

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FISHING LEGISLATION AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Primary Industry, the Hon John Kerin, MP)

OUTLINE

The Fisheries Act 1952 provides for regulation of fishing in proclaimed waters. The Bill amends that Act by providing for the Minister to determine plans of management having the force of law and reviewable by Parliament, in respect of individual fisheries in proclaimed waters. A plan of management is to set out its objective and the means of attaining that objective and may specify the permitted capacity of the fishery and divide that capacity into units. The Bill also increases the penalties for offences against this Principal Act and makes a number of miscellaneous amendments.

The Torres Strait Fisheries Act 1984 provides for regulation of fishing in the area of Australian jurisdiction in the Protected Zone established by the Torres Strait Treaty. The Bill amends this Principal Act to take account of a number of administrative matters revealed in its initial implementation and increases the penalties for offences against the Act, on the same lines as for the Fisheries Act.

The Bill and its associated Fisheries Levy Amendment Bill have no direct implications in themselves for revenue or expenditure.

FISHING LEGISLATION AMENDMENT BILL 1985NOTES ON CLAUSESPART I - PRELIMINARY

Clause 1: Short Title

1. Formal.

Clause 2 : Commencement

2. Entry into force on a date fixed by Proclamation.

PART II - AMENDMENTS OF THE
FISHERIES ACT 1952

Clause 3: Principal Act

3. Formal.

Clause 4: Interpretation

4. "Managed fishery" means fishing activities identified in a plan of management for a fishery as activities to which the plan applies;

"plan of management" means a plan of management determined under s. 7B(1).

Clause 5: Delegation

5. Limits, to the Secretary to the Department of Primary Industry, the persons to whom the Minister may delegate his power under s.7B(1) or his function under s.7C(1)

Clause 6:

6. This clause inserts sections dealing with plans of management.

7. Plans of management

New s. 7B provides -

sub-section (1) -power for the Minister to determine in writing a plan of management for a fishery in proclaimed waters;

sub-section (2) - a requirement that a management plan specify the objective of the plan and the measures by which it is to be attained;

sub-section (3) - power for the Minister, in a management plan, to determine how the fishing capacity in the fishery is to be measured and the amount of that capacity to be permitted in the fishery;

sub-section (4) - authority for a plan to make provision for and in relation to granting boat licences for the fishery, conditions to which licences valid for the fishery are to be subject, and the duration, transfer and variation of licences valid for the fishery;

sub-section (5) - in cases of management plans specifying the permitted amount of fishing capacity in the fishery, authority for the plan to provide for and in relation to

- . division of that capacity into units of fishing capacity
- . allocation of units to persons
- . assignment of units to boats and the holding and the cessation of holding of units in relation to boats
- . requiring the holding of units in relation to boats
- . determining the number of units to be held in relation to boats
- . holding of units not assigned to boats including the number of such units a person may hold and the period for which the person may hold them
- . duration, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units
- . recording of the allocation, assignment, holding, cessation of holding, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units and the manner of evidencing those transactions including issue, recall and replacement of certificates and other documents, and
- . reconsideration of decisions made under the management plan;

sub-section (6) - requiring payment of prescribed fees in respect of any kind of transaction (other than cessation of holding units) referred to in (5);

sub-section (7) - power for the regulations to specify different fees or prescribe different methods of calculating fees in respect of units in different classes of units;

sub-section (8) - requiring the Minister and the Secretary to perform their functions and exercise their powers in relation to a fishery for which a management plan is in force, in accordance with the plan and not otherwise;

sub-section (9) - for purposes of s. 7B, defining "decision" in the same way as in the Administrative Appeals Tribunal Act 1975 and "fishery" as fishing activities identified in a management plan as a fishery to which the plan applies;

sub-section (10) - including in the matters to which a plan may refer to identify a managed fishery, the same matters as provided by s. 12A (4) in relation to Part IVA of the Principal Act for identifying joint authority fisheries.

