

TASMANIA

LIVING MARINE RESOURCES MANAGEMENT (MISCELLANEOUS AMENDMENTS) BILL 2006

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**LIVING MARINE RESOURCES MANAGEMENT
(MISCELLANEOUS AMENDMENTS) BILL 2006**

*(Brought in by the Minister for Primary Industries and Water,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the *Living Marine Resources Management Act 1995* and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Living Marine Resources Management (Miscellaneous Amendments) Act 2006*.

2. Commencement

- (1) This Act, other than section 77, commences on the day on which it receives the Royal Assent.
- (2) Section 77 commences on 1 March 2007.

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3. Principal Act

In this Act, the *Living Marine Resources Management Act 1995** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “Aborigine”:

“adult” means a natural person who has attained the age of 18 years;

- (b) by omitting the definition of “maximum number of pots”;

- (c) by omitting the definition of “possession” and substituting the following definition:

“possession” – see section 6A;

- (d) by omitting the definition of “process” and substituting the following definition:

“process”, in relation to any fish, means to –

- (a) void or purge the fish; or

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- (b) break up, cut up, skin or fillet the fish; or
 - (c) shell or shuck the fish; or
 - (d) dry, cure, smoke or cook the fish; or
 - (e) chill the fish (either dead or alive); or
 - (f) freeze the fish; or
 - (g) pack the fish (either dead or alive); or
 - (h) can the fish; or
 - (i) treat the fish by any other means; or
 - (j) hold the fish in readiness for processing by any means;
- (e) by omitting the definition of “recreational fishing” and substituting the following definition:

“recreational fishing” means fishing carried out other than –

- (a) for a commercial purpose; or
- (b) as part of an Aboriginal cultural activity;

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- (f) by omitting the definitions of “rock lobster catch history”, “rock lobster catch history unit”, “rock lobster fishery A” and “rock lobster fishery B”;
- (g) by omitting the definition of “rock lobster quota unit” and substituting the following definition:
 - “**rock lobster quota unit**”, for a quota period, means a unit that is an entitlement to one 10 507th of the total allowable catch set for the commercial rock lobster fishery for that quota period;
- (h) by inserting “or in the expectation of receiving any kind of reward” after “consideration” in paragraph (a) of the definition of “sale”;
- (i) by omitting “or chance;” from paragraph (i) of the definition of “sale” and substituting “of chance; and”;
- (j) by inserting the following paragraph after paragraph (i) in the definition of “sale”:
 - (j) resale;
- (k) by omitting the definitions of “scientific observer” and “scientific observer scheme”;
- (l) by omitting the definition of “take fish” and substituting the following definition:

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“take”, in relation to fish, includes any of the following activities (except where the activity is authorised under a marine farming licence or fish processing licence):

- (a) capture, carry away, catch, collect, dredge or fish for, gather, kill, raise, remove or in any other way obtain the fish (whether from water, land under water or the foreshore);
- (b) land the fish from a vessel or in any other way bring the fish ashore;
- (c) transfer the fish from one fishing vessel to another fishing vessel;
- (d) attempt, cause or permit an act referred to in paragraph (a), (b) or (c);
- (m) by omitting the definitions of “year”, “yearly catch” and “yearly catch history”.

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5. Section 6A inserted

After section 6 of the Principal Act, the following section is inserted in Division 1:

6A. Meaning of possession

- (1) A person is taken to be in possession of something for the purposes of this Act if the person has, either alone or jointly with others, actual possession or actual custody of the thing.
- (2) A person is also taken to be in possession of something for the purposes of this Act if –
 - (a) the thing is at or in a place that the person, either alone or jointly with others, occupies; or
 - (b) the person, either alone or jointly with others, enjoys the thing at or in any place; or
 - (c) the person has, whether it is exercised for the person's own benefit or for the benefit of others, any control over the thing.
- (3) Subsection (2) applies whether or not any other person has actual possession or actual custody of the thing.

- (4) However, subsection (2)(a) does not apply if the person proves that the person had no knowledge of the thing.

6. Section 11 substituted

Section 11 of the Principal Act is repealed and the following section is substituted:

11. Exemption from Act

- (1) The Minister, by instrument in writing, may exempt a person or a class of persons from any provision of this Act.
- (2) The exemption may be granted on the Minister's own initiative or consequent on an application made by or on behalf of the person or class of persons.
- (3) The Minister, having regard to any relevant considerations, may grant the exemption –
- (a) for such period not exceeding 3 years as the Minister thinks fit; and
 - (b) on such conditions, if any, as the Minister thinks fit.
- (4) The Minister, by instrument in writing, may at any time –

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- (a) vary the conditions of the exemption, if any; or
 - (b) revoke the exemption.
- (5) The Minister is to ensure that each person who has the benefit of the exemption is given adequate advance notice of the variation of its conditions or of its revocation.
- (6) However, in the case of a class exemption where not all members of the class are individually known, notice under subsection (5) may be given by means of a public notice.
- (7) The exemption remains in force until the first of the following occurs:
 - (a) the period for which the exemption has been granted expires;
 - (b) the exemption is revoked.
- (8) A person must not contravene a condition of an exemption granted under this section.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 6 months, or both, and a daily fine not exceeding 5 penalty units.

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(9) In this section –

“**relevant consideration**”, in relation to the granting of an exemption, includes –

- (a) the reasons for, and the nature and scope of, the exemption; and
- (b) the purpose and objectives of this Act set out in section 7; and
- (c) whether the exemption is likely to yield any commercial, educational, environmental, economic, scientific or other benefit (either locally, nationally or internationally) having particular regard to fisheries or allied industries; and
- (d) whether the exemption is likely to involve any risk to the State’s fisheries or allied industries; and
- (e) whether the objects of the exemption are reasonably capable of being attained by other means; and
- (f) the likely impact of the exemption, if any, on the operation of any management plan; and

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- (g) whether the exemption will be fair having regard to the interests and obligations of any existing licence and permit holders; and
- (h) the character and antecedents of any person who will have the benefit of the exemption; and
- (i) the Crown's experience with any exemptions of a similar kind; and
- (j) compliance monitoring requirements.

