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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FISHERIES LEGISLATION AMENDMENT BILL (No. 1) 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry,  
Senator the Hon. Joe Ludwig)

## **FISHERIES LEGISLATION AMENDMENT BILL (No. 1) 2012**

### **GENERAL OUTLINE**

The Fisheries Legislation Amendment Bill (No.1) 2012 will amend the *Fisheries Management Act 1991* (FM Act) and the *Fisheries Administration Act 1991* (FA Act) to facilitate the implementation of electronic monitoring (e-monitoring) in relation to Commonwealth fisheries. The Bill will also make several minor amendments to the FM Act to make provisions clear, consistent and simpler to administer.

The Bill will provide for a system of e-monitoring of fishing and fishing-related activities undertaken by Commonwealth fishing concession and scientific permit holders, for the purposes of data collection and compliance monitoring. The Bill will provide the Australian Fisheries Management Authority (AFMA) with express powers to give directions to Commonwealth fishing concession and scientific permit holders relating to the e-monitoring of fishing and related activities. Associated amendments include: offences of preventing or hindering the operation of e-monitoring equipment or modifying, damaging or destroying e-monitoring data; provisions to allow evidentiary certificates to be issued to minimise challenges to the use of e-monitoring data in court proceedings; a provision to clarify that a direction about e-monitoring can apply where a boat is in a state or territory fishery, or incidentally records fishing activity under a state or territory issued licence; and provisions dealing with the disclosure of e-monitoring data.

Other minor amendments in the Bill will increase the effectiveness of provisions in the FM Act that make corporations and other persons responsible for unlawful conduct engaged in by their employees, agents or directors. The amendments will also improve consistency and clarity by:

- amending the obligations upon AFMA when making and notifying fishers of directions to close a fishery or part of a fishery to fishing, including in emergencies;
- clarifying the meaning of ‘part of a fishery’ as it is used in relation to directions to close a fishery or part of a fishery; and
- permitting AFMA to waive levies applicable to statutory fishing rights, similar to arrangements for fishing permits.

The Bill has been prepared by the Department of Agriculture, Fisheries and Forestry and AFMA. Consultation has taken place with various parts of the Attorney-General’s Department, as well as the Department of Finance and Deregulation, the National Archives Australia and the Office of Legislative Drafting and Publishing. Large sectors of the fishing industry have been involved in trials of e-monitoring and the Commonwealth Fisheries Association, the peak industry representative body, has been consulted on the proposed amendments.

### **E-monitoring**

In order to effectively carry out its legislative objectives and functions, AFMA requires accurate and comprehensive data on fishing activity. Under legislation, AFMA is required to ensure that the exploitation of fisheries resources is ecologically sustainable, to implement efficient and cost-effective fisheries management and to

collect information about possible breaches of the law and the management of and research into fisheries and the marine environment. Currently, data is primarily obtained through logbook returns, which are submitted by fishers for each fishing trip, as well as through vessel monitoring systems and by observers deployed on fishing boats.

E-monitoring involves the electronic recording of fishing and related activities for data collection and compliance purposes, through the use of specialised equipment installed on boats. E-monitoring equipment can include cameras, global positioning systems or sensors, and vessel monitoring systems, and can therefore generate a range of visual and non-visual e-monitoring data. Types of data that will be generated by e-monitoring include video footage of fishing and fishing-related activities on the deck of boats, in processing areas on boats, or in the water; data showing the location and identity of boats and the time that fishing activities take place; and data that indicates whether pieces of e-monitoring equipment are functioning. E-monitoring will therefore complement other monitoring techniques, such as logbooks and observers and, over time, is expected to largely replace the use of observers.

E-monitoring has been trialled in several Commonwealth fisheries and overseas and has been implemented as an operational tool on some boats in the Gillnet, Hook and Trap sector of the Commonwealth Southern and Eastern Scalefish and Shark Fishery. These experiences have indicated that data collected through e-monitoring is more comprehensive than logbook and observer data, particularly given that it is only possible for a portion of the fleet to carry observers at a given time. E-monitoring enables high quality data to be collected on:

- fishing and related activities, including on the take of target and non-target species;
- fishing methods and fish handling processes; and
- the impact of fishing on the broader marine environment, including interactions with marine species protected under the *Environmental Protection Biodiversity and Conservation Act 1999*.