8 Tabling, disallowance, etc., of determinations under s.7B(1)

New s. 7C provides -

sub-section (1) - a requirement for the Minister to publish notification in the Gazette of the making of each determination of a management plan and the places where copies may be obtained;

sub-section (2) - power for a determination to provide for or in relation to a matter by applying, adopting or incorporating, with or without modification, any provision of an Act, a Regulation, a notice under s.8 or another determination in force at a particular time or from time to time, or any matter in another instrument in force or existing at the time the determination takes effect;

sub-section (3) - for application of the provisions of the Acts Interpretation Act 1901 with respect to the tabling of regulations before both Houses of the Parliament, disallowance of regulations, and the effect of repeal of a regulation, as if regulations were determinations;

sub-section (4) - that determinations are not statutory rules within the meaning of the Statutory Rules Publication Act 1903;

sub-section (5) - that determinations are Ministerial orders for purposes of s. 5 of the Evidence Act 1905;

sub-section (6) - that determinations are enactments for purposes of the Administrative Appeals Tribunal Act 1975;

sub-section (7) - that "determination" means a determination under s. 7B(1).

Clause 7 Regulation of fishing

8. Amends s.8 of the Principal Act by -

sub-clauses 7(a),(b) - providing power to make notices prohibiting the carriage of specified fishing equipment on a boat or having specified equipment on a boat unless carried in a specified manner;

sub-clause 7(c) - replacing the provision in s. 8 of the Principal Act whereby a notice may provide that it is one from which exemption may be gained by the making of an endorsement in a licence, with provision for -

- . a notice to provide that it is one from which exemption may be gained by a licence granted pursuant to a management plan or by endorsement of a licence
- . disapplication of a prohibition in a notice in respect of a boat for which a licence granted under a management plan is in force, when the notice provides that the prohibited activities are activities in a managed fishery that such a licence would authorise.

Clause 8 Tabling, disallowance, etc., of notices

9. Amends s.8A of the Principal Act by -

sub-clause 8(a) - editorial amendment;

sub-clause 8(b) - enabling a notice under s.8 to provide for or in relation to a matter by applying, adopting or incorporating, with or without modification, a provision of an Act, a regulation, another notice, or a management plan in force at any time or any other matter in an instrument in force at the time when the notice comes into force.

Clause 9 Licences

10. Amends s.9 of the Principal Act by -

sub-clauses 9(1)(a),(b) - adding to the existing provision whereby a licence in respect of a fishing boat or a fish processing or fish carrier boat is valid for operations in proclaimed waters or a specified area of proclaimed waters, an alternative provision for such licences to be valid for a specified managed fishery;

sub-clause 9(1)(c) - consequential amendment;

sub-clause 9(1)(d) - extending the kinds of conditions to which a licence for a boat may be subject to include prescribed conditions or conditions specified in the management plan for the fishery for which the boat is licensed; replacing the provision whereby a licence remains in force until a day specified in it that is not more than 12 months from the day on which it came into force, with provision for licences not valid for managed fisheries so to remain in force and for licences valid for a managed fishery to remain in force either until such a day or for a period specified in the management plan for that fishery;

sub-clause 9(1)(e) - authorising a management plan to specify conditions to which licences issued in accordance with the management plan are to be subject;

sub-clause 9(1)(f) - replacing provision for determining the day on which a licence expires with provision for -

- . the day on which a licence or a renewal of a licence is to expire, to be a day not more than 12 months after the licence or renewal was granted, or, in the case of a licence valid for a managed fishery for which the management plan specifies a different period for the expiry of licences in that fishery, a day determined in accordance with that provision of the plan;
- . the voluntary surrender of licences and expiry on the day of surrender; and
- . the grant of a renewal of a licence if applied for not more than two months nor less than one month before the end of the period during which the licence or the last renewal of the licence is in force;

sub-clause 9(1)(g) - inserting power for the Minister or the Secretary to vary a boat licence by substituting the name of another boat, subject to payment of any levy or fee that is payable;

sub-clauses 9(1)(h),(j) - adding variation of a licence to the matters for which the regulations may prescribe fees;

sub-clause 9(1)(k) - adding different classes of endorsements of licences to the matters in respect of which the regulations may prescribe different fees ;

sub-clause 9(1)(m) - consequential amendment;

sub-clause 9(1)(n) - inserting a requirement to refuse to renew a licence unless the amount of any levy and fee is tendered;

sub-clause 9(1)(p) - inserting a requirement to refuse to vary a licence unless the amount of any levy and fee is tendered and power for the Minister to reduce the fee payable in respect of a licence, replacing a surrendered licence, for a replacement boat;

sub-clause 9(1)(q) - inserting power to combine two or more licences and issue them as a single document.

sub-clause 9(2) - formal provision.