7. Section 12 amended (Permits)

Section 12 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(h) "Act." and substituting "Act;"
- (b) by inserting the following paragraphs after paragraph (h) in subsection (1):
 - (i) Aboriginal cultural and ceremonial activities;
 - (j) the development of marine farming;
 - (k) law enforcement;
 - (l) environmental monitoring;

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- (m) bio-prospecting.
- (c) by omitting paragraph (a) from subsection (4) and substituting the following paragraph:
 - (a) issue permits authorising the taking of actions which would otherwise contravene provisions of this Act; and
- (d) by omitting from subsection (4)(b) “a” and substituting “any such”;
- (e) by omitting from subsection (4)(c) “paragraph (b).” and substituting “paragraph (b); and”;
- (f) by inserting the following paragraph after paragraph (c) in subsection (4):
 - (d) determine the conditions of any such permit.

8. Section 13 amended (Grant of permit)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “section 12(1)(b), (c), (d) or (f)” and substituting “section 12(1)(b), (c), (d), (f) or (j)”;

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(b) by inserting the following subsection after subsection (2):

(3) However, subsection (2) does not apply to a permit for the purpose specified in section 12(1)(k).

9. Section 15 amended (Condition of permit)

Section 15(2) of the Principal Act is amended by omitting “fail to comply with, or contravene,” and substituting “contravene”.

10. Section 22 substituted

Section 22 of the Principal Act is repealed and the following section is substituted:

22. Inquiries

- (1) The Minister, by instrument in writing, may direct a qualified person to conduct an inquiry into a matter under this Act.
- (2) Sections 8 and 33, and Part 3 of the *Commissions of Inquiry Act 1995* (other than sections 17, 18, 19 and 23 of that Part) apply to the inquiry as if –
 - (a) the qualified person conducting it were a Commission established under section 4 of that Act; and

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(b) the subject of the inquiry were the matter into which that Commission had been directed to inquire under that Act.

(3) In this section –

“qualified person” means –

- (a) the Secretary; or
- (b) a person who, in the Minister’s estimation, has qualifications, expertise or experience relevant to the subject of the inquiry.

11. Section 40D amended (General provisions relating to rules)

Section 40D of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) Rules may authorise any matter to be from time to time determined, applied or regulated by –
 - (a) the Minister; or
 - (b) the Secretary or another fisheries officer.
- (4) Rules that are made wholly or partly in substitution for other rules may contain

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provisions of a savings and transitional
nature.

12. Section 42 substituted

Section 42 of the Principal Act is repealed and
the following section is substituted:

42. Offences and penalties

(1) Rules made under this Division may
provide that –

(a) a contravention of any of the
rules is an offence; and

(b) in respect of any such offence,
provide for the imposition of –

(i) a penalty of either or both
of the following:

(A) imprisonment for
a term not
exceeding 2 years;

(B) a fine not
exceeding 5 000
penalty units and,
in the case of a
continuing
offence, a further
fine not exceeding
10 penalty units
for each day

during which the
offence continues;
or

(ii) a penalty specified in the
regulations.

(2) Rules made under this Division may –

- (a) provide that an offence under the rules is a prescribed offence for the purposes of Division 5 of Part 9 (an offence in respect of which an infringement notice may be served); and
- (b) prescribe the penalty or special penalty, or both, for that prescribed offence.

13. Section 49 amended (Order changing management plan)

Section 49(3)(f) of the Principal Act is amended by omitting “fine” and substituting “penalty”.

14. Section 59 amended (Emergency order)

Section 59(5) of the Principal Act is amended by omitting “fail to comply with” and substituting “contravene”.

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15. Section 60 amended (Fishing licence)

Section 60(2) of the Principal Act is amended by omitting paragraph (ba) and substituting the following paragraph:

- (ba) a person who carries out an activity specified in subsection (1), other than taking fish with a spear or by diving, under the close direct supervision of –
 - (i) a natural person who is the holder of a fishing licence; or
 - (ii) a supervisor; or

16. Section 66A inserted

After section 66 of the Principal Act, the following section is inserted in Division 2:

66A. Marine farming licence depends on marine farming lease

- (1) The Minister must cancel a marine farming licence if the holder of the licence –
 - (a) ceases for any reason to hold a lease under the *Marine Farming Planning Act 1995* for the area to which the licence relates; and
 - (b) is not, under that Act, being granted a new lease for that area.

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(2) The cancellation takes effect as soon as the holder of the licence is given written notice of it by the Minister.

(3) In this section –

“lease” means a lease of any kind within the meaning of the *Marine Farming Planning Act 1995*.

17. Section 67 amended (Fish processing licence)

Section 67 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) A person who does not hold a fish processing licence must not, for commercial purposes, process –

(a) abalone, giant crab, rock lobster or scallop; or

(b) more than a prescribed quantity of prescribed fish during a prescribed period.

Penalty: Fine not exceeding 500 penalty units and a daily fine not exceeding 10 penalty units.

