

Fisheries Amendment Bill 2006

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Fisheries Amendment Bill 2006*.

Objectives of the Legislation

The Bill amends the *Fisheries Act 1994*.

The primary objectives of the Bill are to:

- Enshrine in legislation the shark control program for bather protection that is currently carried out as an administrative program. By formally providing for a shark control program within the purposes of the *Fisheries Act 1994*, and providing for incidental powers and other necessary provisions for the implementation of the Program, ensures the operation of the program.
- Provide for a compensation scheme in the Act which will complement proposed changes to the Regulation in respect of fees and licensing. The scheme will provide a basis upon which, in certain cases, authority holders who have had their rights diminished or lost as a result of amendments to regulation or management plan, may claim compensation, but will limit the amount of compensation that is payable by the State.
- Consolidate declaration making powers under the Act, to provide for a centralised and less complex statutory regime. Relevant offence provisions will also be consolidated. This will help reduce overlap and duplication between and within the regulation and management plans, as well as within the Act itself.
- To provide for a mechanism whereby authorities are automatically suspended or cancelled where fees are outstanding.

Under proposed changes to the regulation, unpaid fees become a debt owed by the authority holder to the State. Provision is made for the chief executive to give holders of authorities with outstanding fees a warning notice that the authority will be suspended or cancelled if the outstanding fees are not paid within a certain time. Suspended authorities can be reinstated once outstanding fees are paid.

- To provide for the removal of certain restrictions on temporary quota transfers and to provide that the chief executive may establish a system under which the application and the registration of transfers can be made automatically or by electronic means, so as to enhance the tradability and value of rights associated with fishing authorities.
- To allow the chief executive to sell seized fisheries resources that were seized in a live state. This is to reduce the loss in market value of the fish that may result from their deterioration if kept in storage for long periods while appeals are awaiting determination. The net proceeds of any sale are to be held on trust for the benefit of the owner, pending determination of any appeal or prosecution.

Alternatives to the Bill

Generally all the amendments are considered desirable or necessary for the effective operation of the Act.

Estimated costs for government implementation

There are no financial implications resulting from the proposed amendments and if there were any additional costs, these would be met within existing government resources.

Consistency with fundamental legislative principles

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.

Legislative Standards Act 1992, section 4(3)—“whether legislation has sufficient regard to the rights and liberties of individuals”

Clauses 11 and 14 (Omission of ss 33 and 39 - Procedure to make management plan; Amendment of management plan)

The Bill removes the obligation to release draft legislation when an amendment to a management plan that requires a Regulatory Impact Statement (RIS) is proposed. The RIS will already contain detailed information about the policy options and the objectives of proposed legislation. In some cases, the concurrent release of a draft plan is counterproductive to effective consultation, creating an expectation that the draft legislation will always be the end result, diluting the effectiveness of other policy options canvassed in the RIS. The additional time it takes to prepare the draft and engage in consultation can also result in delays where there is a need to progress important amendments that have often already been under discussion between government and stakeholders for some time. Also, the amendment does not preclude the production of draft legislation for future amendments if this is helpful in a particular case.

Legislative Standards Act 1992, section 4(3)—“whether legislation has sufficient regard to the rights and liberties of individuals”

Clause 28 (Insertion of section 68AB - Suspension of cancellation for non-payment of fee)

As a result of the *Fisheries and Other Legislation Amendment Regulation (No. 1) 2006*, many authorities no longer require annual renewal, ending only if they are suspended or cancelled or otherwise expired under the Act. Fees remain annual and are payable quarterly in arrears, with accounts sent out in advance.

The Bill provides for the automatic suspension of an authority where the fees for them remain outstanding despite the receipt of a warning notice. Commercial harvest fishery licences, commercial boat licences and quota authorities, which have many proprietary characteristics, are included in this, raising the issue of whether the automatic suspension has sufficient regard to the rights of owners.

The purpose is to facilitate the recovery of outstanding fees. The provisions only operate, however if a warning notice has been given.

Once any outstanding fees are paid, the suspension will end and the holder can resume fishing. Also, provision is made for debtors to enter a repayment agreement to avoid suspension. The only authority liable for cancellation is a commercial fisher licence, which is cancelled where a

repayment agreement or payment is not made for 90 days despite the warning notice. Commercial fisher licences are personal licences that are not transferable and are readily available to qualified persons. Cancellation is appropriate in this case as it is more likely that persons would seek a fresh licence after cancellation rather than reinstatement.

