PRIMARY INDUSTRIES AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

General Outline

Short Title

The short title of the Bill is the Primary Industries and Other Legislation Amendment Bill 2003.

Objectives of the Legislation

The Bill amends the following Acts administered by the Minister for Primary Industries and Rural Communities:

- *Animal Care and Protection Act 2001*
- *Chicken Meat Industry Committee Act 1976*
- *Exotic Diseases in Animals Act 1981*
- *Fisheries Act 1994*
- *Food Production (Safety) Act 2000*
- *Grain Industry (Restructuring) Act 1991*
- *Plant Protection Act 1989*
- *Stock Act 1915.*

The Bill also amends:

- *Police Powers and Responsibilities Act 2000*
- *Integrated Planning Act 1997*

The primary objectives of the Bill are to:

- Make minor amendments to the *Animal Care and Protection Act 2001, Chicken Meat Industry Committee Act 1976*, *Grain Industry (Restructuring) Act 1991, Police Powers and Responsibilities Act 2000* and the *Stock Act 1915.*

- Amend the *Exotic Diseases in Animals Act 1981* to reduce current restrictions associated with licensing requirements for movements into, within and out of restricted areas, and to improve processes for compensation claims after the destruction of either an animal or property, or the death of an animal.
- Amend the *Fisheries Act 1994* and the *Integrated Planning Act 1997* to continue the roll-in of existing development approvals under Queensland Acts into the single, co-ordinated Integrated Development and Approval System (IDAS) (the fisheries development amendments);
- Amend the *Fisheries Act 1994* to make miscellaneous changes that are considered necessary or desirable (other fisheries amendments) to the enforcement of the administration and *Fisheries Act 1994.*
- Amend the *Food Production (Safety) Act 2000* to clarify the meaning and intention of particular provisions and to enable an expertise based decision-making board of directors to be constituted who will have the normal powers of a board under statutory authority legislation, especially in regard to corporate governance.
- Amend the *Plant Protection Act 1989* to provide a timeframe for aggrieved persons to seek review of an administrative decision, and make other minor amendments.

Reasons for the Policy Objectives

Chicken Meat Industry Committee Act 1976 (CMIC Act)

There is currently no provision in the CMIC Act that provides a general power to the Chicken Meat Industry Committee to charge for services it provides in the administration of the CMIC Act. It is imperative that such a power is included in the CMIC Act to enable the Committee to properly administer the Act.

Exotic Diseases in Animals Act 1981 (EDA Act)

As a consequence of the Foot and Mouth Disease simulation exercise known as "Exercise Minotaur" conducted in September 2002, a number of amendments in relation to licensing and compensation have been identified to correct deficiencies identified during that exercise where provisions of the EDA Act were practically applied.

***Fisheries development amendments - Fisheries Act 1994* (Fisheries Act) *and Integrated Planning Act 1997* (IPA)**

The IPA is the foundation of Queensland's planning and development legislation and establishes IDAS - a step-by-step process for making, assessing and deciding all aspects of development applications, by integrating existing State and local government approvals into a single development approval. The main purpose of the Bill is to apply IDAS to certain development currently administered under the Fisheries Act.

Fisheries Act – other fisheries amendments

Generally, the proposed amendments are aimed at ensuring a more efficient administration and better enforcement of the *Fisheries Act 1994*. Some minor or technical amendments are also proposed.

Food Production (Safety) Act 2000 (FPS Act)

There are two sets of proposed amendments to the Food Production Safety Act 2000.

The first set of amendments to sections 6 and 10 of the FPS Act is needed in order to achieve the intended effect of these provisions.

The second set of amendments to the FPS Act is concerned with the enhancement of corporate governance arrangements for Safe Food Production Queensland.

***Grain Industry (Restructuring) Act 1991* (GIR Act)**

The GIR Act was amended in 2002 to "sunset" ie terminate the wheat and barley vesting (compulsory vesting) powers held by Grainco (Australia) Pty Ltd. The powers ceased at 30 June 2002. Consequently, all provisions in the GIR Act that deal with vesting need to be repealed.

***Plant Protection Act 1989* (PP Act)**

The proposed amendments will provide a time limit for aggrieved persons to seek a review of a decision under section 21M of the PP Act.

The way in which the policy objectives are to be achieved by the Bill

Chicken Meat Industry Committee Act 1976

It is acceptable to allow Committees to charge for services it provides pursuant to an Act. It is therefore proposed to include a general power for

the Chicken Meat Industry Committee to charge for certain services it provides. Services will include the registration of changes to contracts, the transfer of existing contracts to other growers, the transfer of an existing quota to another contract and a change in partnership.

Exotic Diseases in Animals Act 1981

Firstly, the current licensing requirement for all movements in relation to section 11 of the Act (Effect of notification) is considered too restrictive on the public and excessively resource intensive on the Department to enforce.

An amendment to this section will permit the Minister by public notice, to specify the requirements for the movement of persons, animals, carcasses, animal products, animal pathogens, biological preparations, fittings, fodder, property, vehicles, vessels, any other property or thing, into within and from restricted areas, as long as the Minister is satisfied that the specified movement does not pose a significant risk of spreading the exotic disease.

By enabling the Minister to determine those movements that require a licence is not expected to increase the risk of the spread of disease, because movements that are exempt from licensing will be those that have been assessed as posing a low risk of spreading the exotic disease. This amendment will lead to potentially lower costs to the State by enabling emergency response resources to better target high risks.

Secondly, section 30(3) of the Act requires amendment to improve the compensation claim process after the destruction of either an animal or property through exotic disease. Currently, compensation is payable under the Act for the destruction of stock or property and death of stock as a result of exotic disease.

The amendment will mean that the critical date on which eligibility for additional compensation is determined will be the date when the property is eligible for restocking, rather than the date when the quarantine ends. By amending the provision to refer instead to the date of eligibility for unrestricted restocking, will provide for the continuation of additional compensation arrangements.

Fisheries Development Amendments

There are four existing authorities or approvals under the Fisheries Act that constitute development -

- licenses and permits for aquaculture;
- permits for operational works in a declared fish habitat area;
- approvals for waterway barrier works (including an associated direction to build a fish way); and
- permits to remove/destroy or damage marine plants.

The Bill will amend the Fisheries Act and make consequential amendments to IPA so that assessment, approval and appeals associated with these developments will be administered under IPA.

The fisheries development amendments also introduce a modified public notification and appeal process under IDAS for land-based aquaculture adjacent to the Great Barrier Reef World Heritage Area (GBRWHA) into the IPA. This implements an agreement between the State and Commonwealth governments and stakeholders necessary for accreditation of Queensland law under the *Great Barrier Reef Marine Park (Aquaculture) Regulation 2000 Cth* - a critical step toward eliminating unnecessary duplication in the assessment of the developments under State and Commonwealth law.

Other fisheries amendments

The other fisheries amendments propose to do the following:

- reduce the unnecessary administrative burden in circumstances where an authority has been issued and the prescribed fees related to that authority have been paid by cheque and the cheque subsequently dishonoured;
- remove the administrative power to suspend or cancel authorities on the ground of conviction for a serious fisheries offence – this power is proposed to be dealt with by the courts;
- extend the obligation to ensure provisions in the Fisheries Act are complied with to executive officers of corporations;
- amend the evidentiary provisions to make a minor amendment and to clarify the use of VMS (Vessel Monitoring System) certificates as evidentiary aids;
- define "transfer" to allow for a more equitable and efficient administration of transfer provisions;
- include a new provision to exempt the payment of transfer fees or surrender provisions in certain circumstances;

- add another way in which statistical returns can be provided and received under the Fisheries Act; and
- make a technical amendment to the definition of "fish".

Food Production (Safety) Act 2000

The amendments to sections 6 and 10 of the FPS Act will prevent primary producers from circumventing the intended application of the Act by commercially supplying primary produce to consumers without an accreditation.

Further amendments to the FPS Act establish a Board of Directors for SFPQ and provide for relevant consequential amendments in order to give effect to the intended operation of the Board.

Grain Industry (Restructuring) Act 1991

Repeal all provisions dealing with wheat and barley vesting powers held by Grainco (Australia) Pty Ltd as these provisions sunsetted (terminated) on 30 June 2002.

Plant Protection Act 1989 (PP Act)

Section 21M of the PP Act currently provides that a person may make application for reconsideration of an administrative decision, without specifying any time limit for requesting the review. In effect, any decision made at any time is reviewable. An amendment of this section is required so that a request for a review of a decision would be made within a stated timeframe (proposed to be 28 days).

A new section 21LA has also been included to provide for the situation where there may be a failure to decide particular decisions for individuals who make applications to the chief executive or inspector.

Police Powers and Responsibilities Act 2000 (PP&R Act)

A minor amendment to the PP&R Act will correct an incorrect reference. The Queensland Police Service supports DPI making this amendment.

Stock Act 1915 (Stock Act)

There are minor amendments required to reflect current drafting practice.

Alternatives To The Bill

There are 3 options for dealing with the above issues:

Option 1. Act decisively to amend the legislation to remedy the deficiencies identified. This is the **preferred option**.

Option 2. While each Act could be amended individually, this would be a time consuming process and far simpler an option to include minor amendments in one Bill.

Option 3. Do nothing. This is not appropriate because, although a number of amendments are minor it is critical that they are made.

Fisheries development amendments

The Government has given an undertaking to the community that development approvals administered under existing Acts will be rolled into IDAS. As this requires amendment of the existing Acts, the proposed fisheries development amendments are the only viable means of furthering the Government's objective.

Exotic Diseases in Animals amendments

It is important that the State Government optimise this legislative opportunity to improve the State Government's preparedness and response to the potential impacts of an outbreak of exotic disease.

Estimated Costs For Government Implementation

There will be no costs for government with respect to the amendments to the *Chicken Meat Industry Committee Act 1976* and the *Grain Industry (Restructuring) Act 1991*.

Fisheries development amendments

There are established financial benefits in implementing the reform of Queensland's planning and development regime that can be expected as a result of the fisheries development amendments.

The revenue shortfall resulting from the discontinuation of fees for annual aquaculture licence renewals will be offset by:

- gains in administrative efficiency and financial benefits flowing from the integration of multiple approvals into a single approval under IDAS; and
- significant reform in removing existing assessment of fisheries development that are appropriately managed as self-assessable development under IPA.

Other fisheries amendments

There will be no significant financial implications for government from the proposed other fisheries amendments. The only implication is for loss of transfer fees and this will be in consequential and absorbed within existing budget.

Exotic Disease Act amendments

The proposed amendment to the EDA Act to clarify the operation of additional compensation provisions is not anticipated to change the existing arrangements for funding under the Act.

By reducing the number of licences issued for movements into, within and out of restricted areas for exotic disease under the EDA Act will also significantly assist the resourcing of an exotic disease outbreak and, by removing any unnecessary movement restrictions over people and businesses, is likely to limit any legal liability and resultant litigation.

Plant Protection Act amendments

The proposed amendment to the PP Act to limit the timeframe for review of decision making (to within 28 days) after the making of or failure to make a decision will potentially reduce the costs to the Department in searching records to find relevant information on which to base a reconsideration of decision making.

Food Production (Safety) Act 2000

The amendments to the FPS Act regarding sections 6 and 10 of the Act will not have any appreciable impacts on SFPQ finances.

The introduction of enhanced corporate governance arrangements for SFPQ will cost approximately $40-50 000 per annum.

Consistency With Fundamental Legislative Principles

Amendments to the *Animal Care and Protection Act 2001*, *Chicken Meat Industry Committee Act 1976*, *Exotic Diseases in Animals Act 1981*, *Food Production (Safety) Act 2000*, *Grain Industry Restructuring Act 1991*, *Police Powers and Responsibilities Act 2000*, and the *Stock Act 1915* are consistent with fundamental legislative principles.

The fisheries development amendments are consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992.*

While the provisions of the Act are generally consistent with the standards required under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions of the Act.

s4(2)(d) Legislative Standards Act 1992 – "does not reverse the onus of proof in criminal proceedings without adequate justification"

Clause 42 adds a new provision (219A) that provides for direct liability for executive officers of corporations, such as directors, for offences committed under the Fisheries Act.

The Office of the Queensland Parliamentary Counsel notes that this will effectively reverse the onus of proof for executive officers who would have to prove that they did not direct their employees to act illegally and that this is a fundamental legislative principle issue.

The proposed amendment does not impose any more obligations than otherwise currently exists for individuals and corporations (as authority holders) under the Fisheries Act. It is intended that this new provision would only be exercised in serious cases. For example, it will be important in circumstances where a serious fisheries offence has been committed and for enforcement purposes and to act as a sufficient deterrent, liability needs to attach to the actual person who was indirectly responsible for the offence, as opposed to the corporation.

The administering agency still has to prove the commission of the offence and if proven, executive officers will not be liable if they show that they weren't in a position to influence the conduct of the corporation or they had taken reasonable steps to ensure the corporation complied with the Act or the offence happened without their knowledge. Placing the onus to prove the defence on the executive officer is justified because the facts that

support the defence will usually be entirely within the defendant's knowledge and would be impossible for the prosecutor to negative.

Similar provisions are included in a number of Acts, and are justifiable for inclusion in the Fisheries Act on the basis of ensuring good governance arrangements for fishing and other companies and for ensuring the corporate veil is not used to shield any liability.

s4(2)(a) Legislative Standards Act 1992 – "that legislation has sufficient regard to the rights and liberties of individuals"

Clause 86 - Amended section 21M of the *Plant Protection Act*.

