



Queensland

Fisheries Amendment Bill 2006



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2006

A Bill

for

An Act to amend the *Fisheries Act 1994*

The Parliament of Queensland enacts—	1
Clause 1 Short title	2
This Act may be cited as the <i>Fisheries Amendment Act 2006</i> .	3
Clause 2 Commencement	4
The following commence on a day to be fixed by proclamation—	5 6
(a) sections 12, 13, 18 to 22, 31, 33, 34, 36 and 38;	7
(b) section 46(1) to the extent it omits the definitions <i>closed season declaration</i> and <i>closed waters declaration</i> ;	8 9
(c) section 46(2) to the extent it inserts the definitions <i>emergency fisheries declaration</i> , <i>fisheries declaration</i> , <i>regulated fish declaration</i> , <i>regulated fishing apparatus declaration</i> , <i>regulated fishing method declaration</i> and <i>regulated waters declaration</i> .	10 11 12 13 14
Clause 3 Act amended	15
This Act amends the <i>Fisheries Act 1994</i> .	16
Clause 4 Amendment of long title	17
Long title, ‘and the management of aquaculture activities’—	18
<i>omit, insert—</i>	19
‘, the management of aquaculture activities and helping to prevent shark attacks’	20 21
Clause 5 Amendment of s 3 (Main purpose of Act)	22
(1) Section 3, heading—	23
<i>omit, insert—</i>	24
‘3 Particular purposes of Act’.	25
(2) Section 3(3)—	26

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renumber as section 3(5).

- | | | |
|--|---|------------------|
| | | 1 |
| | (3) Section 3— | 2 |
| | <i>insert</i> — | 3 |
| | ‘(3) Despite the main purpose of this Act, a further purpose of this Act is to reduce the possibility of shark attacks on humans in coastal waters of the State adjacent to coastal beaches used for bathing. | 4
5
6
7 |
| | ‘(4) Subsections (1) and (3) do not limit the purposes of this Act.’. | 8 |

Clause 6	Amendment of s 3A (How purpose is to be primarily achieved)	9 10
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- | | | |
|--|--------------------------|----|
| | (1) Section 3A, heading— | 11 |
| | <i>omit, insert</i> — | 12 |

‘3A	How particular purposes are to be primarily achieved’.	13
------------	---	----

- | | | |
|--|---|----------------------|
| | (2) Section 3A— | 14 |
| | <i>insert</i> — | 15 |
| | ‘(2) The further purpose of this Act under section 3(3) is to be primarily achieved by the chief executive establishing and managing a program for particular coastal waters of the State adjacent to coastal beaches used for bathing. | 16
17
18
19 |
| | ‘(3) The program is the <i>shark control program</i> .’. | 20 |

Clause 7	Amendment of s 5 (Meaning of fish)	21
-----------------	---	----

- | | | |
|--|---|----|
| | (1) Section 5(3)(c)— | 22 |
| | <i>renumber</i> as section 5(3)(d). | 23 |
| | (2) Section 5(3)— | 24 |
| | <i>insert</i> — | 25 |
| | ‘(c) pests under the <i>Pest Management Act 2001</i> ; or’. | 26 |

Clause 8	Amendment of s 20 (Chief executive’s functions)	27
-----------------	--	----

- | | | |
|--|---|----|
| | (1) Section 20(1A) and (2)— | 28 |
| | <i>renumber</i> as section 20(2) and (5). | 29 |

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- (2) Section 20(2)(d) to (i), as renumbered— 1
renumber as section 20(2)(e) to (j). 2
- (3) Section 20(2), as renumbered— 3
insert— 4
‘(d) the establishment and management of the shark control 5
program in circumstances where the chief executive 6
considers the program is necessary or desirable; and’. 7
- (4) Section 20(2)(j), as renumbered, ‘this or another Act’— 8
omit, insert— 9
‘an Act’. 10
- (5) Section 20— 11
insert— 12
- ‘(3) The shark control program may be established or maintained 13
despite the main purpose of this Act under section 3(1). 14
- ‘(4) To remove any doubt, it is declared that it is not a function of 15
the chief executive to establish or manage the shark control 16
program other than to the extent mentioned in subsection 17
(2)(d).’. 18

Clause 9 Amendment of s 20A (Powers) 19

- (1) Section 20A(1)(a)— 20
insert— 21
 ‘*Example*— 22
 contracts to establish or manage the shark control program’. 23
- (2) Section 20A(2), ‘this or another Act’— 24
omit, insert— 25
‘an Act’. 26