Legislative Standards Act 1992, section 4(3)—“whether legislation has sufficient regard to the rights and liberties of individuals”

Clause 31 (Replacement of Section 77 – Contravention of particular fisheries declarations)

The Bill inserts a replacement section 77 (Contravention of particular fisheries declarations), which allows a regulation or management plan to prohibit or restrict fishing activities by reference to the fishing method/ fishing apparatus or area. Currently, these activities are regulated under several provisions and the intention is to consolidate the effect of these provisions into a single regulation-making power.

The provision sets a maximum of 1000 penalty units for contravening a regulated waters declaration and 300 penalty units for contravening a regulated fishing apparatus or fishing method declaration.

The maximum penalties are consistent with existing levels and are commensurate with the gravity of the offences. Serious examples of these offences threaten the sustainability of commercial, recreational and Indigenous fisheries and must be deterred.

The Act continues to provide for the declarations to be made in subordinate legislation. This model allows effective and responsive fisheries management, with detailed arrangements being set out in subordinate legislation, while the offence and penalty are created in the empowering Act.

Legislative Standards Act 1992, section 4(4)—“whether legislation has sufficient regard to the institution of Parliament, by authorising the amendment of an Act only by another Act”

Clause 31 (Insertion of new section 77A – Exemptions for contravention of regulated fishing apparatus declaration)

The Bill inserts new section 77A (Exemptions for contravention of regulated fishing apparatus declaration), which provides for specific exemptions from the offence of selling, buying, using or possessing certain fishing apparatus. Subsection (d) allows for further exemptions to be provided for under a regulation.

While the most common exemptions are able to be identified in the Act, it is not possible to forecast all of the appropriate exemptions. If another exemption is required, it is appropriate to allow it to be made, at least at first instance by regulation, to ensure exemption from liability for a criminal offence can be provided quickly in an appropriate case.

Legislative Standards Act 1992, section 4(3)—“whether legislation has sufficient regard to the rights and liberties of individuals”

Clause 38 (Replacement of s 118 - Information requirements)

The Bill consolidates several provisions about the information that may be required to be kept or given by persons into one provision. The requirements may be imposed by regulation, management plan, a condition of authority or written notice. The maximum penalty of 1000 penalty units for contravening docketing requirements in respect of abalone sales and 500 penalty units for other fish sales are being retained in the consolidated provision. However the requirement itself will be able to be provided by regulation rather than as a separate provision of the Act, which raises the issue of the appropriateness of the penalty.

Dockets are a key means of verifying the source and validity of fish traded commercially in Queensland. Illegal trading in fisheries resource is among the most serious of all fisheries offences, threatening the sustainability of Queensland fisheries. The importance of docketing as a compliance tool has further increased with a number of key commercial species in Queensland now managed under quotas, while the illegal market in abalone is a serious issue to which all Australian fisheries jurisdictions. While it is desirable for the information obligations to be consolidated, the retention of the existing penalties is needed to provide effective deterrence. The provision creating the offence remains in the Act and it is likely that docketing obligations will be imposed by regulation rather than the other administrative options, remaining subject to Parliamentary scrutiny.

The new provision also places a limitation on the power to make a requirement, in that the information the subject of the requirement must reasonably relate to the recipient. Further, the section provides for a defence where the required information is not reasonably available to the recipient.

Legislative Standards Act 1992, section 4(3)—“whether legislation has sufficient regard to the rights and liberties of individuals”

Clause 41 (Insertion of new ss 160A – Chief executive’s power to sell particular live seized fish)

The Bill allows the chief executive to sell fish seized live, before the 7 day period for lodging and appeal expires, and if an appeal is lodged, before it is heard. This raises the issue of whether the pre-emptive sale has regard to the rights of the owner of the seized fish.

It is not practical for the State to store live seized fish for any length of time. Their condition rapidly deteriorates along with the market value of the fish. It is in the interest of the owner of the fish for the market value for the fish to be realised. To ensure this, the sale must be carried out in a reasonable way or with the owner's agreement and the proceeds must be held on trust until the suspected offence over which the fish were seized is resolved and the proceeds are either forfeited to the State or returned.

Legislative Standards Act 1992, section 4(3)—“whether legislation has sufficient regard to the rights and liberties of individuals”

Clause 43 Amendment of s 196 (Appeals to Tribunal)

The Bill amends section 196 which provides that a decision of the chief executive about policy is not appealable, to specify that this includes a decision about the shark control program.