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(b) by inserting the following paragraph after paragraph (c) in subsection (2):

(ca) by the holder of a marine farming licence if the fish have been produced under the authority of any marine farming licence and are being packed live, or being held in readiness to be packed live, for sale; or

(c) by inserting the following subsection after subsection (3):

(4) In this section –

“**abalone**” means fish of the genus *Haliotis*;

“**giant crab**” means crab of the species *Pseudocarcinus gigas*;

“**rock lobster**” means rock lobster of the genus *Jasus*;

“**scallop**” means fish of the species –

(a) *Equichlamys bifrons*
(commonly known as queen scallop);
or

- (b) *Pecten fumatus*
(commonly known
as commercial
scallop); or
- (c) *Mimachlamys*
asperrimus
(commonly known
as doughboy
scallop).

18. Section 68 substituted

Section 68 of the Principal Act is repealed and
the following section is substituted:

68. Processing fish

- (1) A fish processing licence is to specify the places where the fish that it authorises to be processed may be processed.
- (2) Under subsection (1), a place may be specified as –
 - (a) a place where fish of any kind may be processed; or
 - (b) a place where only fish of a particular kind may be processed.
- (3) The holder of a fish processing licence must not process fish at a place other than the place specified for that purpose in the licence.

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Penalty: Fine not exceeding 500 penalty units.

- (4) The holder of a fish processing licence must not –
- (a) have, at a place specified in the licence pursuant to subsection (1), fish that have been taken illegally; or
 - (b) cause or allow another person to have, at a place specified in the licence pursuant to subsection (1), fish that have been taken illegally.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

19. Section 77 amended (Applications)

Section 77(2) of the Principal Act is amended by omitting “a natural person” and substituting “an adult”.

20. Section 78 amended (Grant of licence)

Section 78(1) of the Principal Act is amended as follows:

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- (a) by inserting the following paragraph after paragraph (f):
 - (fa) the applicant is, in the case of a natural person who is applying for a licence for commercial purposes, an adult; and
- (b) by omitting from paragraph (g) “charges.” and substituting “charges; and”;
- (c) by inserting the following paragraph after paragraph (g):
 - (h) it is appropriate to do so.

21. Section 81 amended (Renewal of licence)

Section 81 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “, before it ceases to be in force,” after “may”;
- (b) by omitting from subsection (2) “a” first occurring and substituting “the”;
- (c) by inserting the following paragraph after paragraph (e) in subsection (2):
 - (ea) the applicant is, in the case of a natural person who is applying for the renewal of a licence for

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commercial purposes, an adult;
and

- (d) by omitting from subsection (4) “The Minister may refuse to renew a fish processing” and substituting “Also, in the case of a fish processing licence, the Minister may refuse to renew the”;
- (e) by inserting the following subsection after subsection (4):
 - (5) If the application for the renewal of the licence is not determined by the Minister before the day on which it ceases to be in force, it is, despite section 80, taken to continue in force until it is renewed or its renewal is refused under this section.

22. Section 82 amended (Transfer of licence)

Section 82 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (f) in subsection (2):
 - (faa) the other person is, if a natural person, an adult; and
- (b) by omitting subsection (4) and substituting the following subsections:

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- (4) The Minister may defer a decision on an application under subsection (1) pending the determination or discontinuation of any proceedings against the applicant, the proposed transferee or an associate of the proposed transferee for an offence against –
- (a) this Act; or
 - (b) any other Act that the Minister considers relevant to the making of the decision; or
 - (c) a corresponding law.
- (5) For the purposes of subsection (4), a person is an associate of the proposed transferee if the person –
- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in their own right or on behalf of any other person), in a business of the proposed transferee and, by virtue of that interest or power, is able or will be able to exercise a significant

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influence over or in
respect of the
management or operation
of that business; or

(b) holds or will hold any
relevant position (whether
in their own right or on
behalf of any other
person) in a business of
the proposed transferee;
or

(c) is a relative of the
proposed transferee.

(6) In this section –

“relative” means –

(a) the spouse, parent,
child or sibling
(whether of the
full or half blood);
or

(b) the person with
whom a person is
in a personal
relationship within
the meaning of the
Relationships Act
2003;

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“relevant financial interest”,
in relation to a business,
means –

- (a) any share in the
capital of the
business; or
- (b) any entitlement to
receive any
income derived
from the business;

“relevant position”, in
relation to a business,
means the position of
director, manager or other
executive position or
secretary, however that
position is designated in
that business;

“relevant power” means any
power, whether
exercisable by voting or
otherwise and whether
exercisable alone or in
association with others –

- (a) to participate in a
directorial,
managerial or
executive
decision; or

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- (b) to elect or appoint any person to any relevant position.

23. Section 83 amended (Variation of licence)

Section 83 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (d) in subsection (1A):

- (da) varying the licence will not, if it includes matters provided for under a deed of agreement, be inconsistent with that deed of agreement; and

- (b) by omitting subsection (1C) and substituting the following subsections:

- (1C) The Minister may defer a decision on an application under subsection (1) pending the determination or discontinuation of any proceedings against the applicant for an offence against –

- (a) this Act; or
 - (b) any other Act that the Minister thinks is relevant to the making of that decision; or

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(c) a corresponding law.

(1D) In exercising power under subsection (1)(b), the Minister is to ensure that –

(a) a marine farming licence is not varied in a way that is inconsistent with a marine farming development plan; and

(b) a licence that includes matters provided for under a deed of agreement is not varied in a way that is inconsistent with that deed of agreement.

(c) by omitting paragraph (b) from subsection (2);

(d) by omitting from subsection (2)(c) “containing new conditions”;

(e) by omitting from subsection (4) “specified in the notice served under subsection (2)(b)” and substituting “on which the substitute licence is issued”;

(f) by inserting the following subsection after subsection (4):

(5) In this section –

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“**vary a licence**” includes vary the conditions of the licence by doing one or more of the following:

- (a) omitting a subsisting condition;
- (b) amending a subsisting condition;
- (c) adding a new condition.

