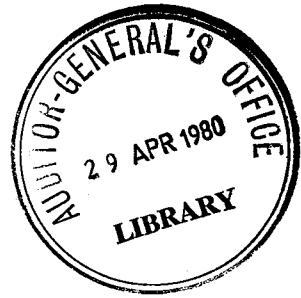


1980



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

FISHERIES AMENDMENT BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Primary Industry,
the Hon P.J. Nixon)

FISHERIES AMENDMENT BILL 1980

Purpose

This Bill implements the fisheries component of the offshore constitutional settlement adopted by the Commonwealth and the States at the Premiers' Conference at Canberra on 24 November 1979.

The Bill was prepared at the direction of the 1978 Premiers' Conference under the supervision of the Australian Fisheries Council. Commonwealth and State fisheries and legal officers reviewed its progress throughout preparation. The Australian Fisheries Council at its 9th Meeting on 2 November 1979 approved the Bill going forward to the 1979 Premiers' Conference for final agreement.

The Provisions of the Bill

Clause 2 - Commencement

Provisions not dependent on the offshore constitutional settlement are to commence on Royal Assent. Provisions giving effect to the settlement

commence on a date to be fixed by proclamation. This will be the same date as the complementary legislation to be enacted by State Governments comes into operation.

Clause 3 - Interpretation

This clause amends and inserts a number of definitions not directly connected with the offshore constitutional settlement. In particular, it clears the way for wider geographical application of the principal Act in respect of Australian fishing operations by removing the limitation, of waters proclaimed under section 7 of the principal Act, to Australian waters. It also provides, in respect of the definition of "foreign boat" in the principal Act, that the Minister, if he is satisfied with the extent of Australian control over the operations of a foreign boat temporarily imported into Australia, may declare that such a boat be deemed Australian while temporarily imported. This will enable such a boat to be brought within the powers of a joint authority established by Clause 12, when it is operating in a fishery which the Commonwealth and the State(s) concerned have agreed should be managed by a joint authority.

Clause 4 - Coastal waters

Under the offshore constitutional settlement, the coastal waters of a State are to be defined to be the territorial sea within 3 nautical miles of the baseline and any marine or tidal waters landward of the baseline. The Government has agreed, in the offshore constitutional settlement, that the territorial sea adjacent to Jervis Bay should be deemed adjacent to N.S.W. and proposed sub-section 4A(3) gives effect to this for fisheries purposes. The States are to exercise jurisdiction in their coastal waters unless otherwise agreed (see clauses 6 and 8).

Clause 5 - Application

This clause makes it clear that the Act has extra-territorial force according to its tenor.

Clause 6 - Operation of certain State and Territory laws

This clause makes clear that the Act does not preclude the States from regulating recreational fishing by Australians in waters beyond 3 nautical miles. The Bill retains Commonwealth control over recreational fishing in the AFZ with the use of foreign boats.

Clause 7 - Delegation

Sub-clause 1 comprises technical drafting amendments. Sub-clause 2 applies those amendments so as to confirm the validity of delegations given under the Fisheries Act 1952 since Royal Assent to the Fisheries Amendment Act 1978.

Clause 8 - Proclaimed waters

This clause substitutes a new section 7 in the principal Act, authorising the Governor-General to declare specified marine or tidal waters to be proclaimed waters, in which the principal Act applies. At present, proclamations under section 7 are limited to Australian waters. The new section 7 will remove that limitation by authorising the Governor-General to proclaim any marine or tidal waters except the coastal waters, or waters within the limits, of a State or internal Territory. Proclamations in force when the new section comes into operation continue in force until altered or replaced.

Clause 9 - Regulation of fishing

To simplify administration, this clause provides that evidence of a notice may be given by production in Court of the Gazette in which it appears.

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Clause 10 - Exploratory Operations

Clause 11 - Investigations

These clauses are consequential on removal of limitation of proclaimed waters to "Australian waters".

Clause 12 - Provisions giving effect to the
offshore constitutional settlement

Clause 12 inserts a new Part IVA into the Fisheries Act 1952 to implement the offshore constitutional settlement in respect of fisheries. Part IVA is in three Divisions.

DIVISION 1 - PRELIMINARY

Interpretation

Proposed section 12A provides for interpretation of terms in Part IVA. It combines waters within and beyond the 3-mile limit, to an offshore distance of 200 nautical miles, in a single legal concept of "waters adjacent to a State". It also lists the principal elements by reference to which a fishery may be described in an instrument under the Act.

(Clause 12)

Application of Part to Northern Territory

For purposes of Part IVA, proposed section 12B provides that the Northern Territory is to be treated as if it were a State.

Acting Ministers

The purpose of proposed section 12C is to facilitate administration at times when Ministers are being represented by Acting Ministers.

DIVISION 2 - ESTABLISHMENT AND PROCEDURES

OF JOINT AUTHORITIES

Establishment of joint authorities

Proposed section 12D establishes four joint fisheries authorities which together cover all the waters adjacent to Australia. It also provides for creation of additional joint authorities with the approval of the Governor-General and the Governor(s) of the State(s) thereon represented. Members of joint authorities are the Commonwealth Minister and the State Minister(s) concerned, or their appointed deputies.

