

NORTHERN TERRITORY OF AUSTRALIA

FISHERIES AMENDMENT ACT 1994

No. 65 of 1994

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NORTHERN TERRITORY OF AUSTRALIA

No. 65 of 1994

AN ACT

to amend the *Fisheries Act* and to
certain plans approved under that Act

[Assented to 3 November 1994]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Fisheries Amendment Act 1994*.

2. COMMENCEMENT

(1) Sections 15, 43 and 44 of this Act shall come into operation on the day on which the Administrator's assent to the Act is declared.

(2) Sections 5(b), (c), (d) and (f), 31A, 33, 34, 35 and 36 of this Act shall come into operation on the commencement of Part 5 of the *Fisheries Management Act 1991* of the Commonwealth.

(3) The remaining provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Fisheries Act* is in this Act referred to as the Principal Act.

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4. LONG TITLE

The long title to the Principal Act is amended by omitting "resources," and substituting "resources so as to maintain their sustainable utilisation, to regulate the sale and processing of fish and aquatic life,".

5. INTERPRETATION

Section 4(1) of the Principal Act is amended -

- (a) by inserting before the definition of "coastal waters" the following:

"'Australian fishing zone' means the Australian fishing zone as defined by the Commonwealth Act;"

- (b) by omitting the definition of "Commonwealth Act" and substituting the following:

"'Commonwealth Act' means the *Fisheries Management Act 1991* of the Commonwealth or any Act in substitution for that Act;"

- (c) by omitting from the definition of "Commonwealth Minister" the words "section 12C" and substituting "section 60";

- (d) by omitting the definition of "Commonwealth proclaimed waters";

- (e) by omitting the definition of "Joint Authority" and substituting the following:

"'Joint Authority' means a Joint Authority established under section 61 of the Commonwealth Act that includes the Minister as a member;"

- (f) by inserting at the end of the definition of "licence" the words "or, as the context requires, a licence document issued as a consequence of the grant of a licence";

- (g) by omitting the definition of "licensee" and substituting the following:

"'licensee' means the holder of a licence and includes a person who holds a permit and a person to whom a licence has been transferred under section 12A;

'licensee's record book' means a record of information required by the Director to be kept by a licensee under section 34;

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'managed fishery' means a fishery declared to be a managed fishery under section 22;

'nominated person' means a person nominated under section 11(3A) or (3B) for the purposes of section 13;"; and

(h) by inserting after the definition of "permit" the following:

"'person' includes a partnership;".

6. TAKING, &c., FISH, &c., WITHOUT LICENCE

Section 10(1) of the Principal Act is amended -

(a) by omitting from the end of paragraph (d) "fish; or" and substituting "fish;"; and

(b) by inserting after paragraph (d) the following:

"(da) process for sale or sell aquatic life or fish, or eggs, fry, spat or larva of fish; or".

7. LICENCES

Section 11 of the Principal Act is amended -

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

"(3A) Where the applicant is a partnership or a corporation, it shall, in the application, nominate a natural person to be the nominated person for the purposes of section 13 and the Director may approve such a person accordingly.

"(3B) A licensee may nominate a person in substitution for the person approved under subsection (3A) and the Director may approve such a person in substitution for the person originally approved.";

(b) by inserting after "applicant" in subsection (4) "or person nominated under subsection (3A) or (3B), or both, as the case may be,";

(c) by omitting from subsection (7) "issued for a period of not more than 5 years on payment of the prescribed fee (if any) for each year for which it is issued" and substituting "granted for a period of not more than 5 financial years on payment of the prescribed fee (if any) for each financial year of the licence";

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(d) by inserting after subsection (7) the following:

"(7A) Where a licence is granted after the commencement of a financial year, the remaining part of the financial year shall be taken as a full financial year for the purposes of this section.";

(e) by omitting from subsection (8) "issued" and substituting "granted";

(f) by omitting subsection (9) and substituting the following:

"(9) The fee payable in respect of a licence granted for more than one financial year may be paid in annual instalments, each instalment being paid before the licence, if it were granted for one year, would expire.";

(g) by omitting from subsection (12) "the holder of a licence to return it and the Director issue a substitute licence" and substituting "a licensee to return the licence document and the Director shall issue a substitute";

(h) by omitting from subsection (13) "the licence holder" and substituting "the licensee"; and

(j) by omitting from subsection (15) "under this Act".

