

Queensland



FISHERIES ACT 1994

**Reprinted as in force on 21 July 2000
(includes amendments up to Act No. 26 of 2000)**

Reprint No. 2C

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This Act is reprinted as at 21 July 2000. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



FISHERIES ACT 1994

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
<i>Division 1—Introduction</i>		
1	Short title	11
2	Commencement	11
<i>Division 2—Objectives</i>		
3	Objectives of Act and their achievement	11
<i>Division 3—Interpretation</i>		
4	Definitions	12
5	Meaning of “fish”	20
7	Meaning of “fishery”	21
8	Meaning of “marine plant”	22
9	Meaning of “quota”	22
<i>Division 4—Operation of Act</i>		
10	Act binds all persons	23
11	General application of Act	23
12	When Act does not apply	25
13	Exemptions from Act	25
14	Aborigines’ and Torres Strait Islanders’ rights to take fisheries resources etc.	25
PART 2—MINISTERIAL ADVISORY BODIES		
15	Minister may establish advisory bodies	26
PART 3—CHIEF EXECUTIVE		
20	Chief executive’s functions	26
20A	Powers	27

21	Chief executive may delegate	28
22	Integrated development approval system regulations and guidelines	28

PART 5—FISHERIES MANAGEMENT

Division 1—Management plans

32	Making management plans	29
33	Procedure to make management plan	29
34	Management plan must be approved by Governor in Council	30
35	What management plan must deal with	30
36	What management plan may deal with	30
37	Management plan may declare closed season, closed waters etc.	31
38	Management plan may prescribe quotas etc.	32
38A	Management plan to protect things that are not fish	32
39	Amendment or repeal of management plan	32
40	Compensation not payable on making, amendment or repeal	32
41	Management plan may provide penalty for contravention	32
42	Regulation may make provision about management plan matters	33

Division 2—Fisheries declarations

43	Declaration of closed season, closed waters etc.	33
44	Declaration of quotas	34
45	Fisheries declaration is subordinate legislation	34
45A	Declaration to protect things that are not fish	34
46	Emergency fisheries declarations	34
47	Compensation not payable on making, amendment or repeal	35
48	Regulation may make provision about fisheries declaration matters etc.	35

Division 3—Authorities

Subdivision 1—General

49	Authorities that may be issued under Act	36
50	Who issues authorities (other than permits)	36
51	Who issues permits	36
52	Things authorised by authorities	37
53	Form, content and term of authorities	37

<i>Subdivision 2—Issue and renewal</i>	
54	Application for authority 37
55	Consideration of application for issue of authority 38
56	Application for renewal of authority (other than permit) 38
57	Permit not renewable 38
58	Consideration of application for renewal of authority (other than permit) 39
59	Refusal to issue or renew 39
60	Notice of refusal of application for issue or renewal etc. 40
<i>Subdivision 3—Conditions</i>	
61	Conditions imposed on issue or renewal 40
62	Conditions imposed under regulations and management plans 41
<i>Subdivision 4—Amendment</i>	
63	Amendment of authority 41
64	Notice to return authority for alteration after amendment 43
<i>Subdivision 5—Transfer</i>	
65	Transfer of authority (other than permit) 43
66	Permits not transferable 44
<i>Subdivision 6—Suspension and cancellation</i>	
67	Suspension or cancellation of authorities 44
68	Procedure for cancellation or suspension 45
69	Effect of suspension on renewal 47
70	Authority to be returned 47
<i>Subdivision 7—Replacement and surrender</i>	
71	Replacement of authorities 47
72	Surrender of authorities 47
<i>Subdivision 8—Registers and certificates</i>	
73	Registers of authorities 48
74	Certificates about authorities 48
<i>Subdivision 9—Offences about authorities and registers</i>	
75	False representations about authorities 49
76	Offences about registers 49

Division 4—Fisheries offences

77	Closed season and closed waters offences	50
78	Prohibited acts about regulated fish	50
79	Quota offences	50
80	Fish not to be taken in prohibited way	50
81	Use of explosives etc. prohibited	50
82	Offence to do prescribed act	51
83	Additional penalty based on value of fish taken in trade or commerce . . .	51
84	Prohibited fishing apparatus	51
85	Sale etc. of commercial fishing apparatus prohibited in certain circumstances	52
86	Dockets for wholesale sale of fisheries resources etc.	53
86A	Records for processing abalone	54
87	Interference etc. with aquaculture activity or fishing apparatus	55
88	Holder of authority to have it available for immediate inspection etc.	55
88A	Possessing fish taken in contravention of other fisheries legislation	56

***Division 5—Noxious and nonindigenous fisheries resources and
aquaculture fish***

89	Noxious fisheries resources not to be possessed, released etc.	56
90	Nonindigenous fisheries resources not to be possessed, released etc.	56
91	Aquaculture fisheries resources not to be released	57
92	Duty of person who takes or possesses noxious or nonindigenous fisheries resources	57
93	Recovery of costs of removing noxious fisheries resources etc.	57

Division 6—Diseased fisheries resources

94	Chief executive may declare diseases	58
95	Chief executive may declare quarantine area	58
96	Emergency disease or quarantine declarations	59
97	Regulation may make provision about disease or quarantine declaration matters etc.	60
98	Offence to contravene quarantine or emergency quarantine declaration . .	61
99	Holder of authority to help in declared quarantine area	61
100	Notice to be given about diseased fisheries resources or habitat	61

101	Chief executive or inspector may take action required by quarantine declaration	61
102	Revocation of quarantine or emergency quarantine declaration	62
103	Compensation	62
104	Offence to communicate disease to live fisheries resources or fish habitat	62
105	Offence to sell diseased fisheries resources and products	62
106	Offence to leave diseased fisheries resources and products in a place	63
107	Offence to bring diseased fisheries resources and products into Queensland	63

Division 7—Orders for destruction

108	Order for taking and removing, or destroying, noxious, nonindigenous or diseased fisheries resources or aquaculture fish	63
109	Order to stop or delay escape of noxious, nonindigenous or diseased fisheries resources or aquaculture fish	64
110	Recovery of costs of complying with order	64

Division 8—Fish ways

111	Purpose of division	65
112	Offence to build waterway barrier works without approval	65
113	Application for approval to build waterway barrier works	65
114	Consideration of application	65
115	Notice of refusal to give approval etc.	66
116	Chief executive may direct building of fish way	66

Division 9—Fisheries Research Fund

117	Fisheries Research Fund	67
-----	-----------------------------------	----

Division 10—General

118	Statistical returns to be kept	68
119	Codes of practice	68

PART 6—PROTECTION AND CONSERVATION OF FISH HABITATS

120	Declaration of fish habitat areas	69
121	Management of declared fish habitat areas	69
122	Protection of fisheries resources in declared fish habitat area	69
123	Protection of marine plants	69

124	Chief executive may rehabilitate or restore land etc.	70
125	Notice to restore fish habitat etc.	70

PART 7—COMMONWEALTH—STATE MANAGEMENT OF FISHERIES

126	Functions and powers of Minister	72
127	Minister to table reports of Joint Authorities	72
128	Judicial notice	72
129	Functions of Joint Authorities	73
130	Delegation	73
131	Proceedings of Joint Authorities	73
132	Making of Joint Authority and other Commonwealth-State arrangements	73
133	Ending of Commonwealth-State arrangements	74
134	Application of Queensland law to fisheries	74
135	Additional functions of Joint Authority for fishery under Queensland law	74
136	Exercise of powers for Joint Authority fishery under Queensland law	75
137	Application of provisions about offences	75
138	Presumption about certain statements in arrangements	76
139	Instruments for Commonwealth-State fisheries under Queensland law	76

PART 8—ENFORCEMENT

Division 1—Inspectors

140	Appointment	77
141	Limitation of inspector's powers	78
142	Inspector's conditions of appointment	78
143	Inspector's identity card	78
144	Production or display of inspector's identity card	79

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

145	Entry to places	79
146	Boarding of boats and entry of vehicles	80
147	Boarding of boat, or entry of vehicle, that is moving or about to move	81
148	Warrants	82
148A	Monitoring warrants for abalone	82

149	Warrants—applications made other than in person	84
150	Inspector’s general powers for places, boats and vehicles	85
151	Power to seize evidence from places etc.	87
152	Power to seize evidence after boarding a boat or entering a vehicle	88
153	Additional power to seize fisheries resources etc.	88
154	Seizure of fisheries resources in heap etc.	89
155	Power to seize explosives etc.	90
156	Powers in support of seizure	90

Division 3—Procedures after seizure

Subdivision 1—General

157	Receipt to be given	91
158	Inspector to allow inspection etc.	92
159	Inspector may dispose of fisheries resources taken unlawfully	92
160	Seized fisheries resources become property of State	92
161	Chief executive may return seized things etc.	93
162	Obligation to return seized things (other than fisheries resources)	94
163	Obligation to pay net proceeds of sale of fisheries resources	94
164	Chief executive may order forfeiture of unclaimed things	95

Subdivision 2—Appeal against seizure of fisheries resources

165	Where and how to start appeal	95
166	Hearing procedures	96
167	Powers of Magistrates Court on appeal	96
168	Court may give directions about disposal of seized fisheries resources	97
169	Appeal to District Court on questions of law only	97

Division 4—Other enforcement powers of inspectors

170	Power to stop persons	97
171	Power to require name and address	97
172	Power to require information from certain persons	98
173	Power to require production of documents	99

Division 5—Other enforcement matters

174	Restraining orders against persistent offenders	99
175	False or misleading information	100

176	False, misleading or incomplete documents	100
177	Forfeiture on conviction	101
178	Dealing with forfeited things	101
179	Compensation	102
180	Inspector to give notice of damage	102
181	Consent to entry	103
182	Obstruction etc. of inspector	104
183	Impersonation of inspector	104

Division 6—Evidence

184	Evidentiary provisions	104
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PART 9—ADMINISTRATIVE APPEALS

Division 1—Fisheries Tribunal

185	Establishment	106
186	Composition	106
187	Acting members	107
188	Fees and allowances	107

Division 2—Proceedings of tribunal

190	Places of sitting	107
191	Decisions of tribunal	107
192	Evidence and procedure	108
193	Costs	108
194	Powers in relation to witnesses etc.	109
195	Questions of law etc. to be decided by chairperson	110

Division 3—Jurisdiction of tribunal

196	Appeals to tribunal	110
197	How to start an appeal	111
198	Stay of operation of decisions etc.	111
199	Powers of tribunal on appeal	111

PART 11—MISCELLANEOUS

215	Attempts to commit offences	112
216	Responsibility for acts or omissions of representatives	112
217	Protection from liability	113

218	Identification of boundaries	113
219	Holder of authority responsible for ensuring Act complied with	114
220	Start of offence proceedings	114
221	Inspector not to have interest in authority	115
223	Regulation making power	115

PART 12—TRANSITIONAL PROVISIONS

Division 1—Transitional references

224	Application of division	115
225	Fisheries Act 1976 references	115
226	Fishing Industry Organisation and Marketing Act 1982 references	116

Division 2—Savings and transitional provisions for Primary Industries and Natural Resources Legislation Amendment Act 2000

227	Definitions for div 2	116
228	Dissolution of Authority	116
229	Vesting of assets, rights and liabilities	116
230	Decisions, documents etc. of Authority	117
231	Legal proceedings	117
232	References to Authority	117
233	Duty to register transfer of property	117
234	Employees of the Authority	117
235	Contract employees	118
236	Accrued entitlements	119
237	Industrial instruments	119
238	Amendment of management plan	119

ENDNOTES

1	Index to endnotes	120
2	Date to which amendments incorporated	120
3	Key	120
4	Table of earlier reprints	121
5	List of legislation	121
6	List of annotations	122

FISHERIES ACT 1994

[as amended by all amendments that commenced on or before 21 July 2000]

An Act for the management, use, development and protection of fisheries resources and fish habitats and the management of aquaculture activities, and for related purposes

PART 1—PRELIMINARY

Division 1—Introduction

Short title

1. This Act may be cited as the *Fisheries Act 1994*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Division 2—Objectives

Objectives of Act and their achievement

- 3.(1) The objectives of this Act include—
 - (a) ensuring fisheries resources are used in an ecologically sustainable way; and
 - (b) achieving the optimum community, economic and other benefits obtainable from fisheries resources; and
 - (c) ensuring access to fisheries resources is fair.

- (2) The objectives are to be achieved mainly by—
- (a) giving the chief executive appropriate powers to perform the chief executive's functions under this Act; and
 - (c) providing for the management and protection of fish habitats; and
 - (d) providing for the management of commercial, recreational and indigenous fishing; and
 - (e) providing for the prevention, control and eradication of disease in fish; and
 - (f) providing for the management of aquaculture.

Division 3—Interpretation

Definitions

4. In this Act—

“abalone” means a mollusc of the genus *Haliotis*.

“aquaculture” means the cultivation of live fisheries resources for sale other than in circumstances prescribed under a regulation.

“aquaculture fisheries resources” means live fish and marine plants cultivated in aquaculture.

“aquaculture furniture” means a cage, rack, tank, tray or anything else used, or capable of being used, in aquaculture or to assist in aquaculture.

“area” means an area of land, waters or both land and waters, and includes a place.

“arrangement” includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).

“Australian boat” has the meaning given by the Commonwealth Fisheries Act.

“authority” means a licence, permit, quota or other authority in force under this Act.

Fisheries Act 1994

“**boat**” includes a ship or other vessel of any size or type and however propelled or moved, including, for example, a hovercraft and a submersible vessel.

“**body**” of water includes a dam and waterway.

“**buy**” includes—

- (a) buy by wholesale, retail or auction; and
- (b) accept, acquire or receive in trade or commerce or under an arrangement; and
- (c) agree, attempt or offer to buy; and
- (d) cause or permit to be bought.

“**closed season declaration**” means a declaration in force under this Act declaring a period to be a closed season.¹

“**closed waters declaration**” means a declaration in force under this Act declaring waters to be closed waters.²

“**coastal waters**” of the State has the meaning given by Commonwealth Fisheries Act.

“**Commonwealth Fisheries Act**” means the *Fisheries Management Act 1991* (Cwlth).

“**Commonwealth Minister**” has the meaning given by part 5 of the Commonwealth Fisheries Act.

