

FISHERIES BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Fisheries Bill 1994 will replace the *Fisheries Act 1976* and the *Fishing Industry Organisation and Marketing Act 1982*. It will combine the relevant parts of the previous legislation and update the legislation to ensure that adequate structures and powers are in place to ensure the management of Queensland fisheries resources, and its associated habitat, is undertaken within the principles of ecologically sustainable development.

The Bill reforms the previous Queensland Fish Management Authority from a representative body to an expertise-based body to be called the Queensland Fisheries Management Authority. It also provides for the formation of various advisory committees to enhance the consultation processes in developing fisheries management plans.

The objectives of the Bill relate to ensuring that the State's fisheries resources are managed and utilised in an ecologically sustainable way, as well as providing for management of fish habitats and ensuring that there is equity in access to the resources by commercial, recreational and indigenous fishers.

The Bill also provides for management of aquaculture in the State and the control of diseases in fish. The Bill delineates the relative responsibilities of the Department of Primary Industries and the Queensland Fisheries Management Authority with respect to various functions and activities related to the management of fisheries. In essence, the Authority will be responsible for the management of all fisheries occurring in the wild, while the Department, through its chief executive, the Director-General, will be responsible for the management of the farming of fish stocks (aquaculture), the protection of fish habitat and environmental matters, quarantine, and coral limestone licences.

The Bill establishes a Queensland Fisheries Policy Council which will advise the Minister on a range of strategic matters regarding fisheries management and provide a forum for policy advice through consultation between industry and government. The Authority will remain the day-to-day manager and will operate under the strategic policies formed through the Policy Council and Government and the requirements of the Bill.

The Bill provides for a Fisheries Tribunal, formerly the Fishing Industry Appeals Tribunal.

The Bill contains the power to make management plans for particular fisheries or parts of fisheries or areas of the State. This is a significant change designed to ensure appropriate management of Queensland fisheries within the context of additional catching effort and environmental disturbances.

The Bill also ensures that management arrangements with respect to indigenous use of the fisheries is consistent with the recent State and Commonwealth native title legislation. It provides for consultation mechanisms for Aboriginal and Torres Strait Islander interests in the development of management plans for fisheries.

The savings provisions effect termination of the former Queensland Fish Board.

Reasons for Bill

The Fisheries Bill has been introduced in part to consolidate and simplify current management arrangements which have existed under two separate pieces of fisheries legislation with two separate organisations involved in their administration.

The Public Sector Management Commission had also recommended that the arrangements for fisheries management in Queensland be simplified between the Authority and the Department. The commitment of the Queensland Government to incorporate ecologically sustainable development principles into natural resource management, and in this case fisheries management, is incorporated in the Bill and the recommendations arising from the recent Inquiry into Recreational Fishing in Queensland are also incorporated in the Bill.

The recent passage of the State and Commonwealth native title legislation has also required a revision of fisheries legislation and processes involved in consultation and management of the fisheries resources.

Finally over recent years the pressure on our fisheries stocks has increased due to increasing technology among existing commercial fishers and increasing numbers of recreational fishers seeking access to the resource. Pressure also upon habitat and the environment supporting the resource has increased and hence there is a need to update fisheries legislation to meet these challenges and to provide for the sustainable use of the resource into the future.

Estimated Cost for Government Implementation

There will be some increase in costs to Government in implementation of the Bill and there will be some further increases to the Queensland Fisheries Management Authority in implementation of the Bill.

The increased cost to the Government will relate to the operation of the Queensland Fisheries Policy Council through payment of costs associated with operating the Council and for payment of costs to the chairperson of the selection committee to be established for nomination of members for appointment to the Queensland Fisheries Management Authority. These costs are minimal, and will be absorbed within existing budget.

Some additional costs will be incurred associated with the operation of the Fisheries Tribunal in relation to decisions of the Director-General of the Department of Primary Industries.

The increased costs to the Queensland Fisheries Management Authority will be met by increased contributions from the various users of the resource as fee increases through the normal processes of approval by Governor in Council.

The Bill provides that no compensation will be paid by the Government in circumstances where existing fisheries rights may be adversely impacted through necessary policy and management changes, unless specifically approved by regulation or management plan.

There will potentially be increased management costs incurred following the implementation of new Regulations under the Bill, but these will rely on industry funding which will be considered through the normal processes of fee approvals.

Consultation

A Discussion Paper entitled “Queensland Fisheries Policy and Legislation” was issued in August 1993 for input from the community and all other interested organisations into the development of the new Fisheries Bill. Further, an exposure draft of the Fisheries Bill was released in December 1993 for further public consultation, and detailed discussions were undertaken with particular interest groups, organisations and a range of Government Departments and Statutory Organisations.

The Litigation Reform Commission has been consulted and has raised no objections to the Bill. The Office of the Parliamentary Counsel and the Department of Justice and Attorney-General are satisfied that the Bill raises no concerns with respect to fundamental legislative principles.

An Interim Queensland Fisheries Policy Council has been formed with widespread industry and Government representation, including Aboriginal and Torres Strait Islander interests, and the Council has been consulted throughout the development of the Bill. Aboriginal and Torres Strait Islander Commission staff and Commissioners were also consulted in regard to the Bill.

The recent Government Inquiry into Recreational Fishing also provided widespread opportunity for consultation concerning the future needs of the State’s fisheries and input from Cabinet’s consideration of this Inquiry has been included in the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introductory

Clause 1 provides that the short title is to be the Fisheries Act 1994.

Clause 2 provides for the commencement of the Bill by proclamation.

Implementation of the Bill will rely, in part, on continued operation of the existing regulations while relevant subordinate legislation is being prepared. New regulations will be prepared in consultation with industry and other interest groups.

Division 2—Objectives

Clause 3 states the objectives of the Bill.

