

2016

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR PRIMARY INDUSTRY AND FISHERIES

FISHERIES LEGISLATION AMENDMENT BILL 2016

SERIAL NO. 162

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill amends the *Fisheries Act* and Fisheries Regulations in the following ways:

1. Fulfils Government's legal commitments under the various Blue Mud Bay (BMB) settlement agreements that allow permit-free fishing in intertidal waters overlying Aboriginal Land;
2. Provides essential biosecurity powers to deal with increasing risks of pest and disease incursions;
3. Removes red tape and administrative burden to provide a simpler and more efficient fishery licensing framework to reduce time, costs, and improve business flexibility;
4. Provides for more efficient and effective compliance through the use of electronic monitoring systems, the use of fishery infringement notices or confiscation notices for minor offences and contemporary penalties that are commensurate with the level of the offence; and
5. Ensures fisheries legislation is consistent with Northern Territory privacy laws and other Australian fisheries legislation.

NOTES ON CLAUSES

Part 1 **Preliminary Matters**

Clause 1. **Short Title**

This is a formal clause which provides for the citation of the Bill. When passed the Act may be cited as the *Fisheries Legislation Amendment Act 2016*.

Clause 2. Commencement

This is a formal clause which provides for the commencement of the Bill when enacted.

Clause 2 states that the Act commences on the date fixed by the Administrator by *Gazette* notice.

Part 1 Amendment of Fisheries Act

Clause 3. Act amended

Clause 3 provides that the amendments in this Part are to the *Fisheries Act* (herein “the Act”).

Clause 4. Section 2A amended

Clause 4 amends the objects of the Act which are in section **2A – Objects**. The objects are the foundation of all activity under the Act. They articulate the purpose and role of the legislation.

Object (a) has been amended by removing unnecessary words.

The inclusion of Object (ab) is to acknowledge the importance of biosecurity for the Northern Territory’s aquatic resources.

The amendment to Object (b)(ii) ensures the Act reflects contemporary industries managed under the legislation.

Finally the amendments to Object (c) remove duplication of intent outlined in the revised Objects.

Clause 5. Section 4 amended

Clause 5 amends section 4 of the Act which provides for the various definitions used throughout the Act

Clause 5 inserts a number of new terms used in the Act, for example *approved operator, authorised officer, Fisheries Inspector*.

A range of other definitions have been moved from the Regulations into the Act, for example *fishing gear, fishing monitoring equipment* and *vessel monitoring system*.

Other definitions have been omitted as the terms will no longer be used in the Act, for example *assistant, nominated person, operative management plan, short term operator* and *temporary transferee* or because the terms are already defined in the *Interpretation Act*, for example *State*

and *Territory of the Commonwealth*.

A key definitional change has been the inclusion of the term *noxious species* which replaces the current terms *aquatic pest*, *noxious aquatic life* and *noxious fish*.

Section 4(3) is omitted as it is covered by the definition of *this Act* in section 17 of the *Interpretation Act*.

Clause 6. Section 4A inserted

This clause inserts a new section 4A in the Act which provides that Part IIAA of the Criminal Code applies to an offence against the Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, concepts commonly used in the creation of offences.

Section 4A(2) clarifies that Part IIAA of the Criminal Code does not apply to offences against the Regulations or a management plan unless those instruments state otherwise.

Clause 7. Section 6 replaced

Clause 7 replaces section 6 of the Act with a new section that simplifies the process for delegation of functions by the Minister and the Director.

In particular, the existing sections 6(2) and (3) are no longer necessary as these matters are covered by section 46A of the *Interpretation Act*.

Clause 8. Section 8 replaced

Clause 8 replaces section 8 of the Act with new sections 7A, 8 and 8A.

The new section 7A inserts a new category of Authorised Officer known as Fisheries Inspectors. This will meet Government's commitments in BMB agreements by allowing Indigenous marine rangers to have enforcement powers.

The Minister may appoint Fisheries Inspectors with the powers and functions to be prescribed by regulation. These powers and functions will be commensurate with the level of training and qualifications of the individual. In addition the Minister may confer additional powers or functions on a specified Fisheries Inspector or class of Fisheries Inspectors by *Gazette* notice.

The new section 8(1) re-enacts the requirement under current section 8(1) that requires the Director to issue an identity card to Fisheries Officers and expands this requirement to Fisheries Inspectors appointed under new section 7A.

The new section 8(2) retains the current requirements for an identify card to include a recent photograph and the signature of the holder and adds a new requirement that the card shows the date of issue and expiry.

Flexibility has been provided in the new section 8(3) to enable a single identity card to be issued to a person to fulfil the requirements of the *Fisheries Act* and other Acts thus minimising the amount of identification an officer (authorised under a range of legislation) has to carry.

The new section 8(4) re-enacts current section 32(7), which provides that the production of a current identity card, or evidence that a Fisheries Officer is a police officer, is sufficient authority to undertake any activity under this Act until the contrary is proved. It also applies this provision to Fisheries Inspectors.

New section **8A – Return of identity card** makes it an offence for a person, who ceases to be a Fisheries Officer or Fisheries inspector, to fail to return their identity card back to the Director within 21 days. The maximum penalty for the offence is 20 penalty units.