24. Section 86 repealed

Section 86 of the Principal Act is repealed.

25. Section 86A amended (Compliance with conditions)

Section 86A of the Principal Act is amended by omitting “or fail to comply with”.

26. Section 87 amended (Prohibition on use of licence by other persons)

Section 87 of the Principal Act is amended as follows:

- (a) by inserting the following subparagraph after subparagraph (iv) in subsection (2)(b):

- (v) is, if a natural person, an adult;
and
- (b) by omitting from subsection (3) “for a person to prove” and substituting “if the defendant establishes”.

27. Section 89 amended (Supervision of activities)

Section 89(4) of the Principal Act is amended by inserting “as if the supervisor were the holder of the licence” after “Act”.

28. Sections 90 and 92 substituted

Sections 90 and 92 of the Principal Act are repealed and the following sections are substituted:

90. Cancellation or suspension of licence

- (1) The Secretary may apply to a magistrate for an order to cancel a licence, or to suspend it for a period of 5 years, if –
 - (a) the holder, or a supervisor or approved user, of the licence is convicted of an offence against this Act, another Act or a corresponding law, being an offence of a kind that is –

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- (i) relevant to the holding, supervision or use of the licence; and
 - (ii) of such character as to merit the cancellation or suspension of the licence; or
- (b) the holder, or a supervisor or approved user, of the licence is convicted of an offence, against a corresponding law or a New Zealand law, that is the equivalent of an offence under this Act; or
- (c) the holder, or a supervisor or approved user, of the licence contravenes a condition of the licence; or
- (d) the holder, or a supervisor or approved user, of the licence contravenes a provision of this Act relating to the keeping or supply of any records, accounts or other information; or
- (e) a fee or charge or other money payable in respect of the licence is not paid by the due date.
- (2) Only the following persons may be a party to the proceedings on the application:

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- (a) the Secretary;
 - (b) the holder of the licence;
 - (c) a supervisor of the licence;
 - (d) an approved user of the licence.
- (3) Subject to subsections (4) and (5), the magistrate may grant or dismiss the application.
- (4) The magistrate may grant the application and order the cancellation or suspension of the licence if –
- (a) the Secretary has given the magistrate, either orally or by affidavit, any information the magistrate requires concerning the grounds on which the order is sought; and
 - (b) the prescribed requirements, if any, relating to the making or hearing of the application have been met; and
 - (c) the magistrate is satisfied that there are reasonable grounds for making the order.
- (5) The authority conferred by a licence is of no effect while it is suspended.
- (6) In this section –

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“approved user”, of a licence, means
a person who is allowed to use
the licence pursuant to an
approval under section 87.

92. Surrender of licence

- (1) The holder of a licence may, by notice in writing to the Secretary, surrender it at any time.
- (2) The surrender takes effect –
 - (a) on the date specified in the notice; or
 - (b) if no date is specified in the notice, on the day the Secretary receives the notice.
- (3) The licence is cancelled as soon as the surrender takes effect.

29. Sections 98A and 98B repealed

Sections 98A and 98B of the Principal Act are repealed.

30. Section 98C amended (Allocation of rock lobster quota units)

Section 98C of the Principal Act is amended by omitting subsections (3) and (4).

31. Sections 98D, 98E, 98F, 98G, 98H, 98I, 98J, 98K and 98L repealed

Sections 98D, 98E, 98F, 98G, 98H, 98I, 98J, 98K and 98L of the Principal Act are repealed.

32. Section 104 substituted

Section 104 of the Principal Act is repealed and the following section is substituted:

104. Rules

- (1) The Minister may make rules for –
 - (a) marine resources protected area management plans; and
 - (b) habitat protection plans.
- (2) Without limiting the generality of subsection (1), rules may be made in relation to the following matters:
 - (a) the prohibition of all or any fishing;
 - (b) the restriction of any fishing to any season, class of person, time, area, fishing method, apparatus, species, size, quantity, class of fish or for any purpose;
 - (c) the possession of any species, size, class or quantity of fish;

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- (d) the use and possession of any apparatus or other matter, equipment, contrivance or vessel;
 - (e) the granting of an approval under section 132;
 - (f) reporting, notification, marking, identification, landing or monitoring requirements in respect of any activity likely to have a detrimental effect on the environment;
 - (g) any other matter the Minister considers necessary or convenient to achieve the objectives of the marine resources protected area management plan or the habitat protection plan.
- (3) Rules may –
- (a) provide that a contravention of any of the rules is an offence; and
 - (b) in respect of any offence, provide for the imposition of –
 - (i) a penalty of either or both of the following:
 - (A) imprisonment for a term not exceeding 2 years;

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- (B) a fine not exceeding 5 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; or
 - (ii) a penalty specified in the regulations.
- (4) Rules may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the rules.
- (5) Rules may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the rules take effect.
- (6) Rules may authorise any matter to be from time to time determined, applied or regulated by –
 - (a) the Minister; or

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(b) the Secretary or another fisheries officer.

(7) Rules that are made wholly or partly in substitution for other rules may contain provisions of a savings and transitional nature.

33. Section 113 amended (Compliance with marine management plan)

Section 113 of the Principal Act is amended by omitting “or fail to comply with”.

34. Section 126 amended (Importation of live fish)

Section 126(3) of the Principal Act is amended by omitting “for a person to prove that the person” and substituting “if the defendant establishes that he or she”.

35. Section 129 amended (Possession of noxious fish)

Section 129(2) of the Principal Act is amended by omitting “for a person to prove” and substituting “if the defendant establishes”.

36. Section 133 amended (Conditions of approval)

Section 133(3) of the Principal Act is amended by omitting “fail to comply with” and substituting “contravene”.