The objectives reflect the Government's commitment to managing fisheries resources on the basis of the principles of ecologically sustainable development, fair access to the resources by all user groups and achieving optimum economic and other returns to the community from use of the resources. The Bill also specifically provides for management of aquaculture and for the control of disease and other environmental matters affecting fish.

The objectives are achieved by establishing a new Queensland Fisheries Policy Council to provide strategic policy direction for the Industry and reforming the Queensland Fish Management Authority to an expertise-based body from a representative body. Appropriate powers are provided for the chief executive (Director-General of the Department of Primary Industries) to administer specified functions under the Bill, namely the management of aquaculture, the protection of fish habitat, the control of fish diseases and the authorisation of coral limestone extraction. All other fisheries are to be managed by the new Queensland Fisheries Management Authority.

Division 3—Interpretation

Clause 4 defines certain terms used in the Bill.

Clause 5 defines "fish".

The definition provides that fish protected under another Act, for example the *Nature Conservation Act 1992*, are excluded from this Bill. There is provision to add to exclusions by regulation.

Clause 6 defines "fisheries agency".

This definition states that the chief executive and the Queensland Fisheries Management Authority are the fisheries agencies and outlines the respective issues for which each is responsible.

Clause 7 defines “fishery”.

This definition is wide to allow declaration of management plans for fisheries using flexible management regimes, and for management plans over fish habitat.

Clause 8 defines “marine plant”.

This definition is wide, and covers plants growing adjacent to tidal or other land which form part of fish habitat.

Clause 9 defines “quota”.

Quotas are used in the management of fisheries, and may refer to a wide range of variables, such as quantities of fish, periods of time, area of waters, and quantities of apparatus.

Division 4—Operation of Act

Clause 10 provides that the Bill will bind the State.

Clause 11 clarifies the area, activities and circumstances which come within the application of the Bill. Essentially the Bill applies to all Queensland waters and may also apply to additional areas subject to agreements between Queensland and the Commonwealth under Commonwealth/State fisheries legislation. These agreements can involve commercial, recreational or traditional fishing activities.

Further, it applies to recreational fishing in the Australian Fishing Zone adjacent to Queensland waters.

Clause 12 provides that the Bill will not apply to the unintentional taking or possession of regulated fish, or marine plants, if they are immediately put back unharmed or undamaged. The lawful use of a hand net or gaff to secure fish is also outside the operation of the Bill.

Clause 13 provides for a person to be exempted from the operation of the Bill.

Exemptions have been used under the existing Act to accommodate special circumstances or prevent unintended consequences. This provision retains that capacity.

Clause 14 protects the rights of Aboriginal and Torres Strait Islander persons to take, use or keep fisheries resources or use fish habitat under Aboriginal tradition or Island custom.

A regulation or management plan which affects traditional or customary use of fisheries may be made, after consultation with Aborigines or Torres Strait Islanders. Conservation, environmental or sustainability concerns are examples of the circumstances in which this provision might be used. The clause does not allow Aboriginal or Torres Strait Islander persons to exploit the resource in a commercial manner without compliance in all respects with the Bill. The clause is intended to preserve the traditional and customary rights within the framework of proper resource management.

PART 2—QUEENSLAND FISHERIES POLICY COUNCIL

Clause 15 establishes the Queensland Fisheries Policy Council.

Clause 16 states the functions of the Policy Council.

These functions are advisory in nature as the Policy Council is not a decision-making body. Its advice will relate to broad strategic issues and policies facing the State's fisheries resources and it will not become involved in the day-to-day activities necessary for the administration and management of the fisheries resources.

Clause 17 provides for the membership of the Policy Council.

Clause 18 provides for meetings of the Policy Council and the manner in which the Minister or members may call the Policy Council together.

Clause 19 allows the Policy Council to establish committees to advise it.

PART 3—CHIEF EXECUTIVE

Clause 20 describes the functions of the chief executive (i.e. Director-General, Department of Primary Industries), on behalf of the State.

These are the management of aquaculture, marine plants, fish habitat and coral limestone extraction and management of diseased fish, as well as functions relating to fishways.

These management functions are to be undertaken having regard to the principles of ecologically sustainable development.

Clause 21 provides for the chief executive to delegate the chief executive's powers to a range of persons or bodies. It provides for delegations to Local Government where appropriate and to bodies of other States or the Commonwealth if joint management of particular fisheries resources is necessary.

Clause 22 establishes powers for the chief executive to implement guidelines, criteria and conditions in cases where the Government's Integrated Development Approval System requires Local Government to exercise certain functions which impact on fisheries resources e.g. habitat planning.

PART 4—QUEENSLAND FISHERIES MANAGEMENT AUTHORITY

Division 1—Establishment of Authority

Clause 23 establishes the Queensland Fisheries Management Authority.

Clause 24 states that the authority is a body corporate with perpetual succession.

The Authority does not represent the State, and is an exempt public authority under the Corporations Law.

Division 2—Functions and powers of Authority

Clause 25 states the functions of the Authority.

The primary function is to ensure the management, use, development and protection of the fisheries resources of the State, other than those areas managed by the chief executive. The Authority is responsible for management of the naturally occurring fisheries throughout the State. It is to achieve these functions through the development of regulations, management plans and declarations having regard to the principles of ecologically sustainable development.

Clause 26 outlines generally the other functions of the Authority.

Clause 27 provides generally for the powers of the Authority.

Clause 28 empowers the Authority to delegate its powers in a similar manner to the chief executive.

Division 3—Reserve powers of Minister

Clause 29 permits the Minister to give the Authority written notice of a public sector policy that is to apply to the Authority if the Minister is satisfied that it is necessary in the public interest, after consulting with the Authority.

