



Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008

No. 36, 2008

An Act to amend legislation about 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. 36, 2008

An Act to amend legislation about fisheries, and for related purposes

[Assented to 24 June 2008]

The Parliament of Australia enacts:

Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008 No. 36, 2008 1

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008*.

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 on which this Act receives the Royal Assent.	24 June 2008
2. Schedule 1	1 July 2008.	1 July 2008
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent.	22 July 2008
4. Schedule 3	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	24 June 2009
5. Schedule 4	The 28th day after the day on which this Act receives the Royal Assent.	22 July 2008

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Fisheries Administration Act 1991

1 Subsection 4(1)

Insert:

AFMA staff member means a member of the staff assisting the CEO (see section 68).

2 Subsection 4(1)

Insert:

AFZ has the same meaning as in the *Fisheries Management Act 1991*.

3 Subsection 4(1) (definition of *borrowing*)

Repeal the definition.

4 Subsection 4(1)

Insert:

CEO means the Chief Executive Officer (see subsection 10B(1)).

5 Subsection 4(1)

Insert:

Commission means the Commission established by subsection 10B(1).

6 Subsection 4(1)

Insert:

commissioner means:

- (a) a part-time commissioner; or
- (b) the CEO.

7 Subsection 4(1) (definition of *director*)

Repeal the definition.

8 Subsection 4(1)

Insert:

domestic fisheries management functions and powers of the Authority means the functions and powers of the Authority, other than the foreign compliance functions and powers of the Authority.

Note: The functions and powers of the Authority are set out in sections 7 and 8, and include functions and powers under associated laws.

9 Subsection 4(1) (definition of *Finance Minister*)

Repeal the definition.

10 Subsection 4(1)

Insert:

fishing concession has the same meaning as in the *Fisheries Management Act 1991*.

11 Subsection 4(1)

Insert:

foreign boat has the same meaning as in the *Fisheries Management Act 1991*.

12 Subsection 4(1)

Insert:

foreign compliance functions and powers of the Authority means the functions and powers of the Authority as they relate to:

- (a) foreign boats in the AFZ where the operation of the boat is not covered by a fishing concession, port permit or scientific permit, and persons or things on such boats; and
- (b) boats outside the AFZ, and persons or things on such boats, other than where the boat is operating in an area where it is authorised to operate under a fishing concession.

Note: The functions and powers of the Authority are set out in sections 7 and 8, and include functions and powers under associated laws.

13 Subsection 4(1) (definition of *Ministerial Council*)

Repeal the definition.

14 Subsection 4(1) (definition of *nominated director*)

Repeal the definition.

15 Subsection 4(1)

Insert:

part-time commissioner means a person appointed as a part-time commissioner under subsection 12(1), and includes the Chairperson of the Commission.

16 Subsection 4(1)

Insert:

port permit has the same meaning as in the *Fisheries Management Act 1991*.

17 Subsection 4(1) (definition of *Presiding Member*)

Repeal the definition.

18 Subsection 4(1) (before the note)

Insert:

scientific permit has the same meaning as in the *Fisheries Management Act 1991*.

19 Subsection 4(1) (definition of *Selection Committee*)

Repeal the definition (not including the note).

20 Subsection 7(1) (note)

Repeal the note.

21 Subsection 8(2)

Repeal the subsection, substitute:

- (2) However, the Authority does not have the following powers:
- (a) the power to acquire, hold and dispose of real or personal property;

- (b) the power to enter into contracts;
 - (c) the power to lease the whole or any part of any land or building for the purposes of the Authority.
- (3) A right to sue is taken not to be personal property for the purposes of paragraph (2)(a).

22 Subsection 9(1)

Omit “(1)”.

23 Subsection 9(2)

Repeal the subsection.

24 Division 2 of Part 2 (heading)

Repeal the heading.

25 Sections 10 and 11

Repeal the sections, substitute:

10 Authority is a body corporate

- (1) The Authority:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may sue and be sued in its corporate name.
- (2) The seal of the Authority must be kept in such custody as the CEO directs, and must not be used except as authorised:
 - (a) in relation to the performance and exercise of the domestic fisheries management functions and powers of the Authority—by the Commission; or
 - (b) in relation to the performance and exercise of the foreign compliance functions and powers of the Authority—by the CEO.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Authority appearing on a document; and
 - (b) presume that it was duly sealed.

10A Financial liabilities

- (1) Any financial liabilities of the Authority are taken to be liabilities of the Commonwealth.

- (2) For the purposes of this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

10B The Commission and CEO

- (1) There is to be a Commission and a Chief Executive Officer.

Note: The Chief Executive Officer is also a commissioner: see the definition of ***commissioner*** in subsection 4(1).

- (2) The Commission is responsible for performing and exercising the domestic fisheries management functions and powers of the Authority.

- (3) The CEO is responsible for:

- (a) performing and exercising the foreign compliance functions and powers of the Authority; and
- (b) assisting the Commission, including by giving effect to the decisions of the Commission.

- (4) The CEO is not subject to direction by the Commission in relation to the CEO's performance or exercise of:

- (a) functions and powers under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*; or
- (b) the foreign compliance functions and powers of the Authority.

- (5) Anything done in the name of the Authority, or on the Authority's behalf, by:

- (a) the Commission in performing or exercising the domestic fisheries management functions and powers of the Authority; or
- (b) the CEO in performing or exercising the foreign compliance functions and powers of the Authority;

is taken to have been done by the Authority.

10C Minister may give directions to CEO about foreign compliance

- (1) The Minister may give written directions to the CEO about the performance and exercise of the foreign compliance functions and powers of the Authority.
- (2) Directions given by the Minister under subsection (1) may relate to a particular case.
- (3) The CEO must comply with any direction given by the Minister under subsection (1).
- (4) The Minister must cause a copy of each direction given under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after giving the direction.
- (5) Subsection (4) does not apply in relation to a particular direction if the Minister determines, in writing, that compliance with the subsection is undesirable because compliance would, or would be likely to, be prejudicial to the national interest of Australia.
- (6) Neither a direction made under subsection (1) nor a determination made under subsection (5) is a legislative instrument.

Division 2—Constitution of Commission

11 Constitution of Commission

- (1) The Commission consists of:
 - (a) the Chairperson of the Commission; and
 - (b) the other part-time commissioners; and
 - (c) the CEO.
- (2) There must be no more than 8 part-time commissioners (including the Chairperson).

Division 3—Appointment of commissioners

26 Section 12

Repeal the section, substitute:

12 Appointment of commissioners

- (1) The Chairperson of the Commission, the other part-time commissioners and the CEO are to be appointed by the Minister by written instrument.

CEO may also be appointed Chairperson

- (2) The CEO may also be appointed as the Chairperson of the Commission, but must not otherwise hold office as a part-time commissioner.

Eligibility for appointment

- (3) To be eligible for appointment as a commissioner, an individual, at the time of appointment:
- (a) must have a high level of expertise in one or more of the following fields:
 - (i) fisheries management;
 - (ii) fishing industry operations;
 - (iii) science;
 - (iv) natural resource management;
 - (v) economics;
 - (vi) business or financial management;
 - (vii) law;
 - (viii) public sector administration or governance;
 - (ix) such other fields (if any) as are prescribed by the regulations; but
 - (b) must not hold:
 - (i) an executive position in a fishing industry association (however described); or
 - (ii) a fishing concession granted under the *Fisheries Management Act 1991*; or
 - (iii) a licence or permit granted under the *Torres Strait Fisheries Act 1984*; or
 - (iv) an executive position (however described and whether or not a director of the body) in a body corporate that holds a fishing concession, licence or permit of a kind mentioned in subparagraph (ii) or (iii); or

- (v) the majority of the voting shares in a company that holds a fishing concession, licence or permit of a kind mentioned in subparagraph (ii) or (iii).

Note: These eligibility criteria will apply to the CEO who is also a commissioner: see the definition of **commissioner** in subsection 4(1).

- (4) For the purposes of subparagraph (3)(b)(iv), a person holds an **executive position** in a body corporate if the person is concerned in, or takes part in, the management of the body.
- (5) In appointing commissioners, the Minister must ensure, as far as practicable, that the commissioners collectively possess expertise in all of the fields mentioned in paragraph (3)(a).

Basis of appointments

- (6) The Chairperson of the Commission and the other part-time commissioners must be appointed on a part-time basis.
- (7) The CEO must be appointed on a full-time basis.

Term of appointment

- (8) A commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Validation

- (9) The appointment of an individual as a commissioner is not invalid because of a defect or irregularity in connection with the individual's appointment.

27 Subsection 13(1)

Omit "nominated director to be the Deputy Chairperson of the Authority", substitute "part-time commissioner (other than the Chairperson) to be the Deputy Chairperson of the Commission".

28 Subsection 13(2)

Omit "Authority", substitute "Commission".

29 Subsection 13(4)

Omit "nominated director", substitute "part-time commissioner".

30 Paragraphs 13(6)(a) and (b)

Omit “Authority”, substitute “Commission”.