Clause 10 Suspension and cancellation of licences

11. This clause replaces the existing provisions for suspension and cancellation of licences with -

- . power (exercisable only once in relation to any event) for the Minister or the Secretary to suspend a licence by notice in writing on having reasonable grounds for believing
 - that there has been a contravention of or failure to comply with a condition to which the licence is subject
 - that the licensee or a person acting on his behalf has contravened a prohibition in a fisheries notice, or
 - that the application in relation to the licence contained a statement that the applicant knew to be false or misleading in a material particular;
- . provision for a suspension to cease, unless sooner revoked, after one month or on completion of proceedings against the licensee or a person acting on behalf of the licensee, instituted within one month of the suspension;
- . power for the Minister or the Secretary to revoke a suspension at any time;
- . power for the Minister to cancel a boat licence or a master-fisherman's licence on conviction of the holder for an offence against this Act, the Fisheries Regulations, any other Commonwealth law relating to fishing or any law of Papua New Guinea, a State or a Territory relating to fishing, or to cancel a licence in respect of a boat on conviction of the licence holder or a person acting on behalf of the licence holder for an offence against any of the listed kinds of laws in relation to the use of the boat.
- . saving provision in respect of any suspension of a licence in force on the day the Act comes into force.

Clause 11 Powers of officers

12. This clause provides

sub-clause 11(a) - power for an officer to enter land or premises on which he reasonably believes there is evidence of the commission of an offence, with the occupier's consent or on a warrant and there search the land or premises and break open and search any receptacle in which the officer reasonably believes the evidence to be and then examine, take possession of or secure against interference, the evidence;

sub-clause 11(b) - consequential amendment;

sub-clause 11(c) - power similar to s. 42(o) of the Torres Strait Fisheries Act 1984;

sub-section 11(d) - requirements and indemnities similar to those in ss. 16(4) and (5) of the Antarctic Marine Living Resources Conservation Act 1981;

sub-clause 11(e) - for purposes of the requirements and indemnities inserted by (c), defines "prescribed person" as an officer who is a member of the Defence Force or a Police Force and "the Act" as including the regulations.

Clause 12 Interpretation

13. This clause interprets the following terms for purposes of Part IVA of the Principal Act -

sub-clause 12(a) - drafting amendment;

sub-clause 12(b) - defines a reference in Part IVA of the Principal Act to units of fishing capacity as a reference to units in relation to a managed fishery that is also a joint authority fishery.

Clause 13 Delegation

14. Blocks the delegation by a joint authority of its powers with respect to determining management plans.

Clause 14 Arrangements

15. Adds units of fishing capacity to the matters with which ss. 12J(7), (8) and (9) of the Principal Act may deal.

Clause 15 Powers of Joint Authority to determine plans of management

16. Empowers a Joint Authority to exercise the powers of the Minister in relation to determining management plans under proposed ss. 7B and 7C, in respect of joint authority fisheries, and terminates any management plans determined by the Minister in relation to such fisheries.

Clause 16 Powers of Joint Authority with respect to licences

17. Extends the licensing powers of joint authorities to renewal and variation of licences as inserted by this Act and makes a consequential amendment.

Clause 17 Reconsideration and review of decisions by Joint Authority

18. Consequential amendment.

Clause 18 Offences

19. Subclause 18(a) adds to the elements of the offence of being an unlicensed master-fisherman, the requirement that the licence be valid in relation to the area in which the alleged offence took place;

sub-clauses 18(b)-(e) - consequential amendments;

sub-clause 18(f) - increases the maximum fines a court may order on convicting a person for an offence in the commission of which an Australian boat was used, to \$5000 for a natural person or \$25000 for a body corporate, consistent with current Commonwealth legal policy in relation to offences determined summarily;

sub-clause 18(g) - increases the maximum fines a court may order on convicting a person for an offence in the commission of which a foreign boat was used, to -

- . in summary conviction, \$5000 for a natural person or \$25000 for a body corporate;
- . on conviction on indictment, \$50000 for a natural person or \$250000 for a body corporate;

sub-clauses 18(h)-(m) - consequential amendments.

Clause 19 Removing fish from traps, etc

Clause 20 Using foreign boat for fishing for private purposes

20. Increase penalties consistent with current Commonwealth legal policy in relation to offences determined summarily.

Clause 21 Having foreign boat equipped with nets, etc..

21. Sub-clause 21 (a) - editorial amendment;

sub-clause 21(b) - consequential amendment;

sub-clause 21(c) - increases the maximum fines a court of summary jurisdiction may order on convicting a person of having in the Australian fishing zone an unlicensed foreign boat equipped for fishing, to \$5000 for a natural person or \$25000 for a body corporate.

