



# THE NORTHERN TERRITORY OF AUSTRALIA

No. 38 of 1981

## AN ACT

To amend the Fish and Fisheries Act to enable arrangements with respect to the management of certain fisheries to be entered into between, and given effect to by, the Commonwealth, the Territory and the States

[Assented to 8 April 1981]

**B**E 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 Fish and Fisheries Amendment Act 1981.

### 2. PRINCIPAL ACT

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

### 3. COMMENCEMENT

This Act shall come into operation on the date on which Part IVA of the Fisheries Act 1952 of the Commonwealth, as amended by subsequent Acts of the Commonwealth, comes into operation.

### 4. DEFINITIONS

Section 5 of the Principal Act is amended -

(a) by inserting after the definition of "amateur fisherman" the following:

"'arrangement' means an arrangement made under Part IIIA by the Territory with the Commonwealth whether or not it is also made with a State;"

(b) by inserting after the definition of "boat" the following:

"'coastal waters', in relation to the Territory, has the same meaning as it has in the Commonwealth Act;

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"'Commonwealth Act' means the Fisheries Act 1952 of the Commonwealth, as amended by subsequent Acts of the Commonwealth, whether effected before or after the commencement of this Act;

"'Commonwealth Minister' means the Minister for the time being administering the Commonwealth Act or other Minister exercising powers and performing functions pursuant to section 12C of the Commonwealth Act;

"'Commonwealth proclaimed waters' means waters that, by virtue of a proclamation in force under the Commonwealth Act, are proclaimed waters within the meaning of that Act;";

(c) by inserting after the definition of "fisheries officer" the following:

"'fishery' means a class of activities by way of fishing, being a class of such activities that is identified in an arrangement under Part IIIA as a fishery to which the arrangement applies;";

(d) by omitting from the definition of "foreign boats" all words after "the meaning of" and substituting "the Commonwealth Act;";

(e) by inserting after the definition of "indigenous" the following:

"'Joint Authority' means -

(a) the Northern Australian Fisheries Joint Authority established under section 12D(1) of the Commonwealth Act;

(b) the Northern Territory Fisheries Joint Authority established under section 12D(1) of that Act; or

(c) a Joint Authority established under section 12D(6) of that Act, of which the Minister is a member,

as the case requires;

"'Joint Authority fishery' means a fishery in respect of which there is in force an arrangement under which the fishery is to be under the management of a Joint Authority;";

(f) by inserting after the definition of "registered" the following:

"'State' means a State of the Commonwealth;"; and

(g) by inserting after the definition of "take" the following:

"'Territory of the Commonwealth' means a Territory of the Commonwealth within the meaning of the Acts Interpretation Act 1901 of the Commonwealth;".

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### 5. NEW SECTION

The Principal Act is amended by inserting in Part I after section 5 the following:

#### "5A. REFERENCE TO FISHERY

"Without limiting the matters by reference to which a fishery may be identified in an arrangement, those matters include -

- (a) a species of fish;
- (b) a description of fish by reference to sex or another characteristic;
- (c) an area of waters or seabed;
- (d) a method of fishing;
- (e) a kind or class of vessels;
- (f) a class of persons; or
- (g) a purpose of activities,

or all or a combination of those matters."

### 6. NEW PART

The Principal Act is amended by inserting after Part III the following:

#### "PART IIIA - FISHERIES ARRANGEMENTS

##### "Division 1 - Joint Authorities

#### "72A. POWERS AND FUNCTIONS OF MINISTER

"(1) The Minister may exercise a power or perform a function conferred on him by Part IVA of the Commonwealth Act, including a power or function of the Minister as a member of a Joint Authority.

"(2) Where, in the exercise of a power conferred on him by Part IVA of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise the powers and perform the functions conferred by that Act on a deputy of a member of a Joint Authority other than the Commonwealth Minister.

#### "72B. JUDICIAL NOTICE

"All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

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### "72C. FUNCTIONS OF JOINT AUTHORITY

"A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division 2 as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

### "72D. DELEGATION

"(1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person a power under this Act other than this power of delegation.

"(2) Where a power delegated by a Joint Authority under subsection (1) is exercised by a delegate, the power shall, for the purposes of this Act, be deemed to have been exercised by the Joint Authority.

"(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office, including an office -

- (a) in the service of;
- (b) in the service of an authority of; or
- (c) under a law of,

the Commonwealth, the Territory, a State or a Territory of the Commonwealth.

"(4) A delegate of a Joint Authority is, in the exercise of his delegated powers, subject to the directions of the Joint Authority.

"(5) A delegation under this section by a Joint Authority -

- (a) may be revoked, by instrument in writing, by a Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Joint Authority; and
- (c) continues in force notwithstanding a change in the membership of the Joint Authority.

"(6) Where, under this Act, the exercise of a power or performance of a function by a Joint Authority is dependent upon the opinion, belief or state of mind of the members of that Joint Authority in relation to a matter and that power or function has been delegated in pursuance of this section, that power may be exercised or that function may be performed by a delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

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"(7) A certificate signed by a member of a Joint Authority stating a matter with respect to a delegation under this section by the Joint Authority is prima facie evidence of that matter.

"(8) A document purporting to be a certificate referred to in sub-section (7) shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly signed.

"(9) Nothing in this Part is intended to prevent a delegation by a Joint Authority, in accordance with the law of the Commonwealth, of powers conferred on the Joint Authority by that law of the Commonwealth.

### "72E. PROCEDURE OF JOINT AUTHORITIES

"(1) The provisions of section 12F(1) to (8), both inclusive, of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.