37. Section 134 amended (Revocation of approval)

Section 134 of the Principal Act is amended by omitting “fails to comply with” and substituting “contravenes”.

38. Section 136 amended (Notice to restore fish habitat)

Section 136 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “or fail to comply with”;
- (b) by omitting from subsection (4) “for a person to prove” and substituting “if the defendant establishes”.

39. Section 137 amended (Minister may take action)

Section 137 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or fails to comply with”;

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- (b) by omitting from subsection (3)(a) “or failed to comply with”.

40. Section 139 amended (Protection of marine plant)

Section 139(2) of the Principal Act is amended by omitting “for a person to prove” and substituting “if the defendant establishes”.

41. Section 147 substituted

Section 147 of the Principal Act is repealed and the following section is substituted:

147. Scientific observers

- (1) The Secretary, by instrument in writing, may authorise persons to be scientific observers for the purposes of the scientific observer scheme.
- (2) Persons holding authorisations under subsection (1) are not subject to the *State Service Act 2000* but a State Service officer or State Service employee may hold such an authorisation in conjunction with his or her State Service employment.
- (3) However, the Secretary must not authorise any of the following to be scientific observers:

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- (a) a fisheries officer;
- (b) an assistant fisheries officer;
- (c) a person who has any of the powers of a fisheries officer.

42. Section 161 amended (Arrangements with Commonwealth)

Section 161 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) The power of the State to enter into an arrangement with the Commonwealth under subsection (1) includes the power to vary or terminate the arrangement.
- (5) If an arrangement entered into under subsection (1) is varied, a reference to the arrangement in any legislative or other instrument is, unless the context expressly or impliedly indicates otherwise, a reference to the arrangement as so varied.

43. Section 197 amended (Application and issue of warrant)

Section 197(2)(a) of the Principal Act is amended by omitting “believing” and substituting “suspecting”.

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44. Section 200 amended (Seizure of fish, vessels and other things)

Section 200(f) of the Principal Act is amended by omitting “is evidence” and substituting “may be evidence”.

45. Section 204 amended (Contravention of requirement, direction or signal)

Section 204 of the Principal Act is amended by omitting “fail to comply with” and substituting “contravene”.

46. Section 209 amended (Defence for accidental taking of fish)

Section 209 of the Principal Act is amended as follows:

- (a) by omitting “for a person to satisfy the court” and substituting “if the defendant establishes”;
- (b) by omitting “person” second occurring and substituting “defendant”.

47. Section 210 amended (Liability of master of vessel)

Section 210(2) of the Principal Act is amended as follows:

- (a) by omitting “for the master of the vessel to prove” and substituting “if the defendant establishes”;
- (b) by omitting from paragraph (c) “action” and substituting “steps”.

48. Section 211 amended (Liability of employer)

Section 211 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that the defendant –
 - (a) did not know the offence had been committed; and
 - (b) could not reasonably have prevented the commission of the offence; and
 - (c) had, before the offence allegedly occurred, taken reasonable steps to have the employee comply with this Act; and
 - (d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

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49. Section 212 substituted

Section 212 of the Principal Act is repealed and the following section is substituted:

212. Liability of person concerned in management of body corporate

- (1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person establishes that –
 - (a) the act or omission constituting the offence took place without the person's knowledge or consent; or
 - (b) the person used all due diligence to prevent that act or omission by the body corporate.
- (2) A person referred to subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.

50. Section 213 amended (Liability of holder of authorisation regarding offence by agent)

Section 213 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she –
- (a) did not know the offence had been committed; and
 - (b) could not reasonably have prevented the commission of the offence; and
 - (c) had, before the offence allegedly occurred, taken reasonable steps to have the agent comply with this Act; and
 - (d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

51. Section 213A inserted

After section 213 of the Principal Act, the following section is inserted in Division 2:

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213A. Liability of holder of licence regarding offence by supervisor

- (1) If the supervisor of an activity carried out under the authority of a licence commits an offence under section 89(4) in respect of that activity, the holder of the licence –
 - (a) is taken to have allegedly committed that offence; and
 - (b) may be proceeded against for that offence whether or not the supervisor is proceeded against for that offence.
- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she –
 - (a) did not know the offence had been committed; and
 - (b) could not reasonably have prevented the commission of the offence; and
 - (c) had, before the offence allegedly occurred, taken reasonable steps to have the supervisor comply with this Act; and
 - (d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

52. Section 214 substituted

Section 214 of the Principal Act is repealed and the following section is substituted:

214. Liability of supervisors

- (1) If a person allegedly commits an offence under this Act in relation to any activity supervised under section 89, the supervisor –
 - (a) is taken to have allegedly committed that offence; and
 - (b) may be proceeded against for that offence whether or not the person is proceeded against for that offence.
- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she –
 - (a) did not know the offence had been committed; and
 - (b) could not reasonably have prevented the commission of the offence; and
 - (c) had, before the offence allegedly occurred, taken reasonable steps to have the person comply with this Act; and

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- (d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

53. Section 221 substituted

Section 221 of the Principal Act is repealed and the following section is substituted:

221. Certificates relating to licensing and statistical matters

- (1) In any proceedings for an offence under this Act, the production of a certificate purporting to be signed by the Secretary stating any of the following facts is evidence of those facts:
 - (a) that on any date or during any period a person was or was not authorised to do anything under an authorisation or was, or was not, exempted from this Act or a specified provision of this Act;
 - (b) that on any date or during any period any place or thing was or was not the subject of an authorisation or exemption;
 - (c) that on any date or during any period an authorisation or exemption was cancelled,

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- suspended or for any other reason of no effect;
- (d) that on any date or during any period an authorisation or exemption was subject to any specified condition or conditions;
 - (e) that the holder of an authorisation had taken, received, despatched or sold a quantity, form or type of fish as recorded from records, dockets and returns required to be provided under the Act, regulations or rules;
 - (f) that on any date or during any period the holder of an authorisation had made a report required to be provided under the Act, regulations or rules and that the information recorded is the information that was reported;
 - (g) that on any date or during any period the holder of an authorisation had not made a report required to be provided by the Act, regulations or rules;
 - (h) that a holder of an authorisation had submitted returns indicating particular levels of production or catches of fish over particular

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periods of time or similar
statistical information;

(i) that on any date or during any
period a person was or was not –

(i) a supervisor for a
particular licence; or

(ii) a supervisor for any
licence;

(j) that on any date or during any
period a natural person was or
was not, for the purposes of a
licence, a nominated person
under section 77.