Currently section 21M of the PP Act does not specify a time limit for the reconsideration of administrative decisions by an aggrieved person. An amendment of this section will improve the time to respond to any requests made by aggrieved persons, and will ensure consistency across Acts that have similar timeframes for review of decision-making.

The proposed timeframe of up to 28 days for applicants to seek reconsideration of an administrative decision does not affect the rights of aggrieved persons to appeal to the Magistrates Court.

CONSULTATION - *Animal and Plant Health Amendments*

Community

The Biosecurity and Market Access Liaison Group (BMALG) that includes representatives from the major producer groups, have been consulted on these amendments.

Queensland Government

There has been consultation with the Departments of Premier & Cabinet, Queensland Treasury, Justice and Attorney-General, State Development, Local Government and Planning, the Office of Rural Communities, and the Office of the Queensland Parliamentary Counsel.

There has been consultation on the amendments to the FPS Act with Queensland Treasury, Queensland Health, Business Regulation Reform Unit, Department of State Development and the Office of the Queensland Parliamentary Counsel.

RESULTS OF CONSULTATION

Community

The groups consulted support the proposed amendments.

Queensland Government

Those Departments and agencies consulted support the amendments.

CONSULTATION – *Chicken Meat Industry Committee Act 1976* and *Grain Industry (Restructuring) Act 1991*

Community

Consultation has occurred with the Chicken Meat Industry Committee with respect to the insertion of a section in the *Chicken Meat Industry Committee Act 1976* to provide that the Committee may charge for services it provides in the administration of the *Chicken Meat Industry Committee Act 1976*.

Consultation has occurred with Grainco (Australia) Pty Ltd regarding the amendments to the *Grain Industry (Restructuring) Act 1991*.

Queensland Government

There has been consultation with Queensland Treasury and the Department of State Development with respect to the amendments to the *Chicken Meat Industry Committee Act 1976* and the *Grain Industry (Restructuring) Act 1991*.

RESULTS OF CONSULTATION

Community

The Chicken Meat Industry Committee sought the amendment to the *Chicken Meat Industry Committee Act 1976* and was supportive of the

insertion of the section that provides for the Committee to charge for services.

Grainco (Australia) Pty Ltd raised no objection to the amendments.

Queensland Government

Queensland Treasury and the Department of State Development raised no objections to the amendments to the CMIC Act and the GIR Act.

CONSULTATION - *Fisheries development amendments*

Community

There has been extensive consultation with relevant stakeholders and the wider community on the fisheries development amendments. Specifically consulted were:

- Canegrowers;
- Agforce;
- Queensland Farmers Federation;
- Aquaculture industry, including the Australian Prawn Farmers' Association, the Queensland Aquaculture Industry Federation, the Queensland Barramundi Association and Oyster, Crayfish and Scallop Grower's Association;
- Queensland Seafood Industry Association;
- SunFish;
- conservation organisations;
- development organisations including the Urban Development Industry Association and Master Builders Association, Port authorities, energy and water authorities; and
- the Local Government Association of Queensland (LGAQ).

Government
Queensland Government

The Departments of Premier and Cabinet, Justice and Attorney-General, Natural Resources and Mines, State Development, Queensland Treasury, the Environmental Protection Agency, Queensland Health, Department of and the Queensland Police Service and the Office of Rural Communities were consulted in relation to the fisheries development amendments.

Commonwealth Government

Environment Australia and the Great Barrier Reef Marine Park Authority were consulted.

RESULTS OF CONSULTATION

Community

The community was generally supportive of the fisheries development amendments, particularly the objective of making minor marine plant disturbance, maintenance work associated with existing infrastructure and development footprints, minor waterway barrier works and freshwater aquaculture of indigenous and endemic freshwater fish below a specified threshold self assessable against a code.

However, the Environmental Defenders Office did not support the change to the appeal rights about fisheries development decisions. The Fisheries Act affords a right of appeal to the Fisheries Tribunal to a person whose interests are adversely affected by an administrative decision. Under IPA, a person, other than the applicant, may appeal to the Planning and Environment Court (the Court) only if the development application was impact assessable and the person made a submission about the application.

The change is a consequence of the application of the standard IDAS provisions to fisheries development. IDAS appeal rights reflect existing policy by providing for different appeal rights depending on the level of assessment appropriate to the nature of the development. Impact assessment is the highest level of assessment, and is not considered appropriate to the type and scale of fisheries development under the Fisheries Act. In the case of particular GBRWHA aquaculture

development, the public will have the right to make submissions and appeal against the outcome to the Court.

GOVERNMENT

The Department of Natural Resources and Mines and the Environmental Protection Agency (EPA) raised the issue that early advice about fish movement requirements for proposed waterway barriers was relevant to design formulation and appropriate water allocation, matters that require resolution prior to lodging the development application.

The fisheries development amendments address the issue by providing an option for proponents to seek prior advice as to whether the area in which the barrier is proposed may require fish movement to be accommodated. Also, if fish movement is required, the ways in which it may be adequately provided are clearly set out. This reflects the existing policy on when barrier approvals are given. By enshrining the alternatives in the Act, applicants have a clear explanation of the expectations that are to be met for the chief executive to be satisfied that the application should be approved.

The EPA raised issues regarding the administration of resource allocation decisions generally; the relationship between resource allocation and development; and the interagency administration and coordination of resource allocation processes**.** These issues have been addressed through the inclusion of appropriate linkages to the *Coastal Protection and Management Act 1995*, the *Environmental Protection Act 1994* and the *Marine Parks Act 1982* as matters to which the chief executive administering the Fisheries Act must have regard in making decisions that affect State resources also managed under the other Acts.

The Department of Main Roads, Queensland Rail and Queensland Transport have endorsed the proposed simplification of approvals relating to public infrastructure, particularly the proposal to make maintenance work associated with such infrastructure self-assessable.

COMMONWEALTH GOVERNMENT

The fisheries development amendments implements an agreement between the Commonwealth and State governments relating to accreditation of Queensland law under the *Great Barrier Reef Marine Park (Aquaculture) Regulation 2000.* Environment Australia and the Great

Barrier Reef Marine Park Authority were party to the development of the agreement.

CONSULTATION - *Other fisheries amendments*

Community

The Queensland Seafood Industry Association (QSIA) has been consulted on the proposed amendments to the Fisheries Act, as these amendments affect mainly commercial fishers.

Government

There has been consultation on the development of this submission with Queensland Treasury, the Department of Justice and Attorney General and the Office of the Queensland Parliamentary Counsel.

RESULTS OF CONSULTATION

Community

QSIA are in agreement with the proposed amendments.

Government

Queensland Treasury has accepted the need for and consequences of the proposed amendments as, the only amendment with financial implications for DPI relates to the proposed amendment to provide explicit exemption from transfer fees and surrender provisions in certain situations, and will result in a very small reduction in total licensing revenues.

Based on the small number of transactions of this nature, the total impact is inconsequential. This revenue loss will be absorbed within existing budget.

The Department of Justice and the Attorney General has endorsed the proposals, including those to remove doubt regarding enforcement and evidentiary provisions for the use of the Vessel Monitoring System.

Consultation – *Food Production (Safety) Act 2000*

Community

SFPQ have been consulted in respect of the amendments to sections 6 and 10 of the FPS Act.

SFPQ have been consulted in respect of the enhanced corporate governance amendments to the FPS Act.

Government

There has been consultation on the amendments to the FPS Act with Queensland Treasury, Queensland Health, Business Regulation Reform Unit, Department of State Development and the Office of the Queensland Parliamentary Counsel.

RESULTS OF CONSULTATION

Community

SFPQ support the amendments to sections 6 and 10 of the FPS Act and have consulted with industry via the Food Safety Advisory Committee and the Dairy and Meat sub-committees thereof.

SFPQ are supportive of the proposed enhanced corporate governance arrangements as contained in the amendments to the FPS Act.

Government

Queensland Health strongly supports the need, as identified by SFPQ and DPI to close off any "loopholes" in the FPS Act. The involvement of Queensland Health has ensured continuity between this piece of legislation and related provisions in legislation administered under the Health portfolio.

The results of consultation with BRRU, Treasury, Department of State Development and Department of Premier & Cabinet have not raised any objections to the proposed enhanced corporate governance arrangements for SFPQ.

PRIMARY INDUSTRIES AND OTHER LEGISLATION AMENDMENT BILL 2003

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 sets out the short title of the Act.

Commencement

Clause 2 provides that the fisheries development amendments commence upon proclamation. Before the amendments are proclaimed, consequential amendments to the *Fisheries Regulation 1995* must be made. Extensive training on new administrative arrangements and industry awareness sessions will also occur prior to commencement.

PART 2—AMENDMENT OF ANIMAL CARE AND PROTECTION ACT 2001

Act amended in pt 2

Clause 3 provides for the amendment of the *Animal Care and Protection Act 2001*.

Amendment of s166 (Failure to comply with information requirement)

Clause 4 amends section 166(2)(b) to more appropriately link it to section 165, so that the reasonable excuses for not complying with an

information requirement are consistent with section 165(1)(b) (Power to require information).

This will mean that a person of whom an information requirement has been made must comply with the requirement unless the person has a reasonable excuse. It is a reasonable excuse if the information sought by the requirement is not relevant to a suspected contravention of the Act, or is not relevant to the compliance or non-compliance with an animal welfare direction.

PART 3—AMENDMENT OF CHICKEN MEAT INDUSTRY COMMITTEE ACT 1976

Act amended in pt 3

Clause 5 provides for the amendment of the *Chicken Meat Industry Committee Act 1976*.

Replacement of s 14 (Powers)

Clause 6 amends section 14 of the *Chicken Meat Industry Committee Act 1976* to provide for the committee to charge for services provided in the course of performing a function imposed on the committee under the Act. The charge must not be more than the reasonable cost of providing the service.

PART 4—AMENDMENT OF EXOTIC DISEASES IN ANIMALS ACT 1981

Act amended in pt 4

Clause 7 provides for the amendment of the *Exotic Diseases in Animals Act 1981*.

Insertion of new s 10A (Restricted movements)

Clause 8 provides that after the notification of a restricted area, the Minister may by notice declare that the movement of any of the following into, within or out of the restricted area is restricted: all persons or particular classes of persons; all animals or particular classes or species of animals; carcasses or animal products of all animals or particular classes or species of animals; all or particular kinds of animal pathogens or biological preparations; all or particular kinds of fittings or fodders; all or particular kinds of vehicles or vessels; any other property or thing that is likely to or capable of spreading an exotic disease.

Subsection 10A(2) provides that the notice under subsection 10A(1) is subordinate legislation.

Amendment of s 11 (Effect of Notification)

Clause 9 amends this section to clarify issues in relation to the licensing of movements required for particular restrictions. The heading "Effect of Notification" has been replaced with "Licence required for restricted movements".

Subsection 11(1) provides that a person, other than an inspector must not make, cause or allow a restricted movement for a restricted area unless the person holds a licence in the approved form from an inspector for the movement and complies with any conditions stated on the licence. The maximum penalty of 2000 penalty units or 2 years imprisonment for this section remains unchanged.

The amended section will mean a reduced number of licences being issued which will result in the Department providing an improved emergency response in these situations.

Enabling the Minister to determine those movements that require a licence (restricted movements) is not expected to increase the risk of the spread of disease, because movements that do not require a licence (movements other than restricted movements) will be those that have been assessed as posing a low risk of spreading the exotic disease. This amendment will lead to potentially lower costs to the State by only directing emergency response resources to high risk movements. Resources that would otherwise be directed towards issuing licences may be directed to other higher priority activities such as conducting surveillance and trace forward and trace back for exotic disease.

Amendment of s 14 (Entry and exit places)

Clause 10 amends section 14(3) by clarifying the existing provisions and redrafting the section into modern drafting terms.

This provision states that a person (other than an authorised person) must not pass through a place of entry or exit without stopping and producing to the authorised person the licence mentioned in section 11 for the movement, or giving the authorised person enough information to reasonably satisfy the authorised person that the movement is not a restricted movement. In addition, all persons seeking to pass through the place must obtain permission from the authorised person to pass through the place.

The maximum penalty of 1000 penalty units or 1 year's imprisonment for this section remains unchanged.

The chief inspector may at any time by notification appoint places on or near the boundaries of a restricted area to be places for the entry into or exit from that area.

Amendment of s 15 (Check points)

Clause 11 amends section 15(2) by clarifying the existing provisions and redrafting the section into modern drafting terms.

This provision states that a person (other than an authorised person) must not pass through the check point without stopping and producing to the authorised person the licence mentioned in section 11 for the movement, or giving the authorised person enough information to reasonably satisfy the authorised person that the movement is not a restricted movement. In addition, all persons seeking to pass through the check point must obtain permission from the authorised person to pass through the check point.

The maximum penalty of 1000 penalty units or 1 year's imprisonment for this section remains unchanged.

A check point is established in the restricted area whenever the chief inspector deems it necessary for the purpose of preventing or checking the spread of exotic disease within the restricted area.

Amendment of s 30 (Claims for compensation)

Clause 12 amends section 30(3) by improving the operation of compensation claims after the destruction of either an animal or property through exotic disease. This section now clarifies that if when the restriction period relating to animal or property ends, the market value of the animal or property is more than the amount of compensation paid under an application under subsection (1), the owner may apply for additional compensation, within 30 days after the restriction period ends.

Amended subsection 30(4) removes the reference to the wording "quarantine is revoked" and replaces it with the improved wording of "restriction period relating to the animal or property ends".

Amended subsection 30(6) includes the definitions of restriction period and end market value.

