



Fisheries Legislation Amendment Act 2010

No. 39, 2010

**An Act to amend the law in relation to fisheries,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 39, 2010

**An Act to amend the law in relation to fisheries,
and for related purposes**

[Assented to 13 April 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment Act 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 April 2010
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	11 May 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Fisheries Management Act 1991

1 Subsection 4(1)

Insert:

being investigated for a fisheries offence, in relation to the holder of a fishing concession, means:

- (a) AFMA is investigating whether the holder has committed a fisheries offence; or
- (b) a law enforcement agency has notified AFMA that the agency is investigating whether the holder has committed a fisheries offence; or
- (c) the holder is charged with a fisheries offence.

2 Subsection 4(1)

Insert:

computer function notice has the meaning given by section 163D.

3 Subsection 4(1)

Insert:

defensive equipment has the meaning given by section 89A.

4 Subsection 4(1)

Insert:

electronic decision has the meaning given by section 163B.

5 Subsection 4(1)

Insert:

fisheries legislation means:

- (a) this Act or the regulations; or
- (b) another Act or regulations that are:
 - (i) administered by the Minister; and
 - (ii) prescribed under the regulations.

6 Subsection 4(1)

Insert:

fisheries offence means:

- (a) an offence against this Act or the regulations; or
- (b) an offence against another Act that relates to a fishing concession (including an offence for unlawfully obtaining a fishing concession, for example).

7 Subsection 4(1)

Insert:

fishing concession certificate has the meaning given by section 163E.

8 Subsection 4(1)

Insert:

law enforcement agency means a government body that has responsibility for the enforcement of the laws of:

- (a) the Commonwealth; or
- (b) a State or Territory.

9 Subsection 4(1)

Insert:

lease, of a fishing right, means a temporary assignment of the fishing right.

10 Subsection 22(7)

Repeal the subsection.

11 Subsection 32(1BA)

Repeal the subsection, substitute:

- (1BA) After the commencement of this subsection, a boat may be nominated under subsection (1A) or (1B) only if:
 - (a) either:
 - (i) the boat's particulars are already registered on the Fishing Permits Register; or

- (ii) the boat is an Australian boat; and
- (b) the acceptance of the nomination would not be contrary to:
 - (i) a condition of the permit; or
 - (ii) the regulations; and
- (c) for the purposes of a permit to fish in a specified fishery on the high seas—the boat is an Australian-flagged boat.

12 Subsections 32(9A) and (10)

Repeal the subsections.

13 At the end of Division 5 of Part 3

Add:

32A Transfer of fishing permits

- (1) This section is about the holder of a fishing permit transferring the permit to another person.
- (2) The holder of the fishing permit must apply to AFMA, in the approved form, to register the transfer.
- (3) The transfer takes effect when AFMA registers the transfer.
- (4) AFMA must register the transfer unless:
 - (a) the fishing permit is suspended under section 38; or
 - (b) the holder of the fishing permit:
 - (i) is being investigated for a fisheries offence; or
 - (ii) has been convicted of a fisheries offence; or
 - (c) a levy on the fishing permit that is due has not been paid; or
 - (d) other circumstances that are prescribed under the regulations exist.
- (5) Subsection (4) applies despite the fact that a requirement in a plan of management relating to the transfer has not been satisfied.
- (6) This section does not apply to a fishing permit that is stated to be non-transferable.

14 Subsection 33(7A)

Repeal the subsection.

15 Subsection 34(10A)

Repeal the subsection.

16 Subsection 40(6A)

Repeal the subsection.

17 Subsection 46(4)

Omit “subsection (4C)”, substitute “subsections (4C) and (4D)”.

18 After subsection 46(4C)

Insert:

(4D) AFMA must register a lease, or transfer of ownership, of a fishing right unless:

- (a) the fishing right is suspended under section 38; or
- (b) the holder of the fishing right:
 - (i) is being investigated for a fisheries offence; or
 - (ii) has been convicted of a fisheries offence; or
- (c) a levy on the fishing right that is due has not been paid; or
- (d) other circumstances that are prescribed under the regulations exist.

(4E) Subsection (4D) applies despite the fact that any requirement in a plan of management relating to the lease, or transfer, has not been satisfied.

19 Section 49

Repeal the section.

20 After section 89

Insert:

89A Defensive equipment

- (1) This section is about defensive equipment.
- (2) *Defensive equipment* is:
 - (a) a bulletproof vest; or
 - (b) an extendible baton; or
 - (c) handcuffs; or

- (d) other equipment prescribed under the regulations.
- (3) The CEO may authorise an officer to be issued with, carry, use and store defensive equipment if the CEO considers:
 - (a) it is reasonably necessary for the officer to use the equipment in order to perform functions or exercise powers under this Act; and
 - (b) the officer has received adequate training in the effective, lawful and safe carriage, use and storage of defensive equipment.
- (4) The CEO may make the authorisation subject to conditions.
- (5) The officer may use the defensive equipment if the officer considers it is reasonably necessary to do so in order to perform functions or exercise powers under this Act or the regulations, subject to:
 - (a) any conditions in the CEO's authorisation; and
 - (b) section 87J.
- (6) A person commits an offence if:
 - (a) the person has been issued with defensive equipment; and
 - (b) the person stops being an officer; and
 - (c) the person does not, as soon as practicable, return the defensive equipment to the CEO.