(2) In any proceedings for an offence under
this Act, the production of a document
purporting to have been prepared in the
Department, for or on behalf of the
Minister, is evidence of the matters
contained in the document.

**54. Section 223 amended (Accuracy of measuring
equipment)**

Section 223 of the Principal Act is amended by
inserting “compiling the information or” after
“officer in”.

55. Section 225 amended (Forfeiture on conviction)

Section 225(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “, or intended to be used, in” and substituting “or intended to be used in, or in connection with,”;
- (b) by inserting in paragraph (c) “, or in connection with,” after “in”.

56. Section 226 amended (Forfeiture on acceptance of infringement notice)

Section 226(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “, or intended to be used, in” and substituting “or intended to be used in, or in connection with,”;
- (b) by inserting in paragraph (c) “, or in connection with,” after “in”.

57. Section 231 amended (Release of seized property)

Section 231(4) of the Principal Act is amended by omitting “fail to comply with” and substituting “contravene”.

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58. Section 235 amended (Form of infringement notice)

Section 235(1)(b) of the Principal Act is amended as follows:

- (a) by inserting in subparagraph (ii) “, if applicable,” after “penalty and”;
- (b) by inserting in subparagraph (iv) “or other place” after “sessions”.

59. Section 236 amended (Petty sessions courts)

Section 236 of the Principal Act is amended by omitting “to be a court” and substituting “or other place to be a court or place”.

60. Section 242 substituted

Section 242 of the Principal Act is repealed and the following section is substituted:

242. Allocation of demerit points on conviction

- (1) If a court convicts a person of a fisheries offence, the prescribed number of demerit points are allocated to each of the following:
 - (a) the person;
 - (b) the licence under which the person was operating when the offence was committed;

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- (c) the fishing certificate on which the licence is specified.
- (2) For the purposes of subsection (1), the prescribed number of demerit points is the aggregate of the following:
- (a) one demerit point for each penalty unit that the court imposes on the convicted person by way of a fine;
 - (b) 50 demerit points for each month of suspended imprisonment, of each term of imprisonment, that the court imposes on the convicted person;
 - (c) 100 demerit points for each month of actual imprisonment, of each term of imprisonment, that the court imposes on the convicted person.
- (3) However, for the purposes of subsection (2) –
- (a) terms of suspended imprisonment that are ordered to be served concurrently with each other are taken to be a single term of suspended imprisonment; and
 - (b) terms of actual imprisonment that are ordered to be served concurrently with each other are

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taken to be a single term of actual
imprisonment.

(4) In this section –

“**actual imprisonment**”, in relation to
a term of imprisonment, means
such part of the term as is not
suspended at the time of
sentencing;

“**fine**” includes a fine by way of
special penalty;

“**fisheries offence**” means –

- (a) an offence against this
Act; or
- (b) an offence against any
rules or regulations made
under this Act; or
- (c) an indictable offence,
relating to fish or fish
processing, or the keeping
of records relating to fish
or fish processing,
punishable under the
Criminal Code;

“**month**” includes part of a month;

“**penalty unit**” means a penalty unit
within the meaning of the *Penalty*

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*Units and Other Penalties Act
1987;*

“suspended imprisonment”, in relation to a term of imprisonment, means such part of the term as is suspended at the time of sentencing.

61. Section 244 amended (Allocation of demerit points)

Section 244 of the Principal Act is amended by omitting subsection (1).

62. Section 245 substituted

Section 245 of the Principal Act is repealed and the following section is substituted:

245. Period for which demerit points remain in force

A demerit point allocated under this Division remains in force for a period of 5 years from the date of the conviction that causes it to be allocated.

63. Section 246 amended (Permanent disqualification from obtaining licence)

Section 246 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “permanently” after “are”;
- (b) by omitting from subsection (1)(a) “during a period of 5 years referred to in section 245” and substituting “consequent on one or more serious convictions”;
- (c) by omitting from subsection (1)(b) “during that period” and substituting “consequent on one or more serious convictions”;
- (d) by omitting from subsection (1)(c)(i) “during that period” and substituting “consequent on one or more serious convictions”;
- (e) by omitting from subsection (1)(c)(ii) “during that period” and substituting “consequent on one or more serious convictions”;
- (f) by inserting in subsection (3)(a) “under this section” after “disqualification”;
- (g) by inserting in subsection (4) “, to a person other than their associate,” after “transfer”;
- (h) by inserting in subsection (4) “under this section” after “disqualification”;
- (i) by inserting the following subsection after subsection (4):

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- (4A) For the purposes of section 82, a person who is obligated to transfer a licence by subsection (4) is taken to remain the holder of that licence until the transfer is effected.
- (j) by inserting the following subsections after subsection (5):
- (6) For the avoidance of doubt, the operation of this section prevails over the operation of section 246A.
- (7) In this section –
- “associate”**, of the transferor of a licence, has the same meaning as in section 82;
- “serious conviction”** means a conviction for an indictable offence tried before the Supreme Court.