Amendment of sch 2 (Dictionary)

Clause 13 amends Schedule 2 (Dictionary) by defining the meaning of authorised person for a place of entry or exit or a check point, as the inspector in charge of the place or check point, or another person authorised by the chief inspector to be in charge of the place.

The amendment also defines the meaning of restricted movement for a restricted area, as a movement that the Minister has declared under section 10A is restricted for the restricted area.

PART 5—AMENDMENT OF FISHERIES ACT 1994

Act amended in pt 5

Clause 14 provides that this part amends the Fisheries Act.

Amendment of s 5 (Meaning of "fish")

Clause 15 makes a technical amendment to section 5(2)(c) of the Fisheries Act to omit the reference to "sea snakes, marine mammals and

turtles" from the definition of "fish". These animals are now protected animals under the *Nature Conservation Act 1992* (Qld).

Amendment of s 20 (Chief executive's functions)

Clause 16 amends existing section 20 of the Fisheries Act by providing for an additional function of the chief executive to ensure that, where an entity has been invested with a function or power under the Fisheries Act, the entity discharges its duty or power in a way that is consistent with that Act's objectives.

The amendment is appropriate, both for the application of IDAS to the administration of fisheries developments and for the administration of the Fisheries Act generally. It recognises that the chief executive's functions extend to ensuring other entities acting under the Act, for example local governments that have been delegated certain powers, do so in a way that is consistent with its purposes.

Amendment of s 22 (Integrated Development Approval System regulations and guidelines)

Clause 17 corrects a minor error in the heading of existing section 22, so that the Integrated Development *Assessment* System is correctly identified. Fisheries development (that is, making a material change of premises for aquaculture, building work or operational work in a declared fish habitat area, the removal, damage or destruction of marine plants and the construction or raising of a waterway barrier) is to be assessable or self-assessable development under IPA. Where it is to be assessable development, it will be decided through concurrence assessment or code assessment.

Code assessment requires the decision-maker to undertake assessment of a development application against the common material and any applicable codes. Self-assessable development is assessed by the developer against a development code. Schedule 10 of the IPA defines a "code" as including a document or part of a document as a code for IDAS in IPA or another Act. The clause amends section 22 by extending the IDAS matters that may be dealt with by regulation under the Fisheries Act to include the identification of the codes.

Amendment of s 37 (Management Plan may declare closed season, closed waters etc.)

Clause 18 amends section 37 by providing that, unless expressly stated to the contrary, the declaration of a closed season or closed waters in a management plan made under the Fisheries Act, will not affect the carrying out of an activity under a development approval.

It is the intent of IDAS that once issued, a development approval remain in force for the currency period unless it lapses or is cancelled. However, there may be circumstances, where the overriding public interest dictates that subordinate legislation under the Fisheries Act declaring a closed season or waters must affect existing development rights. The amendment reflects the spirit of IDAS by providing that this should only occur where this is the express intent of the closed season/closed waters declaration in a management plan.

Amendment of s 43 (Declaration of closed season, closed waters etc.)

Clause 19 amends section 43 in the same way as clause 18 amends section 37, in respect of declarations made in other subordinate legislation.

Amendment of Pt 5, div 3, hdg

Clause 20 changes the heading for Part 5, Division 3, Subdivision 1 to refer more specifically to authorities issued under the Fisheries Act. This is to distinguish those authorities from development approvals issued under the IPA that authorise fisheries development.

Replacement of sections 49 to 51

Clause 21 replaces the effect of existing sections 49, 50 and 51 of the Act with a single provision, new section 49. The current structure of these provisions reflects the era of shared administration of the Act between the chief executive and the now defunct Queensland Fisheries Management Authority (the Authority). It is no longer necessary for the Fisheries Act to provide that it is the chief executive (as opposed to the Authority) that may issue authorities (former section 49), issue permits (former section 50), as well as listing the types of permits the chief executive may issue (former section 51). New section 49 reflects the role of the chief executive as the sole administrator of the Fisheries Act, by simply providing that it is the chief executive who may issue the authorities for the Act (with prescription

of the type of authorities for the Act being a matter for regulation or management plan).

Amendment of s 52 (Things authorised by authorities)

Clause 22 amends existing section 52, which provides for the entitlement conferred by an authority issued under the Fisheries Act. The existing authorities that authorise the carrying out of fisheries development already implicitly permit the use, taking or interference with the fisheries habitats or the community's fisheries resources (a "resource allocation") where this is a consequence of the development. For example, a licence to aquaculture oysters using aquaculture furniture in tidal waters (development) must by necessary implication, include permission of the chief executive on behalf of the State to use that area of the State's tidal waters and fish habitats for this purpose (resource allocation). Similarly, by granting a permit to perform work in a declared fish habitat area (development), the chief executive is, by virtue of the chief executive's function to manage the community's fish habitat resources, permitting a limited interference with that habitat resource (resource allocation).

The intent of the Bill is to apply IDAS to the matters under the Act that constitute development only. Activity that also involves the use or interference with a State land, water or fisheries resources will require both an authority under the Fisheries Act (a resource allocation authority) and a development approval under IPA. The resource allocation decision involves assessment of the appropriate use of and access to resources. It requires assessment of the long term, broad scale impacts of a development of the kind proposed in the context of the most beneficial use of the State-managed community resource and the main purpose of the Act. The development application assessment process requires the chief executive to specifically assess a particular development proposal and its immediate fisheries impacts.

The purpose of section 52(4) is to remove from any doubt that:

- the nature of a resource allocation authority is to approve the limited use or interference with State resources rather than granting of any ownership or tenure rights over the resource; and
- the resource allocation authority itself does no confer development approval. It is a precondition to the right to make the development application, which is then decided under IDAS.

Amendment of s 59 (Refusal to issue or renew)

Clause 23 amends the examples given in section 59 of the reasons for which the chief executive may be satisfied that an application to issue or renew an authority for the Fisheries Act should be refused. The examples already include the conviction of the holder for an offence against the Fisheries Act. The effect of the Bill is that IPA offences will apply to fisheries developments. The amendment to section 59 reflects this by ensuring that a person's convictions for IPA offences relevant to fisheries development (included in the definition of "fisheries offences" for the Fisheries Act) can be taken into account by the chief executive in deciding whether to refuse to issue the person an authority under the Fisheries Act. This is particularly appropriate given the relationship between resource allocation authorities and development approvals. Also, as fisheries development approvals will be issued, suspended and cancelled under IPA, the examples are being extended to encapsulate the suspension or cancellation of a development approval under IPA as a ground to refuse to issue or renew an authority under the Fisheries Act.

Insertion of new pt 5, div 3, sdiv 2A

Clause 24 inserts a heading for a new subdivision inserted into Part 5, Division 3, which provides for matters about authorities issued under the Fisheries Act.

New section 60A (Matters chief executive must consider)

New section 60A is relevant to the new resource allocation authorities. A resource allocation authority must be issued to a person as a prerequisite to the right to the make a development application under IDAS for fisheries development that involves the taking or interference with State resources under the Fisheries Act. The section provides that, in making the decision whether to issue a resource allocation authority, the chief executive must take into account the impact that any future development would have on the resource considered against:

- coastal management under the *Coastal Protection and Management Act 1995;*
- the protection of Queensland waters as required under the *Environmental Protection Act 1994* – specifically the way the environmental values of Queensland waters are to be protected under the *Environmental Water Policy 1997*; or

- the management of marine parks under the *Marine Parks Act 1982*.

The Fisheries Act's main purpose can be best achieved by considering the impacts of possible future development both on fisheries resources and habitats directly and in the context of the objects of other legislation that is, by its nature and subject matter, relevant to fisheries impacts. The resource allocation decision is a preliminary step toward development that would impact not only on the State resources managed under the Fisheries Act, but also on coastal management, protection of Queensland waters and management of marine parks.

The section amplifies the matters that are relevant considerations in deciding a resource allocation authority by providing legislative links to other relevant legislation. It is appropriate and relevant that the chief executive considers the wider impacts on State resources at this stage and takes into account the advice of other management agencies at the time of the resource allocation decision. For example, in considering whether an area of tidal waters is suitable for future aquaculture development, the impacts on marine parks, the coast line and water resources management may be relevant to deciding where an appropriate area for marine aquaculture is located.

Amendment of s 61 (Conditions imposed on issue or renewal)

Clause 25 makes a minor amendment to the heading of section 61 so that it refers to the general application of that section to the conditions imposed administratively on authorities upon issue or renewal. This distinguishes the provision from section 62, which provides for the imposition of conditions on authorities by law.

Insertion of new s 65C

Clause 26 inserts a new section 65C which deals with two situations where transfer fees and surrender provisions required under the *Fisheries Regulation 1995* ("the regulation") or a management plan will be waived in certain circumstances.

The section only applies to the following situations:

(1) where there is an application for a transfer or amendment of an authority; or

(2) where there is an application for a transfer or amendment of an authority and before the amendment or transfer can be approved, the regulation or a management plan requires the surrender of an authority(s), or the amendment of an authority by removing a fishery symbol(s) or in some other way that is not beneficial to the authority holder; and

(3) the application is necessary or was a result of one of the following prescribed events:

- a matrimonial or defacto property settlement;
- bankruptcy;
- winding up or administration under the Corporations Act;
- the administration of the deceased estate of the authority holder; or
- the loss of the boat (at sea) being used in relation to the authority through storm, capsize, collision or fire.

An example of surrender provisions discussed in (2) is section 117 of the *Fisheries (East Coast) Trawl Plan 1999*, which deals with the surrender of a percentage of effort units if a trawl licence is transferred in certain circumstances.

It is only in the circumstances outlined above that an application for waiver will apply. This is because transfer fees and "other penalties" applying to commercial fishing licences are significant and it is considered unfair to impose such fees in the circumstances described above, where essentially these events result from circumstances beyond the control of the authority holder and are not a deliberate commercial decision.

The authority holder must apply to the chief executive for a waiver under this section. Section 65C(3) provides for how the application for waiver should be made by the holder. It includes the requirement that the application must be accompanied by sufficient documentary evidence to support the application (eg. insurance report).

Section 65C(4) provides that if the chief executive asks the applicant for further information to decide the application, the applicant must give such further relevant information.

If the chief executive is satisfied that one of the prescribed circumstances exists for a waiver and that there is sufficient evidence to support the waiver, the chief executive must exempt the holder of the authority from

the payment of the transfer or amendment fee or any other surrender requirements on transfer or amendment of that authority.

Replacement of s 67 (Suspension or cancellation of authorities by chief executive)

Clause 27 inserts a new section 67 which removes the administrative power to suspend or cancel an authority on the ground of conviction (of the authority holder) for a serious fisheries offence. This amendment also relates to clause 29, which inserts a new section 68B (Suspension or cancellation of authority by court), which now provides this power to the courts. In other words, there is now only one ground (not two) for the administrative suspension or cancellation of authorities – it is necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats.

By way of background, Fisheries Act offences are prosecuted summarily. The only sentencing option available to Magistrates are fines, the maximum amounts of which are determined by reference to the penalty units prescribed for fisheries offences, created in the Fisheries Act, the regulation and the various management plans.

Currently, the Fisheries Act provides for a power for the chief executive to suspend or cancel authorities on two grounds. The first ground is if it is necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats. The other ground is where the holder has been convicted of a serious fisheries offence. "Serious fisheries offences" are those prescribed as such by the regulation or a management plan. The issue is with the latter.

This system is not working satisfactorily in practice. Serious fisheries offences are, by nature, often those which pose the greatest threat to the sustainability of fisheries resources, such as unlawfully taking scallops from closed regeneration areas. There is generally a significant financial incentive motivating the commission of these offences against which a court-imposed fine alone may not be an effective deterrent.

Also, the requirement that a conviction be recorded before the administrative power to suspend/cancel can be invoked has restricted the practical application of this provision.

It is considered that it would be more appropriate for the issue of authority suspension (or cancellation) to be considered by the court itself at the time of sentence. This would increase the sentencing options available

to the court and be a more holistic way of sentencing fisheries offenders. In practice, the suspension (or cancellation) of a commercial fishing licence may well be a far more effective deterrent than the imposition of a fine, as well as a more effective way of protecting the common fisheries resource.

It would also ensure the consequences of the offence were dealt with by way of one legal process and appeal and that the imposition of any suspension or cancellation be by a court rather than the fisheries agency that issued the licence, removing any misperception that an offender is being punished twice, once by the court and then by the fisheries agency.

Amendment of s 68 (Procedure for cancellation or suspension by chief executive)

Clause 28 makes consequential amendments to section 68 (Procedure for cancellation or suspension by chief executive) as a result of the amendment to section 67 (clause 27).

Insertion of new ss 68A and 68B

Clause 29 inserts two new sections – section 68A (Suspension or cancellation of authority for dishonoured payment) and section 68B (Suspension or cancellation of authority by court).

Section 68A deals with a very specific situation where the chief executive can suspend or cancel authorities in circumstances where an authority has been issued and the applicant has paid by cheque a prescribed fee related to that authority, and that cheque has been dishonoured. This provision details when authorities are automatically suspended where payments have been made by cheque for applications, renewals, transfers or amendments and payment of annual fees relating to an authority.

Currently, before suspension or cancellation of the authority can occur, a lengthy administrative process needs to occur. The proposed amendment aims to reduce this unnecessary administrative burden.

Section 68B inserts a new provision giving the courts the power to suspend or cancel an authority when sentencing an offender for a serious fisheries offence. This power was formerly an administrative power of the chief executive. This amendment relates to section 67 (clause 27) outlined earlier.