“**Commonwealth-State arrangement**” means an arrangement made by the State with the Commonwealth under this Act,³ and includes a Joint

¹ Declarations may be made under the following provisions—

- section 37(1)(a)—management plans
- sections 42(1) and 48(1)—regulations
- section 43(1)(a)—fisheries declarations
- section 46(1)—emergency fisheries declarations.

² Declarations may be made under the following provisions—

- section 37(1)(b)—management plans
- sections 42(1) and 48(1)—regulations
- section 43(1)(b)—fisheries declarations
- section 46(1)—emergency fisheries declarations.

³ Part 7 deals with Commonwealth–State fisheries management arrangements.

Authority arrangement.

“Commonwealth-State fishery” means a fishery for which there is in force a Commonwealth-State arrangement, and includes a Joint Authority fishery.

“condition” includes restriction.

“container” includes a basket, case and tray.

“conviction” includes a finding of guilt, and the acceptance of a plea of guilty, by a court.

“coral limestone” means a calcareous deposit derived from coral, but does not include shell grit or star sand.

“declaration” means a declaration in force under this Act.

“declared disease” means anything that is declared under this Act to be a declared disease.⁴

“declared fish habitat area” means an area that is declared under this Act to be a fish habitat area.⁵

“declared quarantine area” means an area that is declared under this Act to be a quarantine area.⁶

“entity” includes an entity established under the law of the Commonwealth or another State.

“fee” includes a charge or tax.

“fish” see section 5.

“fisheries legislation” includes—

- (a) this Act or a former Act; and

⁴ Declarations may be made under the following provisions—

- section 94(2)—disease declarations
- section 96(1)—emergency disease declarations
- section 97(1)—regulations.

⁵ Section 120 deals with declaration of fish habitat areas.

⁶ Declarations may be made under the following provisions—

- section 95(1)—quarantine area declarations
- section 96(1)—emergency quarantine area declarations
- section 97(1)—regulations.

Fisheries Act 1994

- (b) the Commonwealth Fisheries Act or the *Fisheries Act 1952* (Cwlth); and
- (c) the *Marine Parks Act 1982* and the *Great Barrier Reef Marine Park Act 1975* (Cwlth); and
- (d) another law of the State, the Commonwealth or another State—
 - (i) about fishing, fisheries resources or fish habitats; or
 - (ii) prescribed under a regulation.

“fisheries offence” means an offence against fisheries legislation, and includes a serious fisheries offence.

“fisheries resources” includes fish and marine plants.

“fishery” see section 7.

“fish habitat” includes land, waters and plants associated with the life cycle of fish, and includes land and waters not presently occupied by fisheries resources.

“fishing” includes—

- (a) searching for, or taking, fish; and
- (b) attempting to search for, or take, fish; and
- (c) engaging in other activities that can reasonably be expected to result in the locating, or taking, of fish; and
- (d) landing fish (from a boat or in another way), bringing fish ashore or transshipping fish.

“fishing apparatus” means anything used, or capable of being used, to take fish, or assist in the taking of fish, and includes, for example—

- (a) a hook, line or rod used, or capable of being used, to take fish; and
- (b) a crab pot, crayfish pot, net, pitch fork, spear gun or trap used, or capable of being used, to take fish.

“fish way” means a fish ladder or another structure or device by which fish can pass through, by or over waterway barrier works.

“foreign boat” has the meaning given by the Commonwealth Fisheries Act.

Fisheries Act 1994

“foreshore” means parts of the banks, bed, reefs, shoals, shore and other land between high water and low water.

“former Act” means the *Fisheries Act 1976* or *Fishing Industry Organisation and Marketing Act 1982*.

“high water” means the mean height of the highest high water at spring tide.

“holder” of an authority means the person to whom it is issued or transferred.

“inspector” means a person who is appointed under this Act as an inspector.

“issue” an authority (other than a permit) includes renew the authority.

“Joint Authority” means a Joint Authority established under the Commonwealth Fisheries Act of which the Minister is a member.

“Joint Authority arrangement” means an arrangement made by the State with the Commonwealth under this Act,⁷ whether or not it is also made with another State.

“Joint Authority fishery” means a fishery for which there is in force a Joint Authority arrangement under which the fishery is to be under the management of a Joint Authority.

“keep” includes possess.

“land” includes foreshores and tidal and nontidal land.

“leave” includes put.

“low water” means the mean height of the lowest low water at spring tide.

“management plan” means a management plan in force under this Act.⁸

“marine plant” see section 8.

“net” means netting material used, or capable of being used, to take fish, and includes tackle and equipment used, or capable of being used, with

⁷ Part 7 deals with Commonwealth-State fisheries management arrangements.

⁸ Management plans may be made under the following provisions—

- section 32—making of management plans by fisheries agencies
- section 42(1)—making of management plans by regulation.

a net.

“net proceeds of sale” of fisheries resources seized under this Act means the amount left from the proceeds of the sale of the fisheries resources after payment of—

- (a) expenses incurred in—
 - (i) seizing the fisheries resources; and
 - (ii) transporting the fisheries resources from the place of seizure to the place of sale; and
 - (iii) performing any necessary treatment of the fisheries resources; and
 - (iv) storing the fisheries resources until delivery for sale; and
 - (v) selling the fisheries resources; and
- (b) any other expenses prescribed under a regulation.

“netting material” includes material of any type formed into mesh.

“nonindigenous fisheries resources” means fisheries resources—

- (a) if used in relation to an area—
 - (i) not spawned, born or grown in the area; and
 - (ii) not belonging to a species of fisheries resources native to the area; or
- (b) if used without reference to an area—
 - (i) not spawned, born or grown in Queensland; and
 - (ii) not belonging to a species of fisheries resources native to Queensland.

“nontidal land” includes land permanently or periodically submerged by waters not subject to tidal influence.

“noxious fisheries resources” means fisheries resources prescribed under a regulation or management plan to be noxious fisheries resources.

“noxious substance” means anything that—

- (a) is harmful, or produces conditions that are harmful, to fisheries resources or fish habitats; or

Fisheries Act 1994

(b) is prescribed under a regulation or management plan to be a noxious substance.

“occupier” of a place includes a person who reasonably appears to be the occupier, or in charge, of the place.

“owner” of a seized thing includes the person from whom the thing was seized unless the chief executive is aware of its actual owner.

“permit” means a permit in force under this Act.

“person in control” includes—

- (a) for a boat—the person who has, or reasonably appears to have, command or charge of the boat; and
- (b) for a vehicle—the vehicle’s driver or the person who reasonably appears to be the vehicle’s driver.

“place” includes premises and a place on or in waters or on land, but does not include a vehicle or boat.

“possess” a thing includes—

- (a) have custody or control of the thing; and
- (b) have an ability or right to obtain custody or control of the thing.

“premises” includes—

- (a) a building, wharf or other structure; and
- (b) a part of a building, wharf or other structure; and
- (c) land or waters where a building, wharf or other structure is situated.

“public place” means a place that the public is entitled to use, is open to the public or is used by the public, whether or not on payment of money.

“quarantine declaration” means a declaration in force under this Act declaring an area to be a quarantine area.⁹

“Queensland waters” means all waters that are—

⁹ Declarations may be made under the following provisions—

- section 95(1)—quarantine area declarations
- section 96(1)—emergency quarantine area declarations
- section 97(1)—regulations.

Fisheries Act 1994

- (a) within the limits of the State; or
- (b) coastal waters of the State.

“quota” means a quota (within the meaning of section 9) in force under this Act.¹⁰

“regulated fish” means fish declared to be regulated fish by a regulated fish declaration.

“regulated fish declaration” means a declaration in force under this Act declaring fish to be regulated fish.¹¹

“release” includes place.

“sell” includes—

- (a) sell by wholesale, retail or auction; and
- (b) supply in trade or commerce or under an arrangement; and
- (c) agree, attempt or offer to sell; and
- (d) keep or expose for sale; and
- (e) cause or permit to be sold.

“serious fisheries offence” means an offence against fisheries legislation prescribed under a regulation or management plan to be a serious fisheries offence.

“species” of a fish or plant means a species, subspecies, hybrid, variant, race, mutation or geographically separate population of the animal or plant.

“stowed and secured” has the meaning given under a regulation or management plan.

¹⁰ Quotas may be made under the following provisions—

- section 38—management plans
- sections 42(1) and 48(1)—regulations
- section 44(1)—quota declarations
- section 61(1)(a)—quotas imposed as condition of authorities.

¹¹ Declarations may be made under the following provisions—

- section 37(1)(c)—management plans
- sections 42(1) and 48(1)—regulations
- section 43(1)(c)—fisheries declarations
- section 46(1)—emergency fisheries declarations.

Fisheries Act 1994

“take” fisheries resources includes—

- (a) catch, gather, kill or obtain from water or land; and
- (b) attempt to catch, gather, kill or obtain from water or land; and
- (c) land (from a boat or in another way), bring ashore or tranship.

“tidal land” includes reefs, shoals and other land permanently or periodically submerged by waters subject to tidal influence.

“trade or commerce” includes—

- (a) a business activity; and
- (b) anything else done for gain or reward.

“tribunal” means the Fisheries Tribunal.

“unlawfully” means without authority under this Act or other legal authority, justification or excuse under an Act.

“vehicle” includes a caravan, trailer and aircraft, but does not include a boat.

“VMS equipment” means equipment used as part of a system that monitors the position and operation of a vessel.

“waterway” includes a river, creek, stream, watercourse or inlet of the sea.

“waterway barrier works” means a dam, weir or other barrier across a waterway.

Meaning of “fish”

5.(1) “Fish” means an animal (whether living or dead) of a species that throughout its life cycle usually lives—

- (a) in water (whether freshwater or saltwater); or
- (b) in or on foreshores; or
- (c) in or on land under water.

(2) “Fish” includes—

- (a) prawns, crayfish, rock lobsters, crabs and other crustaceans; and
- (b) scallops, oysters, pearl oysters and other molluscs; and

Fisheries Act 1994

(c) sponges, annelid worms, beche-de-mer and other holothurians, sea snakes, marine mammals and turtles; and

(d) trochus and green snails.

(3) However, “fish” does not include—

(a) crocodiles; or

(b) protected animals under the *Nature Conservation Act 1992*; or

(c) animals prescribed under a regulation not to be fish.

(4) “Fish” also includes—

(a) the spat, spawn and eggs of fish; and

(b) any part of fish or of spat, spawn or eggs of fish; and

(c) treated fish, including treated spat, spawn and eggs of fish; and

(d) coral, coral limestone, shell grit or star sand; and

(e) freshwater or saltwater products declared under a regulation to be fish.

(5) A regulation under subsection (4)(e) may declare a product to be fish only—

(a) for a particular provision of this Act; or

(b) if the product is used for a particular purpose.

(6) Subsection (5) does not limit the following provisions of the *Statutory Instruments Act 1992*—

- section 24 (Statutory instrument may be of general or limited application)
- section 25 (Statutory instrument may make different provision for different categories).

Meaning of “fishery”

7. “Fishery” includes activities by way of fishing, including, for example, activities specified by reference to all or any of the following—

(a) a species of fish;

- (b) a type of fish by reference to sex, size or age or another characteristic;
- (c) an area;
- (d) a way of fishing;
- (e) a type of boat;
- (f) a class of person;
- (g) the purpose of an activity;
- (h) the effect of the activity on a fish habitat, whether or not the activity involves fishing;
- (i) anything else prescribed under a regulation.

Meaning of “marine plant”

8.(1) “Marine plant” includes the following—

- (a) a plant (a **“tidal plant”**) that usually grows on, or adjacent to, tidal land, whether it is living, dead, standing or fallen;
- (b) material of a tidal plant, or other plant material on tidal land;
- (c) a plant, or material of a plant, prescribed under a regulation or management plan to be a marine plant.

(2) “Marine plant” does not include a declared plant under the *Rural Lands Protection Act 1985*.

Meaning of “quota”

9. “Quota” includes a restriction on activities by way of fishing, including, for example, a restriction specified by reference to all or any of the following—

- (a) a quantity of fish;
- (b) a percentage of a quantity of fish;
- (c) a period of time;
- (d) an area;
- (e) the length or another reference to the size of a boat;

- (f) a quantity or type of fishing apparatus or aquaculture furniture;
- (g) an activity affecting a fish habitat, whether or not the activity involves fishing;
- (h) anything else prescribed under a regulation.

Division 4—Operation of Act

Act binds all persons

10. This Act binds all persons, including the State.

General application of Act

11.(1) This Act applies to persons, things, acts and omissions on or in—

- (a) land within the limits of the State; and
- (b) Queensland waters.

(2) However, this Act does not apply to—

- (a) activities to which a Commonwealth law cooperative fishery applies; or
- (b) the taking of fish, within the meaning of the *Torres Strait Fisheries Act 1984* (Cwlth), for the purposes of a Commonwealth law Torres Strait cooperative fishery; or
- (c) the landing in Queensland of fish taken under a Commonwealth fishing concession as mentioned in section 10(2)(c) of the Commonwealth Fisheries Act; or
- (d) exclusive Commonwealth matters for a State law cooperative fishery.

(3) This Act also applies to—

- (a) recreational fishing carried on in the part of the Australian fishing zone that is the adjacent area for Queensland by the use of an Australian boat; and
- (b) activities in the Australian fishing zone to which a State law cooperative fishery applies.

(4) Subsection (3)(a) does not apply to recreational fishing regulated by a Commonwealth plan of management.

(5) Subsection (3)(b) does not apply to exclusive Commonwealth matters for the State law cooperative fishery.

(6) In this section—

“adjacent area” for Queensland has the meaning given by the *Petroleum (Submerged Lands) Act 1967* (Cwlth).

“Australian fishing zone” has the meaning given by the Commonwealth Fisheries Act.

“Commonwealth fishing concession” means a fishing concession within the meaning of the Commonwealth Fisheries Act.

“Commonwealth law cooperative fishery” means a Commonwealth-State fishery managed under Commonwealth law.

“Commonwealth law Torres Strait cooperative fishery” means a fishery managed under Commonwealth law under an arrangement under the *Torres Strait Fisheries Act 1984*, part 3.

“Commonwealth plan of management” means a plan of management within the meaning of the Commonwealth Fisheries Act.