64. Section 246A inserted

After section 246 of the Principal Act, the following section is inserted in Division 6:

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246A. Temporary disqualification from obtaining licence

- (1) The following are disqualified, for a period of 5 years, from obtaining or holding a licence:
 - (a) a person to whom 200 or more demerit points have been allocated in any 5-year period;
 - (b) a person who is or has been a partner in a partnership or a major shareholder in a body corporate to which 200 or more demerit points have been allocated in any 5-year period;
 - (c) a partnership or body corporate which has or had a partner or major shareholder –
 - (i) to whom 200 or more demerit points have been allocated in any 5-year period; or
 - (ii) who has been a partner of another partnership or major shareholder in another body corporate to which 200 or more demerit points have been allocated in any 5-year period.

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- (2) A major shareholder is a person who holds more than 10% of the issued shares in a body corporate.
- (3) The Secretary, by notice in writing, must notify a person of –
 - (a) any disqualification under this section; and
 - (b) the date on which the disqualification takes effect.
- (4) A person is to transfer, to a person other than their associate, a licence to which a disqualification under this section relates –
 - (a) within 6 months after receipt of a notice under subsection (3); and
 - (b) in accordance with Division 5 of Part 4.
- (5) For the purposes of section 82, a person who is obligated to transfer a licence by subsection (4) is taken to remain the holder of that licence until the transfer is effected.
- (6) If a person fails to transfer a licence pursuant to subsection (4), the Minister must suspend the licence until the expiration of the person's 5-year period of disqualification.

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(7) In this section –

“associate”, of the transferor of a licence, has the same meaning as in section 82.

65. Section 247 amended (Accumulation of demerit points suspends licence, &c.)

Section 247 of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

(1) A licence is suspended if, under this Division, during any 5-year period, 200 or more demerit points are allocated to –

(a) the licence; or

(b) a fishing certificate on which the licence is specified.

(2) The suspension is for a period of 5 years.

(b) by omitting from subsection (3) “ceases to be in force” and substituting “is suspended”;

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- (c) by omitting from subsection (4) “ceases to be in force” and substituting “is suspended”.

66. Section 253 amended (Issue of control order)

Section 253(2) of the Principal Act is amended by omitting “fail to comply with” and substituting “contravene”.

67. Section 257 amended (Interfering with apparatus)

Section 257(2) of the Principal Act is amended by omitting “for a person to prove” and substituting “if the defendant establishes”.

68. Section 258 amended (Use of foreign boat)

Section 258(2) of the Principal Act is amended as follows:

- (a) by omitting “for a person to prove” and substituting “if the defendant establishes”;
- (b) by omitting “person” second occurring and substituting “defendant”.

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69. Section 259 amended (Foreign boat equipped with apparatus)

Section 259(2) of the Principal Act is amended by omitting “for a person to prove” and substituting “if the defendant establishes”.

70. Section 262 amended (Possession, purchase or sale of illegally taken fish)

Section 262(2) of the Principal Act is amended by omitting “for a person to prove” and substituting “if the defendant establishes”.

71. Part 9, Division 9 substituted

Division 9 of Part 9 of the Principal Act is repealed and the following Division is substituted:

Division 9 – Indictable offences

263A. Prosecution of offences

- (1) An offence against this Division is an indictable offence.
- (2) However, a court of summary jurisdiction may hear and determine proceedings for an offence against this Division if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against this Division, the penalty that the court may impose is a fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, or both.

264. Unlawful possession of fish

A person must not have possession of fish without lawful excuse.

264A. Trafficking in fish

- (1) A person must not traffic in fish without lawful excuse.
- (2) For the purposes of subsection (1), a person is taken to traffic in fish without lawful excuse if –
- (a) the fish have been taken unlawfully or possessed unlawfully; and
 - (b) on one or more occasions, the person –
 - (i) possesses the fish; or
 - (ii) conceals the fish; or

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- (iii) processes the fish; or
 - (iv) sells or otherwise disposes of the fish; or
 - (v) receives or delivers the fish from or to another person; or
 - (vi) transports the fish from one place to another; or
 - (vii) otherwise deals with the fish; or
 - (viii) carries out any combination of the activities referred to in this paragraph.
- (3) For the purposes of subsection (2) –
- (a) it does not matter whether the fish referred to in that subsection are all of one species or a mixture of different species; and
 - (b) a person is taken to have carried out an activity if the person –
 - (i) carries out, or participates in the carrying out of, the activity; or
 - (ii) directs, controls or supervises the carrying out of the activity; or

- (iii) provides finance, facilities or other resources to enable the activity to be carried out or to facilitate it; or
- (iv) is knowingly concerned in the carrying out of the activity.

265. False or misleading records

A person must not, in keeping any records, accounts or other information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

266. Application of certain Act

The *Crime (Confiscation of Profits) Act 1993* applies to an indictable offence under this Division as if fish were property within the meaning of that Act.

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72. Section 267 amended (Illegally taking or possessing fish, &c.)

Section 267(1) of the Principal Act is amended by omitting “or possession” and substituting “, possession, purchase, sale or trafficking”.

73. Section 268 amended (Illegal use of apparatus)

Section 268 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsections:

(1) On a finding of guilt for an apparatus offence committed entirely or partially in a special protected area, a court must impose a special penalty equal to –

(a) 2 penalty units for each rock lobster pot used or possessed in the commission of the offence; and

(b) 2 penalty units for each 50 metres of net used or possessed in the commission of the offence.