The court may, in addition to, or instead of, imposing a fine for the offence suspend or cancel the authority. In doing so, section 68B(4) states

the factors that the court must have regard to – namely the criteria prescribed by the regulation or a management plan (eg. maximum suspension periods) and the fine the court imposes for the offence. These are the same considerations the chief executive had to have regard to. The court may also disregard any third party interests in the authority. Formerly, the chief executive also had this power.

If appropriate, the court may also have regard to any previous convictions of the authority holder (section 68B(5)). This provision is similar to the former administrative power of the chief executive.

Section 68B(2) makes the relationship between quotas and authorities clear and provides that if an authority is suspended, any quota relating to that authority is also suspended for the same period of time.

Section 68B(6) specifies the circumstances where the court may impose a cumulative or concurrent suspension period (at its discretion) – if the court convicts the holder of more than 1 serious fisheries offence or during the suspension period, the holder is again convicted of a serious fisheries offence.

Insertion of new s 69A

Clause 30 inserts a new section 69A (Effect of suspension on issue or transfer of another authority), which relates to the amendment in section 67 and the new section 68B (clauses 27 and 29). This section provides that where an authority has been suspended, the chief executive cannot accept an application for the issue or transfer to the person of another authority under the Fisheries Act that would allow the person to carry out activities otherwise allowed under the suspended authority, during the period of the suspension. For example, if the authority suspended was a commercial fisher licence then the chief executive cannot accept an application for another commercial fisher licence regardless of any endorsements (fishery symbols) on that licence. However, the person may still apply for another type of authority, such as a buyer licence.

Similarly, a person who holds an authority that has been suspended cannot apply to transfer the authority to another person until the suspension period has ended.

Amendment of s 73 (Registers of authorities)

Clause 31 amends section 73, which provides an obligation on the chief executive to keep a register of authorities issued under the Act. The

Register is an important source of community information about fisheries authorities. The amendment ensures that information about fisheries developments is publicly available by extending the chief executive's obligations to the keeping information on the Register about fisheries development approvals issued under IPA.

Insertion of new pt 5, div 3A

Division 3A – Fisheries development approvals

Clause 32 inserts new subdivision 3A into part 5 of the Act – Fisheries Development Approvals.

Subdivision 1 – Particular fisheries development also requires a resource allocation authority

New subdivision 1 provides for the types of fisheries development that will require the issue of a resource allocation authority under the Fisheries Act, before an application for development approval may be made under IDAS.

New section 76A Application of sdiv 1

New section 76A provides for the application of the subdivision. There are three categories of assessable development under IPA for which a resource allocation authority must have been issued before a development application for fisheries development will be properly made:

- building or operational work in a declared fish habitat area;
- removing, damaging or destroying marine plants in a declared fish habitat area; and
- a material change in use for aquaculture proposed to be carried out wholly on State land and/or in Queensland waters.

New subdivision 1 provides for the types of fisheries development that will require the issue of a resource allocation authority under the Fisheries Act, before an application for development approval may be made under IDAS. The purpose of the resource allocation authority is to approve the

use or interference with the declared fish habitat area or State land/waters as being appropriate for that type of development. It does not confer a development right or limit the powers and functions of the chief executive under IDAS when assessing a development application for an interference or use allocated under a resource allocation authority.

Where more than one allocation is required for a single proposed development, for convenience one resource allocation authority may be issued that encompasses all required allocations. For example, if a proposal to conduct aquaculture in a declared fish habitat area would require an allocation of both the right to use the area and to interfere with the declared fish habitat area. If approved, one resource allocation authority may be issued for both allocations.

Aquaculture development on private land that requires only wastewater infrastructure (such as wastewater discharge pipes, channels and culverts) to run over or under State land does not require a resource allocation authority. This use of State land is authorised by an appropriate approval issued under the *Land Act 1994*.

New section 76B Requirement for a resource allocation authority

Section 3.2.1(5A) of IPA provides that if a development involves taking, or interfering with a resource of the State, another Act may require the application to be supported by evidence of the allocation of the resource. An application that does not comply with such a requirement will not be a properly made application under IDAS and the assessment manager may refuse to accept it.

New section 76B establishes such a requirement under the Fisheries Act. Where both a resource allocation authority and development approval are required to carry out development, the fundamental issue of resource allocation must be determined prior to the making of a development application. It would be futile for the State and development proponents alike to allow a development application that impacts on State-managed resources to be issued before the State, as manager of those resources, has assessed the threshold issue of whether the resource should be allocated for future development

The combined effect of section 76B and section 3.2.1(5A) of IPA is that for a valid development application to be made for the fisheries development identified in section 76A, it must be accompanied by evidence of the issue of a resource allocation authority held by the applicant for development approval.

New section 76C Nature of fisheries development approval for which resource allocation authority required

New section 76C recognises the ongoing relationship between resource allocation authorities and development approvals. It provides that a development right attaching to a particular parcel of land or other area can only be exercised by the holder of a resource allocation authority. For example, if a resource allocation authority that allows an area of tidal waters to be used for aquaculture is suspended or cancelled, then unless and until a further resource allocation authority is issued to a person with the benefit of a development approval for the area, the development approval alone will not allow the person to carry out aquaculture in that area.

This section also varies the effect of the general proposition under IPA that a development approval attaches to land. A development approval that also required a resource allocation authority attaches to the area mentioned in the authority. In practice, real property descriptors will not always be applicable to the land and waters mentioned in a resource allocation authority. For example, the area in which aquaculture development may be authorised may be an area of Queensland's tidal waters described by latitude and longitude. Also, areas identified when the authority was first issued may naturally undergo natural metamorphosis during the term of the authority, for example, due to changes to seabeds. This may require the area identified in the authority to be amended to take account of the natural topographical changes. It is proposed that in such a case, a development approval will attach to the area currently identified in the resource allocation authority, rather than necessarily the land identified in the development application.

Subdivision 2 – Assessment of development applications for fisheries development approval generally

New subdivision 2 provides for the matters the chief executive must consider in deciding applications for assessable fisheries developments under IPA.

New section 76D Matters chief executive must consider for Planning Act

New section 76D(1) expressly provides that in discharging the chief executive's IDAS roles it is the impact of a proposed fisheries development

on the management, use, development and protection of fisheries resources, fish habitats and the management of aquaculture under the Fisheries Act that the chief executive is required to assess.

In the case of waterway barrier development, the chief executive must have regard to the *Water Act 2000* in addition to the matters in subsection (1). The chief executive's jurisdictional interest in this category of development lies in the impact of barriers on the natural patterns of fish movement through Queensland waters. Impediments to movement can have a significant detrimental impact on fish, for example by interrupting normal fish migratory breeding cycles and access to habitats critical to fish survival. The requirement to also have regard to the *Water Act 2000* ensures that the relevant considerations for the chief executive in considering a development application for a waterway barrier include an assessment of the fish and habitat impacts, within the broader context of water management and the water needs of communities.

Subdivision 3 – Assessment of development applications for construction or raising of waterway barrier works

The purpose of this subdivision is to:

- provide proponents with the facility to seek early advice as to whether the barrier's provision for fish movement will be a relevant issue in the exercise of the chief executive's concurrence jurisdiction for the barrier under the Fisheries Act; and

- set out clearly and certainly the grounds on which the chief executive may be satisfied, during the IDAS information and referral stage, that the issue of fish movement has been adequately addressed in a development application, so that the concurrence response may be that the application be approved, or approved with conditions. Enshrining these matters in the Act enhances the capacity for successful development applications by providing a clear statement of the ways the barrier can successfully address fish movement requirements under the concurrence jurisdiction of the Fisheries Act. It also promotes consideration of fish ways at an early design stage and allows applicants for a licence to take or interfere with water under the *Water Act 2000* to factor in fish way operating requirements when seeking an appropriate allocation. The five grounds on

which the chief executive may decide to approve a development application reflect existing policy and are as follows:

- the proposed barrier design includes an appropriate fish way;
- the movement needs of the area's fish are provided for in another way, for example, the proposed barrier will "drown out", meaning that enough water will continue to flow despite the barrier to allow adequate fish movement;
- the barrier, while it will interrupt the normal fish movement in the area, is only to exist temporarily and when the disruption is weighed against the other relevant factors, its approval advances the main purpose of the Act;
- the barrier is one for which a valid fish movement exemption notice exists (unless there has been some material change to the facts or circumstances that applied when it was given); or
- despite the fact no notice was given, there are no fish movement issues for the proposed barrier in that location.

However, if a proposed barrier development is called in as a project of State significance, then the IDAS information and referral stage does not apply. The development is assessed by the co-coordinator–general in accordance with the process prescribed under the *State Development Public Works Organisation Act 1971* and the decision resulting from the assessment is then made under IDAS, in accordance with chapter 3, part 6 of IPA.

New section 76E Application for fish movement exemption notice

If a person that proposes a future waterway barrier wishes to eliminate fish movement as an issue prior to making subsequent development application under IDAS, the person may apply to the chief executive for an exemption notice. Section 76E provides for the procedural matters that the person must follow to apply for the exemption. By administrative arrangement with the Department of Natural Resources and Mines, applicants will be encouraged to seek confirmation that fish movement needs are not an issue, by way of application for exemption notice, if they have not factored the possibility of a fish way in when assessing their water needs at the time of seeking an allocation under the *Water Act 2000*.

New section 76F Deciding application for fish movement exemption notice

The chief executive is obliged to consider an application for a fish movement exemption notice and may either approve or refuse it. The decision is straightforward – provision for fish movement is required at the location so that a development application will be assessed, having regard to the barrier's impact on fish movement, or based on current information and circumstances, providing for fish movement across the proposed barrier is not necessary, so that the exemption may be granted. The test that the chief executive must apply in making this decision is whether the best management, use development, or protection of fisheries resources or fish habitats would require fish movement to be accommodated across the proposed barrier at that location.

The provision includes a non-exhaustive list of reasons why the chief executive may be satisfied that fish movement requirements may be disregarded for the proposed barrier – for example that there are virtually no fish in the waters of the area, or the fish that are in the area do not require access to the upstream habitat. If a notice is given, it may state the period for which it is current, however this may not exceed 4 years. The decision of the chief executive attracts a right of review to the Fisheries Tribunal under section 196 of the Fisheries Act.

New section 76G When chief executive may approve applications relating to waterway barrier works

The provision states the grounds on which the chief executive must be satisfied that fish movement needs in an area will be accommodated so that an application may be approved under the concurrence jurisdiction of the Fisheries Act. As explained in relation to the purpose of the subdivision, the intention of the approach is to provide potential applicants with as much knowledge about the criteria that development applications will be assessed against as early as possible in the design stage and to underpin the effectiveness of subsequent water allocations.

Subdivision 4 – Conditions on fisheries development approvals generally

New section 76H Relationship between sdiv 4 and Planning Act

The overriding test under IPA for the imposition of conditions on development approvals by a concurrence agency is reasonableness and

relevance. Section 76H ensures that, while subdivision 4 provides generally for the types of conditions that may be imposed on fisheries development approvals, the exercise of the chief executive's conditioning power in respect of a particular application must withstand the IPA test and otherwise comply with IDAS.

New section 76I Conditions on fisheries development approvals generally

Section 76I sets the tone of the subdivision by expressly stating that the chief executive's overriding function when imposing conditions on a fisheries development approval under IPA is to advance the purpose of the Fisheries Act. It also preserves the effect of section 61(1)(b) for fisheries development approvals, by providing that the chief executive may impose a condition requiring the payment of monetary security (called a "bond" under section 61). The purpose of the security is to ensure that the conditions of the approval are complied with.

New section 76J Conditions on fisheries development approvals relating to aquaculture

Section 76J is intended to provide inclusively for the matters that may be appropriate conditions for an approval for the material change in use for aquaculture, depending on the circumstances of the particular development.

New section 76K Conditions on fisheries development approvals relating to constructing or raising waterway barrier works

Section 76K is intended to provide inclusively for the matters that may be appropriate conditions for an approval for constructing a new or raising the height of an existing barrier, depending on the circumstances of the particular development.

Of particular note is a limitation on the chief executive's power to impose conditions about a fish way if the development is one for which there is a valid fish movement exemption notice. In these instances, the issue of a fish way may only be revisited if the information used by the chief executive when deciding to issue the notice was incorrect or has changed, or if the circumstances relevant to the fisheries resources or habitat in the location have changed.

For illustrative purposes, if a fish movement exemption notice was given in 2001 in respect of a particular waterway barrier and location that states that a fish way is not required, the chief executive may still decided to impose fish way conditions on a development approval because:

- the notice stated that it was current for 1 year and has now lapsed (section 76K(3)(a); or
- a study provided by the applicant in 2001 about the fisheries resources indigenous to the location is now incorrect (section 76K(b)(i)); or
- at the time that notice was given fish movement from the locality was already precluded by existing barriers that have since been removed or the barriers have subsequently had devices facilitating fish passage installed on, around or within them (section 76K(b)(ii)).

New section 76L Conditions on fisheries development approvals for works in a declared fish habitat area or removal etc of marine plants

The provision is intended to provide inclusively for the matters that may be appropriate conditions for an approval for works in a declared fish habitat area or for disturbance to marine plants, depending on the circumstances of the particular development.

Subdivision 5 – Amending conditions on fisheries development approvals

New section 76M Definition for sdiv 5

The definition of amendment ensures that the addition of a new condition and the cancellation of an existing condition can be made as amendments of conditions.