Clause 30 permits the Minister to give the Authority a written direction if the Minister is satisfied that it is necessary to give the direction in the public interest because of exceptional circumstances.

The Minister must consult with the Authority before giving the direction and seek its advice in relation to the direction and the Authority must comply with the direction.

Clause 31 provides for matters that must be included in the Authority's Annual Report, including particulars of any notices and directions given by the Minister and their impact on the Authority's financial position or on the management of the State's fisheries resources.

PART 5—FISHERIES MANAGEMENT

Division 1—Management Plans

Clause 32 empowers the chief executive or the Authority to make management plans for fisheries and activities within their respective jurisdictions. The clause also provides that a management plan is subordinate legislation.

Clause 33 requires the Authority or the chief executive to publish a draft management plan and to take reasonable steps to engage in consultation prior to determining a final management plan.

Clause 34 requires that management plans must be approved by the Governor in Council.

Clause 35 establishes the content of management plans.

Management plans will be a fundamental tool for management for fisheries under this Bill, and will detail the particular management methods to be applied in each of the fisheries throughout the State. The plans will be developed after widespread consultation with all user groups and interest groups in the community.

The plans allow for different aspects of the plan to be amended by administrative decision, e.g. fishing seasons.

Clause 36 establishes additional provisions which may be included in a management plan and allows for such provisions to vary with each management plan.

Clause 37 provides that declarations may be made under management plans in respect of closed seasons, closed waters and regulated fish. Regulated fish will be protected by means of various methods including total prohibition on their taking, minimum/maximum sizes, etc.

Clause 38 allows for quotas to be imposed under a management plan.

Clause 39 establishes the mechanisms by which a management plan may be amended or repealed.

It also provides that where a management plan is repealed, any authorities issued for the fishery are also terminated, unless the particular

management plan provides otherwise.

Clause 40 provides that no compensation is payable where a management plan or authority is made, amended or repealed or other limitations prescribed affecting fishing activities, unless specific compensation was agreed as part of the development of the original management plan, and incorporated in the management plan.

Clause 41 provides that a management plan may provide for offences and penalties against a management plan, up to a maximum of 500 penalty units.

Clause 42 provides that a regulation may make provision for anything which a management plan may contain.

This is to allow for a situation where management plans may take some time to develop and regulations may be used as an interim measure. Further, a regulation may be developed after a management plan to mitigate any unforeseen and undesirable aspect of the management plan, or to resolve conflicting interests in the development or implementation of management plans.

Division 2—Fisheries declarations

Clause 43 allows the fisheries agency to declare closed seasons, closed waters or regulated fish.

Clause 44 provides that quotas for a fishery may be declared in situations where a management plan has not made provision for a quota. The clause also requires the fisheries agency to take reasonable steps to engage in consultation prior to making the declaration. This provision may be employed simply to set a total allowable catch for a fishery, while allocating quotas for individuals by means of authorities. Alternatively, quotas for individuals may be allocated by declaration.

Clause 45 provides that all declarations under this Division (other than an emergency declaration) are to be subordinate legislation.

Clause 46 provides that the fisheries agency, if it is satisfied that emergency circumstances exist, instead of making a declaration under Clause 43, may make the declaration by notice published in the gazette and published in such other ways as are appropriate.

Such declaration, however, may only be for a period of two months and will expire after that time, unless it is inconsistent with a regulation or management plan where it will expire after 21 days.

Clause 47 provides that no compensation is payable where a declaration is made, amended or repealed, unless specifically provided for in a regulation, management plan or fisheries declaration.

Clause 48 provides that a regulation may make provisions for anything which may be achieved by fisheries declarations.

A regulation or management plan is to prevail over a fisheries declaration, except in the case of an emergency declaration.

Division 3—Authorities

Subdivision 1—General

Clause 49 provides that the authorities which may be issued under the Bill may be prescribed by regulation or by a management plan.

Clause 50 provides that the Authority and the chief executive may issue authorities in accordance with their respective jurisdictions.

Clause 51 allows the Authority and the chief executive to issue permits of various types. The chief executive is empowered to issue permits for the possession of regulated fish or nonindigenous fisheries resources for aquaculture purposes, the use of boats and apparatus for aquaculture purposes, the removal, destruction or damage of marine plants, the carrying out of works in a fish habitat area and permits about diseased fisheries resources and fishways. The clause also allows for the chief executive to issue other permits prescribed by regulation.

The Authority may issue various permits, other than those issued by the chief executive. Approvals for the collection of broodstock for aquaculture are to be issued by the Authority.

Clause 52 enables the holder of an authority to do those things prescribed by regulation or a management plan or endorsed on the authority. A regulation, management plan or an authority itself may extend the authority to those persons operating under the direction of the holder.

Clause 53 requires that an authority must be in a particular form, contain certain particulars and be in force for a period as determined by the Authority or chief executive.

Subdivision 2—Issue and renewal

Clause 54 describes the process for application for an authority to either the Authority or chief executive.

The clause requires prescribed fees to be paid and for certain information to be provided in relation to an application.

Clause 55 requires the Authority or chief executive to consider an application and to refuse or issue the relevant authority.

Clause 56 provides that the holder of an authority (other than a permit) may apply for renewal of the authority, and details relevant requirements.

Clause 57 states that permits cannot be renewed. A permit is not a substitute for a licence, but is different in kind, being non-transferable and non-renewable.

Clause 58 requires that the application for renewal of an authority must be considered and that the Authority or chief executive may renew or refuse to renew the authority (other than a permit).

Clause 59 provides the grounds by which the Authority or chief executive may refuse an application for the issue or renewal of an authority.

It provides that such grounds relate to the best management, use, development or protection of fisheries resources.

A wide range of examples of the grounds upon which the Authority or chief executive may consider refusal for issue or renewal of the authority is given.