Clause 10 Amendment of s 21 (Chief executive may delegate) 27

- (1) Section 21(1), ‘powers’— 28
omit, insert— 29

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	‘functions’.	1
	(2) Section 21(2), ‘power’—	2
	<i>omit, insert—</i>	3
	‘function’.	4
	(3) Section 21—	5
	<i>insert—</i>	6
	‘(4) In this section—	7
	<i>functions</i> includes powers.’.	8
Clause 11	Omission of s 33 (Procedure to make management plan)	9
	Section 33—	10
	<i>omit.</i>	11
Clause 12	Replacement of s 37 (Management plan may declare closed season, closed waters etc.)	12
	Section 37—	14
	<i>omit, insert—</i>	15
‘37	Management plan may make declaration regulating particular matters	16
	‘(1) Without limiting section 36, a management plan may make the declarations mentioned in this section (each a <i>fisheries declaration</i>).	20
	‘(2) A fisheries declaration (a <i>regulated fish declaration</i>) may regulate the taking, purchase, sale, possession or use of particular fish.	23
	<i>Examples of matters that may be regulated under a regulated fish declaration—</i>	24
	1 A limit may be placed on the size or number of a species or type of fish that may be taken, purchased, sold, used or possessed.	27
	2 The taking, possessing or selling of fish of a particular species or type may be prohibited.	29
	3 The fish may be regulated by way of fillet size or other form in which they may be possessed after they are taken.	31

- ‘(3) A fisheries declaration (a *regulated fishing apparatus declaration*) may regulate the purchase, sale, possession or use of particular fishing apparatus. 1
2
3
- ‘(4) A fisheries declaration (a *regulated fishing method declaration*) may regulate how fish may be taken. 4
5
- ‘(5) A fisheries declaration (a *regulated waters declaration*) may regulate all or any of the following in particular waters— 6
7
- (a) the taking or possessing of fish; 8
- (b) engaging in stated activities; 9
- (c) using or possessing a boat, aquaculture furniture, fishing apparatus or anything else. 10
11
- ‘(6) However, a regulated waters declaration does not apply to an activity authorised by a development approval unless the declaration expressly states that it applies to the activity.’. 12
13
14

Clause 13 Amendment of s 38A (Management plan to protect things that are not fish) 15
16

Section 38A, ‘A management plan may be made’— 17
omit, insert— 18
‘A management plan, including a fisheries declaration included in the management plan, may be made’. 19
20

Clause 14 Omission of s 39 (Amendment of management plan) 21

Section 39— 22
omit. 23

Clause 15 Omission of s 40 (Compensation not payable on making, amendment or repeal) 24
25

Section 40— 26
omit. 27

Clause 16 Insertion of new pt 5, div 1A 28

After section 42— 29

	<i>insert—</i>	1
‘Division 1A	When compensation is payable because of a regulation or management plan	2 3 4
‘Subdivision 1	Right to compensation in particular circumstances	5 6
‘42A	Right to compensation	7
	‘(1) This section applies to a person if—	8
	(a) the person is, other than because of a temporary transfer, the holder of an authority (the <i>eligible authority</i>) that—	9 10
	(i) is a licence or quota; and	11
	(ii) authorises the taking of fish for trade or commerce in a fishery described under a regulation or management plan as a commercial fishery; and	12 13 14
	(b) a regulation or management plan is amended after the commencement of this section (the <i>relevant amendment</i>); and	15 16 17
	(c) because of the relevant amendment, an entitlement to take fisheries resources that the person had under the eligible authority immediately before the relevant amendment is lost or reduced.	18 19 20 21
	‘(2) Subject to sections 42B and 42K, ¹ the person is entitled to be paid compensation by the State for the value of the loss or reduction.	22 23 24
	‘(3) However, the compensation is only payable if, under subdivision 2, a claim for the compensation has been made and the chief executive has decided to grant the claim.	25 26 27

1 Section 42K (Restriction on payment if someone other than the claimant has a registered interest in the eligible authority)

‘42B	Limits to compensation payable	1
‘(1)	The entitlement under section 42A arises only if the cause, or one of the causes, of the loss or reduction was—	2 3
	(a) a reallocation, under the relevant amendment, of the entitlement to take fisheries resources to persons who do not hold an authority to which section 42A applies; or	4 5 6
	(b) a restriction or prohibition, under the relevant amendment, of the exercise of the entitlement in an area, if the purpose of the restriction or prohibition was to protect a thing that is not fish.	7 8 9 10
‘(2)	Compensation is not payable for the loss or reduction if—	11
	(a) compensation under section 42A has already been paid for the loss or reduction to a previous or another holder of the eligible authority; or	12 13 14
	(b) compensation is payable for a similar loss or reduction of an entitlement under another Act or law of the State, another State or the Commonwealth.	15 16 17
‘42C	No general right to compensation because of amendment	18 19
‘(1)	To remove any doubt, it is declared that, other than as provided for under section 42A, no one has an entitlement under or in relation to this Act to claim or to be paid an amount from the State for or in connection with—	20 21 22 23
	(a) the making, amendment or repeal of a regulation or management plan; or	24 25
	(b) something previously permitted under a regulation or management plan becoming prohibited or regulated because of an amendment to the regulation or plan.	26 27 28
‘(2)	Subsection (1) applies whether the amount is claimed as compensation, reimbursement or otherwise.	29 30

