader strategy to combat global IUU fishing. This control must, by logic, extend to the high seas and waters under the jurisdiction of other countries which fall under the area of competence of a prescribed international fisheries management measure.

Item 53: Subsection 106(1)

This item removes references to sections 105C and 105F. Subsection 106(1) allows court ordered forfeiture of certain things used in the commission of the offence where a court convicts a person of a specified offence. Subsection 106(1) applies to offences that can be committed without using a boat. The offences in sections 105C and 105F can only be committed when using a boat. Subsection 106(2) allows court ordered forfeiture of certain things used in the commission of the offence, including the boat, where a court convicts a person of an offence when using a boat. Accordingly, Item 54 amends the references in subsection 106(2).

Item 54: Subsection 106(2)

This item removes references to sections 105E, 105A and 105B and replaces it with references to section 104 and Division 5A of Part 6. This is consistent with the approach and reasoning provided in Item 53 above and amendments to, and restructure of, Division 5A of Part 6 under Items 39 to 52.

Item 55: Subparagraph 106AAA(1)(a)(i)

This item removes reference to sections 105C or 105F. Subsection 106AAA(1)(a)(i) provides for the automatic forfeiture of a boat for the commission of an offence that could be committed without using a boat if a boat is used. This is necessary because the offences in sections 105C and 105F which have been removed can only be committed when using a boat. Subsection 106AAA(1)(a)(ii) provides for automatic forfeiture of a boat if the boat was used in the commission of an offence against other subsections described in item 56. Accordingly, Item 56 amends the references in subsection 106AAA(1)(a)(ii).

Item 56: Subparagraph 106AAA(1)(a)(ii)

This item removes reference to sections 105A, 105B and 105E and replaces it with references to section 104 and Division 5A of Part 6. This is consistent with the approach and reasoning provided in Item 55 above.

Item 57: Paragraph 108(1)(c)

This item replaces references to sections in the FM Act with updated references. This item is a consequential amendment, necessary due to the deletion of the referenced section by Item 28 and the insertion of a new section under Item 32.

Item 58: Paragraph 168(2)(l)

This item replaces references to sections in the FM Act with updated references. This item is a consequential amendment, necessary due to the deletion of the referenced section by Item 28 and the insertion of a new section under Item 32.

Item 59: Paragraph 168(2)(na)

This item removes the phrase ‘a part of the convention area for the purpose related to fishing for a WCPFC fish stock’ and replaces it with the phrase ‘an area covered by an international fisheries management organisation’. The FM Act currently contains a number of provisions which apply expressly to the WCPFC. The amendment will

delete all specific references to the WCPFC and restructure and extend the general enforcement framework so it applies to any prescribed international fisheries management organisation.

Item 60: Subclause 8(1) of Schedule 1A

This item removes reference to section 105F and replaces it with reference to 105EA, 105H and 105I. This item is a consequential amendment, necessary due to the deletion of the referenced section by Item 52. This item extends officers' powers relating to the detention of suspected illegal foreign fishers to apply to all foreign fisheries offences.

Item 61: Subclause 8(3) of Schedule 1A

This item removes reference to section 87E and replaces it with reference to sections 105E, 105EA, 105H, 105I and 'subject to regulations'. This is consistent with the approach and reasoning provided in Item 60 above.

Item 62: Subclause 8(3) of Schedule 1A (note)

This item repeals the note following subclause 8(3) of Schedule 1A. This is a consequential amendment due to the deletion of the referenced section under Item 28. This is consistent with the approach and reasoning provided in Item 60 above.

Item 63: Subclause 12(4) of Schedule 1A

This item removes a reference to section 105F and replaces it with reference to sections 105EA, 105H and 105I. This is a consequential amendment due to the deletion of the referenced section under Item 52 and insertion of a number of new sections. This is consistent with the approach and reasoning provided in Item 60 above.

Item 64: Subclause 12(4) of Schedule 1A

This item removes reference to section 87E and replaces it with reference to sections 105E, 105EA, 105H and 105I subject to any limitations set out in the regulations. This is a consequential amendment due to the deletion of the referenced section under Item 28. This is consistent with the approach and reasoning provided in Item 60 above.

Item 65: Subclause 12(4) of Schedule 1A (note)

This item repeals the note following subclause 12(4) of Schedule 1A. This is a consequential amendment due to the deletion of the referenced section under Item 28. This is consistent with the approach and reasoning provided in Item 60 above.

Item 66: Subparagraph 15(2)(b)(i) of Schedule 1A

This item omits reference to section 105F and replaces it with references to 105E, 105H and 105I. This item is a consequential amendment, necessary due to the deletion of the referenced section by Item 52. This is consistent with the approach and reasoning provided in Item 60 above.

Migration Act 1958

Item 67: Subsection 5(1) (paragraph (a) definition of fisheries detention offence)

This item removes reference to 105F and replaces it with references to 105EA, 105H and 105I. This is a consequential amendment required due to Item 52. This item ensures a consistent treatment of all illegal foreign fishers detained by Australia for foreign fisheries offences.