"(2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister or his deputy, who took part in or made the decision, is prima facie evidence that the decision, as recorded, was duly made.

"(3) In proceedings in a court, an instrument or other document signed on behalf of a Joint Authority by a member of the Joint Authority shall be deemed to have been duly executed by the Joint Authority and is prima facie evidence that it was signed in accordance with a decision of the Joint Authority.

### "72F. REPORT OF JOINT AUTHORITY

"The Minister shall cause a copy of a report of a Joint Authority prepared under section 12G of the Commonwealth Act to be laid before the Legislative Assembly as soon as practicable after preparation of the report.

## "Division 2 - Arrangements with Respect to the Management of Fisheries

### "72G. ARRANGEMENTS FOR MANAGEMENT OF FISHERIES

"(1) The Territory may, in accordance with section 12J of the Commonwealth Act, make an arrangement referred to in section 12H of that Act for the management of a fishery.

"(2) An arrangement made under sub-section (1) may be terminated as provided by the Commonwealth Act.

"(3) After an arrangement has been made under sub-section (1), but before the arrangement takes effect, licences, endorsements and other instruments may be granted, given or made, and regulations may be made, for the purposes of the operation of this Act as effected by the arrangement, as if the arrangement had taken effect,

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but such a licence, endorsement, instrument or regulation does not have effect before the arrangement takes effect.

"(4) Upon the termination of an arrangement, licences, endorsements and other instruments granted, given or made, and regulations made, for the purposes of the operation of this Act as effected by the arrangement, cease to have effect.

"(5) After action for the purpose of the termination of an arrangement has been taken but, before the termination takes effect, licences, endorsements and other instruments may be granted, given or made, and regulations may be made, for the purposes of the operation of this Act as effected by the termination of the arrangement, as if the arrangement had been terminated, but such a licence, endorsement, instrument or regulation does not have effect before the termination of the arrangement takes effect.

"(6) Where an arrangement is made under this Act, the Minister shall, by notice in the Gazette, give notice that such an arrangement has been made.

### "72H. APPLICATION TO FISHERIES IN ACCORDANCE WITH ARRANGEMENTS

"Where there is in force an arrangement that provides that a fishery is to be managed in accordance with the law of the Territory, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of foreign boats in Commonwealth proclaimed waters or operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters or in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before the arrangement took effect.

### "72J. FUNCTIONS OF JOINT AUTHORITY

"Where, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and that fishery is to be managed in accordance with the law of the Territory, the Joint Authority has the function of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with the other authorities, including other Joint Authorities within the meaning of the Commonwealth Act, in matters of common concern.

### "72K. JOINT AUTHORITY TO EXERCISE CERTAIN POWERS INSTEAD OF DIRECTOR OF FISHERIES

"(1) Subject to this section, a licence or endorsement granted, given or made under this Act otherwise than by virtue of this section, does not authorize the doing of an act or a thing by or in relation to a Joint Authority fishery.

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"(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the Territory, the powers conferred before or after the commencement of this Part on the Director of Fisheries by or under this Act, other than this Part, or the Regulations, including his powers with respect to the issue, renewal, cancellation and suspension of licences, are exercisable by the Joint Authority to the exclusion of the Director of Fisheries.

"(3) In exercising a power referred to in sub-section (2), a Joint Authority -

- (a) is not subject to the direction of the Minister; and
- (b) shall not exercise a power so that a licence granted, given or made by the Joint Authority applies in relation to a Joint Authority fishery, or Joint Authority fisheries, not managed by that Joint Authority.

"(4) A Joint Authority may endorse a licence referred to in section 15 (including such a licence granted by that Joint Authority or another Joint Authority) so as to extend the operation of the licence to matters to which the licensing powers of the Joint Authority under this Act are applicable and, where such an endorsement is made -

- (a) the endorsement ceases to have effect if the licence ceases to have effect; and
- (b) the Joint Authority may suspend or cancel the endorsement as if it were a licence granted by that Joint Authority.

"(5) Subject to section 72M(1)(b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, notification or order under this Act would, but for this section, apply to the fishery, the regulation, notification or order, as the case may be, ceases so to apply.

"(6) This section does not empower a Joint Authority to grant, or to take other action in respect of, a licence in respect of a foreign boat or to endorse such a licence.

### "72L. PRESUMPTION RELATING TO CERTAIN STATEMENTS

"A statement in an arrangement to the effect that specified waters -

- (a) in the case of an arrangement to which the Commonwealth and the Territory are the only parties - are waters adjacent to the Territory; and
- (b) in the case of another arrangement - are waters adjacent to the Territory and a State that is a party to the arrangement or are waters adjacent to the Territory, a specified State or Territory of the Commonwealth,

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shall, for the purposes of this Act, be conclusive evidence of the fact so stated.

"72M. REGULATIONS AND NOTICES

"(1) Where a Joint Authority is to manage a fishery in accordance with the law of the Territory, the Administrator may, for the purpose of giving effect to a decision of the Joint Authority -

- (a) make regulations for the management of the fishery;
- (b) deem a regulation made otherwise than pursuant to this section to be a regulation applying to the fishery; or
- (c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to another fishery.

"(2) The power conferred on the Administrator to make regulations otherwise than under sub-section (1) does not extend to the making of a regulation of a kind referred to in sub-section (1)(a) or (b) or the amendment of a regulation in the manner referred to in sub-section (1)(c).

"(3) Where a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made pursuant to this section, it shall be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority."

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