‘Subdivision 2	Claiming and payment of compensation	1 2
‘42D	Application of sdiv 2	3
	‘This subdivision applies for a claim for compensation under section 42A.	4 5
‘42E	Time limit on making claim	6
	‘The claim must be made within 6 months after the day the relevant amendment commences.	7 8
‘42F	Requirements for making claim	9
	‘The claim must—	10
	(a) be made in writing to the chief executive; and	11
	(b) be signed by all holders of the eligible authority; and	12
	(c) state each of the following—	13
	(i) the entitlement to take fisheries resources the subject of the claim;	14 15
	(ii) the ground under section 42B(1) on which the claim is made;	16 17
	(iii) the amount of the compensation claimed;	18
	(iv) how the claimant has worked out the amount.	19
‘42G	Chief executive may require further information	20
	‘(1) The chief executive may, by written notice to the claimant, require the claimant to give the chief executive within a stated reasonable period—	21 22 23
	(a) additional information about, or a document relevant to, the claim; or	24 25
	(b) a statutory declaration verifying any information included in the claim or any additional information required under paragraph (a).	26 27 28

-
- ‘(2) The notice may be given at any time before the claim is decided. 1
2
- ‘(3) If the claimant does not comply with the requirement within the following period the claimant is taken to have withdrawn the claim— 3
4
5
- (a) generally—the period stated in the notice; 6
- (b) if, within the period stated in the notice, the chief executive agrees in writing to a longer period to comply with the requirement—the longer period. 7
8
9
- ‘42H Deciding claim 10**
- ‘(1) Subject to sections 42I and 42J, the chief executive must, within a reasonable period after the making of the claim, decide— 11
12
13
- (a) whether to grant or refuse the claim; and 14
- (b) if the chief executive decides to grant the claim—the amount of the compensation payable. 15
16
- ‘(2) If the chief executive decides to refuse the claim or decides an amount of compensation that is less than the amount claimed or agreed to by the claimant, the chief executive must give the claimant a written notice informing the claimant— 17
18
19
20
- (a) of the decision and the reasons for it; and 21
- (b) that the claimant may appeal against the decision to the tribunal within 28 days. 22
23
- ‘(3) In deciding what is a reasonable period for subsection (1), regard must be had to— 24
25
- (a) whether the chief executive may need to give a notice under section 42G or obtain, under section 42I, other information or evidence; and 26
27
28
- (b) the period that may be needed to consider the information or document the subject of the notice or the information or evidence that may need to be obtained. 29
30
31

‘42I	Chief executive may obtain other information	1
‘(1)	Before making the decision, the chief executive may obtain	2
	from a person other than the claimant any further information	3
	or evidence that the chief executive considers will help the	4
	making of the decision.	5
‘(2)	If the chief executive obtains further information or evidence	6
	under subsection (1) and the chief executive proposes to act	7
	on the information or evidence adversely to the claimant—	8
(a)	the chief executive must give the claimant a written	9
	notice stating—	10
(i)	what the further information or evidence is; and	11
(ii)	that the claimant may respond in writing to the	12
	further information or evidence within a stated	13
	reasonable period after the giving of the notice;	14
	and	15
(b)	the chief executive must not make the decision unless	16
	the claimant has given the response or the following	17
	period has ended—	18
(i)	generally—the period stated in the notice;	19
(ii)	if, within the period stated in the notice, the chief	20
	executive agrees in writing to a longer period for	21
	the giving of the response—the longer period.	22
‘42J	Amount of compensation that may be decided	23
‘(1)	The amount of the compensation decided may only be for—	24
(a)	either—	25
(i)	if the eligible authority continued in force after the	26
	commencement—the difference between its	27
	market value immediately before the	28
	commencement and its market value immediately	29
	after the commencement; or	30
(ii)	if, under the relevant amendment, the eligible	31
	authority ended—its market value immediately	32
	before the commencement; and	33