The amendment removes any doubt that the operation of the shark control program is a policy matter.

Decisions taken about the program, such as its locations and methods, are made at a high level, utilising expert advice. The decision are for the public interest or all citizens. Appeals to the administrative Fisheries Tribunal are intended to lie only where a person's individual interests are affected by a decision.

Legislative Standards Act 1992, section 4(3)—“whether legislation affects rights and liberties or imposes obligations, retrospectively”

Clause 45 (Insertion of new pt 12, div 5 – Transitional provisions for Fisheries Amendment Act 2006)

The Bill provides for a further express purpose of the Act to establish and maintain the shark control program so as to enshrine the program in legislation.

New division 5 is retrospective in its operation. The intention of the amendments is to remove any doubt that contracts and permits issued prior to the inclusion of the shark control purpose in the Act are consistent and compatible with the new provisions. Validation of these contracts and permits insures against disruption to the operation of the program. Contractors and those acting under permits acted in good faith under the

shark control program, which is run in the interests of public safety. The amendments, while retrospective, do not adversely affect individual interests.

Consultation

Community

There was extensive consultation with stakeholders during 2005 regarding changes to the fisheries licensing and fees regime, to be implemented by amendments to the *Fisheries Regulation 1995* and the various Fisheries Management Plans. Many of the amendments in the Bill are intended to complement those changes and to address related issues raised during the consultation process.

The Queensland Seafood Industry Association (QSIA) and Sunfish Queensland (Sunfish) have also been consulted regarding the other amendments proposed in this Bill.

Government

This Bill has been developed in consultation with the Department of the Premier and Cabinet, the Department of Justice and Attorney-General, and the Department of State Development, Trade and Innovation, as well as the Environmental Protection Agency and the Office of the Queensland Parliamentary Counsel.

Results of Consultation

Community

Various amendments arising from consultation about the new licensing and fees system have been proposed in response to issues raised by stakeholders and are widely supported by those involved in the fishing industry.

QSIA and Sunfish are supportive of the package of proposed amendments.

Government

There was broad support from government that the amendments should proceed.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 provides that the short title of the Bill is the *Fisheries Amendment Act 2006*.

Commencement

Clause 2 provides that sections 12, 13, 18 to 22, 31, 33, 34, 36 and 38 of the Bill commence on a day to be fixed by proclamation.

Section 46(1) to the extent that it omits the definitions closed season declaration and closed waters declaration is to commence on a day to be fixed by proclamation.

Section 46(2) to the extent it inserts the definitions emergency fisheries declaration, fisheries declaration, regulated fish declaration, regulated fishing apparatus declaration, regulated fishing method declaration and regulated waters declaration is to commence on a day to be fixed by proclamation.

All other provisions commence upon assent.

Act amended

Clause 3 provides that the provisions of the Bill amend the *Fisheries Act 1994*.

Amendment of long title

Clause 4 amends the long title to include the further purpose of the Act, namely, shark control, as provided for in the amendment to section 3.

Amendment of s 3 (Main purpose of Act)

Clause 5 amends section 3 to provide for a further purpose of the Act, in addition to its main purposes. The heading of the section is amended to “Specific purposes of Act” to reflect this.

The further purpose, which is expressed in subsection 3, as amended, is to reduce the possibility of shark attacks on humans in coastal bathing beaches of Queensland. This purpose is expressed to exist despite of the Act's main purpose, that is, it is not subject to the main purpose. This is to ensure that the shark control function is not compromised if there is any perceived conflict between purposes.

Subsection 4 states that neither the main purpose or the further purpose limit the purposes of the Act.

Amendment of s 3A (How purpose is to be primarily achieved)

Clause 6 amends section 3A of the Act by inserting new subsections (2) and (3), to enshrine in legislation the shark control program, formerly an administrative program, in order that the further purpose provided for in subsection 3 may be achieved.

Amendment of s 5 (Meaning of fish)

Clause 7 amends section 5 of the Act to exclude from the meaning of *fish* pests under the *Pest Management Act 2001*.

Amendment of s 20 (Chief executive's functions)

Clause 8 amends section 20, inserting a new paragraph (d) in subsection 2 to give to the chief executive the function of establishing and managing a shark control program, as described in the new section 3(5).

