

2008

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Fisheries Legislation Amendment (New
Governance Arrangements for the
Australian Fisheries Management
Authority and Other Matters) Bill 2008**

No. , 2008

(Agriculture, Fisheries and Forestry)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Fisheries Legislation Amendment*
6 *(New Governance Arrangements for the Australian Fisheries*
7 *Management Authority and Other Matters) Act 2008.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	1 July 2008.	1 July 2008
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent.	
4. Schedule 3	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
5. Schedule 4	The 28th day after the day on which this Act receives the Royal Assent.	

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—New Governance arrangements**
3 **for AFMA**

4 **Part 1—Amendments**

5 *Fisheries Administration Act 1991*

6 **1 Subsection 4(1)**

7 Insert:

8 *AFMA staff member* means a member of the staff assisting the
9 CEO (see section 68).

10 **2 Subsection 4(1)**

11 Insert:

12 *AFZ* has the same meaning as in the *Fisheries Management Act*
13 *1991*.

14 **3 Subsection 4(1) (definition of *borrowing*)**

15 Repeal the definition.

16 **4 Subsection 4(1)**

17 Insert:

18 *CEO* means the Chief Executive Officer (see subsection 10B(1)).

19 **5 Subsection 4(1)**

20 Insert:

21 *Commission* means the Commission established by subsection
22 10B(1).

23 **6 Subsection 4(1)**

24 Insert:

25 *commissioner* means:

- 26 (a) a part-time commissioner; or
27 (b) the CEO.

1 **7 Subsection 4(1) (definition of *director*)**

2 Repeal the definition.

3 **8 Subsection 4(1)**

4 Insert:

5 *domestic fisheries management functions and powers* of the
6 Authority means the functions and powers of the Authority, other
7 than the foreign compliance functions and powers of the Authority.

8 Note: The functions and powers of the Authority are set out in sections 7 and
9 8, and include functions and powers under associated laws.

10 **9 Subsection 4(1) (definition of *Finance Minister*)**

11 Repeal the definition.

12 **10 Subsection 4(1)**

13 Insert:

14 *fishing concession* has the same meaning as in the *Fisheries*
15 *Management Act 1991*.

16 **11 Subsection 4(1)**

17 Insert:

18 *foreign boat* has the same meaning as in the *Fisheries*
19 *Management Act 1991*.

20 **12 Subsection 4(1)**

21 Insert:

22 *foreign compliance functions and powers* of the Authority means
23 the functions and powers of the Authority as they relate to:

- 24 (a) foreign boats in the AFZ where the operation of the boat is
25 not covered by a fishing concession, port permit or scientific
26 permit, and persons or things on such boats; and
27 (b) boats outside the AFZ, and persons or things on such boats,
28 other than where the boat is operating in an area where it is
29 authorised to operate under a fishing concession.

30 Note: The functions and powers of the Authority are set out in sections 7 and
31 8, and include functions and powers under associated laws.

1 **13 Subsection 4(1) (definition of *Ministerial Council*)**

2 Repeal the definition.

3 **14 Subsection 4(1) (definition of *nominated director*)**

4 Repeal the definition.

5 **15 Subsection 4(1)**

6 Insert:

7 *part-time commissioner* means a person appointed as a part-time
8 commissioner under subsection 12(1), and includes the
9 Chairperson of the Commission.

10 **16 Subsection 4(1)**

11 Insert:

12 *port permit* has the same meaning as in the *Fisheries Management*
13 *Act 1991*.

14 **17 Subsection 4(1) (definition of *Presiding Member*)**

15 Repeal the definition.

16 **18 Subsection 4(1) (before the note)**

17 Insert:

18 *scientific permit* has the same meaning as in the *Fisheries*
19 *Management Act 1991*.

20 **19 Subsection 4(1) (definition of *Selection Committee*)**

21 Repeal the definition (not including the note).

22 **20 Subsection 7(1) (note)**

23 Repeal the note.

24 **21 Subsection 8(2)**

25 Repeal the subsection, substitute:

26 (2) However, the Authority does not have the following powers:
27 (a) the power to acquire, hold and dispose of real or personal
28 property;

- 1 (b) the power to enter into contracts;
2 (c) the power to lease the whole or any part of any land or
3 building for the purposes of the Authority.

- 4 (3) A right to sue is taken not to be personal property for the purposes
5 of paragraph (2)(a).

6 **22 Subsection 9(1)**

7 Omit “(1)”.

8 **23 Subsection 9(2)**

9 Repeal the subsection.

10 **24 Division 2 of Part 2 (heading)**

11 Repeal the heading.

12 **25 Sections 10 and 11**

13 Repeal the sections, substitute:

14 **10 Authority is a body corporate**

- 15 (1) The Authority:
16 (a) is a body corporate; and
17 (b) must have a seal; and
18 (c) may sue and be sued in its corporate name.
- 19 (2) The seal of the Authority must be kept in such custody as the CEO
20 directs, and must not be used except as authorised:
21 (a) in relation to the performance and exercise of the domestic
22 fisheries management functions and powers of the
23 Authority—by the Commission; or
24 (b) in relation to the performance and exercise of the foreign
25 compliance functions and powers of the Authority—by the
26 CEO.
- 27 (3) All courts, judges and persons acting judicially must:
28 (a) take judicial notice of the imprint of the seal of the Authority
29 appearing on a document; and
30 (b) presume that it was duly sealed.

1 **10A Financial liabilities**

2 (1) Any financial liabilities of the Authority are taken to be liabilities
3 of the Commonwealth.

4 (2) For the purposes of this section:

5 *financial liability* means a liability to pay a person an amount,
6 where the amount, or the method for working out the amount, has
7 been determined.

8 **10B The Commission and CEO**

9 (1) There is to be a Commission and a Chief Executive Officer.

10 Note: The Chief Executive Officer is also a commissioner: see the definition
11 of *commissioner* in subsection 4(1).

12 (2) The Commission is responsible for performing and exercising the
13 domestic fisheries management functions and powers of the
14 Authority.

15 (3) The CEO is responsible for:

16 (a) performing and exercising the foreign compliance functions
17 and powers of the Authority; and

18 (b) assisting the Commission, including by giving effect to the
19 decisions of the Commission.

20 (4) The CEO is not subject to direction by the Commission in relation
21 to the CEO's performance or exercise of:

22 (a) functions and powers under the *Financial Management and*
23 *Accountability Act 1997* or the *Public Service Act 1999*; or

24 (b) the foreign compliance functions and powers of the
25 Authority.

26 (5) Anything done in the name of the Authority, or on the Authority's
27 behalf, by:

28 (a) the Commission in performing or exercising the domestic
29 fisheries management functions and powers of the Authority;
30 or

31 (b) the CEO in performing or exercising the foreign compliance
32 functions and powers of the Authority;

33 is taken to have been done by the Authority.

1 **10C Minister may give directions to CEO about foreign compliance**

- 2 (1) The Minister may give written directions to the CEO about the
3 performance and exercise of the foreign compliance functions and
4 powers of the Authority.
- 5 (2) Directions given by the Minister under subsection (1) may relate to
6 a particular case.
- 7 (3) The CEO must comply with any direction given by the Minister
8 under subsection (1).
- 9 (4) The Minister must cause a copy of each direction given under
10 subsection (1) to be tabled in each House of the Parliament within
11 15 sitting days of that House after giving the direction.
- 12 (5) Subsection (4) does not apply in relation to a particular direction if
13 the Minister determines, in writing, that compliance with the
14 subsection is undesirable because compliance would, or would be
15 likely to, be prejudicial to the national interest of Australia.
- 16 (6) Neither a direction made under subsection (1) nor a determination
17 made under subsection (5) is a legislative instrument.

18 **Division 2—Constitution of Commission**

19 **11 Constitution of Commission**

- 20 (1) The Commission consists of:
21 (a) the Chairperson of the Commission; and
22 (b) the other part-time commissioners; and
23 (c) the CEO.
- 24 (2) There must be no more than 8 part-time commissioners (including
25 the Chairperson).

26 **Division 3—Appointment of commissioners**

27 **26 Section 12**

28 Repeal the section, substitute:

1 **12 Appointment of commissioners**

- 2 (1) The Chairperson of the Commission, the other part-time
3 commissioners and the CEO are to be appointed by the Minister by
4 written instrument.

5 *CEO may also be appointed Chairperson*

- 6 (2) The CEO may also be appointed as the Chairperson of the
7 Commission, but must not otherwise hold office as a part-time
8 commissioner.

9 *Eligibility for appointment*

- 10 (3) To be eligible for appointment as a commissioner, an individual, at
11 the time of appointment:

12 (a) must have a high level of expertise in one or more of the
13 following fields:

- 14 (i) fisheries management;
15 (ii) fishing industry operations;
16 (iii) science;
17 (iv) natural resource management;
18 (v) economics;
19 (vi) business or financial management;
20 (vii) law;
21 (viii) public sector administration or governance;
22 (ix) such other fields (if any) as are prescribed by the
23 regulations; but

24 (b) must not hold:

- 25 (i) an executive position in a fishing industry association
26 (however described); or
27 (ii) a fishing concession granted under the *Fisheries*
28 *Management Act 1991*; or
29 (iii) a licence or permit granted under the *Torres Strait*
30 *Fisheries Act 1984*; or
31 (iv) an executive position (however described and whether
32 or not a director of the body) in a body corporate that
33 holds a fishing concession, licence or permit of a kind
34 mentioned in subparagraph (ii) or (iii); or

1 (v) the majority of the voting shares in a company that
2 holds a fishing concession, licence or permit of a kind
3 mentioned in subparagraph (ii) or (iii).

4 Note: These eligibility criteria will apply to the CEO who is also a
5 commissioner: see the definition of *commissioner* in subsection 4(1).

6 (4) For the purposes of subparagraph (3)(b)(iv), a person holds an
7 *executive position* in a body corporate if the person is concerned
8 in, or takes part in, the management of the body.

9 (5) In appointing commissioners, the Minister must ensure, as far as
10 practicable, that the commissioners collectively possess expertise
11 in all of the fields mentioned in paragraph (3)(a).

12 *Basis of appointments*

13 (6) The Chairperson of the Commission and the other part-time
14 commissioners must be appointed on a part-time basis.

15 (7) The CEO must be appointed on a full-time basis.

16 *Term of appointment*

17 (8) A commissioner holds office for the period specified in the
18 instrument of appointment. The period must not exceed 5 years.

19 *Validation*

20 (9) The appointment of an individual as a commissioner is not invalid
21 because of a defect or irregularity in connection with the
22 individual's appointment.

23 **27 Subsection 13(1)**

24 Omit "nominated director to be the Deputy Chairperson of the
25 Authority", substitute "part-time commissioner (other than the
26 Chairperson) to be the Deputy Chairperson of the Commission".

27 **28 Subsection 13(2)**

28 Omit "Authority", substitute "Commission".

29 **29 Subsection 13(4)**

30 Omit "nominated director", substitute "part-time commissioner".

1 **30 Paragraphs 13(6)(a) and (b)**

2 Omit “Authority”, substitute “Commission”.

3 **31 Subsection 13(7)**

4 Omit “Authority”, substitute “Commission”.

5 **32 Sections 14 to 16**

6 Repeal the sections, substitute:

7 **14 Acting CEO**

8 (1) The Minister may appoint a person to act as the CEO:

- 9 (a) during a vacancy in the office of CEO (whether or not an
10 appointment has previously been made to the office); or
11 (b) during any period, or during all periods, when the CEO is
12 absent from duty or from Australia, or is, for any reason,
13 unable to perform the duties of the office.

14 (2) Anything done by or in relation to a person purporting to act under
15 an appointment is not invalid merely because:

- 16 (a) the occasion for the appointment had not arisen; or
17 (b) there was a defect or irregularity in connection with the
18 appointment; or
19 (c) the appointment had ceased to have effect; or
20 (d) the occasion to act had not arisen or had ceased.