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- (b) the loss, for no more than 3 years from the commencement, of probable taxable income from fishing lost or reduced because of the lost or reduced entitlement to take fisheries resources the subject of the claim. 1
2
3
4
5
- ‘(2) In working out the market value immediately before the commencement, any reduction in the value of the eligible authority caused by the making, or the prospect of the making, of the relevant amendment must be disregarded. 6
7
8
9
- ‘(3) In working out the lost or reduced fishing income, regard may be had only to income from fishing under the eligible authority as stated in taxation returns lodged by the claimant and relevant notices of assessment accompanying the claim or given to the chief executive by or for the claimant. 10
11
12
13
14
- ‘(4) If the chief executive considers— 15
- (a) a ground on which the claim is made was not the sole cause of the loss or reduction claimed; and 16
17
- (b) the other cause or causes of the loss or reduction were not causes for which compensation may be claimed under subdivision 1; 18
19
20
- the chief executive may reduce the amount worked out under subsection (1) to reflect the other cause or causes. 21
22
- ‘(5) In this section— 23
- commencement* means when the relevant amendment commenced. 24
25
- taxable income* means taxable income under the *Income Tax Assessment Act 1997* (Cwlth). 26
27
- ‘42K **Restriction on payment if someone other than the claimant has a registered interest in the eligible authority** 28
29
30
- ‘If— 31
- (a) the claim and an amount of compensation has been decided under this subdivision; and 32
33
- (b) someone other than the claimant has a registered interest in the eligible authority; 34
35

the chief executive must not pay the claimant the amount
 unless the other person has agreed in writing to the making of
 the payment.’ 1
 2
 3

Clause 17	Replacement of pt 5, div 2, hdg (Fisheries declarations)	4
	Part 5, division 2, heading—	5
	<i>omit, insert—</i>	6
	‘Division 2 Fisheries declarations by chief executive’.	7 8
Clause 18	Replacement of s 43 (Declaration of closed season, closed waters etc.)	9 10
	Section 43—	11
	<i>omit, insert—</i>	12
‘43	Chief executive may make fisheries declarations	13
	‘(1) Subject to section 45, the chief executive may make a fisheries declaration in an instrument other than a management plan.	14 15
	‘(2) Subsection (1) does not limit section 37. ²	16
	<i>Note—</i>	17
	Section 37 provides for the types of fisheries declarations and what they may regulate.’.	18 19
Clause 19	Amendment of s 45 (Fisheries declaration is subordinate legislation)	20 21
	Section 45(1), from ‘declaration under’ to ‘ <i>declaration</i>)’—	22
	<i>omit, insert—</i>	23
	‘fisheries declaration under this division or a quota declaration’.	24 25

2 Section 37 (Management plan may make declaration regulating particular matters)

Clause 20	Amendment of s 45A (Declaration to protect things that are not fish)	1 2
	(1) Section 45A, heading, ‘Declaration’—	3
	<i>omit, insert</i> —	4
	‘Fisheries declaration’.	5
	(2) Section 45, ‘A declaration’—	6
	<i>omit, insert</i> —	7
	‘A fisheries declaration’.	8
 Clause 21	 Amendment of s 46 (Emergency fisheries declarations)	 9
	(1) Section 46(1)—	10
	<i>omit, insert</i> —	11
	‘(1) A fisheries declaration under this division may be made because of an emergency (an <i>emergency fisheries declaration</i>).’.	12 13 14
	(2) Section 46(4)—	15
	<i>omit.</i>	16
	(3) Section 46(5) to (9)—	17
	<i>renumber</i> as section 46(4) to (8).	18
 Clause 22	 Amendment of s 48 (Regulation may make provision about fisheries declaration matters etc.)	 19 20
	(1) Section 48, words before subsection (3)—	21
	<i>omit, insert</i> —	22
	‘48 Relationship between fisheries declaration under div 2 and other subordinate legislation’.	23 24
	(2) Section 48(3), after ‘fisheries declaration’—	25
	<i>insert</i> —	26
	‘under this division’.	27
	(3) Section 48(4), after ‘or fisheries declaration’—	28
	<i>insert</i> —	29

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‘under this division’. 1

(4) Section 48(3) and (4)— 2

renumber as section 48(1) and (2). 3

Clause 23 Amendment of s 53 (Form, content and term of authorities) 4
5

Section 53(c)— 6

omit, insert— 7

‘(c) is issued— 8

(i) for the term stated in it; or 9

(ii) if no term is stated in the authority—until it is 10
cancelled or surrendered or it otherwise expires 11
under this Act.’. 12

Clause 24 Replacement of s 65A (Application to register transfer of authority) 13
14

Section 65A— 15

omit, insert— 16

‘65A Application to register transfer of authority 17

‘(1) An application to register the transfer of an authority must— 18

(a) be made to the chief executive in the approved form; and 19

(b) be made by— 20

(a) if the transfer is a temporary quota transfer—the 21
transferor under the transfer; or 22