The program is to apply only to Queensland coastal waters of the state adjacent to coastal beaches that are used for bathing, for which the chief executive considers a shark control program to be necessary and desirable.

Subsection 3, as amended provides that the program is not subject to the main purpose of the Act under section 3(1). Subsection (4) as amended further provides that is not a function of the chief executive to establish or maintain a shark control program in respect of waters for which the chief executive does not consider a program necessary and desirable.

Amendment of s 20A (Powers)

Clause 9 inserts in section 20A(1)(a) an example of the kinds of contracts into which the chief executive may enter, namely, contracts for the establishment or management of a shark control program.

Amendment of s 21 (Chief executive may delegate)

Clause 10 makes consequential amendments to section 21 to take into account amendments to the *Acts Interpretation Act 1954*, s 27A under the *Justice and Other Legislation Amendment Act 2005*.

Omission of s 33 (Procedure to make management plan)

Clause 11 omits section 33, which required the chief executive, prior to making a management plan to publish a draft of it and take reasonable steps to engage in public consultation with respect to it.

The omission of section 33 does not, however, preclude the chief executive from publishing a draft where it is considered desirable to do so.

Replacement of s 37 (Management plan may declare closed season, closed waters etc.)

Clause 12 omits section 37 and replaces it with a provision allowing for the making of declarations in management plans with respect to regulating certain matters. Subsection 1 provides that a management plan may make the declarations mentioned in section 37.

Subsection 2 provides for declarations to regulate the taking, purchase, sale, possession or use of particular fish. It provides for examples of ways of regulating fish. Formerly these were contained in the omitted section 37(5). The new provision provides an additional example, namely that fish may be regulated by way of fillet size or the form in which they may be possessed after they are taken.

Subsection 3 provides for declarations to regulate the purchase, sale, possession or use of particular fishing apparatus. Formerly, activities concerning certain fishing apparatus were “prohibited” under section 84. Further, section 85 of the Act prohibited certain activities with respect to fishing apparatus for which an authority was required, unless a person held that authority. Subsection 3 consolidates these provisions such that the activities formerly proscribed by section 84 or 85 may now be dealt with by way of a regulated fishing apparatus declaration.

Subsection 4 provides for declarations to regulate the way in which fish may be taken. Formerly section 80 provided that it was an offence to take fish in a prohibited way and subordinate legislation prohibited certain fishing practices. Such matters are now dealt with by regulated fishing method declarations under section 37(4).

Subsection 5 provides for declarations with respect to regulated waters. Formerly, a management plan could declare certain waters to be closed waters; or to be closed to fishing for certain periods (a closed season) pursuant to section 37(1)(a) and (b). The new section 37(5) brings together the concepts of closed waters and closed seasons under the single concept of regulated waters. Regulated waters declarations may regulate particular activities, for example prohibit fishing, in the waters the subject of the declaration.

Subsection 6 exempts activities authorised by development approvals from regulated waters declarations unless the declaration expressly states that it applies to that activity.

Subsection 7 states that the term “regulate” includes prohibit. This means that matters currently prohibited under regulation or a management plan are captured by the declarations insofar as the matter is one which may be regulated under section 37.

Amendment of s 38A (Management plan to protect things that are not fish)

Clause 13 makes consequential amendments to section 38A to reflect the new section 37.

Omission of s 39 (Amendment of management plan)

Clause 14 omits section 39, which required the chief executive to prepare a draft amending management plan and take reasonable steps to engage in consultation with respect to it, or to conduct a review of the management plan or the part of the management plan to which the proposed amendment relates.

Omission of s 40 (Compensation not payable on making, amendment or repeal)

Clause 15 omits section 40 which provided that compensation was not payable on making, amending or repealing a management plan. A new part 5, division 1A is inserted to provide for a new compensation regime.

Insertion of new pt 5, div 1A

Clause 16 inserts a new part 5, division 1A which provides for the payment of compensation in relation to a regulation or management plan in certain circumstances.

Subdivision 1 sets out where the right to compensation arises.

Section 42A(1) sets out the criteria that may give rise to an entitlement to compensation, namely, a person must hold a particular type of authority. To begin with, temporary transferees are excluded from being paid compensation. This is because their interest in the authority is not an enduring one, and as the matters likely to give rise to compensation may impact on the value of the authority itself, then the substantive holder is considered the person who should be compensated.