21 Note: See section 33A of the *Acts Interpretation Act 1901*.

22 **15 Other employment**

23 (1) A part-time commissioner must not engage, without the Minister’s
24 approval, in paid employment that conflicts or may conflict with
25 the proper performance of his or her duties.

26 (2) The CEO must not engage in paid employment outside the duties
27 of the CEO’s office without the Minister’s approval.

28 **33 Subsection 17(1)**

29 Omit “director” (wherever occurring), substitute “commissioner”.

30 **34 Subsection 17(2)**

1 Omit “director”, substitute “commissioner”.

2 **35 Paragraph 17(3)(a)**

3 Omit “director”, substitute “part-time commissioner”.

4 **36 Subsection 17(4)**

5 Omit “director”, substitute “part-time commissioner”.

6 **37 Subsection 17(7)**

7 Repeal the subsection.

8 **38 Subsection 18(1)**

9 Omit “Authority”, substitute “Commission”.

10 Note: The following heading to subsection 18(1) is inserted “*Part-time commissioners*”.

11 **39 Subsection 18(2)**

12 Omit “director (other than the Managing Director)”, substitute
13 “part-time commissioner”.

14 **40 At the end of section 18**

15 Add:

16 *CEO*

17 (3) The CEO has the recreation leave entitlements that are determined
18 by the Remuneration Tribunal.

19 (4) The Minister may grant the CEO leave of absence, other than
20 recreation leave, on the terms and conditions as to remuneration or
21 otherwise that the Minister determines.

22 **41 Section 19**

23 Omit “director (other than the Managing Director)”, substitute
24 “commissioner”.

25 **42 After section 19**

26 Insert:

1 **20 Disclosure of interests to Minister**

2 *Disclosure on appointment*

- 3 (1) Before starting to hold office, a commissioner must give to the
4 Minister a written statement of any interest, pecuniary or
5 otherwise, that the commissioner has that may relate to:
6 (a) the functions of the commissioner; and
7 (b) in the case of the CEO—the additional functions of the CEO.

8 *Disclosures during term of appointment*

- 9 (2) The commissioner must give written notice to the Minister of all
10 interests, pecuniary or otherwise, that the commissioner has or
11 acquires and that conflict or may conflict with the proper
12 performance of:
13 (a) the commissioner’s functions; and
14 (b) in the case of the CEO—the additional functions of the CEO.
- 15 (3) The notice must be given as soon as possible after the relevant
16 facts come to the commissioner’s knowledge.

17 *Keeping of register*

- 18 (4) The Commission must keep a register of the interests disclosed
19 under this section.

20 **43 Subsection 21(1)**

21 Omit “the Chairperson of the Authority or a nominated director”,
22 substitute “a commissioner”.

23 **44 Subsection 21(2)**

24 Repeal the subsection, substitute:

- 25 (2) The Minister may terminate the appointment of a commissioner if:
26 (a) the commissioner:
27 (i) becomes bankrupt; or
28 (ii) applies to take the benefit of any law for the relief of
29 bankrupt or insolvent debtors; or
30 (iii) compounds with his or her creditors; or

- 1 (iv) makes an assignment of his or her remuneration for the
2 benefit of his or her creditors; or
- 3 (b) the commissioner is absent, except on leave of absence:
- 4 (i) in the case of a part-time commissioner—from 3
5 consecutive meetings of the Commission; or
- 6 (ii) in the case of the CEO—for 14 consecutive days or for
7 28 days in any 12 months; or
- 8 (c) the commissioner engages:
- 9 (i) in the case of a part-time commissioner—in paid
10 employment, without the approval of the Minister, that
11 conflicts or may conflict with the proper performance of
12 the duties of his or her office (see section 15); or
- 13 (ii) in the case of the CEO—in paid employment outside the
14 duties of his or her office without the approval of the
15 Minister (see section 15); or
- 16 (d) the commissioner fails, without reasonable excuse, to comply
17 with section 20 or 24.

18 *Termination for holding certain positions or interests*

- 19 (3) The appointment of a commissioner is terminated, by force of this
20 subsection, if the commissioner becomes the holder of:
- 21 (a) an executive position in a fishing industry association
22 (however described); or
- 23 (b) a fishing concession granted under the *Fisheries*
24 *Management Act 1991*; or
- 25 (c) a licence or permit granted under the *Torres Strait Fisheries*
26 *Act 1984*; or
- 27 (d) an executive position (however described and whether or not
28 a director of the body) in a body corporate that holds a
29 fishing concession, licence or permit of a kind mentioned in
30 paragraph (b) or (c); or
- 31 (e) the majority of the voting shares in a company that holds a
32 fishing concession, licence or permit of a kind mentioned in
33 paragraph (b) or (c).
- 34 (4) For the purposes of paragraph (3)(d), a person holds an ***executive***
35 ***position*** in a body corporate if the person is concerned in, or takes
36 part in, the management of the body.

1 *Validation*

2 (5) Anything done by or in relation to the Commission is not invalid
3 merely because the appointment of a commissioner has been
4 terminated by force of subsection (3).

5 **45 Section 22**

6 Omit “director (other than the Managing Director)”, substitute
7 “commissioner”.

8 **46 After section 22**

9 Insert:

10 **Division 4—Operation of Commission**

11 **47 Subsections 23(1) and (2)**

12 Omit “Authority” (wherever occurring), substitute “Commission”.

13 **48 At the end of subsection 23(2)**

14 Add:

15 Note: Section 33B of the *Acts Interpretation Act 1901* provides for
16 participation in meetings by telephone etc.

17 **49 Subsections 23(3) and (4)**

18 Omit “Authority” (wherever occurring), substitute “Commission”.

19 **50 Subsection 23(4)**

20 Omit “directors”, substitute “commissioners”.

21 **51 Subsection 23(5)**

22 Omit “Authority”, substitute “Commission”.

23 **52 Paragraph 23(5)(a)**

24 Omit “5 directors constitute”, substitute “a majority of the
25 commissioners constitutes”.

26 **53 Paragraph 23(5)(b)**

27 Omit “directors”, substitute “commissioners”.

1 **54 Paragraph 23(5)(c)**

2 Omit “director”, substitute “commissioner”.

3 **55 Subsections 23(6) and (7)**

4 Repeal the subsections, substitute:

5 (6) If:

6 (a) section 24 prevents a commissioner from participating in
7 deliberations or decisions with respect to a particular matter
8 at a meeting of the Commission; and

9 (b) when the commissioner leaves the meeting concerned there is
10 no longer a quorum present;
11 the remaining commissioners at the meeting constitute a quorum
12 for the purpose of any deliberation or decision at that meeting with
13 respect to that matter.

14 (7) The Commission must keep minutes of its proceedings.

15 (8) The Commission may invite a person to attend a meeting for the
16 purpose of advising or informing it on any matter.

17 **56 Section 24**

18 Repeal the section, substitute:

19 **24 Disclosure of interests to Commission**

20 (1) A commissioner who has an interest, whether pecuniary or
21 otherwise, in a matter being considered or about to be considered
22 by the Commission must disclose the nature of the interest to a
23 meeting of the Commission.

24 (2) The disclosure must be made as soon as possible after the relevant
25 facts have come to the commissioner’s knowledge.

26 (3) The disclosure must be recorded in the minutes of the meeting of
27 the Commission.

28 (4) Unless the Commission otherwise determines, the commissioner:

29 (a) must not be present during any deliberation by the
30 Commission on the matter; and

31 (b) must not take part in any decision of the Commission with
32 respect to the matter.

- 1 (5) For the purposes of the Commission making a determination under
2 subsection (4), the commissioner:
3 (a) must not be present during any deliberation of the
4 Commission for the purpose of making the determination;
5 and
6 (b) must not take part in making the determination.
- 7 (6) A determination made by the Commission under subsection (4)
8 must be recorded in the minutes of the meeting of the Commission.

9 **25 Decisions without meetings**

- 10 (1) The Commission is taken to have made a decision at a meeting if:
11 (a) without meeting, a majority of the commissioners entitled to
12 vote on the proposed decision indicate agreement with the
13 decision; and
14 (b) that agreement is indicated in accordance with the method
15 determined by the Commission under subsection (2); and
16 (c) all the commissioners were informed of the proposed
17 decision, or reasonable efforts were made to inform all the
18 commissioners of the proposed decision.
- 19 (2) Subsection (1) applies if the Commission:
20 (a) has determined that it may make decisions of that kind
21 without a meeting; and
22 (b) has determined the method by which commissioners are to
23 indicate agreement with proposed decisions.
- 24 (3) For the purposes of paragraph (1)(a), a commissioner is not entitled
25 to vote on a proposed decision if the commissioner would not have
26 been entitled to vote on that proposal if the matter had been
27 considered at a meeting of the Commission.
- 28 (4) The Commission must keep a record of decisions made in
29 accordance with this section.

30 **57 Divisions 3 and 4 of Part 2**

31 Repeal the Divisions.

32 **58 Subsection 55(1)**

1 Omit “members of the Authority or partly by members of the
2 Authority”, substitute “commissioners or partly by commissioners”.

3 **59 At the end of paragraph 60(1)(a)**

4 Add “of the committee”.

5 **60 Paragraph 60(1)(b)**

6 Repeal the paragraph, substitute:

7 (b) the AFMA staff member who is responsible for the
8 management of the fishery in relation to which the committee
9 has been established;

10 **61 Sections 64 and 64A**

11 Repeal the sections, substitute:

12 **64 Leave of absence**

13 (1) The Authority may grant leave of absence to the Chairperson of a
14 management advisory committee on such terms and conditions as
15 the Authority considers appropriate.

16 (2) The Chairperson of a management advisory committee may grant
17 leave of absence to another member of the committee on such
18 terms and conditions as the Chairperson considers appropriate.

19 **64A Resignation**

20 A member of a management advisory committee may resign his or
21 her appointment by giving the Authority a written resignation.

22 **64B Termination of appointment**

23 (1) The Authority may terminate the appointment of a member of a
24 management advisory committee for:

25 (a) misbehaviour or physical or mental incapacity; or
26 (b) inefficiency or incompetence.

27 (2) The Authority may terminate the appointment of a member of a
28 management advisory committee if:

29 (a) the member:
30 (i) becomes bankrupt; or

- 1 (ii) applies to take the benefit of any law for the relief of
2 bankrupt or insolvent debtors; or
3 (iii) compounds with his or her creditors; or
4 (iv) makes an assignment of his or her remuneration for the
5 benefit of his or her creditors; or
6 (b) the member is absent, except on leave of absence, from 3
7 consecutive meetings of the Commission; or
8 (c) the member fails, without reasonable excuse, to comply with
9 section 64C or 64D.

10 **64C Disclosure of interests to management advisory committee**

- 11 (1) A member of a management advisory committee who has an
12 interest, whether pecuniary or otherwise, in a matter being
13 considered or about to be considered by the committee must
14 disclose the nature of the interest to a meeting of the committee.
- 15 (2) The disclosure must be made as soon as possible after the relevant
16 facts have come to the member's knowledge.
- 17 (3) The disclosure must be recorded in the minutes of the meeting of
18 the committee.
- 19 (4) Unless the committee otherwise determines, the member:
20 (a) must not be present during any deliberation by the committee
21 on the matter; and
22 (b) must not take part in any decision of the committee with
23 respect to the matter.
- 24 (5) For the purposes of the committee making a determination under
25 subsection (4), the member:
26 (a) must not be present during any deliberation of the committee
27 for the purpose of making the determination; and
28 (b) must not take part in making the determination.
- 29 (6) A determination made by the committee under subsection (4) must
30 be recorded in the minutes of the meeting of the committee.

31 **64D Disclosure of interests to Authority**

32 A member of a management advisory committee must give written
33 notice to the Authority of all interests, pecuniary or otherwise, that

1 the member has or acquires and that conflict or could conflict with
2 the proper performance of his or her functions.