“exclusive Commonwealth matter”, for a State law cooperative fishery, means any of the following matters—

- (a) foreign boats;
- (b) operations on and from foreign boats;
- (c) persons on foreign boats;
- (d) for activities in the Australian fishing zone—matters that happened before the Commonwealth-State arrangement for the fishery took effect if Commonwealth law applies to the matters.

“recreational fishing” has the same meaning as in the Commonwealth Fisheries Act.

“State law cooperative fishery” means a Commonwealth-State fishery managed in accordance with State law.

When Act does not apply

12. This Act does not apply to—

- (a) the unintentional taking of regulated fish or marine plants if the fish or plants are not intentionally or recklessly injured or damaged and are immediately put back; or
- (b) the unintentional possession of regulated fish or marine plants by a person if the fish or plants are not intentionally or recklessly injured or damaged and the person can not, because of circumstances beyond the person's control, put the fish or plants back immediately they come into the person's possession; or
- (c) the use of a hand net to lift from water fish taken by other fishing apparatus; or
- (d) the use of a gaff to secure fish taken by other fishing apparatus.

Exemptions from Act

13.(1) A regulation may exempt a person from this Act or a provision of this Act.

Examples—

1. A regulation may exempt a person who keeps live fish, for sale, in a pet shop or restaurant from all provisions of the Act.

2. A regulation may exempt a person from all provisions of the Act for the use or possession of specified fishing apparatus.

(2) The exemption may be given on conditions stated in the regulation.

(3) A person must not contravene a condition of an exemption that applies to the person.

Maximum penalty for subsection (3)—200 penalty units.

Aborigines' and Torres Strait Islanders' rights to take fisheries resources etc.

14.(1) An Aborigine may take, use or keep fisheries resources, or use fish habitats, under Aboriginal tradition, and a Torres Strait Islander may take, use or keep fisheries resources, or use fish habitats, under Island custom.

(2) However, subsection (1) is subject to a provision of a regulation or management plan that expressly applies to acts done under Aboriginal tradition or Island custom.

(3) A regulation or management plan mentioned in subsection (2) may be developed only after cooperating with Aborigines or Torres Strait Islanders, considered by the chief executive to be appropriate, to reach agreement, or reasonably attempt to reach agreement, about the proposed regulation or plan.

PART 2—MINISTERIAL ADVISORY BODIES

Minister may establish advisory bodies

15. The Minister may establish an advisory committee or other body to assist the Minister in the administration of this Act.

PART 3—CHIEF EXECUTIVE

Chief executive's functions

20.(1) The chief executive is, on behalf of the State, responsible under this Act for—

- (a) the management, use, development and protection of aquaculture, marine plants, fish habitats and, coral limestone and fisheries resources generally; and
- (b) the management, control and, if possible, elimination of diseased fisheries resources; and
- (c) fish ways.

(1A) The other functions of the chief executive are—

- (a) to ensure the fair division of access to fisheries resources for commercial, recreational and indigenous use; and

Fisheries Act 1994

- (b) to supervise and control the way, extent and conditions of producing, harvesting, treating, transporting and selling of fisheries resources for use in the State or elsewhere; and
- (c) to ensure that economic efficiency is properly taken into account in developing management arrangements for fisheries resources; and
- (d) to conduct or support fisheries research and development; and
- (e) to supply or support fisheries educational programs and codes of practice for fisheries management; and
- (f) to examine, and advise the Minister on, issues affecting fisheries resources and fish habitats; and
- (g) to examine, and advise the Minister on, the administration of this Act, and to make any recommendations the chief executive considers appropriate; and
- (h) to perform other functions given to the chief executive under this or another Act.

(2) This Act does not limit the functions and powers of the chief executive under other laws.

Powers

20A.(1) The chief executive may, for performing the chief executive's functions—

- (a) enter into contracts; and
- (b) acquire, deal with and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) charge for services and facilities supplied; and
- (e) join and take part in industry associations; and
- (f) support financially or in another way an entity promoting or wanting to promote fisheries resources; and
- (g) enter into agreements or arrangements with the Commonwealth, another State or an entity prescribed by regulation for the management, use, development or protection of fisheries

resources; and

- (h) formulate and operate arrangements (including funding) for adjusting the use of fisheries resources, including, for example, by adjusting the number of authorities for a fishery; and
- (i) formulate fisheries restocking and enhancement programs; and
- (j) perform, or arrange for the performance of, research, education and environmental programs; and
- (k) do anything else necessary or convenient to be done for, or in connection with, the performance of the chief executive's functions.

(2) Without limiting subsection (1), the chief executive has the powers given to the chief executive under this or another Act.

(3) The chief executive may exercise the chief executive's powers inside and outside Queensland, including outside Australia.

Chief executive may delegate

21.(1) The chief executive may delegate the chief executive's powers under this Act to—

- (a) a local government or an entity prescribed under a regulation (a “**prescribed entity**”); or
- (b) an officer or employee of the public service; or
- (c) an officer or employee of a local government or prescribed entity; or
- (d) an officer or employee of the Commonwealth or another State.

(2) A delegation of a power to a local government or a prescribed entity may permit the subdelegation of the power.

(3) This section does not limit powers of delegation the chief executive has under other laws.

Integrated development approval system regulations and guidelines

22.(1) A regulation may make provision about, or empower the chief

executive to make guidelines about—

- (a) the policy objectives and criteria to which a person (the “**delegate**”) exercising a power delegated by the chief executive must have regard; and
- (b) the way in which the delegate must exercise the power, including, for example, time limits for the making of decisions; and
- (c) appeals from decisions of the delegate; and
- (d) the cases involving the exercise of a power delegated by the chief executive that must be referred to the chief executive or someone else for decision, including the criteria to be applied in deciding whether a particular case must be referred; and
- (e) the conditions to which an authority issued by the delegate must be subject; and
- (f) the consequences of contravention of the regulation or guidelines.

(2) This section does not limit the *Acts Interpretation Act 1954*, section 27A (Delegation of powers).

PART 5—FISHERIES MANAGEMENT

Division 1—Management plans

Making management plans

32.(1) The chief executive may make a management plan for a fishery.

(2) A management plan is subordinate legislation.

Procedure to make management plan

33.(1) Before making a management plan for a fishery, the chief executive must prepare a draft plan and take reasonable steps to engage in consultation about the draft plan.

(2) The draft plan must be published in the way and contain the information prescribed under a regulation.

Management plan must be approved by Governor in Council

34. A management plan does not have effect until it has been approved by the Governor in Council.

What management plan must deal with

35. A management plan for a fishery must state—

- (a) a description of the fishery; and
- (b) the known status of the fishery; and
- (c) the objectives of the management plan; and
- (d) how the objectives are to be achieved; and
- (e) how the plan may be amended or repealed, including the consultation and other processes to be followed before amendment or repeal.

What management plan may deal with

36. The management plan may make provision about anything prescribed under a regulation for the fishery or the chief executive considers appropriate to deal with in the plan.

Examples of what the chief executive may consider appropriate to deal with—

1. Fishing capacity of the fishery and its measurement.
2. The way the fishery is to be managed, which may include, for example, the regulation of the following—
 - (a) fishing methods;
 - (b) taking of a species, type or quantity of fisheries resources;
 - (c) the use of a type, size or quantity of fishing apparatus;
 - (d) use of a type or number of boats;
 - (e) a period of fishing.
3. Management of the fishery by a system of authorities.

Fisheries Act 1994

4. Procedures to be followed to select persons to whom authorities are to be issued.
5. Obligations of holders of authorities which may include, for example, a requirement to install, maintain and use VMS equipment.
6. Regulation of recreational activities in the fishery.
7. Regulation of fishing for research purposes in the fishery.
8. Formulation and funding of restructuring or adjustment schemes.
9. Formulation and funding of fisheries restocking or enhancement programs.
10. Research, education and environmental issues.
11. Enforcement.

Management plan may declare closed season, closed waters etc.

37.(1) A management plan may also declare—

- (a) a period to be a closed season; or
- (b) waters to be closed waters; or
- (c) fish to be regulated fish.

(2) A declaration under subsection (1)(a) (a “**closed season declaration**”) may regulate taking or possessing of fish in the closed season.

(3) A declaration under subsection (1)(b) (a “**closed waters declaration**”) may regulate—

- (a) taking or possessing of fish in the closed waters; or
- (b) engaging in activities in the closed waters; or
- (c) using or possessing a boat, aquaculture furniture, fishing apparatus or anything else in the closed waters.

(4) A declaration under subsection (1)(c) (a “**regulated fish declaration**”) may regulate taking, possessing or selling regulated fish.

Examples of matters that may be provided under a regulated fish declaration under a management plan—

1. A limit may be placed on the size or number of a species or type of fish that may be taken, possessed or sold.

2. A total prohibition may be placed on the taking, possessing or selling of fish of a particular species or type.

Management plan may prescribe quotas etc.

38. In addition, a management plan for a fishery may prescribe quotas, or authorise the issue of quotas, for the fishery.

Management plan to protect things that are not fish

38A. A management plan may be made to protect things that are not fish.

Example—

A management plan may regulate taking or possessing fish in an area to protect dugong in the area.

Amendment or repeal of management plan

39.(1) A management plan made by the chief executive may be amended or repealed by the chief executive only in accordance with the provisions of the management plan about how it may be amended or repealed.

(2) If a management plan for a fishery is repealed, authorities issued by the chief executive for the fishery end, unless the plan otherwise provides.

Compensation not payable on making, amendment or repeal

40.(1) Compensation is not payable if a management plan is made, amended or repealed, or anything previously permitted is prohibited or regulated under the plan.

(2) However, subsection (1) does not prevent a regulation or management plan providing for payment of compensation.

Management plan may provide penalty for contravention

41. A management plan may provide that contravention of the management plan is an offence and, if a penalty for the contravention is not otherwise provided under this Act, prescribe a maximum penalty of not more than 500 penalty units.

Regulation may make provision about management plan matters

42.(1) Anything that may be declared by a management plan may also be declared by regulation.

(2) A regulation may also make provision about anything else about which provision may be made by a management plan.

(3) If there is an inconsistency between a regulation and a management plan, the regulation prevails to the extent of the inconsistency.

Division 2—Fisheries declarations**Declaration of closed season, closed waters etc.**

43.(1) The chief executive may declare—

- (a) a period to be a closed season; or
- (b) waters to be closed waters; or
- (c) fish to be regulated fish.

(2) A declaration under subsection (1)(a) (a “**closed season declaration**”) may regulate taking or possessing fish in the closed season.

(3) A declaration under subsection (1)(b) (a “**closed waters declaration**”) may regulate—

- (a) taking or possessing fish in the closed waters; or
- (b) engaging in activities in the closed waters; or
- (c) using or possessing a boat, aquaculture furniture, fishing apparatus or anything else in the closed waters.

(4) A declaration under subsection (1)(c) (a “**regulated fish declaration**”) may regulate taking, possessing or selling regulated fish.

Examples of matters that may be provided in a regulated fish declaration under this section are given in section 37(4) (Management plan may declare closed season, closed waters etc.).

(5) Before making a declaration, the chief executive must take reasonable steps to engage in consultation about the declaration.

Declaration of quotas

44.(1) The chief executive may declare a quota for a fishery.

(2) A declaration (a “**quota declaration**”) may be made under subsection (1) for a fishery only if a quota has not been decided for the fishery under a management plan.

(3) Before making a quota declaration, the chief executive must take reasonable steps to engage in consultation about the declaration.

Fisheries declaration is subordinate legislation

45.(1) A declaration under this division (a “**fisheries declaration**”) is subordinate legislation.

(2) However, an emergency fisheries declaration is not subordinate legislation.

Declaration to protect things that are not fish

45A. A declaration under this division may be made to protect things that are not fish.

Example—

A declaration may regulate taking or possessing fish in an area to protect dugong in the area.

Emergency fisheries declarations

46.(1) The chief executive may make an emergency closed season declaration, closed waters declaration or regulated fish declaration (an “**emergency fisheries declaration**”).

(2) The chief executive may make an emergency fisheries declaration only if the chief executive is satisfied that urgent action is needed to meet a significant threat to fisheries resources or a fish habitat or another emergency.

(3) The declaration must state it is an emergency fisheries declaration and outline the nature of the emergency.

(4) The chief executive is not required to engage in consultation about the

declaration.

(5) The chief executive must publish the declaration in the gazette and may publish it in other ways the chief executive considers appropriate having regard to the emergency.

(6) The chief executive must repeal the declaration as soon as possible after the chief executive is satisfied the emergency no longer exists.

(7) Unless it is earlier repealed, the declaration expires 2 months after it is gazetted.

(8) However, if the declaration is inconsistent with a regulation or management plan, then, unless it is earlier repealed, the declaration expires 21 days after it is gazetted.

(9) The following sections of the *Statutory Instruments Act 1992* apply to an emergency fisheries declaration as if it were subordinate legislation—

- (a) section 49 (Subordinate legislation must be tabled);
- (b) section 50 (Disallowance);
- (c) section 51 (Limited saving of operation of subordinate legislation that ceases to have effect).

Compensation not payable on making, amendment or repeal

47.(1) Compensation is not payable if a fisheries declaration (including an emergency fisheries declaration) is made, amended or repealed, or anything previously permitted is prohibited or regulated under the declaration.

(2) However, subsection (1) does not prevent a regulation, management plan or fisheries declaration providing for payment of compensation.

Regulation may make provision about fisheries declaration matters etc.

48.(1) Anything that may be declared by a fisheries declaration may also be declared by a regulation.

(2) A regulation may also make provision about anything else about which provision may be made by a fisheries declaration.

(3) If there is an inconsistency between a regulation or management plan and a fisheries declaration, the regulation or management plan prevails to the extent of the inconsistency.

(4) However, if there is an inconsistency between an emergency fisheries declaration, a regulation, management plan or fisheries declaration that is not an emergency fisheries declaration, the emergency fisheries declaration prevails to the extent of the inconsistency.

Division 3—Authorities

Subdivision 1—General

Authorities that may be issued under Act

49. A regulation or management plan may prescribe the authorities that may be issued under this Act.

Who issues authorities (other than permits)

50.(1) An authority under this Act may be issued by the chief executive.

(2) However, a regulation may provide that subsection (1) applies or does not apply to a stated activity or thing.

(4) This section does not apply to the issue of permits.