(Clause 12)

Delegation

Under proposed section 12E, a joint authority may delegate its powers and functions under the Act, other than the power to delegate or to cancel or suspend a licence. Provision is made for actions of delegates to have the force of actions of the joint authority, for delegating powers only to Commonwealth or State officers, for delegates to exercise their powers in accordance with the joint authority's directions, for revocation of delegations and for evidentiary aspects of delegations.

Procedure of joint authorities

Proposed section 12F provides that at meetings of joint authorities, the Commonwealth Minister presides. When a meeting is attended only by deputies, the deputy of the Commonwealth Minister presides. If neither of these applies, those present are to elect a Minister to preside. The Commonwealth Minister convenes meetings, as necessary or at the request of any other member. A quorum is 2 or, if the joint authority has 3 or more members, the Commonwealth member and at least half of the other members. The Commonwealth Minister has a deliberative vote and may decide a matter alone if the members fail to agree, subject to submitting his decision for consideration by the Australian Fisheries Council,

(Clause 12)

which he is to convene for that purpose if requested. Any member may submit a matter for consideration and decision by the joint authority. The joint authority may establish advisory committees and adopt its own rules of procedure. The Commonwealth Minister is to appoint secretaries for joint authorities, provide supporting services and cause written records of the decisions to be kept for judicial purposes.

Annual reports

Proposed section 12G requires each joint authority to report annually and for the Commonwealth Minister to cause the reports to be tabled in both Houses of the Parliament.

DIVISION 3 - ARRANGEMENTS WITH RESPECT TO MANAGEMENT OF PARTICULAR FISHERIES

Arrangements with the States

Proposed section 12H vests joint authorities with the management of such fisheries in waters adjacent to their member States as may be agreed by arrangement between the Commonwealth and a State or States. Such arrangements may provide for either Commonwealth or State law to apply to a fishery adjacent to one State but

(Clause 12)

must provide for Commonwealth law to apply to fisheries adjacent to 2 or more States. The Commonwealth may make an arrangement directly with a State that either State or Commonwealth law is to apply in adjacent waters, to a fishery that does not come under the administration of the relevant joint authority. Where a fishery subject of an arrangement is for a sedentary species, the Continental Shelf (Living Natural Resources) Act 1968 ceases to apply to that species in the waters concerned and the Fisheries Act 1952 applies.

Procedure for making and termination of arrangements

Proposed section 12J specifies the procedure for making and terminating arrangements. Every instrument for those purposes is to be published in the Gazette. Any party wishing to terminate an arrangement must give six months notice or such shorter period as the arrangement provides. Notification of intention to terminate must be published not less than 3 months, or such shorter period as the arrangement provides, before termination is to take effect. Administrative preparations may be implemented between the making of an arrangement and its formal commencement but do not have effect until the latter

(Clause 12)

time. Administrative instruments made in pursuance of an arrangement cease to have effect on the date of termination. The Minister may make administrative preparations to take effect after the date an arrangement terminates.

Extension of Act in accordance with arrangement

Proposed sections 12K and 12L respectively provide that the Commonwealth Act operates within the coastal waters of a State and that State law applies beyond territorial limits, where there is an arrangement in force to that effect. In the latter case, Commonwealth law will continue to apply in respect of foreign boats and to matters that occurred while the Commonwealth law applied and that have not been resolved.

Functions of joint authorities under the Act

Proposed section 12M specifies the functions of joint authorities to be

- . to keep the condition of their fisheries under review;
- . to formulate policies and plans for the good management of their fisheries;

(Clause 12)

- . to exercise statutory powers and functions;
- . to co-operate and consult with other authorities.

Powers of joint authority to regulate fishing

Proposed section 12M vests joint authorities with the power of the Minister to make and publish notices under section 8 of the principal Act. Exercise of those powers by the Minister in relation to a joint authority fishery is invalid.

Powers of joint authority with respect to licences

Proposed section 12P vests joint authorities with the power of the Minister to grant, endorse, transfer, cancel or suspend licences in respect of their fisheries. Licences so granted are limited in their effect to joint authority fisheries. A joint authority may endorse a licence issued by the authority of the Minister or another joint authority, to extend its validity to a fishery under the management of the endorsing joint authority. Such an endorsement has the same period of validity as the licence and may be suspended or cancelled separately from the licence.

(Clause 12)

The regulations may prescribe fees for endorsement. Power to take action in respect of licences for foreign boats in joint authority fisheries is reserved to the Minister.

Application of provisions relating to offences

Proposed section 12Q provides that offences capable of being committed under section 13 may equally be committed with respect to matters within the management of a joint authority.

Evidentiary provision

For ease of administration, proposed section 12R provides that a statement in an arrangement that waters are adjacent to a State or States is to be conclusively presumed to be correct.

Clause 13 - Evidence

This clause extends the purposes for which evidentiary certificates may be given to include matters relating to joint authorities.

Clause 14 - Regulations

This clause preserves the existing application of the statistics power in the principal Act in respect of fisheries in waters within territorial limits as well as beyond those limits. This amendment is a consequence of repeal by clause 3(b) of the general definition of "Australian waters". The definition in clause 14 is limited to the power to make regulations for the furnishing of fishing statistics.