3 **62 After section 65**

4 Insert:

5 **65A Decisions without meetings**

- 6 (1) A management advisory committee is taken to have made a
7 decision at a meeting if:
- 8 (a) without meeting, a majority of the members of the committee
9 entitled to vote on the proposed decision indicate agreement
10 with the decision; and
 - 11 (b) that agreement is indicated in accordance with the method
12 determined by the committee under subsection (2); and
 - 13 (c) all the members of the committee were informed of the
14 proposed decision, or reasonable efforts were made to inform
15 all the members of the proposed decision.
- 16 (2) Subsection (1) applies if the management advisory committee:
- 17 (a) has determined that it may make decisions of that kind
18 without a meeting; and
 - 19 (b) has determined the method by which members of the
20 committee are to indicate agreement with proposed decisions.
- 21 (3) For the purposes of paragraph (1)(a), a member of a management
22 advisory committee is not entitled to vote on a proposed decision if
23 the member would not have been entitled to vote on that proposal
24 if the matter had been considered at a meeting of the committee.
- 25 (4) A management advisory committee must keep a record of
26 decisions made in accordance with this section.

27 **63 Section 66**

28 Omit “Chairperson of the Authority for the services of employees of,
29 and consultants to, the Authority, and for facilities of the Authority,”,
30 substitute “CEO for the services of AFMA staff members and
31 consultants to the Authority, and facilities,”.

32 **64 Subsection 67(4)**

1 Omit “director or employee of the Authority”, substitute “commissioner
2 or AFMA staff member”.

3 **65 Division 6 of Part 2 (heading)**

4 Repeal the heading, substitute:

5 **Division 6—Staff and consultants**

6 **66 Section 68**

7 Repeal the section, substitute:

8 **68 Staff**

9 (1) The staff assisting the CEO must be persons engaged under the
10 *Public Service Act 1999*.

11 (2) For the purposes of the *Public Service Act 1999*:

12 (a) the CEO and the staff assisting the CEO together constitute a
13 Statutory Agency; and

14 (b) the CEO is the Head of that Statutory Agency.

15 **67 Subsection 69(1)**

16 Omit “Authority may”, substitute “CEO may, on behalf of the
17 Commonwealth,”.

18 **68 Subsection 69(2)**

19 Omit “Authority”, substitute “CEO”.

20 **69 Sections 70 and 71**

21 Repeal the sections.

22 **70 Paragraph 72(4)(e)**

23 Repeal the paragraph, substitute:

24 (e) be signed by the Chairperson and the CEO.

25 **71 Paragraph 77(2)(d)**

26 Repeal the paragraph, substitute:

27 (d) be signed by the Chairperson and the CEO.

1 **72 Division 8 of Part 2**

2 Repeal the Division.

3 **73 Before section 89**

4 Insert:

5 **87 Annual report**

6 (1) The Authority must, as soon as practicable after the end of each
7 financial year, prepare and give to the Minister, for presentation to
8 the Parliament, a report on its operations during that year.

9 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
10 contains extra rules about annual reports.

11 (2) The Authority must include in the report:

12 (a) an assessment of the extent to which the operations of the
13 Authority during the year to which the report relates have
14 contributed:

15 (i) to the objectives set out in section 6 and, in particular, to
16 the objective set out in paragraph (b) of that section; and

17 (ii) to the goals set out in the corporate plan applicable to
18 the period; and

19 (iii) to the objectives set out in the annual operational plan
20 that relates to a period corresponding to that year; and

21 (b) particulars of:

22 (i) variations (if any) of the corporate plan and the annual
23 operational plan taking effect during that year; and

24 (ii) significant changes to plans of management and the
25 introduction of new plans of management during that
26 year; and

27 (iii) the effectiveness or otherwise of the operation of plans
28 of management during that year; and

29 (iv) any directions given to the Authority by the Minister
30 under section 91 during that year; and

31 (c) an evaluation of its overall performance against the
32 performance indicators set out in the corporate plan
33 applicable to the period and the annual operational plan that
34 came into force at the beginning of that year.

35 **74 Subsection 89(1)**

1 Omit “Authority”, substitute “Commission”.

2 **75 Subsection 89(2)**

3 After “enable the Chairperson”, insert “and the CEO”.

4 **76 Paragraph 89(2)(a)**

5 Omit “regards”, substitute “and the CEO regard”.

6 **77 Paragraph 89(2)(b)**

7 Omit “believes”, substitute “and the CEO believe”.

8 **78 Paragraph 91(2)(c)**

9 Omit “Authority”, substitute “Commission or the CEO, as the case
10 requires,”.

11 **79 Sections 92 to 94**

12 Repeal the sections, substitute:

13 **92 Delegation of functions and powers for which Commission is**
14 **responsible**

15 *Delegation to the CEO*

- 16 (1) The Commission may, by writing under the seal of the Authority,
17 delegate to the CEO any of the domestic fisheries management
18 functions or powers of the Authority.
- 19 (2) The CEO, in performing a function or exercising a power
20 delegated under subsection (1), is subject to the directions of the
21 Commission.

22 *Sub-delegation by the CEO*

- 23 (3) The CEO may, by signed writing, delegate to:
24 (a) an AFMA staff member; or
25 (b) a committee established by the Authority under section 54; or
26 (c) a person engaged as a consultant to the Authority; or
27 (d) a person engaged under contract to assist the Authority; or
28 (e) an officer within the meaning of the *Fisheries Management*
29 *Act 1991* or the *Torres Strait Fisheries Act 1984*;
-

1 any of the functions or powers of the Authority that have been
2 delegated to the CEO by the Commission.

3 (4) Subject to subsection (5) of this section, sections 34AA, 34AB and
4 34A of the *Acts Interpretation Act 1901* apply to a delegation
5 under subsection (3) of this section in a corresponding way to the
6 way in which they apply to a delegation under subsection (1) of
7 this section.

8 (5) A function or power that is performed or exercised by a person
9 under a delegation under subsection (3) is taken, for the purposes
10 of this Act, to have been exercised or performed by the Authority.

11 (6) A delegate of the CEO, in performing a function or exercising a
12 power delegated under subsection (3), is subject to the directions of
13 the CEO.

14 **93 Delegation of functions and powers for which CEO is responsible**

15 (1) The CEO may, by signed writing, delegate to:

- 16 (a) an AFMA staff member; or
17 (b) a committee established by the Authority under section 54; or
18 (c) a person engaged as a consultant to the Authority; or
19 (d) a person engaged under contract to assist the Authority; or
20 (e) an officer within the meaning of the *Fisheries Management*
21 *Act 1991* or the *Torres Strait Fisheries Act 1984*;

22 any of the functions or powers of the Authority for which the CEO
23 is responsible.

24 (2) A delegate of the CEO, in performing a function or exercising a
25 power delegated under subsection (1), is subject to the directions of
26 the CEO.

27 **94 Fees**

28 (1) The Authority may charge such fees as are reasonable in respect of
29 work done, services provided or information given by the
30 Authority.

31 (2) A fee:

- 32 (a) must not be such as to amount to taxation; and
33 (b) is payable to the Commonwealth.
-

1 **94A Exemption from tax**

2 The Authority is not liable to pay tax under any law of the
3 Commonwealth or of a State or Territory.

4 **94B The AFMA Special Account**

- 5 (1) The AFMA Special Account is established by this section.
- 6 (2) The Account is a Special Account for the purposes of the *Financial*
7 *Management and Accountability Act 1997*.

8 **94C Credits to the AFMA Special Account**

9 There must be credited to the AFMA Special Account the
10 following:

- 11 (a) adjusted levy amounts within the meaning of subsection
12 94E(1);
- 13 (b) amounts of any fee paid to the Commonwealth in respect of
14 work done, services provided or information given by the
15 Authority (see section 94);
- 16 (c) amounts equal to money received by the Commonwealth in
17 relation to property paid for with money from the Account;
- 18 (d) amounts equal to amounts of any gifts given or bequests
19 made for the purposes of the Account.

20 Note: An Appropriation Act may contain a provision to the effect that, if any
21 of the purposes of a Special Account is a purpose that is covered by an
22 item in the Appropriation Act (whether or not the item expressly refers
23 to the Special Account), then amounts may be debited against the
24 appropriation for that item and credited to that Special Account.

25 **94D Purposes of the AFMA Special Account**

- 26 (1) This section sets out the purposes of the AFMA Special Account.
- 27 (2) Amounts standing to the credit of the Account may be debited for
28 the following purposes:
- 29 (a) in payment or discharge of the costs, expenses or other
30 obligations incurred in the performance or exercise of the
31 functions or powers of the Authority;
- 32 (b) in payment of any remuneration and allowances payable to
33 any person under this Act;

1 (c) meeting the expenses of administering the Account.

2 **94E Adjusted levy amounts**

3 (1) The *adjusted levy amounts* to be credited to the AFMA Special
4 Account under paragraph 94C(a) are the amounts worked out using
5 the formula:

6 Levy amount – Deductible component

7 where:

8 *deductible component*, in relation to a levy amount, means:

- 9 (a) if, as a result of the receipt by the Commonwealth of the levy
10 amount, an amount (the *research component*) is required to
11 be paid under subparagraph 30A(1)(a)(i) or (ii) of the
12 *Primary Industries and Energy Research and Development*
13 *Act 1989* to an R & D Corporation (within the meaning of
14 that Act) established in respect of the fishing industry—an
15 amount equal to the research component; or
16 (b) if the levy amount is an amount referred to in paragraph (e)
17 of the definition of *levy amount*—an amount equal to so
18 much (if any) of the levy amount as is determined by the
19 Minister to be an amount paid to the Commonwealth for the
20 right to engage in fishing in the AFZ; or
21 (c) if a part of the levy amount is prescribed for the purposes of
22 this paragraph—an amount equal to the part so prescribed.

23 *levy amount* means all of the following amounts received by the
24 Commonwealth after the commencement of this section:

- 25 (a) an amount received by the Commonwealth as levy imposed
26 by the *Fisheries Levy Act 1984*;
27 (b) an amount received by the Commonwealth as levy imposed
28 by the *Fishing Levy Act 1991*;
29 (c) an amount received by the Commonwealth as levy imposed
30 by the *Foreign Fishing Licences Levy Act 1991*;
31 (d) an amount received by the Commonwealth as charge
32 imposed by the *Statutory Fishing Rights Charge Act 1991*;
33 (e) an amount received by the Commonwealth as mentioned in
34 the *Fisheries Agreements (Payments) Act 1991*;

- 1 (f) an amount received by the Commonwealth in repayment of a
2 loan made under a fisheries adjustment program or a fisheries
3 restructuring program;
4 (g) an amount received by the Commonwealth as a penalty under
5 section 112 of the *Fisheries Management Act 1991*;
6 (h) an amount received by the Commonwealth as a fee under
7 regulations made under paragraph 168(2)(e) of the *Fisheries*
8 *Management Act 1991*;
9 other than an amount that is declared by the regulations not to be a
10 levy amount for the purposes of this section.

- 11 (2) A determination made under paragraph (b) of the definition of
12 *deductible component* in subsection (1) is not a legislative
13 instrument.

14 **80 Paragraph 102(1)(b)**

15 Omit “Authority”, substitute “Commission”.

16 **81 Paragraph 102(4)(a)**

17 Repeal the paragraph, substitute:

- 18 (a) commissioners of the Commission other than the Chairperson
19 of the Commission;

20 **82 Subsection 111(4)**

21 Omit “Authority”, substitute “Commission”.

22 ***Fisheries Management Act 1991***

23 **83 Subsection 4(1)**

24 Insert:

25 *AFMA staff member* has the same meaning as in the *Fisheries*
26 *Administration Act 1991*.

27 **84 Subsection 4(1)**

28 Insert:

29 *CEO* has the same meaning as in the *Fisheries Administration Act*
30 *1991*.

1 **85 Subsection 4(1)**

2 Insert:

3 *Commission* has the same meaning as in the *Fisheries*
4 *Administration Act 1991*.

5 **86 Subsection 4(1)**

6 Insert:

7 *Ministerial Council* means:

- 8 (a) subject to paragraph (b)—the Ministerial Council on
9 Forestry, Fisheries and Aquaculture, whether known by that
10 name or any other name; or
11 (b) if another body is prescribed by the regulations for the
12 purposes of this definition—that other body.