Refusal of an application for issue or renewal of an authority does not confer any right to compensation.

Clause 60 provides that if an application has been refused, the applicant must be given written advice of the refusal including reasons, and a refund of fees, other than the fees for assessing the application.

Subdivision 3—Conditions

Clause 61 enables an authority to be issued or renewed subject to conditions considered appropriate by the Authority or chief executive.

The clause also enables the determination that a bond may also be required to ensure compliance with certain conditions. It also provides that compensation is not payable if conditions are imposed which prohibit or regulate an activity, unless a regulation or management plan provides otherwise.

Clause 62 provides that an authority will be subject to any conditions prescribed under a regulation or management plan.

Subdivision 4—Amendment

Clause 63 enables the Authority or chief executive to amend an authority or to impose further conditions or vary conditions following the issue or renewal of the authority. Compensation is not to be payable if an authority is amended under this clause, unless provided for in a regulation or management plan.

The holder must be notified of the intention to impose or amend such conditions and may make written representations relating to these proposals, except in the case of a variation of a quota.

Any submissions received must be considered prior to determining the appropriate conditions and the holder of the authority must be advised of the holder's rights to appeal the decision.

This clause also enables the imposition of a condition which will limit what would otherwise have been permitted on the original issue of the authority.

Clause 64 allows the fishery agency to require the return of an authority for amendment.

Subdivision 5—Transfer

Clause 65 provides for circumstances relating to transfers by the Authority or chief executive of an authority, other than a permit, which is transferable under a relevant management plan or regulation.

Clause 66 provides permits cannot be transferred.

Subdivision 6—Suspension and cancellation

Clause 67 provides for the suspension or cancellation of an authority by the Authority or chief executive, and the grounds for cancellation or suspension.

It is expressly provided that the fisheries agency may disregard any third party interests in the authority when considering suspension or cancellation.

Clause 68 requires the holder of an authority to be given written notice of an intention to cancel or suspend the authority and allow written representations concerning the matter.

The Authority or chief executive must consider such representations before making a final decision and following a decision, must inform the holder of the right to apply to the Tribunal for a review or stay of the decision.

If a fisheries agency decides to suspend or cancel an authority it must advise the holder of the reasons for suspension or cancellation.

Clause 69 provides that a suspension may not be implemented until any appeal is heard and determined, but that a suspended authority may be renewed.

Clause 70 requires the holder of a suspended or cancelled authority to return it within 7 days of the suspension or cancellation taking effect.

Subdivision 7—Replacement and surrender

Clause 71 allows the Authority or chief executive to issue a replacement authority for one that has been lost, damaged or destroyed.

Clause 72 provides that the holder of an authority may surrender it.

Subdivision 8—Registers and certificates

Clause 73 requires registers of authorities to be kept by the Authority and chief executive in relation to their particular activities.

Clause 74 allows the Authority or chief executive, as the case may be to issue a certificate, admissible as evidence in proceedings, to the effect that a particular person was or was not the holder of an authority issued under the Bill.

Subdivision 9—Offences about authorities and register

Clause 75 provides that a person must not falsely represent that someone holds an authority.

Clause 76 provides an offence for a person to make false entries or to produce false documents in relation to the register.

Division 4—Fisheries offences

Clause 77 provides for an offence for a person to contravene a closed season or closed waters declaration.

Clause 78 makes it an offence to take, possess or sell regulated fish.

It is also an offence to mutilate or disfigure a regulated fish with intent to disguise its status as a regulated fish.

Clause 79 provides for an offence for a person not to comply with a quota.

Clause 80 prohibits the taking of fish in ways prohibited by regulation or management plan.

Clause 81 prohibits the use or possession of explosives, explosive propelled missiles, firearms, noxious substances or devices which create an electrical field in water with the intent to take fish. An exception is made for

firearms and propelled spears used or intended for use as a defence against sharks.

Clause 82 provides for the making of a regulation which prohibits acts except by persons who hold an appropriate authority. A person may be exempted from this clause under a regulation or management plan.

Clause 83 allows the courts on conviction of a person of an offence involving the unlawful taking or possessing fish for the purposes of trade or commerce, to impose a further fine equal to five times the wholesale value of such fish.

Clause 84 makes it an offence to use or possess apparatus that is otherwise prohibited, or to possess a greater number of the apparatus than prescribed.

Clause 85 prohibits the sale, purchase or possession of commercial fishing apparatus, or netting material used in the manufacture of such apparatus, by or to persons who are not lawfully entitled to have the apparatus.

Clause 86 provides for dockets to be kept by the buyer and seller in the purchase or sale of fish. It is intended that the general law of agency will apply in respect of this clause so that the clause is complied with if the buyer's or seller's agent actually completes or has possession of the docket.

Clause 87 prohibits a person from unlawfully removing fisheries resources from or interfering with authorised aquaculture activity or fishing apparatus.

Clause 88 requires the holder of an authority to have the authority in possession while engaged in the activities to which the authority relates, and to produce the authority to an inspector if required to do so. The clause also extends to other persons authorised under the authority.

Division 5—Noxious and nonindigenous fisheries resources and aquaculture fish

Clause 89 prohibits the introduction into Queensland, or the possession, sale or purchase of noxious fisheries resources, or release of noxious fisheries resources into Queensland waters.

Clause 90 prohibits the introduction into Queensland, or the possession, sale or purchase of nonindigenous fisheries resources, or release of nonindigenous fisheries resources into Queensland waters, except for certain species to be prescribed by regulation.

This clause is not intended to apply to those processed, treated or packaged fish products, fillets, etc which are regularly imported as part of normal trade.

Clause 91 prohibits placing or releasing aquaculture fisheries resources into Queensland waters without proper authority.

Clause 92 outlines the obligation of a person who takes or possesses noxious or nonindigenous fisheries resources.