Who issues permits

51.(1) The following permits under this Act may be issued by the chief executive—

- (a) a permit to possess regulated fish or nonindigenous fisheries resources for aquaculture purposes;
- (b) a permit to use boats, aquaculture furniture and fishing apparatus for aquaculture purposes;
- (c) a permit to remove, destroy or damage marine plants;
- (d) a permit to perform works or related activity in a declared fish

habitat area;

- (e) a permit about diseased fisheries resources;
- (f) a permit about fish ways;
- (g) a permit prescribed under a regulation;
- (h) any other permit under this Act.

(2) However, a regulation may provide that subsection (1) applies or does not apply to a stated activity or thing.

Things authorised by authorities

52.(1) An authority authorises the holder of the authority to do the things permitted under a regulation or management plan or stated in the authority.

(2) A regulation or management plan, or the authority itself, may also authorise other persons to do all or any of the things authorised by it.

Example of someone else authorised by an authority—

A person who is a member of the crew of a boat owned by the holder.

(3) However, an authority does not authorise the holder or anyone else (other than an inspector) to enter, or remain on, someone else's land.

Form, content and term of authorities

53. An authority—

- (a) must be in the form approved by the chief executive; and
- (b) must contain the particulars decided by the chief executive; and
- (c) is issued for the term specified in it.

Subdivision 2—Issue and renewal

Application for authority

54.(1) An application for the issue of an authority must—

- (a) be made to the chief executive in the form approved by the chief

executive; and

(b) be accompanied by the fees prescribed under the regulations.

(2) If asked by the chief executive, the applicant must give the further relevant information or evidence the chief executive requires to decide the application.

Consideration of application for issue of authority

55.(1) The chief executive must consider an application for the issue of an authority and may issue the authority or refuse to issue it.

(2) In considering the application, the chief executive must comply with any relevant regulation or management plan.

Application for renewal of authority (other than permit)

56.(1) The holder of an authority (other than a permit) may apply for its renewal to the chief executive.

(2) The application must—

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

(b) be accompanied by the fees prescribed under the regulations.

(3) If asked by the chief executive, the holder must give the further relevant information or evidence the chief executive requires to decide the application.

Permit not renewable

57.(1) A permit can not be renewed.

(2) However, the holder may apply for the issue of another permit.

(3) Compensation is not payable if the chief executive refuses to issue another permit.

(4) However, subsection (3) does not prevent a regulation or management plan providing for payment of compensation.

Consideration of application for renewal of authority (other than permit)

58.(1) The chief executive must consider an application for renewal of an authority (other than a permit) and may renew the authority or refuse to renew it.

(2) In considering the application, the chief executive must comply with any relevant regulation or management plan.

Refusal to issue or renew

59.(1) The chief executive may refuse to issue or renew an authority if the chief executive is satisfied the refusal is necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats.

Examples of the bases on which the chief executive may be satisfied—

1. The authority was issued in error or because of a document or representation—
 - (a) that is false, misleading or omits a material particular; or
 - (b) obtained or made in another improper way.
2. The applicant has been convicted of an offence against fisheries legislation.
3. The applicant has had a licence, permit, concession or other authority under fisheries legislation (a **“fishing authority”**) cancelled or suspended.
4. The applicant has not complied with a condition of a fishing authority.
5. The applicant has not kept or given returns as required by the chief executive under this Act.
6. The applicant has given a false or misleading return to the chief executive under this Act.
7. The applicant has been convicted of an indictable offence.
8. The applicant has not satisfied the training or competency requirements or other criteria for the authority as decided by the chief executive or prescribed under a regulation or management plan.
9. The applicant has not paid fees payable under this Act.
10. Another matter specified in a relevant regulation or management plan.

(2) Compensation is not payable if the chief executive refuses to issue or renew an authority.

(3) However, subsection (2) does not prevent a regulation or management plan providing for payment of compensation.

Notice of refusal of application for issue or renewal etc.

60. If the chief executive refuses to issue or renew an authority sought by an applicant, the chief executive must promptly—

- (a) give the applicant a written notice informing the applicant—
 - (i) of the refusal and the reasons for the refusal; and
 - (ii) that the applicant may appeal against the decision to the Fisheries Tribunal within 28 days; and
- (b) refund the fees paid by the applicant, other than fees for assessing the application.

Subdivision 3—Conditions

Conditions imposed on issue or renewal

61.(1) When the chief executive issues or renews an authority, the chief executive may impose reasonable and relevant conditions, including, for example—

- (a) if the authority is not itself a quota—a condition fixing a quota for the authority; and
- (b) a condition requiring payment of a bond to ensure the holder will comply with the conditions of the authority; and
- (c) a condition conferring powers on inspectors; and
- (d) a condition requiring the holder to install, maintain and use VMS equipment.

(2) The conditions must be stated in the authority.

(3) In fixing a quota for an authority, the chief executive must comply with any relevant regulation, management plan or quota declaration.

(4) If a power conferred on inspectors by a condition of an authority is exercised by an inspector, the power is taken to be exercised with the consent of the authority's holder.

(5) A power conferred on inspectors by a condition of an authority is not limited by the powers given to an inspector under a provision of this Act.

(6) If an inspector may exercise a power under this Act and under a condition of an authority, the inspector may exercise the power under either or both.

(7) To remove any doubt, a condition may be imposed by the chief executive even though the effect is to stop the holder or someone else taking fisheries resources, or using a boat or fishing apparatus that could, apart from the condition, be lawfully taken or used under the authority.

(8) Compensation is not payable if conditions are imposed on an authority, or anything previously permitted is prohibited or regulated under the authority.

(9) However, subsection (8) does not prevent a regulation or management plan providing for payment of compensation.

Conditions imposed under regulations and management plans

62.(1) An authority is also subject to the conditions prescribed under a regulation or management plan.

(2) To remove any doubt, any condition that may be imposed on an authority by the chief executive may be prescribed under a regulation or management plan.

Subdivision 4—Amendment

Amendment of authority

63.(1) If the chief executive considers an authority (including the conditions stated in it) should be amended, the chief executive must give the holder of the authority a written notice (the “**show cause notice**”) that—

- (a) states the proposed amendment; and

Fisheries Act 1994

- (b) states the reasons for the proposed amendment; and
- (c) outlines the facts and circumstances forming the basis of the reasons; and
- (d) invites the holder to show, within a stated time of at least 28 days, why the authority should not be amended.

(2) The chief executive may amend the authority if, after considering all representations made within the stated time, the chief executive still considers the authority should be amended—

- (a) in the way mentioned in the show cause notice; or
- (b) in another way, having regard to the representations.

(3) If the chief executive decides to amend the authority, the chief executive must give the holder of the authority a written notice stating—

- (a) how the authority has been amended; and
- (b) that the holder may appeal against the amendment to the Fisheries Tribunal within 28 days.

(4) Subsections (1) to (3) do not apply if the authority is amended only—

- (a) by omitting a condition if the omission does not adversely affect the holder's interests; or
- (b) for a formal or clerical reason; or
- (c) in another way that does not adversely affect the holder's interests; or
- (d) at the holder's request; or
- (e) by changing a quota for the authority.

(5) The chief executive may make an amendment of a type mentioned in subsection (4) by written notice given to the holder.

(6) To remove any doubt, any condition that may be imposed on an authority when it is issued may be imposed on the authority by amendment.

(7) Compensation is not payable if an authority is amended, or anything previously permitted under the authority is prohibited or regulated.

(8) However, subsection (7) does not prevent a regulation or management plan providing for payment of compensation.

Notice to return authority for alteration after amendment

64.(1) The chief executive may, by written notice, require the holder of an authority issued by the chief executive to return the authority to the chief executive within a stated time, of at least 28 days, to enable the chief executive to alter the authority to reflect an amendment made to it.

(2) The holder must comply with the notice, unless the holder has a reasonable excuse for not complying with it.

Maximum penalty—80 penalty units.

(3) After altering the authority, the chief executive must return it to the holder.

(4) The amendment of an authority by the chief executive does not depend on it being altered under this section.

Subdivision 5—Transfer**Transfer of authority (other than permit)**

65.(1) The chief executive may transfer an authority (other than a permit) issued by the chief executive, unless the authority is not transferable under a regulation or management plan.

(2) An application for the transfer of an authority must—

- (a) be made to the chief executive in the form approved by the chief executive; and
- (b) be accompanied by the fees prescribed under the regulations; and
- (c) be accompanied by the written approval of each person (other than the holder) who has an interest in the authority noted in the relevant register of authorities.

(3) If asked by the chief executive, the applicant must give the further relevant information or evidence the chief executive requires to decide the application.

(4) The transfer may be granted on—

- (a) conditions prescribed under the regulations or a management plan; or

(b) conditions imposed by the chief executive.

(5) If the chief executive refuses to transfer the authority, the chief executive must promptly—

(a) give the applicant a written notice informing the applicant—

(i) of the refusal and the reasons for the refusal; and

(ii) that the applicant may appeal against the decision to the Fisheries Tribunal within 28 days; and

(b) refund the fees paid by the applicant, other than fees for assessing the application.

(6) Compensation is not payable if the chief executive refuses to transfer the authority, the transfer is granted on conditions or anything previously permitted under the authority is prohibited or regulated.

(7) However, subsection (6) does not prevent a regulation or management plan providing for payment of compensation.

Permits not transferable

66. A permit can not be transferred.

Subdivision 6—Suspension and cancellation

Suspension or cancellation of authorities

67.(1) The chief executive may suspend or cancel an authority issued by the chief executive on the following grounds—

(a) the suspension or cancellation is necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats;

(b) the holder has been convicted of a serious fisheries offence.

Examples of the bases on which the chief executive may be satisfied under paragraph (a) are the examples mentioned in section 59(1) (Refusal to issue or renew).

(2) In acting under subsection (1)—

(a) the chief executive may disregard any third party interests in the

authority; and

- (b) the chief executive must have regard to—
 - (i) criteria prescribed under the regulations or a management plan for the suspension or cancellation of the authority; and
 - (ii) if the holder has been convicted of a fisheries offence—the penalty imposed by the court for the offence.

Example of subsection (2)(b)(i)—

A regulation or management plan may provide to the effect that, for each conviction for a serious fisheries offence, the offender accumulates points against the offender's authority and that the chief executive may cancel the authority or suspend it for a particular time, when the offender has accumulated a particular number of points.

(3) The chief executive may, in appropriate circumstances, have regard to previous convictions recorded against an authority in the relevant register of authorities, even though its current holder was not its holder when the conviction was recorded.

(4) If the person in control of a boat is convicted of a serious fisheries offence involving the use of the boat, the chief executive may, in appropriate circumstances, record the conviction in the fisheries register against the authority applying to the boat even though the person is not the holder of the authority.

(5) If a chief executive suspends or cancels an authority, the chief executive may also suspend or cancel other authorities issued by it that are held by the holder.

Procedure for cancellation or suspension

68.(1) If the chief executive considers grounds exist to suspend or cancel an authority (the “**proposed action**”), the chief executive must give the holder of the authority a written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and

Fisheries Act 1994

- (d) if the proposed action is suspension of the authority—states the proposed suspension period; and
- (e) invites the holder to show, within a stated time of at least 28 days, why the proposed action should not be taken.

(2) If, after considering all written representations made within the stated time, the chief executive still considers grounds to take the proposed action exist, the chief executive may—

- (a) if the proposed action was to suspend the authority for a specified period—suspend the authority for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel the authority—either cancel the authority or suspend it for a period.

(3) The chief executive must inform the holder of the decision by written notice.

(4) If the chief executive decides to suspend or cancel the authority, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may appeal against the decision to the Fisheries Tribunal within 28 days.

(5) The decision takes effect on the later of—

- (a) the day when the notice is given to the holder; or
- (b) the day of effect stated in the notice.

(6) However, if the authority is suspended or cancelled because of the conviction of a person for an offence—

- (a) the suspension or cancellation does not take effect until—
 - (i) the end of the time to appeal against the conviction; and
 - (ii) if an appeal is made against the conviction—the appeal is finally decided; and
- (b) the suspension or cancellation has no effect if the conviction is quashed on appeal.

(7) Compensation is not payable if the chief executive suspends or cancels an authority.

(8) However, subsection (7) does not prevent a regulation or management plan providing for payment of compensation.

Effect of suspension on renewal

69. If an authority has been suspended, it may be renewed but continues to be suspended until the end of the suspension period.

Authority to be returned

70.(1) The holder of an authority suspended, or the former holder of an authority cancelled, must return the authority to the chief executive within 7 days after the suspension or cancellation takes effect, unless the person has a reasonable excuse for not returning it or not returning it within that time.

Maximum penalty—80 penalty units.

(2) If a suspended authority is returned to the chief executive, the chief executive must return it to the holder at the end of the suspension period.

Subdivision 7—Replacement and surrender

Replacement of authorities

71.(1) The holder of a lost, damaged or destroyed authority may apply to the chief executive for a replacement authority.

(2) The application must—

- (a) be made in the form approved by the chief executive; and
- (b) be accompanied by the fees prescribed under the regulations.

(3) The chief executive may replace the authority if the chief executive is satisfied it has been lost, damaged or destroyed.

Surrender of authorities

72.(1) The holder of an authority may surrender it by giving notice of surrender to the chief executive.

(2) The notice must be in a form approved by the chief executive and be accompanied by the authority.

Subdivision 8—Registers and certificates

Registers of authorities

73.(1) The chief executive must keep a register of authorities issued by the chief executive.

(2) The register must contain the particulars prescribed under the regulations or management plan and may include other particulars decided by the chief executive.

(3) Within 21 days after a change in circumstances prescribed under a regulation or a management plan, the holder of an authority must give the chief executive written particulars of the change in the form approved by the chief executive.

Maximum penalty—300 penalty units.

(4) A person may, on payment of the fee prescribed under the regulations and subject to reasonable conditions imposed by the chief executive—

- (a) inspect the register at the department's head office during business hours; and
- (b) take extracts from, or obtain a copy of details in, the register.

(5) The chief executive may publish details in the register at the times and in the way decided by the chief executive.

(6) The holder of an authority may apply to the chief executive in the form approved by the chief executive to have noted on the register an interest that a specified person has in the authority.