31 Subsection 13(7)

Omit “Authority”, substitute “Commission”.

32 Sections 14 to 16

Repeal the sections, substitute:

14 Acting CEO

- (1) The Minister may appoint a person to act as the CEO:
 - (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901*.

15 Other employment

- (1) A part-time commissioner must not engage, without the Minister’s approval, in paid employment that conflicts or may conflict with the proper performance of his or her duties.
- (2) The CEO must not engage in paid employment outside the duties of the CEO’s office without the Minister’s approval.

33 Subsection 17(1)

Omit “director” (wherever occurring), substitute “commissioner”.

34 Subsection 17(2)

Omit “director”, substitute “commissioner”.

35 Paragraph 17(3)(a)

Omit “director”, substitute “part-time commissioner”.

36 Subsection 17(4)

Omit “director”, substitute “part-time commissioner”.

37 Subsection 17(7)

Repeal the subsection.

38 Subsection 18(1)

Omit “Authority”, substitute “Commission”.

Note: The following heading to subsection 18(1) is inserted “*Part-time commissioners*”.

39 Subsection 18(2)

Omit “director (other than the Managing Director)”, substitute “part-time commissioner”.

40 At the end of section 18

Add:

CEO

(3) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(4) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

41 Section 19

Omit “director (other than the Managing Director)”, substitute “commissioner”.

42 After section 19

Insert:

20 Disclosure of interests to Minister

Disclosure on appointment

- (1) Before starting to hold office, a commissioner must give to the Minister a written statement of any interest, pecuniary or otherwise, that the commissioner has that may relate to:
 - (a) the functions of the commissioner; and
 - (b) in the case of the CEO—the additional functions of the CEO.

Disclosures during term of appointment

- (2) The commissioner must give written notice to the Minister of all interests, pecuniary or otherwise, that the commissioner has or acquires and that conflict or may conflict with the proper performance of:
 - (a) the commissioner's functions; and
 - (b) in the case of the CEO—the additional functions of the CEO.
- (3) The notice must be given as soon as possible after the relevant facts come to the commissioner's knowledge.

Keeping of register

- (4) The Commission must keep a register of the interests disclosed under this section.

43 Subsection 21(1)

Omit “the Chairperson of the Authority or a nominated director”, substitute “a commissioner”.

44 Subsection 21(2)

Repeal the subsection, substitute:

- (2) The Minister may terminate the appointment of a commissioner if:
 - (a) the commissioner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the commissioner is absent, except on leave of absence:
 - (i) in the case of a part-time commissioner—from 3 consecutive meetings of the Commission; or
 - (ii) in the case of the CEO—for 14 consecutive days or for 28 days in any 12 months; or
- (c) the commissioner engages:
 - (i) in the case of a part-time commissioner—in paid employment, without the approval of the Minister, that conflicts or may conflict with the proper performance of the duties of his or her office (see section 15); or
 - (ii) in the case of the CEO—in paid employment outside the duties of his or her office without the approval of the Minister (see section 15); or
- (d) the commissioner fails, without reasonable excuse, to comply with section 20 or 24.

Termination for holding certain positions or interests

- (3) The appointment of a commissioner is terminated, by force of this subsection, if the commissioner becomes the holder of:
 - (a) an executive position in a fishing industry association (however described); or
 - (b) a fishing concession granted under the *Fisheries Management Act 1991*; or
 - (c) a licence or permit granted under the *Torres Strait Fisheries Act 1984*; or
 - (d) an executive position (however described and whether or not a director of the body) in a body corporate that holds a fishing concession, licence or permit of a kind mentioned in paragraph (b) or (c); or
 - (e) the majority of the voting shares in a company that holds a fishing concession, licence or permit of a kind mentioned in paragraph (b) or (c).
- (4) For the purposes of paragraph (3)(d), a person holds an **executive position** in a body corporate if the person is concerned in, or takes part in, the management of the body.

Validation

- (5) Anything done by or in relation to the Commission is not invalid merely because the appointment of a commissioner has been terminated by force of subsection (3).

45 Section 22

Omit “director (other than the Managing Director)”, substitute “commissioner”.

46 After section 22

Insert:

Division 4—Operation of Commission

47 Subsections 23(1) and (2)

Omit “Authority” (wherever occurring), substitute “Commission”.

48 At the end of subsection 23(2)

Add:

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

49 Subsections 23(3) and (4)

Omit “Authority” (wherever occurring), substitute “Commission”.

50 Subsection 23(4)

Omit “directors”, substitute “commissioners”.

51 Subsection 23(5)

Omit “Authority”, substitute “Commission”.

52 Paragraph 23(5)(a)

Omit “5 directors constitute”, substitute “a majority of the commissioners constitutes”.

53 Paragraph 23(5)(b)

Omit “directors”, substitute “commissioners”.

54 Paragraph 23(5)(c)

Omit “director”, substitute “commissioner”.

55 Subsections 23(6) and (7)

Repeal the subsections, substitute:

(6) If:

(a) section 24 prevents a commissioner from participating in deliberations or decisions with respect to a particular matter at a meeting of the Commission; and

(b) when the commissioner leaves the meeting concerned there is no longer a quorum present;

the remaining commissioners at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

(7) The Commission must keep minutes of its proceedings.

(8) The Commission may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

56 Section 24

Repeal the section, substitute:

24 Disclosure of interests to Commission

(1) A commissioner who has an interest, whether pecuniary or otherwise, in a matter being considered or about to be considered by the Commission must disclose the nature of the interest to a meeting of the Commission.

(2) The disclosure must be made as soon as possible after the relevant facts have come to the commissioner’s knowledge.

(3) The disclosure must be recorded in the minutes of the meeting of the Commission.

(4) Unless the Commission otherwise determines, the commissioner:

(a) must not be present during any deliberation by the Commission on the matter; and

(b) must not take part in any decision of the Commission with respect to the matter.

- (5) For the purposes of the Commission making a determination under subsection (4), the commissioner:
 - (a) must not be present during any deliberation of the Commission for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination made by the Commission under subsection (4) must be recorded in the minutes of the meeting of the Commission.

25 Decisions without meetings

- (1) The Commission is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the commissioners entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Commission under subsection (2); and
 - (c) all the commissioners were informed of the proposed decision, or reasonable efforts were made to inform all the commissioners of the proposed decision.
- (2) Subsection (1) applies if the Commission:
 - (a) has determined that it may make decisions of that kind without a meeting; and
 - (b) has determined the method by which commissioners are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a commissioner is not entitled to vote on a proposed decision if the commissioner would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Commission.
- (4) The Commission must keep a record of decisions made in accordance with this section.

57 Divisions 3 and 4 of Part 2

Repeal the Divisions.

58 Subsection 55(1)

Omit “members of the Authority or partly by members of the Authority”, substitute “commissioners or partly by commissioners”.

59 At the end of paragraph 60(1)(a)

Add “of the committee”.

60 Paragraph 60(1)(b)

Repeal the paragraph, substitute:

- (b) the AFMA staff member who is responsible for the management of the fishery in relation to which the committee has been established;

61 Sections 64 and 64A

Repeal the sections, substitute:

64 Leave of absence

- (1) The Authority may grant leave of absence to the Chairperson of a management advisory committee on such terms and conditions as the Authority considers appropriate.
- (2) The Chairperson of a management advisory committee may grant leave of absence to another member of the committee on such terms and conditions as the Chairperson considers appropriate.

64A Resignation

A member of a management advisory committee may resign his or her appointment by giving the Authority a written resignation.

64B Termination of appointment

- (1) The Authority may terminate the appointment of a member of a management advisory committee for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) inefficiency or incompetence.
- (2) The Authority may terminate the appointment of a member of a management advisory committee if:
 - (a) the member:
 - (i) becomes bankrupt; or

- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (iii) compounds with his or her creditors; or
- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Commission; or
- (c) the member fails, without reasonable excuse, to comply with section 64C or 64D.

64C Disclosure of interests to management advisory committee

- (1) A member of a management advisory committee who has an interest, whether pecuniary or otherwise, in a matter being considered or about to be considered by the committee must disclose the nature of the interest to a meeting of the committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the committee.
- (4) Unless the committee otherwise determines, the member:
 - (a) must not be present during any deliberation by the committee on the matter; and
 - (b) must not take part in any decision of the committee with respect to the matter.
- (5) For the purposes of the committee making a determination under subsection (4), the member:
 - (a) must not be present during any deliberation of the committee for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination made by the committee under subsection (4) must be recorded in the minutes of the meeting of the committee.

64D Disclosure of interests to Authority

A member of a management advisory committee must give written notice to the Authority of all interests, pecuniary or otherwise, that

the member has or acquires and that conflict or could conflict with
the proper performance of his or her functions.

62 After section 65

Insert:

65A Decisions without meetings

- (1) A management advisory committee is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members of the committee entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the committee under subsection (2); and
 - (c) all the members of the committee were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies if the management advisory committee:
 - (a) has determined that it may make decisions of that kind without a meeting; and
 - (b) has determined the method by which members of the committee are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member of a management advisory committee is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the committee.
- (4) A management advisory committee must keep a record of decisions made in accordance with this section.