The clause provides for the destruction of the fisheries resources, the notification of an inspector and the delivery of the fisheries resources to the inspector.

Clause 93 provides that where an offence occurs under this Division the Court may order the defendant to pay the cost of removing and destroying the fisheries resources.

Division 6—Diseased fisheries resources

Clause 94 provides for the chief executive to declare certain things to be diseases which may affect fisheries resources, humans or animals. Such a declaration is to be subordinate legislation.

Clause 95 empowers the chief executive to declare an area to be a quarantine area and to outline the nature of the quarantine. The declaration may also state matters relevant to the management, control and elimination of the declared disease in the area. A quarantine declaration is subordinate legislation.

Clause 96 empowers the chief executive, where an emergency may exist, to make an emergency disease or quarantine declaration, to apply for not more than two months, by publishing a notice in the Gazette and other appropriate manner. In the case where such a declaration is inconsistent with a regulation or management plan it will expire after 21 days.

Clause 97 provides that a regulation may also make provision for a

matter for which a declaration may be made under this Division and that a regulation will prevail in the event of an inconsistency (other than for an emergency declaration).

Where there is an inconsistency between an emergency disease or quarantine declaration and a regulation or an ordinary declaration, the emergency declaration will prevail to the extent of the inconsistency.

Clause 98 makes it an offence for a person to contravene a quarantine declaration or an emergency quarantine declaration.

Clause 99 provides that a quarantine declaration, or an emergency quarantine declaration, may require the holder of an authority to do certain things, including destruction or treatment of fisheries resources or plants in the quarantine area.

Clause 100 requires a person who knows or reasonably suspects disease may be present in fisheries resources or fish habitat to immediately notify the chief executive or an inspector.

Clause 101 provides that where the chief executive or an inspector believes a person has failed to take required action specified in a quarantine declaration or an emergency quarantine declaration, the chief executive or inspector may enter the area and take appropriate action.

The clause provides that the cost of such action may be recovered from the person.

Clause 102 requires the chief executive to revoke a quarantine declaration, or an emergency quarantine declaration, as soon as the chief executive is satisfied the disease is no longer present.

Clause 103 provides that compensation is not payable for fisheries resources or property destroyed under a quarantine declaration, or an emergency quarantine declaration, unless the chief executive determines compensation should be payable in a particular case.

Clause 104 creates an offence for a person to communicate intentionally or recklessly a disease to live fisheries resources or fish habitat.

Clause 105 creates an offence for a person to sell fisheries resources, or product derived from fisheries resources, knowing them to be infected with a declared disease.

Clause 106 creates an offence for a person to put fisheries resources, or

product derived from fisheries resources, into any place knowing they are infected with a declared disease.

Clause 107 creates an offence for a person to bring into Queensland fisheries resources, or product derived from fisheries resources, which are known to be infected with a declared disease.

Division 7—Orders for destruction

Clause 108 empowers the Authority or the chief executive to direct an inspector to take and remove or destroy noxious, non-indigenous, diseased or aquaculture fisheries resources as the case may be.

The clause provides that compensation for taking and removing or destruction of fisheries resources is not payable unless the Authority or the chief executive in a particular case determines otherwise.

Clause 109 empowers the Authority or chief executive as the case may be to direct an inspector to stop or delay the escape of fisheries resources where they are noxious, non-indigenous, diseased or aquaculture fisheries resources.

Clause 110 provides the power for the chief executive, or the Authority as the case may be, to recover monies paid for the removal, destruction or prevention of escape of fisheries resources concerned in any offence.

Division 8—Fish ways

Clause 111 outlines the purpose of this Division in terms of its relevance to fish stocks having access to breeding environments and habitats important for food and protection.

Clause 112 prohibits a person building certain works, referred to as waterway barrier works, across waterways without approval of the chief executive.

Clause 113 outlines the requirements for an application to the chief executive to build any works across waterways, including being accompanied by relevant information or evidence required by the chief executive.

Clause 114 requires the chief executive to consider applications for the building of works across waterways and for approval or refusal of the application to be given. The chief executive is required to comply with any relevant regulation or management plan, as well as the provisions of the *Water Resources Act*, in considering such applications.

Clause 115 requires that where an application to build works is refused, the chief executive must advise the applicant in writing together with reasons for the refusal.

The Clause also provides for the refund of fees, other than assessment fees, paid by the applicant and for advice to the applicant of the right of appeal to the Tribunal.

Clause 116 empowers the chief executive to direct a person to build a fishway on, over or through works.

The Clause also provides that where a person fails to comply with a direction the chief executive may build the fishway and recover the costs reasonably incurred, from the person.

The Clause also provides an offence for failure to comply with a direction by the chief executive. In deciding whether to give a direction under this clause, the chief executive is required to have regard to the *Water Resources Act*.

Division 9—Fisheries Research Fund

Clause 117 establishes a Fisheries Research Fund and sets out the operation of the Fund.

Division 10—General

Clause 118 provides for certain persons as prescribed to keep and make available certain records, information and documents relating to fisheries as determined by the Authority or chief executive.

This provision relates to the collection of fisheries statistics which will be used to enhance management and research of fisheries resources.

Clause 119 empowers the Authority or chief executive, after taking reasonable steps to engage in consultation, to determine codes of practice for persons to whom the Bill applies.

PART 6—PROTECTION AND CONSERVATION OF FISH HABITATS

Clause 120 provides for the declaration under regulation of an area of water, or land and water, to be a fish habitat area.

Clause 121 provides that a declared fish habitat area may be managed under a management plan. Different fish habitat areas may be subject to different management arrangements under these provisions.

Clause 122 provides for an offence for a person to unlawfully carry out works within a declared fish habitat area.