Certificates about authorities

74.(1) The chief executive may issue a certificate stating—

- (a) that a particular person was or was not the holder of an authority on a particular day or over a particular period; or
- (b) the type or conditions of a particular authority; or

- (c) the cancellation or suspension of an authority; or
- (d) anything else contained in the register of authorities kept by the chief executive.

(2) The certificate is admissible in a proceeding as evidence of a matter stated in it.

(3) An application for a certificate must—

- (a) be made to the chief executive in the form approved by the chief executive; and
- (b) be accompanied by the fees prescribed under the regulations.

Subdivision 9—Offences about authorities and registers

False representations about authorities

75. A person must not intentionally or recklessly falsely represent that someone (whether the person or someone else) holds an authority or an authority of a particular type.

Maximum penalty—1 000 penalty units.

Offences about registers

76. A person must not intentionally or recklessly—

- (a) make, cause to be made, or agree to the making of, a false or misleading entry in the register of authorities kept by the chief executive; or
- (b) produce or tender in evidence a document falsely purporting to be—
 - (i) an instrument, or a copy of or extract from an instrument, given to or by the chief executive under this part; or
 - (ii) a copy of or extract from an entry in a register of authorities kept by the chief executive.

Maximum penalty—1 000 penalty units.

Division 4—Fisheries offences**Closed season and closed waters offences**

77. A person must not unlawfully contravene a closed season or closed waters declaration.

Maximum penalty—1 000 penalty units.

Prohibited acts about regulated fish

78.(1) A person must not unlawfully take, possess or sell a regulated fish.

(2) A person must not mutilate or disfigure a regulated fish with intent to hide the fact that it is a regulated fish.

Maximum penalty—1 000 penalty units.

Quota offences

79. A person must not unlawfully contravene a quota.

Maximum penalty—2 000 penalty units.

Fish not to be taken in prohibited way

80. A person must not unlawfully take fish in a way prohibited under a regulation or management plan.

Maximum penalty—300 penalty units.

Use of explosives etc. prohibited

81.(1) A person must not unlawfully—

- (a) use an explosive, powerhead or other explosive propelled missile, firearm or noxious substance (a “**restricted thing**”) to take fish; or
- (b) have a restricted thing on board a boat—
 - (i) with intent to take fish; or

- (ii) by which fish may be injured or destroyed; or
- (c) use or possess, with intent to take fish, a device that creates an electrical field in waters or on land; or
- (d) possess fish taken by a thing mentioned in paragraph (b) or a device mentioned in paragraph (c).

Maximum penalty—2 000 penalty units.

(2) Subsection (1)(b)(ii) does not apply to a firearm on board a boat, or a powerhead attached to a spear gun or hand propelled spear, if the firearm or powerhead is used, or intended for use, only in defence against sharks.

Offence to do prescribed act

82. A person must not unlawfully do an act prescribed under a regulation or management plan as an act that must only be done by the holder of an authority.

Maximum penalty—1 000 penalty units.

Additional penalty based on value of fish taken in trade or commerce

83.(1) If, having convicted a person of an offence against this Act involving the taking or possessing of fish, the court is satisfied the person took or possessed the fish in trade or commerce, it may, under this section, impose a fine of not more than 5 times the amount calculated by it to be the wholesale value of the fish when they were taken.

(2) The court may impose the fine as well as imposing another fine or penalty prescribed under this or another Act.

(3) The court may regard fish taken or possessed in contravention of this Act to have a wholesale value equivalent to the wholesale value of fish of the same or a similar species or type taken lawfully.

Prohibited fishing apparatus

84.(1) A person must not unlawfully use or possess fishing apparatus.

Maximum penalty—300 penalty units.

(2) A person must not unlawfully use or possess a greater number of

fishing apparatus than the number permitted under a regulation or management plan.

Maximum penalty—300 penalty units.

(3) Subsections (1) and (2) do not apply to a boat lawfully passing through waters if the fishing apparatus is stowed and secured.

Sale etc. of commercial fishing apparatus prohibited in certain circumstances

85.(1) In this section—

“**commercial fishing apparatus**” means fishing apparatus that may be used, bought or possessed only by the holder of a particular type of authority, and includes netting material ordinarily used in the manufacture of commercial fishing apparatus.

(2) If commercial fishing apparatus may be bought only by the holder of a particular type of authority, a person must not sell the fishing apparatus to a person who is not the holder of an authority of that type.

Maximum penalty—300 penalty units.

(3) If commercial fishing apparatus may be bought only by the holder of a particular type of authority, a person must not buy the fishing apparatus unless the person is the holder of an authority of that type.

Maximum penalty—300 penalty units.

(4) If commercial fishing apparatus may be used or possessed only by the holder of a particular type of authority, a person must not use or possess the fishing apparatus unless the person is the holder of an authority of that type.

Maximum penalty—300 penalty units.

(5) This section does not apply to the selling, buying, using or possessing of commercial fishing apparatus to be used or used—

- (a) in sporting activities, other than fishing; or
- (b) to protect trees or collect fruit from trees; or
- (c) for display or decorative purposes; or

- (d) for other purposes prescribed under a regulation or management plan.

Examples of sporting activities mentioned in paragraph (a)—

1. Indoor cricket.
2. School sports.

Examples of purposes mentioned in paragraph (c)—

1. Use in shopfitting.
2. Use as part of a restaurant's decor.

(6) This section does not apply to a person who possesses commercial fishing apparatus if the person is—

- (a) a genuine maker, dealer in or repairer of fishing apparatus; or
- (b) a person acting for a person mentioned in paragraph (a); or
- (c) 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.

Dockets for wholesale sale of fisheries resources etc.

86.(1) This section applies if fisheries resources are sold by a person (the “**seller**”) to someone else (the “**buyer**”) and the buyer—

- (a) is a person engaged in the business of selling fisheries resources by wholesale or retail; or
- (b) intends to resell any of the fisheries resources in trade or commerce.

(2) The seller must give to the buyer, and the buyer must obtain from the seller, a docket (the “**required docket**”) for the sale containing the particulars prescribed under a regulation.

Maximum penalty—1 000 penalty units.

(3) The seller and the buyer comply with subsection (2) if the buyer prepares the required docket and the seller signs it.

(4) The buyer must have the required docket available for immediate inspection while the buyer has the fisheries resources or part of the fisheries resources in the buyer's possession.

Maximum penalty—500 penalty units.

(5) Also, if the fisheries resources are abalone and the seller consigns them to the buyer, the seller must ensure they are accompanied by a copy of the required docket.

Maximum penalty—500 penalty units.

(6) In addition, if the required docket relates to the sale of abalone the seller and the buyer must each keep a copy of the required docket for 5 years after the day the abalone are sold.¹²

Maximum penalty—500 penalty units.

Records for processing abalone

86A.(1) This section applies to a person carrying on the business of processing abalone.

(2) The person must keep a record containing the following particulars for any abalone the person processes—

- (a) the person's full name and usual address;
- (b) if the person is not the owner of the abalone—the full name and usual address of the owner;
- (c) the species of abalone processed;
- (d) the date of processing;
- (e) the weight of each species of abalone before processing;
- (f) the weight of each species of abalone after processing;
- (g) the way the abalone are processed.

Maximum penalty—1 000 penalty units.

(3) The person must keep the record for 5 years after the day the abalone are processed.

Maximum penalty—500 penalty units.

¹² Under section 173 (Power to require production of documents), an inspector may require a person to produce a document required to be kept.

(4) In this section—

“**processing**”, abalone, includes doing any of the following to the abalone—

- (a) shelling;
- (b) filleting;
- (c) cooking;
- (d) preserving;
- (e) packing.

Interference etc. with aquaculture activity or fishing apparatus

87.(1) A person must not unlawfully interfere with an aquaculture activity or fishing apparatus.

Maximum penalty—500 penalty units.

(2) In this section—

“**interfere with**” includes—

- (a) for an aquaculture activity—the removal of fisheries resources, damage and destroy; and
- (b) for fishing apparatus—the removal of fisheries resources, damage, destroy, mark, remove and trample.

Holder of authority to have it available for immediate inspection etc.

88.(1) The holder of an authority must have the authority available for immediate inspection while the holder is doing anything authorised by it.

(2) If anyone else is doing anything the other person is authorised to do under the authority and the holder is not present, the other person must have the authority available for immediate inspection.

(3) If a number of persons on a boat are doing anything the persons are authorised to do under the authority and the holder is not present, the person in control must have the authority available for immediate inspection.

Possessing fish taken in contravention of other fisheries legislation

88A. A person must not unlawfully possess fish knowing the fish have been taken in contravention of a law of the Commonwealth or another State about fishing, fisheries resources or fish habitats.

Maximum penalty—1 000 penalty units.

Division 5—Noxious and nonindigenous fisheries resources and aquaculture fish**Noxious fisheries resources not to be possessed, released etc.**

89. A person must not unlawfully—

- (a) bring noxious fisheries resources, or cause noxious fisheries resources to be brought, into Queensland; or
- (b) possess, rear, sell or buy noxious fisheries resources; or
- (c) release noxious fisheries resources, or cause noxious fisheries resources to be placed or released, into Queensland waters.

Maximum penalty—2 000 penalty units.

Nonindigenous fisheries resources not to be possessed, released etc.

90.(1) A person must not unlawfully—

- (a) bring nonindigenous fisheries resources, or cause nonindigenous fisheries resources to be brought, into Queensland; or
- (b) possess, rear, sell or buy nonindigenous fisheries resources; or
- (c) release nonindigenous fisheries resources, or cause nonindigenous fisheries resources to be placed or released, into Queensland waters.

Maximum penalty—2 000 penalty units.

(2) Subsections (1)(a) and (b) do not apply to nonindigenous fisheries resources prescribed under a regulation or management plan.

Aquaculture fisheries resources not to be released

91. A person must not unlawfully release aquaculture fisheries resources, or cause aquaculture fisheries resources to be released, into Queensland waters.

Maximum penalty—2 000 penalty units.

Duty of person who takes or possesses noxious or nonindigenous fisheries resources

92.(1) A person who unlawfully takes or possesses noxious or nonindigenous fisheries resources must—

- (a) immediately destroy the fisheries resources and notify an inspector of the destruction within 2 business days after taking or first possessing them; or
- (b) immediately give the fisheries resources to an inspector; or
- (c) immediately notify an inspector of taking or possessing the fisheries resources.

Maximum penalty—2 000 penalty units.

(2) Subsection (1) does not apply to nonindigenous fisheries resources prescribed under a regulation or management plan.

(3) On application by a person who acts under subsection (1)(a) or (b), the chief executive must reimburse the person for reasonable expenses incurred by the person in complying with subsection (1).

Recovery of costs of removing noxious fisheries resources etc.

93.(1) If a person commits an offence against this division, the costs reasonably incurred by the chief executive in taking and removing, or destroying, the fisheries resources in relation to which the offence was committed are a debt payable by the person to the chief executive.

(2) If the person is convicted of an offence against this division, the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the chief executive.

(3) Subsection (2) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Division 6—Diseased fisheries resources

Chief executive may declare diseases

94.(1) In this section—

“chemical” includes an element.

“disease” means—

- (a) a disease, parasite, pest, plant or other thing (the **“disease”**) that has, or may have, the effect (directly or indirectly) of killing or causing illness in fisheries resources, or in humans or animals that eat fisheries resources infected with or containing the disease; or
- (b) a chemical or antibiotic residue.

(2) The chief executive may declare a disease to be a declared disease.

(3) A declaration may prescribe a concentration level for a chemical or antibiotic residue and declare a residue over the prescribed concentration level for the residue to be a declared disease.

(4) A declaration under this section (a **“disease declaration”**) is subordinate legislation.

Chief executive may declare quarantine area

95.(1) The chief executive may declare an area to be a quarantine area because of the presence, or suspected presence, of a declared disease in the area (a **“declared quarantine area”**).

(2) A declaration under subsection (1) (a **“quarantine declaration”**) must state the nature of the quarantine.

(3) The quarantine declaration may make provision about the matters the chief executive considers necessary or desirable for the management, control and elimination of the declared disease.

Fisheries Act 1994

Examples of what may be considered to be appropriate—

1. Functions and powers of inspectors in, or in relation to, the declared quarantine area, including the giving of directions by inspectors to ensure the proper management, control and elimination of the declared disease.
2. Regulating the taking or removal of fisheries resources, plants, fishing apparatus, aquaculture furniture or anything else from or into the declared quarantine area.
3. Regulating the pumping, discharge or removal in another way of water from the declared quarantine area.
4. Regulating what persons may, or may not, do in the declared quarantine area.
5. Regulating how fisheries resources and anything else infected with or containing the declared disease are to be treated or dealt with when found by an inspector or anyone else.
6. Authorising or requiring seizure and destruction of fisheries resources and anything else infected with or containing, or suspected of being infected with or containing, the declared disease.
7. Authorising or requiring testing and treatment of fisheries resources, plants and anything else in the declared quarantine area.

(4) A quarantine declaration is subordinate legislation.

Emergency disease or quarantine declarations

96.(1) The chief executive may make an emergency disease or quarantine declaration (an “**emergency disease or quarantine declaration**”).

(2) The chief executive may make an emergency disease or quarantine declaration only if the chief executive is satisfied that urgent action is needed to meet a significant threat to fisheries resources or a fish habitat or another emergency.

(3) The declaration must state that it is an emergency disease or quarantine declaration and outline the nature of the emergency.

(4) The chief executive must publish the declaration in the gazette and may publish it in other ways the chief executive considers appropriate having regard to the emergency.

(5) The chief executive must repeal the declaration as soon as possible after the chief executive is satisfied the emergency no longer exists.

(6) Unless it is earlier repealed, the declaration expires 2 months after it is gazetted.

(7) However, if the declaration is inconsistent with a regulation or management plan, then, unless it is earlier repealed, the declaration expires 21 days after it is gazetted.

(8) The declaration is not subordinate legislation.

(9) However, the following sections of the *Statutory Instruments Act 1992* apply to the declaration as if it were subordinate legislation—

- section 43 (Tabling)
- section 44 (Disallowance)
- section 45 (Limited saving of operation of subordinate legislation that ceases to have effect).

Regulation may make provision about disease or quarantine declaration matters etc.

97.(1) Anything that may be declared by a disease or quarantine declaration may also be declared by a regulation.