63 Section 66

Omit “Chairperson of the Authority for the services of employees of, and consultants to, the Authority, and for facilities of the Authority,”, substitute “CEO for the services of AFMA staff members and consultants to the Authority, and facilities,”.

64 Subsection 67(4)

Omit “director or employee of the Authority”, substitute “commissioner or AFMA staff member”.

65 Division 6 of Part 2 (heading)

Repeal the heading, substitute:

Division 6—Staff and consultants

66 Section 68

Repeal the section, substitute:

68 Staff

- (1) The staff assisting the CEO must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the staff assisting the CEO together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

67 Subsection 69(1)

Omit “Authority may”, substitute “CEO may, on behalf of the Commonwealth,”.

68 Subsection 69(2)

Omit “Authority”, substitute “CEO”.

69 Sections 70 and 71

Repeal the sections.

70 Paragraph 72(4)(e)

Repeal the paragraph, substitute:

- (e) be signed by the Chairperson and the CEO.

71 Paragraph 77(2)(d)

Repeal the paragraph, substitute:

- (d) be signed by the Chairperson and the CEO.

72 Division 8 of Part 2

Repeal the Division.

73 Before section 89

Insert:

87 Annual report

- (1) The Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The Authority must include in the report:
- (a) an assessment of the extent to which the operations of the Authority during the year to which the report relates have contributed:
 - (i) to the objectives set out in section 6 and, in particular, to the objective set out in paragraph (b) of that section; and
 - (ii) to the goals set out in the corporate plan applicable to the period; and
 - (iii) to the objectives set out in the annual operational plan that relates to a period corresponding to that year; and
 - (b) particulars of:
 - (i) variations (if any) of the corporate plan and the annual operational plan taking effect during that year; and
 - (ii) significant changes to plans of management and the introduction of new plans of management during that year; and
 - (iii) the effectiveness or otherwise of the operation of plans of management during that year; and
 - (iv) any directions given to the Authority by the Minister under section 91 during that year; and
 - (c) an evaluation of its overall performance against the performance indicators set out in the corporate plan applicable to the period and the annual operational plan that came into force at the beginning of that year.

74 Subsection 89(1)

Omit “Authority”, substitute “Commission”.

75 Subsection 89(2)

After “enable the Chairperson”, insert “and the CEO”.

76 Paragraph 89(2)(a)

Omit “regards”, substitute “and the CEO regard”.

77 Paragraph 89(2)(b)

Omit “believes”, substitute “and the CEO believe”.

78 Paragraph 91(2)(c)

Omit “Authority”, substitute “Commission or the CEO, as the case requires,”.

79 Sections 92 to 94

Repeal the sections, substitute:

92 Delegation of functions and powers for which Commission is responsible

Delegation to the CEO

- (1) The Commission may, by writing under the seal of the Authority, delegate to the CEO any of the domestic fisheries management functions or powers of the Authority.
- (2) The CEO, in performing a function or exercising a power delegated under subsection (1), is subject to the directions of the Commission.

Sub-delegation by the CEO

- (3) The CEO may, by signed writing, delegate to:
 - (a) an AFMA staff member; or
 - (b) a committee established by the Authority under section 54; or
 - (c) a person engaged as a consultant to the Authority; or
 - (d) a person engaged under contract to assist the Authority; or
 - (e) an officer within the meaning of the *Fisheries Management Act 1991* or the *Torres Strait Fisheries Act 1984*;

any of the functions or powers of the Authority that have been delegated to the CEO by the Commission.

- (4) Subject to subsection (5) of this section, sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a delegation under subsection (3) of this section in a corresponding way to the way in which they apply to a delegation under subsection (1) of this section.
- (5) A function or power that is performed or exercised by a person under a delegation under subsection (3) is taken, for the purposes of this Act, to have been exercised or performed by the Authority.
- (6) A delegate of the CEO, in performing a function or exercising a power delegated under subsection (3), is subject to the directions of the CEO.

93 Delegation of functions and powers for which CEO is responsible

- (1) The CEO may, by signed writing, delegate to:
 - (a) an AFMA staff member; or
 - (b) a committee established by the Authority under section 54; or
 - (c) a person engaged as a consultant to the Authority; or
 - (d) a person engaged under contract to assist the Authority; or
 - (e) an officer within the meaning of the *Fisheries Management Act 1991* or the *Torres Strait Fisheries Act 1984*;any of the functions or powers of the Authority for which the CEO is responsible.
- (2) A delegate of the CEO, in performing a function or exercising a power delegated under subsection (1), is subject to the directions of the CEO.

94 Fees

- (1) The Authority may charge such fees as are reasonable in respect of work done, services provided or information given by the Authority.
- (2) A fee:
 - (a) must not be such as to amount to taxation; and
 - (b) is payable to the Commonwealth.

94A Exemption from tax

The Authority is not liable to pay tax under any law of the Commonwealth or of a State or Territory.

94B The AFMA Special Account

- (1) The AFMA Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

94C Credits to the AFMA Special Account

There must be credited to the AFMA Special Account the following:

- (a) adjusted levy amounts within the meaning of subsection 94E(1);
- (b) amounts of any fee paid to the Commonwealth in respect of work done, services provided or information given by the Authority (see section 94);
- (c) amounts equal to money received by the Commonwealth in relation to property paid for with money from the Account;
- (d) amounts equal to amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

94D Purposes of the AFMA Special Account

- (1) This section sets out the purposes of the AFMA Special Account.
- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
 - (a) in payment or discharge of the costs, expenses or other obligations incurred in the performance or exercise of the functions or powers of the Authority;
 - (b) in payment of any remuneration and allowances payable to any person under this Act;

- (c) meeting the expenses of administering the Account.

94E Adjusted levy amounts

- (1) The **adjusted levy amounts** to be credited to the AFMA Special Account under paragraph 94C(a) are the amounts worked out using the formula:

Levy amount – Deductible component

where:

deductible component, in relation to a levy amount, means:

- (a) if, as a result of the receipt by the Commonwealth of the levy amount, an amount (the **research component**) is required to be paid under subparagraph 30A(1)(a)(i) or (ii) of the *Primary Industries and Energy Research and Development Act 1989* to an R & D Corporation (within the meaning of that Act) established in respect of the fishing industry—an amount equal to the research component; or
- (b) if the levy amount is an amount referred to in paragraph (e) of the definition of **levy amount**—an amount equal to so much (if any) of the levy amount as is determined by the Minister to be an amount paid to the Commonwealth for the right to engage in fishing in the AFZ; or
- (c) if a part of the levy amount is prescribed for the purposes of this paragraph—an amount equal to the part so prescribed.

levy amount means all of the following amounts received by the Commonwealth after the commencement of this section:

- (a) an amount received by the Commonwealth as levy imposed by the *Fisheries Levy Act 1984*;
- (b) an amount received by the Commonwealth as levy imposed by the *Fishing Levy Act 1991*;
- (c) an amount received by the Commonwealth as levy imposed by the *Foreign Fishing Licences Levy Act 1991*;
- (d) an amount received by the Commonwealth as charge imposed by the *Statutory Fishing Rights Charge Act 1991*;
- (e) an amount received by the Commonwealth as mentioned in the *Fisheries Agreements (Payments) Act 1991*;

- (f) an amount received by the Commonwealth in repayment of a loan made under a fisheries adjustment program or a fisheries restructuring program;
 - (g) an amount received by the Commonwealth as a penalty under section 112 of the *Fisheries Management Act 1991*;
 - (h) an amount received by the Commonwealth as a fee under regulations made under paragraph 168(2)(e) of the *Fisheries Management Act 1991*;
- other than an amount that is declared by the regulations not to be a levy amount for the purposes of this section.
- (2) A determination made under paragraph (b) of the definition of ***deductible component*** in subsection (1) is not a legislative instrument.

80 Paragraph 102(1)(b)

Omit “Authority”, substitute “Commission”.

81 Paragraph 102(4)(a)

Repeal the paragraph, substitute:

- (a) commissioners of the Commission other than the Chairperson of the Commission;

82 Subsection 111(4)

Omit “Authority”, substitute “Commission”.

Fisheries Management Act 1991

83 Subsection 4(1)

Insert:

AFMA staff member has the same meaning as in the *Fisheries Administration Act 1991*.

84 Subsection 4(1)

Insert:

CEO has the same meaning as in the *Fisheries Administration Act 1991*.

85 Subsection 4(1)

Insert:

Commission has the same meaning as in the *Fisheries Administration Act 1991*.

86 Subsection 4(1)

Insert:

Ministerial Council means:

- (a) subject to paragraph (b)—the Ministerial Council on Forestry, Fisheries and Aquaculture, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body.

87 Subsection 4(1)

Insert:

Presiding Member means the Presiding Member of Australian Fisheries Management Authority Selection Committees appointed under section 139.

88 Subsection 4(1)

Insert:

Selection Committee means an Australian Fisheries Management Authority Selection Committee established under section 141A.