Accordingly, the amendments will greatly assist AFMA to achieve its legislative objectives.

E-monitoring is a cost-effective monitoring tool. The decision to introduce e-monitoring will be made on a fishery by fishery basis, having regard to the fishery specific monitoring requirements of, as well as the costs and benefits to, each fishery. It is expected that fishing concession and scientific permit holders will meet the costs of purchasing and installing e-monitoring equipment. Fisheries are expected to use either e-monitoring or observers, or a combination of the two, according to the most cost-effective option for achieving the required level of monitoring. For example, cost-benefit analyses have shown that for fisheries with high monitoring requirements, e-monitoring is the least costly monitoring option. As e-monitoring becomes more widely implemented, the relative costs to both fishers and AFMA of collecting data to manage fisheries and ensure compliance are expected to decrease.

Whereas AFMA has the power to impose conditions on fishing concessions and permits under existing provisions in the FM Act, the Bill provides AFMA with express powers to direct holders of fishing concessions or scientific permits to comply with any obligations relating to the e-monitoring of fishing-related activity.

Obligations may include, for example, the installation, use and maintenance of e-monitoring equipment on boats, the collection of e-monitoring data and the provision of e-monitoring data to AFMA. Compliance with an e-monitoring direction within a specified reasonable period of time will be a condition of the fishing concession or scientific permit to which the direction relates. A breach of such a condition may constitute an offence under section 95 of the FM Act, as with a breach of any other condition imposed on a fishing concession or scientific permit.

The Bill will ensure that AFMA is expressly authorised to collect e-monitoring data. The storage, handling and disposal of e-monitoring data will be managed in accordance with AFMA policies that, in turn, are governed by relevant legal requirements. The Bill will also ensure that disclosure of e-monitoring data is expressly authorised, by amending section 7 of the FA Act. Various safeguards can apply to the disclosure of personal information that forms part of e-monitoring data; for example, AFMA may prevent or limit secondary disclosure of information that it has disclosed and, where personal information is not relevant to the purpose of the disclosure, the personal information component could be obscured.

The Bill creates offences for preventing or hindering the operation of e-monitoring equipment, or for modifying, damaging or destroying e-monitoring data, without the written authority of AFMA. The Bill also allows AFMA to give evidentiary certificates relating to e-monitoring, which would be prima facie evidence in court proceedings of the matters stated in that certificate. This will help to reduce costs associated with proving administrative or procedural matters that would not usually be in dispute, such as whether a direction relating to e-monitoring was in force, or whether AFMA had received e-monitoring data or equipment from a fishing concession or scientific permit holder. They will also help to avoid challenges to the use of e-monitoring data based on matters that would otherwise be dealt with in a straightforward manner.

The Bill also clarifies, for the avoidance of doubt, that the FM Act provisions relating to e-monitoring continue to apply in relation to a fishery that is managed in accordance with the law of a state or territory.

### **Other minor amendments**

The Bill will make several minor amendments to the FM Act to make provisions clear and consistent, to help ensure that provisions operate as intended, and to simplify the administration of the FM Act.

#### *Directions in relation to closure of fisheries*

The Bill will clarify the meaning of ‘part of a fishery’ as it is used in relation to directions to close a fishery or part of a fishery to fishing. The provision will avoid doubt by providing that ‘part of a fishery’ can be defined in any way, consistent with the FM Act’s definition of ‘fishery’.

The Bill will make it a requirement that all fishers are given written notification of a direction to close a fishery or part of a fishery to fishing, or of any variation to or revocation of such a direction. The Bill will also remove the requirement for AFMA

to consult before making a direction to close a fishery or a part thereof in an emergency. A requirement upon AFMA to consult in an emergency is inconsistent with the need to take urgent action. Because emergency closure directions are legislative instruments, they will still be subject to parliamentary scrutiny and AFMA will be required to notify fishers of the emergency closure as soon as possible.