Item 68: Paragraph 43(5)(b)

This item removes reference to sections 87B, 87C, or 87 D and replaces it with a reference to section 87HA. This is a consequential amendment required due to Items 28 and 32. This item ensures that officers or foreign fishermen holding an enforcement visa need not enter at a proclaimed port as required by section 43 of the Migration Act due to the exercise of powers under section 87HA of the FM Act under Item 32.

Item 69: Paragraph 164B(1A)(b)

This item removes reference to 87B, 87C and 87D and replaces it with a reference to 87HA. This is a consequential amendment required due to Items 28 and 32. This is consistent with the approach and reasoning provided in Item 67 above. This item grants an enforcement visa to non-citizens on a foreign boat outside the migration zone who have brought to Australia or a Territory as a result of an officer exercising powers under section 87HA of the FM Act under Item 32.

Schedule 4: Support boats

Fisheries Management Act 1991

Item 1, Paragraphs 87(1)(a) and (b)

This item repeals and replaces the existing paragraphs. The new paragraphs outline the circumstances in which officers may exercise powers under section 84. In particular, an officer may exercise section 84 powers in relation to a person or boat if the person or boat has been pursued in accordance with subsections (1A), (1B) or (1C) and the powers are exercised at or immediately after the pursuit.

Item 2: After subsection 87(1)

This item inserts new subsections (1A), (1B) and (1C). Subsection (1A) reinstates the essence of paragraphs 87(1)(a) and (b) deleted by Item 1 which provide for pursuit of a boat from a place within the AFZ. This subsection also inserts a new provision which requires officers to request the master of a foreign boat being pursued to stop the boat while the boat is still within the AFZ.

Subsections (1B) and (1C) deal with requirements for pursuit of a support boat from a place outside the AFZ. This was previously dealt with in relevant subsections 101B which are deleted by Item 6.

Subsection (1B) provides for the pursuit of an Australian vessel situated outside the AFZ which is supporting a foreign vessel fishing illegally inside the AFZ. Subsection (1B) is aimed at vessels such as transshipment, freezer, factory, transport and refuelling vessels and any other vessel which supports a foreign vessel within the

AFZ and which is breaching sections 100, 100A, 100B, 101, 101A or 101AA of the FMA.

Subsection (1C) provides for the pursuit of a foreign vessel situated outside the AFZ which is supporting a fishing vessel fishing illegally inside the AFZ. As with the pursuit of a foreign vessel from within the AFZ (subsection (1A)) this item inserts a requirement that an order to stop be given to the master of the support boat, while the supported vessel is still in the AFZ, before the pursuit is commenced. The order to stop is a requirement which applies only to the pursuit of foreign vessels. This section is also aimed at catching vessels such as transshipment, freezer, factory, transport and refuelling vessels and any other vessel which supports a vessel within the AFZ and which is breaching sections 100, 100A, 100B, 101, 101A or 101AA of the FMA.

The activities of support vessels aid immensely illegal, unreported and unregulated (IUU) fishing not only in Australia but globally. These new provisions are consistent with international law and consonant with international calls for countries to strengthen their efforts to combat IUU fishing.

Item 3: Subsection 87(2)

This item replaces a reference to the existing subsection (1), with a reference to the new subsections (1A), (1B) and (1C).

Item 4: Subsection 87(2)

This item omits the words “terminated or substantially”. The retention of these words was considered unnecessary, and removing them ensures the language of the subsection is clearer.

Item 5: At the end of section 87

This item inserts four new subsections 87(4) to 87(7). Subsection 87(4) has been inserted to put it beyond doubt that a ‘pursued’ vessel need not try to evade pursuing officers. This would still allow officers to exercise powers under section 84 upon vessels which do not try to escape from the position they were when ordered to stop.

Subsection 87(5) and 87(6) provide further details about how the requirement to make an order to stop under paragraph (1A)(b) or (1C)(c) may be exercised. Any reasonable means may be used to make the order, and the order is taken to have been given regardless of the absence of a master or the master not understanding the request (6).

Subsection 87(7) deems the support vessels to which subsection (1B) or (1C) applies to be in the AFZ, ensuring that powers under paragraph 84(1)(a) may be exercised for support vessels outside the AFZ. Paragraph 84(1)(a) provides certain powers where, among other matters, a boat is in the AFZ.

Item 6: Subsections 101B(3), (4) and (5)

This item repeals these subsections. These subsections detail provisions which will be covered under the new amendments according to Items 1- 5.

Migration Act 1958

Item 7: Paragraph 43(5)(b)

This item removes reference to section 87B and replaces it with a reference to section 87. This is a consequential amendment required due to Item 28 of Schedule 3 deleting section 87B. This item ensures that officers or foreign fishermen holding an enforcement visa need not enter at a proclaimed port as required by section 43 of the Migration Act due to the exercise of powers under subparagraph 84(1)(k)(ii) and paragraphs 84(1)(l) and (m) of the FM Act or paragraph 42(1)(g) of the TSF Act.

Item 8: Paragraph 164B(1A)(b)

This item removes reference to section 87B and replaces it with a reference to section 87. This is a consequential amendment required due to Item 28 of Schedule 3 deleting section 87B. This item grants an enforcement visa to non-citizens on a foreign boat outside the migration zone who have been brought to Australia or a Territory as a result of an officer exercising powers under subparagraph 84(1)(k)(ii), paragraph 84(1)(l) of the FM Act or 84(1)(m).