Section 8A(2) provides that failure to return an identity card is an offence of strict liability.

Clause 9. Section 9 amended

This clause amends section 9 of the Act to update the requirements for the registers to be kept by the Director. In particular, the amendments clarify the information to be kept on registers by the Director and what information on those registers can be obtained by members of the public.

Clause 10. Section 9A amended

Clause 10 updates the provisions in current section 9A of the Act for registration of third party interests in licences or quotas under a licence.

This amendment recasts section 9A in line with modern legislative drafting styles to re-enact the requirement under the current section 9A(1) requiring the Director to register a third party interest in a fishing licence and expands this requirement to a quota allocated to a licence.

Section 9A(2) articulates the process that the Director must follow after receiving an application for registration of a third party interest, including providing both the applicant and licensee written notice that the application has been received and also providing the licensee 28 days to lodge an objection to the registration.

Clause 10 also inserts a new section 9A(4A) requiring the Director to register the third party interest on the register established under section 9(1).

The new section 9A(5) re-enacts the requirement under the current section 9A(5) that the Director must not approve the transfer of a licence until a determination is made to either register or refuse the third party interest. The new section also applies this requirement to the transfer of a quota allocated to a licence.

Section 9A(6)(b) has been slightly amended to include a third party interest in a quota to the process to remove a third party interest from the register if agreed by both the licensee and third party interest holder.

Clause 11. Part II, Divisions 2 to 5 replaced

Clause 11 inserts a new section **9B – Notice to registered third party holder** - after existing section 9A in the current Act.

Under section 9B, the Director must notify the holder of a registered party interest before processing an application to transfer, or making a decision to suspend or cancel, the licence or quota.

Clause 11 repeals existing Part II, Divisions 2 to 5 from the Act which is replaced with the new Part 2A dealing with licensing and vessel registration.

New section **10 – Requirement for licence** re-enacts existing section 10 outlining the requirements for a licence to authorise a person to do various activities under the Act in language more consistent with modern drafting styles. Section 10 has also been modified to give the flexibility, via management plan or regulation, to exempt an activity from requiring a licence. In addition, offences have been reviewed to ensure they are compliant with Part IIAA of the Criminal Code, and the relevant penalties have been updated with a maximum penalty of 200 penalty units or imprisonment for 2 years (increased from a previous maximum penalty of 170 penalty units or imprisonment for 2 years), while a person intentionally engages in conduct that is reckless in nature faces a maximum penalty of 100 penalty units or imprisonment for 12 months.

New section **11 – Requirement for permit** re-enacts existing section 15(1) outlining the requirements for a range of permits to authorise a person to do various activities under the Act in language more consistent with modern drafting styles. In addition, offences have been reviewed to ensure they are compliant with Part IIAA of the Criminal Code. Relevant penalties have been updated with a maximum penalty of 500 penalty units or imprisonment for 2 years (increased from a previous maximum penalty of 170 penalty units or imprisonment for 2 years) in order to reflect the seriousness of offences against the Act, while offences against sections 11(5) and (7) have been updated within a maximum penalty of 100 penalty units or 12 months imprisonment.

New section **12 – Licence allocation for new fishery** re-enacts the existing provision in section 11(3A) requiring the Director to determine an open and public process for the allocation of licences in a new fishery or additional licences in an existing a fishery.

New section **13 – Applying for and granting licence or permit** combines the existing sections 11 and 16 outlining the process for applying for, and the granting of, a licence or permit under the Act in language more consistent with modern drafting styles. Provision has also been included for the Director to take into consideration any Ministerial guidelines or other matters the Director considers relevant.

New section **14 – Conditions of licence or permit** sets out the general conditions that apply for licences and permits and allows conditions to be prescribed by regulation or prescribed within the licence or permit that were formerly contained in sections 11(7) and 16(3). Section 14 also

includes an offence of strict liability with a maximum penalty of 200 penalty units.

New section **15 – Term of licence or permit** specifies that a licence or permit has effect for the period specified in it (unless otherwise revoked). The section increases the timeframe a licence may be issued from 5 years to 10 years and amends the timeframe for a permit from such period as the Director thinks fit to 5 years.

New section **16 – Expiry and renewals** re-enacts the existing provision in section 12, however, expands it from licences to licences and permits. This section outlines the process for renewing a licence or permit and removes the requirement for the Director to renew a licence on the same terms and conditions as the original licence, to improve flexibility of management practices.

Section **16A – Transfer of licence** re-enacts the existing section 12B, however, allows for the transfer to be either permanent or for a fixed period. Provision has also been included for the Director to take into consideration any Ministerial guidelines or other matters the Director considers relevant.

Clause 11 also inserts new section **16B – Restriction on licensee performing fishing operations** that stipulates that a licence or permit does not authorise the licensees to personally undertake any fishing operations unless the licensee is an approved operator, has the approval of the Director, or the licence or permit is of a class prescribed by regulation.

New section **16C – Licence not personal property** re-enacts section 14B.

New section **17 – Special permits** re-enacts current section 17 in line with modern legislative drafting style.