Clause 22 Using foreign boat for fishing in Australian fishing zone

22. Sub-clause 22(a) - consequential amendment;

sub-clause 22(b) - increases the maximum fines a court may order on convicting a person of using an unlicensed foreign boat for fishing in the Australian fishing zone, to \$5000 in summary jurisdiction or \$250000 on indictment.

Clause 23 Foreign boats not to land fish in Australia

23. Increases to \$50000 the penalty for conviction on indictment for the offence of landing in Australia, fish on board a foreign boat without proper authorisation to do so.

Clause 24 Court may make certain orders

24. Increases the period of imprisonment on conviction for contempt to 12 months (the period currently provided by Commonwealth legal policy).

Clause 25 Obstruction

25. Sub-clause 25(a) - indemnifies persons who have reasonable excuse for not complying with certain requirements;

sub-clauses 25(b)-(e) - consequential amendments;

sub-clause 25(f) - increases penalties for offences against officers in performance of their duties to \$2000 or 12 months imprisonment, consistent with current Commonwealth legal policy;

sub-clause 25(g) - replaces existing offences of giving false or misleading information to an officer or making false or misleading statements in an application with offences of doing so when the information is, to the knowledge of the person, false or misleading in a material particular. Increases the penalties for either of those offences to \$5000 or up to 2 years imprisonment or both for a natural person, or \$25000 for a body corporate, consistent with current Commonwealth legal policy for this kind of offence.

Clause 26 Certain offences to be indictable offences

26. Adds to the offences against the Principal Act that may be heard and determined on indictment, the offences of stealing fish from another person's trap or net, or of knowingly providing information required by an officer or in an application that was false or misleading in a material particular.

Clause 27 Enforcement of orders for payment

27. Where a person is convicted of using a boat on the licence for which levy in respect of the fishery in which the offence occurred has not been paid and the amount of fines and unpaid levy that the court orders the person to pay exceeds the amount in which that court has jurisdiction or it is more appropriate for the order to be enforceable as the order of a court that has jurisdiction in that amount, enables enforcement of the order as a final judgement in favour of the Commonwealth.

Clause 28 Reconsideration and review of decisions by the Minister or Secretary

28. Consequential amendments.

Clause 29 Regulations

29. Sub-clause 29(a) - increases the maximum fines for offences against the regulations to \$2000 for a natural person or \$10000 for a body corporate, consistent with current Commonwealth legal policy;

sub-clause 29(b) - consequential amendment;

sub-clause 29(c) - inserts power to make regulations providing for the replacement of instruments granted under the Principal Act and to prescribe fees for such replacements;

sub-clauses 29(d),(e) - add to the matters on which the regulations may require a person to provide information, the carrying and transhipping of fish;

sub-clause 29(f) - formal provision.

PART III - AMENDMENTS OF THE
TORRES STRAIT FISHERIES ACT 1984

Clause 30 Principal Act

30. Formal provision.

Clause 31 Minister may require information to be furnished

31. Sub-clauses 31(a),(b) - add to the categories of person required to furnish information to the Minister of community fishing catches delivered to that person, the pilot of or a person on board, an aircraft ;

sub-clause 31(c) - increases the fine for failing to provide information required, to \$5000, consistent with current Commonwealth legal policy;

sub-clause 31(d) - increases the fine for taking fish at a time when taking that fish is prohibited by a notice closing the fishery until the opening of the next season, to \$5000 for a natural person or \$25000 for a body corporate, consistent with current Commonwealth legal policy;

sub-clause 31(e) - inserts the offence of purchasing fish at a time when the taking of that fish is prohibited by a notice of the same kind as (d) refers to. Penalty - \$5000 for a natural person or \$25000 for a body corporate;

sub-clause 31(f) - increases from 5 to 15, the number of days by which a person receiving information of community fishing catches is to furnish that information to the Minister;

sub-clauses 31(g),(h) - increase the penalty for failing to furnish to the Minister, information of community fishing catches delivered to a person, to \$5000 for a natural person or \$25000 for a body corporate.

Clause 32 Commercial fishing licences

Clause 33 Entries in licences and endorsements

Clause 34 Terms of licences

Clause 35 Renewal of licences

32. These clauses provide consequential and editorial amendments.

Clause 36 Variation of licences

33. Inserts provision in the Principal Act with similar effect to sub-clauses 9(1)(g) and 9(1)(p) (in respect of proposed sub-section 9(8AD) of the Fisheries Act 1952).

