

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FISHING LEGISLATION AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Primary Industries and Energy,
the Hon. John Kerin)

FISHING LEGISLATION AMENDMENT BILL 1987

OUTLINE

The Fishing Legislation Amendment Bill 1987 makes a number of miscellaneous amendments of the Continental Shelf (Living Natural Resources) Act 1968, the Fisheries Act 1952 and the Torres Strait Fisheries Act 1984.

2. The provisions of each of the Acts with respect to regulation of fishing will be based on prohibitions contained in notices rather than on the notices themselves.

3. The grant of a licence under each of the Acts in respect of a vessel may be refused if the vessel does not comply with other laws relating to safety at sea.

4. Officers will have power, on reasonably believing a vessel or a motor vehicle contains evidence of an offence against the relevant Act, to stop, enter, search, break open any enclosed space in and take possession of evidence found on board or in, the vessel or the vehicle. These powers are exercisable without warrant if it should not be possible to obtain one due to the exigencies of the immediate situation at sea or on a road. There is a power to enter land or premises, exercisable only by consent of the occupier or on a warrant. Persons on vessels are to assist in making fishing gear available for measurement to ascertain compliance with a prohibition relating to the size of the equipment.

5. In respect of the exercise of officers' powers, offences include the offences, against the Crimes Act 1914, of assisting in the commission of an offence, being an accessory after the fact of an offence or conspiring to commit an offence.

6. Persons who promptly return to the sea fish that have been taken contrary to the relevant Act will be not guilty of an offence. Provision is made for determining the state of mind of corporate officers or servants where necessary to do so in legal proceedings for offences for which the Acts provide a penalty on conviction of a body corporate.

7. The Continental Shelf (Living Natural Resources) Act will allow the prohibition of cutting up, etc., at sea of fish for which there is a minimum size in force, as the other two Acts already provide.

8. The Torres Strait Fisheries Act will authorise the making of notices requiring first buyers to report community fishing catches from specified fisheries taken by Australian traditional inhabitants and requiring masters of boats to report entry to or departure from the Protected Zone as well as changes of master while the boat is in the Protected Zone.

9. The Bill provides for making regulations under the Fisheries Act and the Torres Strait Fisheries Act prescribing a period other than 12 months during which licences, or licences in a class of licences, are valid.

10. Other amendments reflect recent experience with administering the three Acts that the Bill amends.

FINANCIAL IMPLICATIONS

11. The Bill has no financial implications.

FISHING LEGISLATION AMENDMENT BILL 1987

NOTES ON CLAUSES

No. of
Clause

Explanation

PART I -PRELIMINARY

- 1 Short title.
- 2 Commencement. The amendments of the provisions of the Fisheries Act 1952 in relation to Joint Authorities (clauses 20, 21) come into force on a day fixed by proclamation. This day will be co-ordinated with commencement of similar provisions in Western Australian law. The amendments of the Torres Strait Fisheries Act 1984 in relation to requiring catch information to be furnished (sub-clauses 27(2) and (3), 32(2) and 35(2)) come into force 60 days after Royal Assent to allow time for the Protected Zone Joint Authority to make the necessary notices under s.14 of the Act. The remainder of the Bill comes into force 28 days after Royal Assent.

PART II - AMENDMENTS OF THE CONTINENTAL SHELF (LIVING NATURAL RESOURCES) ACT 1968

- 3 Specifies the above Act as the principal Act for purposes of Part II.

- 4(1) Amends s.12 of the Continental Shelf (Living Natural Resources) Act 1968 - "Notices by Minister".

Paragraphs (a) to (d) are formal amendments to clarify the intention of the provisions they amend.

Paragraph (e) authorises notices requiring the marking of fishing gear.

Paragraph (f) inserts -

provision similar to s.8(4) of the Fisheries Act for a notice specifying a minimum size of sedentary organisms also to prohibit the cutting up, etc., of that sedentary organism on a ship in the area where the minimum size applies [new sub-section (2)]

provision for specifying the day on which a prohibition is to come into force and specifying the period during which a prohibition is in force, additional to the existing provisions for exemptions from notices and multiple prohibitions in notices, [new sub-section (3)]

provision similar to those of the Fisheries Act for commencement and duration of prohibitions [new sub-sections (4) and (5)]

4(1) (ctd) provision for saving the effect of an endorsement of a licence made to exempt the holder from a particular prohibition, in cases where the prohibition is revoked and replaced by another having similar effect [new sub-section (6)]. This provision will avoid the need to recall every licence, endorsed with respect to a notice that has been revoked and replaced by a notice different in a detailed particular without altering the general import of the matter being regulated, for endorsement with respect to the replacing notice.