#### *Waiver of levies in respect of statutory fishing rights*

The Bill will make it possible for AFMA to waive levies payable in respect of a statutory fishing right that is surrendered, and any penalty amounts payable for non-payment of the levy, where no fishing has been undertaken under the statutory fishing right in the period to which the levy applies. The FM Act currently provides AFMA with this power in respect of fishing permits, but not in respect of statutory fishing rights. The amendments will remove this inconsistency to ensure that the same ability to waive levies can be applied to statutory fishing right holders.

#### *Liability of corporations and other principals*

The Bill will amend the FM Act so that corporations or other persons can be held responsible for the unlawful conduct of their directors, employees or agents, unless the corporation or person took reasonable precautions and exercised due diligence to prevent the conduct. The Bill will also specify matters to be taken into account when determining whether a corporation or person took reasonable precautions and exercised due diligence to prevent unlawful conduct by their directors, employees or agents. These amendments will make the provisions more effective in holding, for example, corporate or other concession holders responsible for the conduct of the master of a boat or members of the crew fishing under their concession.

### FINANCIAL IMPACT STATEMENT

The amendments have no financial impact on the Australian Government. It is expected that the costs of purchasing and installing e-monitoring systems will be met by fishing concession or scientific permit holders. Administrative arrangements to implement the amendments in the Bill are expected to be funded under AFMA's operating budget and through fishing industry levies and fees.

### HUMAN RIGHTS COMPATIBILITY STATEMENT

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Bill places limitations on the prohibition on interference with privacy and the right to work; however, those limitations are reasonable, necessary and proportionate.

Article 17 of the *International Covenant on Civil and Political Rights (ICCPR)* prohibits unlawful or arbitrary interferences with a person's privacy. The prohibition may be engaged because the Bill implements a scheme for electronic surveillance of fishing and related activities, which may incidentally include personal information. In turn, this information could be stored, used and disclosed by AFMA and access by individuals to this information may be regulated. Under the ICCPR, the right to

privacy can be limited, provided the limitation is not unlawful or arbitrary. The limitation the Bill places on the right to privacy is lawful, being authorised under a number of laws including the FM Act, and is not arbitrary, because it is consistent with the provisions, aims and objectives of the ICCPR and is reasonable in the particular circumstances.

Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) protects the right of every person to have the opportunity to gain a living by work which s/he freely chooses or accepts. The right to work is engaged by the Bill because it incorporates offences, the penalties for which could affect a person's ability to work as chosen. The right to work can be subjected to limitations that are compatible with the nature of the rights and solely for the purpose of promoting general welfare in democratic society. Under the Bill, the imposition of penalties for offences committed would be a proportional limitation on the right to work and would not be overly restrictive or of unlimited duration. Furthermore, the imposition of penalties is consistent with the promotion of the welfare of society, both in terms of redressing criminality and promoting the protection of fisheries resources, and is necessary to meeting AFMA's legislative objective of ensuring the ecologically sustainable exploitation of fisheries resources.

# **FISHERIES LEGISLATION AMENDMENT BILL (NO. 1) 2012**

## **NOTES ON ITEMS**

### **Section 1: Short title**

Section 1 is a formal provision specifying the short title by which the Act may be cited.

### **Section 2: Commencement**

Section 2 provides for the commencement of the provisions in the Act.

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

Section 3 provides that each Act specified in a Schedule to the Act is amended as set out in the applicable items of the Schedule concerned, and that any other item in a Schedule to the Act has effect according to its terms.

## **Schedule 1—E-monitoring**

### **Part 1—Main amendments**

#### *Fisheries Management Act 1991*

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

This item inserts a definition of ‘e-monitoring’.

#### **Item 2: Subsection 4(1)**

This item inserts a definition of ‘e-monitoring data’.

#### **Item 3: Subsection 4(1)**

This item inserts a definition of ‘e-monitoring equipment’.