8. EXPIRY AND RENEWALS

Section 12 of the Principal Act is amended -

(a) by omitting from subsection (1) "31 December" and substituting "30 June";

(b) by omitting from subsection (1) "year" (wherever occurring) and substituting "financial year";

(c) by omitting subsections (3) and (4) and substituting the following:

"(3) Where the applicant for a licence is a corporation, an application for renewal of a licence shall contain a statement, in an approved form, indicating the current nominal and beneficial ownership of the shares in the corporation and each sale or transfer of that ownership since the grant or transfer of the licence to the corporation, or the last renewal of the licence, whichever is the later.

"(4) If the Director is satisfied, on considering an application for the renewal of a licence, that -

(a) the applicant has a commitment to the fishery in respect of which the applicant is licensed and to the fishing industry generally;

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- (b) where the applicant is a corporation - the share structure of the corporation is not other than that specified in section 12B(4)(b)(iii), unless -
 - (i) the Director, in accordance with section 12B, approved the transfer of the shares that resulted in that share structure; or
 - (ii) the transfer of the licence to the corporation having such a share structure was permitted by or under this Act or the conditions of the licence;
- (c) the applicant has complied with the conditions of the licence; and
- (d) nothing in an instrument of a legislative or administrative character made under this Act prevents it,

the Director shall renew the licence on payment of the prescribed fee (if any).

"(5) The Director may, on the application of a licensee, renew an approval given under section 12A if the Director is satisfied that the person with whom the licensee has entered into the agreement would, if the person was an applicant for the purposes of subsection (4), be entitled to renewal of the licence."

9. NEW SECTIONS

The Principal Act is amended by inserting after section 12 the following:

"12A. TEMPORARY TRANSFER OF LICENCE

"(1) Subject to the Regulations, a fishery management plan made in respect of the fishery for which a licence has been granted, or a condition of the licence, a licensee may, with the approval of the Director, by agreement in writing ('a temporary transfer agreement'), permit another person to use the licence as if that other person were the licensee.

"(2) A licensee may apply in writing to the Director for the Director's approval to enter into a temporary transfer agreement.

"(3) An application under subsection (2) shall be accompanied by the prescribed fee and by such information, if any, as the Director requires, including the proposed period of the temporary transfer agreement.

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"(4) The Director may, in the Director's absolute discretion, approve or refuse to approve the proposed agreement.

"(5) If the Director approves a temporary transfer agreement, the Director shall signify the approval by endorsing the agreement to that effect.

"(6) A temporary transfer agreement expires at such date, if any, specified in the agreement or at the end of the financial year in which it was entered into, whichever is the sooner.

"(7) A licensee shall not, except in pursuance of an approval under this section or as permitted by or under this Act or the terms of the licence, purport to permit, or enter into an agreement purporting to permit, another person to use the licensee's licence.

Penalty: \$20,000.

"(8) A temporary transfer agreement is void unless it is approved by the Director.

"(9) Where the Director has approved the temporary transfer of a licence under this section -

- (a) the person to whom the licence was temporarily transferred -
 - (i) is responsible for complying with the conditions of the licence; and
 - (ii) is, in any proceedings taken against that person for an offence against this Act committed during that period and for the purposes of section 45, deemed to be the licensee; and
- (b) the licensee is not permitted to engage in any activity for which a licence of the kind transferred is required by or under this Act or an instrument of a legislative or administrative character made under the Act,

but nothing in this section affects the liability under section 45A(1) of the licensee for actions taken by the person to whom the licence has been temporarily transferred or for any other person engaged in fishing operations under the licence.

"(10) The Director may, on application by either party to a temporary transfer agreement approved under this section, revoke the approval of the transfer.

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"12B. PERMANENT TRANSFER OF LICENCE

"(1) Subject to this section, the Regulations or a fishery management plan made in respect of the fishery for which a licence has been granted or a condition of the licence, a licence may be permanently transferred by a licensee to another person and where a licence is so transferred, the person from whom it is transferred ceases to be the licensee in respect of the licence and the person to whom it is transferred becomes the licensee in respect of the licence for the purposes of this Act.

"(2) A licensee may apply, in writing, in an approved form accompanied by the prescribed fee to the Director for approval to transfer the licence.