4(2) The amendments made by paragraph 4(1)(f) apply in relation to notices published after commencement of that paragraph.

5 Amends s.13 of the Continental Shelf (Living Natural Resources) Act 1968 - "Licences".

Paragraphs (a) and (b) are consequential upon sub-clause 4(1)(f).

Paragraph (c) makes formal amendments to clarify the intention of the provision being amended.

Paragraph (d) authorises the refusal of a licence for a ship when the Minister or the Secretary believes that the ship does not comply with a requirement of other Commonwealth, State or Territory laws with respect to ships; for example, a requirement that the ship be in current survey, carry specified safety equipment, etc..

Paragraph (e) confirms the power of a properly authorised agent to exercise the powers of another person (except the Minister or the Secretary) who is the principal in relation to licensing.

6 Amends s.14 of the Continental Shelf (Living Natural Resources) Act 1968 - "Powers of officers".

Paragraphs (a) and (e) insert a requirement that an officer have "reasonable grounds" for believing that an event has occurred in relation to which he has powers.

Paragraph (b) amends the general power to search a ship by providing similar powers to those in the Torres Strait Fisheries Act in relation to searching for evidence of an offence that may be in an enclosed space on a ship.

Paragraph (c) inserts -

power to examine things found pursuant to exercise of the search power [new paragraph (aa)];

power similar to that in the Torres Strait Fisheries Act with respect to entering and searching land or premises (exercisable only with the occupier's consent or on warrant) where the officer has reasonable grounds to believe that there is evidence of an offence, to enter enclosed spaces and to take possession of evidence found [new paragraph (ab)];

- 6 (ctd) powers, similar to those in new paragraph (ab) except for the absence of the requirement to have the occupier's consent or a warrant, in relation to stopping and searching vehicles [new paragraph (ac)].

Paragraph (d) adds, to the existing list of things that an officer has power to seize, detain, remove or secure, documents or things that the officer has reasonable grounds to believe might afford evidence of an offence.

Paragraph (f) imposes a duty on persons on board a ship to assist an officer in ascertaining the dimensions of fishing equipment of which the size is regulated by a notice in force under s.12.

Paragraph (g) imposes a requirement on persons on land or in premises or a vehicle searched in exercise of the officer's powers, to state their name and address and to produce documents in their possession or give information relating to sedentary organisms in their possession.

Paragraph (h) inserts -

provision for the obtaining of warrants and for warrants to expire not more than 7 days after being given [new sub-sections (3), (4) and (5)]

standard provisions similar to those in the Fisheries Act and the Torres Strait Fisheries Act, requiring officers to identify themselves before boarding boats, stopping and searching vehicles or making requirements of persons [new sub-sections (6) to (8)]

provision extending the powers of officers to offences or contraventions of the Act that come within the scope of the provisions of the Crimes Act 1914 with respect to being an accessory after the fact of an offence, attempting to commit an offence and conspiracy in the commission of an offence, in relation to the Continental Shelf (Living Natural Resources) Act 1968 [new sub-section (9)]

provision defining "examine" to include counting, measuring, weighing, grading or gauging and "force member" similarly to the equivalent definition in the Fisheries Act and Torres Strait Fisheries Act [new sub-section 10].

- 7 Amends s.15 of the Continental Shelf (Living Natural Resources) Act 1968 - "Offences in relation to licences and unlicensed operations" - to provide higher penalties in accordance with Commonwealth legal policy, consistent with those in the Fisheries Act for similar offences.

- 8 Amends s.16 of the Continental Shelf (Living Natural Resources) Act 1968 - "Offences in relation to notices under section 12" - to provide higher penalties in accordance with Commonwealth legal policy, consistent with those in the Fisheries Act for similar kinds of offences.

- 9 Amends s.17 of the Continental Shelf (Living Natural Resources) Act 1968 - "Obstruction of officers, etc.". Paragraphs (a), (b) and (c) insert, in the offences of giving false information or making a false application, the element of the person knowing that the information or the application was false or misleading.

Paragraph (d) adds the offence of providing false or misleading information in a report or return made under the Act or the regulations and revises the penalties for offences against s.17 in accordance with Commonwealth legal policy and consistently with the penalties for offences of the same kind against the Fisheries Act. An officer who knowingly submitted a false report under the Act would thereby commit an offence against this provision.