To be eligible, pursuant to paragraph (a) the relevant authority must be either a licence or quota, and must authorise the taking of fish for trade or commerce in a fishery described under a regulation or management plan as a commercial fishery. This captures authorities whose entitlements confer on their holders rights that are proprietary in nature, rather than those which are mere personal licences such as commercial fisher licences.

In addition to holding the relevant type of authority in accordance with paragraph (a), for compensation to be payable, there must be, subsequent to the commencement of section 42A an amendment to a regulation or management plan that would result in the loss or reduction of an entitlement to take fisheries resources that the authority holder had immediately prior to the amendment. If the amendment does not result in a loss or reduction of an entitlement, in other words, if the amendment results increases or does not change an entitlement to take fisheries resources that an authority holder had under the relevant authority immediately prior to the amendment, then no compensation is payable.

Subsection 2 provides that if the criteria in subsection 1 are met, compensation for the value of the loss or reduction is payable by the State subject to sections 42B and 42K; and pursuant to subsection 3, only if under division 2 the chief executive decides to grant a claim made under subdivision 2.

Section 42B sets limits to the compensation that is payable. Compensation is only payable if one of the situations set out in subsection 1 applies.

Subsection 1 paragraph (a) states that compensation is payable if the cause of the loss or reduction was a reallocation of the entitlement to take fisheries resources to persons who do not hold an authority of the type described in section 42A. For example, if an amendment in a management plan resulted in the reallocation of fisheries resources from the commercial fishery to the recreational fishery, then compensation may be payable. On the other hand, a reallocation from one commercial fishery to another would not give rise to a right to compensation.

Subsection 1 paragraph (b) sets out an alternative situation for which compensation may be payable, namely, if the amendment contained a restriction or prohibition on activities otherwise authorised by the authority in an area so as to protect a thing that is not fish. This may for example include an amendment to provide for a dugong protection area. To give rise to the potential for compensation under section 42A, however, the amendment must restrict or prohibit the exercise of an entitlement in the relevant area.

For example, if a management plan were amended to prescribe as a condition for certain authorities, the use of a bycatch reduction device (BRD) or turtle excluder device (TED), even though the use of such a device may be shown to reduce levels of catch, if it does not actually restrict the exercise of an entitlement to undertake fishing activity, it will not give rise to an entitlement to claim compensation pursuant to section 42B(1)(b).

Compensation is not payable where an amendment is made for reasons other than those in section 42B, such as the sustainability of the fishery.

Subsection 2 limits compensation further such that it may not in effect be twice paid in respect of any matter, that is, it is not payable where a holder of the relevant authority has already been paid, or where compensation is payable for a similar loss or reduction under another law of the State or of another jurisdiction.

Section 42C states that there is no general right to compensation for the making, amendment or repeal of a regulation or management plan, save as provided for in section 42A.

Subdivision 2 provides for the process for claiming compensation and how the claim is to be decided and paid.

Section 42E requires that a claim for compensation must be made within 6 months after the day of the amendment that gave rise to the loss or reduction.

Section 42F requires that the claim be in writing to the chief executive; be signed by all holders of the relevant authority; and state the entitlement that has been reduced or lost along with the grounds under section 42B(1) on which the claim is made and the amount claimed. It also requires the claimant to show how they arrived at the amount claimed.

Section 42G allows the chief executive to require before the claim is decided, by written notice, further information about the claim. The notice

should allow the claimant a reasonable time to provide the chief executive with the information.

If the claimant does not comply with the requirement to provide the further information in the time stated in the notice, the claimant is taken to have withdrawn their claim, unless the chief executive agrees in writing to a longer period to comply. If the claimant does not comply within the longer agreed period, the claim is taken to be withdrawn.

Section 42H requires the chief executive within a reasonable period of the claim being made to decide whether to grant or refuse the claim, and further, to decide the amount of compensation payable if the chief executive decides to grant the claim.

Subsection 2 requires the chief executive to give the claimant written notice of a refusal to grant the claim, or of a decision to grant compensation at an amount less than that claimed, containing reasons for the decision, and informing the claimant that they have 28 days to appeal the decision to the tribunal.

Subsection 3 provides that in determining what is a reasonable period for deciding the claim, regard must be had to whether the chief executive required further information of the claimant pursuant to section 42G, or whether the chief executive had to obtain further information elsewhere pursuant to section 42I. These additional factors may increase the time that is reasonably necessary to assess the claim. Regard must also be had to the time that is required to give any further information obtained consideration.