89 Subsection 17(11)

Omit “Managing Director of AFMA”, substitute “CEO”.

90 Subsection 43(8)

Omit “Managing Director of AFMA”, substitute “CEO”.

91 Paragraph 54(3)(c)

Omit “employee of AFMA”, substitute “AFMA staff member”.

92 Section 56

Omit “AFMA or an employee of AFMA is not”, substitute “Neither AFMA nor a person acting for or on behalf of AFMA is”.

93 Subsection 69(2)

Omit “employee of AFMA”, substitute “AFMA staff member”.

94 Paragraph 83(1)(a)

Omit “AFMA or”.

95 Subsections 89(1) and (3)

Omit “Managing Director of AFMA”, substitute “CEO”.

96 Paragraphs 106C(2)(c) and (d)

Omit “Managing Director of AFMA”, substitute “CEO”.

97 Paragraph 106E(1)(a)

Omit “Managing Director of AFMA”, substitute “CEO”.

98 Paragraph 106F(1)(b)

Omit “Managing Director of AFMA”, substitute “CEO”.

99 Subsection 106F(1) (note 1)

Omit “Managing Director of AFMA”, substitute “CEO”.

100 Subsection 106F(1) (note 2)

Omit “Managing Director”, substitute “CEO”.

101 Subsection 106F(2)

Omit “Managing Director of AFMA”, substitute “CEO”.

102 Subsection 106F(2)

Omit “Managing Director” (second and third occurring), substitute “CEO”.

103 Subsection 106F(4)

Omit “Managing Director of AFMA”, substitute “CEO”.

104 Subsection 106G(1)

Omit “Managing Director of AFMA”, substitute “CEO”.

105 Section 106M(1)

Omit “officer of AFMA”, substitute “AFMA staff member”.

106 Paragraphs 106M(2)(d) and (e)

Omit “Managing Director of AFMA”, substitute “CEO”.

107 Subsection 106N(1)

Omit “officer of AFMA”, substitute “AFMA staff member”.

108 Subsection 106P(1)

Omit “Managing Director of AFMA”, substitute “CEO”.

109 Subsection 106Q(1)

Omit “Managing Director of AFMA”, substitute “CEO”.

110 Paragraphs 106R(2)(a) and (d)

Omit “Managing Director of AFMA”, substitute “CEO”.

111 Division 2 of Part 8

Repeal the Division, substitute:

**Division 2—Nomination and selection process for members
of the Panel**

139 Presiding Member

- (1) The Minister is to appoint a person to be the Presiding Member of Australian Fisheries Management Authority Selection Committees.
- (2) The Presiding Member is to be appointed on a part-time basis.
- (3) Subject to this Division, the Presiding Member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible to be re-appointed once in accordance with this Act.

140 Acting Presiding Member

- (1) The Minister may appoint a person to act as Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Presiding Member is absent from Australia or is, for any other reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:
 - (a) the occasion for the person's appointment had not arisen; or
 - (b) there is a defect or irregularity in connection with the person's appointment; or
 - (c) the person's appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901*.

141 Request for nominations

- (1) The Minister may, by written notice given to the Presiding Member, request the Presiding Member to establish a Selection Committee for the purpose of:
 - (a) nominating a person or persons for appointment (otherwise than as the Principal Member) as a member or members of the Panel; or
 - (b) if there is a vacancy caused by the resignation of, or the ending of the appointment of, any member (other than the Principal Member)—nominating a person for appointment.
- (2) The Minister is to specify in the notice a period within which the Selection Committee is to comply with the notice.

141A Selection Committee

- (1) Where the Presiding Member receives a request under section 141, he or she must:
 - (a) establish a Selection Committee for the purpose of nominating a person or persons for appointment to the Panel; and
 - (b) give to the body that is the peak industry body within the meaning of the *Fisheries Administration Act 1991* a written

- notice requesting the body to nominate to the Minister persons for appointment to the Selection Committee; and
- (c) give to the Ministerial Council a written notice requesting the Council to nominate to the Minister a person for appointment to the Selection Committee; and
 - (d) take reasonable steps to inform members of the public (which may consist of advertising in a newspaper circulating generally throughout the Commonwealth), and members of such groups of persons (if any) as the Presiding Member thinks appropriate, of the following matters:
 - (i) that nominations are being sought for appointment of a person or persons to the Panel;
 - (ii) the qualifications for nomination required by a person.
- (2) The function of the Selection Committee is, in accordance with the request of the Minister, to nominate a person or persons for appointment to the Panel.
- (3) The Selection Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its function.

141B Membership of Selection Committee

- (1) A Selection Committee is to consist of the following members:
 - (a) the Presiding Member;
 - (b) 2 members determined by the Minister, one of whom has knowledge of environmental conservation issues;
 - (c) 2 members nominated by the peak industry body referred to in paragraph 141A(1)(b);
 - (d) a member nominated by the Ministerial Council.
- (2) A Selection Committee member referred to in paragraph (1)(b), (c) or (d) is to be appointed by the Minister in writing and holds office on a part-time basis.

141C Selection of nominees

- (1) A Selection Committee must only nominate for appointment as members of the Panel persons who have expertise in one or more of the following fields:

- (a) commercial fishing;
 - (b) fishing industry operations other than commercial fishing;
 - (c) fisheries science;
 - (d) natural resource management;
 - (e) marine ecology;
 - (f) economics;
 - (g) business management;
 - (h) such other fields (if any) as are prescribed.
- (2) In selecting persons for nomination, a Selection Committee must try to choose such persons as will ensure, as far as practicable, that the members of the Panel collectively possess expertise in all of the fields referred to in subsection (1).
- (3) A Selection Committee must not nominate a person who is:
 - (a) a member of the Selection Committee; or
 - (b) a commissioner of the Commission; or
 - (c) under subsection 126(2), ineligible for appointment.

141D Nomination

- (1) Within the period specified in a notice under section 141:
 - (a) the Selection Committee must select a person or persons for nomination according to the request; and
 - (b) the Presiding Member must, on behalf of the Committee, nominate the person or persons selected by the Committee.
- (2) A nomination must:
 - (a) be in writing; and
 - (b) be given to the Minister.
- (3) A Selection Committee must select only one person in respect of each appointment to be made by the Minister.
- (4) Where a person is nominated for appointment, the Presiding Member must attach to the nomination a statement setting out:
 - (a) details of the person's qualifications and experience; and
 - (b) any other information regarding the person that the Committee considers will assist the Minister in deciding whether to appoint the person.

141E Rejection of nominations

- (1) If the Minister is not satisfied that a person nominated by a Selection Committee is suitable for appointment, the Minister may give the Presiding Member written notice that he or she rejects the nomination of the person.
- (2) The Minister may include in a notice of rejection a further request under section 141 for a nomination of a person for appointment to the position concerned.

141F Meetings of a Selection Committee

- (1) Meetings of a Selection Committee are to be held at such times and places as the Committee determines.
- (2) The Presiding Member may convene a meeting of a Committee.
- (3) At a meeting, the following persons constitute a quorum:
 - (a) the Presiding Member;
 - (b) a member referred to in paragraph 141B(1)(b);
 - (c) a member referred to in paragraph 141B(1)(c);
 - (d) one other member who may also be a member referred to in one of those paragraphs.
- (4) The Presiding Member is to preside at all meetings of a Committee.
- (5) A question arising at a meeting of a Committee is to be decided by a majority of the votes of the members present and voting.
- (6) At a meeting of a Committee, the Presiding Member has a deliberative vote and, if there is an equality of votes, also has a casting vote.
- (7) A Committee must keep a record of its proceedings.
- (8) The procedure of a Committee is to be as determined by the Committee.

141G Remuneration and allowances

- (1) The Presiding Member of a Selection Committee is to be paid such remuneration as is determined by the Remuneration Tribunal but, if

no determination is in operation, the Presiding Member is to be paid such remuneration as is prescribed.

- (2) The Presiding Member is to be paid such allowances as are prescribed.
- (3) A member (other than the Presiding Member) is to be paid such travelling allowance as is prescribed.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

141H Leave of absence

- (1) The Minister may grant to the Presiding Member leave of absence from a meeting of a Selection Committee.
- (2) The Presiding Member may grant to another member of a Committee leave of absence from a meeting of the Committee.

141J Resignation

A member of a Selection Committee may resign by giving to the Minister a signed notice of resignation.

141K Termination of appointment of member of Selection Committee

- (1) The Minister may terminate the appointment of a member of a Selection Committee for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) inefficiency or incompetence.
 - (2) If a member of a Committee:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to comply with his or her obligations under section 141L; or
 - (c) is absent, without leave of absence, from 3 consecutive meetings of the Committee;the Minister may terminate the appointment of the member.
-

141L Disclosure of interests by members of Selection Committees

- (1) Where:
 - (a) a member of a Selection Committee has a direct or indirect interest in a matter being considered, or about to be considered, by the Committee; and
 - (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;the member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

141M Resolutions without meetings

- (1) Where:
 - (a) copies of a document setting out a proposed resolution of a Selection Committee are received by at least 4 members of the Committee, of whom one is the Presiding Member; and
 - (b) at least 4 such members, being members who would constitute a quorum at a meeting of the Committee, sign a copy of the document;the Committee is taken to have passed a resolution in the terms set out in the document at a meeting of the Committee.
- (2) The resolution is taken to have been passed:
 - (a) on the day on which copies of the document were signed by members; or
 - (b) if the copies were signed on different days—on the latest of those days.