13 **87 Subsection 4(1)**

14 Insert:

15 *Presiding Member* means the Presiding Member of Australian
16 Fisheries Management Authority Selection Committees appointed
17 under section 139.

18 **88 Subsection 4(1)**

19 Insert:

20 *Selection Committee* means an Australian Fisheries Management
21 Authority Selection Committee established under section 141A.

22 **89 Subsection 17(11)**

23 Omit “Managing Director of AFMA”, substitute “CEO”.

24 **90 Subsection 43(8)**

25 Omit “Managing Director of AFMA”, substitute “CEO”.

26 **91 Paragraph 54(3)(c)**

27 Omit “employee of AFMA”, substitute “AFMA staff member”.

28 **92 Section 56**

1 Omit “AFMA or an employee of AFMA is not”, substitute “Neither
2 AFMA nor a person acting for or on behalf of AFMA is”.

3 **93 Subsection 69(2)**

4 Omit “employee of AFMA”, substitute “AFMA staff member”.

5 **94 Paragraph 83(1)(a)**

6 Omit “AFMA or”.

7 **95 Subsections 89(1) and (3)**

8 Omit “Managing Director of AFMA”, substitute “CEO”.

9 **96 Paragraphs 106C(2)(c) and (d)**

10 Omit “Managing Director of AFMA”, substitute “CEO”.

11 **97 Paragraph 106E(1)(a)**

12 Omit “Managing Director of AFMA”, substitute “CEO”.

13 **98 Paragraph 106F(1)(b)**

14 Omit “Managing Director of AFMA”, substitute “CEO”.

15 **99 Subsection 106F(1) (note 1)**

16 Omit “Managing Director of AFMA”, substitute “CEO”.

17 **100 Subsection 106F(1) (note 2)**

18 Omit “Managing Director”, substitute “CEO”.

19 **101 Subsection 106F(2)**

20 Omit “Managing Director of AFMA”, substitute “CEO”.

21 **102 Subsection 106F(2)**

22 Omit “Managing Director” (second and third occurring), substitute
23 “CEO”.

24 **103 Subsection 106F(4)**

25 Omit “Managing Director of AFMA”, substitute “CEO”.

26 **104 Subsection 106G(1)**

27 Omit “Managing Director of AFMA”, substitute “CEO”.

1 **105 Section 106M(1)**

2 Omit “officer of AFMA”, substitute “AFMA staff member”.

3 **106 Paragraphs 106M(2)(d) and (e)**

4 Omit “Managing Director of AFMA”, substitute “CEO”.

5 **107 Subsection 106N(1)**

6 Omit “officer of AFMA”, substitute “AFMA staff member”.

7 **108 Subsection 106P(1)**

8 Omit “Managing Director of AFMA”, substitute “CEO”.

9 **109 Subsection 106Q(1)**

10 Omit “Managing Director of AFMA”, substitute “CEO”.

11 **110 Paragraphs 106R(2)(a) and (d)**

12 Omit “Managing Director of AFMA”, substitute “CEO”.

13 **111 Division 2 of Part 8**

14 Repeal the Division, substitute:

15 **Division 2—Nomination and selection process for members**
16 **of the Panel**

17 **139 Presiding Member**

18 (1) The Minister is to appoint a person to be the Presiding Member of
19 Australian Fisheries Management Authority Selection Committees.

20 (2) The Presiding Member is to be appointed on a part-time basis.

21 (3) Subject to this Division, the Presiding Member holds office for
22 such period, not exceeding 3 years, as is specified in the instrument
23 of appointment, but is eligible to be re-appointed once in
24 accordance with this Act.

25 **140 Acting Presiding Member**

26 (1) The Minister may appoint a person to act as Presiding Member:

- 1 (a) during a vacancy in the office of Presiding Member (whether
2 or not an appointment has previously been made to the
3 office); or
4 (b) during any period, or during all periods, when the Presiding
5 Member is absent from Australia or is, for any other reason,
6 unable to perform the duties of the office.
- 7 (2) Anything done by or in relation to a person purporting to act under
8 subsection (1) is not invalid merely because:
9 (a) the occasion for the person's appointment had not arisen; or
10 (b) there is a defect or irregularity in connection with the
11 person's appointment; or
12 (c) the person's appointment had ceased to have effect; or
13 (d) the occasion for the person to act had not arisen or had
14 ceased.

15 Note: See section 33A of the *Acts Interpretation Act 1901*.

16 **141 Request for nominations**

- 17 (1) The Minister may, by written notice given to the Presiding
18 Member, request the Presiding Member to establish a Selection
19 Committee for the purpose of:
20 (a) nominating a person or persons for appointment (otherwise
21 than as the Principal Member) as a member or members of
22 the Panel; or
23 (b) if there is a vacancy caused by the resignation of, or the
24 ending of the appointment of, any member (other than the
25 Principal Member)—nominating a person for appointment.
- 26 (2) The Minister is to specify in the notice a period within which the
27 Selection Committee is to comply with the notice.

28 **141A Selection Committee**

- 29 (1) Where the Presiding Member receives a request under section 141,
30 he or she must:
31 (a) establish a Selection Committee for the purpose of
32 nominating a person or persons for appointment to the Panel;
33 and
34 (b) give to the body that is the peak industry body within the
35 meaning of the *Fisheries Administration Act 1991* a written
-

- 1 notice requesting the body to nominate to the Minister
2 persons for appointment to the Selection Committee; and
3 (c) give to the Ministerial Council a written notice requesting the
4 Council to nominate to the Minister a person for appointment
5 to the Selection Committee; and
6 (d) take reasonable steps to inform members of the public (which
7 may consist of advertising in a newspaper circulating
8 generally throughout the Commonwealth), and members of
9 such groups of persons (if any) as the Presiding Member
10 thinks appropriate, of the following matters:
11 (i) that nominations are being sought for appointment of a
12 person or persons to the Panel;
13 (ii) the qualifications for nomination required by a person.
14 (2) The function of the Selection Committee is, in accordance with the
15 request of the Minister, to nominate a person or persons for
16 appointment to the Panel.
17 (3) The Selection Committee has power to do all things that are
18 necessary or convenient to be done for, or in connection with, the
19 performance of its function.

141B Membership of Selection Committee

- 20
21 (1) A Selection Committee is to consist of the following members:
22 (a) the Presiding Member;
23 (b) 2 members determined by the Minister, one of whom has
24 knowledge of environmental conservation issues;
25 (c) 2 members nominated by the peak industry body referred to
26 in paragraph 141A(1)(b);
27 (d) a member nominated by the Ministerial Council.
28 (2) A Selection Committee member referred to in paragraph (1)(b), (c)
29 or (d) is to be appointed by the Minister in writing and holds office
30 on a part-time basis.

141C Selection of nominees

- 31
32 (1) A Selection Committee must only nominate for appointment as
33 members of the Panel persons who have expertise in one or more
34 of the following fields:

- 1 (a) commercial fishing;
2 (b) fishing industry operations other than commercial fishing;
3 (c) fisheries science;
4 (d) natural resource management;
5 (e) marine ecology;
6 (f) economics;
7 (g) business management;
8 (h) such other fields (if any) as are prescribed.
- 9 (2) In selecting persons for nomination, a Selection Committee must
10 try to choose such persons as will ensure, as far as practicable, that
11 the members of the Panel collectively possess expertise in all of the
12 fields referred to in subsection (1).
- 13 (3) A Selection Committee must not nominate a person who is:
14 (a) a member of the Selection Committee; or
15 (b) a commissioner of the Commission; or
16 (c) under subsection 126(2), ineligible for appointment.

17 **141D Nomination**

- 18 (1) Within the period specified in a notice under section 141:
19 (a) the Selection Committee must select a person or persons for
20 nomination according to the request; and
21 (b) the Presiding Member must, on behalf of the Committee,
22 nominate the person or persons selected by the Committee.
- 23 (2) A nomination must:
24 (a) be in writing; and
25 (b) be given to the Minister.
- 26 (3) A Selection Committee must select only one person in respect of
27 each appointment to be made by the Minister.
- 28 (4) Where a person is nominated for appointment, the Presiding
29 Member must attach to the nomination a statement setting out:
30 (a) details of the person's qualifications and experience; and
31 (b) any other information regarding the person that the
32 Committee considers will assist the Minister in deciding
33 whether to appoint the person.

1 **141E Rejection of nominations**

- 2 (1) If the Minister is not satisfied that a person nominated by a
3 Selection Committee is suitable for appointment, the Minister may
4 give the Presiding Member written notice that he or she rejects the
5 nomination of the person.
- 6 (2) The Minister may include in a notice of rejection a further request
7 under section 141 for a nomination of a person for appointment to
8 the position concerned.

9 **141F Meetings of a Selection Committee**

- 10 (1) Meetings of a Selection Committee are to be held at such times and
11 places as the Committee determines.
- 12 (2) The Presiding Member may convene a meeting of a Committee.
- 13 (3) At a meeting, the following persons constitute a quorum:
14 (a) the Presiding Member;
15 (b) a member referred to in paragraph 141B(1)(b);
16 (c) a member referred to in paragraph 141B(1)(c);
17 (d) one other member who may also be a member referred to in
18 one of those paragraphs.
- 19 (4) The Presiding Member is to preside at all meetings of a
20 Committee.
- 21 (5) A question arising at a meeting of a Committee is to be decided by
22 a majority of the votes of the members present and voting.
- 23 (6) At a meeting of a Committee, the Presiding Member has a
24 deliberative vote and, if there is an equality of votes, also has a
25 casting vote.
- 26 (7) A Committee must keep a record of its proceedings.
- 27 (8) The procedure of a Committee is to be as determined by the
28 Committee.

29 **141G Remuneration and allowances**

- 30 (1) The Presiding Member of a Selection Committee is to be paid such
31 remuneration as is determined by the Remuneration Tribunal but, if
-

- 1 no determination is in operation, the Presiding Member is to be
2 paid such remuneration as is prescribed.
- 3 (2) The Presiding Member is to be paid such allowances as are
4 prescribed.
- 5 (3) A member (other than the Presiding Member) is to be paid such
6 travelling allowance as is prescribed.
- 7 (4) This section has effect subject to the *Remuneration Tribunal Act*
8 *1973*.

9 **141H Leave of absence**

- 10 (1) The Minister may grant to the Presiding Member leave of absence
11 from a meeting of a Selection Committee.
- 12 (2) The Presiding Member may grant to another member of a
13 Committee leave of absence from a meeting of the Committee.

14 **141J Resignation**

15 A member of a Selection Committee may resign by giving to the
16 Minister a signed notice of resignation.

17 **141K Termination of appointment of member of Selection**
18 **Committee**

- 19 (1) The Minister may terminate the appointment of a member of a
20 Selection Committee for:
21 (a) misbehaviour or physical or mental incapacity; or
22 (b) inefficiency or incompetence.
- 23 (2) If a member of a Committee:
24 (a) becomes bankrupt, applies to take the benefit of any law for
25 the relief of bankrupt or insolvent debtors, compounds with
26 his or her creditors or makes an assignment of remuneration
27 for their benefit; or
28 (b) fails, without reasonable excuse, to comply with his or her
29 obligations under section 141L; or
30 (c) is absent, without leave of absence, from 3 consecutive
31 meetings of the Committee;
32 the Minister may terminate the appointment of the member.
-

1 **141L Disclosure of interests by members of Selection Committees**

2 (1) Where:

3 (a) a member of a Selection Committee has a direct or indirect
4 interest in a matter being considered, or about to be
5 considered, by the Committee; and

6 (b) the interest could conflict with the proper performance of the
7 member's duties in relation to the consideration of the matter;
8 the member must, as soon as practicable after the relevant facts
9 have come to the member's knowledge, disclose the nature of the
10 interest at a meeting of the Committee.

11 (2) A disclosure under subsection (1) must be recorded in the minutes
12 of the meeting.