Section 42I gives the chief executive the power to obtain information or evidence to assist in deciding the claim, from entities other than the claimant. If the chief executive obtains other information or evidence under section 42I, the chief executive must give written notice of the information to the claimant, informing them that they may respond in writing within a stated reasonable period. The chief executive must not decide the claim unless the claimant has responded to the notice; or the period stated within the notice has expired; or, if the chief executive agrees to an extension of time for giving a response, within that period.

Section 42J provides for the amount of compensation that may be decided. If after the relevant amendment the subject authority continued in force, compensation may be for the difference between the authority's market value immediately before and immediately after the amendment's commencement; or, if after the amendment the authority ended, compensation may be for the authority's market value immediately prior to commencement. Additionally, compensation may be for probable taxable

income from fishing lost or reduced as a result of the lost or reduced entitlement to take fisheries resources, for a maximum of 3 years from the commencement of the relevant amendment. Subsection 3 provides that regard may only be had to taxation returns and notices of assessment lodged by the claimant in working out the loss of income from fishing. For this section, 'taxable income' has the same meaning as under the Commonwealth *Income Tax Assessment Act 1997*, that is, assessable income less deductions.

Further, subsection 4 provides that if the chief executive considers that the ground on which the claim was made was not the sole cause of the loss or reduction claimed, and the other causes do not give rise to a claim for compensation under subdivision 1, then the chief executive may reduce the amount of compensation to reflect the other causes.

Section 42K provides that where the authority the subject of a compensation claim is subject to a third party interest that is noted in the register of authorities, the chief executive must not pay compensation to the claimant unless the holder of the interest has agreed to the payment in writing.

Replacement of pt 5, div 2, hdg (Fisheries declarations)

Clause 17 omits the heading to division 2 of part 5, and inserts a new heading: "Fisheries declaration by chief executive". This is to reflect the fact that other fisheries declarations are now provided for under section 37.

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

Clause 18 replaces section 43 with a provision that allows the chief executive to make declarations about the same matters in section 37, in an instrument other than a management plan.

Amendment of s 45 (Fisheries declaration is subordinate legislation)

Clause 19 amends section 45 to provide that declarations made by the chief executive are subordinate legislation.

Amendment of s 45A (Declaration to protect things that are not fish)

Clause 20 amends section 45A to reflect the terminology used in section 37 and the new part 5 division 2, namely, “fisheries declaration”.

Amendment of s 46 (Emergency fisheries declarations)

Clause 21 amends section 46 to reflect the terminology used in section 37 and the new part 5 division 2, namely, “fisheries declaration”.

Amendment of s 48 (Regulation may make provision about fisheries declaration matters)

Clause 22 amends section 48 to provide that fisheries declarations made by the chief executive may be declared by a regulation.

Amendment of s 53 (Form, content and term of authorities)

Clause 23 amends section 53 to remove any doubt that the term of an existing licence, unless it has its term stated in it, may be taken to be the term that ends only on its cancellation or surrender or other expiry under the Act. This is to reflect proposed changes to the fees and licensing regime contained in amendments to the Fisheries Regulation.

Replacement of s 65A (Application to register transfer of authority)

Clause 24 replaces section 65A to remove existing restrictions on temporary transfer of quota, such that the written approval of third party interest holders is required only where the transfer is not a temporary quota transfer. Further, applications other than applications for a temporary quota transfer no longer need be made by the transferee. The transferor may apply to transfer the authority to the transferee provided the application is in the approved form. The approved form must include a written declaration by the applicant that the information relevant to the application is true; that the applicant has complied with the Act’s requirements relating to the authority; and that each transferee has complied with the Act’s requirements relating to the authority. For transfers other than temporary quota transfers, the application must also include the written approval of all persons having a registered interest in the authority, and if there are any outstanding fees in respect of the authority, the written approval of the chief executive to register the transfer.

The new section also provides that where an application is not made by the internet system provided for in the new section 65BA, it must be accompanied by the fee prescribed under regulation unless it is a temporary quota transfer, or the fee is waived under section 65E. A fee is not payable for transfers made by the internet system.

Insertion of new ss 65BA

Clause 25 inserts the new section 65BA, which provides that the chief executive may establish an internet system under which the application to register transfers can be made, and the decision about whether an application is properly made, and registration of such a transfer, can be done automatically. The system may only provide for such decisions to be made, however, if the information required to be given by an applicant making an online application shows that such an application is on its face a properly made application for the purposes of section 65A.