"(3) Subject to this section, the Director may, in the Director's absolute discretion, approve or refuse to approve an application under this section.

"(4) A licence shall not be transferred under this section to -

- (a) a natural person unless the person is resident in Australia; or
- (b) a corporation unless -
 - (i) the corporation is incorporated in Australia;
 - (ii) every person who is a director or officer of the corporation is resident in Australia; and
 - (iii) not more than 49% of the shares in the corporation are held beneficially, entirely, whether directly or indirectly, including through interposed corporations or trusts or both corporations and trusts, by persons who are not resident in Australia,

unless expressly permitted by or under this Act or by the conditions of the licence.

"(5) Where the licensee is a corporation, the corporation shall not register the transfer of any share in the corporation which has the effect of causing the share structure to be other than that specified in subsection (4)(b)(iii) unless the Director approves of the transfer and endorses the approval on the instrument of transfer.

Penalty: \$20,000.

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"(6) A contract or agreement for the sale or transfer of shares in a corporation is unenforceable by either party unless the instrument of transfer is endorsed with the approval of the Director.

"(7) Where a corporation holds a licence in contravention of this section, the Director shall, by written notice to the corporation, require the corporation, within 3 months after the date of the notice, to transfer the licence to another person who is eligible to hold the licence.

"(8) For the purposes of this section -

- (a) 'corporation' and 'share' have the same meaning as in the Corporations Law; and
- (b) a person, including a corporation, shall be deemed to have a beneficial interest in a share if the person, either alone or together with other persons (including a corporation or corporations), is entitled (other than as a trustee for, on behalf of or on account of, another person) to receive, directly or indirectly, a dividend in respect of the share or to control the exercise of a right attracting to the share."

10. REPEAL AND SUBSTITUTION

Section 13 of the Principal Act is repealed and the following substituted:

"13. OPERATIONS TO BE SUPERVISED

"(1) Subject to this Act or to any instrument of a legislative or administrative character made under it -

- (a) where a licensee is a natural person - the licensee or a person approved under section 14(1), for the period of the approval, or the person whose name is entered in the licensee's record book under section 14(4), for the period noted in the book opposite his or her name;
- (b) where the licensee is not a natural person or a partnership - a nominated person or, where a person's name is entered in the licensee's record book under section 14(4), that person, for the period noted in the book opposite his or her name; or
- (c) where the licensee is a partnership - one of the partners specified in the licence or a nominated person,

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shall at all times be in the vicinity of, and maintain direct physical control of each fishing operation carried out under the licence or at each premise or farm operated under the licence.

Penalty: \$20,000.

"(2) If, for reasons acceptable to the Director, a licensee, a nominated person, a person approved under section 14(1) or the person whose name is entered in the licensee's record book under section 14(4), for the period noted in the book opposite his or her name, is unable to be in the vicinity of the fishing operation or at each farm or premises, the licensee or the person shall maintain such control as is approved."

11. APPROVALS

Section 14 of the Principal Act is amended -

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

"(1) The Director may approve a person (the 'nominated person'), nominated on the approved form by a licensee who is a natural person, to carry out operations under the licence as if the nominated person were the licensee for the period specified in the approval, and while such an approval remains in force the nominated person -

- (a) is responsible for complying with the conditions of the licence; and
- (b) is, in any proceedings taken against the nominated person for an offence against this Act committed during that period, deemed to be the licensee,

but nothing in this section affects the liability under section 45A of the licensee for actions taken by the nominated person or by any other person engaged in fishing operations under the licence."; and

- (b) by adding at the end the following:

"(4) Where the person required by section 13 to be in the vicinity of a fishing operation, a farm or premises under a licence ('the responsible person') intends to be absent from the fishing operation farm or premises for a period not exceeding 7 days, he or she shall ensure -

- (a) that the name of an assistant or other person approved in writing by the Director is, before that absence, entered in legible English in the licensee's record book kept for the purposes of the licence; and

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- (b) the entry is signed and dated by the responsible person and by the person whose name is entered in that book, opposite the dates during which the responsible person intends to be absent.

"(5) Where the person whose name is entered in the book has signed the entry, that person is, during the absence of the responsible person, the person responsible for complying with the conditions of the licence and is, in any proceedings taken against that person for an offence against this Act committed during that period, deemed to be the licensee.