13 **141M Resolutions without meetings**

14 (1) Where:

15 (a) copies of a document setting out a proposed resolution of a
16 Selection Committee are received by at least 4 members of
17 the Committee, of whom one is the Presiding Member; and

18 (b) at least 4 such members, being members who would
19 constitute a quorum at a meeting of the Committee, sign a
20 copy of the document;

21 the Committee is taken to have passed a resolution in the terms set
22 out in the document at a meeting of the Committee.

23 (2) The resolution is taken to have been passed:

24 (a) on the day on which copies of the document were signed by
25 members; or

26 (b) if the copies were signed on different days—on the latest of
27 those days.

28 **141N Consultants etc.**

29 (1) The Presiding Member may, on behalf of a Selection Committee,
30 engage persons as consultants to assist the Committee in the
31 performance of its functions.

32 (2) The Presiding Member may only engage persons who have
33 suitable qualifications and experience.

- 1 (3) The Presiding Member may, on behalf of a Selection Committee,
2 engage persons to perform clerical or administrative services in
3 connection with the performance of the Committee's functions.
- 4 (4) The terms and conditions of engagement of persons under
5 subsection (1) or (3) are to be determined by the Committee.

6 **141P Presiding Member to abolish Selection Committee**

7 Where:

- 8 (a) the Minister has appointed to the Panel a person or persons
9 nominated by a Selection Committee; and
- 10 (b) the Committee has not made any nominations for
11 appointment that have yet to be accepted or rejected by the
12 Minister; and
- 13 (c) there are no matters in a request by the Minister under
14 section 141 or 141E that are still to be dealt with by the
15 Committee;
- 16 the Presiding Member must abolish the Committee.

17 **141Q Annual reports of Selection Committees**

- 18 (1) The Presiding Member must, as soon as practicable after 30 June in
19 each year, prepare and give to the Minister a report on the
20 operations, during the immediately preceding financial year, of
21 Selection Committees (if any) established by the Presiding
22 Member or any other Presiding Member.
- 23 (2) Where the first appointment of a Presiding Member does not begin
24 on 1 July, subsection (1) has effect in relation to the period
25 beginning on the day the appointment begins and ending on the
26 next 30 June as if:
- 27 (a) if the period is less than 3 months—the period were included
28 in the next financial year; or
- 29 (b) in any other case—the period were a financial year.
- 30 (3) A report for a financial year may, subject to agreement between the
31 Presiding Member and the Secretary of the Department, be
32 included, as a discrete part, in the annual report of the Department
33 for that financial year.

1 (4) If subsection (3) does not apply to a report under this section, the
2 Minister must cause a copy of the report to be laid before each
3 House of the Parliament within 15 sitting days of that House after
4 the Minister receives the report.

5 **112 Paragraphs 163(a) and (b)**

6 Repeal the paragraphs, substitute:
7 (a) the Commission; or
8 (b) the CEO; or
9 (ba) an AFMA staff member; or

10 **113 Paragraph 166(3)(c)**

11 Omit “employee of AFMA”, substitute “AFMA staff member”.

12 **114 Subparagraph 17(3)(c)(i) of Schedule 1A**

13 Omit “Managing Director of AFMA”, substitute “CEO”.

14 **115 Paragraph 38(3)(b) of Schedule 1A**

15 Omit “Managing Director of AFMA”, substitute “CEO”.

16 **116 Subclause 38(4) of Schedule 1A**

17 Omit “Managing Director”, substitute “CEO”.

18 **117 Subclause 38(11) of Schedule 1A (paragraph (b) of the**
19 **definition of *senior authorising officer*)**

20 Omit “Managing Director of AFMA”, substitute “CEO”.

21 ***Torres Strait Fisheries Act 1984***

22 **118 Subsection 3(1)**

23 Insert:

24 *AFMA staff member* has the same meaning as in the *Fisheries*
25 *Administration Act 1991*.

26 **119 Subsection 3(1)**

27 Insert:

1 *CEO* has the same meaning as in the *Fisheries Administration Act*
2 *1991*.

3 **120 Paragraph 9(1)(b)**

4 Repeal the paragraph, substitute:
5 (b) an AFMA staff member; or

6 **121 Paragraph 38(1)(b)**

7 Repeal the paragraph, substitute:
8 (b) an AFMA staff member; or

9 **122 Paragraphs 52C(2)(c) and (d)**

10 Omit “Managing Director of AFMA”, substitute “CEO”.

11 **123 Paragraph 52E(1)(a)**

12 Omit “Managing Director of AFMA”, substitute “CEO”.

13 **124 Paragraph 52F(1)(b)**

14 Omit “Managing Director of AFMA”, substitute “CEO”.

15 **125 Subsection 52F(1) (note 1)**

16 Omit “Managing Director of AFMA”, substitute “CEO”.

17 **126 Subsection 52F(1) (note 2)**

18 Omit “Managing Director”, substitute “CEO”.

19 **127 Subsection 52F(2)**

20 Omit “Managing Director of AFMA”, substitute “CEO”.

21 **128 Subsection 52F(2)**

22 Omit “Managing Director” (second and third occurring), substitute
23 “CEO”.

24 **129 Subsection 52F(4)**

25 Omit “Managing Director of AFMA”, substitute “CEO”.

26 **130 Subsection 52G(1)**

27 Omit “Managing Director of AFMA”, substitute “CEO”.

1 **131 Subparagraph 17(3)(c)(i) of Schedule 2**

2 Omit “Managing Director of AFMA”, substitute “CEO”.

3 **132 Paragraph 38(3)(b) of Schedule 2**

4 Omit “Managing Director of AFMA”, substitute “CEO”.

5 **133 Subclause 38(4) of Schedule 2**

6 Omit “Managing Director”, substitute “CEO”.

7 **134 Subclause 38(11) of Schedule 2 (paragraph (b) of the**
8 **definition of *senior authorising officer*)**

9 Omit “Managing Director of AFMA”, substitute “CEO”.

1

2 **Part 2—Transitional provisions**

3 **135 Definitions**

4 In this Part:

5 **AFMA** means the Australian Fisheries Management Authority.

6 **asset** means:

- 7 (a) any legal or equitable estate or interest in real or personal
8 property, whether actual, contingent or prospective; and
9 (b) any right, power, privilege or immunity, whether actual,
10 contingent or prospective;

11 but does not include a right, power, privilege or immunity conferred by
12 an Act or by regulations or other subordinate legislation made under an
13 Act.

14 **assets official**, in relation to an asset other than land, means the person
15 or authority who, under a law of the Commonwealth, a State or a
16 Territory, under a trust instrument or otherwise, has responsibility for
17 keeping a register in relation to assets of the kind concerned.

18 **associated law** has the same meaning as in the *Fisheries Administration*
19 *Act 1991*.

20 **CEO** has the same meaning as in the *Fisheries Administration Act 1991*.

21 **commencement time** means the time when this Schedule commences.

22 **commissioner** has the same meaning as in the *Fisheries Administration*
23 *Act 1991*.

24 **director** means a person who was a director of AFMA before the
25 commencement time.

26 **financial liability** means a liability to pay a person an amount where the
27 amount, or the method for working out the amount, has been
28 determined.

29 **instrument**:

- 30 (a) includes:
31 (i) a contract, deed, undertaking or agreement; and
32 (ii) a notice, authority, order or instruction; and
33 (iii) an instrument made under an Act or regulations; but
34 (b) does not include an Act or regulations.
-

1 **land** means any legal or equitable estate or interest in real property,
2 whether actual, contingent or prospective.

3 **land registration official**, in relation to land, means the Registrar of
4 Titles or other proper officer of the State or Territory in which the land
5 is situated.

6 **liability** means any liability, duty or obligation, whether actual,
7 contingent or prospective, but does not include a liability, duty or
8 obligation imposed by an Act or by regulations or other subordinate
9 legislation made under an Act.

10 **staffing procedures** includes procedures and policies, and any actions
11 or decisions taken under or in accordance with those procedures and
12 policies, that relate to the following:

- 13 (a) recruitment, probation, or promotion;
14 (b) performance management or appraisal;
15 (c) inefficiency, misconduct, forfeiture of position, or fitness for
16 duty;
17 (d) conditions of continued employment, including failure to
18 gain, or loss of, essential qualifications or clearances;
19 (e) disciplinary action;
20 (f) grievance processes or reviews of, or appeals against, staffing
21 decisions;
22 (g) transfers, redundancy, resignations, or termination of
23 employment;
24 (h) leave.

25 **136 AFMA staffing processes to continue**

26 (1) AFMA's staffing procedures that were in effect immediately before the
27 commencement time continue to apply after the commencement time in
28 relation to:

- 29 (a) processes begun before, but not completed by, the
30 commencement time; and
31 (b) things done by, for or in relation to AFMA or an employee of
32 AFMA before the commencement time.

33 (2) The regulations may prescribe:

- 34 (a) details relating to how the AFMA's staffing procedures will
35 continue to apply under subitem (1); and
36 (b) other matters of a transitional nature in relation to the transfer
37 of persons:
-

- 1 (i) who were employed by the AFMA before the
2 commencement time; and
3 (ii) who will be employed under the *Public Service Act*
4 *1999* after the commencement time.
- 5 (3) Subitem (1) and any regulations made under subitem (2) have effect
6 despite the *Public Service Act 1999*.

7 **137 Australian Fisheries Management Selection Committees**
8 **to continue**

9 *Presiding member*

- 10 (1) A person holding office as the Presiding Member of Australian
11 Fisheries Management Authority Selection Committees under
12 section 25 of the *Fisheries Administration Act 1991* immediately before
13 the commencement time:
14 (a) is taken to have been appointed, at the commencement time,
15 under subsection 139(1) of the *Fisheries Management Act*
16 *1991* for the balance of the term of appointment under
17 subsection 25(3) of the *Fisheries Administration Act 1991* as
18 in force immediately before the commencement time; and
19 (b) is taken to have been so appointed on the same terms and
20 conditions as applied to the person immediately before the
21 commencement time.

22 *Acting Presiding member*

- 23 (2) A person appointed to act as Presiding Member of Australian Fisheries
24 Management Authority Selection Committees under subsection 26(1) of
25 the *Fisheries Administration Act 1991* immediately before the
26 commencement time:
27 (a) is taken to have been appointed, at the commencement time,
28 under subsection 140(1) of the *Fisheries Management Act*
29 *1991* for the balance of the term of appointment under
30 subsection 26(1) of the *Fisheries Administration Act 1991* as
31 in force immediately before the commencement time; and
32 (b) is taken to have been so appointed on the same terms and
33 conditions as applied to the person immediately before the
34 commencement time.

1 (4) This item has effect subject to items 140 and 141.

2 **139 Vesting of financial liabilities**

3 (1) This item applies to any financial liabilities of AFMA that exist
4 immediately before the commencement time.

5 (2) At the commencement time, the financial liabilities cease to be
6 liabilities of AFMA and become financial liabilities of the
7 Commonwealth, without any conveyance, transfer or assignment. The
8 Commonwealth becomes AFMA's successor in law in relation to those
9 liabilities.

10 (3) This item has effect subject to items 140 and 141.

11 **140 Vesting of assets held on trust**

12 (1) This item applies to any assets held on trust by AFMA immediately
13 before the commencement time.

14 (2) At the commencement time, the assets cease to be assets held on trust
15 by AFMA and become assets held on trust by the Commonwealth,
16 without any conveyance, transfer or assignment. The Commonwealth
17 becomes AFMA's successor in law in relation to those assets.

18 **141 Vesting of liabilities relating to assets held on trust**

19 (1) This item applies to the liabilities of AFMA relating to assets to which
20 item 140 of this Schedule applies.

21 (2) At the commencement time, the liabilities cease to be liabilities of
22 AFMA relating to the assets and become liabilities of the
23 Commonwealth relating to the assets, without any conveyance, transfer
24 or assignment. The Commonwealth becomes AFMA's successor in law
25 in relation to those liabilities.

26 **142 Contracts**

27 A contract, agreement, arrangement or understanding entered into by
28 AFMA before the commencement time and that is in force immediately
29 before that time has effect after that time as if it had been entered into
30 by the Commonwealth.