It is provided that a decision made under the automated system is taken to be a decision under section 65B to register the transfer.

Amendment of s 65C (Temporary transfers)

Clause 26 omits paragraph (d) of subsection 2 of section 65C, to remove the existing restriction preventing trading of quota in the last 28 days of the quota year.

Amendment of s 65D (Effect of temporary transfer)

Clause 27 substitutes a new subsection (6) for section 65D, which provides that, in the case of temporary transfers, an interested party means the transferor and transferee under the temporary transfer, and for transfers that are not temporary quota transfers, anyone else who has a registered interest in the authority.

For example, if A, a quota holder, makes a temporary transfer of quota to B, who subsequently makes a temporary transfer of that quota to C, then in the transaction between B and C, A is not an interested party.

Insertion of new ss 68AB

Clause 28 inserts a new section.

Section 68AB provides for the suspension or cancellation of an authority in certain circumstances where fees are unpaid. Pursuant to proposed

amendments to the Fisheries Regulation, licences will no longer require renewal each year. Fees will nevertheless continue to be payable annually and will become a debt payable to the State.

If a fee is not paid, the chief executive may give the holder of the relevant authority a notice warning that the authority will be suspended if the fee is not paid within 30 days; or, if the authority is a commercial fisher licence, that it will be cancelled if the fee is not paid within 90 days from the issue of the warning notice. In such instances fishers will temporarily lose their access rights until either unpaid fees are paid or an agreement is entered into for their payment, unless the relevant authority is a commercial fisher licence which has been cancelled under this section, in which case, once unpaid fees are paid or a payment agreement is entered into, the person may apply for a fresh licence.

Amendment of s 69A (Effect of suspension on issue or transfer of another authority)

Clause 29 amends section 69A to provide that an authority suspended under section 68AB for non-payment of fees may be the subject of an application to transfer if the chief executive has under section 65A(3)(b) given written approval to the registration of the transfer, however the transfer does not affect the suspension under section 68AB.

Insertion of new s 69B

Clause 30 inserts a new section 69B, which provides that where an authority is suspended, outstanding fees relating to that authority will continue to accrue until such time as the authority is cancelled. Any fees that have accumulated at the time of cancellation remain payable.

Replacement of s 77 (Closed season and closed waters offences) and insertion of s 77A

Clause 31 replaces section 77 with new offence provisions to reflect changes to sections 37 and 43. Specifically, section 77 provides for offences relating to regulated waters declarations, regulated fishing method declarations and regulated fishing apparatus declarations. For a contravention of a regulated fishing method declaration or a regulated fishing apparatus declaration, provision is made for a maximum penalty of 300 penalty units, which is effectively a retention of the penalties prescribed under the old sections 80, 84 and 85. For a contravention involving a regulated waters declaration, the maximum penalty is 1000

penalty units. This is consistent with the penalty formerly provided by the replaced section 77 for closed waters offences.

Exemptions to contraventions involving commercial fishing apparatus, formerly found in section 85(5) and (6), are retained in the new section 77A.

Amendment of s 78 (Prohibited acts about regulated fish)

Clause 32 amends section 78 to reflect changes to section 37 regarding regulated fish declarations.

Insertion of new s 79A

Clause 33 inserts an offence provision for contravening a condition of an authority. This offence is presently found in the regulation.

Omission of s 80 (Fish not to be taken in a prohibited way)

Clause 34 omits section 80. This offence provision is subsumed by the new section 77.

Amendment of s 81 (Use of explosives etc. prohibited)

Clause 35 amends section 81 to exempt persons carrying out activities under the shark control program, so that they may humanely destroy sharks or other animals caught in shark control apparatus.

Omission of ss 84 to 86A

Clause 36 omits sections 84 to 86A. Sections 84 and 85 are now subsumed by the new section 77; sections 86 and 86A are subsumed by the amended section 118.

Amendment of s 94 (Chief executive may declare diseases)

Clause 37 amends the definition of disease to include a species that may out-compete fisheries resources.

Replacement of s 118 (Statistical returns to be kept)

Clause 38 replaces section 118 with a new provision allowing the chief executive to require persons to obtain or keep certain information (an “information requirement”).

The chief executive may make such a requirement by way of regulation or management plan, a condition of an authority or by written notice.