"(6) Nothing in this section affects the liability under this Act of the licensee or the responsible person to be convicted or punished in respect of the offence committed by the person."

12. SPECIAL PERMITS

Section 17 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) Notwithstanding anything in this Act or an instrument of a legislative or administrative character made under this Act, the Director may grant to a person who applies to the Director in writing a special permit, subject to such conditions as the Director may, from time to time, impose -

- (a) to take fish or aquatic life -
 - (i) of all species or a species specified in the permit;
 - (ii) from any waters (including waters where fishing may for the time being be prohibited or restricted) specified in the permit;
 - (iii) during a time specified in the permit; and/or
 - (iv) using such fishing gear as may be specified in the permit (whether or not the use of the fishing gear is otherwise prohibited or restricted); or
- (b) to be in possession of fishing gear which the person is otherwise not permitted to have in his or her possession by or under this Act or an instrument of a legislative or administrative character made under this Act,

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for -

- (c) the purposes of education, research or the carrying out of trials and experiments with fishing vessels or fishing gear or any other apparatus or technique which is capable of being used in connection with the taking of fish or aquatic life;
- (d) the purposes of sport or recreation in the case of a disabled person who, in the opinion of the Director, would otherwise be unable, by reason of the person's disability, to fish by the methods permitted by this Act; or
- (e) any other purpose approved by the Minister."

13. REGISTRATION OF FISHING VESSELS

Section 18 of the Principal Act is amended -

- (a) by omitting from subsection (1) "no person shall use a vessel for taking fish or aquatic life for sale unless the vessel is registered" and substituting "a person shall not use a vessel for any purpose in relation to which a licence or a permit is required under this Act unless the vessel is registered."; and
- (b) by inserting after subsection (1) the following:

"(1A) The Director may, by notice in the *Gazette*, direct that subsection (1) does not apply to a vessel used for the purposes of a licence of a type specified in the notice."

14. TENDERS

Section 19(1) of the Principal Act is amended by omitting "the purposes of taking fish or aquatic life for sale," and substituting "any purpose in relation to which a licence is required under this Act".

15. PURPOSES OF PART

Section 21 of the Principal Act is amended -

- (a) by omitting "fisheries" (first occurring) and substituting "fish and aquatic life resources";
- (b) by omitting from paragraph (a) "and develop" and substituting ", develop and maintain";
- (c) by omitting from paragraph (c) "overexploited; and" and substituting "overexploited;";

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(d) by inserting after paragraph (c) the following:

"(ca) encourage tourist and scientific interest in fish and aquatic life; and/or"; and

(e) by adding at the end the following:

"(2) For the avoidance of doubt, 'manage' in subsection (1) includes, and shall be taken always to have included, a total prohibition against the taking of fish or aquatic life in all or part of a fishery management area or in a fishery."

16. PROCEDURE IN RELATION TO PLANS

Section 25(1) of the Principal Act is amended by omitting "such of the particulars for management" and substituting "make provision in relation to the managed area or the managed fishery with respect to such of the matters".

17. NEW SECTION

The Principal Act is amended by inserting after section 25 the following:

"25A. AMENDMENTS TO PLANS

"(1) Where the Director is of the opinion that an amendment to a fishery management plan is required, the Director may submit the proposed amendment to the Minister and, if the Minister agrees in principle with the proposed amendment, the Minister may -

(a) where the proposed amendment is accompanied by a statement signed by the Director stating that the proposed amendment is, in the Director's opinion, a minor amendment - approve the amendment with such amendment to it as the Minister thinks fit; or

(b) where the proposed amendment is not accompanied by a statement referred to in paragraph (a) - give notice in the *Gazette* and such newspapers circulating in the Territory as the Minister thinks fit of the proposed amendment to the plan and of the place or places where a copy of the amendment may be inspected.

"(2) There may be included with a proposed amendment under subsection (1) such explanatory notes as the Director thinks fit, but such notes do not form part of the proposed amendment or an amendment to the plan.

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"(3) Where notice of a proposed amendment is given in the *Gazette* under subsection (1)(b), the Minister may, not less than one month after the date of notification and after -

- (a) considering any submissions made in respect of the proposed amendment; and
- (b) advising the relevant advisory committee of any amendment the Minister has made to the amendment as proposed and the reasons for the amendment,

approve the amendment to the fishery management plan."