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(1A) On a finding of guilt for an apparatus offence committed entirely in an area that is not a special protected area, a court must impose a special penalty equal to 2 penalty units for –

(a) each unauthorised rock lobster pot used or possessed in the commission of the offence; and

(b) each 50 metres of unauthorised net used or possessed in the commission of the offence; and

(c) each unauthorised prescribed apparatus used or possessed in the commission of the offence.

(b) by inserting the following subsection after subsection (2):

(3) In this section –

“apparatus offence” means an offence under this Act or rules or regulations made under this Act relating to the use or possession of apparatus;

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“protected area” means –

- (a) a marine resources protected area; or
- (b) reserved land under the *Nature Conservation Act 2002*; or
- (c) a prescribed area of State waters;

“special protected area”, in relation to an apparatus offence, means a protected area in which –

- (a) fishing of any kind is unlawful; or
- (b) fishing that is ordinarily carried out by means of apparatus of the kind used or possessed in connection with the offence is unlawful;

“unauthorised”, in relation to the use or possession of apparatus, means use or possession that is not

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sanctioned by an
authorisation.

74. Section 272 amended (Requirements made by order)

Section 272(3) of the Principal Act is amended by omitting “fail to comply with” and substituting “contravene”.

75. Section 279 amended (Industry levy)

Section 279 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1A)(a)(ii) “organisation” and substituting “entity”;
- (b) by inserting the following subsection after subsection (9):

(10) In this section –

“entity” includes –

- (a) a government department or instrumentality of a State, a Territory or the Commonwealth;
and

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- (b) an international organisation.

76. Section 285 amended (Regulations in general)

Section 285 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (3) and substituting the following paragraph:

- (b) in respect of such an offence, provide for the imposition of a penalty of either or both of the following:

- (i) imprisonment for a term not exceeding 2 years;

- (ii) a fine not exceeding 5 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (b) by inserting the following subsections after subsection (3):

- (3A) The regulations may specify penalties that are to be imposed

for offences against regulations or rules made under Part 3 or 5.

(3B) A penalty specified in the regulations pursuant to subsection (3A) may be either or both of the following:

- (a) imprisonment for a term not exceeding 2 years;
- (b) a fine not exceeding 5 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

77. Section 302 substituted

Section 302 of the Principal Act is repealed and the following section is substituted:

302. Geocentric Datum of Australia

- (1) Where, on or after 1 March 2007, it is necessary to determine the position on the earth's surface of a point, line or area for the purposes of this Act or an allied enactment, then, unless the Minister determines otherwise, the position is to be determined by reference to the GDA.

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- (2) For the avoidance of doubt, subsection (1) has effect even if the determination is being made in respect of something that occurred before 1 March 2007.
- (3) However, for the purposes of pre-existing subordinate legislation, the position is to be determined by reference to the superseded datum.
- (4) Subsection (3) has effect regardless of whether –
 - (a) the pre-existing subordinate legislation contains any amendments effected on or after 1 March 2007; or
 - (b) the determination is in respect of any provision inserted in the pre-existing subordinate legislation on or after that date.
- (5) A Ministerial determination under subsection (1) –
 - (a) is to be made by instrument in writing; and
 - (b) may be of general application or limited in its application according to matters, criteria or restrictions (whether as to time, area, circumstance or otherwise)

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as are specified in the
determination; and

(c) is invalid if it purports to have
retrospective effect.

(6) The Minister may –

(a) by instrument in writing revoke a
determination under
subsection (1); and

(b) cause any such determination or
its revocation to be published in
such ways as the Minister thinks
fit.

(7) In any proceedings for an offence under
this Act or an allied enactment, a
document purporting to be signed by the
Minister and to be a copy of a
determination under subsection (1) is
evidence of the determination.

(8) In this section –

“allied enactment” means an
enactment that –

(a) is contained in an Act that
regulates any matters
relating to sea fisheries or
marine farming; and

(b) incorporates this section;

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“GDA” means the Geocentric Datum of Australia (also known as “the GDA” or “GDA94”) as defined in the *Commonwealth Gazette* No. GN 35, 6 September 1995;

“legislative instrument” includes a public notice that has the effect of regulating, either directly or indirectly, any matters relating to sea fisheries or marine farming;

“pre-existing subordinate legislation” means a statutory rule or other legislative instrument made under this Act or an allied enactment before 1 March 2007;

“statutory rule” means a statutory rule within the meaning of the *Rules Publication Act 1953*;

“superseded datum” means the provisions of this section as in force immediately before 1 March 2007.

78. Section 306 repealed

Section 306 of the Principal Act is repealed.

79. Section 308 repealed

Section 308 of the Principal Act is repealed.

80. Section 310 repealed

Section 310 of the Principal Act is repealed.

81. Validation

The *Fisheries Penalties Regulations 2001* are,
and are to be taken as having always been, valid.

82. Meaning of certain penalties specified in rules, &c.

- (1) The word “Fine”, when used in the expression “Fine not exceeding the applicable Grade 3 penalty” in any regulations, rules or management plans made or approved under the Principal Act before the commencement day, is taken to include and to have always included a reference to a term of imprisonment.
- (2) Accordingly, in sentencing a person who has been found guilty of a fisheries offence committed before or after the commencement day, a court may, without limiting its other sentencing powers or discretions, order that the person serve a term of imprisonment if that is prescribed as one of the penalties that may be imposed on the person in the circumstances.

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(3) However, if the court does order the person to serve a term of imprisonment, that term is not to exceed the term prescribed for the circumstances of the person's offence.

(4) In this section –

“commencement day” means the day on which this Act commences;

“fisheries offence” means an offence against a regulation, rule or management plan made or approved under the Principal Act before the commencement day and for which the penalty is expressed to be a “Fine not exceeding the applicable Grade 3 penalty”.