

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

FISHING LEGISLATION AMENDMENT BILL (NO. 2) 1984  
EXPLANATORY MEMORANDUM

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

## OUTLINE

### Fishing Legislation Amendment Bill (No. 2) 1984

This Bill amends the Fisheries Act 1952 and the Torres Strait Fisheries Act 1984. It requires persons empowered to grant licences, endorsements or entries, in respect of which levy is payable under the Fisheries Licences Levy Act 1984, to refuse to do so unless the holder of the licence tenders the amount of levy at the time of applying for the licence, endorsement or entry.

The Bill imposes fines of \$5000 in respect of offences committed with the use of a boat in a fishery in which levy is payable when there is no licence, endorsement or entry in force authorising that use. In addition, the Bill empowers courts to order persons convicted of such offences to pay an amount not exceeding the amount of levy and such an order is enforceable as a civil debt due to the Commonwealth.

The Bill contains power to make regulations providing for remission of levy on statutory fees under each Act in specified circumstances.

The Bill also makes a number of miscellaneous amendments to the two Acts.

This Bill has no direct financial impact.

## NOTES ON CLAUSES

NO. OF  
CLAUSEEXPLANATIONPART 1 - PRELIMINARY

1. Short title.
2. Commencement of Parts I and II on the same day as the Fisheries Licences Levy Act 1984. Commencement of Part III on the date of commencement of the Fisheries Licences Levy Act 1984 or of the Torres Strait Fisheries Act 1984, whichever occurs later.

PART II - AMENDMENTS OF THE FISHERIES ACT 1952

3. Self-explanatory
4. Inserts in s.9 of the Principal Act, a requirement to refuse to grant or endorse a licence on which levy is payable or to transfer a licence unless the applicant, licence-holder or proposed transferee tenders the amount of the levy or any statutory fee payable.
5. Inserts in s.10 of the Principal Act, power for an officer to board a boat which he believes is one for which levy may become payable or has been paid under the Fisheries Licences Levy Act 1984, and inspect the boat. Amends the existing power to board and take measurements of a foreign boat for purposes of Foreign Fishing Boats Levy Act 1981, to a power to inspect a boat when the officer believes that levy may become payable or has been paid under that Act. The power to inspect boats will be exercised when it is necessary to record details of a boat, its engines or its fishing equipment, for levy assessment purposes.
6. Inserts a requirement in s.12P of the Principal Act for a joint authority to refuse to make a leviable endorsement on a licence so as to authorise use of a boat in a joint authority fishery, unless the holder of the licence tenders the levy and any statutory fee payable for endorsing the licence.
7. Inserts in s.13 of the Principal Act, the penalty of \$5000 where a person is convicted for an offence of using or having charge of a boat in proclaimed waters for catching fish and processing and carrying its own catch or for processing or carrying the catch of another boat, of having fish in his possession or control in a boat in an area of proclaimed waters at a time when taking that fish in that area is prohibited by a fisheries notice, or of doing an act prohibited by a fisheries notice, and either

- the boat involved in the offence should have been but was not covered by a leviabale licence or
- a licence in force for the boat involved in the offence did not authorise its use in that area for that purpose and a licence that would authorise such use is leviabale.

Empowers the court convicting a person for any such offence to order that the person pay to the Commonwealth an amount not exceeding the relevant levy amount.

Defines "leviabale licence" and "relevant levy amount".

8. Miscellaneous amendment of s.13AB of the Principal Act.
9. Miscellaneous amendment of s.13E of the Principal Act.
10. Amendment of s.14 of the Principal Act consequent on clause 5.
11. Remakes s.15 of the Principal Act in conformity with modern drafting practice (c.f. Torres Strait Fisheries Act 1984, s.55).

Inserts a new s.15A into the Principal Act to provide for the enforcement of orders to pay an amount to the Commonwealth.