18. MANAGEMENT PLANS ENFORCEABLE AS REGULATIONS

Section 27 of the Principal Act is amended -

- (a) by adding at the end of subsection (2) "to the extent of the inconsistency"; and
- (b) by adding at the end the following:

"(3) Where a word or phrase used in a fishery management plan or a notice under section 28 is not defined by this Act or the plan but is defined by the Regulations, it shall have the meaning it has under the Regulations in relation to the management plan or the notice, as the case may be."

19. GENERAL POWER OF MINISTER

Section 28(1) of the Principal Act is amended by inserting after paragraph (a) the following:

- "(ab) declare that the taking of fish or aquatic life or fish or aquatic life of a specified species, sex, size, age or other characteristic is prohibited or allowed;"

20. FISHERIES OFFICER MAY QUESTION AND EXAMINE

Section 30(1) of the Principal Act is amended -

- (a) by omitting from paragraph (c) ", in the prescribed manner"; and
- (b) by inserting after "engaged in taking," the words "processing for sale,".

21. RECORDS AND RETURNS

Section 34(2) of the Principal Act is amended by omitting "a department or unit of administration (within the meaning of the *Public Service Act*)" and substituting "an Agency within the meaning of the *Public Sector Employment and Management Act*".

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22. GENERAL OFFENCES AND PENALTIES

Section 37(1) of the Principal Act is amended by omitting "judicial" and substituting "legislative".

23. NEW SECTIONS

The Principal Act is amended by inserting after section 37 the following:

"37A. INFRINGEMENT OFFENCES AND NOTICES

"(1) A Fisheries Officer may serve an infringement notice on a person if it appears to the fisheries officer that the person has committed an offence against this Act, being an offence prescribed as an infringement offence.

"(2) An infringement notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may, within the time and to the person specified in the notice, pay the prescribed penalty for the offence, and shall contain a statement that if the person pays such a penalty all fish or fishing gear seized by a Fisheries Officer in respect of the matter shall be forfeit to the Crown.

"(3) If the prescribed penalty for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

"(4) Payment under this section is not to be regarded as an admission of liability for the purposes of, nor in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

"(5) The penalty prescribed for an infringement offence shall not exceed the maximum penalty that could be imposed for the offence by a court.

"(6) Subject to this section, Division 2A of Part IV of the *Justices Act* applies to an infringement notice under this section as if it were an infringement notice prescribed under that Act.

"(7) Notwithstanding any other law or rule of law to the contrary, where a person is found guilty of an offence against this Act, evidence that the person has paid the prescribed penalty for an offence under this section may be taken into account by a court for the purposes of sentencing the person in respect of the offence for which the person was found guilty by the court but shall not be taken into account for the purposes of section 20.

"37B. WITHDRAWAL OF INFRINGEMENT NOTICE

"(1) An infringement notice issued under section 37A may be withdrawn, whether or not the prescribed penalty has been paid, at any time within 28 days after the

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service of the notice, by the sending of a notice signed by a prescribed person who is an employee within the meaning of the *Public Sector Employment and Management Act*, to the alleged offender at his or her last known place of residence or business, advising the alleged offender that the infringement notice has been withdrawn and, in that event, the amount of the prescribed penalty that has been paid shall be refunded.

"(2) Where a prescribed penalty has been paid in pursuance of an infringement notice and the notice has not been withdrawn as provided by subsection (1), proceedings shall not be brought against any person with respect to the offence alleged in the notice."

24. REGULATORY OFFENCES

Section 38 of the Principal Act is amended by adding at the end the following:

"(3) Subsection (2)(b) applies only to an offence prescribed in the Regulations or a fishery management plan to be an offence to which that subsection applies."

25. LIABILITY OF OWNER AND PERSON IN CONTROL OF VESSEL

Section 40 of the Principal Act is amended -

- (a) by omitting "owner" (first occurring) and substituting "owner of or person in control"; and
- (b) by omitting "owner" (second occurring) and substituting "owner or person in control of the vessel, as the case may be,".

26. FALSELY IDENTIFYING FISH, &c., FOR SALE

Section 41 of the Principal Act is amended by omitting "with intent to deceive the buyer" and substituting "in circumstances where the buyer may be deceived".

27. NEW SECTION

The Principal Act is amended by inserting after section 43 the following:

"43A. LIMITATION OF TIME FOR COMPLAINTS.