(b) otherwise—each holders of the authority 23
immediately before the transfer. 24

‘(2) Without limiting what the approved form may require, it must 25
include— 26

(a) a sufficient description of the authority; and 27

(b) a written declaration by the applicant that— 28

(i) the information in or accompanying the application 29
provided by the applicant is true; and 30

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- (ii) the applicant has complied with the requirements under this Act that relate to the authority; and 1
2
- (iii) each transferee under the transfer has complied with the requirements under this Act that relate to the authority. 3
4
5
- ‘(3) Unless the transfer is a temporary quota transfer, the application must be accompanied by— 6
7
- (a) the written approval of each person, other than the holder, who has a registered interest in the authority; and 8
9
- (b) if a fee payable under this Act for, or relating to, the authority has not been paid—the chief executive’s written approval to the registration of the transfer. 10
11
12
- ‘(4) Also, the application must be accompanied by the fee prescribed under a regulation, unless— 13
14
- (a) the application is made by the internet system mentioned in section 65BA; or 15
16
- (b) the fee is waived under section 65E.’. 17

Clause 25 Insertion of new s 65BA 18

After section 65B— 19

insert— 20

‘65BA Internet system for transfer registration applications 21

- ‘(1) The chief executive may establish an internet system under which— 22
23
- (a) applications may be made to register authority transfers; and 24
25
- (b) the following are made or done automatically on the internet— 26
27
- (a) the decision about whether an application to register a transfer, or a transfer of a particular type, is a properly made application for section 65A; 28
29
30
- (b) registration of the transfer. 31
- ‘(2) However, the use of the system may allow the decision to be made only if the information that the system requires to be 32
33

given in making the application shows the application is, on
its face, a properly made application for section 65A. 1
2

‘(3) For section 196,³ a decision made under the system is taken to
be a decision of the chief executive under section 65B.’. 3
4

Clause 26 Amendment of s 65C (Temporary transfers) 5

Section 65C(2)(d)— 6

omit. 7

Clause 27 Amendment of s 65D (Effect of temporary transfer) 8

Section 65D(6)— 9

omit, insert— 10

‘(6) Each of the following is an interested party under subsection
(1)— 11
12

(a) the transferor under the temporary transfer; 13

(b) the transferee under the temporary transfer; 14

(c) unless the transfer is a temporary quota
transfer—anyone else who has a registered interest in
the authority the subject of the temporary transfer.’. 15
16
17

Clause 28 Insertion of new s 68AB 18

After section 68A— 19

insert— 20

**‘68AB Suspension or cancellation for non-payment of fee
other than because of dishonoured cheque** 21
22

‘(1) This section applies if— 23

(a) a fee payable under this Act for or relating to an
authority is not paid; and 24
25

(b) the authority is not suspended under section 68A; and 26

3 Section 196 (Appeals to tribunal)

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- (c) the fee is not for an application to which section 68A(1)(c) applies. 1
2
- ‘(2) The chief executive may give the holder of the authority a notice warning the holder that, under this section— 3
4
- (a) the authority will be suspended unless the fee is paid or a repayment agreement for the fee is made within 30 days after the giving of the notice; and 5
6
7
- (b) if the authority is a commercial fisher licence—it will be cancelled unless the fee is paid or a repayment agreement for the fee is made within 90 days after the giving of the notice. 8
9
10
11
- ‘(3) If the fee is not paid or a repayment agreement for the fee is not made within 30 days after the giving of the notice the authority is suspended. 12
13
14
- ‘(4) The suspension ends if the fee is paid within 90 days after the giving of the notice. 15
16
- ‘(5) If— 17
- (a) the authority is a commercial fisher licence; and 18
- (b) the fee is not paid or a repayment agreement for the fee is not made within 90 days after the giving of the notice; 19
20
- the authority is cancelled. 21
- ‘(6) Otherwise, the suspension continues until and unless the fee is paid or a repayment agreement for the fee is made. 22
23
- ‘(7) In this section— 24
- commercial fisher licence* means an authority that, under a regulation, is described as a commercial fisher licence. 25
26
- repayment agreement*, for a fee, means a written agreement between the holder of the authority and the chief executive for the payment of the fee.’. 27
28
29

Clause 29 Amendment of s 69A (Effect of suspension on issue or transfer of another authority) 30
31

- (1) Section 69A(a), from ‘to issue’ to ‘another authority that’— 32
omit, insert— 33

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‘to issue another authority, or register a transfer of another authority, to the holder of the suspended authority, if the other authority’.