New section **17A – Approved operators** creates a new fishing activity authorisation. Every person who wishes to be in charge of fishing operations must apply to the Director for approved operator status. If the applicant is considered a "fit and proper" person, they may be approved as an approved operator for a period of up to 5 years.

New section **17B – Fit and proper person test** establishes the requirements to become an approved operator. Applicants will need to meet a range of requirements including that they have not been convicted of fishing offences (or offences under other relevant Acts) in the previous five years. Provision has also been included to develop a 'fit and proper' person policy as Ministerial guidelines, in consultation with key stakeholders, once the Act is amended. These policy guidelines will provide industry with clarity over requirements for a person to be in charge of fishing operations.

The new section 17C(1) requires the Director to issue an identity card to the approved operator. Section 17C(2) articulates the requirements for an identity card to include a recent photograph, date of issue and expiry and the signature of the holder. Section 17C(3) makes it an offence for a person, who ceases to be an approved operator, to fail to return their identity card back to the Director within 21 days. The maximum penalty for the offence is 20 penalty units. Failure to return an identity card is an offence of strict liability.

New section **17D – Revocation of approval** allows the Director to revoke approved operator status if the Director considers that the person is no longer a fit and proper person (e.g. convicted of an offence).

New section **17E – Appointment of approved operator to be person in charge of fishing operations** requires that a fishing licensee must appoint an approved operator to undertake fishing operations under either a licence or permit. The section articulates the processes for nominating, varying and cancelling an approved operator to be charge of fishing operations as well as notification requirements to the Director. Failure to comply with the 24 hour notification requirement is an offence of strict liability and attracts a maximum penalty of 100 penalty units.

New section **17F – Production of identity card** requires a person in charge of fishing operations to produce an approved operator card for inspection if requested by a Fisheries Officer. Failure to produce an identity card is an offence of strict liability and attracts a maximum penalty of 50 penalty units.

New section **17G – Offence if person in charge not appointed** creates two new offences, one for the licensee, and one for the person undertaking fishing operations, relating to undertaking fishing operations without an approved operator being appointed. Contravention of these requirements attracts a maximum penalty of 100 penalty units.

New section **17H – Liability of person in charge for offences by others** makes it an offence for a person who is in charge of fishing operations if another person commits an offence against the Act and the person in charge did not take reasonable steps to prevent the offence. The maximum penalty is that which may be imposed for the relevant offence.

New section **17J – Liability of licensee for offences by approved operator and others** provides that a licensee commits an offence if an approved operator or another person commits an offence under the Act, and the licensee failed to take reasonable steps to prevent the offence. The maximum penalty is that which may be imposed for the relevance offence.

New section **17K – Requirement for registration of fishing vessels** re-enacts the existing offences in section 18 for intentionally using an un-registered vessel in conducting fishing operations that require either a licence or permit. If the vessel is a foreign boat, the offence is one of strict liability and attracts the maximum penalty of 500 penalty units or imprisonment for 2 years (decreased from 860 penalty units or 3 years imprisonment). Whereas if the vessel is not a foreign boat, the offence attracts a maximum penalty of 200 penalty units or imprisonment for 2 years (increased from 170 penalty units or 2 years imprisonment).

New section **18 Registration of fishing vessels** re-enacts the existing registration provisions in section 18 in language more consistent with modern drafting styles. Provision has also been included for the Director to take into consideration any Ministerial guidelines or other matters the Director considers relevant. The amendments also provide for the vessel to be registered for a period of not more than 10 years.

New section **19 Tender vessels** re-enacts the existing section 19 in language more consistent with modern drafting styles. Provision has also been included for Ministerial guidelines to be developed to specify distances and other matters relating to the operation of tender vessels.

New section **20 – Cancellation or suspension by court order** re-enacts current section 20 in two new sections. The first, section 20, deals with cancellation / suspension by the court and the second, section 20A, deals with the cancellation by the Director.

New section **20B – Cancellation of vessel registration if licence or permit cancelled** re-enacts the existing sections 11(15) and (16) in line with modern legislative drafting style.

New section **20C – Surrender of licence or permit** is a new provision enabling a licensee to voluntarily surrender a licence or permit.

New section **20D – Ministerial guidelines** is a new provision enabling the Minister to make guidelines articulating further details relating to licensing and vessel registration (such as the ‘fit and proper’ test and distances of operation in relation to tender vessels) to provide specific guidance on matters that may vary between fishing operations.

New section **20E – Form of application** is a general section specifying the information requirements and prescribed fee that the Director requires to make an assessment of the application.

New section **20F – Notice of decision** requires that the Director must, as soon as practicable after making a decision, provide written notice of the decision, the reasons for it and any right of review that may exist (for example, review to the Northern Territory Civil and Administrative Tribunal (NTCAT) under new section 50A).

New section **20G – Grant of licence may be noted on existing licence** enables the Director to note any further licences obtained by a licensee on the original licence documentation. This re-enacts current section 11(5).

Clause 12. Section 23 replaced

Clause 12 re-enacts section 23 of the Act which requires the Director to prepare a management plan as soon as practicable after the declaration of a management area or managed fishery having regard to the need for coordination between each management area or managed fishery.