Clause 123 provides an offence for a person to unlawfully remove, destroy or damage a marine plant, or to cause such removal, destruction or damage.

Clause 124 empowers the chief executive to take action to rehabilitate or restore fish habitat or declared fish habitat under certain circumstances.

The costs reasonably incurred may be recovered as a debt due to the State.

Clause 125 provides a power for the chief executive to require a person to take remedial action for damage to fish habitat.

The chief executive may take action to restore the integrity of the area and recover the costs of that action.

PART 7—COMMONWEALTH-STATE MANAGEMENT OF FISHERIES

This part relates to the ability of the State and the Commonwealth Governments to enter into arrangements for the management of particular fisheries by the State, by the Commonwealth or by a joint authority of the State or States and the Commonwealth.

Clause 126 empowers the Minister to exercise powers and perform functions conferred on the Minister by the Commonwealth *Fisheries Management Act 1991*, including as a member of a joint authority.

Clause 127 requires the Minister to table in the Legislative Assembly a report of a joint authority.

Clause 128 requires judicial notice to be taken of the signature of a person who is a member of a joint authority.

Clause 129 confers on a joint authority functions conferred on it by this Bill or under the Commonwealth *Fisheries Management Act 1991*.

Clause 130 empowers a joint authority to delegate its powers to a specified person or to a nominated body.

Clause 131 provides for certain procedural matters in regard to a joint authority.

Clause 132 provides for making of fisheries management arrangements with the Commonwealth.

Clause 133 provides that termination of fisheries management arrangements may be undertaken under the Commonwealth *Fisheries Management Act 1991*. All authorities, regulations, management plans and declarations for a fishery will expire if an arrangement is terminated.

Clause 134 provides for the application of Queensland laws to fisheries where an arrangement to that effect is in place, except for certain issues relating to foreign boats and pre-existing matters.

Clause 135 outlines additional functions of a joint authority for a fishery managed under Queensland law.

Clause 136 enables a joint authority to manage a fishery under Queensland law, and to have all of the powers which have otherwise been

conferred on the fisheries agencies in regard to that fishery.

Clause 137 applies provisions of this Bill relating to offences, enforcement and proceedings to cooperative fisheries.

Clause 138 provides that certain presumptions are to be made relating to jurisdiction over waters in construction of arrangements.

Clause 139 provides for the making of regulations relating to a fishery for which a Commonwealth-State agreement exists and which is to be managed under Queensland law.

PART 8—ENFORCEMENT MATTERS

Division 1—Inspectors

Clause 140 provides for the chief executive to appoint inspectors.

Clause 141 enables the powers of inspectors to be limited.

Clause 142 provides that an inspector holds office on the conditions specified in the instrument of appointment.

An inspector ceases to hold office upon expiration of the term of appointment, resignation or ceasing to hold another specified office.

Clause 143 requires that the chief executive must issue an identity card to each inspector, other than a police officer acting as an inspector.

Clause 144 requires that an inspector, other than a police officer, must produce the identity card before exercising a power, or at the first reasonable opportunity.

Division 2—Powers of inspectors for places, boats and vehicles

Clause 145 provides for the conditions of entry to a place by an inspector.

Clause 146 empowers an inspector to board a boat or enter a vehicle in

certain circumstances.

In the particular circumstances, for example, of an unattended boat which is secured and at a recognised mooring, an inspector may board the boat but may not enter the secured cabin of the vessel without consent or a warrant.

Clause 147 provides for the conditions of entry for an inspector to board or enter a moving boat or vehicle.

It is an offence for a person to fail to obey (without reasonable excuse) a signal by an inspector to stop a moving boat or vehicle.

Clause 148 describes the process by which an inspector may apply to a Magistrate for a warrant for entry to a place or a boat.

Provision is made for the circumstances in which a Magistrate may issue a warrant, and the contents of a warrant.

Clause 149 provides for the application for a warrant by electronic or another form of communication in urgent or special circumstances.

Clause 150 provides for the various powers of an inspector in relation to places, boats and vehicles.

Clause 151 empowers an inspector to seize things from places where the inspector believes on reasonable grounds the things are evidence of an offence against the Bill.

Clause 152 empowers an inspector who boards a boat or enters a vehicle to seize a thing, or the boat or vehicle itself, if the inspector believes on reasonable grounds the thing, boat or vehicle is evidence of the commission of an offence against the Bill.

Clause 153 empowers an inspector who has entered a place or vehicle, or boarded a boat, to seize fisheries resources and other things if the inspector believes on reasonable grounds that an offence against the Bill has been committed in relation to the fisheries resources or other things.

Clause 154 provides that where particular fisheries resources are illegally taken, possessed or sold, an inspector may seize the entire quantity of fisheries resources if a number or weight of fisheries resources within the entire quantity exceeds a prescribed percentage.

Clause 155 provides powers for inspectors to enable the seizure of boats, vehicles or other things.

Division 3—Procedures after seizure

Subdivision 1—General

Clause 156 requires an inspector to provide a receipt as soon as practicable after a thing is seized.

Clause 157 allows the person entitled to possession of a thing seized to inspect it.

Clause 158 empowers an inspector to return fisheries resources taken unlawfully to the wild, or to dispose of dead fisheries resources taken unlawfully.

Clause 159 provides for the conditions upon which fisheries resources seized become the Authority's property, appeals to the Magistrates Court, and how seized fisheries resources can be dealt with by the Authority.

Clause 160 provides for the procedure to be adopted in order to return a seized thing or net proceeds of sale of fisheries resources.

Clause 161 sets out the circumstances in which the Authority must return a seized thing (other than fisheries resources).

Clause 162 provides for the circumstances in which the Authority must pay the net proceeds of sale to the owner of the fisheries resources.