- (2) Section 69A(b), from ‘to transfer’ to ‘authority, to’—
omit, insert—
‘to register a transfer of the authority to’.
- (3) Section 69A—
insert—
- ‘(2) However, subsection (1)(b) does not apply if—
- (a) the suspension is under section 68AB; and
- (b) the chief executive has, under section 65A(3)(b), given written approval to the registration of the transfer.
- ‘(3) To remove any doubt, it is declared that subsection (2) does not affect the suspension under section 68AB.⁴’.

Clause 30 Insertion of new s 69B

After section 69A—
insert—

‘69B Further fees continue to be payable for suspended authority

- ‘(1) This section applies if an authority is suspended.
- ‘(2) To remove any doubt, it is declared that the suspension has no effect on a liability under this Act to pay the full amount of a further fee for or relating to the suspended authority.
- ‘(3) Subsection (2) continues to apply for the amount even if the suspended authority is later cancelled.’.

Clause 31 Replacement of s 77 (Closed season and closed waters offences)

Section 77—

4 Sections 65A (Application to register transfer of authority) and 68AB (Suspension or cancellation for non-payment of fee other than because of dishonoured cheque)

	<i>omit, insert—</i>	1
‘77	Contravention of particular fisheries declarations	2
	‘(1) A person to whom a regulated fishing apparatus declaration or regulated fishing method declaration applies must comply with the declaration.	3 4 5
	Maximum penalty—300 penalty units.	6
	‘(2) A person to whom a regulated waters declaration applies must comply with the declaration.	7 8
	Maximum penalty—1000 penalty units.	9
‘77A	Exemptions for contravention of regulated fishing apparatus declaration	10 11
	‘(1) Section 77(1) does not apply to the sale, purchase, use or possession of commercial fishing apparatus regulated under a regulated fishing apparatus declaration if the apparatus is used or to be used—	12 13 14 15
	(a) in sporting activities, other than fishing; or	16
	<i>Examples—</i>	17
	indoor cricket and school sports, other than fishing	18
	(b) to protect trees or collect fruit from trees; or	19
	(c) for display or decorative purposes; or	20
	<i>Examples—</i>	21
	for use in shopfitting or as part of a restaurant’s decor	22
	(d) for other purposes prescribed under a regulation or management plan.	23 24
	‘(2) Section 77(1) does not apply to the possession of fishing apparatus regulated under a regulated fishing apparatus declaration if the apparatus is stowed and secured on a boat lawfully passing through waters.	25 26 27 28
	‘(3) Section 77(1) does not apply to the possession of commercial fishing apparatus regulated under a regulated fishing apparatus declaration if the person possessing the apparatus—	29 30 31
	(a) is a genuine maker, dealer in or repairer of fishing apparatus; or	32 33

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- (b) is a person acting for a person mentioned in paragraph (a); or 1
2
- (c) is transporting the fishing apparatus to or from the place where it is made, used, dealt in, repaired or stored for a person who has an authority to use or possess the apparatus.’. 3
4
5
6

Clause 32	Amendment of s 78 (Prohibited acts about regulated fish)	7
	Section 78(1), ‘possess or’—	8
	<i>omit, insert</i> —	9
	‘possess, use or’.	10
Clause 33	Insertion of new s 79A	11
	After section 79—	12
	<i>insert</i> —	13
‘79A	Contravening a condition of an authority	14
	‘A person to whom a condition of an authority applies must comply with the condition.	15 16
	Maximum penalty—100 penalty units.’.	17
Clause 34	Omission of s 80 (Fish not to be taken in prohibited way)	18
	Section 80—	19
	<i>omit.</i>	20
Clause 35	Amendment of s 81 (Use of explosives etc. prohibited)	21
(1)	Section 81(1)(d)—	22
	<i>omit, insert</i> —	23
	‘(d) possess fish taken by a thing mentioned in paragraph (b); or	24 25
	(e) possess fish taken by a device mentioned in paragraph (c).’.	26 27
(2)	Section 81(2)—	28

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renumber as section 81(3). 1

(3) Section 81— 2

insert— 3

‘(2) Subsection (1)(a), (b) and (d) does not apply to an activity 4
carried out by a person if the person— 5

(a) is acting under a contract made by the chief executive 6
for the establishment or management of the shark 7
control program; and 8

(b) is authorised under an authority to carry out the 9
activity.’. 10

Clause 36 Omission of ss 84 to 86A 11

Sections 84 to 86A— 12

omit. 13

**Clause 37 Amendment of s 94 (Chief executive may declare 14
diseases)** 15

Section 94(1), definition *disease*— 16

insert— 17

‘(c) a species of a fish or plant that may compete against 18
fisheries resources or other fisheries resources to the 19
detriment of the fisheries resources or other fisheries 20
resources.’. 21