12. Inserts in s.17 of the Principal Act, power to make regulations for remission or refund of levy or statutory fees in specified circumstances.

#### PART III - AMENDMENTS OF THE TORRES STRAIT FISHERIES ACT 1984

13. Self-explanatory.
14. Inserts in s.19 of the Principal Act, a requirement to refuse to grant a boat licence on which levy is payable unless the applicant tenders the levy and any applicable licence fee.
15. Inserts in s.21 of the Principal Act, a requirement to refuse to make, in a boat licence, an entry on which levy is payable unless the applicant tenders the levy and any applicable fee for the entry.
16. Inserts in s.24 of the Principal Act, a requirement to refuse to renew a boat licence on which levy is payable unless the holder tenders the levy and any applicable renewal fee.

17. Inserts in s.25 of the Principal Act, a requirement to refuse to transfer a boat licence unless the holder tenders the applicable transfer fee.
18. Inserts in s.36 of the Principal Act, a requirement for the Protected Zone Joint Authority to refuse to make a leviable entry in a licence so as to authorise the use of a boat in a joint authority fishery, unless the holder of the licence tenders the levy and any fee that is payable for making the entry.
19. Inserts in s.42 of the Principal Act, power for an officer to board a boat which he believes is one for which levy may become payable or has been paid and inspect the boat. This power will be exercised when it is necessary to record details of a boat, its engines or its fishing equipment, for levy assessment purposes. Adds power for an officer inspecting a boat to seek professional assistance (eg, a qualified ship surveyor) and deems that other person to be an officer while carrying out the inspection (c.f. Fisheries Act 1952, s.10 (5)).
20. Inserts in s.43 of the Principal Act, the offence of refusing to allow the inspection of a boat for levy assessment purposes (c.f. Fisheries Act 1952, s.14 (1)(ca)).
21. Inserts in s.44 of the Principal Act, the penalty of \$5000 where a person is convicted for an offence, committed in the area of Australian jurisdiction, of doing an act prohibited by a notice under s.16 by using an Australian or a foreign boat for a particular purpose or for searching for fish, and either
  - the boat should have been, but was not, covered by a leviable licence; or
  - a licence in force for the boat did not authorise its use for that purpose and a licence that would authorise such use is leviable.

(Papua New Guinea boats, being exempt from levy by virtue of Article 26(2) of the Torres Strait Treaty, do not incur these heavier penalties, the purpose of which is to facilitate the enforcement of the levy).

Empowers the court convicting a person of any such offence to order that the person pay to the Commonwealth an amount not exceeding the relevant levy amount.

Defines "leviable licence" and "relevant levy amount".

22. Inserts in s.45 of the Principal Act, the penalty of \$5000 where a person is convicted for an offence, committed in an area of Australian jurisdiction, of engaging in commercial fishing (other than community fishing) with the use of an Australian or foreign boat for a purpose, of engaging with the use of a boat in community fishing of a kind declared under s.17 or of using an Australian or foreign boat to process or carry the catch of another boat, and either
  - the boat should have been, but was not, covered by a leviabale licence; or
  - a licence in force for the boat did not authorise its use for the purpose and a licence that would authorise such use is leviabale.

(Papua New Guinea boats, being exempt from levy by virtue of Article 26(2) of the Torres Strait Treaty, do not incur these heavier penalties, the purpose of which is to facilitate the enforcement of the levy).

Empowers the court convicting a person of any such offence to order that the person pay to the Commonwealth an amount not exceeding the relevant levy amount.

Defines "leviabale licence" and "relevant levy amount".
23. Miscellaneous amendment of s.46 of the Principal Act.
24. Miscellaneous amendment of s.51 of the Principal Act.
25. Inserts a new s.55A into the Principal Act to provide for the enforcement of orders to pay an amount to the Commonwealth.
26. Inserts in s.60 of the Principal Act, power to make regulations for remission or refund of levy or statutory fees, in specified circumstances.