Clause 163 empowers the Authority to order the forfeiture of a thing seized where the owner of the thing cannot be decided after reasonable enquiries or having regard to its value, it is not reasonable to make enquiries about its owner.

Subdivision 2—Appeal against seizure of fisheries resources

Clause 164 provides for the procedure to bring an appeal against seizure of fisheries resources.

Clause 165 provides for the procedure for the hearing of an appeal against seizure of fisheries resources.

Clause 166 provides that the Magistrates Court may confirm a seizure of fisheries resources or set aside the seizure and order the return of the fisheries resources.

Clause 167 empowers the Magistrates Court to direct the sale or other disposal of fisheries resources by the Authority where a seizure is confirmed.

Clause 168 enables a party dissatisfied by the decision of the Magistrates Court to appeal, on a question of law only, to a District Court.

Division 4—Other enforcement powers of inspectors

Clause 169 empowers an inspector to stop a person found committing an offence or a person suspected on reasonable grounds to have committed an offence.

The person must not move on so long as is reasonably necessary for the inspector to exercise the inspector's powers under the Bill in relation to the person.

Clause 170 empowers an inspector to require a person to state the person's name and address in particular circumstances. The clause also permits a police officer to arrest a person without warrant in certain circumstances.

Clause 171 allows an inspector to require a person to give information about an offence where it is suspected on reasonable grounds an offence against the Bill has happened, and provides for protection from self-incrimination.

Clause 172 empowers an inspector to require a person to produce certain documents required to be kept under the Bill or relating to the buying or selling of fisheries resources.

Clause 173 provides an inspector with the power to require a person who possesses explosives, noxious substances etc. to provide appropriate proof that the possession is lawful and to seize the items in question.

Division 5—Other enforcement matters

Clause 174 empowers the Authority or chief executive to apply to the District Court for a restraining order prohibiting a person from continuing an activity in relation to fisheries resources, fish habitat or related matters.

It is an offence for a person to contravene a restraining order.

Clause 175 makes it an offence for a person to make a statement which is false or misleading in a material particular.

Clause 176 provides an offence for a person to use a document containing information that the person knows is false, misleading, or incomplete in a material particular.

Clause 177 provides that on conviction the Court may order forfeiture of a thing used in the commission of an offence, fisheries resources, or net proceeds of sale of fisheries resources.

Clause 178 provides that a thing forfeited becomes the Authority's property and may be dealt with by the Authority as it considers appropriate.

Clause 179 provides for compensation to be paid to a person who incurs loss where the Court considers it is just.

Clause 180 requires an inspector to give written notice of any damage resulting from the exercise of the inspector's power.

Clause 181 states procedures in regard to an inspector's seeking consent to entry.

Clause 182 makes it an offence for a person to obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Clause 183 makes it an offence to impersonate an inspector.

Division 6—Evidence

Clause 184 provides for various evidentiary aids.

PART 9—ADMINISTRATIVE APPEALS

Division 1—Fisheries Tribunal

Clause 185 establishes the Fisheries Tribunal.

Clause 186 provides membership of the Tribunal, including eligibility for membership, and for vacation of and removal from office.

Clause 187 provides for acting members of the Tribunal.

Clause 188 provides for the remuneration of members of the Tribunal as decided by the Governor in Council.

Clause 189 provides that the Authority must meet all expenses associated with the establishment and operation of the Tribunal.

However, the Authority is to be reimbursed by the chief executive for costs incurred by the Authority on behalf of the chief executive in an appeal against a decision of the chief executive.

Division 2—Proceedings of Tribunal

Clause 190 provides that the Tribunal is to sit at the times and places decided by the chairperson.

Clause 191 provides that the Tribunal may be formed by the chairperson and one or two other members for the purpose of hearing an appeal.

A decision of the majority of members is the decision of the Tribunal when formed by three members, but if the Tribunal is formed by 2 members and there is disagreement, the decision of the chairperson prevails.

Clause 192 provides that the Tribunal is not to be bound by the rules of evidence and further provides in regard to procedure at the Tribunal. In particular, the Tribunal constituted by the chairperson sitting alone may conduct preliminary hearings.

Clause 193 provides that each party in an appeal bears the party's own costs.

However if an appeal is struck out as frivolous or vexatious, the Tribunal may order the appellant to pay costs determined by the Tribunal.

Clause 194 gives powers to the Tribunal in regard to witnesses and evidence.

Clause 195 provides that the Tribunal formed by the chairperson alone may decide questions of law and determine matters by way of a consent order.

Division 3—Jurisdiction of Tribunal

Clause 196 provides the grounds upon which an appeal to the Tribunal may be made, which are that the decision of the fisheries agency was contrary to the Bill, the decision was manifestly unfair or the decision will cause severe personal hardship to the appellant. It is intended that severe personal hardship in this case is to mean more than mere loss of income, but that every case should be determined on its own facts, of which economic loss may be a component. In addition, the ground of severe personal hardship must be demonstrated to be a direct, natural and reasonable consequence of the decision of the fisheries agency which is appealed against.

Clause 197 describes how an appeal to the Tribunal is started.

Clause 198 empowers the Tribunal to stay the operation of a decision which has been appealed against, prior to the hearing of the appeal.

Clause 199 describes the powers which the Tribunal has in making a determination in relation to an appeal.

PART 10—OTHER PROVISIONS ABOUT THE AUTHORITY

Division 1—Membership of Authority

Clause 200 provides for a seven member Authority consisting of a Chairperson and six other persons who have particular expertise or skill in,

or knowledge of matters including fishing, fisheries sciences, natural resource management, public administration, industrial affairs, commerce, economic or financial management.

The Chairperson and members are appointed by the Governor in Council.

The members are not representative of any particular interests and must discharge their duties in accordance with the Bill and in the interests of furthering the functions of the Authority.