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

This item inserts a definition of ‘fishing-related activity’. ‘Fishing-related activity’ includes activities that constitute ‘fishing’, as defined in section 4 of the FM Act, as well as additional activities, the monitoring of which is consistent with AFMA’s legislative objectives specified in section 3 of the FM Act and section 6 of the FA Act. For example, ‘fishing-related activity’ would include any encounters with fish and non-fish marine life, including plants; encounters with the marine environment; and the preparation of fishing equipment, such as nets, before a boat leaves port.

### **Item 5: After Division 9 of Part 3**

This item inserts three new provisions that provide AFMA with express powers to make written directions that require fishing concession or scientific permit holders to comply with obligations relating to the e-monitoring of fishing-related activity, or to comply with restrictions on engaging in fishing if obligations relating to the e-monitoring of fishing-related activity have not yet been complied with. This item also provides examples of obligations that may be prescribed in directions relating to the e-monitoring of fishing-related activity.

The effect of this item is that AFMA will be able to, for example:

- require fishing concession and scientific permit holders to install specific pieces of equipment and specify when and how the equipment should be operated, maintained or repaired;
- require holders to send e-monitoring data, or e-monitoring equipment that contains e-monitoring data, such as hard drives, to AFMA for analysis and specify when and how this is to be done;
- require holders to provide information about the boat, times and locations to which the e-monitoring data they provide relates, or about events such as a malfunction of e-monitoring equipment. Such statements would help to ensure the integrity of e-monitoring data by demonstrating, for example, the chain of custody associated with it; and
- require the holder to comply with restrictions on engaging in fishing if other specified obligations about e-monitoring have not yet been complied with. This will allow AFMA to ensure, where necessary, that certain fishing or related activities only take place if they are being monitored.

The provisions inserted by this item will allow AFMA to issue two categories of directions about e-monitoring. The first category is directions given under proposed section 40A, which would be given to two or more concession or scientific permit holders where the data collection requirements or obligations for monitoring are the same between them. These directions will be legislative instruments and therefore subject to parliamentary scrutiny. AFMA must consult before making directions under section 40A and must send a copy of the direction to all concession or scientific permit holders to which it applies at least seven days before it takes effect, following registration on the Federal Register of Legislative Instruments. This item specifies that consultation is not required when a direction under section 40A is made in an emergency and that AFMA must notify fishers of emergency directions as soon as possible. AFMA may at any time vary or revoke a direction given under section 40A.

The second category is directions given under proposed section 40B, which would be given to an individual concession or scientific permit holder if different or additional obligations are required. To avoid doubt, this item provides that directions given under section 40B are not legislative instruments, because they do not fall within the definition of legislative instrument in section 5 of the *Legislative Instruments Act 2003*.

Having two categories of directions will reduce the administrative burden of making individual directions for each concession or scientific permit holder, while still allowing directions to be tailored if necessary. Both categories of direction can



contain the same types of obligations, as described above, and a concession or scientific permit holder could be subject to either or both categories of direction. However, a section 40B direction given to a concession or scientific permit holder that is already subject to a section 40A direction cannot contain obligations that are inconsistent with those contained in the section 40A direction. For example, a concession or scientific permit holder could be subject to a single direction given under section 40B, because the monitoring requirements applicable to them are different to those applicable to other concession or scientific permit holders. Alternatively, a class of concession or scientific permit holders might be subject to a direction given under section 40A because the same monitoring requirements apply to all of them, but an additional requirement might apply to one of those holders. In that case, a direction under section 40B, which would not be inconsistent with the direction given under section 40A, would be given to that holder as well.

This item provides that compliance with the obligations in a direction given under section 40A or section 40B, within a reasonable specified period, is a condition of the fishing concession or scientific permit to which the direction relates. The relevant period/s of time for compliance will be stated in the direction, therefore allowing AFMA to provide fishers with an appropriate period for compliance, according to the nature of the obligation being imposed. For example, more time would be given to fishers to comply with an obligation to obtain, install and begin operating e-monitoring equipment, whereas less time would be given to comply with a technical requirement, such as the manner in which equipment is operated. A contravention of a condition of a fishing concession or scientific permit is an offence under section 95 of the FM Act. This item inserts a note to refer to the offence provision.