- 10 Inserts a new provision indemnifying persons who promptly return sedentary organisms to the sea after taking them contrary to the Act.

- 11 Amends s.17A of the Continental Shelf (Living Natural Resources) Act 1968 - "Liability of master or person in charge of ship". Editorial amendments.

- 12 Inserts new provisions, conforming with current drafting practice, dealing with ascertaining the state of mind of directors, servants or agents of bodies corporate where it is necessary to do so in proceedings for an offence against the Act. The new provisions, which are associated with the provision of penalties applicable on conviction of a body corporate, apply to offences alleged and conduct occurring after the new provisions come into force.

- 13 Repeals the existing provision for punishment of offences and substitutes -

standard provisions, for offences against the Act involving foreign ships to be indictable but determinable summarily if prosecutor and defendant consent. Other offences, involving the use of an Australian ship or no ship, are punishable summarily [new s.18];

provisions relating to forfeitures consistent with similar provisions in the Fisheries Act [new s.18A].

- 14 Inserts power to make regulations to facilitate the exercise by officers of their powers and increases the maximum penalties for offences against the regulations to the amounts provided by the Fisheries Act.

**PART III - AMENDMENTS OF THE
FISHERIES ACT 1952**

15 Specifies the above Act as the principal Act for purposes of Part III.

16 Inserts a requirement for the Minister and the Secretary, when exercising their powers under the Act, to have regard to the potential effects of that exercise on fisheries for which there is a plan of management in force.

17(1) Amends s.8 of the Fisheries Act 1952 - "Regulation of fishing".

Paragraph (a) authorises the making of notices prohibiting taking of fish with the use of a boat of a specified kind, in addition to the matters which may already be prohibited.

Paragraph (b) authorises the making of notices to prohibit possession of un-marked fishing gear on a boat.

Paragraph (c) adds, to the existing provisions for exemptions from notices and multiple prohibitions in notices, provision for specifying the day on which a prohibition is to come into force and specifying the period during which a prohibition is in force.

Paragraphs (d) to (h) and (k) to (n) clarify the intention of the administrative sub-sections of s.8 that the prohibition, rather than the notice, is the principal mechanism for regulating the fisheries.

Paragraph (j) inserts provision for saving the effect of an endorsement of a licence made to exempt the holder from a particular prohibition, in cases where the prohibition is revoked and replaced by another having similar effect. This provision will avoid the need to recall every licence, endorsed with respect to a notice that has been revoked and replaced by a notice different in a detailed particular without altering the general import of the matter being regulated, for endorsement with respect to the replacing notice.

17(2) The provisions of paragraphs 17(1)(c) to (o) apply in relation to notices published after commencement of the provision.

18 Amends s.9 of the Fisheries Act 1952 - "Licences".

Paragraph (a) authorises the refusal of a licence for a boat when the Minister or the Secretary believes that the boat does not comply with a requirement of other Commonwealth, State or Territory laws with respect to boats; for example, a requirement that the boat be in current survey, carry specified safety equipment, etc..

- 18 Paragraph (b) is a formal amendment consequential upon
(ctd) clause 17(1).

Paragraphs (c) and (d) authorise the making of regulations prescribing different periods during which licences or renewals of licences in a prescribed class of licences remain in force.

Paragraph (e) confirms the power of a properly authorised agent to exercise the powers of another person (except the Minister or the Secretary) who is the principal in relation to licensing.

- 19 Amends s.10 of the Fisheries Act 1952 - "Powers of officers".

Paragraphs (a) and (f) insert a requirement that an officer have "reasonable grounds" for believing that an event has occurred in relation to which he has powers.

Paragraphs (b) and (c) amend the general power to search Australian and foreign boats by providing similar powers to those in the Torres Strait Fisheries Act in relation to searching for evidence of an offence that may be in an enclosed space on a boat.

Paragraph (d) inserts power to examine things found
Paragraph (e) inserts a power to search vehicles, similar to that inserted into the Continental Shelf (Living Natural Resources) Act by paragraph 7(c).

Paragraphs (g) and (h) add, to the existing list of things that an officer has power to seize, detain, remove or secure, documents or things that the officer has reasonable grounds to believe might afford evidence of an offence.

Paragraph (j) imposes a duty on persons on board a boat to assist an officer in ascertaining the dimensions of fishing equipment of which the size is regulated by a notice in force under s.12.