Clause 38 Replacement of s 118 (Statistical returns to be kept) 22

Section 118— 23

omit, insert— 24

‘118 Information requirements 25

‘(1) A regulation or management plan, a condition of an authority, 26
or the chief executive by written notice, may require (an 27
information requirement) a person to— 28

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-
- (a) obtain and keep for stated periods, in the approved form, stated documents or information (the ***required information***) about—
- (i) fishing, a fishery or fisheries resources; or
- (ii) trade or commerce related to fishing, a fishery or fisheries resources; or
- (b) give the chief executive or another stated person documents or information mentioned in paragraph (a) (also the ***required information***), in writing or in another stated way, or at stated intervals or times.
- Example of another stated person—*
- if the person of whom the requirement is made is a buyer of fisheries resources, the person who sold them to the buyer
- Examples of another stated way—*
- by a telephonic automated interactive voice response system
 - by VMS equipment
 - by recording the required information on the department's website on the internet
- ‘(2) However, 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.
- ‘(3) To remove any doubt, it is declared that, subject to subsection (2), subsection (1) is capable of applying to a person whether or not the person performs activities by way of fishing or other activities.
- ‘(4) A person to whom an information requirement applies, or of whom an information requirement has been made, must comply with the requirement unless, in the circumstances, the person could not reasonably have been expected to have, or to be able to obtain, the required information.
- Maximum penalty for subsection (4)—
- (a) 1000 penalty units if—
- (i) the required information is a docket or other document about the buying or selling of fisheries resources in trade or commerce; or

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	(ii) the person carries on a business that includes the processing of abalone and the required information relates to the business or the processing; or	1 2 3
	(b) otherwise—500 penalty units.’	4
Clause 39	Insertion of new s 132A	5
	After section 132—	6
	<i>insert—</i>	7
	‘132A Variation of Commonwealth–State arrangements	8
	‘A Commonwealth–State arrangement may be varied in the way provided for under the Commonwealth Fisheries Act.’	9 10
Clause 40	Amendment of s 160 (Seized fisheries resources become property of State)	11 12
	(1) Section 160, heading, ‘Seized’—	13
	<i>omit, insert—</i>	14
	‘When seized’.	15
	(2) Section 160(2) to (5)—	16
	<i>renumber</i> as section 160(3) to (6).	17
	(3) Section 160—	18
	<i>insert—</i>	19
	‘(2) However, this section stops applying if the fisheries resources are sold under section 160A.’	20 21
	(4) Section 160(6), as renumbered, after ‘However, if’—	22
	<i>insert—</i>	23
	‘the fisheries resources are not fish that were live when they were seized and’.	24 25
Clause 41	Insertion of new s 160A	26
	After section 160—	27
	<i>insert—</i>	28

'160A Chief executive's power to sell particular live seized fish	1
	2
'(1) This section applies if—	3
(a) seized fisheries resources mentioned in section 160(1) were live fish when they were seized; and	4
	5
(b) the fish have not, under section 160, become the property of the State.	6
	7
'(2) The chief executive may sell the fish at any time after the seizure as if the fish were the property of the State.	8
	9
'(3) However, the sale must be carried out in a reasonable way decided by the chief executive or in a way agreed with the owner of the fish.	10
	11
	12
'(4) Also, until the end of the period under 163(2), the chief executive must hold the net proceeds of the sale on trust for whoever will, under that section, be entitled to the net proceeds.'	13
	14
	15
	16
Clause 42 Amendment of s 163 (Obligation to pay net proceeds of sale of fisheries resources)	17
	18
Section 163(1)(b)—	19
<i>omit, insert—</i>	20
'(b) the fisheries resources—	21
(i) are sold after becoming property of the State; or	22
(ii) are fish that have been sold under section 160A.'	23
Clause 43 Amendment of s 196 (Appeals to tribunal)	24
	25
Section 196(2)(a)—	25
<i>insert—</i>	26
'(a) a decision of the chief executive about policy, including, for example, a decision of the chief executive about the shark control program;'	27
	28
	29

Clause 44	Omission of s 238 (Amendment of management plan)	1
	Section 238—	2
	<i>omit.</i>	3
Clause 45	Insertion of new pt 12, div 5	4
	After section 253—	5
	<i>insert—</i>	6
‘Division 5	Transitional provisions for Fisheries Amendment Act 2006	7 8
‘254	Existing contracts to provide services relating to sharks	9 10
	‘(1) This section applies to a contract made before the commencement of this section for someone to provide to the State services involving the placement in coastal waters of the State adjacent to a beach of nets or baited drumlines, for the purpose of catching sharks.	11 12 13 14 15
	‘(2) The contract is taken to be, and to have always been, validly made under this Act.	16 17
	‘(3) From the commencement, the contract is taken to have been made for the shark control program.	18 19
‘255	Existing general fisheries permits relating to sharks	20
	‘(1) The general fisheries permits or former general fisheries permits issued under the <i>Fisheries Regulation 1995</i> with the following numbers are taken to be, and to have always been, validly issued under this Act—	21 22 23 24
	• PRM37037A	25
	• PRM37441E	26
	• PRM37965D	27
	• PRM37971I	28
	• PRM04051G	29
	• PRM04058D	30