The new section clarifies that it does not apply to a Joint Authority fishery (this is covered under new section 70A of the Act).

Clause 13. Section 25 replaced

Clause 13 re-enacts section 25 in language more consistent with modern drafting styles.

Section 25 outlines the process to be followed to make a management plan. Amongst other

things, it provides that if the Minister agrees in principle with a proposed plan, the Minister must give notice of where it can be inspected through the *Gazette* or a Northern Territory newspaper.

The old section 25 required that notice had to be advertised in both the *Gazette* **and** a newspaper, whereas under the new section 25 the requirement is the *Gazette* **or** a newspaper.

Clause 14. Section 25A amended

Clause 14 re-enacts existing section 25A in language more consistent with current drafting styles.

Section 25A outlines the process to be followed to amend a management plan. Amongst other things, it provides that if the Minister agrees in principle with a proposed amendment, the Minister must give notice of where it can be inspected through the *Gazette* or a Northern Territory newspaper.

The old section 25A required that notice had to be advertised in both the *Gazette* **and** a newspaper, whereas under the new section 25A the requirement is the *Gazette* **or** a newspaper.

Clause 15. Section 26 replaced

Clause 15 re-enacts section 26 of the Act which details the procedure for the Minister to make emergency amendments to management plans. For example, subsection (3) specifies that the amendment cannot take effect before the *Gazette* notice is published. Subsection (4) has been revised to specify that the period can be extended by *Gazette* notice.

Clause 16. Section 29 amended

Clause 16 re-enacts the current section 29 of the Act, however, amended to make the language of the section more consistent with current drafting styles.

Clause 17. Section 30 replaced

Clause 17 re-enacts the current section 30, however, amended to make the language of the section more consistent with current drafting styles. The offence related to not answering an authorised officer's question or complying with other requirements under the section has been redrafted for compliance with Part 11AA of the Criminal Code. It also includes a maximum penalty of 100 penalty units (reduced from a previous maximum penalty of 170 penalty units).

The new section 30 also reverses the current position that a person may refuse to answer a question or give information to a Fisheries Officer if it would incriminate them [section 32(2)]. New section 30(3) and (4) requires the person to answer the question or give the information but prevents the answer or information being used in proceedings against the person except in limited circumstances.

Clause 18. Section 31 amended

Clause 18 amends section **31 – Search** of the Act to re-enact the current offence related to intentionally contravening a direction relating to an authorised officer conducting a search and redrafts it for compliance with Part 11AA of the Criminal Code. There is a maximum penalty of 100 penalty units (reduced from a previous maximum penalty of 170 penalty units).

Further clarification is provided in section 31(1)(d) that equipment includes electronic monitoring and navigation equipment.

Clause 19. Section 32 amended

Clause 19 amends section **32 – General matters relating to powers of Fisheries Officers** to re-enact the current offence related to not complying with a requirement of a Fisheries Officer under section 32(3) (to facilitate the Fisheries Officer to enter or board a vessel or vehicle or to remove fishing gear from the water for inspection). The offence is redrafted for compliance with Part 11AA of the Criminal Code. There is a maximum penalty of 100 penalty units.

Clause 19 reduces the maximum penalty from 170 to 100 penalty units and removes section 32(2) due to the new provision in section 30(3) and (4) that abolishes the privilege against self-incrimination.

Clause 19 also removes section 32(7) as that is now contained in new section 8(4) inserted by clause 8.

Clause 20. Section 33 replaced

Clause 20 replaces section 33 of the Act, which deals with Fisheries Officers' powers of seizure, with three new sections 33 to 33B. These sections re-enact the substance of section 33 in clearer, modern language.

Clause 20 also inserts new section 33C, which re-enacts current section 15(2) providing certain powers to Fisheries Officers in connection with permit offences.

Clause 21. Section 34 amended

Clause 21 makes minor amendments to section 34(1) of the Act to improve the readability of the section and clarify that records must be kept by persons who transport or are in possession of fish or aquatic life that is intended for sale by wholesale or retail under a licence or permit.

Clause 22. Sections 34A to 36 replaced

Clause 22 re-enacts the current offence in section **34A – Movement of fish without proper documents prohibited** and also includes an offence of strict liability with a maximum penalty of 100 penalty units.

Clause 22 also replaces current section 35 with two new sections, sections 35 and 35A.

New section 35 creates an offence if a person contravenes a requirement of the Director under section 34 to keep or supply an account, record, return or information and also includes an offence of strict liability with a maximum penalty of 100 penalty units. This replaces current section 35(1)(a).

New section 35A makes it an offence for a person to intentionally provide misleading information or documentation to an Authorised officer, if the person knows that the information is misleading, and knows that the person is an authorised officer and is acting in an official capacity. If guilty, the maximum penalty for the above offences is 400 penalty units or imprisonment for up to 2 years. This replaces current section 35(1)(b).

Current section 35(2) is not re-enacted because it is now covered by new section 36(3)(a)(iv).

Clause 22 also re-enacts current section 36 of the Act, which makes it an offence to disclose information in the course of performing functions under the Act. The section defines when information may be disclosed without such disclosure being an offence. The offence is punishable by imprisonment for up to 2 years or 200 penalty units.