141N Consultants etc.

- (1) The Presiding Member may, on behalf of a Selection Committee, engage persons as consultants to assist the Committee in the performance of its functions.
- (2) The Presiding Member may only engage persons who have suitable qualifications and experience.

- (3) The Presiding Member may, on behalf of a Selection Committee, engage persons to perform clerical or administrative services in connection with the performance of the Committee's functions.
- (4) The terms and conditions of engagement of persons under subsection (1) or (3) are to be determined by the Committee.

141P Presiding Member to abolish Selection Committee

Where:

- (a) the Minister has appointed to the Panel a person or persons nominated by a Selection Committee; and
- (b) the Committee has not made any nominations for appointment that have yet to be accepted or rejected by the Minister; and
- (c) there are no matters in a request by the Minister under section 141 or 141E that are still to be dealt with by the Committee;

the Presiding Member must abolish the Committee.

141Q Annual reports of Selection Committees

- (1) The Presiding Member must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operations, during the immediately preceding financial year, of Selection Committees (if any) established by the Presiding Member or any other Presiding Member.
- (2) Where the first appointment of a Presiding Member does not begin on 1 July, subsection (1) has effect in relation to the period beginning on the day the appointment begins and ending on the next 30 June as if:
 - (a) if the period is less than 3 months—the period were included in the next financial year; or
 - (b) in any other case—the period were a financial year.
- (3) A report for a financial year may, subject to agreement between the Presiding Member and the Secretary of the Department, be included, as a discrete part, in the annual report of the Department for that financial year.

- (4) If subsection (3) does not apply to a report under this section, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

112 Paragraphs 163(a) and (b)

Repeal the paragraphs, substitute:

- (a) the Commission; or
- (b) the CEO; or
- (ba) an AFMA staff member; or

113 Paragraph 166(3)(c)

Omit “employee of AFMA”, substitute “AFMA staff member”.

114 Subparagraph 17(3)(c)(i) of Schedule 1A

Omit “Managing Director of AFMA”, substitute “CEO”.

115 Paragraph 38(3)(b) of Schedule 1A

Omit “Managing Director of AFMA”, substitute “CEO”.

116 Subclause 38(4) of Schedule 1A

Omit “Managing Director”, substitute “CEO”.

117 Subclause 38(11) of Schedule 1A (paragraph (b) of the definition of *senior authorising officer*)

Omit “Managing Director of AFMA”, substitute “CEO”.

Torres Strait Fisheries Act 1984

118 Subsection 3(1)

Insert:

AFMA staff member has the same meaning as in the *Fisheries Administration Act 1991*.

119 Subsection 3(1)

Insert:

CEO has the same meaning as in the *Fisheries Administration Act 1991*.

120 Paragraph 9(1)(b)

Repeal the paragraph, substitute:
(b) an AFMA staff member; or

121 Paragraph 38(1)(b)

Repeal the paragraph, substitute:
(b) an AFMA staff member; or

122 Paragraphs 52C(2)(c) and (d)

Omit “Managing Director of AFMA”, substitute “CEO”.

123 Paragraph 52E(1)(a)

Omit “Managing Director of AFMA”, substitute “CEO”.

124 Paragraph 52F(1)(b)

Omit “Managing Director of AFMA”, substitute “CEO”.

125 Subsection 52F(1) (note 1)

Omit “Managing Director of AFMA”, substitute “CEO”.

126 Subsection 52F(1) (note 2)

Omit “Managing Director”, substitute “CEO”.

127 Subsection 52F(2)

Omit “Managing Director of AFMA”, substitute “CEO”.

128 Subsection 52F(2)

Omit “Managing Director” (second and third occurring), substitute “CEO”.

129 Subsection 52F(4)

Omit “Managing Director of AFMA”, substitute “CEO”.

130 Subsection 52G(1)

Omit “Managing Director of AFMA”, substitute “CEO”.

131 Subparagraph 17(3)(c)(i) of Schedule 2

Omit “Managing Director of AFMA”, substitute “CEO”.

132 Paragraph 38(3)(b) of Schedule 2

Omit “Managing Director of AFMA”, substitute “CEO”.

133 Subclause 38(4) of Schedule 2

Omit “Managing Director”, substitute “CEO”.

134 Subclause 38(11) of Schedule 2 (paragraph (b) of the definition of *senior authorising officer*)

Omit “Managing Director of AFMA”, substitute “CEO”.

Part 2—Transitional provisions

135 Definitions

In this Part:

AFMA means the Australian Fisheries Management Authority.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective;

but does not include a right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

associated law has the same meaning as in the *Fisheries Administration Act 1991*.

CEO has the same meaning as in the *Fisheries Administration Act 1991*.

commencement time means the time when this Schedule commences.

commissioner has the same meaning as in the *Fisheries Administration Act 1991*.

director means a person who was a director of AFMA before the commencement time.

financial liability means a liability to pay a person an amount where the amount, or the method for working out the amount, has been determined.

instrument:

- (a) includes:
 - (i) a contract, deed, undertaking or agreement; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or regulations; but
- (b) does not include an Act or regulations.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by an Act or by regulations or other subordinate legislation made under an Act.

staffing procedures includes procedures and policies, and any actions or decisions taken under or in accordance with those procedures and policies, that relate to the following:

- (a) recruitment, probation, or promotion;
- (b) performance management or appraisal;
- (c) inefficiency, misconduct, forfeiture of position, or fitness for duty;
- (d) conditions of continued employment, including failure to gain, or loss of, essential qualifications or clearances;
- (e) disciplinary action;
- (f) grievance processes or reviews of, or appeals against, staffing decisions;
- (g) transfers, redundancy, resignations, or termination of employment;
- (h) leave.

136 AFMA staffing processes to continue

- (1) AFMA's staffing procedures that were in effect immediately before the commencement time continue to apply after the commencement time in relation to:
 - (a) processes begun before, but not completed by, the commencement time; and
 - (b) things done by, for or in relation to AFMA or an employee of AFMA before the commencement time.
 - (2) The regulations may prescribe:
 - (a) details relating to how the AFMA's staffing procedures will continue to apply under subitem (1); and
 - (b) other matters of a transitional nature in relation to the transfer of persons:
-

- (i) who were employed by the AFMA before the commencement time; and
 - (ii) who will be employed under the *Public Service Act 1999* after the commencement time.
- (3) Subitem (1) and any regulations made under subitem (2) have effect despite the *Public Service Act 1999*.

137 Australian Fisheries Management Selection Committees to continue

Presiding member

- (1) A person holding office as the Presiding Member of Australian Fisheries Management Authority Selection Committees under section 25 of the *Fisheries Administration Act 1991* immediately before the commencement time:
 - (a) is taken to have been appointed, at the commencement time, under subsection 139(1) of the *Fisheries Management Act 1991* for the balance of the term of appointment under subsection 25(3) of the *Fisheries Administration Act 1991* as in force immediately before the commencement time; and
 - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

Acting Presiding member

- (2) A person appointed to act as Presiding Member of Australian Fisheries Management Authority Selection Committees under subsection 26(1) of the *Fisheries Administration Act 1991* immediately before the commencement time:
 - (a) is taken to have been appointed, at the commencement time, under subsection 140(1) of the *Fisheries Management Act 1991* for the balance of the term of appointment under subsection 26(1) of the *Fisheries Administration Act 1991* as in force immediately before the commencement time; and
 - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

Selection Committees

- (3) A Selection Committee that is:
- (a) established under section 140 of the *Fisheries Management Act 1991*; and
 - (b) in existence immediately before the commencement time;
- continues in existence, on and after the commencement time, as if it had been established under section 141A of that Act, as in force at the commencement time.
- (4) A person (other than the Presiding Member mentioned in subitem (1)) who, immediately before the commencement time, was a member of a Selection Committee to which paragraphs (3)(a) and (b) apply:
- (a) is taken to have been appointed, at the commencement time, under subsection 141B(2) of the *Fisheries Management Act 1991*; and
 - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.
- (5) A notice that is:
- (a) given under subsection 139(1) of the *Fisheries Management Act 1991*; and
 - (b) in force immediately before the commencement time;
- continues to have effect, on and after the commencement time, as if it had been given under subsection 141(1) of that Act, as in force at the commencement time.

138 Vesting of property and money

- (1) This item applies to any real or personal property or money held by AFMA immediately before the commencement time.
- (2) At the commencement time, the property or money ceases to be held by AFMA and becomes the property or money of the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes AFMA's successor in law in relation to that property or money.
- (3) After the commencement time, there must be credited to the AFMA Special Account an amount equal to the total of all money held by AFMA immediately before the commencement time.
-

- (4) This item has effect subject to items 140 and 141.