Clause 37 Fees

34. Sub-clause 37(a) - Inserts power to prescribe fees for variation of a licence;

sub-clause 37(b) - inserts provision in the Principal Act with similar effect to sub-clause 9(1)(k).

Clause 38 Powers of Protected Zone Joint Authority with respect to licences, etc..

35. Consequential amendment.

Clause 39 Powers of officers

36. Sub-clause 39(a) - consequential amendment;

sub-clause 39(b) - editorial amendment;

sub-clauses 39(c),(d) - insert provision in the Principal Act with similar effect to sub-clause 11(d).

Clause 40 Obstruction of officers, etc

37. Inserts provisions in the Principal Act with similar effect to clause 25.

Clause 41 Contravention of notices under section 16

38. Sub-clauses 41(a),(b) - increase the fines for offences against s.44 of the Principal Act to \$5000 for a natural person and \$25000 for a body corporate, consistent with current Commonwealth legal policy with respect to summary conviction;

sub-clause 41(c) - increases the fines for offences against s. 44 of the Principal Act, in commission of which a foreign boat was involved, to -

- . on summary conviction, \$5000 for a natural person or \$25000 for a body corporate
- . on conviction on indictment, \$50000 for a natural person or \$250000 for a body corporate;

sub-clause 41(d) - inserts in the Principal Act provisions with similar effect to sub-clause 18(h);

sub-clause 41(e)-(g) - consequential amendments.

Clause 42 Offences relating to commercial fishing

39. Sub-clauses 42(a),(b) - increase the penalties for the offence of engaging in fishing in the area of Australian jurisdiction in the Protected Zone with the use of an unlicensed foreign boat, other than as the master of the foreign boat, to -

- . on summary conviction, \$5000
- . on conviction on indictment, \$50000;

sub-clause 42(c) - re-arranges the penalties for the offences of being an unlicensed master fisherman on a foreign boat, contravening or failing to comply with conditions to which the licence for a foreign boat is subject, using an unlicensed foreign processing or carrier boat or transshipping of fish to an unlicensed foreign processing or carrier boat, in each case in the area of Australian jurisdiction in the Protected Zone, to

- . on summary conviction, \$5000 for a natural person or \$25000 for a body corporate
- . on conviction on indictment, \$50,000 for a natural person or \$250000 for a body corporate;

sub-clauses 42(d),(e) - consequential amendments;

sub-clause 42(f) - increases the penalties for offences involving the use of Australian boats, to \$5000 for a natural person or \$25000 for a body corporate;

sub-clause 42(g) - inserts in the Principal Act, provisions with similar effect to sub-clause 18(h);

sub-clauses 42(h)-(k) - consequential amendments.

Clause 43 Court may make certain orders

40. Inserts provision in the Principal Act with similar effect to clause 24.

Clause 44 Removing fish from traps, etc

41. Inserts provision in the Principal Act with similar effect to clause 19.

Clause 45 Using foreign boat for fishing for private purposes

42. Inserts provision in the Principal Act with similar effect to clause 20.

Clause 46 Certain boats not to be brought to certain places

Clause 47 Certain boats not to land fish at certain places

43. These clauses insert provision in the Principal Act with similar effect to clause 23.

Clause 48 Having boat equipped with nets, etc

44. Increases the penalty on conviction in summary jurisdiction for the offence of having an unlicensed boat equipped for taking fish in the area of Australian jurisdiction in the Protected Zone, to \$5000 for a natural person or \$25000 for a body corporate.

Clause 49 Offences against Papua New Guinea law

45. Increases the penalty for contravening Papua New Guinea law in the Protected Zone, to \$5000.

Clause 50 Certain offences to be indictable offences

46. Inserts provision in the Principal Act with similar effect to clause 26.

Clause 51 Enforcement of orders for payment

47. Inserts provision in the Principal Act with similar effect to clause 27.

Clause 52 Regulations

48. Sub-clause 52(a) - increases the maximum penalty for an offence against the regulations to \$2000 for a natural person or \$10000 for a body corporate, consistent with current Commonwealth legal policy;

sub-clause 52(b) - consequential amendment;

sub-clause 52(c) - inserts provision in the Principal Act with similar effect to sub-clause 29(c);

sub-clause 52(d) - inserts provision empowering the making of regulations requiring provision of information about carrying and transshipping of fish taken in the area of Australian jurisdiction in the Protected Zone;

sub-clauses 52(e),(f) - consequential amendments.