Clause 23. Sections 37 to 37B replaced

Clause 23 replaces existing sections **37 – General Offences and penalties**, **37A – Infringement offences and notices** and **37B – Withdrawal of infringement notice** with a new section 37. Current sections 37A and 37B are replaced by new Division 4A, which is inserted by clause 28.

The current section 37, which provided a general offence for contravention of the Act, is repealed as it is not consistent with Part IIAA of the Criminal Code. The new section 37 is the re-enactment of the penalty at current section 15(1)(c), which is being omitted by the amendments made by clause 11.

New section 37 provides that a person convicted of an offence against section 11(6) – *where a person intentionally introduces directly or indirectly a dangerous substance into waters of the Territory with the result that either fish or aquatic life are stunned, injured, killed or detrimentally affected or the habitats, food or spawning grounds of fish or aquatic life are detrimentally affected* – the court may impose an additional penalty (over and above the original penalty imposed for the offence) not exceeding 50 penalty units for each day the offence continues.

Clause 24. Section 38 amended

Clause 24 updates section **38 – Regulatory offences** as part of the Part IIAA of the Criminal Code review of offences under the Act. Offences against the Act will no longer be regulatory offences. For the Regulations and management plans, current offences will remain regulatory offences but new offences, to which Part IIAA of the Criminal Code will apply, will not be regulatory offences.

Clause 25. Sections 39 to 43A replaced

Clause 25 inserts new offences and re-enacts existing offences in the Act in modern language for compliance with Part IIAA of the Criminal Code and to update the relevant penalties:

- for a person to obstruct an authorised officer if the person knows the authorised officer is acting in an official capacity. The maximum penalty for this offence is 50 penalty units or imprisonment for 6 months [section 39];
- for a person who is control of a registered vessel who permits another person to use the vessel or fishing equipment in the commission of an offence. The maximum penalty for this offence is 100 penalty units or imprisonment for 12 months [section 40];
- for a licensee or the owner of registered vessel who fails to give the Director written notice of the change of address within 28 days after the change. The maximum penalty for this offence is 20 penalty units [new section 40A, currently section 57(3)];
- for a person who intentionally traffics fish of a priority species, if the number of fish in question is equal to or greater than a commercial quantity of that species. The maximum penalty for this offence is 400 penalty units or imprisonment for 2 years [new section 40B – this is a new offence];
- for a person who intentionally sells fish or aquatic life, or a product containing such content, and the fish or product is labelled with the false identity or origin. The maximum penalty for this offence is 200 penalty units or imprisonment for 2 years [section 41];
- for a person who intentionally buys, sells or possesses fish or aquatic life that was taken in contravention of this Act and the person has knowledge of that circumstance. The maximum penalty for this offence is 200 penalty units or imprisonment for 2 years [section 42]; and
- for a person who commits various offences related to aquaculture, there is a range of penalties from 50 to 500 penalty units or imprisonment for 2 years, depending on the nature of the offence [section 43].

Clause 25 also re-enacts section 43A of the Act and extends the time a prosecution can be brought from 12 months to 2 years.

Clause 26. Sections 45A and 45B inserted

Clause 26 inserts new section 45A of the Act which re-enacts current section 15(3) relating to cost recovery for certain offences related to permits.

Clause 26 also inserts new section 45B which re-enacts current section 33(10) relating to cost recovery for handling and storing of things seized by a Fisheries Officer.

Clause 27. Section 46 amended

Clause 27 amends section 46 of the Act to update and clarify the provisions for forfeiture of

property on the finding of guilt for an offence against the Act.

Clause 28. Part IV, Divisions 4A and 4B inserted

Clause 28 inserts Part IV, Divisions 4A and 4B.

Division 4A contains standard Northern Territory provisions for the issue of infringement notices for infringement notice offences (which are prescribed in the Regulations).

Division 4B provides a process for the confiscation of fishing gear, fish or aquatic life, by a Fisheries Officer, on reasonable grounds it was used in, or taken as part of, a confiscation offence and the Fisheries Officer does not intend to make a complaint or serve an infringement notice.

Section 46H articulates the information to be obtained by the Fisheries Officer at the time of seizure which forms the contravention notice.

Section 46J requires the Fisheries Officer to ensure that any property seized is to be delivered into the custody of the Director. It also provides for the Director to dispose of any fish or aquatic life seized that may rot, spoil or otherwise perish.

Sections 46K, 46L and 46M outlines the processes the Local Court may undertake to resolve ownership of seized property, particularly if the owner of the property did not commit the offence.

Clause 29. Section 47 amended

This amendment amends section 47 - **Regulation** of the Act in line with modern legislative drafting styles and expands on types of regulations that can be made under the Act, including managing a fishery through a quota system [section 47(3)], requiring the use of fish monitoring and vessel monitoring systems [section 47(8)] and establishing offences against a regulation attracting a fine not exceeding 170 penalty units and, if the offence is a continuing one, prescribing a further fine not exceeding 4 penalty units for each day the offence continues.