139 Vesting of financial liabilities

- (1) This item applies to any financial liabilities of AFMA that exist immediately before the commencement time.
- (2) At the commencement time, the financial liabilities cease to be liabilities of AFMA and become financial liabilities of the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes AFMA's successor in law in relation to those liabilities.
- (3) This item has effect subject to items 140 and 141.

140 Vesting of assets held on trust

- (1) This item applies to any assets held on trust by AFMA immediately before the commencement time.
- (2) At the commencement time, the assets cease to be assets held on trust by AFMA and become assets held on trust by the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes AFMA's successor in law in relation to those assets.

141 Vesting of liabilities relating to assets held on trust

- (1) This item applies to the liabilities of AFMA relating to assets to which item 140 of this Schedule applies.
- (2) At the commencement time, the liabilities cease to be liabilities of AFMA relating to the assets and become liabilities of the Commonwealth relating to the assets, without any conveyance, transfer or assignment. The Commonwealth becomes AFMA's successor in law in relation to those liabilities.

142 Contracts

A contract, agreement, arrangement or understanding entered into by AFMA before the commencement time and that is in force immediately before that time has effect after that time as if it had been entered into by the Commonwealth.

143 Instruments relating to transferred assets and liabilities

If:

- (a) an instrument is in force immediately before the commencement time; and
- (b) the instrument relates to assets or liabilities covered by items 138 to 141; and
- (c) the instrument refers to AFMA;

the reference is to be read as a reference to the Commonwealth as necessary to give effect to those items.

144 References to Managing Director and directors of AFMA

(1) Subject to item 143, if:

- (a) an instrument is in force immediately before the commencement time; and
- (b) the instrument refers to the Managing Director of AFMA;

the reference is to be read, on and after the commencement time, as a reference to the CEO.

(2) If regulations made under the *Fisheries Administration Act 1991* or an associated law that are in force immediately before the commencement time refer to the Managing Director of AFMA, the reference is to be read, on and after the commencement time, as a reference to the CEO.

(3) Subject to item 143, if:

- (a) an instrument is in force immediately before the commencement time; and
- (b) the instrument refers to a director;

the reference is to be read, on and after the commencement time, as a reference to a commissioner.

145 Proceedings relating to transferred assets and liabilities

If, immediately before the commencement time, any proceedings:

- (a) that related to assets or liabilities covered by items 138 to 141; and
- (b) to which AFMA was a party;

were pending in any court or tribunal, then, from the commencement time, the Commonwealth is substituted for AFMA as a party to the proceedings.

146 Certificates relating to vesting of land

- (1) This item applies if:
- (a) any land vests in the Commonwealth under this Part; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Part.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 154 of this Schedule.

- (2) The land registration official may:
- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.

147 Certificates relating to vesting of assets other than land

- (1) This item applies if:
- (a) any asset other than land vests in the Commonwealth under this Part; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Part.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 154 of this Schedule.

- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.

148 Appropriations

If under an Act, the Consolidated Revenue Fund is appropriated for the purposes of the performance or exercise of the functions or powers of AFMA, that Act continues to apply in relation to AFMA after the commencement time, despite the amendments made by this Schedule.

149 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or anything connected with:

- (a) the transfer of an asset or liability under this Part; or
- (b) the operation of this Part in any other respect.

150 Reporting requirements

Reports for periods ending after the commencement time

- (1) If:
- (a) immediately before the commencement time, a law required AFMA or a director to provide a report (whether financial statements or otherwise) for a period; and
 - (b) the period ends after the commencement time;
- AFMA must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
- (a) under subitem (1), AFMA is required to provide a report for a part of a period; and
 - (b) AFMA is also required to provide a similar report for the remainder of the period;
- AFMA may meet the requirements in a single report for the period.

Reports for periods ending before the commencement time

- (3) If:
- (a) a law required AFMA or a director to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
 - (b) the report has not been provided by the commencement time;
- AFMA must provide the report as required.

Application of law to AFMA

- (4) To avoid doubt, if, under this item, AFMA is required to provide a report under a law, the law applies to AFMA in respect of the report in the same way as the law would have applied to AFMA or the director in respect of the report.

151 Access to records

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of AFMA, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to AFMA.

152 Continuing obligation to keep records

Section 20 of the *Commonwealth Authorities and Companies Act 1997* (as in force from time to time) continues to apply after the commencement time in relation to the accounting records kept by AFMA under that section before that time as if AFMA continued to be subject to that Act.

153 Compensation for acquisition of property

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

154 Certificates taken to be authentic

A document that appears to be a certificate made or issued under this Part:

- (a) is taken to be such a certificate; and
 - (b) is taken to have been properly given;
- unless the contrary is established.

155 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her functions and powers under this Part to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department; or
 - (c) the CEO.
- (2) In performing or exercising functions or powers under a delegation, the delegate must comply with any directions of the Minister.

156 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Part to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

Schedule 2—Foreign boats equipped for fishing

Fisheries Management Act 1991

1 Subsection 101(1)

Omit “with nets, traps or other equipment”.

Note: The heading to section 101 is altered by omitting “**with nets etc.**” and substituting “**for fishing**”.

2 Paragraph 101(1)(c)

Omit “nets, traps or other equipment for fishing are stored and secured”, substitute “fishing equipment is stowed”.

3 Paragraph 101(1)(d)

Omit “nets, traps or other equipment are stored and secured”, substitute “fishing equipment is stowed”.

4 After subsection 101(1)

Insert:

(1A) For the purposes of paragraphs (1)(c) and (d), a boat’s fishing equipment is not stowed unless all of the boat’s:

(a) nets, traps and other fishing equipment; and

(b) associated equipment, including buoys and beacons;

are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.

5 Paragraph 101A(1)(c)

Omit “with nets, traps or other equipment”.

6 Paragraph 101A(4)(c)

Omit “nets, traps and other equipment for fishing are stored and secured”, substitute “fishing equipment is stowed”.

7 Paragraph 101A(4)(d)

Omit “nets, traps and other equipment for fishing are stored and secured”, substitute “fishing equipment is stowed”.

8 At the end of section 101A (after the note)

Add:

- (5) For the purposes of paragraphs (4)(c) and (d), a boat’s fishing equipment is not stowed unless all of the boat’s:
- (a) nets, traps and other fishing equipment; and
 - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.

9 Paragraph 101AA(1)(c)

Omit “with nets, traps or other equipment”.

10 Paragraph 101AA(2)(c)

Omit “nets, traps and other equipment for fishing are stored and secured”, substitute “fishing equipment is stowed”.

11 Paragraph 101AA(2)(d)

Omit “nets, traps and other equipment for fishing are stored and secured”, substitute “fishing equipment is stowed”.

12 After subsection 101AA(2) (after the note)

Insert:

- (2A) For the purposes of paragraphs (2)(c) and (d), a boat’s fishing equipment is not stowed unless all of the boat’s:
- (a) nets, traps and other fishing equipment; and
 - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.

Torres Strait Fisheries Act 1984

13 Subsection 51(1)

Omit “with nets, traps or other equipment”.

14 Paragraph 51(4)(a)

Omit “nets, traps or other equipment for taking fish were stowed and secured”, substitute “boat’s equipment for taking fish was stowed”.

15 After subsection 51(4) (after the note)

Insert:

(4AA) For the purposes of paragraph (4)(a), a boat’s equipment for taking fish is not stowed unless all of the boat’s:

- (a) nets, traps and other fishing equipment; and
 - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.

16 Paragraph 51A(1)(c)

Omit “with nets, traps or other equipment”.

17 Paragraph 51A(2)(a)

Omit “nets, traps and other equipment for taking fish were stowed and secured”, substitute “equipment for taking fish was stowed”.

18 After subsection 51A(2) (after the note)

Insert:

(2A) For the purposes of paragraph (2)(a), a boat’s equipment for taking fish is not stowed unless all of the boat’s:

- (a) nets, traps and other fishing equipment; and
 - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.

Schedule 3—Boats beyond the AFZ

Fisheries Management Act 1991

1 Subsection 4(1)

Insert:

Australian national means:

- (a) an Australian citizen; or
- (b) a resident of Australia; or
- (c) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) any other body corporate that carries on its activities principally in Australia.

2 Subsection 4(1) (definition of *Australian regional management measure*)

Repeal the definition.

3 Subsection 4(1)

Insert:

conservation area, for a conserved fish stock, means the area to which the international fisheries management measure that covers the fish stock relates.

4 Subsection 4(1)

Insert:

conserved fish stock means a fish stock covered by an international fisheries management measure.

5 Subsection 4(1) (definition of *Convention area*)

Repeal the definition.

6 Subsection 4(1) (definition of *FSA boat*)

Repeal the definition.

7 Subsection 4(1)

Insert:

international fisheries management measure means a measure prescribed by the regulations to give effect to a measure established by an international fisheries management organisation.