Section 165 of the FM Act, which relates to merits review, will not apply to a direction given under proposed section 40A, being a legislative instrument, or to a direction given under proposed section 40B. The flexibility that is required to impose necessary obligations, which might range from an obligation about installing e-monitoring equipment, to an obligation about specific technical requirements for the operation of equipment, the handling of data, or the provision of data to AFMA, means that merits review would be inappropriate.

#### **Item 6: After paragraph 77(e)**

This item inserts a new paragraph to clarify the application of the FM Act. To avoid doubt, it specifies that the FM Act provisions relating to e-monitoring continue to apply in relation to a fishery that is wholly or partly managed in accordance with the law of a state or territory. It is possible that, as a result of an e-monitoring direction being made, e-monitoring equipment might generate, transmit or store data related to fishing activity undertaken in respect of a licence granted under the law of a state or territory. Such data could only be generated, transmitted or stored as an incident of compliance with a direction that applied to a fishing concession or scientific permit granted under the law of the Commonwealth. Similarly, an e-monitoring direction could require a concession or scientific permit holder to generate, transmit or store information (such as information showing the location of the boat) while the boat is transiting state or territory waters to access a Commonwealth fishery. As such, the Bill provides that the FM Act continues to apply to authorise such monitoring.

### **Item 7: After section 97**

This item inserts two new offences. The first concerns conduct that prevents or hinders the operation of e-monitoring equipment installed, carried or used in compliance with a condition of a fishing concession or scientific permit. The second concerns conduct that results in modification of, damage to, or destruction of, e-monitoring data. The item specifies maximum penalties for the offences of 250 penalty units or 2 years imprisonment, or both.

The offences and penalties reflect the need to provide an appropriate disincentive to actions that affect the integrity of the e-monitoring equipment or data. For example, some fishing concession or scientific permit holders might be motivated to avoid providing e-monitoring data to AFMA, such as if they consider the data might contain information that would lead to restrictions on their fishing activity.

### **Item 8: At the end of subsection 166(2)**

This item adds to the matters specified in subsection 166(2) of the FM Act, in relation to which AFMA may give a certificate. Consistent with the matters already specified in subsection 166(2), the matters being added are administrative or procedural in nature and generally unlikely to be in dispute. They include whether a direction relating to e-monitoring was in force, or whether AFMA had received e-monitoring data or equipment from a fishing concession or scientific permit holder. Subsection 166(7) of the FM Act provides that a certificate given under subsection 166(2) is prima facie evidence of the matters stated in the certificate; however, a court would not be required to exclude evidence to the contrary. The provisions inserted by this item will help to reduce costs associated with proving administrative or procedural matters that would not usually be in dispute. However, they will also help to avoid challenges to the use of e-monitoring data based on matters that would otherwise be dealt with in a straightforward manner.

### **Item 9: Paragraph 168(2)(v)**

This item amends paragraph 168(2)(v) to provide AFMA with an express power to make regulations providing for the disclosure of e-monitoring data. This item will allow AFMA to make new or amend existing regulations, if required, to authorise disclosure of e-monitoring data by AFMA in different circumstances, including in court proceedings. Disclosure of e-monitoring data is also dealt with under item 11 of this schedule.

## **Part 2—Consequential amendments of the Fisheries Administration Act 1991**

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

### **Item 10: Subsection 4(1)**

This item inserts a definition of e-monitoring data, which refers to the definition of e-monitoring data in the FM Act.

### **Item 11: Paragraph 7(1)(gb)**

This item amends paragraph 7(1)(gb) of the FA Act to provide that ‘information’ includes e-monitoring data. This item will expressly authorise AFMA to disclose e-monitoring data under section 7(4) of the FA Act, including data that constitutes personal information (for example, visual images that disclose the identity of a person). The data disclosed under section 7(4) must relate to specific topics listed in paragraph 7(1)(gb), including possible breaches of the law, the administration and management of fisheries or marine environments and research or monitoring about fisheries or marine environments. Under existing regulations, AFMA will only be authorised to disclose e-monitoring data under this provision to other government organisations if satisfied that the data relates to the organisation’s performance of its functions. By this amendment, AFMA will also be expressly authorised to disclose e-monitoring data in accordance with other existing legislative provisions, such as section 8 of the FA Act or the *Privacy Act 1988*.