The requirement may relate to records or documents about fishing (for example logbooks), a fishery or fisheries resources, or about activities in trade or commerce related to any of these things (for example, dockets).

Subsection (2) provides that an information requirement may apply to or be made of a person only if the required information relates to the person, or could reasonably be expected to relate to the person. This means that there must be some reasonable connection between the person and the information (for example, the requirement relates to the business of the person).

The section sets out examples of the form or method in which the chief executive may require the information to be given. It creates an offence for failing to comply with the requirement. The maximum penalties contained in the old sections 86, 86A and 118, which the new section 118 subsumes, are retained, that is, 1000 penalty units if the information is a docket or other document about the buying or selling of fisheries resources in trade or commerce, or if the person carries on a business involving abalone processing and the information relates to the business or the processing. Otherwise the maximum penalty is 500 penalty units.

Insertion of new s 132A

Clause 39 inserts a new section 132A to provide for complementary amendments to the Commonwealth Fisheries Act. The amendments relate to the variation of Commonwealth-State arrangements.

Amendment of s 160 (Seized fisheries resources become property of the State)

Clause 40 makes consequential amendments to section 160 to reflect the insertion of the new section 160A.

Insertion of new s 160A

Clause 41 inserts a new section which provides for the way in which the chief executive may deal with fisheries resources the subject of a seizure under section 160, if those fisheries resources are alive at the time of seizure, but have not yet become the property of the State.

Section 160A allows the chief executive to sell the fisheries resources in a reasonable way, or in a way agreed with the owner of the fish. This is to

reduce the loss in market value of the fish that may result from their deterioration if kept in storage while appeal processes are on foot. If sold under this section, the net proceeds of the sale are to be held on trust for the benefit of the owner, pending determination of the appeal or prosecution.

Amendment of s 163 (Obligation to pay net proceeds of sale of fisheries resources)

Clause 42 amends section 163 reflect the insertion of the new section 160A.

Amendment of s 196 (Appeals to tribunal)

Clause 43 amends section 196. It adds to subsection (2)(a) an example of the kind of decision that cannot be appealed to the tribunal, namely a decision of the chief executive about the shark control program.

Omission of s 238 (Amendment of management plan)

Clause 44 omits section 238, which is redundant with the omission of sections 33 and 39.

Insertion of new pt 12, div 5

Clause 45 provides for transitional provisions for the amending Act.

Section 254 provides that shark control contracts previously entered into under the administrative shark control program are taken to be made under the new legislative regime. This is to ensure their continuity and compatibility with the new legislation, so as not to disrupt the program or jeopardise its operation.

Section 255 provides that the general fisheries permits listed there, which were issued under the administrative shark control program are taken to be issued under the new legislative regime. This is to ensure their continuity and compatibility with the new legislation, so as not to disrupt the program or jeopardise its operation. The section further provides that any amendment to those permits is taken to have commenced upon the day the permit was issued. This is also to ensure that all permits are compatible with the legislation from the day of their issue.

Section 256 provides that persons acting under contracts and permits for shark control prior to the commencement of the legislative program are exempted from the offence in section 81, of the Act. This is to ensure the

compatibility of activities carried out under the administrative program with that of the new legislative program.

Amendment of schedule (Dictionary)

Clause 46 amends the dictionary to reflect amendments to the Act.

Schedule (Other amendments)

Clause 1 of the schedule replaces references to the 'Fisheries Tribunal' in sections 60(a)(ii), 63(3)(b) and 68(4)(b) with 'tribunal', which is defined in the dictionary to mean the Fisheries Tribunal.

Clause 2 of the schedule omits the words 'the chief executive keeps under section 73(1)', which are now contained in the definition of register in the dictionary.

Clause 3 of the schedule amends section 74(1)(d) to reflect the new definition of register in the dictionary.

Clause 4 of the schedule amends section 76 to replace the words 'of authorities kept by the chief executive' with 'about an authority'. This is so that such references to the register take into account the section 73(1) description of the register, which refers to authorities and development approvals.

Clause 5 of the schedule makes consequential amendments to section 76A(b) to reflect changes to the Integrated Planning Act 1997.

Clause 6 of the schedule makes consequential amendments to section 76T(2)(b) to reflect changes to the Integrated Planning Act 1997.

Clause 7 of the schedule makes consequential amendments to section 88B(1)(b) to reflect changes to the Integrated Planning Act 1997.