New section 76N When chief executive may amend conditions of development approval

Conditions on the authorities that were formerly issued for fisheries development could be amended in accordance with the process prescribed in section 63 of the Act. The inclusion of section 76N maintains the status

quo for development approvals and is appropriate to provide the flexibility necessary to achieve the objects of the Act.

Section 76N(2) provides a limitation to the extent conditions relating to the movement of fish can be amended. Only conditions that relate to the internal design of the fishway may be amended, for example to improve the movement of fish across the barrier. The limitation provides certainty to developers who have obtained an approval requiring a particular type of fish way on a barrier that this will not be subsequently changed.

New section 76O Procedure for amendment

The provision ensures that an appropriate process that provides natural justice to persons with an interest in the amendment must be followed when exercising the power to amend under section 76N.

New section 76P No compensation for amendment

The provision expressly excludes a right to claim compensation as a result of a consequence of amendment, unless a regulation or management plan provides for the payment of compensation. The intent of this provision is to remove any doubt that compensation is not payable; it does not remove any existing rights to compensation. This provisions is consistent with the approach to the issue of compensation for amendment of authorities issued under the Fisheries Act

It is considered that the approach is necessary having regard to the nature of the right conferred by the approval when balanced against the public interest in ensuring approvals can be appropriately managed during the currency of the development. The redress available to a person who objects to amendment lies in the right of appeal to the Planning and Environment Court.

New section 76Q Appeal to Planning and Environment Court about amendment

The provision provides that an owner and/or occupier of land to which the amended development approval attaches has standing to appeal against the amendment to the Planning and Environment Court. The procedure for the appeal and jurisdiction of the Court are as provided under IPA for other appeals about development matters.

As IPA itself does not have an equivalent provision to section 76N it is necessary to provide the right to appeal in the Fisheries Act. As the amendment decision is about fisheries development it is appropriate that the appeal lie to the Planning and Environment Court under IPA, rather than to the Fisheries Tribunal established under the Fisheries Act.

New section 76R Court process for appeals

The purpose of the section is to apply the IPA provisions that apply for the appeal process to the Planning and Environment Court to appeals made under 76Q. The excluded provisions relate specifically to appeals about applications for development approval and so are not relevant to appeals about amending existing conditions.

Subdivision 6 – Provisions about development offences

New section 76S Purpose of sdiv 6

Chapter 4, part 3 of IPA contains the provisions relevant to development offences and enforcement that will apply to fisheries development. These offences are in addition to the existing fisheries offences. Section 4.3.29(1)(a) of IPA provides that another Act may set different penalties for IPA offences and that these will prevail. Also, section 4.3.29(1)(c) of IPA provides that if another Act provides for the carrying out of development in an emergency, in way that is different to the IPA provisions, the other Act's provisions will prevail to the extent of the inconsistency.

New section 76S explains that the purpose of subdivision 6 is to displace certain penalties for IPA offences and provide a modification to the emergency development provision in section 4.3.6 of IPA.

New section 76T Penalties for carrying out assessable development without permit

Where the existing maximum penalty under the Fisheries Act is higher than the maximum penalty of 1665 penalty units under the equivalent offence provision (section 4.3.1) in IPA, the section maintains the existing penalty. Also, for aquaculture, the provision applies the equivalent penalty under section 4.3.1 of IPA, which is higher than the existing penalty under the Fisheries Act. The effect is that the carrying out the following types of

assessable fisheries development without a permit is an offence with the following maximum penalties:

- work in a declared fish habitat area – 3000 penalty units;
- aquaculture – 1665 penalty units;
- constructing or raising a waterway barrier – 2000 penalty units;
- the removal, damage or destruction of marine plants – 3000 penalty units.

The maintenance of the existing penalties reflects the seriousness of the offences, particularly those that may result in serious or irreparable damage to fisheries resources and habitats.

New section 76U Penalties for non-compliance with particular development approvals

Currently, the chief executive may direct the building of a fish way where the chief executive has approved the building of a waterway barrier. Compliance with the direction is mandatory and is enforced by summary prosecution for an offence with a maximum penalty of 2000 penalty units. Under IPA, the directions power will be superseded by IDAS, with fish way requirements being imposed as conditions of a development approval attached to the development permit. The offence for non-compliance with conditions of a development approval under IPA is section 4.3.3, which carries a maximum penalty of 1665 penalty units.

The intention of section 76U is to preserve the maximum penalty of 2000 penalty units, where a person offends section 4.3.3 of IPA by contravening a condition of a waterway barrier works development approval that relates to a fish way.

New section 76V Additional requirement for development carried out in emergency

Section 76V modifies section 4.3.6 of IPA that provides for when and how a person may carry out a development without an approval because of an emergency situation. The modification ensures that after the emergency development is carried out, the person must notify not only the relevant local government, but also the chief executive (for self assessable development and assessable development for which the chief executive is a concurrence agent) and any other assessment manager for assessable development.

The purpose is to ensure that the chief executive is made aware of instances in which emergency development has occurred, so that the chief executive may take steps to rehabilitate the area or take other appropriate action following the emergency development.

Insertion of new s 88B

Clause 33 inserts new section 88B into existing part 5, division 4 – Fisheries Offences. The part contains the provisions that create offences against the Fisheries Act. The new offence created by section 88B is a consequence of the new resource allocation authority requirements.

A person who carries out assessable fisheries development that is operational or building work in a declared fish habitat area, removing, damaging or destroying marine plants in a declared fish habitat area or aquaculture wholly on State land and/or Queensland waters but who is not the holder of (or person authorised to act under) a resource allocation authority in force under the Fisheries Act will commit an offence. The penalties are the equivalent to those for carrying out the development without a development permit, explained under section 76T.

It is intended to make a consequential amendment to the *Fisheries Regulation 1995*, to prescribe, as an act only an resource allocation authority holder may do, the removal damage or destruction of dead marine wood that is self assessable development under schedule 8, part 2, table 4, item 4(a) of IPA. The intention is to ensure the numbers of developers and the areas in which the development can occur can be effectively managed under the Fisheries Act, while the mechanics of the development itself will be set out in a self-assessable code. The offence for carrying out this type of self-assessable development without the requisite resource allocation authority is to be set under section 88B(1)(d) at 3000 penalty units, the same level as for other unlawful marine plant developments.

Section 88B(3)(a) provides a defence under the Fisheries Act for a person who carries out fisheries development without a required resource allocation authority for emergency reasons, in the same way as for a development offence under section 4.3.6 and section 76V.

Omission of pt 5, div 8 (Fish ways)

Clause 34 omits obsolete provisions about waterway barrier approvals and fish ways, which are replaced by IDAS for this type of development.

Amendment of s 118 (Statistical returns to be kept)

Clause 35 makes two amendments to section 118. First, it adds a third way by which the requirement to keep and give statistical returns can be imposed. This is to be by way of a condition on an authority issued under the Fisheries Act. This amendment assists with enforcement in that it removes any doubt as to whether the person received a direction by the chief executive to keep and give statistical returns in the required way. It is seen as a way of improving compliance with the compulsory log book requirement, as non compliance with a condition on an authority may well be viewed more seriously by authority holders.

Secondly, an amendment is made to section 118 to introduce a further method of collecting data for the purposes of fisheries management (eg. log book information) by the use of electronic means/media, such as e-mail. This method allows for a more timely and cost-efficient way of collecting the relevant data.

Amendment of s 119 (Codes of Practice)

Clause 36 makes a minor amendment to accord with best drafting practice. As the phrase "code of practice" appears in full in section 119(1), it is not necessary to repeat the entire phrase in section 119(3); rather the term "code" is substituted.

Amendment of s 124 (Chief executive may rehabilitate or restore land etc.)

Clause 37 amends section 124 to extend its application to contraventions of IPA in so far as it relates to fisheries development and of conditions of fisheries development approvals issued under IPA. The purpose is to ensure the chief executive's power to rehabilitate and restore degraded land, waters, marine plants or a declared fish habitat area apply where the degradation is a result of the contravention of an IPA provision or a development approval as well as Fisheries Act matters.

Insertion of new s 140A

Clause 38 inserts new section 140A, which is a statement of the functions of inspectors for the Fisheries Act. This amendment has a dual purpose:

- it ensures that the functions of inspectors are expressly stated as including the conduct of investigations and inspections, which is a logical but crucial component of the effective discharge of inspector's monitoring and enforcement roles; and
- it extends an inspector's function to IPA, in so far as relevant to fisheries development.

Amendment of s 145 (Entry to places)

Clause 39 amends the existing power of entry of an inspector to a place mentioned in a condition of an authority issued under the Fisheries Act as one that must be open for inspection by an inspector. The power of entry is to also apply to a place, such as an aquaculture facility, mentioned in a condition of a development approval issued under IPA or as a condition of carrying out self-assessable development under a self-assessable code as a place that must be open for inspection.

Amendment of s 184 (Evidentiary provisions)

Clause 40 makes two amendments to the evidentiary provisions in the Fisheries Act. The first one is a minor or technical amendment which inserts an existing evidentiary provision (currently in the regulation) into the Fisheries Act, where other evidentiary aids exist. The evidentiary provision assists in the prosecution of any offence under the Act or other fisheries legislation where it is relevant to establish that a person took fish.

The second amendment clarifies the way section 184(5) can be interpreted. Section 184(5) deals with VMS (Vessel Monitoring System) certificates. It has become apparent from court proceedings that there is some ambiguity in the way section 184(5) can be interpreted. It is possible to read the section in two ways. One possible interpretation would suggest that a certificate can only be issued if the chief executive (or an Inspector) is looking at the VMS information at the same instant in time as they are reporting the location of the boat. This interpretation is not practical nor does it reflect the intended purpose as the trawling fleet trawls almost exclusively at night, and the nature and operation of the VMS system is such that it is not practicable for such an interpretation.

The information received from the VMS is recorded in computers and is able to be re-called at any time. It is this stored information that is used in the evidentiary certificates for the location(s) of the boats from the signals that were received by the VMS equipment.

To remove any doubt it is proposed to clarify that the provision is intended to cover the fact that the information on the certificate is compiled using data stored in the VMS equipment/computers/programs and a certificate may then be issued in relation to the location of boat well into the past.

The amendment also provides an example for illustrative purposes.

Amendment of s 196 (Appeals to tribunal)

Clause 41 amends section 196(2) to distinguish the jurisdiction of the Fisheries Tribunal that is established to hear appeals about administrative decisions under the Fisheries Act from the jurisdiction of the Planning and Environment Court about fisheries development under IPA.

Insertion of new s 219A

Clause 42 inserts a new section 219A (executive officers must ensure corporation complies with Act), which imposes a direct obligation on executive officers of corporations, such as directors, to ensure their corporation, including employees, comply with the provisions of the Fisheries Act.

Currently, the Fisheries Act has a provision about responsibility for acts or omissions of representatives, which can include for a corporation, an executive officer, employee or agent of the corporation (section 216). Further, section 219 of the Fisheries Act places an obligation (and liability) on the holder of authority to ensure that everyone acting under the Act complies with this Act. Generally, when authorities are issued to a corporation, they are issued in the corporations name as opposed to the name of individual executive officers.

There is no similar provision that places an express obligation on executive officers of a corporation to ensure that the corporation complies with the Fisheries Act. This amendment proposes to impose the same obligation as that which currently exists for individuals and corporations as authority holders. A defence is available to executive officers if they show they weren't in a position to influence the conduct of the corporation or they took reasonable steps to ensure the corporation complied with the Act or the offence occurred without their knowledge.

This proposed amendment is of particular importance in relation to serious fisheries offences where liability needs to attach to an actual person or individual as opposed to a corporation for corporate governance and

greater enforceability. Similar provisions are included in a number of other Queensland Acts.

Amendment of s 223 (Regulation making power)

Clause 43 amends the existing regulation making power for the Fisheries Act by extending it to the prescription of fees payable to the chief executive for assessing development applications for fisheries development as assessment manager or concurrence agency.

Insertion of new pt 12, div 4

Clause 44 inserts a new part into the existing transitional provisions under part 4 of the Fisheries Act.

Division 4—Transitional provisions for Primary Industries and Other Legislation Amendment Act 2003

The part provides for appropriate transitional arrangements: -

- the conversion (and continuation of the entitlement) of existing Fisheries Act authorities for fisheries development into equivalent development rights under IPA;
- the conversion of certain authorities that do not constitute aquaculture development into harvesting authorities under the Fisheries Act;
- the provision of resource allocation authorities to existing developments where this is required as a result of the fisheries development amendments; and
- providing for how applications for, and undetermined appeals about, authorities for fisheries developments under the Fisheries Act are to be finalised.

Subdivision 1—Definitions

New section 240 Definitions for division 4

Section 240 contains relevant definitions to the transitional provisions. The definition of "relevant authority" means those authorities under the Fisheries Act for which the entitlement will be replaced by another authority under the Fisheries Act or IPA, as appropriate.

Subdivision 2 – Continuing effect of particular authorities is approvals

New Section 241 Continuing effect of existing licences or permits

Section 241 provides that certain authorities in force when the section commences or that are subsequently issued as result of an appeal that was underway on commencement are to be taken to be an equivalent development permit under IPA as follows:-

Fisheries Act authority	**IPA development permit**
Aquaculture licence (other than for harvesting wild oysters from foreshores)	Material change in use
Permit to perform works in a declared fish habitat area	Building work or operational works
Permit to remove destroy or damage marine plants	Operational works

The conditions, including the period for which the authority was issued, are taken to conditions of the development permit. If the development is one that, following commencement, would have required a resource allocation as explained in relation to new sections 76A – 76C, the resource allocation authority is taken to have been issued to the holder of the former authority.