## **Part 3—Consequential amendments of the Fisheries Management Act 1991**

### ***Fisheries Management Act 1991***

#### **Item 12: Subsection 22(3) (note)**

This item inserts an additional cross-reference to the new section 40C to better explain the operation of the Act.

#### **Item 13: Subsection 32(5) (note)**

This item inserts an additional cross-reference to the new section 40C to better explain the operation of the Act.

#### **Item 14: Subsection 33(3) (note)**

This item inserts an additional cross-reference to the new section 40C to better explain the operation of the Act.

#### **Item 15: Subsection 34(4) (note)**

This item inserts an additional cross-reference to the new section 40C to better explain the operation of the Act.

## **Schedule 2—Closure etc. of fishery**

### ***Fisheries Management Act 1991***

#### **Item 1: After subsection 41A(2)**

This item inserts a new provision to clarify the meaning of ‘part of a fishery’ as it is used in section 41A of the FM Act. This item will make it clear that a direction to

close part of a fishery to fishing could apply to, for example, a particular area, a species of fish, a type or quantity of fishing equipment, a method of fishing, or a combination of these.

**Item 2: Subsections 41A(2A) and (2B)**

This item repeals and substitutes subsections 41A(2A) and (2B) to specify the circumstances and manner in which AFMA must notify the holders of fishing concessions, scientific permits or foreign master fishing licences of a direction that fishing must not be engaged in in a fishery, or in a particular part of a fishery, or of a variation to or revocation of such a direction. While it is administrative practice within AFMA to issue written notice of closures, the FM Act is inconsistent in this regard. This item will ensure that fishers receive written notification in all cases.

This item also repeals and substitutes provisions to provide that in an emergency, AFMA is not required to consult before directing that fishing must not be engaged in. A consultation requirement is inconsistent with the need to take urgent action in emergency situations; examples might include where water becomes contaminated by an oil spill or algal bloom and the consumption of affected fish posed a health hazard, or where there was an immediate threat to a protected species. Because emergency fishery closure directions are legislative instruments, AFMA will still be required to justify emergency closures through parliamentary processes. AFMA will also be required to notify fishers of emergency closures as soon as possible, which gives greater certainty to fishers than the current provision, which requires notification as soon as practicable.

**Item 3: At the end of subsection 41A(3)**

This item inserts a note to clarify that requirements like those relating to consultation about and notification of a direction that fishing must not be engaged in, do not apply to a direction that revokes or varies a direction that fishing must not be engaged in. The provision inserted by item 4 of this schedule deals with notification of variations and revocations.

**Item 4: Subsection 41A(4)**

This item repeals and substitutes subsection 41A(4) to specify the circumstances and manner in which AFMA must notify the holders of fishing concessions, scientific permits or foreign master fishing licences of a variation to, or revocation of, a direction that fishing must not be engaged in in a fishery, or in a particular part of a fishery.

**Item 5: Subsection 41A(5)**

This item replaces a reference to a section of the *Acts Interpretation Act 1901* that has been repealed.

## **Item 6: Application amendments made by items 1 to 5**

This item specifies that the directions, or variations to or revocations of directions, to which the amendments in items 1 to 5 of this schedule apply, are only those directions, variations or revocations that are given or made on or after the commencement of this item.

## **Schedule 3—Waiver of levy**

### ***Fisheries Management Act 1991***

#### **Item 1: After subsection 113(1)**

This item inserts a new provision to allow AFMA to waive a levy that is due and payable in respect of a statutory fishing right, and any penalty for non-payment of such a levy, if that statutory fishing right is surrendered before any fishing activities are undertaken under it in the period to which the levy applies. The FM Act currently provides AFMA with this power in respect of fishing permits. This item will ensure the power is available in respect of statutory fishing rights.

#### **Item 2: Application of amendment made by item 1**

This item specifies that the levies that can be waived under item 1 of this schedule are levies that are due and payable on the commencement of item 1, as well as levies that become due and payable after the commencement of item 1.