"Notwithstanding section 52 of the *Justices Act*, a complaint for an offence against this Act may be brought at any time within 12 months from the time when the matter of the complaint arose."

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28. LIABILITY OF DIRECTORS, MANAGERS AND LICENSEES

Section 45(2) of the Principal Act is repealed.

29. NEW SECTION

The Principal Act is amended by inserting after section 45 the following:

"45A. LIABILITY OF PERSON FOR OFFENCE OF OTHERS

"(1) Notwithstanding this Act or any other law in force in the Territory, where -

- (a) an assistant;
- (b) a nominated person;
- (c) a person conducting operations under a licence by virtue of a temporary transfer agreement under section 12A; or
- (d) a person approved under section 14(1) in respect of the licence or whose name is entered in the licensee's record book under section 14(4),

is convicted of an offence against this Act in respect of operations in relation to a licence, the licensee is, subject to subsection (1A), guilty of the same offence.

"(2) It is a defence to a prosecution for an offence by the licensee that is referred to in subsection (1) if the licensee establishes that he or she took all reasonable precautions to prevent the commission of the offence by the other person.

"(3) Notwithstanding any other law in force in the Territory, where an assistant is convicted of an offence against this Act in respect of fishing operations in relation to a licence -

- (a) the nominated person;
- (b) a person approved under section 14(1) in respect of the licence or whose name is entered in the licensee's record book under section 14(4); or
- (c) a person conducting operations under a licence by virtue of a temporary transfer agreement under section 12A,

who was in charge of the fishing operation at the time at which the offence was committed is, subject to subsection (2A), guilty of the same offence.

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"(4) It is a defence to a prosecution for an offence by the licensee that is referred to in subsection (1) if the licensee establishes that he or she took all reasonable precautions to prevent the commission of the offence by the other person."

"(5) Nothing in this section prejudices or affects a liability imposed by this Act on a person by whom an offence against this Act is actually committed."

30. FORFEITURE OF PROPERTY ON CONVICTION

Section 46 of the Principal Act is amended -

- (a) by omitting "Minister" wherever occurring and substituting "Director"; and
- (b) by adding at the end the following:

"(4) Subject to subsection (2), where fish or aquatic life or fishing gear is seized under this Act and a person pays an infringement penalty under section 37A that has not been refunded to him or her under section 37B in respect of the alleged offence to which the fish, aquatic life or gear relates, the fish, aquatic life or fishing gear is, notwithstanding that no conviction is entered against the person, forfeited to the Crown."

31. REGULATIONS

Section 47(2) of the Principal Act is amended -

- (a) by inserting in paragraph (a) after "fishing" the words ", the selling or trading of fish";
- (b) by inserting in paragraph (e) after "prescribe" (first occurring) ", by notice in the Gazette,";
- (c) by adding at the end of paragraph (p) "under a law of the Commonwealth, a State or another Territory of the Commonwealth"; and
- (d) by omitting from paragraph (s) -
 - (i) "and its possession" and substituting "for sale and its possession for sale"; and
 - (ii) "or stored;" and substituting "or stored, for sale;".

32. CERTAIN NOTICES TO HAVE STATUS OF REGULATIONS

Section 49 of the Principal Act is amended -

- (a) by inserting in subsection (1), after "approved under section 25(3)," the words "or amendment to a management plan approved under section 26A";

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- (b) by omitting from subsection (1) "purposes" and substituting "purposes of sections 57 and 63"; and
- (c) by omitting from subsection (2) "25(2)" and substituting "25(2), 25A(1)(b)".

33. REVIEW OF DECISIONS OF DIRECTOR

Section 50(3) of the Principal Act is amended by inserting after "notice of the decision" the words "(or in a case referred to in subsection (2), within 28 days after the decision on the review under section 11(13))".

34. POWERS AND FUNCTIONS OF MINISTER

Section 58 of the Principal Act is amended by omitting "Part IVA" and substituting "Division 1 of Part V".

35. PROCEDURE OF JOINT AUTHORITY

Section 62(1) of the Principal Act is amended by omitting "sections 12F(1) to (8)" and substituting "sections 66 to 68".

36. REPORT OF JOINT AUTHORITY

Section 63 of the Principal Act is amended by omitting "section 12G" and substituting "section 70".