For the simplicity of both the administering agency and affected authority holders, paperwork to reflect the change will be issued only to persons holding the benefit of a development permit that will continue to attach to land or another area for 6 months or more after commencement.

New Section 242 Continuing effect of existing approvals for waterway barrier works

New section 242 provides that existing valid approvals to construct or raise a waterway barrier will be taken to be a development permit for operational works, with directions given by the chief executive about a fish way being conditions of the permit. Waterway barrier works approvals were not issued for a fixed term. For consistency with section 3.5.21 of IPA, which provides for the lapsing of approvals where development is not commence within stated times, the development permit is taken to have a currency period of 2 years. This may the subject of an application for extension, in the same way as any development approval under section 3.5.22 of IPA.

New section 243 Continuing effect of existing aquaculture licences for wild oyster harvesting

The object of the fisheries development amendments is to administer matters that are development under IPA. Some existing aquaculture licences authorise activities more properly classified as wild oyster harvesting. The activities do not amount to the cultivation of fisheries resources; rather naturally occurring oysters are harvested from coastal foreshores for commercial purposes. The provision provides for the conversion of the entitlement of these licences to a more appropriate authority under the Fisheries Act – an authority to take fish for trade or commerce in commercial fishery (issued under section 40 of the *Fisheries Regulation 1995)*. The period and conditions of the former licence will be taken to be those of to the authority to take, which may be transferred and renewed, with the approval of the chief executive.

Subdivision 3 – Effect of commencement on particular applications in progress

New section 244 Applications in progress for particular relevant authorities

Section 244 provides for how the chief executive must, upon the commencement of the section, decide applications already being considered for a matter that becomes assessable fisheries development under IPA. The intention of the section is to decide the application as if it

had been made in accordance with the fisheries development amendments, with minimal delay and inconvenience to applicants.

To achieve this:

- existing applications for fisheries development that would, after commencement, have required both a resource allocation authority and a development approval are taken to have been made for both. However, consistent with the order in which applications must be made and decided after commencement, the resource allocation aspect must be determined first, and if refused, the development application is taken to be withdrawn. Until the resource allocation issue is finally determined, the development application is premature. If a resource allocation authority is granted, the existing application is taken to be a development application that has reached the following IDAS stage:
  - if the chief executive has asked and received further information from the applicant, the beginning of the decision stage (IPA, pt 5); or
  - otherwise, the beginning of the information and referral stage (IPA, pt 3).
- existing applications for fisheries development that would, after commencement, have required a development approval only is taken to be a development application that is at the following IDAS stage:
  - if the chief executive has asked and received further information from the applicant, the beginning of the decision stage (IPA, pt 5); or
  - otherwise, the beginning of the information and referral stage (IPA, pt 3).

New section 245 Applications in progress for aquaculture licences for wild oyster harvesting

As explained in relation to section 243, this activity is more correctly authorised under an authority to take fisheries resources for trade or commercial in a commercial fishery. The Applications in progress for this type of aquaculture licence will be regarded as being an application for an authority to take, without the need to inconvenience applicants by requiring a further application to be made.

Subdivision 4 – Effect of commencement on particular appeals

New section 246 Definitions for sdiv 4

Section 246 defines the terms relevant to the transitional provisions about appeals.

New section 247 Application of sdiv 4

Section 247 sets the scope of the subdivision, by providing for its application to appeals already instituted against the decision of the chief executive to refuse to issue an authority under the Fisheries Act for an activity that, after commencement, would be fisheries development under IPA.

New section 248 Appeal to be decided under provisions before commencement

The Fisheries Tribunal has jurisdiction under part 9 of the Fisheries Act to hear administrative appeals against the chief executive's decisions, while it is the Planning and Environment Court, established under Chapter 4, Part 1 of IPA that has exclusive jurisdiction to hear appeals under IPA. The transitional arrangement implemented under section 248 reflects the jurisdictional division by requiring the Tribunal to finish its determination of existing appeals as if the fisheries development amendments had not commenced.

New section 249 Effect of tribunal decision to issue relevant authority

Section 249 requires the chief executive, if the Tribunal decides to substitute a decision issuing the authority, to issue instead the corresponding development approvals (and, if relevant, resource allocation authority) that the authority would have been converted to under the transitional provisions, had it already been issued. This approach best achieves the object of applying IPA to the matters that constitute development.

New section 250 Effect of tribunal decision to refer matter back to chief executive – development authority

Section 250 applies when, rather that substituting a decision, the Tribunal sends the matter back to the chief executive with directions. In so far as the directions relate to matters that are fisheries development under IPA, the chief executive must assess the application as if it were for a development approval (and for a resource allocation authority if relevant) and as if the chief executive were the assessment manager.

New section 251 Effect of tribunal decision to refer matter back to chief executive – particular aquaculture licences

Section 251 ensures that if there are any undetermined appeals against refusals to issue aquaculture licences for activities more appropriately managed as harvesting (under an authority to take), that these are treated consistently with other licences of this type, transitioned under section 243 or 245.

New section 252 Effect of tribunal decision to not issue relevant authority

Section 252 provides for unsuccessful appeals about authorities that would otherwise become fisheries development. The Fisheries Act applies to any further dealings in respect of that application as if the fisheries development amendments had not commenced.

Subdivision 5 – Effect of commencement on prescribed criteria

New section 253 Continuing effect of criteria prescribed for s 67

Section 253 relates to the other fisheries amendments to the Fisheries Act and makes a technical amendment to allow for the continuation of the prescribed criteria currently found in the regulation and management plans for the purposes of the new section 68B.

Amendment of schedule (Dictionary)

Clause 45 inserts new definitions for terms introduced into the Fisheries Act as a result of the IPA integration. Key IPA terms used in the Fisheries

Act have the meaning given in IPA's dictionary, located in schedule 10 of that Act. Othr changes to the dictionary are:

- **"authority" –** an authority under the Fisheries Act is now defined to include the new resource allocation authority. An approval issued under IPA is not an authority within the definition as it is not issued under the Fisheries Act.
- The defined terms **"development approval"** and **"development permit"**, which have the meaning ascribed under IPA**;**
- **"fisheries development"** - a new term used to collectively identify the matters under the jurisdiction of the Fisheries Act that are development (both assessable and self assessable) under IPA.
- **"fisheries development approval" –** a new term meaning a development approval within the chief executive's jurisdiction, whether as assessment manager or concurrence agency.
- **"fish way exemption notice" –** a new term that means the written notice exempting an applicant for a waterway barrier development from the obligation to provide for adequate fish movement as part of the development;
- **"unallocated tidal land"** – a new term that is used in denote unallocated State land that is subject to tidal influence. By necessary implication, references to other land includes non-tidal land.

Other fisheries amendments – amendments to dictionary

The section also introduces a definition of "executive officer", which is a consequential amendment to support the new section 219A.

Also, a definition of "transfer" is introduced. Currently "transfer" is not defined. The proposed definition of transfer includes the ordinary meaning, that is a transfer of the whole of a holder's interest in an authority to another person, but also extends the meaning to allow for the following scenarios:

- Where an authority is held jointly - to ensure that if one holder disposes of their interest or part of their interest to the remaining owners, whether or not for consideration, this is a transfer; and
- Where the authority is a quota - to operate in quota fisheries, a fisher needs to hold both a licence and quota. Some fishers hold multiple licences with related quota for both. Currently, there are

no clear requirements applying to a situation where a multiple licence holder wishes to transfer quota from one of their licences to another. This is required to be regarded as a transfer, as there are requirements to surrender part of quota holdings upon transfer, which are one of the main ways of reducing fishing effort in quota managed fisheries.

PART 6—AMENDMENT OF FOOD PRODUCTION (SAFETY) ACT 2000

Act amended in pt 6

Clause 46 states that Part 6 amends the *Food Production (Safety) Act 2003* (the "FPS Act").

Amendment of s 6 (Exemption from application of Act)

Clause 47 amends section 6(2)(a) and (b) of the FPS Act and introduces a further restriction on the application of the exemptions. The amendments restrict the operation of the exemptions to individuals who possess or produce primary produce and do not remove the produce from the place of production. For example, an individual who raises a chicken, slaughters and consumes it on the property where it was reared and does not supply the chicken carcass or use it as food for paying guests will not attract the operation of the FPS Act.

However, as there are circumstances when the removal of produce from the place of production should continue to attract the operation of the exemption, the amendments introduce a further sub-section 6(2A). The new sub-section 6(2A) provides that primary produce may be removed from the place of production and continue to be exempted from the application of the FPS Act if the primary produce is harvested in the wild or it is primary produce that has been prescribed under a regulation by Safe Food. Safe Food must however be satisfied that the produce is not likely to expose the public to a food safety hazard before prescribing it in the Regulations.

Amendment of s 7 (Definitions)

Clause 48 amends section 7 of the FPS Act by providing that the dictionary defining particular words in the Act is found at schedule 2.

Amendment of s 10 (Meaning of "primary produce")

Clause 49 amends sub-section 10(1) of the FPS Act by expanding the definition of primary produce. It provides that primary produce may include a substance labelled as not for human or animal consumption that has been prescribed in the FPS Regulations. Prior to listing in the Regulations, the Minister must be satisfied that the substance is likely to be consumed and if consumed poses a food safety hazard to consumers.

The enhanced definition will ensure that unaccredited producers of primary produce cannot circumvent the intended operation of the FPS Act by supplying produce labelled as not for human or animal consumption to consumers who are likely to eat the produce. For example primary produce sold as "bath milk", "body butter", and "face cream" may be regulated by Safe Food if listed in the FPS Regulations.

Replacement of pt 2, div 1, hdg

Clause 50 introduces a new FPS Act part 2 division 1 heading.

Omission of pt 2, div 2 hdg

Clause 51 omits the FPS Act part 2 division 2 heading as the contents of that division are now incorporated into part 2 division 1.

Insertion of new pt 2, div 2

Clause 52 introduces a new part 2 division 2 heading to the FPS Act. The new division introduces a raft of new provisions to the FPS Act related to the establishment of a board of corporate governance for Safe Food. The board is intended to provide effective leadership, advice, and independence in decision making to Safe Food.

Section 16A introduces a board of directors for Safe Food.

Section 16B sets out the role of the board.

Sub-section 16B(1) intends the board to oversight the proper exercise of Safe Food's functions and powers as set out at sections 14 and 15 of the

FPS Act. The board bears overall responsibility for the way in which Safe Food fulfils its statutory role and meets its statutory obligations.

Sub-section 16B(2)(a) provides that the board's role includes determining strategies for Safe Food and deciding the operational, administrative and financial policies to be followed by Safe Food.

Sub-section 16B(2)(b) provides that the board's role includes making recommendations to the Minister about proposed food safety scheme fees and receiving advice or recommendations from the advisory committee.

Sub-section 16B(2)(c) provides that the board's role includes ensuring that Safe Food is competently fulfilling its functions.

Sub-section 16B(2)(d) requires the board to review the role of the chief executive officer of Safe Food on an annual basis.

Section 16C of the FPS Act sets out the composition of the board. The board is to be comprised of the chief executive of the department responsible for administering the FPS Act, the chief executive of the department administering the *Health Act 1937* (the "health chief executive"), and a maximum of three other persons to be appointed by the Governor in Council who possess the relevant skills or experience.

Sub-section 16C(2) provides that the chair of the board will not be the chief executive of a government department responsible for the administration of the FPS Act or the health chief executive and must be appointed under sub-section 16(1)(c).

Section 16D requires the chair of the board to report to the Minister. Such reports are to be provided to the Minister at least four times a year unless further reports are specifically requested by the Minister. The reports are intended to address the performance of Safe Food's statutory role and use of powers. Reports must be provided to the Minister within one month of the end of each quarter or if specifically requested by the Minister, within the stated period.

Consistent with it's corporate governance role, sub-section 16D(3) requires the board to immediately report to the Minister any matter that, in the view of the board, may compromise the proper functions or integrity of Safe Food.

Section 16E requires the chair of the board to provide a copy of Safe Food's business plans, as prepared by the chief executive officer of Safe Food, to the Minister prior to the 30th of April every year. It is intended that the board approve the business plans prior to a referral to the Minister.

Section 16F introduces new provisions to the FPS Act stating that additional provisions related to the board are set out in schedule 1 of the Act.

Replacement of pt 2, div 3, hdg

Clause 53 inserts a new FPS Act part 2 division 3 heading regarding the chief executive officer of Safe Food.

Amendment of s 17 (Appointment of chief executive officer)

Clause 54 amends section 17 of the FPS Act. The amendment requires the Governor in Council to appoint the chief executive officer of Safe Food, however such appointment is to be made on the recommendation of the board. The intention is to give effect to the corporate governance role of the board.

The role of the chief executive officer is critical in providing leadership to Safe Food, managing the day to day operations of Safe Food, creating an ethical working environment and supporting the board in its governance role. As a consequence, it is proper that the board should bear responsibility for recommending the appointment of the chief executive officer who in future will be formally appointed by the Governor in Council.

Amendment of s 18 (Conditions of appointment)

Clause 55 amends section 18 of the FPS Act by empowering the board to determine the conditions of appointment for the chief executive officer of Safe Food where they are not already provided for in the Act.

Given the inter-relationship between the role of the board and the chief executive officer, it is appropriate that the board determine the conditions of appointment for the chief executive officer.