Paragraph (k) makes editorial amendments to the requirement imposed on persons on land or in premises or a vehicle searched in exercise of the officer's powers, to state their name and address and to produce documents in their possession or give information relating to fish in their possession.

Paragraph (m) inserts new sub-section (2A), requiring officers to produce evidence of their identity as officers as a necessary pre-requisite to searching a vehicle.

- 19 (ctd) Paragraph (n) inserts new sub-section (5A) extending the powers of officers to offences or contraventions of the Act that come within the scope of the provisions of the Crimes Act 1914 with respect to being an accessory after the fact of an offence, attempting to commit an offence and conspiracy in the commission of an offence, in relation to the Fisheries Act 1952.
- Paragraph (o) defines "examine" to include counting, measuring, weighing, grading or gauging.
- 20 Amends s.12D of the Fisheries Act 1952 - "Establishment of Joint Authorities" - to add Western Australia to the States members of the Northern Australian Joint Fisheries Authority.
- 21 Amends s.12H of the Fisheries Act 1952 - "Arrangements with States" - to limit the geographical scope of arrangements giving the Northern Australian Joint Fisheries Authority power to manage a fishery in waters adjacent to Western Australia, to waters north of 16° south.
- 22 Inserts a new provision indemnifying persons who promptly return fish to the sea after taking them contrary to the Act.
- 23 Amends s.14 of the Fisheries Act 1952 - "Obstruction of officers, etc." - by adding the offence of providing false or misleading information in a report or return made under the Act, the regulations or a management plan. An officer who knowingly submitted a false report under the Act would thereby commit an offence against this provision.
- 24 Inserts new provisions, conforming with current drafting practice, dealing with ascertaining the state of mind of directors, servants or agents of bodies corporate where it is necessary to do so in proceedings for an offence against the Act. The new provisions, which are associated with the provision of penalties applicable on conviction of a body corporate, apply to offences alleged and conduct occurring after the new provisions come into force.
- 25 Inserts power to make regulations to facilitate the exercise by officers of their powers.

PART IV - AMENDMENTS OF THE TORRES STRAIT FISHERIES ACT 1984

- 26 Specifies the above Act as the principal Act for purposes of Part IV.

- 27 Amends s.14 of the Torres Strait Fisheries Act 1984 - "Minister may require information to be furnished".
- 27(1) Inserts power to make notices imposing a requirement for the master of a licensed boat or boats in a class of boats to report, at a specified time and in a specified manner, the boat's entry to and departure from the Australian area of jurisdiction in the Protected Zone and the name of the master at each such time, as well as a requirement to report changes of master while the boat is in the area. These powers complement the existing powers in s.14 of the Torres Strait Fisheries Act 1984 and will facilitate enforcement, by providing a data-base of authorised boats in the Protected Zone and their masters who are required to furnish catch information in accordance with notices made under those other powers.
- 27(2) Paragraph (a) repeals the existing power to make notices requiring Australian traditional inhabitants to report their catches of specified kinds of fish, made in the course of community fishing, to the person to whom they sold those catches and substitutes -
- power to make notices requiring relevant persons to report deliveries to them of such fish so taken by Australian traditional inhabitants [new sub-section (3)]
- provision applying the requirement in sub-section (3) to furnish information to catches by Australian traditional inhabitants in areas outside but near the Protected Zone under Papua New Guinea jurisdiction and defines "relevant person" as a person, other than an Australian traditional inhabitant, who is on board a boat or aircraft or is the operator of a land-based fish processing plant [new sub-section (4)]. By sub-clause 2(3), this provision will come into force 60 days after the Bill receives Royal Assent.
- Paragraphs (b) to (e) are formal amendments consequent on paragraph (a) including repeal of ss.14(15) and (15A) of the Torres Strait Fisheries Act 1984.
- 27(3) Saves the operation of repealed s.14(15) of the Torres Strait Fisheries Act 1984 in relation to information required to be furnished immediately before that repeal. By sub-clause 2(3), this provision will come into force 60 days after the Bill receives Royal Assent.
- 28 Amends s.16 of the Torres Strait Fisheries Act 1984 - "Regulation of fishing".

- 28(1) Paragraphs (a) and (b) authorise a notice requiring that specified fishing or processing equipment on a boat be stowed and secured to specify the manner of that stowage and securing.

Paragraph (c) authorises the making of notices prohibiting possession of un-marked fishing gear on a boat.