## **Schedule 4—Conduct of directors etc.**

### ***Fisheries Management Act 1991***

#### **Item 1: Subsection 97(2)**

This item replaces outdated language in the legislation.

#### **Item 2: Section 164 (heading)**

This item replaces outdated language in the legislation.

#### **Item 3: Paragraph 164(1)(a)**

This item replaces outdated language in the legislation.

#### **Item 4: Paragraph 164(1)(a)**

This item is consequential on the amendment to subsection 164(2) at item 6 of this schedule and provides that the state of mind of a director, employee or agent of a body corporate can be attributed to the body corporate, without having to show that the

director, employee or agent was acting within the scope of his or her actual or apparent authority.

**Item 5: Paragraph 164(1)(b)**

This item replaces outdated language in the legislation.

**Item 6: Subsection 164(2)**

This item repeals and substitutes subsection 164(2) to remove the requirement on the prosecution to prove that conduct engaged in by a director, employee, or agent of a body corporate was engaged in on behalf of the body corporate and within the scope of the director, employee or agent's actual or apparent authority. These requirements are difficult to establish and are inconsistent with the purpose of the provisions, which is to facilitate prosecution of, for example, corporate fishing concession holders for offences committed by the master of the boat or a member of the crew fishing under their concession, where the holder did not take measures to prevent the offence.

This item also inserts a new provision to specify matters to be taken into account in determining whether a body corporate took reasonable precautions and exercised due diligence to prevent unlawful conduct by its directors, employees or agents. This will ensure that, at a minimum, a court would consider any actions taken to inform the directors, employees or agents about relevant legal obligations, which could include whether the body corporate informed the director, employee or agent in writing of the applicable legal obligations, whether they provided any training or induction programs, and whether the contract under which the employee or agent was engaged specified consequences if they failed to comply with applicable legal obligations. It would also require a court to consider whether efforts were made to ensure the director, employee or agent understood those legal obligations and any ongoing efforts to monitor compliance. It will also ensure that a court considers whether any other actions could reasonably have been taken to prevent the conduct.

**Item 7: Paragraph 164(3)(a)**

This item replaces outdated language in the legislation.

**Item 8: Paragraph 164(3)(a)**

This item is consequential on the amendment to paragraph 164(4) at item 10 of this schedule and provides that the state of mind of an employee or agent of a person other than a body corporate can be attributed to that person, without having to show that the employee or agent was acting within the scope of his or her actual or apparent authority.

**Item 9: Paragraph 164(3)(b)**

This item replaces outdated language in the legislation.

**Item 10: Subsection 164(4)**

This item repeals and substitutes subsection 164(4) to remove the requirement on the prosecution to prove that conduct engaged in by an employee or agent of a person other than a body corporate was engaged in on behalf of the person and within the scope of the employee or agent's actual or apparent authority. These requirements are difficult to establish and are inconsistent with the purpose of the provisions, which is to facilitate prosecution of, for example, fishing concession holders for offences committed by the master of the boat or a member of the crew fishing under their concession, where the holder did not take measures to prevent the offence.

This item also inserts a new provision to specify matters to be taken into account in determining whether a person took reasonable precautions and exercised due diligence to prevent unlawful conduct by their employees or agents. This will ensure that, at a minimum, a court would consider any actions taken to inform the employees or agents about relevant legal obligations, which could include whether the person informed the employee or agent in writing of the applicable legal obligations, whether they provided any training or induction programs, and whether the contract under which the employee or agent was engaged specified consequences if they failed to comply with applicable legal obligations. It would also require a court to consider whether efforts were made to ensure the employee or agent understood those legal obligations and any ongoing efforts to monitor compliance. It will also ensure that a court considers whether any other actions could reasonably have been taken to prevent the conduct.

**Item 11: Paragraph 164(5)(b)**

This item corrects a typographical error in the legislation.

**Item 12: Application**

This item specifies that the only conduct that can be attributed to a body corporate, or a person other than a body corporate, in reliance on the amendments at items 4, 6, 8 and 10 of this schedule, is conduct that occurs on or after the commencement of this item.