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•	PRM04060F	1
•	PRM04063K	2
•	PRM04092D	3
•	PRM04097E	4
•	PRM04172F	5
•	PRM04173D	6
•	PRM04949B	7
•	PRM05108J.	8
‘(2)	If, under section 63(4) and (5), the chief executive amends any of the permits to authorise the holder to authorise someone else to do any thing that the holder may do under the permit, the amendment is taken to have had effect from—	9 10 11 12
(a)	if the relevant notice under section 63(5) states a day of effect—the day of effect; or	13 14
(b)	if no day of effect is stated in the notice—when the permit was issued.	15 16
‘(3)	This section does not prevent the amendment or repeal of the <i>Fisheries Regulation 1995</i> .	17 18
‘256	Activities carried out under existing contracts relating to sharks	19 20
	‘Section 81(1)(a), (b) and (d) ⁵ does not apply to an activity carried out by a person before the commencement of this section if, when the activity was carried out, the person—	21 22 23
(a)	was acting under a contract mentioned in section 254; and	24 25
(b)	was authorised under a general fisheries permit mentioned in section 255 to carry out the activity.’.	26 27

5 Section 81 (Use of explosives etc. prohibited)

Clause 46	Amendment of schedule (Dictionary)	1
	(1) Schedule, definitions <i>closed season declaration</i> , <i>closed waters declaration</i> , <i>owner</i> , <i>Queensland waters</i> and <i>regulated fish declaration</i> —	2
		3
		4
	<i>omit</i> .	5
	(2) Schedule—	6
	<i>insert</i> —	7
	<i>‘eligible authority</i> , for part 5, division 1A, see section 42A(1)(a).	8
		9
	<i>emergency fisheries declaration</i> see section 46(1).	10
	<i>fisheries declaration</i> see section 37(1).	11
	<i>owner</i> , for a thing that has been seized under this Act means—	12
		13
	(a) if the chief executive is aware of the actual owner of the thing immediately before the seizure—the actual owner;	14
	or	15
		16
	(b) otherwise—a person who would be entitled to possession of the thing had it not been seized.	17
		18
	<i>register</i> , when used as a noun, means the register the chief executive keeps under section 73(1).	19
		20
	<i>registered interest</i> , in an authority, means an interest in the authority that is noted on the register.	21
		22
	<i>regulated fish declaration</i> see section 37(2).	23
	<i>regulated fishing apparatus declaration</i> see section 37(3).	24
	<i>regulated fishing method declaration</i> see section 37(4).	25
	<i>regulated waters declaration</i> see section 37(5).	26
	<i>relevant amendment</i> , for part 5, division 1A, see section 42A(1)(b)	27
		28
	<i>shark control program</i> see section 3A(3).	29
	<i>temporary quota transfer</i> means a temporary transfer of an authority that is a quota.’.	30
		31
	(3) Schedule, definition <i>Commonwealth–State arrangement</i> , after ‘Joint Authority arrangement’—	32
		33

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- insert—* 1
- ‘, and includes, in each case, the arrangement as varied’. 2
- (4) Schedule, definition *waterway barrier works*, after ‘a 3
waterway’— 4
- insert—* 5
- ‘if the barrier limits fish stock access and movement along a 6
waterway’. 7

Schedule	Minor amendments	
		1
		section 3
		2
1	Section 60(a)(ii), 63(3)(b) and 68(4)(b), ‘Fisheries Tribunal’—	3 4
	<i>omit, insert—</i>	5
	‘tribunal’.	6
2	Section 70D(3), ‘the chief executive keeps under section 73(1)’—	7 8
	<i>omit.</i>	9
3	Section 74(1)(d)—	10
	<i>omit, insert—</i>	11
	‘(d) anything else about an authority that is in the register.’.	12
4	Section 76, ‘of authorities kept by the chief executive’—	13
	<i>omit, insert—</i>	14
	‘about an authority’.	15
5	Section 76A(b), ‘item 5’—	16
	<i>omit, insert—</i>	17
	‘item 8’.	18
6	Section 76T(2)(b), ‘item 5’—	19
	<i>omit, insert—</i>	20
	‘item 8’.	21

Schedule (continued)

7	Section 88B(1)(b), ‘item 5’—	1
	<i>omit, insert—</i>	2
	‘item 8’.	3