Amendment of s 19 (Qualifications for appointment)

Clause 56 amends section 19(1) of the FPS Act by providing that the board must not recommend a person for the position of chief executive officer of Safe Food to the Governor in Council, unless the person is relevantly qualified for appointment.

Amendment of s 21 (Chief executive officer to manage Safe Food's affairs and prepare business plans)

Clause 57 inserts a new heading and amends section 21 of the FPS Act. Amendments to the responsibilities of the chief executive officer of Safe Food are intended to ensure the role is aligned with the corporate governance objectives of the board.

The new sub-section 21(1) sets out the responsibilities of the chief executive officer to manage the business of Safe Food in a manner that meets the strategic and operational, administrative and financial directions of the board. The chief executive officer must also report to the board regarding the performance of the strategies and policies proposed by the board. The chief executive officer must also keep the board informed of the activities of the advisory committee and its subcommittees and advise the board regarding the progress and implementation of the food safety schemes and food safety policies devised by Safe Food.

Sub-section 21(2) requires the chief executive officer to prepare and submit an annual business plan to the board prior to 31 March of each year.

Omission of s 22 (Chief executive officer to give business plans to Minister)

Clause 58 omits section 22 so as to be consistent with the operation of the new section 16E of the FPS Act.

Insertion of new ss 23A – 23C

Clause 59 introduces new sections 23A to 23C to the FPS Act.

Section 23A provides that the seal for Safe Food is to be kept by the chief executive officer or as required by the board. It is intended that the seal should only be used where permitted by the board. When a document is sealed by Safe Food it is presumed to have been properly sealed unless otherwise proven.

Section 23B intends that unless otherwise proven, judicial notice must be taken of the chair of the board's official signature and the fact that the chair holds or has held that position.

Section 23C(1) intends that documents produced by Safe Food other than documents requiring a seal are properly made if they are signed by the chair of the board, the chief executive officer or another person authorised by Safe Food.

Sub-section 23C(2) provides that a document made under seal by Safe Food must be sealed as required by section 23A(1) and signed in accordance with the requirements of section 23C(1) in order to be properly made.

Amendment of s 24 (delegation)

Clause 60 amends sub-section 24(2) of the FPS Act. It requires the chief executive officer to ensure that delegations are only granted to those committee members or employees who possess the necessary qualifications in order to carry out the delegated powers in an appropriate manner. It is also intended that delegations be subject to the approval of the board.

Omission of s 31 (Time and place of first meeting)

Clause 61 omits section 31 of the FPS Act as it is redundant.

Amendment of s 67 (Suspension or cancellation - grounds)

Clause 62 amends section 67(b)(ii) of the FPS Act by omitting the words "whether on indictment or summarily" as they are superfluous.

Insertion of new pt 11, div 4

Clause 63 inserts a new division and section into the FPS Act transitional provisions. The new section provides that the role of the Minister should be substituted by the board when reading any documents related to the appointment and conditions of the chief executive officer of Safe Food that were in existence prior to the amendment.

The intention is that the board will assume responsibility for all matters concerning the chief executive officer's position as previously dealt with by the Minister.

Amendment of schedule (Dictionary)

Clause 64 amends the FPS Act by inserting into the dictionary schedule, cross references to a number of definitions in the Act.

The clause also provides for the renumbering of the dictionary schedule.

Insertion of new sch 1

Clause 65 introduces a new schedule to the FPS Act which sets out additional statutory requirements for the new board of Safe Food.

Part 1 of the amendments set out certain pre-requisites and conditions of appointment for directors of the board intended to promote the accountability and independence of the board.

Item 1(1) disqualifies a person affected by a bankruptcy action or a person who has been convicted of an indictable offence from appointment or continuing their appointment as a director of the board.

Item 1(2) disqualifies a person who holds an accreditation under the FPS Act or is a member or employee of an organization that represents the interests of accreditation holders from appointment or continuing their appointment as a director.

Item 2 provides that a director's term of appointment must be for a period of 3 years or less. A director may serve for a period longer than 3 years if re-appointed by the board.

Item 3 provides that directors are appointed on a part-time basis only. The Governor in Council will determine the terms, conditions and remuneration for directors where not provided for in the FPS Act.

Item 4 gives the Governor in Council an absolute discretion to terminate the appointment of a director or directors of the board.

Part 2 of the amendments set out the manner in which the board is to conduct its business and meetings.

Item 5 makes it clear that the board has the power to determine the manner in which it conducts its business and meetings so as to best achieve its purpose.

Item 6 provides that the board has the power to establish committees to advise the board on specific matters as needed.

Item 7 provides that the chairperson of the board has the discretion to determine the location and frequency of board meetings. However, the chairperson must call a meeting if required to do so by a number of board directors equal to a quorum of the board.

Item 8 establishes the quorum of the board as being half the number of directors, including the chairperson. If there are three or five directors of the board, the quorums will be two and four respectively.

Item 9 requires the chairperson, when present, to preside at all board meetings. When the chairperson is absent, the directors must choose a director to preside.

Items 10(1) and (2) provide that a director defined in section 16C(1)(a) or (b) who is unable to attend a board meeting, may nominate a senior officer from their department to attend in their place. The board is required to give such an officer 5 days notice of an ordinary board meeting or reasonable notice if it is not an ordinary meeting.

Items 10(3) and (4) provide that a nominated senior departmental officer may participate in board meetings and exercise the vote of the director and is taken to be the director for the purposes of sections 11 and 13 of the schedule.

Item 10(5) defines a senior officer as a senior executive appointed under the *Public Service Act 1996.*

Item 11 details the manner in which the board conducts business.

Items 11(1) and (2) requires a question at a board meeting to be decided by a majority of directors votes. Where the votes are equal the chairperson or presiding director has an extra vote.

Item 11(3) provides that an abstention is counted as a vote in the negative.

Items 11(4) and (5) permit the board to conduct meetings by the use of such technology as permits continuous communication. It is intended that such means would only be used if it reasonably permits the board to conduct it's business in a manner that allows all board directors to participate fully in the proceedings.

Item 11(6) permits the board to pass a valid resolution other than at a board meeting if a majority of board directors agrees in writing to the resolution and notice of the resolution is provided in accordance with those procedures set by the board.

Item 12 requires the board to keep minutes of its meetings and a record of any resolutions made under sub-section 11(6).

Item 13 sets out the duties of all board directors to disclose interests that may have an affect on their ability to perform their functions without bias or favour.

Item 13(1) and (2) requires all directors to as soon as practicable disclose the nature of a direct or indirect interest in a matter to be considered by the

board if the interest could compromise the performance of the directors duties.

Item 13(3) is intended to give the board the power to make a direction excluding a director from a meeting or participating in a decision of the board if it is considering a matter that concerns or relates to a disclosure made by the director under sub-section 13(2).

Item 13(4) requires the director who has made the disclosure under section 13(2) to be absent when the board considers whether or not a direction under sub-section 13(3) should be given.

Item 13(5) deals with the situation where a matter disclosed by a director under sub-section 13(2) also affects the interests of another director. That other director must then also make a disclosure under sub-section 13(2) and must not be present or take part in the board's deliberations regarding a direction under sub-section 13(3) in respect of the director who made the original disclosure.

Item 13(6) provides that in circumstances where a quorum is not able to be reached because of the operation of sub-section 13(3), the remaining board directors will constitute a quorum for the purpose of considering the matter the subject of the disclosure or for the purpose of sub-section 13(4).

Item 13(7) requires all disclosures made under sub-section 13(2) to be recorded in the minutes.

PART 7—AMENDMENT OF GRAIN INDUSTRY (RESTRUCTURING) ACT 1991

Act amended in pt 7

Clause 66 provides for the amendment of the *Grain Industry (Restructuring) Act 1991* (GIR Act).

Amendment of s 2 (Objects of Act)

Clause 67 repeals section 2(e) of the GIR Act. The GIR Act was amended in 2002 to "sunset" i.e. terminate the wheat and barley vesting (compulsory vesting) powers held by Grainco (Australia) Pty Ltd under the Compulsory Marketing Scheme. The powers ceased at 30 June 2002.

Consequently, section 2(e) of the GIR Act will be repealed as it is no longer necessary.

Amensment of s 3 (Definitions)

Clause 68 repeals all definitions in section 3 of the GIR Act that refer to the wheat and barley vesting powers held by Grainco under the Compulsory Marketing Scheme.

Omissions of pts 3 and 4

Clause 69 repeals Part 3 and Part 4 – the Compulsory Marketing Scheme and Grower Assistance Schemes.

Omission of s 56 (Returns)

Clause 70 repeals section 56 of the GIR Act as it is no longer necessary.

PART 8—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Act amended in pt 8

Clause 71 provides that part 8 of the Bill amends IPA.

Amendment of s 1.3.5 (Definitions for terms used in "development")

Clause 72 amends the meaning of "operational work" to add the fisheries development matters appropriately classified within this term, that were previously administered under the Fisheries Act. The effect is that development that is operational work includes:

- the constructing or raising of waterway barrier works
- performing work in a declared fish habitat area; or
- removing, destroying or damaging a marine plant.

Aquaculture, the other type of fisheries development, already falls within the meaning of the limb of development that is making a material change in use of premises.

Insertion of new 3.2.2A

Clause 73 inserts section 3.2.2A into the application stage of IDAS in chapter 3, Part 2 of IPA. The provision ensures application for development that is a material change in use of premises or a reconfiguration of a lot on tidal land which, to be carried out, would require operational work that is the removal, damage or destruction of marine plants, be taken to also be for that work stages where this would not otherwise be within the scope of the application.

The outcome of the assessment for the operational work against the Fisheries Act will fundamentally affect the progress of development. The provision ensures that this threshold issue is considered at the initial stage and that assessment outcome is known as the development progresses. This approach provides certainty for applicants and ensures that the marine plant work is emphasised at the most appropriate development stage.

Amendment of s 3.4.2 (When notification stage applies)

Clause 74 amends section 3.4.2 to take account of the varied notification stage applicable to certain land based aquaculture development adjacent to the Great Barrier Reef Marine Park (special GBRMP aquaculture development), provided for under new part 8A. When new part 8A applies, the notification stage under chapter 3, part 4 does not apply.

Amendment of s 4.1.28 (Appeals by submitters)

Clause 75 makes a minor amendment to section 4.1.28 by changing the heading to **Appeals by submitters – general.** This is to distinguish the provision from the particular appeal rights for submitters for special GBRMP aquaculture development under section 4.1.28A.

Insertion of new s 4.1.28A (Additional and extended appeal rights for submitters for particular development applications)

Clause 76 inserts section 4.1.28A which modifies the general position that it is only submitters to applications for development that are impact

assessable that have a right of appeal to the Planning and Environment Court. A submitter to either impact assessable or code assessable special GBRMP aquaculture development under the modified notification stage pursuant to part 8A will also have the right to appeal, confined to the concurrence agency response of:

- the chief executive administering the *Environmental Protection Act*'s concurrence response about environmentally relevant activity that is special GBRMP development (aquaculture);
- the chief executive administering the *Fisheries Act 1994*'s concurrence response about special GBRMP aquaculture development (making a material change in use of premises for aquaculture and/or any associated operational works that is marine plant disturbance).

Amendment of s 4.3.7 (Giving a false or misleading notice)

Clause 77 makes a minor consequential amendment to section 4.3.7 to extend its application to the new form of public notification for special GBRMP aquaculture development under part 8A, section 5.8A.8.

Insertion of new 5.7.7A Documents particular entities required to keep available for inspection and purchase

Clause 78 inserts 5.7.7A, which provides for a new category of documents that must be kept available for inspection and purchase by certain entities. The amendment is consequent on the proposed amendment to IPA that will allow concurrence agencies and assessment managers to impose a condition requiring a document reporting on the development's compliance with approval conditions to be generated for assessment by the entity imposing the condition. It is desirable that such a document be available for inspection and purchase by interested members of the public.

Insertion of new ch 5, pt 8A

PART 8A—NOTIFICATION STAGE FOR PARTICULAR AQUACULTURE DEVELOPMENT

Clause 79 inserts a new part into the miscellaneous provisions in chapter 5 of IPA. The objective of the part is to introduce a modified notification process for special GBRMP development replacing the notification stage of IDAS, provided under Chapter 3, Part 4 of IPA in the circumstances prescribed.

The new statutory notification process for special GBRMP development introduces public notification requirements and extended appeal rights equivalent to the sum of the requirements currently imposed under State and Commonwealth law. The amendments implement an agreement between the State and Commonwealth Governments and stakeholders necessary to enable accreditation of the assessment process under Queensland law pursuant to Regulation 5 of the *Great Barrier Reef Marine Park (Aquaculture) Regulation 2000 Cth* (GBRMP Regulation). Accreditation will benefit government and stakeholders by removing unnecessary duplication in Commonwealth State assessment requirements, while providing a rigorous level of assessment and community involvement that is appropriate to developments of this type.

Division 1—Preliminary

New section 5.8A.1 Purpose of notification stage under this part

Section 5.8A.1 explains that the purpose of the part is to provide expanded community involvement in the assessment of aspects of special GBRMP aquaculture development relating to water quality discharge by conferring:

- a right to make submissions regarding aspects of the approval that must be taken into account by assessors with the appropriate jurisdiction; and
- a right to appeal the outcome of assessment relating to that jurisdiction to the Planning and Environment Court.

Under IDAS, public notification and third party appeal rights are only available for impact assessable development. The amendments ensure that certain aquaculture development decisions relating to waste water quality made by the State are both notifiable and subject to appeal rights regardless of the level of assessment.