Penalty: 2 penalty units.

- (7) Subsection (6) does not apply if the person has a reasonable excuse for not returning the defensive equipment to the CEO as soon as practicable.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

- (8) An offence against subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

21 Before section 163

Insert:

Division 1—Electronic decision-making

163A What this Division is about

This Division is about AFMA using a computer program to make certain decisions.

163B Electronic decision-making

- (1) AFMA may approve a computer program, which is under AFMA's control, to be used to make a decision under:
 - (a) section 32; or
 - (b) section 32A; or
 - (c) section 46; or
 - (d) section 91; or
 - (e) a plan of management; or
 - (f) another provision of the fisheries legislation that is prescribed under the regulations.
- (2) While the approval is in force, the outcome of the use of the computer program (an *electronic decision*) is taken to be:
 - (a) a decision; and
 - (b) a decision made by AFMA.
- (3) AFMA's approval must be made in writing.
- (4) An approval made under this section is not a legislative instrument.

163C Replacing an electronic decision

- (1) This section applies if AFMA is satisfied that an electronic decision that was made by a computer program was made at a time when the computer program was not functioning correctly.
- (2) A computer program is not functioning correctly if the electronic decision that was made by the computer program is not the same as the decision that AFMA would have made if an employee of AFMA had made the decision.

Example: A computer program may not be functioning correctly because of a computer virus or because of a typographical error that was made when data was entered into the computer.

- (3) AFMA may revoke the electronic decision and replace it with the decision that AFMA would have made if an employee of AFMA had made the decision.
- (4) AFMA may do so:
 - (a) on its own initiative; or
 - (b) on the written application of the applicant who had sought the electronic decision.
- (5) If AFMA revokes an electronic decision after AFMA has notified the applicant about the electronic decision, AFMA must, as soon as practicable after revoking the electronic decision, give to the applicant a written notice that states:
 - (a) that the electronic decision has been revoked; and
 - (b) the reasons for revoking the electronic decision; and
 - (c) the new decision.

163D Evidence of whether computer is functioning correctly

- (1) In any proceedings, a computer function notice is prima facie evidence of the matters that are stated in the notice.
- (2) A ***computer function notice*** is a document that:
 - (a) is, or is purported to be, signed by the CEO; and
 - (b) states whether or not a specified computer program was functioning correctly:
 - (i) in relation to a specified electronic decision; and
 - (ii) at a specified time or during a specified period.
- (3) A computer program is functioning correctly if an electronic decision that the computer program makes is the same as the decision that AFMA would have made if an employee of AFMA had made the decision.

163E Return of fishing concession certificate not necessary

- (1) This section applies if a plan of management requires the holder of a fishing concession to return the fishing concession certificate to AFMA.

- (2) The ***fishing concession certificate*** is the certificate that AFMA issued to the holder of the fishing concession as evidence of the grant of the fishing concession.
- (3) The holder of the fishing concession is no longer required to return the fishing concession certificate to AFMA.

Division 2—Other miscellaneous provisions

22 Subsection 165(1) (definition of *relevant decision*)

Omit “49 or”.

Schedule 2—Amendment of the Torres Strait Fisheries Act 1984

1 Subsection 3(1)

Insert:

commercial fisher means the holder of a commercial fishing licence.

2 Subsection 3(1)

Insert:

commercial fishing licence means a licence that is in force under subsection 19(2) or (4).

3 Subsection 3(1)

Insert:

fish receiver licence means a licence that is in force under subsection 19(4B).

4 Section 46AA

Repeal the section, substitute:

46AA Offences relating to a fish receiver licence

- (1) This section relates to fish taken from:
 - (a) the Protected Zone; or
 - (b) an area of waters that is declared under subsection 15(1).
- (2) A person commits an offence if:
 - (a) the person receives fish directly from another person; and
 - (b) the fish were taken by the other person in circumstances that required the person to hold a commercial fishing licence, or a Treaty endorsement; and
 - (c) the person intends:
 - (i) to process the fish, other than for personal consumption or use; or

- (ii) to sell the fish; and
- (d) the person does not hold a licence that allows the person to receive fish under this Act.

Penalty: 50 penalty units.

- (3) A person receives fish directly from another person if the person receives the fish from:
 - (a) the other person; or
 - (b) someone else who has been engaged by the other person to transport the fish to the person.
- (4) A person commits an offence if:
 - (a) the person holds a fish receiver licence; and
 - (b) the person receives fish from someone who is not a commercial fisher; and
 - (c) the person intends:
 - (i) to process the fish, other than for personal consumption or use; or
 - (ii) to sell the fish.

Penalty: 50 penalty units.

*[Minister's second reading speech made in—
House of Representatives on 25 November 2009
Senate on 10 March 2010]*