31 **143 Instruments relating to transferred assets and liabilities**

1 If:

- 2 (a) an instrument is in force immediately before the
3 commencement time; and
4 (b) the instrument relates to assets or liabilities covered by
5 items 138 to 141; and
6 (c) the instrument refers to AFMA;

7 the reference is to be read as a reference to the Commonwealth as
8 necessary to give effect to those items.

9 **144 References to Managing Director and directors of AFMA**

10 (1) Subject to item 143, if:

- 11 (a) an instrument is in force immediately before the
12 commencement time; and
13 (b) the instrument refers to the Managing Director of AFMA;

14 the reference is to be read, on and after the commencement time, as a
15 reference to the CEO.

16 (2) If regulations made under the *Fisheries Administration Act 1991* or an
17 associated law that are in force immediately before the commencement
18 time refer to the Managing Director of AFMA, the reference is to be
19 read, on and after the commencement time, as a reference to the CEO.

20 (3) Subject to item 143, if:

- 21 (a) an instrument is in force immediately before the
22 commencement time; and
23 (b) the instrument refers to a director;

24 the reference is to be read, on and after the commencement time, as a
25 reference to a commissioner.

26 **145 Proceedings relating to transferred assets and liabilities**

27 If, immediately before the commencement time, any proceedings:

- 28 (a) that related to assets or liabilities covered by items 138 to
29 141; and
30 (b) to which AFMA was a party;

31 were pending in any court or tribunal, then, from the commencement
32 time, the Commonwealth is substituted for AFMA as a party to the
33 proceedings.

34 **146 Certificates relating to vesting of land**

- 1 (1) This item applies if:
2 (a) any land vests in the Commonwealth under this Part; and
3 (b) there is lodged with a land registration official a certificate
4 that:
5 (i) is signed by the Minister; and
6 (ii) identifies the land, whether by reference to a map or
7 otherwise; and
8 (iii) states that the land has become vested in the
9 Commonwealth under this Part.

10 Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 154 of this
11 Schedule.

- 12 (2) The land registration official may:
13 (a) register the matter in a way that is the same as, or similar to,
14 the way in which dealings in land of that kind are registered;
15 and
16 (b) deal with, and give effect to, the certificate.

17 **147 Certificates relating to vesting of assets other than land**

- 18 (1) This item applies if:
19 (a) any asset other than land vests in the Commonwealth under
20 this Part; and
21 (b) there is lodged with an assets official a certificate that:
22 (i) is signed by the Minister; and
23 (ii) identifies the asset; and
24 (iii) states that the asset has become vested in the
25 Commonwealth under this Part.

26 Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 154 of this
27 Schedule.

- 28 (2) The assets official may:
29 (a) deal with, and give effect to, the certificate as if it were a
30 proper and appropriate instrument for transactions in relation
31 to assets of that kind; and
32 (b) make such entries in the register as are necessary having
33 regard to the effect of this Part.

34 **148 Appropriations**

1 If under an Act, the Consolidated Revenue Fund is appropriated for the
2 purposes of the performance or exercise of the functions or powers of
3 AFMA, that Act continues to apply in relation to AFMA after the
4 commencement time, despite the amendments made by this Schedule.

5 **149 Exemption from stamp duty and other State or Territory**
6 **taxes**

7 No stamp duty or other tax is payable under a law of a State or Territory
8 in respect of, or anything connected with:

- 9 (a) the transfer of an asset or liability under this Part; or
10 (b) the operation of this Part in any other respect.

11 **150 Reporting requirements**

12 *Reports for periods ending after the commencement time*

13 (1) If:

- 14 (a) immediately before the commencement time, a law required
15 AFMA or a director to provide a report (whether financial
16 statements or otherwise) for a period; and
17 (b) the period ends after the commencement time;

18 AFMA must provide the report, as required, for so much of the period
19 as occurs before the commencement time.

20 (2) If:

- 21 (a) under subitem (1), AFMA is required to provide a report for
22 a part of a period; and
23 (b) AFMA is also required to provide a similar report for the
24 remainder of the period;

25 AFMA may meet the requirements in a single report for the period.

26 *Reports for periods ending before the commencement time*

27 (3) If:

- 28 (a) a law required AFMA or a director to provide a report
29 (whether financial statements or otherwise) for a period that
30 ended before the commencement time; and
31 (b) the report has not been provided by the commencement time;

32 AFMA must provide the report as required.

1 *Application of law to AFMA*

- 2 (4) To avoid doubt, if, under this item, AFMA is required to provide a
3 report under a law, the law applies to AFMA in respect of the report in
4 the same way as the law would have applied to AFMA or the director in
5 respect of the report.

6 **151 Access to records**

7 For the purposes of the operation of subsection 27L(4) of the
8 *Commonwealth Authorities and Companies Act 1997* in relation to the
9 books of AFMA, the reference in that subsection to a Commonwealth
10 authority is to be read, after the commencement time, as a reference to
11 AFMA.

12 **152 Continuing obligation to keep records**

13 Section 20 of the *Commonwealth Authorities and Companies Act 1997*
14 (as in force from time to time) continues to apply after the
15 commencement time in relation to the accounting records kept by
16 AFMA under that section before that time as if AFMA continued to be
17 subject to that Act.

18 **153 Compensation for acquisition of property**

- 19 (1) If the operation of this Part would result in an acquisition of property
20 from a person otherwise than on just terms, the Commonwealth is liable
21 to pay a reasonable amount of compensation to the person.
- 22 (2) If the Commonwealth and the person do not agree on the amount of the
23 compensation, the person may institute proceedings in the Federal Court
24 of Australia for the recovery from the Commonwealth of such
25 reasonable amount of compensation as the court determines.
- 26 (3) In this item:
27 *acquisition of property* has the same meaning as in paragraph 51(xxxi)
28 of the Constitution.
29 *just terms* has the same meaning as in paragraph 51(xxxi) of the
30 Constitution.

31 **154 Certificates taken to be authentic**

32 A document that appears to be a certificate made or issued under this
33 Part:

- 1 (a) is taken to be such a certificate; and
2 (b) is taken to have been properly given;
3 unless the contrary is established.

4 **155 Delegation by Minister**

- 5 (1) The Minister may, by writing, delegate all or any of his or her functions
6 and powers under this Part to:
7 (a) the Secretary of the Department; or
8 (b) an SES employee, or acting SES employee, in the
9 Department; or
10 (c) the CEO.
11 (2) In performing or exercising functions or powers under a delegation, the
12 delegate must comply with any directions of the Minister.

13 **156 Regulations**

- 14 (1) The Governor-General may make regulations prescribing matters:
15 (a) required or permitted by this Part to be prescribed; or
16 (b) necessary or convenient to be prescribed for carrying out or
17 giving effect to this Part.
18 (2) In particular, regulations may be made prescribing matters of a
19 transitional nature (including prescribing any saving or application
20 provisions) relating to the amendments or repeals made by this
21 Schedule.

1
2 **Schedule 2—Foreign boats equipped for**
3 **fishing**
4

5 *Fisheries Management Act 1991*

6 **1 Subsection 101(1)**

7 Omit “with nets, traps or other equipment”.

8 Note: The heading to section 101 is altered by omitting “**with nets etc.**” and substituting “**for**
9 **fishing**”.

10 **2 Paragraph 101(1)(c)**

11 Omit “nets, traps or other equipment for fishing are stored and secured”,
12 substitute “fishing equipment is stowed”.

13 **3 Paragraph 101(1)(d)**

14 Omit “nets, traps or other equipment are stored and secured”, substitute
15 “fishing equipment is stowed”.

16 **4 After subsection 101(1)**

17 Insert:

18 (1A) For the purposes of paragraphs (1)(c) and (d), a boat’s fishing
19 equipment is not stowed unless all of the boat’s:

20 (a) nets, traps and other fishing equipment; and

21 (b) associated equipment, including buoys and beacons;

22 are disengaged and secured, and where practicable stored inside the
23 boat, in such a manner as not to be readily available for fishing.

24 **5 Paragraph 101A(1)(c)**

25 Omit “with nets, traps or other equipment”.

26 **6 Paragraph 101A(4)(c)**

27 Omit “nets, traps and other equipment for fishing are stored and
28 secured”, substitute “fishing equipment is stowed”.

29 **7 Paragraph 101A(4)(d)**

1 Omit “nets, traps and other equipment for fishing are stored and
2 secured”, substitute “fishing equipment is stowed”.

3 **8 At the end of section 101A (after the note)**

4 Add:

5 (5) For the purposes of paragraphs (4)(c) and (d), a boat’s fishing
6 equipment is not stowed unless all of the boat’s:
7 (a) nets, traps and other fishing equipment; and
8 (b) associated equipment, including buoys and beacons;
9 are disengaged and secured, and where practicable stored inside the
10 boat, in such a manner as not to be readily available for fishing.

11 **9 Paragraph 101AA(1)(c)**

12 Omit “with nets, traps or other equipment”.

13 **10 Paragraph 101AA(2)(c)**

14 Omit “nets, traps and other equipment for fishing are stored and
15 secured”, substitute “fishing equipment is stowed”.

16 **11 Paragraph 101AA(2)(d)**

17 Omit “nets, traps and other equipment for fishing are stored and
18 secured”, substitute “fishing equipment is stowed”.

19 **12 After subsection 101AA(2) (after the note)**

20 Insert:

21 (2A) For the purposes of paragraphs (2)(c) and (d), a boat’s fishing
22 equipment is not stowed unless all of the boat’s:
23 (a) nets, traps and other fishing equipment; and
24 (b) associated equipment, including buoys and beacons;
25 are disengaged and secured, and where practicable stored inside the
26 boat, in such a manner as not to be readily available for fishing.

27 ***Torres Strait Fisheries Act 1984***

28 **13 Subsection 51(1)**

29 Omit “with nets, traps or other equipment”.

1 **14 Paragraph 51(4)(a)**

2 Omit “nets, traps or other equipment for taking fish were stowed and
3 secured”, substitute “boat’s equipment for taking fish was stowed”.

4 **15 After subsection 51(4) (after the note)**

5 Insert:

6 (4AA) For the purposes of paragraph (4)(a), a boat’s equipment for taking
7 fish is not stowed unless all of the boat’s:

8 (a) nets, traps and other fishing equipment; and

9 (b) associated equipment, including buoys and beacons;

10 are disengaged and secured, and where practicable stored inside the
11 boat, in such a manner as not to be readily available for fishing.

12 **16 Paragraph 51A(1)(c)**

13 Omit “with nets, traps or other equipment”.

14 **17 Paragraph 51A(2)(a)**

15 Omit “nets, traps and other equipment for taking fish were stowed and
16 secured”, substitute “equipment for taking fish was stowed”.

17 **18 After subsection 51A(2) (after the note)**

18 Insert:

19 (2A) For the purposes of paragraph (2)(a), a boat’s equipment for taking
20 fish is not stowed unless all of the boat’s:

21 (a) nets, traps and other fishing equipment; and

22 (b) associated equipment, including buoys and beacons;

23 are disengaged and secured, and where practicable stored inside the
24 boat, in such a manner as not to be readily available for fishing.

1
2
3
Schedule 3—Boats beyond the AFZ

4 ***Fisheries Management Act 1991***

5 **1 Subsection 4(1)**

6 Insert:

7 ***Australian national*** means:

- 8 (a) an Australian citizen; or
9 (b) a resident of Australia; or
10 (c) a body corporate incorporated by or under a law of the
11 Commonwealth or of a State or Territory; or
12 (d) any other body corporate that carries on its activities
13 principally in Australia.

14 **2 Subsection 4(1) (definition of *Australian regional***
15 ***management measure*)**

16 Repeal the definition.

17 **3 Subsection 4(1)**

18 Insert:

19 ***conservation area***, for a conserved fish stock, means the area to
20 which the international fisheries management measure that covers
21 the fish stock relates.

22 **4 Subsection 4(1)**

23 Insert:

24 ***conserved fish stock*** means a fish stock covered by an international
25 fisheries management measure.