Paragraphs (d) and (h) add, to the existing provisions for exemptions from notices and multiple prohibitions in notices, provision for specifying the day on which a prohibition is to come into force and specifying the period during which a prohibition is in force.

Paragraphs (e), (f), (g), (j), (m) and (n) clarify the intention of the administrative sub-sections of s.16 that the prohibition rather than the notice is the principal mechanism for regulating the fisheries.

Paragraphs (k) and (o) insert provisions authorising the saving of the effect of an entry of a licence made to exempt the holder from a particular prohibition, in cases where the prohibition is revoked and replaced by another having similar effect. This provision will avoid the need to recall every licence, endorsed with respect to a notice that has been revoked and replaced by a notice different in a detailed particular without altering the general import of the matter being regulated, for endorsement with respect to the replacing notice.

- 28(2) The provisions of paragraphs 28(1)(d) to (o) apply in relation to notices published after commencement of the provision.

- 29 Amends s.19 of the Torres Strait Fisheries Act 1984 - "Commercial fishing licences" - to authorise the refusal of a licence for a boat when the Minister believes that the boat does not comply with a requirement of other Commonwealth, State or Territory laws with respect to boats; for example, a requirement that the boat be in current survey, carry specified safety equipment, etc..

- 30 Consequential amendment following sub-clause 28(10).

- 31 Amends s.23 of the Torres Strait Fisheries Act 1984 - "Term of licences" - to authorise the making of regulations prescribing different periods during which licences or renewals of licences in different classes remain in force.

- 32 Amends s.26 of the Torres Strait Fisheries Act 1984 - "Suspension and cancellation of licences".

- 32(1) Inserts provision for the suspension, after commencement of this provision, of a licence held by a person who has failed to provide information that the person is required to provide by a notice under any of ss.14 (1), (2), (2A), (3), or (4) in the manner in which the notice requires the information to be provided or has knowingly provided false or misleading information of that kind. Suspension can also take place when the person required to provide the information is a person acting on behalf of the licence holder (e.g., the master of a boat employed by the licence holder).
- 32(2) Makes amendments consequential upon sub-clause 27(2), having effect 60 days after Royal Assent.
- 33 Confirms the power of a properly authorised agent to exercise the powers of another person (except the Minister) who is the principal in relation to any matter provided by the Act.
- 34 Amends s.42 of the Torres Strait Fisheries Act 1984 - "Powers of officers".

Paragraph (a) inserts power, where an officer has reasonable grounds to believe that there is evidence of an offence in a vehicle, for the officer to stop and search that vehicle, including enclosed spaces in the vehicle, and to take possession of any thing found in the vehicle affording evidence of the offence.

Paragraph (b) imposes a requirement on persons on land or in premises or a vehicle searched in exercise of the officer's powers, to state their name and address and to produce documents in their possession or give information relating to sedentary organisms in their possession.

Paragraph (c) imposes a duty on persons on board a boat to assist an officer in ascertaining the dimensions of fishing equipment of which the size is regulated by a notice in force under s.16.

Paragraph (d) inserts new sub-section (2AA), requiring officers to produce evidence of their identity as officers as a necessary pre-requisite to entering, searching or detaining a vehicle.

Paragraph (e) inserts new sub-section (6A) extending the powers of officers to offences or contraventions of the Act that come within the scope of the provisions of the Crimes Act 1914 with respect to being an accessory after the fact of an offence, attempting to commit an offence and conspiracy in the commission of an offence, in relation to the Torres Strait Fisheries Act 1984.

Paragraph (f) defines "examine" to include counting, measuring, weighing, grading or gauging.

- 35 Amends s.43 of the Torres Strait Fisheries Act 1984 - "Obstruction of officers etc."
- 35(1) Adds the offence of providing false or misleading information in a report or return made under the Act or the regulations. An officer who knowingly submitted a false report under the Act would thereby commit an offence against this provision.
- 35(2) Makes amendments consequential upon sub-clause 27(2), having effect 60 days after Royal Assent.
- 36 Inserts new provisions, conforming with current drafting practice, dealing with ascertaining the state of mind of directors, servants or agents of bodies corporate where it is necessary to do so in proceedings for an offence against the Act. The new provisions, which are associated with the provision of penalties applicable on conviction of a body corporate, apply to offences alleged and conduct occurring after the new provisions come into force.
- 37 Inserts a new provision indemnifying persons who promptly return fish to the sea after taking them contrary to the Act.