(2) A regulation may also make provision about anything else about which provision may be made by a disease or quarantine declaration.

(3) If there is an inconsistency between a regulation and a disease or quarantine declaration (other than an emergency disease or quarantine declaration), the regulation prevails to the extent of the inconsistency.

(4) However, if there is an inconsistency between a regulation or declaration under this division and a regulation, management plan or declaration under another provision of this Act, the regulation or declaration under this division prevails to the extent of the inconsistency.

(5) Also, if there is an inconsistency between an emergency disease or quarantine declaration and a regulation or declaration under this division that is not an emergency disease or quarantine declaration, the emergency disease or quarantine declaration prevails to the extent of the inconsistency.

Offence to contravene quarantine or emergency quarantine declaration

98. A person who contravenes a quarantine or emergency quarantine declaration commits an offence.

Maximum penalty—2 000 penalty units.

Holder of authority to help in declared quarantine area

99.(1) A quarantine or emergency quarantine declaration may state what action must be taken in the declared quarantine area by the holder of an authority applying to a place within the area.

(2) The action may include the destruction or treatment of fisheries resources or plants.

(3) The holder of the authority must not contravene the declaration.

Maximum penalty for subsection (3)—3 000 penalty units.

Notice to be given about diseased fisheries resources or habitat

100. A person who knows or reasonably suspects fisheries resources or a fish habitat is showing signs of disease, or knows or reasonably suspects disease may be in fisheries resources or a fish habitat, must immediately notify the chief executive or an inspector.

Maximum penalty—2 000 penalty units.

Chief executive or inspector may take action required by quarantine declaration

101.(1) If the chief executive or an inspector believes on reasonable grounds a person has not taken the action the person is required to take under a quarantine or emergency quarantine declaration, or an inspector's direction under the declaration, the chief executive or inspector may take the action.

(2) The chief executive or inspector may act even though other fisheries resources, plants or other property may be destroyed.

(3) The costs reasonably incurred in taking action under this section are a

debt payable by the person to the State.

(4) If the action is necessary because the person committed an offence against this Act and the person is convicted of the offence, the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the State.

(5) Subsection (4) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Revocation of quarantine or emergency quarantine declaration

102. The chief executive must revoke a quarantine or emergency quarantine declaration as soon as possible after the chief executive is satisfied the relevant declared disease is no longer present in the declared quarantine area.

Compensation

103. Compensation is payable for fisheries resources, plants or property destroyed because of action taken under a quarantine or emergency quarantine declaration only if the chief executive decides that compensation should be payable in the circumstances of the particular case.

Offence to communicate disease to live fisheries resources or fish habitat

104. A person must not unlawfully and intentionally or recklessly communicate a disease to live fisheries resources or fish habitat.

Maximum penalty—2 000 penalty units.

Offence to sell diseased fisheries resources and products

105. A person must not unlawfully sell fisheries resources, or a product derived from fisheries resources, knowing the fisheries resources or product is infected with or contains a declared disease.

Maximum penalty—2 000 penalty units.

Offence to leave diseased fisheries resources and products in a place

106. A person must not leave fisheries resources, or a product derived from fisheries resources, in a place knowing the fisheries resources or product is infected with or contains a declared disease.

Maximum penalty—2 000 penalty units.

Offence to bring diseased fisheries resources and products into Queensland

107. A person must not unlawfully bring fisheries resources, or a product derived from fisheries resources, into Queensland knowing the fisheries resources or product is infected with or contains a declared disease.

Maximum penalty—2 000 penalty units.

*Division 7—Orders for destruction***Order for taking and removing, or destroying, noxious, nonindigenous or diseased fisheries resources or aquaculture fish**

108.(1) The chief executive may order an inspector to take and remove, or destroy, fisheries resources (the “**relevant fisheries resources**”).

(2) The chief executive may make the order only if the chief executive is satisfied—

- (a) the relevant fisheries resources are—
 - (i) noxious, nonindigenous or diseased fisheries resources; or
 - (ii) aquaculture fisheries resources; and
- (b) the relevant fisheries resources are a significant threat to other fisheries resources or a fish habitat; and
- (c) it is necessary or desirable for the relevant fisheries resources to be taken and removed, or destroyed.

(3) The chief executive may make the order even though other fisheries resources, plants or other property may be destroyed.

(4) The inspector must take the action necessary to comply with the order.

(5) Compensation is payable for fisheries resources, plants or property taken and removed, or destroyed, under the order only if the chief executive decides that compensation should be payable in the circumstances of the particular case.

Order to stop or delay escape of noxious, nonindigenous or diseased fisheries resources or aquaculture fish

109.(1) If the chief executive is satisfied there is no practicable way to take and remove, or destroy, noxious, nonindigenous or diseased fisheries resources or aquaculture fish, the chief executive may order an inspector to take the action necessary to stop or delay the fisheries resources from escaping.

(2) The chief executive may make the order even though other fisheries resources, plants or other property may be destroyed.

(3) The inspector must take the action necessary to comply with the order.

(4) Compensation is payable for fisheries resources, plants or property taken and removed, or destroyed, under the order only if the chief executive decides that compensation should be payable in the circumstances of the particular case.

Recovery of costs of complying with order

110.(1) If an order under this division is necessary because a person has committed an offence against this Act, the costs incurred by the chief executive in taking action reasonably necessary to comply with the order are a debt payable by the person to the chief executive.

(2) If the person is convicted of an offence against this Act relevant to the order, the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the chief executive.

(3) Subsection (2) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Division 8—Fish ways**Purpose of division**

111.(1) Many important fish stocks need access to particular fresh or salt water environments for breeding or rearing their young or to critical habitats for food and protection.

(2) This division is intended to provide a balance between the need for additional dams and other barriers across waterways and the need to protect fish stock access to these environments and habitats.

Offence to build waterway barrier works without approval

112.(1) A person must not build waterway barrier works without the chief executive's approval.

Maximum penalty—2 000 penalty units.

(2) Subsection (1) does not apply to a person who holds an approval prescribed under a regulation.

Application for approval to build waterway barrier works

113.(1) An application for an approval to build waterway barrier works must—

- (a) be made to the chief executive in the form approved by the chief executive; and
- (b) be accompanied by the fees prescribed under the regulations.

(2) If asked by the chief executive, the applicant must give further relevant information or evidence the chief executive requires to decide the application.

Consideration of application

114.(1) The chief executive must consider an application for an approval to build waterway barrier works, and may give the approval or refuse to give it.

(2) In considering the application, the chief executive must comply with any relevant regulation or management plan.

(3) In considering the application, the chief executive must also have regard to the *Water Resources Act 1989*.

Notice of refusal to give approval etc.

115. If the chief executive refuses to give an approval to build waterway barrier works, the chief executive must promptly—

- (a) give the applicant a written notice informing the applicant—
 - (i) of the refusal and the reasons for the refusal; and
 - (ii) that the applicant may appeal against the decision to the Fisheries Tribunal within 28 days; and
- (b) refund the fees paid by the applicant, other than fees for assessing the application.

Chief executive may direct building of fish way

116.(1) If the chief executive approves the building of waterway barrier works, the chief executive may, by written notice, direct the person given the approval to build a specified fish way for the works in the time stated in the notice.

(2) The person must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—2 000 penalty units.

(3) If the person does not comply with the direction, the chief executive may build the fish way.

(4) To enable the fish way to be built, the chief executive may authorise persons, with or without vehicles, machinery, plant and equipment to enter and stay on any land or in any waters.

(5) If the chief executive builds the fish way, the costs reasonably incurred in building the fish way are a debt payable by the person to the State.

(6) If the person is convicted of an offence for failing to comply with the

direction, the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the State.

(7) Subsection (6) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

(8) In deciding whether to give a direction under this section, the chief executive must have regard to the *Water Resources Act 1989*.

Division 9—Fisheries Research Fund

Fisheries Research Fund

117.(1) The Fisheries Research Fund (the “**fund**”) is continued in existence subject to the *Financial Administration and Audit Act 1977*, part 8, division 2.¹³

(2) Accounts for the fund must be kept as part of the departmental accounts of the department.

(3) Amounts received for the fund must be deposited in a departmental financial-institution account of the department but may be deposited in an account used for depositing other amounts of the department.

(4) Amounts received for the fund include—

- (a) amounts paid to the department as part of the department's departmental vote under the *Financial Administration and Audit Act 1977* and made available by the department for the fund; and
- (b) penalties, costs and fees recovered or received by the chief executive; and
- (c) other amounts recovered or received under this Act if, under a regulation, the amounts must be paid into the fund.

(5) Amounts in the fund must be spent for—

- (a) scientific or other research, training of persons, dissemination of information, or publication of material, for or about fisheries

¹³ *Financial Administration and Audit Act 1977*, part 8 (Transitional provisions), division 2 (Transitional provisions for *Financial Administration Legislation Amendment Act 1999*)

Fisheries Act 1994

activities; or

(b) other fisheries related activities approved by the chief executive.

(6) In this section—

“departmental accounts”, of a department, means the accounts of the department under the *Financial Administration and Audit Act 1977*, section 12.

“departmental financial-institution account”, of a department, means an account of the department kept under the *Financial Administration and Audit Act 1977*, section 18.

“other amounts”, of a department, means amounts received by the department other than amounts received for the fund.

Division 10—General

Statistical returns to be kept

118.(1) A person must, if required under a regulation or management plan—

- (a) keep the records, documents or other information about fisheries required by the chief executive in the way and form and as directed by the chief executive; and
- (b) give them to the chief executive as the chief executive requires.

Maximum penalty—500 penalty units.

(2) Subsection (1) applies whether or not the person performs activities by way of fishing or other activities during the relevant time.

Codes of practice

119.(1) The chief executive may prepare a code of practice for persons to whom this Act applies.

(2) The code may, for example, include the following—

- (a) the way recreational or commercial fishing is to be conducted in a fishery;

- (b) guidelines to be followed by persons engaged in particular activities in fishing;
- (c) processes to be followed to resolve conflicts;
- (d) standards to be adopted for boats, activities or processes in fishing or aquaculture;
- (e) anything else decided by the chief executive.

(3) In preparing a code of practice, the chief executive must take reasonable steps to engage in consultation about the code.

PART 6—PROTECTION AND CONSERVATION OF FISH HABITATS

Declaration of fish habitat areas

120. An area may be declared under a regulation to be a fish habitat area.

Management of declared fish habitat areas

121. A declared fish habitat area may be managed under a management plan.

Protection of fisheries resources in declared fish habitat area

122. A person must not unlawfully perform, or cause to be performed, works or related activity in a declared fish habitat area.

Maximum penalty—3 000 penalty units.

Protection of marine plants

123. A person must not unlawfully—

- (a) remove, destroy or damage a marine plant; or

- (b) cause a marine plant to be removed, destroyed or damaged.

Maximum penalty—3 000 penalty units.

Example of removing a marine plant—

Removing seagrass from a beach or foreshore.

Example of destroying a marine plant—

Burning saltcouch.

Example of damaging a marine plant—

Pruning or trimming mangroves.

Chief executive may rehabilitate or restore land etc.

124.(1) The chief executive may take the action reasonably necessary to rehabilitate or restore land, waters, marine plants or a declared fish habitat area if a person—

- (a) contravenes a provision of this part; or
- (b) does not comply with a condition of an authority to rehabilitate or restore land, waters, marine plants or declared fish habitat area, or the rehabilitation or restoration is not carried out to the chief executive's reasonable satisfaction.

(2) The costs reasonably incurred by the chief executive in rehabilitating or restoring the land, waters, marine plants or declared fish habitat area are a debt payable by the person to the State.

(3) If the person is convicted of an offence for the contravention, the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the State.

(4) Subsection (3) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Notice to restore fish habitat etc.

125.(1) This section applies if—

- (a) litter, soil, a noxious substance, refuse or other matter (the “**polluting matter**”) is on land, in waters, on marine plants or in a fish habitat; and

Fisheries Act 1994

- (b) it appears to the chief executive—
- (i) that the polluting matter has prevented, or may prevent, fishing activities and that it is necessary or desirable for action to be taken about the polluting matter to enable the fishing activities to be carried out; or
 - (ii) that the polluting matter has had, or may have, an adverse effect on the quality or productive capacity of a fishery or fish stocks and that it is necessary or desirable for action to be taken about the polluting matter to protect or restore the quality of productive capacity of the fishery or fish stocks; or
 - (iii) that the polluting matter has had, or may have, an adverse effect on the quality or integrity of a fish habitat and that it is necessary or desirable for action to be taken about the polluting matter to protect or restore the quality or integrity of the fish habitat; or
 - (iv) that circumstances prescribed under the regulations exist in relation to the polluting matter and that it is necessary or desirable for action to be taken about the polluting matter to enable fishing activities to be carried out or to protect or restore the quality, productive capacity or integrity of fisheries resources.

(2) The chief executive may, by written notice, require the person who the chief executive suspects on reasonable grounds is responsible for the presence of the polluting matter to take specified action about the polluting matter within the time and in the way (if any) specified in the notice.

(3) The person must comply with the notice, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—2 000 penalty units.

(4) If the person does not comply with the notice, the chief executive may take action on any land or in any waters that the chief executive considers reasonably necessary to ensure that the matters mentioned in 1 or more of the subparagraphs of subsection (1)(b) are achieved.

(5) To enable action to be taken under subsection (4), the chief executive may authorise persons, with or without vehicles, machinery, plant and equipment to enter and stay on any land or in any waters.

(6) The costs reasonably incurred by the chief executive in taking action under subsection (4) are a debt payable by the person to the State.

(7) If the person is convicted of an offence against subsection (3), the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the State.

(8) Subsection (7) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

PART 7—COMMONWEALTH—STATE MANAGEMENT OF FISHERIES

Functions and powers of Minister

126.(1) The Minister may perform a function and exercise a power conferred on the Minister by the Commonwealth Fisheries Act, including a function or power of the Minister as a member of a Joint Authority.

(2) If, in the exercise of the power conferred on the Minister by the Commonwealth Fisheries Act, the Minister appoints a deputy, the deputy may perform the functions and exercise the powers conferred by that Act on the deputy of the Minister as a member of a Joint Authority.

Minister to table reports of Joint Authorities

127. The Minister must table in the Legislative Assembly a copy of each report of a Joint Authority prepared under the Commonwealth Fisheries Act as soon as practicable after the report is received by the Minister.