New section 5.8A.2 When notification stage under this part applies

Section 5.8A.2 provides for the scope of the development that will fall within the ambit of the modified notification requirements. The provision is intended to apply to special GBRMP development, being:

- a material change in use for land-based aquaculture developments that will involve the discharge of waste water; and
- which is assessable development under IPA against both the Fisheries Act and the *Environmental Protection Act 1994* (EPA) (this is aquaculture that is an environmentally relevant activity within the meaning of the EPA); and
- that is proposed within a specified zone area adjacent to the land side boundary of the Great Barrier Reef Marine Park; and
- that is a larvae hatchery of more than a hectare or is for another aquaculture purpose in ponds with a total surface area of more than 5 hectares.

As the purpose of the amendment is to facilitate and encourage the community's involvement in the assessment of special GBRMP developments that would otherwise not occur, if an Environmental Impact Statement (EIS) has been prepared for the development under part 8, this objective will have already been met. For this reason, a special GBRMP aquaculture development that has already been subject to the EIS process will not require notification under new part 8A. Similarly, if a preliminary approval for the development was issued under IDAS that included the modified notification process before the decision stage, the subsequent development permit does not have to be re-notified before consideration or decision.

New section 5.8A.3 When can notification stage start

As for the notification stage for impact assessable development under section 3.4.3 of chapter 3, part 4 of IPA, section 5.8A.3 provides that the applicant may commence public notification under the modified

notification stage, after the completion of the information stage under IDAS.

Division 2—Public Notification

New section 5.8A.4 Public notice of proposed development

Section 5.8A.4 sets out how the applicant or the assessment manager on the applicant's behalf must notify the public of the proposed special GBRMPA aquaculture development. The provision adopts the same requirements as are applicable to the notification stage for impact assessable development under section 4.4.4 in chapter 3, part 4 of IPA.

New section 5.8A.5 Notification period for development applications

Under the modified notification stage, the period for which applications for special GBRMP aquaculture development must be notified is different to general rules for IDAS, as set out in section 3.4.5 of in chapter 3, part 4 IPA. The purpose of requiring a notification period of at least 30 business days, as opposed to 15 business days, is to reflect existing Commonwealth requirements under the GBRMA Regulation.

New section 5.8A.6 Requirements for certain notices

The requirements for the notice that must remain on land under the modified notification process for special GBRMP aquaculture development are consistent with those under the notification stage generally, as provided by section 3.4.6 of IPA.

New section 5.8A.7 Notice of compliance to be given to assessment manager and concurrence agency

The post-notification requirements of an applicant provided under section 5.8A.7 correspond with the equivalent section 3.4.7 in chapter 3, part 4 of IPA. However, the provision additionally requires:

- notice that the applicant has complied with the notification obligations to be given to the chief executive administering the *Fisheries Act 1994* and the chief executive administering the *Environmental Protection Act 1994*, as well as the assessment manager; and

- if it is the assessment manager contracted by the applicant to discharge notification requirements, that the assessment manager must give the notices in the way required by the section.

This ensures the chief executives can confirm compliance with the modified notification stage as soon as possible.

New section 5.8A.8 Circumstances when applications may be assessed and decided without certain requirements

Section 5.8A.7 corresponds with the equivalent section 3.4.8 in chapter 3, part 4 of IPA in so far as it allows an assessment manager to continue to assess and decide an application for special GBRMP aquaculture development despite non-compliance with the requirements of the modified notification stage. However, the assessment manger must have the written agreement of the chief executive (fisheries) and the chief executive (environment) if the assessment manager proposes such a course.

New section 5.8A.9 Making submissions

Section 5.8A.9 is an important provision as it establishes the requirements for persons interested in making a submission about an application for special GBRMP aquaculture development. It differs from its current counterpart, section 3.4.9 in chapter 3, part 4 of IPA in that:

- it does not apply to submissions that are not properly made (which under 3.4.9 could nevertheless be accepted); and
- it expressly obliges the assessment manager to forward submissions within 5 days after the time for notification ends to the chief executive (fisheries) and the chief executive (environment), who will then undertake concurrence assessment.

New section 5.8A.10 Submissions made during notification period effective for later notification period.

Section 5.8A.10 plays the same role for the modified notification stage as section 3.9A.4 for the notification stage of IDAS under chapter 3, part 4. It ensures that if the notification stage is repeated for any reasons, that valid submissions made under the first notification round must be taken to into account during the later notification.

Division 3—End of notification stage

New section 5.8A.11 When does notification stage end

The effect of section 5.8A.11 is to end the modified notification stage at the same time as section 3.4.10 of IPA ends it under IDAS generally – that is, when either the applicant notifies the assessment manager and concurrence agencies in writing that the stage's requirements have been met or, if is the assessment manager carriers out notification on the applicant's behalf, when the assessment manager provides the notice to the concurrence agencies.

Division 4—Changed referral agency provisions for applications to which this part applies

New section 5.8A.12 Referral agency must not respond before notification stage ends

Section 5.8A.12 ensures that the chief executive (fisheries) and the chief executive (environment) do not send the assessment manager a concurrence agency response for special GBRMPA aquaculture development until after the modified notification stage for these applications has concluded. This ensures that all properly made submissions are taken into account by the chief executives when discharging their concurrence agency roles.

New section 5.8A.13 Adjusted referral agency assessment period

To accommodate the inclusion of the modified notification stage for special GBRMPA aquaculture development, section 5.8A.13 modifies the general rule for when the concurrence agency referral period starts in the IDAS decision stage under section 3.3.14 of IPA. The period starts on the day after the receipt of the notice that notification was complied with and a copy of all properly made submissions made under the modified notification stage. As for the referral agency assessment period for development applications under chapter 3, part 5 of IPA, the period the runs for 30 days and is subject to the normal extension provisions under Chapter 3 part 3.

Amendment of Schedule 8 (Assessable, self assessable and exempt development)

Clause 80 amends schedule 8 of IPA, which provides for the development that will be exempt, self-assessable and assessable to identify the type of IDAS assessment applicable for fisheries development applications that are assessable against the Fisheries Act. Where the chief executive discharges a function under IDAS as a concurrence agent, the assessment is concurrence assessment. Where the chief executive acts as an alternative assessment manager, fisheries developments are code assessable. These developments are set out in schedule 8, part 1, tables 1 and 4.

Certain low impact developments have been identified as suitable for self-assessable development, against the requirements set out in a self-assessable code. These set out in detail schedule 8, part 2, tables 1, 2 and 4. In general terms, self-assessable developments are:

- building work or operational in a declared fish habitat area reasonably necessary for:
  - the maintenance of existing structures, such as jetties, provided the original structure had all the necessary approvals when it was first built;
  - education or research relating to the declared fish habitat area, for example informative signage about the area; and
  - monitoring development impacts. For example, it may be a condition of a development approval that scientific assessment of the impacts of the development occur at certain stages. If this entails building work, the further work will not again be assessable but may proceed in accordance with the applicable self assessable code;
- specified smaller-scale aquaculture that does not require the release of any waste water into natural waterways, and which:
  - is the cultivation of fish indigenous to an area (the species and areas will be prescribed under the Fisheries Act) in above ground tanks or ponds with a total surface area less than 5 hectares;
  - is the cultivation of indigenous freshwater table fish or indigenous/non-indigenous freshwater aquarium display fish in totally sealed tanks with a floor area, excluding water storage, less than 50 metres square; or

- is the cultivation of indigenous marine aquarium display fish in above ground tanks with a floor area, excluding water storage less than 50 metres square; or

- specified temporary inland water barriers of certain dimensions;
- collecting dead marine wood (defined in the IPA dictionary to mean the woody parts (branch or trunk) of a plant that is already dead or a part that has fully detached from a plant and is dead) from unallocated State land. (However, a resource allocation authority is required to ensure the numbers of collectors operating in collection area can be effectively managed);
- marine plant interference reasonable necessary for the maintenance of certain private and public infrastructure. The purpose of this provision is remove the need for a separate approval to remove, destroy or damage a marine plant where this work is necessary to maintain an existing facility, such a drains on cane farms, public roads and powerlines and associated infrastructure (note definition of "associated powerline infrastructure" in IPA dictionary), which when it was constructed, had all the necessary approvals. The way in which maintenance work can be carried out will be detailed in the self-assessable codes for particular structures. The definition of "associated powerline infrastructure" is set out in the IPA dictionary; and
- other marine plant interference necessary for education or research or to monitor the impacts of development, in a way similar to self- assessable work in a declared fish habitat area.

Amendment of sch 8A (Assessment manager for development applications)

Clause 81 makes amendments to Schedule 8A to identify the appropriate assessment manager for applications for assessable fisheries development. In most cases, the chief executive administering the Fisheries Act will become a concurrence agency the application, with the relevant local government acting as the assessment manager. Where no approval is required under a planning scheme or from other State agencies, the chief executive will be the alternative assessment manager. Where no planning approval is required, but multiple State agency approvals are required, the chief executive will be either a concurrence agency or alternate assessment manager, depending on the particular case.

Amendment of Schedule 9 (Development That Is Exempt For Assessment Against A Planning Scheme)

Clause 82 amends schedule 9 to ensure that operational work that is the removal, damage or destruction of marine plants cannot be made assessable development under a local government planning scheme. The management of the community's marine plant resources is a State responsibility and is appropriate that the singular jurisdictional interest of the State be retained.

Amendment of sch 10 Dictionary

Clause 83 amends IPA's dictionary to include new terms introduced as result of the inclusion of fisheries development. Where terms are defined under the Fisheries Act, the same meaning will apply for IPA.

PART 9—AMENDMENT OF PLANT PROTECTION ACT 1989

Act amended in pt 9

Clause 84 provides that this part amends the *Plant Protection Act 1989*.

Replacement of pt 6, hdg

Clause 85 replaces the wording of the Part 6 heading. The words "Part 6 - Review of Administrative Decisions", has been replaced with the words "Part 6 - Provisions About Administrative Decisions". This wording is to encompass the clarified process for applicants who make applications under the Act and require review of an administrative decision.

A new division 1 "General provision" has been inserted that contains new section 21LA. Section 21LA(1) provides that this section applies to an application for accreditation made under section 21A or an application, whether oral or in writing, to an inspector for an inspector's certificate or approval.

Section 21LA(2) provides that if the chief executive or inspector fails to decide the application within 28 days after the application is made, the

failure is taken to be a decision by the chief executive or inspector to refuse the application.

However, section 21LA(3) gives the chief executive or inspector the discretion to extend the period within which the decision may be made by giving the applicant within 28 days of the application, written notice stating that the chief executive or inspector has extended the period to make the decision, and what the extended period will be.

Section 21LA(4) states that the extended period must be no longer than 28 days after the notice is given, or a longer period of time as agreed to by the applicant.

If under section 21LA(5) the chief executive or inspector gives a notice under subsection (3) and fails to decide the application within the extended period stated in the notice, the failure is taken to be a decision by the chief executive or inspector to refuse the application at the end of the extended period of time.

A new division heading has been inserted after section 21LA "Division 2 – Reconsideration of decisions".

Amendment of s 21M (Application for reconsideration of administrative decisions)

Clause 86 amends section 21 M(1) by removing the reference to the failure to make a decision by the chief executive. This is because new section 21LA addresses the situation where there is a failure by the chief executive or inspector to decide an application.

Section 21M(2) is amended by providing that an application must be made within 28 days after the relevant day and must be made in writing and state the grounds on which the applicant seeks the reconsideration.

Section 21M(4) is amended by removing the reference to the failure to make a decision by the chief executive. As mentioned previously, this is because new section 21LA addresses the situation where there is a failure by the chief executive or inspector to decide an application.

New subsection 21M(5) defines the meaning of "relevant day" as being either the day the person is given notice of the decision, or the later of 28 days after the application for the decision was made, or the end of any extended period under section 21LA(3) for deciding the application.

This amendment will ensure that requests for reconsideration of administrative decisions by aggrieved persons are responded to in a timely manner.

Insertion of new pt 6, div3, hdg

Clause 87 inserts a new division 3 heading "Division 3 – Appeal to court" after section 21N.

PART 10—MINOR AMENDMENTS

Acts amended in schedule

Clause 88 provides that the schedule amends the Acts it mentions.

SCHEDULE

MINOR AMENDMENTS OF ACTS

Chicken Meat Industry Committee Act 1976

Item 1 replaces the heading "Regulation making power" with "Regulation-making power" in section 26 to reflect current drafting practice.

Plant Protection Act 1989

Item 1 removes the word "of" from the definition "crop plant district" contained in the Schedule (Dictionary) to correct an error in the wording of the definition.

Police Powers and Responsibilities Act 2000

Item 1 amends an incorrect reference to section 65B(4) by replacing "subsection (2)" with "subsection (1)".

Stock Act 1915

Item 1 is a consequential amendment to section 4C given the definition of "disease" has been relocated to Schedule 2 (Dictionary), and removes the wording "subsection (1) even" and replaces with the wording "Schedule 2, even". The footnote refers to Schedule 2 (Dictionary).

Item 2 removes the words "subject to the following sections—

- section 22F (Waybill sometimes not required)
- section 22G (Multiple conveyances permitted under single waybill)", and replaces the words "subject to sections 22F and 22G" in sections 22(5), 22B(5) and 22C(3) to reflect current drafting practice.

Item 3 replaces the heading in section 48 "Regulation making power" with "Regulation-making power" to reflect current drafting practice.

Item 4 removes the words "includes – (a) the chief inspector; and (b) an honorary inspector of stock", from the definition of "inspector" in Schedule 2, and replaces the words "includes the chief inspector".