Clause 201 provides for the establishment of a selection committee, the persons comprising it and the remuneration of its Chairperson.

Clause 202 provides that the selection committee must ensure that membership of the Authority includes persons with knowledge of or experience in fishing.

A person is not eligible to be nominated for appointment as a member of the Authority if the person is a member of the Policy Council, a member of the selection committee or a chairperson, deputy chairperson or chief executive officer of a peak representative organisation in the fishing industry.

Clause 203 provides for the term of office of members of the Authority, and vacation of and removal from office.

Clause 204 provides that members of the Authority are to be paid fees and allowances decided by the Governor in Council.

Division 2—Proceedings of Authority

Clause 205 provides for the time and place of meetings of the Authority.

Clause 206 provides for the procedures of the business of the Authority.

Clause 207 provides that members of the Authority who have a direct or indirect financial interest in a matter, such that the interest could conflict with the proper performance of those members duties, the members must disclose the nature of the interest to a meeting of the Authority. Unless the Authority otherwise determines, the member must not be present during any deliberations of the Authority in regard to the matter nor take part in the decision of the Authority in relation to the matter.

Clause 208 requires the Authority to keep minutes of its proceedings.

Division 3—Employees

Clause 209 empowers the Authority to engage employees it considers necessary to perform its functions.

Division 4—Other matters about the Authority

Clause 210 empowers the Authority, with the approval of the Governor in Council, to provide superannuation arrangements for the Authority's employees.

Provision is made for continuing benefits to employees who were contributing to various State public sector superannuation schemes.

Clause 211 provides for judicial notice to be taken of the imprint of the Authority's common seal.

Clause 212 empowers the Authority to establish committees and requires the Authority to give consideration to any recommendations arising from the committees.

Clause 213 provides that the Authority is subject to the application of a number of other statutes.

Clause 214 provides the Minister with the power to require the Authority to provide reports on the Authority's operations.

PART 11—MISCELLANEOUS

Clause 215 provides that it is an offence to attempt to commit an offence against the Bill.

Clause 216 provides that the conduct of representatives of a corporation or individual will be imputed to the corporation or individual unless it can

be established that reasonable precautions were taken and proper diligence was exercised to avoid the conduct.

Clause 217 provides that the Authority or the State is vicariously liable for civil liability in relation to an act or omission done honestly and without negligence by officials, and that officials are not personally liable for such acts.

Clause 218 describes the manner in which boundaries and areas may be described.

Clause 219 provides that the holder of an authority must ensure that everyone else acting under the authority complies with the Bill, and a failure to do so is an offence.

Clause 220 provides the time to commence proceedings for an offence.

Clause 221 prohibits an inspector from holding an interest in an authority.

Clause 222 provides that certain penalties, net proceeds of sale, costs and fees or other monies be paid to the Authority, for its general use, other than penalties recovered in a private prosecution where 50% of monies etc. are payable to the person who brings the prosecution.

Clause 223 empowers the Governor in Council to make regulations for the purposes of the Bill, including regulations concerning fees.

PART 12—TRANSITIONAL PROVISIONS

Division 1—Transitional references

Clause 224 provides that this Division applies to references in Acts in existence at its commencement.

Clause 225 provides that a reference to the *Fisheries Act 1976* is taken as a reference to this Bill.

Clause 226 provides that a reference to the *Fishing Industry Organisation and Marketing Act 1982* is taken as a reference to this Bill.

Clause 227 provides that a reference to the Queensland Fish Management Authority is a reference to the Authority established under this Bill.

Division 2—Other transitional provisions

Clause 228 defines a number of terms used in the Division.

Clause 229 provides for a changeover day upon which the existing Queensland Fish Management Authority is dissolved. The clause also enables the Authority to continue to carry out its business until the changeover day.

Clause 230 provides for the continuation of legal proceedings by or against the former Authority and the vesting of all assets, rights and liabilities in the Authority constituted under this Bill.

Clause 231 provides for continuity of employment and the continuity of existing and accruing rights of existing staff of the former Authority.

Clause 232 provides for continuity of superannuation schemes.

Clause 233 provides for continuity of a licence, permit or other permission issued under the repealed Acts.

Clause 234 provides for existing orders, etc to continue in force and be subject to unexhausted appeal rights as if they were made under this Bill.

Clause 235 provides for the application of existing regulations and Orders in Council, fish habitat reserves and fish sanctuaries and the adaptation of their operation to the provisions of this Bill.

Clause 236 provides for the application of an arrangement under Part 6A of the Fisheries Act 1976 for the Commonwealth-State management of fisheries as if it had been entered into under this Bill on the commencement of this Bill.

Clause 237 provides for inspectors appointed under the former Act to be inspectors appointed under this Bill.

Clause 238 provides for the dissolution of the Queensland Fish Board established under the *Fishing Industry Organisation and Marketing Act 1982*, and the vesting in the State of that Board's rights, liabilities and

property.

Clause 239 provides that regulations may be made for anything necessary to facilitate the transition from the operation of the former Act to the operation of this Bill.

Clause 240 provides for the first members of the new Fisheries Tribunal under the Bill to be the sitting members of the previous Tribunal under the *Fishing Industry Organisation and Marketing Act 1982*.

Clause 241 provides that an appeal commenced and not completed under the former Act continues as an appeal under this Bill.

Clause 242 provides for the amount of funds in the Fisheries Research Fund established under the *Fisheries Act 1976* to become part of the Fisheries Research Fund under this Bill.

PART 13—REPEALS AND AMENDMENTS

Clause 244 provides for repeal of Acts replaced in whole or part by this Bill.

Clause 245 provides for consequential amendment of certain Acts.

SCHEDULE 1

This schedule lists the Acts repealed by this Bill.

SCHEDULE 2

This schedule states the Acts amended by this Bill.