Judicial notice

128. Judicial notice must be taken of the signature of a person who is or has been a member of a Joint Authority, or a deputy of a member of a Joint Authority, and of the fact that the person is, or was at the particular time, a member of a Joint Authority or a deputy of a member of a Joint Authority.

Functions of Joint Authorities

129. A Joint Authority has the functions conferred on it by this Act or the Commonwealth Fisheries Act.

Delegation

130.(1) A Joint Authority may delegate its powers to—

- (a) the chief executive, a local government or an entity prescribed under a regulation (a “**prescribed entity**”); or
- (b) an officer or employee of the public service; or
- (c) an officer, employee or member of a local government or prescribed entity; or
- (d) an officer or employee of the Commonwealth or another State.

(2) A delegation of a power to the chief executive, a local government, a prescribed entity, or an officer or employee of the Commonwealth or another State, may permit the subdelegation of the power.

Proceedings of Joint Authorities

131.(1) A Joint Authority is to conduct its meetings and other proceedings in accordance with the Commonwealth Fisheries Act.

(2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or the Commonwealth Minister’s deputy, who took part in or made the decision is evidence that the decision, as recorded, was properly made and recorded.

(3) In a legal proceeding, a document signed for a Joint Authority by a member of the Joint Authority is taken to have been properly executed by the Joint Authority and, unless the contrary is proved, is taken to accord with a decision of the Joint Authority.

Making of Joint Authority and other Commonwealth-State arrangements

132.(1) The State may make an arrangement under part 5 of the Commonwealth Fisheries Act for the management of a particular fishery,

whether or not a Joint Authority is to have the management of a fishery under the arrangement.

(2) To avoid any doubt, an arrangement is a statutory instrument to which the *Acts Interpretation Act 1954*, section 17 (Exercise of powers between enactment and commencement) applies under the *Statutory Instruments Act 1992*, section 14.

Ending of Commonwealth-State arrangements

133.(1) A Commonwealth-State arrangement for a fishery may be ended under the Commonwealth Fisheries Act.

(2) On the ending of the arrangement, all authorities issued, and regulations, management plans and declarations made, for the fishery expire.

Application of Queensland law to fisheries

134.(1) If, under a Commonwealth-State arrangement, a fishery is to be managed under Queensland law, Queensland law applies to the fishery.

(2) Despite subsection (1), Queensland law does not apply to foreign boats, operations on or from foreign boats, or persons on foreign boats, or to matters happening before the arrangement commenced to which Commonwealth law applies.

Additional functions of Joint Authority for fishery under Queensland law

135. If, under a Joint Authority arrangement, a fishery is to be managed by a Joint Authority under Queensland law, the Joint Authority has the following additional functions—

- (a) keeping constantly under consideration the fishery's condition;
- (b) formulating policies and plans for the fishery's management;
- (c) exercising for the fishery's management powers conferred on the Joint Authority under this Act;

- (d) cooperating and consulting with other entities on issues of common interest.

Exercise of powers for Joint Authority fishery under Queensland law

136.(1) This section applies to a Joint Authority fishery managed under Queensland law.

(2) An authority authorises something to be done in or to the fishery only if it is issued under this section.

(3) The Joint Authority for the fishery has, to the exclusion of the fisheries agencies, all the functions and powers of the fisheries agencies for the fishery.

(4) This Act and other laws apply to the Joint Authority as if, for the fishery, it were each of the fisheries agencies.

(5) On the fishery becoming a Joint Authority fishery, but subject to any regulation made under this part, all regulations, management plans, declarations and authorities applying to the fishery stop applying to the fishery.

(6) An authority issued by the Joint Authority must contain a condition limiting it to fisheries managed by the Joint Authority.

(7) The Joint Authority may endorse an authority (including an authority issued by the Joint Authority or another Joint Authority within the meaning of the Commonwealth Fisheries Act) to extend its operation to activities over which the Joint Authority has powers under this Act.

(8) If the endorsement mentioned in subsection (7) is made—

- (a) the endorsement ends if the authority ends; and
- (b) the Joint Authority may suspend or cancel the endorsement under this Act as if it were an authority issued by it.

(9) This section does not allow the Joint Authority to issue, or take other action about, an authority for a foreign boat.

Application of provisions about offences

137. The provisions of this Act about offences, the enforcement of

offences and proceedings for offences apply—

- (a) to anything done in, or about, a Commonwealth-State fishery (the “**cooperative fishery**”) managed under Queensland law; and
- (b) as if—
 - (i) a reference in this Act to an authority were a reference to an authority, or an endorsement of an authority, issued or made under this part for the cooperative fishery; and
 - (ii) a reference in this Act to a fishery were a reference to the cooperative fishery.

Presumption about certain statements in arrangements

138.(1) A statement in a Commonwealth-State arrangement must be presumed to be correct if it is to the effect that—

- (a) for an arrangement to which the Commonwealth and Queensland are the only parties—stated waters are waters relevant to Queensland; and
- (b) in any other case—stated waters are waters adjacent to the States that are parties to the arrangement or are waters relevant to a stated State or States.

(2) A word or expression used in subsection (1) and the Commonwealth Fisheries Act has the same meaning in subsection (1) as it has in the Commonwealth Fisheries Act.

Instruments for Commonwealth-State fisheries under Queensland law

139.(1) If, under a Commonwealth-State arrangement, a Commonwealth-State fishery is to be managed under Queensland law, a regulation may be made about any matter—

- (a) required or permitted by this Act to be prescribed for a fishery or its management; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to, or enabling the carrying out or giving effect to, decisions made under the arrangement; or

- (c) if the fishery is a Joint Authority fishery—necessary or convenient to be prescribed for carrying out or giving effect to, or enabling the carrying out or giving effect to, decisions of the fishery’s Joint Authority about the fishery or its management.

(2) Subsection (1) does not limit the *Statutory Instruments Act 1992*, section 22 (Power to make statutory instrument under Act etc.).

(3) If an issue is to be decided about whether a regulation, management plan or declaration makes provision about a matter for a purpose mentioned in subsection (1)(b) or (c), it must be presumed that it makes provision for the purpose in the absence of evidence to the contrary.

PART 8—ENFORCEMENT

Division 1—Inspectors

Appointment

140.(1) The chief executive may appoint any of the following persons as inspectors—

- (a) employees of the department;
- (b) officers of the public service;
- (c) police officers;
- (d) other persons prescribed under a regulation.

(2) The chief executive may appoint a person (other than a police officer) as an inspector only if—

- (a) in the chief executive’s opinion, the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily finished training approved by the chief executive.

Limitation of inspector's powers

141. The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the chief executive given to the inspector.

Inspector's conditions of appointment

142.(1) An inspector holds office on the conditions specified in the instrument of appointment.

(2) An inspector—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the chief executive; and
- (c) if the conditions of appointment provide—ceases holding office as an inspector on ceasing to hold another office stated in the conditions of appointment.

Inspector's identity card

143.(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the chief executive; and
- (c) be signed by the inspector; and
- (d) identify the person as an inspector under this Act.

(3) A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after the person ceases to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty—80 penalty units.

(4) This section does not apply to an inspector who is a police officer.

Production or display of inspector's identity card

144.(1) This section does not apply to a police officer.

(2) An inspector may exercise a power under this Act in relation to a person only if—

- (a) the inspector first produces the inspector's identity card for inspection by the person; or
- (b) the inspector has the inspector's identity card displayed so that it is clearly visible to the person.

(3) However, if for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

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

Entry to places

145.(1) An inspector may enter a place if—

- (a) its occupier consents to the entry or the purpose of the entry is to get the occupier's consent; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) it is mentioned in an authority as a place of business, or another place, required to be open for inspection and the entry is made when the place is—
 - (i) open for the conduct of business or otherwise open for entry; or
 - (ii) required under the authority to be open for inspection; or
- (d) the entry is permitted by a warrant; or
- (e) the entry is necessary to take action the inspector is required or

authorised to take under—

- (i) a quarantine declaration; or
- (ii) an order under this Act for the taking and removal, or destruction, of fisheries resources;¹⁴ or
- (iii) an order under this Act for the taking of action to stop or delay fisheries resources or plants from escaping.¹⁵

(2) An inspector may also enter a place if—

- (a) the place is not within a city or town under the *Local Government Act 1993*; and
- (b) the place is not the site or curtilage of a building or other structure used for residential purposes; and
- (c) the purpose of the entry is to gain access, by a direct reasonable route, to a body of water.

(3) In addition, an inspector may enter on, and pass along, the beds, banks or borders of a body of water.

Boarding of boats and entry of vehicles

146.(1) An inspector may board a boat to find out whether this Act is being complied with.

(2) An inspector may also board a boat or enter a vehicle if the inspector has reasonable grounds for suspecting—

- (a) the boat or vehicle is being, or has been, used in the commission of an offence against this Act; or
- (b) the boat or vehicle, or a thing in or on the boat or vehicle, may provide evidence of the commission of an offence against this Act.

(3) Before boarding an unattended boat or entering an unattended vehicle

¹⁴ This order is made under section 108 (Order for taking and removing, or destroying, noxious, nonindigenous or diseased fisheries resources or aquaculture fish).

¹⁵ This order is made under section 109 (Order to stop or delay escape of noxious, nonindigenous or diseased fisheries resources or aquaculture fish).

under this section, the inspector must take reasonable steps to advise its owner, or the person in control of it, of the intention to board or enter.

(4) However, an inspector may enter a secured part of an unattended boat only if the owner or person in control of the boat consents or the entry is permitted by a warrant.

Boarding of boat, or entry of vehicle, that is moving or about to move

147.(1) This section applies if an inspector intends to board a boat or enter a vehicle under this division, including a boat that is being carried or towed by a vehicle.

(2) If the boat or vehicle is moving or about to move, the inspector may signal the person in control of the boat or vehicle to stop the boat or vehicle or not to move it.

(3) To enable the boat to be boarded or vehicle to be entered, the inspector may—

- (a) act with necessary and reasonable help and force; and
- (b) require the person in control of the boat or vehicle to give reasonable help to the inspector.

(4) A person must obey a signal under subsection (2), unless the person has a reasonable excuse for disobeying it.

Maximum penalty—200 penalty units.

(5) A person must comply with a requirement under subsection (3)(b), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

(6) It is a reasonable excuse for a person to disobey a signal under subsection (2) if—

- (a) the person reasonably believes that to obey the signal immediately would have endangered the person or someone else, or the boat or vehicle; and
- (b) the person obeys the signal as soon as it is practicable to obey it.

Warrants

148.(1) An inspector may apply to a magistrate for a warrant for a place or boat.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of the commission of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place or on the boat.

(5) The warrant must state—

- (a) the inspector may, with necessary and reasonable help and force, enter the place, or board the boat, and exercise the inspector’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours of the day when entry may be made; and
- (d) the day (within 14 days after the warrant’s issue) when the warrant ends.

Monitoring warrants for abalone

148A.(1) An inspector may apply to a magistrate for a warrant under this section for a place, other than a place, or part of a place used exclusively as a person’s residence, if the inspector is reasonably satisfied—

- (a) abalone are at the place; and

Fisheries Act 1994

(b) it is necessary for the inspector to enter the place to find out if this Act is being complied with in relation to abalone.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue the warrant only if the magistrate is satisfied it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether this Act is being complied with in relation to abalone.

(5) The warrant must state—

- (a) that an inspector may, with necessary and reasonable help and force—
 - (i) enter, and from time to time re-enter, the place; and
 - (ii) exercise an inspector's powers under this part; and
- (b) the purpose for which the warrant is sought; and
- (c) the hours of the day or night when the place may be entered; and
- (d) any conditions imposed by the magistrate; and
- (e) the date, within 2 months after the warrant's issue, the warrant ends.

Examples for paragraph (d)—

1. The magistrate may limit the number of times an inspector may enter the place while the warrant is in force.
2. The magistrate may require an inspector to give to the magistrate information about the use of the inspector's powers under the warrant.

Warrants—applications made other than in person

149.(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing a warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the inspector—

- (a) the Magistrate must—
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the date and time the warrant was signed; and
 - (iii) record on the warrant the reasons for issuing it; and
- (b) the inspector must—
 - (i) complete a form of warrant (“**warrant form**”) in the same terms as the warrant issued by the magistrate; and
 - (ii) write on the warrant form the name of the magistrate and the date and time the magistrate signed the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, is permission for the entry and the exercise of the other powers permitted by the warrant issued by the magistrate.

(7) The inspector must send to the magistrate—

- (a) the sworn application; and
- (b) if a warrant form was completed by the inspector—the completed

warrant form.

(8) The sworn application and a completed warrant form must be sent to the magistrate at the earliest practicable opportunity.

(9) When the magistrate receives the application and warrant form, the magistrate must attach them to the warrant issued by the magistrate.

(10) Unless the contrary is proved, a court must presume that the exercise of a power was not permitted by a warrant under this section if an issue arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant under this section and the warrant is not produced in evidence.

Inspector's general powers for places, boats and vehicles

150.(1) An inspector who enters a place, boards a boat or enters a vehicle under this part may—

- (a) search any part of the place, boat or vehicle; or
- (b) examine, inspect, test, photograph or film anything in or on the place, boat or vehicle; or
- (c) mark or seal a container or other thing in or on the place, boat or vehicle; or
- (d) open a container if the inspector considers it is necessary for exercising a power; or
- (e) take samples of or from anything in or on the place, boat or vehicle; or
- (f) take extracts from, or make copies of, a document in or on the place, boat or vehicle; or
- (g) take into or onto the place, boat or vehicle any persons, equipment and materials the inspector reasonably requires for exercising a power in relation to the place, boat or vehicle; or
- (h) require a person in or on the place, boat or vehicle, or the occupier of the place, to give the inspector reasonable help for the exercise of the powers mentioned in paragraphs (a) to (g); or
- (i) if the inspector boards a boat or enters a vehicle—by written notice given to the person in control of the boat or vehicle, require

Fisheries Act 1994

the person—

- (i) to take the boat or vehicle to a stated reasonable place by a stated reasonable time; and
- (ii) if necessary, to remain in control of the boat or vehicle at the place for a reasonable time;

to enable the inspector to exercise the powers mentioned in paragraphs (a) to (g); or

- (j) if the inspector boards a boat or enters a vehicle—require the person in control of boat or vehicle to accompany the inspector to enable the inspector to comply with subsection (8).

