

Fisheries (Amendment) Bill

EXPLANATORY MEMORANDUM

Clause 1 sets out the purposes of the Bill.

Clause 2 provides for sections 1, 4–6, 12 (1), 13, 19–26 and 28–34 to come into operation on Royal Assent and the remainder of the Act to come into operation on a day or days to be proclaimed.

Clause 3 amends section 3 of the **Fisheries Act 1968** (the Act) to include new definitions including “abalone processor’s licence”, “abalone storer’s licence” and “purse seine net licence” established by this Act.

Clause 4 amends section 4 of the Act to enable the Minister to exempt persons engaged in fishing activity relating to aquaculture from the provisions of the Act.

Clause 5 repeals section 6A of the Act to remove the requirement for a Commercial Fisheries Branch.

Clause 6 amends sections 6B, 6C and 6D of the Act to recognise changes and to update various administrative references that have occurred as a result of organisational changes in the Department.

Clause 7 amends Part 1A of the Act to recognise new Commonwealth legislation. References to the Commonwealth Fisheries Act 1952 (repealed) have been amended to refer to relevant provisions of the Commonwealth Fisheries Management Act 1991.

Clause 8 amends section 13 of the Act to create an abalone processor’s licence and an abalone storer’s licence and to specify the entitlements of those licences.

Clause 9 amends section 13D of the Act as a consequence of the establishment of the new abalone processors’ and abalone storers’ licences and amendments to section 13 relating to processors’ licences.

Clause 10 amends section 14 of the Act to redefine the trawl net licence, to establish a purse seine net licence and to specify the entitlements of the licence. This clause also amends section 15 to prescribe the fee payable in respect of this licence and provide for it to be increased by regulation.

Clause 11 amends section 15 of the Act to specify the impost payable in respect of an abalone processor’s licence and the fee for an abalone storer’s licence. This amendment provides for the fee to be increased by regulation and for the impost to be adjusted annually by an amount calculated in accordance with the formula specified.

Clause 12 amends section 15 of the Act to remove references to maximum fees. Minimum fees are specified and provision exists for those fees to be increased by regulation.

Clause 13 amends sections 13 and 16 (4) of the Act to clarify that licences are subject to conditions, limitations and restrictions expressed or referred to in the licence and to any other conditions, limitations or restrictions prescribed by the regulations.

Clause 14 inserts new sections 17 (1A) and 17 (1B) into the Act. Section 17 (1A) prohibits the use of commercial abalone equipment to take more than the prescribed bag limit of abalone per day except by the holder of an abalone licence. Section 17 (1B) requires a person who holds an abalone processor's licence or an abalone storer's licence to comply with any condition, limitation, or restriction of their licence.

Clause 15 makes various amendments to section 25 of the Act including extension of the term for which a fish culture permit can be issued from 10 to 21 years and removal of references to renewals of those permits.

Clause 16 amends section 26 of the Act to provide for the payment of annual impost in respect of a fish culture permit determined by the Secretary after considering certain matters, or by accepting tenders or by the Valuer-General. This amendment also provides for review of the impost by the Secretary every 3 years and for the Valuer-General to determine the level of an impost if agreement cannot be reached between the permit holder and the Secretary.

Clause 17 substitutes section 27 of the Act to enable the Secretary to vary the conditions on a fish culture permit at any time with the consent of the permit holder.

Clause 18 amends section 29 of the Act to provide for the transfer of fish culture permits to be subject to a transfer impost determined by the Secretary, having regard to the commercial value of the permit. This amendment further provides for the permit holder to require the Secretary to seek the opinion of the Valuer-General if the holder believes the amount of the impost is too high.

Clause 19 amends section 35 (1) (b) of the Act to widen the grounds on which the Secretary may cancel a fish culture permit.

Clause 20 amends section 42A (3) to increase the fee for a special fishing equipment permit and provide for it to be increased by regulation.

Clause 21 amends section 48 (1) (ea) of the Act to extend the powers of authorised officers to the searching for, seizure, removal or destruction of any fish that are contaminated in any way or in a state that could make them dangerous for consumption by humans or animals.

Clause 22 amends section 48 (1) (f) of the Act to extend the powers of entry and inspection of authorised officers for the purposes of inspecting documents in connection with the taking, processing, purchase, or sale of any fish and seizure of those documents.

Clause 23 inserts new sections 48A and 48B into the Act. Section 48A enables a magistrate to issue a warrant for an authorised officer to enter and search a dwelling house and to seize evidence. Section 48B sets out requirements for an authorised officer to issue a receipt for items seized under sections 48 (1) or 48A of the Act.

Clause 24 amends section 49 of the Act to extend the seizure powers of authorised officers. This clause further amends section 49 (5) to extend the period that the Department can retain seized equipment from 28 to 60 days if proceedings are not taken. This clause also makes consequential amendments to section 49 and repeals sections 17 (5), (6) and (7).

Clause 25 inserts a new section 62A into the Act to prohibit the taking of fish from any waters contaminated by algal blooms or other contamination that could make those fish

poisonous and prohibits the processing, sale or offering, consigning or exposure for sale of any such fish.

Clause 26 inserts a new section 73A into the Act to provide that any person found in a boat, aircraft, car or other vehicle or on premises where there is abalone is deemed to be in possession of the abalone until the contrary is proved.

Clause 27 amends section 76B (1) of the Act to enable authorised officers etc. to apply for the compulsory suspension or cancellation of an abalone processor's or storer's licence if an offence concerning abalone is found proven against the holder, and to recognise changes in sentencing legislation.

Clause 28 substitutes section 77 of the Act to ensure consistency with the new section 18 and to recognise changes in sentencing legislation.

Clause 29 amends section 80 of the Act to extend the period for which a fisheries notice can apply from 3 to 12 months.

Clause 30 amends section 81 (1) (c) of the Act to remove reference to minimum and maximum boat registration fees.

Clause 31 amends section 81 of the Act to enable regulations made under the Act to provide for exemptions for specified persons, bodies or things from the provisions of those regulations.

Clause 32 amends section 96 of the **Conservation, Forests and Lands Act 1987** to extend the range of legal proceedings that an authorised officer can take to include proceedings for offences under relevant laws, other proceedings under the Act and proceedings on behalf of the Department or the Secretary.

Clause 33 amends the Act to change references to "Director-General" to "Secretary", to include a definition in section 3 of "Secretary" and to change references to "Director" in sections 13AA and 13AB to "Secretary".

Clause 34 is a statute law revision to repeal section 2 (2) and amend section 81 (1) (*am*) of the Act.