Clause 30. Section 49, Part V heading and section 50 replaced

This amendment re-enacts section 49 of the Act in line with current legislative drafting styles.

New section 50 re-enacts current section 11A (internal review of delegate decisions) and the new section 50A replaces reviews by the Local Court (currently in section 50) with reviews by the Northern Territory Civil and Administrative Tribunal. The decisions that may be reviewed by the Tribunal are specified in new Schedule 3 inserted by clause 42.

‘Tribunal’ is defined as the Civil and Administrative Tribunal (being the Northern Territory Civil and Administrative Tribunal, refer section 17 of the *Interpretation Act*).

Clause 31. Section 51 amended

Clause 31 amends the heading to section 51 from Fishing Industry Research and Development Fund to Fishing Industry Research and Development Trust Fund. An inconsistency was identified between the title of this Fund in the Act and subordinate instruments.

Section 51(1) is being amended to reflect a more operationally efficient process and consistency in terminology by substituting “Agency Operating Account” to “Accountable Officer’s Trust Account” and inserting “Trust” into the name of the fund to reflect its correct title.

Clause 32. Section 52 replaced

Clause 32 re-enacts section 52 of the Act to re-establish the Fishing Industry Research and Development Fund advisory committee as the Fishing Industry Research and Development Trust Fund advisory committee. This is a direct result from the change in the name of the fund outlined in clause 31.

Section 52 has also been redrafted in modern language and also removes the requirement for the Advisory Committee to meet every 6 months. Given the reduced and often *ad hoc* workload of the Committee, it is considered appropriate for the Chairperson (formerly Chairman) to decide the frequency of the Committee’s meetings rather than on a prescribed basis if there are few or no matters to progress.

Clause 33. Section 57 replaced

Clause 33 repeals section 57 – **Service** as the standard provisions for service of documents are contained in section 25 of the *Interpretation Act*. The offence in section 57(3) is re-enacted as the new section 40A (see clause 25).

Clause 33 also inserts a new provision - **57 – Acquisition on just terms**, which provides for a situation if property is seized other than on ‘just terms’ then the person is entitled to receive from the Territory appropriate compensation.

A court of competent jurisdiction may decide the amount of compensation or make orders it considers necessary to ensure the acquisition on just terms.

Clause 34. Part VI, Division 2, Subdivision 1 heading and section 63A inserted

Clause 34 inserts a new section **63A – Definition** – after existing section 63 in the current Act.

This section defines what a *relevant instrument* is in relation to the management arrangements for fisheries (i.e. a licence, endorsement or other instrument as well as a management plan or regulation).

Clause 35. Section 64 amended

Clause 35 omits existing sections 64(2) to 64(6) from the Act and replaces them with three new subsections that re-enact the existing provisions in modern and simplified language as well as imposing a 30 day time limit for notifying an arrangement being made via the *Gazette*.

Clause 36. Section 65 replaced

Clause 36 inserts new section **64A – Variation and termination of arrangements** that enables an arrangement made under section 64 to be varied or terminated by the Commonwealth Act. The Minister must give notice in the *Gazette* within 30 days after an instrument varying or terminating an arrangement is made.

Clause 36 omits existing section 65 from the Act which is replaced with new section **65 – Application** that re-enacts the existing provisions in modern and simplified language to assist comprehension.

Section 65(1) specifies that if an arrangement provides for a fishery to be managed in accordance with the law of the Territory, this Act applies to that fishery.

Section 65(2) states that those provisions do not apply to or in relation to the fishery in respect of: a) foreign boats in the Australian fishing zone; b) operations on or from foreign boats, or persons on foreign boats, in the Australian fishing zone; or c) matters that occurred in or in relation to the Australian fishing zone before the arrangement took effect.

Clause 37. Section 66 amended

Clause 37 provides for the amendment of the heading to section 66 from **Functions and powers, &c. of Joint Authority** to **Functions, powers and objects of Joint Authority**.

Clause 37 also replaces section 66 (2) which previously established two objectives for a Joint Authority to follow in the performance of its functions. The new subsection (2) better aligns the functions and actions of a Joint Authority with the objects of this Act.

Clause 38. Section 67 amended

Clause 38 amends section 67(1) to provide consistency to the range of relevant instruments (licence, permit, approval or endorsement) subject to that section. It also addresses inconsistent spelling and language in the Act. Further it broadens the application of this power to a management plan made under Subdivision 2.

Clause 39. Part VI, Division 2, Subdivision 2 inserted

Clause 39 inserts a new Subdivision 2 to enable Joint Authority managed fisheries to benefit from having management plans, or formal fishery management advisory committees, to ensure consistency with fishery management practices in the Territory.

Clause 40. Part 8 inserted

Clause 40 inserts a new **Part 8 – Transitional** matters for Fisheries Legislation Amendment Act 2016 (this Bill) after existing section 71 in the current Act.

Under Part 8, a new section **72 – Definitions** has been enacted articulating key terms used in this Part, including:

- *amending Act* means this Bill
- *new Act* means this Act as amended by the amending Act
- *old Act* means this Act as in force immediately before the commencement.

Also under Part 8 is section **73 – Offence provisions**, which provides that new or re-enacted offences only apply to offences committed after commencement of the amending Act.