26 **5 Subsection 4(1) (definition of *Convention area*)**

27 Repeal the definition.

28 **6 Subsection 4(1) (definition of *FSA boat*)**

29 Repeal the definition.

1 **7 Subsection 4(1)**

2 Insert:

3 *international fisheries management measure* means a measure
4 prescribed by the regulations to give effect to a measure
5 established by an international fisheries management organisation.

6 **8 Subsection 4(1)**

7 Insert:

8 *international fisheries management organisation* means a global,
9 regional or subregional fisheries organisation or arrangement
10 prescribed by the regulations.

11 **9 Subsection 4(1) (definition of *party to the WCPFC*)**

12 Repeal the definition.

13 **10 Subsection 4(1) (definition of *regional management***
14 ***measure*)**

15 Repeal the definition.

16 **11 Subsection 4(1) (definition of *regional organisation or***
17 ***arrangement*)**

18 Repeal the definition.

19 **12 Subsection 4(1) (definition of *seriously violate*)**

20 Repeal the definition.

21 **13 Subsection 4(1) (definition of *Treaty licensing area*)**

22 Repeal the definition.

23 **14 Subsection 4(1) (definition of *WCPFC*)**

24 Repeal the definition.

25 **15 Subsection 4(1) (definition of *WCPFC boat*)**

26 Repeal the definition.

27 **16 Subsection 4(1) (definition of *WCPFC conservation and***
28 ***management measure*)**

1 Repeal the definition.

2 **17 Subsection 4(1) (definition of WCPFC fish stock)**

3 Repeal the definition.

4 **18 Subsection 7(1) (note)**

5 Repeal the note.

6 **19 At the end of subsection 7(3)**

7 Add “or express provisions that extend the application of this Act”.

8 **20 Subsection 16A(1)**

9 Omit “straddling fish stock or highly migratory”, substitute
10 “conserved”.

11 Note 1: The heading to section 16A is altered by omitting “**obligations under Fish Stocks**
12 **Agreement**” and substituting “**international fisheries management organisation and**
13 **Fish Stocks Agreement obligations**”.

14 Note 2: The heading to subsection 16A(1) is altered by omitting “*regional*” and substituting
15 “*international fisheries*”.

16 **21 After paragraph 16A(3)(b)**

17 Insert:

18 (ba) an offence against section 105AA or 105AB;

19 **22 Subsection 16A(4)**

20 Repeal the subsection.

21 **23 Subsection 32(1D) (note)**

22 Omit “straddling fish stock or a highly migratory”, substitute
23 “conserved”.

24 **24 Paragraph 38(3A)(a)**

25 Omit “serious violation of a WCPFC conservation and”, substitute
26 “contravention of an international fisheries”.

27 **25 Subparagraph 39(1)(d)(i)**

28 Omit “regional organisation or arrangement”, substitute “global,
29 regional or subregional fisheries organisation or arrangement”.

1 **26 Subparagraph 39(1)(d)(ii)**

2 Repeal the subparagraph, substitute:

- 3 (ii) Australia is not involved in the organisation or
4 arrangement and has not agreed to apply measures
5 established by the organisation or arrangement.

6 **27 At the end of section 42A**

7 Add “or a measure established by an international fisheries management
8 organisation”.

9 **28 Sections 87A to 87F**

10 Repeal the sections.

11 **29 Subsection 87H(1) (note)**

12 Repeal the note.

13 **30 Paragraph 87H(5)(b)**

14 Omit “section 87F requires”, substitute “another provision of this Act or
15 the regulations requires”.

16 **31 Subsection 87H(5) (note)**

17 Repeal the note.

18 **32 After section 87H**

19 Insert:

20 **87HA Officers’ powers under international agreements and**
21 **arrangements**

22 *Foreign boats in Australia or Australian waters after*
23 *contraventions on the high seas*

- 24 (1) An officer may exercise powers under section 84 in relation to a
25 foreign boat (and the master of the boat, a person on the boat and a
26 thing on the boat) in the AFZ, Australia or an external Territory if:
27 (a) the officer has reasonable grounds to believe that the boat is
28 on a fishing trip; and
29 (b) the officer has reasonable grounds to believe that, during the
30 fishing trip, the boat was used on the high seas in

- 1 contravention of a measure established by an international
2 fisheries management organisation; and
3 (c) the exercise of the powers in relation to the boat has been
4 authorised by the appropriate authority of the country of
5 nationality of the boat.

6 *Foreign boats on the high seas*

- 7 (2) An officer may exercise powers under section 84 in relation to a
8 foreign boat (and the master of the boat, a person on the boat and a
9 thing on the boat) on the high seas if:
10 (a) the officer has reasonable grounds to believe the boat has
11 been used, is being used, or is intended to be used, for
12 fishing; and
13 (b) the exercise of the powers in relation to the boat has been
14 authorised by the appropriate authority of the country of
15 nationality of the boat.

16 *Foreign boats in foreign countries or foreign waters*

- 17 (3) An officer may exercise powers under section 84 in relation to a
18 foreign boat (and the master of the boat, a person on the boat and a
19 thing on the boat) at a place in a foreign country or in the exclusive
20 economic zone, territorial sea, archipelagic waters (as defined in
21 the United Nations Convention on the Law of the Sea) or internal
22 waters of a foreign country if:
23 (a) the boat was brought or taken to the place:
24 (i) as a result of a requirement made by an officer under
25 paragraph 84(1)(k) or (l) in the exercise of powers under
26 subsection (1) or (2); or
27 (ii) by an officer under paragraph 84(1)(m) in the exercise
28 of powers under subsection (1) or (2); and
29 (b) the exercise of the powers in relation to the boat has been
30 authorised by:
31 (i) the appropriate authority of the country of nationality of
32 the boat; and
33 (ii) if the boat is at a place in a foreign country or in the
34 territorial sea, archipelagic waters (as defined in the
35 United Nations Convention on the Law of the Sea) or
36 internal waters of a foreign country—the appropriate
37 authority of that country.

1 *Applying section 84*

2 (4) For the purposes of subsections (1) to (3), section 84 applies:

3 (a) as if:

4 (i) a reference to the AFZ included a reference to the high
5 seas; and

6 (ii) a reference to Australia or an external Territory included
7 a reference to a foreign country, including the exclusive
8 economic zone, territorial sea, archipelagic waters (as
9 defined in the United Nations Convention on the Law of
10 the Sea) or internal waters of that country; and

11 (iii) a reference to a fishing concession, or a fishing
12 concession under this Act, included a reference to an
13 authorisation to fish (however described) issued by a
14 foreign country or an international fisheries
15 management organisation; and

16 (iv) a reference to an offence against subsection 95(2)
17 included a reference to an offence against section 105E,
18 105EA, 105F, 105FA, 105H or 105I; and

19 (b) as affected by:

20 (i) other provisions of this Act; or

21 (ii) regulations made for the purposes of section 84 or any
22 other provision of this Act.

23 *Regulations may prescribe procedural requirements*

24 (5) In exercising powers under subsections (1) to (3), an officer must
25 follow the procedures (if any) prescribed by the regulations.

26 (6) The regulations may prescribe different procedures for the exercise
27 of powers in relation to:

28 (a) boats of different nationalities; or

29 (b) boats covered by:

30 (i) different international fisheries management
31 organisations; or

32 (ii) different international fisheries management measures;
33 or

34 (c) boats covered by the Fish Stocks Agreement.

1 *Extra-territorial operation of Act*

- 2 (7) This section does not limit:
3 (a) the extra-territorial operation that section 84 has apart from
4 this section; or
5 (b) section 87.

6 **33 Subsection 87J(1)**

7 Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

8 **34 Subsection 88(1)**

9 Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

10 **35 Section 88A**

11 Repeal the section, substitute:

12 **88A Seizure and forfeiture of foreign boats etc.**

- 13 (1) The regulations may provide that some or all of the provisions of
14 this Act that relate to seizure and forfeiture of property do not
15 apply in relation to:
16 (a) foreign boats (including nets, traps, equipment or fish on
17 such boats) covered by a specified:
18 (i) international fisheries management organisation; or
19 (ii) international fisheries management measure; or
20 (b) foreign boats covered by the Fish Stocks Agreement; or
21 (c) foreign boats mentioned in paragraph (a) or (b) in specified
22 circumstances.
- 23 (2) The regulations may prescribe procedures to be followed in dealing
24 with property:
25 (a) under the control of an officer; and
26 (b) covered by regulations made under subsection (1).

27 **36 Paragraph 98(1A)(b)**

28 After “105A,”, insert “105AA, 105AB,”.

29 **37 At the end of subsection 98(1A)**

30 Add:
31 ; or (c) against section 105E, 105EA, 105F, 105FA, 105H or 105I.

38 Paragraph 102(1)(c)

Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

39 Paragraph 105AA(1)(b)

Omit “WCPFC”, substitute “conserved”.

Note: The heading to section 105AA is altered by omitting “WCPFC” and substituting “conserved”.

40 Paragraph 105AA(1)(d)

Omit “Convention area”, substitute “conservation area for the fish stock”.

41 Paragraph 105AB(1)(b)

Omit “WCPFC”, substitute “conserved”.

Note: The heading to section 105AB is altered by omitting “WCPFC” and substituting “conserved”.

42 Paragraph 105AB(1)(d)

Omit “Convention area”, substitute “conservation area for the fish stock”.

43 Subsection 105D(1)

After “Agreement” (first occurring), insert “or that participates in an international fisheries management organisation”.

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

Add “or measures established by the international fisheries management organisation”.

45 Subsection 105D(2)

After “Agreement” (first occurring), insert “or that participates in an international fisheries management organisation”.

Note: The heading to subsection 105D(2) is altered by omitting “regional” and substituting “international fisheries”.

46 Subsection 105D(2)

Omit “a regional”, substitute “an international fisheries”.

47 Paragraph 105D(2)(a)

1 Omit “a regional organisation or arrangement”, substitute “the
2 international fisheries management organisation”.

3 **48 Paragraph 105D(2)(b)**

4 Omit “regional”, substitute “international fisheries”.

5 **49 At the end of paragraph 105D(2)(c)**

6 Add “or measures established by the international fisheries management
7 organisation”.

8 **50 Subsection 105D(5)**

9 Omit “a regional”, substitute “an international fisheries”.

10 Note: The heading to subsection 105D(5) is altered by omitting “*regional*” and substituting
11 “*international fisheries*”.

12 **51 At the end of paragraph 105D(5)(c)**

13 Add “or measures established by the international fisheries management
14 organisation”.

15 **52 Subdivisions AA, B and C of Division 5A of Part 6**

16 Repeal the Subdivisions, substitute:

17 **Subdivision B—Using foreign boat to contravene international
18 fisheries management measure**

19 **105E Contravention on high seas—strict liability**

- 20 (1) A person commits an offence if:
21 (a) the person uses a boat for fishing; and
22 (b) the person contravenes an international fisheries management
23 measure in relation to the fishing; and
24 (c) the boat is on the high seas; and
25 (d) the boat is a foreign boat.

26 Penalty: 60 penalty units.

- 27 (2) Strict liability applies to subsection (1).

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

- 1 (3) Subsection (1) does not apply if the act that contravenes the
2 international fisheries management measure is fishing that is
3 authorised by an authorisation (however described) issued under
4 the law of the country of nationality of the boat.

5 Note: A defendant bears an evidential burden in relation to the matter in
6 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

7 **105EA Contravention on high seas**

- 8 (1) A person commits an offence if:
9 (a) the person uses a boat for fishing; and
10 (b) the person contravenes an international fisheries management
11 measure in relation to the fishing; and
12 (c) the boat is on the high seas; and
13 (d) the boat is a foreign boat.

14 Penalty: 500 penalty units.

- 15 (2) Strict liability applies to paragraphs (1)(c) and (d).

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

- 17 (3) Subsection (1) does not apply if the act that contravenes the
18 international fisheries management measure is fishing that is
19 authorised by an authorisation (however described) issued under
20 the law of the country of nationality of the boat.