8 Subsection 4(1)

Insert:

international fisheries management organisation means a global, regional or subregional fisheries organisation or arrangement prescribed by the regulations.

9 Subsection 4(1) (definition of *party to the WCPFC*)

Repeal the definition.

10 Subsection 4(1) (definition of *regional management measure*)

Repeal the definition.

11 Subsection 4(1) (definition of *regional organisation or arrangement*)

Repeal the definition.

12 Subsection 4(1) (definition of *seriously violate*)

Repeal the definition.

13 Subsection 4(1) (definition of *Treaty licensing area*)

Repeal the definition.

14 Subsection 4(1) (definition of *WCPFC*)

Repeal the definition.

15 Subsection 4(1) (definition of *WCPFC boat*)

Repeal the definition.

16 Subsection 4(1) (definition of *WCPFC conservation and management measure*)

Repeal the definition.

17 Subsection 4(1) (definition of *WCPFC fish stock*)

Repeal the definition.

18 Subsection 7(1) (note)

Repeal the note.

19 At the end of subsection 7(3)

Add “or express provisions that extend the application of this Act”.

20 Subsection 16A(1)

Omit “straddling fish stock or highly migratory”, substitute “conserved”.

Note 1: The heading to section 16A is altered by omitting “**obligations under Fish Stocks Agreement**” and substituting “**international fisheries management organisation and Fish Stocks Agreement obligations**”.

Note 2: The heading to subsection 16A(1) is altered by omitting “*regional*” and substituting “*international fisheries*”.

21 After paragraph 16A(3)(b)

Insert:

(ba) an offence against section 105AA or 105AB;

22 Subsection 16A(4)

Repeal the subsection.

23 Subsection 32(1D) (note)

Omit “straddling fish stock or a highly migratory”, substitute “conserved”.

24 Paragraph 38(3A)(a)

Omit “serious violation of a WCPFC conservation and”, substitute “contravention of an international fisheries”.

25 Subparagraph 39(1)(d)(i)

Omit “regional organisation or arrangement”, substitute “global, regional or subregional fisheries organisation or arrangement”.

26 Subparagraph 39(1)(d)(ii)

Repeal the subparagraph, substitute:

- (ii) Australia is not involved in the organisation or arrangement and has not agreed to apply measures established by the organisation or arrangement.

27 At the end of section 42A

Add “or a measure established by an international fisheries management organisation”.

28 Sections 87A to 87F

Repeal the sections.

29 Subsection 87H(1) (note)

Repeal the note.

30 Paragraph 87H(5)(b)

Omit “section 87F requires”, substitute “another provision of this Act or the regulations requires”.

31 Subsection 87H(5) (note)

Repeal the note.

32 After section 87H

Insert:

87HA Officers’ powers under international agreements and arrangements

Foreign boats in Australia or Australian waters after contraventions on the high seas

- (1) An officer may exercise powers under section 84 in relation to a foreign boat (and the master of the boat, a person on the boat and a thing on the boat) in the AFZ, Australia or an external Territory if:
 - (a) the officer has reasonable grounds to believe that the boat is on a fishing trip; and
 - (b) the officer has reasonable grounds to believe that, during the fishing trip, the boat was used on the high seas in

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- contravention of a measure established by an international fisheries management organisation; and
 - (c) the exercise of the powers in relation to the boat has been authorised by the appropriate authority of the country of nationality of the boat.

Foreign boats on the high seas

- (2) An officer may exercise powers under section 84 in relation to a foreign boat (and the master of the boat, a person on the boat and a thing on the boat) on the high seas if:
 - (a) the officer has reasonable grounds to believe the boat has been used, is being used, or is intended to be used, for fishing; and
 - (b) the exercise of the powers in relation to the boat has been authorised by the appropriate authority of the country of nationality of the boat.

Foreign boats in foreign countries or foreign waters

- (3) An officer may exercise powers under section 84 in relation to a foreign boat (and the master of the boat, a person on the boat and a thing on the boat) at a place in a foreign country or in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country if:
 - (a) the boat was brought or taken to the place:
 - (i) as a result of a requirement made by an officer under paragraph 84(1)(k) or (l) in the exercise of powers under subsection (1) or (2); or
 - (ii) by an officer under paragraph 84(1)(m) in the exercise of powers under subsection (1) or (2); and
 - (b) the exercise of the powers in relation to the boat has been authorised by:
 - (i) the appropriate authority of the country of nationality of the boat; and
 - (ii) if the boat is at a place in a foreign country or in the territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country—the appropriate authority of that country.
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Applying section 84

- (4) For the purposes of subsections (1) to (3), section 84 applies:
- (a) as if:
 - (i) a reference to the AFZ included a reference to the high seas; and
 - (ii) a reference to Australia or an external Territory included a reference to a foreign country, including the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of that country; and
 - (iii) a reference to a fishing concession, or a fishing concession under this Act, included a reference to an authorisation to fish (however described) issued by a foreign country or an international fisheries management organisation; and
 - (iv) a reference to an offence against subsection 95(2) included a reference to an offence against section 105E, 105EA, 105F, 105FA, 105H or 105I; and
 - (b) as affected by:
 - (i) other provisions of this Act; or
 - (ii) regulations made for the purposes of section 84 or any other provision of this Act.

Regulations may prescribe procedural requirements

- (5) In exercising powers under subsections (1) to (3), an officer must follow the procedures (if any) prescribed by the regulations.
- (6) The regulations may prescribe different procedures for the exercise of powers in relation to:
- (a) boats of different nationalities; or
 - (b) boats covered by:
 - (i) different international fisheries management organisations; or
 - (ii) different international fisheries management measures; or
 - (c) boats covered by the Fish Stocks Agreement.

Extra-territorial operation of Act

- (7) This section does not limit:
- (a) the extra-territorial operation that section 84 has apart from this section; or
 - (b) section 87.

33 Subsection 87J(1)

Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

34 Subsection 88(1)

Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

35 Section 88A

Repeal the section, substitute:

88A Seizure and forfeiture of foreign boats etc.

- (1) The regulations may provide that some or all of the provisions of this Act that relate to seizure and forfeiture of property do not apply in relation to:
- (a) foreign boats (including nets, traps, equipment or fish on such boats) covered by a specified:
 - (i) international fisheries management organisation; or
 - (ii) international fisheries management measure; or
 - (b) foreign boats covered by the Fish Stocks Agreement; or
 - (c) foreign boats mentioned in paragraph (a) or (b) in specified circumstances.
- (2) The regulations may prescribe procedures to be followed in dealing with property:
- (a) under the control of an officer; and
 - (b) covered by regulations made under subsection (1).

36 Paragraph 98(1A)(b)

After “105A,”, insert “105AA, 105AB,”.

37 At the end of subsection 98(1A)

Add:

; or (c) against section 105E, 105EA, 105F, 105FA, 105H or 105I.

38 Paragraph 102(1)(c)

Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

39 Paragraph 105AA(1)(b)

Omit “WCPFC”, substitute “conserved”.

Note: The heading to section 105AA is altered by omitting “WCPFC” and substituting “conserved”.

40 Paragraph 105AA(1)(d)

Omit “Convention area”, substitute “conservation area for the fish stock”.

41 Paragraph 105AB(1)(b)

Omit “WCPFC”, substitute “conserved”.

Note: The heading to section 105AB is altered by omitting “WCPFC” and substituting “conserved”.

42 Paragraph 105AB(1)(d)

Omit “Convention area”, substitute “conservation area for the fish stock”.

43 Subsection 105D(1)

After “Agreement” (first occurring), insert “or that participates in an international fisheries management organisation”.

44 At the end of paragraph 105D(1)(c)

Add “or measures established by the international fisheries management organisation”.

45 Subsection 105D(2)

After “Agreement” (first occurring), insert “or that participates in an international fisheries management organisation”.

Note: The heading to subsection 105D(2) is altered by omitting “regional” and substituting “international fisheries”.

46 Subsection 105D(2)

Omit “a regional”, substitute “an international fisheries”.

47 Paragraph 105D(2)(a)

Omit “a regional organisation or arrangement”, substitute “the international fisheries management organisation”.

48 Paragraph 105D(2)(b)

Omit “regional”, substitute “international fisheries”.

49 At the end of paragraph 105D(2)(c)

Add “or measures established by the international fisheries management organisation”.

50 Subsection 105D(5)

Omit “a regional”, substitute “an international fisheries”.

Note: The heading to subsection 105D(5) is altered by omitting “*regional*” and substituting “*international fisheries*”.

51 At the end of paragraph 105D(5)(c)

Add “or measures established by the international fisheries management organisation”.

52 Subdivisions AA, B and C of Division 5A of Part 6

Repeal the Subdivisions, substitute:

Subdivision B—Using foreign boat to contravene international fisheries management measure

105E Contravention on high seas—strict liability

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the person contravenes an international fisheries management measure in relation to the fishing; and
 - (c) the boat is on the high seas; and
 - (d) the boat is a foreign boat.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

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

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.