37. ARRANGEMENTS FOR MANAGEMENT OF FISHERIES

Section 64(1) of the Principal Act is amended by omitting "section 12J" and "section 12H" and substituting "section 74" and "section 71 or 72" respectively.

38. APPLICATION OF THIS ACT TO FISHERIES IN ACCORDANCE WITH ARRANGEMENTS

Section 65 of the Principal Act is amended by omitting "Commonwealth proclaimed waters" (wherever occurring) and substituting "the Australian Fishing zone".

39. FUNCTIONS AND POWERS &c., OF JOINT AUTHORITY

Section 66 of the Principal Act is amended by adding at the end the following:

"(2) A Joint Authority has the following objectives in the performance of its functions under subsection (1):

- (a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which the Act applies are not endangered or over-exploited;

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- (b) achieving the optimum utilization and equitable distribution of those resources."

40. SCHEDULE 2

Schedule 2 to the Principal Act is amended -

- (a) by omitting "FISHERIES MANAGEMENT PLANS" and substituting "MATTERS THAT MAY BE PROVIDED FOR IN A FISHERY MANAGEMENT PLAN";
- (b) by omitting "fisheries management plan" and substituting "fishery management plan";
- (c) by omitting from paragraph (a) "fisheries management area" and substituting "fishery management area";
- (d) by inserting after paragraph (a) the following:
 - "(ba) specify the species of fish that may or shall not be taken and/or the restrictions (if any) that apply in relation to the taking of any species of fish;
 - "(bb) specify the number of licences that may be issued in relation to an area or a fishery, as the case requires, and prohibit or regulate the transfer of licences in respect of a fishery;"
- (e) by omitting from paragraph (f) "fisheries; or" and substituting "fisheries;"
- (f) by omitting from paragraph (g) "limit; or" and substituting "limit;"
- (g) by omitting from paragraph (h) "fishery." and substituting "fishery; or" and
- (h) by adding at the end the following:
 - "(j) provide for the establishment and administration of a scheme for the rationalisation of the fishery and for those purposes may provide for -
 - (i) a limitation or reduction in an equitable manner of the number of fishing units licensed to operate in a fishery;
 - (ii) the surrender and purchase of licences relating to that fishery on payment of agreed compensation;
 - (iii) the establishment of a trust account under the *Financial Administration and Audit Act*;

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- (iv) the imposition of levies or other payments for the purposes of funding any compensation to be paid; and
- (v) the repayment of surplus amounts, after payment of any outstanding amounts due, to persons who, on conclusion of a scheme, are holders of licences in respect of fishing units to which the scheme relates."

41. REPEAL

Schedule 3 to the Principal Act is repealed.

42. SAVINGS AND TRANSITIONAL

(1) Notwithstanding anything in section 12A of the Principal Act, as inserted by section 9 of this Act, an agreement executed before the commencement of section 9 permitting the use of a licence by a person other than the licensee is valid for 90 days after that commencement without the approval of the Director but shall, before the expiration of that period, be submitted for the approval of the Director.

(2) Where an agreement referred to in subsection (1) -

- (a) is not submitted for the approval within the period referred to in that subsection; or
- (b) is not approved by the Director,

the agreement is void and unenforceable after the expiration of that period.

43. VALIDATION OF CERTAIN MANAGEMENT PLANS

Notwithstanding section 63(11) of the *Interpretation Act*, all -

- (a) management plans for a fishery or fishery management area made or purporting to have been made; and
- (b) notices of a kind referred to in section 49(1) of the Principal Act given or purporting to have been given,

before, and in force or purporting to be in force immediately before, the commencement of this section, have full force and effect according to their tenor, and all actions taken or purporting to have been taken under or in pursuance of such a management plan or notice, or purported management plan or notice, are or shall be taken

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to have been effectively taken, notwithstanding any want of power or procedural defect in or in relation to the making of the plan or giving of the notice, including that it may not have been laid before the Legislative Assembly in pursuance of section 63 of the *Interpretation Act*.

44. PRESERVATION OF CERTAIN RIGHTS

Nothing in this Act shall be taken as affecting -

(a) any private right in relation to -

(i) fish or aquatic life; or

(ii) a fishery or fishery management area or other area of land or water affected by this Act; or

(b) any proprietary right in relation to land,

that existed immediately before the commencement of this section.