New section **74 – Licences, permits and vessel registration** provides for the continuity of licences, permits and vessel registration issued under the old Act.

New section **75 – Pending applications** requires the Director to consider any pending applications for a licence, permit, special permit or registration of a vessel as if it occurred under the requirements of the new Act.

New section **76 – Pending reviews by Director** requires the Director review an application made before the commencement of the new Act under the conditions of the old Act. If a licence or permit is granted on the basis of such a review, the licence or permit is taken to be granted under the new Act. If a review of the decision is requested, the NTCAT will be the reviewing authority.

New Section **77 – Pending reviews by Local Court** requires that if an application for the review of a decision was made under section 50 of the old Act, and the review was not determined by the Local Court prior to the commencement of the new Act, then the Local Court must complete its review. If a licence or permit is granted on the basis of such a review, the licence or permit is taken to be granted under the new Act.

New section **78 – Identity cards** provides for the continuity of identity cards issued to Fisheries Officers if they comply with the requirements of the new Act.

New section **79 – Register** ensures that information contained on a register under section 9 of the old Act continues to be information on a register under the new Act.

New section **80 – Pending applications for registration of third-party interests** requires that if an application was made for the registration of a third party interest under the old Act, the Director must complete the application process under section 9A of the new Act.

New section **81 – Management plans** provides for a management plan made under the old Act to continue in effect after the commencement of the amendments.

New section **82 – Fishing Industry Research and Development Fund** requires all money held in the Fishing Industry Research and Development Fund under the old Act immediately before the commencement of the amended Act is to be credited to the Fishing Industry Research and Development Trust Fund established under section 51 of the new Act.

New section **83 – Fishing Industry Research and Development Fund advisory committee** provides for the continuation of the existence and members of the advisory committee established under the old Act after commencement of the newly amended Act.

Clause 41. Schedule 2 amended

Clause 41 amends Schedule 2 to the Act, which sets out matters for management plans in modern and simplified language.

Clause 41(6) inserts a new provision that the Director may specify fishing monitoring and/or vessel monitoring systems on all holders of a class of licence or permit, or all owners of a class of registered vessel.

Clause 41(7) also inserts new provision 2A that a management plan may deem a person to be in possession of fish in circumstances prescribed by the plan.

Clause 41 moves current section 2(g), to new section 2B that states that a management plan may provide for an offence against the management plan, for a penalty not exceeding 170 penalty units, and a further offence of an additional penalty of 4 penalty units for each day the offence has continued after it first occurred.

Clause 42. Schedule 3 inserted

Clause 42 inserts a new **Schedule 3 – Reviewable decisions**, which sets out the decisions under the Act that are reviewable by the Northern Territory Civil and Administrative Tribunal and who may apply for review (the *affected person*).

Clause 43. Act further amended

Clause 43 provides for the amendments in Schedule 1 to have effect.

Schedule 1 provides for more minor amendments necessary as a consequence of more substantive amendments made by the Bill, and other minor amendments to make the language of the Act more consistent with current drafting styles.

Part 3 Amendment of Fisheries Regulations

Clause 44. Regulations amended

This is a formal clause that provides that the amendments in this Part are to the *Fisheries Regulations*.

Clause 45. Regulation 3 amended

Regulation 3 provides amended definitions consequential to the amended Regulations.

Clause 46. Regulation 15 inserted

Clause 46 inserts a new regulation 15, which specifies that each fish or aquatic life specified in Schedule 1 is a noxious species, for the purposes of the definition provided in section 4(1) of the Act. Schedule 1 is set out in clause 65.

Clause 47. Regulations 23A, 24 and 25 replaced

Clause 47 replaces regulations 23A, 24 and 25 with new regulation 25 that specifies that trading in live exotic fish or exotic aquatic life, or releasing an exotic fish or exotic aquatic life into a body of water other than an aquarium, requires a permit.

Current regulation 23A is no longer required as a new term “**noxious species**” is being introduced to replace “**aquatic pests**”, “**noxious fish**” and “**noxious aquatic life**”. Regulation 24 is no longer required as it is covered by new section 11(1)(a) and (b) of the Act.

Clause 48. Regulation 26 amended

Clause 48 amends regulation 26 for consistency with the new licensing process in the Act, in relation to permits to import live fish or aquatic life.

Clause 49. Regulations 27 and 28 replaced

Clause 49 replaces regulations **27 – Application for permit** and **28 – Permit to import live fish or aquatic life to state certain matters** with a new regulation 28 which takes into account the changes made in the amended Act for the application and granting of permits. The current requirements in regulation 27 have been moved to regulation 26 (see clause 48).

Clause 50. Regulation 47 and 50 repealed

Clause 50 repeals regulation **47 – Condition to comply with Act** as it is now an offence under new section 14(7) of the Act to contravene a condition of a licence or permit.

Clause 50 also repeals regulation **50 – Approval of persons to conduct operations** as this is now covered by sections **17A – Approved operators** and **17B – Fit and proper person test** of the amended Act.