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

105EA Contravention on high seas

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the person contravenes an international fisheries management measure in relation to the fishing; and
 - (c) the boat is on the high seas; and
 - (d) the boat is a foreign boat.

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(c) and (d).

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

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.

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

105EB Attorney-General's consent required for prosecution

- (1) The Attorney-General's written consent is required before a charge of an offence against section 105E or 105EA, alleged to have been committed by a person other than an Australian national, can proceed to hearing or determination.
- (2) Before granting such a consent, the Attorney-General must take into account any views expressed by the government of the country of nationality of the boat alleged to be involved in the offence.
- (3) Even though the Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay:

-
- (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
 - (b) the laying of a charge against the suspected offender; or
 - (c) proceedings for the extradition to Australia of the suspected offender; or
 - (d) proceedings for remanding the suspected offender in custody or on bail.
- (4) If the Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay proceedings on the charge.
- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Attorney-General in accordance with this section will be accepted, in the absence of proof to the contrary, as proof of such consent.

105F Australian national on foreign boat in foreign waters—strict liability

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the person is an Australian national; and
 - (c) the person contravenes an international fisheries management measure in relation to the fishing; and
 - (d) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country; and
 - (e) the boat is a foreign boat.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

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

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country covered by paragraph (1)(d).

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

105FA Australian national on foreign boat in foreign waters

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the person is an Australian national; and
 - (c) the person contravenes an international fisheries management measure in relation to the fishing; and
 - (d) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country; and
 - (e) the boat is a foreign boat.

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(d) and (e).

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

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country covered by paragraph (1)(d).

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

Subdivision C—Unauthorised foreign boat on high seas

105H Unauthorised fishing—strict liability

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the boat is a foreign boat; and
 - (c) the boat is on the high seas; and
 - (d) a law of the country of nationality of the boat requires the fishing to be authorised (however described); and
 - (e) the fishing is not so authorised.

Penalty: 60 penalty units.

-
- (2) Strict liability applies to subsection (1).

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

105I Unauthorised fishing

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the boat is a foreign boat; and
 - (c) the boat is on the high seas; and
 - (d) a law of the country of nationality of the boat requires the fishing to be authorised (however described); and
 - (e) the fishing is not so authorised.

Penalty: 500 penalty units.

105J Attorney-General's consent required for prosecution

- (1) The Attorney-General's written consent is required before a charge of an offence against this Subdivision, alleged to have been committed by a person other than an Australian national, can proceed to hearing or determination.
- (2) Before granting such a consent, the Attorney-General must take into account any views expressed by the government of the country of nationality of the boat alleged to be involved in the offence.
- (3) Even though the Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay:
- (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
 - (b) the laying of a charge against the suspected offender; or
 - (c) proceedings for the extradition to Australia of the suspected offender; or
 - (d) proceedings for remanding the suspected offender in custody or on bail.
- (4) If the Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay proceedings on the charge.

- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Attorney-General in accordance with this section will be accepted, in the absence of proof to the contrary, as proof of such consent.

53 Subsection 106(1)

Omit “, subsection 95(5) or section 105C or 105F”, substitute “or subsection 95(5)”.

54 Subsection 106(2)

Omit “, 104, 105A, 105B or 105E”, substitute “or 104 or Division 5A of Part 6”.

55 Subparagraph 106AAA(1)(a)(i)

Omit “, subsection 95(5) or section 105C or 105F”. substitute “or subsection 95(5)”.

56 Subparagraph 106AAA(1)(a)(ii)

Omit “, 104, 105A, 105B or 105E”, substitute “or 104 or Division 5A of Part 6”.

57 Paragraph 108(1)(c)

Omit “87C or 87G”, substitute “87G or 87HA”.

58 Paragraph 168(2)(l)

Omit “87A, 87B, 87C, 87D or 87G”, substitute “87G or 87HA”.

59 Paragraph 168(2)(na)

Omit “a part of the Convention area for a purpose related to fishing for a WCPFC fish stock”, substitute “an area covered by an international fisheries management organisation”.

60 Subclause 8(1) of Schedule 1A

Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

61 Subclause 8(3) of Schedule 1A

Omit “subject to section 87E”, substitute “, in relation to an offence against section 105E, 105EA, 105H or 105I, subject to any limitations set out in the regulations”.

62 Subclause 8(3) of Schedule 1A (note)

Repeal the note.

63 Subclause 10(1) of Schedule 1A

Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

64 Subclause 12(4) of Schedule 1A

Omit “subject to section 87E”, substitute “, in relation to a person detained in relation to an offence against section 105E, 105EA, 105H or 105I, subject to any limitations set out in the regulations”.

65 Subclause 12(4) of Schedule 1A (note)

Repeal the note.

66 Subparagraph 15(2)(b)(i) of Schedule 1A

Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

Migration Act 1958**67 Subsection 5(1) (paragraph (a) of the definition of *fisheries detention offence*)**

Omit “or 105F”, substitute “, 105EA, 105H or 105I”.

68 Paragraph 43(5)(b)

Omit “, 87B, 87C or 87D”, substitute “or 87HA”.

69 Paragraph 164B(1A)(b)

Omit “, 87B, 87C or 87D”, substitute “or 87HA”.

Schedule 4—Support boats

Fisheries Management Act 1991

1 Paragraphs 87(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) subsection (1A), (1B) or (1C) applies in relation to the person or boat; and
- (b) the power is exercised at or immediately after the end of the pursuit referred to in whichever of subsection (1A), (1B) or (1C) applies.

Note: The heading to section 87 is replaced by the heading “**Officers’ powers at place outside AFZ following pursuit**”.

2 After subsection 87(1)

Insert:

Person or boat pursued from within AFZ

- (1A) This subsection applies in relation to a person or a boat if one or more officers (whether or not including the officer exercising the power under section 84):
- (a) pursued the person or boat without interruption from a place in the AFZ to the place referred to in subsection (1); and
 - (b) if the power is to be exercised in relation to a foreign boat or a person who is on such a boat—ordered, when the boat was in the AFZ, the master of the boat to stop the boat to allow an officer to board it.

Australian boat outside AFZ supporting foreign boat in AFZ

- (1B) This subsection applies in relation to an Australian boat (the **support boat**), or a person on such a boat, if:
- (a) one or more officers (whether or not including the officer exercising the power under section 84) have pursued the support boat without interruption from a place outside the AFZ to the place referred to in subsection (1); and
 - (b) the officer exercising the power under section 84 has reasonable grounds to believe that:

- (i) the support boat has been used in support of, or in preparation for, the use of another boat in the commission of an offence against section 100, 100A, 100B, 101, 101A or 101AA; and
- (ii) immediately before the pursuit began, the support boat was still being used in support of the other boat or in preparation for the commission of such an offence by the other boat; and
- (c) the other boat was in the AFZ when the pursuit began.

Foreign boat outside AFZ supporting foreign boat in AFZ

(1C) This subsection applies in relation to a foreign boat (the **support boat**), and a person on such a boat, if:

- (a) one or more officers (whether or not including the officer exercising the power under section 84) have pursued the support boat without interruption from a place outside the AFZ to the place referred to in subsection (1); and
- (b) the officer exercising the power under section 84 has reasonable grounds to believe that the support boat has been used in support of, or in preparation for, the use of another boat in the commission of an offence against section 100, 100A, 100B, 101, 101A or 101AA; and
- (c) one or more officers (whether or not including the officer exercising the power under section 84), as soon as practicable after the offence referred to in paragraph (b) was committed, ordered the master of the support boat to stop the support boat to allow an officer to board it; and
- (d) the officer exercising the power under section 84 has reasonable grounds to believe that, immediately before the order was made, the support boat was still being used in support of the other boat or in preparation for the commission of an offence referred to in paragraph (b) by the other boat; and
- (e) the other boat was in the AFZ when the order referred to in paragraph (c) was made.

3 Subsection 87(2)

Omit “subsection (1)”, substitute “subsections (1A), (1B) and (1C)”.

4 Subsection 87(2)

Omit “terminated or substantially”.

5 At the end of section 87

Add:

- (4) For the purposes of subsections (1A), (1B) and (1C), a person or boat is taken to have been pursued even if the person or boat does not seek to evade an officer.
- (5) An officer may use any reasonable means to make an order under paragraph (1A)(b) or (1C)(c).
- (6) An order is still made under paragraph (1A)(b) or (1C)(c) even if:
 - (a) there was no master on board the boat to receive the order; or
 - (b) the master did not receive or understand the order.
- (7) Paragraph 84(1)(a) applies, for the purposes of subsection (1), in relation to a support boat to which subsection (1B) or (1C) applies, as if the support boat were in the AFZ.

6 Subsections 101B(3), (4) and (5)

Repeal the subsections.

Migration Act 1958

7 Paragraph 43(5)(b)

Before “87B”, insert “87,”.

8 Paragraph 164B(1A)(b)

Before “87B”, insert “87,”.

*[Minister's second reading speech made in—
House of Representatives on 20 March 2008
Senate on 16 June 2008]*

(66/08)

*Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries
Management Authority and Other Matters) Act 2008 No. 36, 2008 73*