21 Note: A defendant bears an evidential burden in relation to the matter in
22 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

23 **105EB Attorney-General's consent required for prosecution**

- 24 (1) The Attorney-General's written consent is required before a charge
25 of an offence against section 105E or 105EA, alleged to have been
26 committed by a person other than an Australian national, can
27 proceed to hearing or determination.

- 28 (2) Before granting such a consent, the Attorney-General must take
29 into account any views expressed by the government of the country
30 of nationality of the boat alleged to be involved in the offence.

- 31 (3) Even though the Attorney-General has not granted such a consent,
32 the absence of consent is not to prevent or delay:

- 1 (a) the arrest of the suspected offender or proceedings related to
2 arrest (such as proceedings for the issue and execution of a
3 warrant); or
4 (b) the laying of a charge against the suspected offender; or
5 (c) proceedings for the extradition to Australia of the suspected
6 offender; or
7 (d) proceedings for remanding the suspected offender in custody
8 or on bail.
- 9 (4) If the Attorney-General declines to grant consent, the court in
10 which the suspected offender has been charged with the offence
11 must permanently stay proceedings on the charge.
- 12 (5) In any proceedings, an apparently genuine document purporting to
13 be a copy of a written consent granted by the Attorney-General in
14 accordance with this section will be accepted, in the absence of
15 proof to the contrary, as proof of such consent.

16 **105F Australian national on foreign boat in foreign waters—strict**
17 **liability**

- 18 (1) A person commits an offence if:
19 (a) the person uses a boat for fishing; and
20 (b) the person is an Australian national; and
21 (c) the person contravenes an international fisheries management
22 measure in relation to the fishing; and
23 (d) the boat is in the exclusive economic zone, territorial sea,
24 archipelagic waters (as defined in the United Nations
25 Convention on the Law of the Sea) or internal waters of a
26 foreign country; and
27 (e) the boat is a foreign boat.
- 28 Penalty: 60 penalty units.
- 29 (2) Strict liability applies to subsection (1).
30 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 31 (3) Subsection (1) does not apply if the act that contravenes the
32 international fisheries management measure is fishing that is
33 authorised by an authorisation (however described) issued under
34 the law of the country covered by paragraph (1)(d).

1 Note: A defendant bears an evidential burden in relation to the matter in
2 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

3 **105FA Australian national on foreign boat in foreign waters**

- 4 (1) A person commits an offence if:
5 (a) the person uses a boat for fishing; and
6 (b) the person is an Australian national; and
7 (c) the person contravenes an international fisheries management
8 measure in relation to the fishing; and
9 (d) the boat is in the exclusive economic zone, territorial sea,
10 archipelagic waters (as defined in the United Nations
11 Convention on the Law of the Sea) or internal waters of a
12 foreign country; and
13 (e) the boat is a foreign boat.

14 Penalty: 500 penalty units.

- 15 (2) Strict liability applies to paragraphs (1)(d) and (e).

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

- 17 (3) Subsection (1) does not apply if the act that contravenes the
18 international fisheries management measure is fishing that is
19 authorised by an authorisation (however described) issued under
20 the law of the country covered by paragraph (1)(d).

21 Note: A defendant bears an evidential burden in relation to the matter in
22 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

23 **Subdivision C—Unauthorised foreign boat on high seas**

24 **105H Unauthorised fishing—strict liability**

- 25 (1) A person commits an offence if:
26 (a) the person uses a boat for fishing; and
27 (b) the boat is a foreign boat; and
28 (c) the boat is on the high seas; and
29 (d) a law of the country of nationality of the boat requires the
30 fishing to be authorised (however described); and
31 (e) the fishing is not so authorised.

32 Penalty: 60 penalty units.

1 (2) Strict liability applies to subsection (1).

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

3 **105I Unauthorised fishing**

- 4 (1) A person commits an offence if:
- 5 (a) the person uses a boat for fishing; and
 - 6 (b) the boat is a foreign boat; and
 - 7 (c) the boat is on the high seas; and
 - 8 (d) a law of the country of nationality of the boat requires the
 - 9 fishing to be authorised (however described); and
 - 10 (e) the fishing is not so authorised.

11 Penalty: 500 penalty units.

12 **105J Attorney-General's consent required for prosecution**

- 13 (1) The Attorney-General's written consent is required before a charge
- 14 of an offence against this Subdivision, alleged to have been
- 15 committed by a person other than an Australian national, can
- 16 proceed to hearing or determination.
- 17 (2) Before granting such a consent, the Attorney-General must take
- 18 into account any views expressed by the government of the country
- 19 of nationality of the boat alleged to be involved in the offence.
- 20 (3) Even though the Attorney-General has not granted such a consent,
- 21 the absence of consent is not to prevent or delay:
- 22 (a) the arrest of the suspected offender or proceedings related to
 - 23 arrest (such as proceedings for the issue and execution of a
 - 24 warrant); or
 - 25 (b) the laying of a charge against the suspected offender; or
 - 26 (c) proceedings for the extradition to Australia of the suspected
 - 27 offender; or
 - 28 (d) proceedings for remanding the suspected offender in custody
 - 29 or on bail.
- 30 (4) If the Attorney-General declines to grant consent, the court in
- 31 which the suspected offender has been charged with the offence
- 32 must permanently stay proceedings on the charge.

1 (5) In any proceedings, an apparently genuine document purporting to
2 be a copy of a written consent granted by the Attorney-General in
3 accordance with this section will be accepted, in the absence of
4 proof to the contrary, as proof of such consent.

5 **53 Subsection 106(1)**

6 Omit “, subsection 95(5) or section 105C or 105F”, substitute “or
7 subsection 95(5)”.

8 **54 Subsection 106(2)**

9 Omit “, 104, 105A, 105B or 105E”, substitute “or 104 or Division 5A of
10 Part 6”.

11 **55 Subparagraph 106AAA(1)(a)(i)**

12 Omit “, subsection 95(5) or section 105C or 105F”. substitute “or
13 subsection 95(5)”.

14 **56 Subparagraph 106AAA(1)(a)(ii)**

15 Omit “, 104, 105A, 105B or 105E”, substitute “or 104 or Division 5A of
16 Part 6”.

17 **57 Paragraph 108(1)(c)**

18 Omit “87C or 87G”, substitute “87G or 87HA”.

19 **58 Paragraph 168(2)(l)**

20 Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

21 **59 Paragraph 168(2)(na)**

22 Omit “a part of the Convention area for a purpose related to fishing for
23 a WCPFC fish stock”, substitute “an area covered by an international
24 fisheries management organisation”.

25 **60 Subclause 8(1) of Schedule 1A**

26 Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

27 **61 Subclause 8(3) of Schedule 1A**

28 Omit “subject to section 87E”, substitute “, in relation to an offence
29 against section 105E, 105EA, 105H or 105I, subject to any limitations
30 set out in the regulations”.

1 **62 Subclause 8(3) of Schedule 1A (note)**

2 Repeal the note.

3 **63 Subclause 10(1) of Schedule 1A**

4 Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

5 **64 Subclause 12(4) of Schedule 1A**

6 Omit “subject to section 87E”, substitute “, in relation to a person
7 detained in relation to an offence against section 105E, 105EA, 105H or
8 105I, subject to any limitations set out in the regulations”.

9 **65 Subclause 12(4) of Schedule 1A (note)**

10 Repeal the note.

11 **66 Subparagraph 15(2)(b)(i) of Schedule 1A**

12 Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

13 ***Migration Act 1958***

14 **67 Subsection 5(1) (paragraph (a) of the definition of *fisheries***
15 ***detention offence*)**

16 Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

17 **68 Paragraph 43(5)(b)**

18 Omit “, 87B, 87C or 87D”, substitute “or 87HA”.

19 **69 Paragraph 164B(1A)(b)**

20 Omit “, 87B, 87C or 87D”, substitute “or 87HA”.

1
2
3

Schedule 4—Support boats

4

Fisheries Management Act 1991

5

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

6 Repeal the paragraphs, substitute:

- 7 (a) subsection (1A), (1B) or (1C) applies in relation to the person
8 or boat; and
9 (b) the power is exercised at or immediately after the end of the
10 pursuit referred to in whichever of subsection (1A), (1B) or
11 (1C) applies.

12 Note: The heading to section 87 is replaced by the heading “**Officers’ powers at place**
13 **outside AFZ following pursuit**”.

14

2 After subsection 87(1)

15 Insert:

16 *Person or boat pursued from within AFZ*

- 17 (1A) This subsection applies in relation to a person or a boat if one or
18 more officers (whether or not including the officer exercising the
19 power under section 84):
20 (a) pursued the person or boat without interruption from a place
21 in the AFZ to the place referred to in subsection (1); and
22 (b) if the power is to be exercised in relation to a foreign boat or
23 a person who is on such a boat—ordered, when the boat was
24 in the AFZ, the master of the boat to stop the boat to allow an
25 officer to board it.

26 *Australian boat outside AFZ supporting foreign boat in AFZ*

- 27 (1B) This subsection applies in relation to an Australian boat (the
28 **support boat**), or a person on such a boat, if:
29 (a) one or more officers (whether or not including the officer
30 exercising the power under section 84) have pursued the
31 support boat without interruption from a place outside the
32 AFZ to the place referred to in subsection (1); and
33 (b) the officer exercising the power under section 84 has
34 reasonable grounds to believe that:

- 1 (i) the support boat has been used in support of, or in
2 preparation for, the use of another boat in the
3 commission of an offence against section 100, 100A,
4 100B, 101, 101A or 101AA; and
5 (ii) immediately before the pursuit began, the support boat
6 was still being used in support of the other boat or in
7 preparation for the commission of such an offence by
8 the other boat; and
9 (c) the other boat was in the AFZ when the pursuit began.

10 *Foreign boat outside AFZ supporting foreign boat in AFZ*

- 11 (1C) This subsection applies in relation to a foreign boat (the *support*
12 *boat*), and a person on such a boat, if:
13 (a) one or more officers (whether or not including the officer
14 exercising the power under section 84) have pursued the
15 support boat without interruption from a place outside the
16 AFZ to the place referred to in subsection (1); and
17 (b) the officer exercising the power under section 84 has
18 reasonable grounds to believe that the support boat has been
19 used in support of, or in preparation for, the use of another
20 boat in the commission of an offence against section 100,
21 100A, 100B, 101, 101A or 101AA; and
22 (c) one or more officers (whether or not including the officer
23 exercising the power under section 84), as soon as practicable
24 after the offence referred to in paragraph (b) was committed,
25 ordered the master of the support boat to stop the support
26 boat to allow an officer to board it; and
27 (d) the officer exercising the power under section 84 has
28 reasonable grounds to believe that, immediately before the
29 order was made, the support boat was still being used in
30 support of the other boat or in preparation for the commission
31 of an offence referred to in paragraph (b) by the other boat;
32 and
33 (e) the other boat was in the AFZ when the order referred to in
34 paragraph (c) was made.

35 **3 Subsection 87(2)**

36 Omit “subsection (1)”, substitute “subsections (1A), (1B) and (1C)”.

37 **4 Subsection 87(2)**

1 Omit “terminated or substantially”.

2 **5 At the end of section 87**

3 Add:

4 (4) For the purposes of subsections (1A), (1B) and (1C), a person or
5 boat is taken to have been pursued even if the person or boat does
6 not seek to evade an officer.

7 (5) An officer may use any reasonable means to make an order under
8 paragraph (1A)(b) or (1C)(c).

9 (6) An order is still made under paragraph (1A)(b) or (1C)(c) even if:
10 (a) there was no master on board the boat to receive the order; or
11 (b) the master did not receive or understand the order.

12 (7) Paragraph 84(1)(a) applies, for the purposes of subsection (1), in
13 relation to a support boat to which subsection (1B) or (1C) applies,
14 as if the support boat were in the AFZ.

15 **6 Subsections 101B(3), (4) and (5)**

16 Repeal the subsections.

17 ***Migration Act 1958***

18 **7 Paragraph 43(5)(b)**

19 Before “87B”, insert “87,”.

20 **8 Paragraph 164B(1A)(b)**

21 Before “87B”, insert “87,”.