Clause 51. Regulation 96CB amended

Clause 51 provides for the amendment of regulation 96CB – **Temporary transfer of fishing units**. In particular sub-regulation (3A) has been redrafted to remove references to sections of the old Act that have been repealed.

Clause 52. Regulation 96CC amended

Clause 52 provides for the amendment of regulation 96CC – **Permanent transfer of entitlement**. In particular sub-regulation (6) has been omitted to remove references to sections of the old Act that have been repealed.

Clause 53. Regulation 97 amended

Clause 53 provides for the amendment of the heading of regulation 97 from **Transfer of licence** to **Transfer of restricted licences to the Territory**.

Clause 53 also omits sub-regulation (1) as the provision for licence transfers is now contained in section **16A – Transfer of licence** of the amended Act and does not need to be repeated in the regulations.

Clause 54. Regulation 98 amended

Clause 54 provides for the amendment of the heading to regulation 98 from **Unrestricted licence** to **Unrestricted licence granted on transfer**.

Clause 54 also deletes sub-regulation (2) as the provision for licence transfers is now contained in section **16A – Transfer of licence** of the amended Act and does not need to be repeated in the regulations.

Clause 55. Regulation 138 replaced

Clause 55 replaces regulation 138 to reflect new terminology of the Act and re-enacts the content of the regulation for carrying out of trials and experiments with new fishing gear or new fishing methods but now states these activities can only be done by the holder of a licence.

Clause 56. Regulation 159 repealed

Clause 56 repeals regulation **159 – No aquaculture without licence** because it is covered by s10(1)(b) of the Act.

Clause 57. Regulation 192 replaced

Clause 57 replaces regulation **192 – Licence required for tour operator** to reflect new terminology of the Act and re-enacts the content of the regulation stipulating that a licence is required to conduct a fishing tour.

Clause 58. Regulation 196A and 197 replaced

Clause 58 replaces regulations 196A and 197 with a new regulation 196A, which takes into account the changes to the licensing provisions of the Act. Regulation 197 is no longer required as it is covered by the licensees' responsibilities under new section 17J of the Act.

Clause 59. Regulation 199 amended

Clause 59 amends regulation **199 – Sale, purchase and exhibition of live fish and aquatic life** to bring it in line with current drafting styles and to mirror language in the amended Act. Further it clarifies that an Aquarium Trader licence authorises the holder to purchase live fish and aquatic life for the purpose of exhibiting them for profit in the Territory.

Clause 60. Regulation 202 amended

Clause 60 amends regulation **202 – Taking, purchasing and exhibiting live fish and aquatic life** to bring it in line with current drafting styles and to mirror language in the amended Act. Further it clarifies that a Public Aquarium licence authorises the holder to purchase live fish and aquatic life for the purpose of exhibiting them for profit in the Territory.

Clause 61. Regulation 203 replaced

Clause 61 re-enacts regulation 203 from **Sale of net** to **Licence required for selling or repairing nets** in order to clarify that the selling or repairing of nets, other than those used in amateur fishing, can only be done by the holder of a licence.

Clause 62. Regulation 205A replaced

Clause 62 re-enacts regulation **205A – Infringement notice offence** to reflect the standard Northern Territory provisions for infringement notice offences.

Clause 63. Regulation 209 amended

Clause 63 amends regulation **209 – General offences** because of the repeal of current section 37(2) of the Act. It also reduces the maximum penalty for an offence against the Regulations that does not specify a separate penalty to 20 penalty units.

Clause 64. Regulation 209B replaced

Clause 64 re-enacts regulation 209B to take into account the revised process for internal reviews and NTCAT reviews in new sections 50 and 50A of the Act.

Clause 65. Schedule 1 replaced

Clause 65 replaces Schedule 1 to the Regulations because of the terminology change from **aquatic pests, noxious fish and noxious aquatic life** to **noxious species** as the defined term in the Act.

New Schedule 1 combines current Schedule 1 (Aquatic Pests) and Schedule 1A (Noxious Fish) in alphabetical order but does not add or delete any species.

Clause 66. Schedule 1A repealed

Clause 66 provides for Schedule 1A to be repealed as the new Schedule 1 combines current Schedule 1 and Schedule 1A – refer to clause 65.

Clause 67. Schedule 6 amended

Clause 67 provides for the amendment of **Schedule 6 – Infringement offences and penalties** to update the description of the offence against section 35(1) of the Act from ‘*Failing to provide record, information etc.*’ to ‘*Contravening requirement to keep or supply accounts, records, returns or information*’.

Clause 68. Regulations further amended

Clause 68 provides for Schedule 2 to the Bill to have effect. Schedule 2 provides for more minor amendments to the Regulations necessary as a consequence of more substantive amendments made by the Bill, and other minor amendments to make the language of the Regulations more consistent with current drafting styles.

Part 4 Consequential amendments

Clause 69. Other Acts amended

Clause 69 provides for Schedule 3 to the Bill to have effect, which makes consequential amendments to the *Marine Act* and *Stamp Duty Act*.

Part 5 Expiry of Act

Clause 70. Expiry of Act

Clause 70 is a formal clause that provides for the Act to expire on the day after it commences. As all the amendments made by the Act will then be in force, there is no need to retain the Act on the Statute Book.