(2) A person must not unlawfully break, remove or change a mark or seal placed on a container or thing under subsection (1)(c).

Maximum penalty—200 penalty units.

(3) A person who is required by an inspector under subsection (1)(h) to give the inspector reasonable help for the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

(4) If the help is required to be given by a person by—

- (a) answering a question; or
- (b) producing a document (other than an authority or other document required to be kept by the person under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

(5) A person who is required by an inspector under subsection (1)(i) to take action in relation to a boat or vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

(6) If, for any reason, it is not practicable to make a requirement under subsection (1)(i) by written notice, the requirement may be made orally and

confirmed by written notice as soon as practicable.

(7) Nothing in this section prevents an inspector making a further requirement under subsection (1)(i) of the same person or another person in relation to the same boat or vehicle, if it is necessary and reasonable to make the further requirement.

(8) The inspector must not enter a part of a boat or vehicle used only as a living area, or exercise a power under subsection (1)(a) to (g) in relation to that part, unless the inspector is accompanied by the person in control of the boat or vehicle.

(9) Subsection (8) does not apply if the person in control of the boat or vehicle is unavailable or unwilling to accompany the inspector or the inspector is unable for another reason to comply with the subsection.

Power to seize evidence from places etc.

151.(1) An inspector who enters a place or boards a boat under this part under a warrant may seize the evidence for which the warrant was issued.

(2) An inspector who enters a place under this part with the occupier's consent may seize the particular thing for which the entry was made if the inspector believes on reasonable grounds the thing is evidence of an offence against this Act.

(3) An inspector who enters a place or boards a boat under this part under a warrant, or enters a place with the occupier's consent, may also seize another thing if the inspector believes on reasonable grounds—

- (a) the thing is evidence of the commission of an offence against this Act; and
- (b) the seizure is necessary to prevent—
 - (i) the concealment, loss, death or destruction of the thing; or
 - (ii) the use of the thing in committing, continuing or repeating the offence.

(4) An inspector who enters a place under this part other than under a warrant or with the occupier's consent may seize a thing if the inspector believes on reasonable grounds—

- (a) the thing is evidence of the commission of an offence against this Act; and
- (b) the seizure is necessary to prevent—
 - (i) the concealment, loss, death or destruction of the thing; or
 - (ii) the use of the thing in committing, continuing or repeating the offence.

(5) This section is in addition to, and does not limit, the powers of an inspector who boards a boat without a warrant.

Power to seize evidence after boarding a boat or entering a vehicle

152. An inspector who boards a boat or enters a vehicle under this part may seize—

- (a) a thing in or on the boat or vehicle; or
- (b) the boat or vehicle itself;

if the inspector believes, on reasonable grounds, the thing, boat or vehicle is evidence of the commission of an offence against this Act.

Additional power to seize fisheries resources etc.

153.(1) This section applies if an inspector—

- (a) enters a place or vehicle or boards a boat; and
- (b) finds fisheries resources, a container, fishing apparatus or anything else (the “**thing**”).

(2) The inspector may seize the thing if the inspector believes, on reasonable grounds—

- (a) that an offence against this Act has been committed in relation to the thing; or
- (b) that the thing was used in committing an offence against this Act.

(3) If the thing is a container, the inspector may seize the container and its contents if the inspector believes, on reasonable grounds, that—

- (a) it contains fisheries resources, fishing apparatus or anything else (the “**contents**”); and

- (b) an offence against this Act has been committed in relation to all or some of the contents.

Seizure of fisheries resources in heap etc.

154.(1) In this section—

“declared fisheries resources” means fisheries resources declared under a regulation or management plan to be fisheries resources to which this section applies.

“forfeiture offence” means an offence against this Act declared under a regulation or management plan to be an offence to which this section applies.

“threshold percentage” for declared fisheries resources means the percentage (which may be nil) prescribed under a regulation or management plan for the fisheries resources.

(2) This section applies if—

- (a) particular declared fisheries resources (the **“suspect fisheries resources”**) are part of declared fisheries resources in a heap, collection or container; and
- (b) an inspector believes, on reasonable grounds, that—
- (i) a forfeiture offence has been committed in relation to the suspect fisheries resources; and
- (ii) the weight or number of the suspect fisheries resources expressed as a percentage of the total weight or number of the declared fisheries resources in the heap, collection or container is more than the threshold percentage for the fisheries resources.

Examples of ‘heap, collection or container’—

1. A freezer on a boat stocked with a large quantity of frozen scallops.
2. Fish in a processing establishment where, because of the quantity of the fish, it is impracticable to count the fish of a particular species or type.

Examples of the ways an inspector may form a belief on reasonable grounds—

A statistical test or random sampling of the declared fisheries resources in the heap, collection or container.

(3) The inspector may seize all the fisheries resources in the heap, collection or container and, if the fisheries resources are in a container, the container.

(4) If a person is later convicted of a forfeiture offence in relation to the suspect fisheries resources, then, for the purposes of the forfeiture of the fisheries resources in the heap, collection or container, all of those fisheries resources are taken to be fisheries resources the subject of the offence.

Power to seize explosives etc.

155.(1) If—

- (a) an inspector finds a person on a boat, a foreshore, or a bed, bank or border of a body of water; and
- (b) the person is in possession of an explosive, powerhead or other explosive propelled missile, firearm, noxious substance, or device that creates an electrical field in waters or on land, (the “**suspect thing**”); and
- (c) the inspector believes, on reasonable grounds, the suspect thing has just been used, or is just about to be used, to commit an offence against this Act;

the inspector may seize the suspect thing.

(2) This section is in addition to, and does not limit, any other seizure powers of an inspector.

Powers in support of seizure

156.(1) This section applies if an inspector is permitted to seize a boat, vehicle or anything else.

(2) To enable the boat, vehicle or other thing to be seized, an inspector may, by written notice given to the person in control of the boat, vehicle or thing, require the person—

- (a) to take it to a specified reasonable place by a specified reasonable time; and
- (b) if necessary, to remain in control of it at the place for a reasonable time.

(3) If, for any reason, it is not practicable to make the requirement by a written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.

(4) A person must comply with a requirement under this section, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

(5) Nothing in this section prevents an inspector making a further requirement under this section of the same person or another person in relation to the same boat, vehicle or thing, if it is necessary and reasonable to make the further requirement.

Division 3—Procedures after seizure

Subdivision 1—General

Receipt to be given

157.(1) As soon as practicable after a thing (including a boat or vehicle) is seized by an inspector under this Act, the inspector must give a receipt for it to the person from whom it was seized.

(2) The receipt must describe generally the condition of the thing seized and, if more than 1 thing is seized, must include an inventory or general description of them.

(3) If, for any reason, it is not practicable to comply with subsection (1), the inspector must—

- (a) leave the receipt at the place where the thing is seized; and
- (b) ensure the receipt is left in a reasonably secure way in a conspicuous position.

(4) This section does not apply if—

- (a) it is not practicable to comply with subsection (1) or (3); and
- (b) the owner of the thing can not be decided after reasonable inquiries or, having regard to its value, it is not reasonable to make inquiries about its owner.

Example of subsection (4)—

An inspector seizes an unattended crab pot or net that the inspector finds in a creek.

Inspector to allow inspection etc.

158. Until a seized thing is forfeited, returned or otherwise finally dealt with under this Act, an inspector must allow a person who would be entitled to possession of it, if it had not been seized, to inspect it and, if it is a document, make copies of it.

Inspector may dispose of fisheries resources taken unlawfully

159.(1) This section applies if fisheries resources are seized under this Act and an inspector believes, on reasonable grounds, that the fisheries resources have been taken unlawfully.

(2) If the fisheries resources are alive, the inspector may immediately return them to the wild or, if appropriate, the place from which they were taken.

(3) If the fisheries resources are dead and the inspector believes, on reasonable grounds, that they are diseased, putrid, unfit for sale, of no value or of insufficient value to justify their sale, the inspector may immediately dispose of the fisheries resources in a way decided by the inspector.

Seized fisheries resources become property of State

160.(1) This section applies if fish are seized under this Act and are not immediately returned to the wild or otherwise disposed of by an inspector under this subdivision.

(2) The fisheries resources become the property of the State if—

- (a)** their seizure is not the subject of an appeal to a Magistrates Court within 7 days after their seizure; or
- (b)** their seizure is the subject of an appeal to a Magistrates Court within 7 days after their seizure, but the seizure is confirmed on appeal; or
- (c)** the chief executive and the owner of the fisheries resources agree,

in writing, that the fisheries resources should become the chief executive's property.

(3) If fisheries resources that become the property of the State under this section have a market value and it is practicable to sell them, the chief executive must sell them in a reasonable way decided by the chief executive or in a way agreed with the owner of the fisheries resources.

(4) If the fisheries resources do not have a market value or it is not practicable to sell them, the chief executive may dispose of them in any reasonable way decided by the chief executive or in a way agreed with the owner of the fisheries resources.

(5) However, if the seizure of the fisheries resources is the subject of an appeal to a Magistrates Court, the court may give directions about how the fisheries resources are to be sold or disposed of, whether or not it confirms the seizure.

Chief executive may return seized things etc.

161.(1) The chief executive may return anything seized under this Act to its owner.

(2) If fisheries resources seized under this Act are sold by the chief executive, the chief executive may return the net proceeds of sale to the owner of the fisheries resources.

(3) The chief executive may return the thing or net proceeds of sale to its owner on conditions, including conditions to ensure that the thing or net proceeds of sale are available for forfeiture.

(4) If the thing or net proceeds of sale are not ordered to be forfeited to the State, the chief executive must return any property or security taken by the chief executive under a condition imposed under subsection (3) at the end of—

- (a) 6 months after the seizure; or
- (b) if a prosecution for an offence involving the thing or fisheries resources is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

Obligation to return seized things (other than fisheries resources)

162.(1) This section applies if a thing (other than fisheries resources) is seized under this Act.

(2) The chief executive must return the seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving the thing is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

(3) Despite subsection (2), the chief executive must return the seized thing to its owner immediately if the chief executive is not satisfied or stops being satisfied its retention as evidence is necessary.

(4) However, the chief executive may keep the seized thing if the chief executive believes, on reasonable grounds, the thing is liable to forfeiture under this Act.

(5) This section does not require the return of the thing if a court has ordered that the thing be forfeited to the State.

Obligation to pay net proceeds of sale of fisheries resources

163.(1) This section applies if—

- (a) fisheries resources are seized under this Act; and
- (b) the fisheries resources are sold after becoming the property of the State.

(2) The chief executive must pay the net proceeds of sale to the owner of the fisheries resources at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving the fisheries resources is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

(3) This section does not require the payment of the net proceeds of sale if a court has—

- (a) confirmed the seizure; or
- (b) ordered that the net proceeds of sale be forfeited to the State.

Chief executive may order forfeiture of unclaimed things

164.(1) This section applies if—

- (a) a thing is seized under this Act; and
- (b) the owner of the thing can not be found after reasonable inquiries or, having regard to its value, it is not reasonable to make inquiries about its owner.

(2) This section also applies if—

- (a) a thing is seized under this Act; and
- (b) the thing contravenes this Act or other fisheries legislation, but a prosecution involving the thing is not started.

Example of subsection (2)—

Fishing apparatus of illegal dimensions.

(3) In addition, this section also applies if—

- (a) a thing is seized under this Act; and
- (b) the chief executive is unable, after making reasonable efforts, to return the thing to its owner.

(4) The chief executive may order the forfeiture of the thing to the State.

Subdivision 2—Appeal against seizure of fisheries resources

Where and how to start appeal

165.(1) A person whose fisheries resources have been seized under this Act may appeal to the Magistrates Court nearest where the fisheries resources were seized.

(2) However, the person may not appeal, and any appeal already started by the person lapses, if the fisheries resources become the property of the State.

(3) The appeal is started by—

- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and
- (b) giving a copy of the notice to the chief executive.

(4) Without limiting subsection (3)(b), the chief executive is given a copy of the notice if a copy is given to the inspector who seized the fisheries resources.

(5) The notice of appeal must state the grounds of the appeal.

Hearing procedures

166.(1) The power to make rules of court under the *Magistrates Courts Act 1921* includes power to make rules of court for appeals to Magistrates Courts under this Act.

(2) The procedure for an appeal to a Magistrates Court under this Act is to be—

- (a) in accordance with the rules made under the *Magistrates Courts Act 1921*; or
- (b) in the absence of relevant rules, as directed by a magistrate.

(3) In deciding the appeal, the Magistrates Court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice; and
- (c) may hear the appeal in court or chambers.

Powers of Magistrates Court on appeal

167. In deciding the appeal, the Magistrates Court may—

- (a) confirm the seizure of the fisheries resources; or
- (b) set aside the seizure and order the return of the fisheries resources.

Court may give directions about disposal of seized fisheries resources

168. If the Magistrates Court confirms the seizure, it may direct the chief executive how to sell or otherwise dispose of the fisheries resources.

Appeal to District Court on questions of law only

169. A party dissatisfied by the decision of the Magistrates Court may appeal to the District Court, but only on a question of law.

Division 4—Other enforcement powers of inspectors**Power to stop persons**

170.(1) An inspector may require a person to stop, and not to move on until permitted by the inspector, if the inspector—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the inspector to suspect on reasonable grounds the person has just committed an offence against this Act.

(2) The inspector may require the person not to move on only for as long as is reasonably necessary for the inspector to exercise the inspector's powers under this Act in relation to the person.

(3) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—200 penalty units.

Power to require name and address

171.(1) An inspector may require a person to state the person's name and address if the inspector—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the inspector to suspect on reasonable grounds the person has just committed an offence against this Act.

(2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the person's stated name or address if the inspector suspects, on reasonable grounds, the stated name or address is false.

(4) A person must comply with an inspector's requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

(5) The person does not commit an offence against this section if—

- (a) the inspector required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

Power to require information from certain persons

172.(1) This section applies if an inspector suspects, on reasonable grounds, that—

- (a) an offence against this Act has been committed; and
- (b) a person may be able to give information about the offence.

(2) The inspector may require the person to give information about the offence.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(4) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

(5) It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person.

(6) The person does not commit an offence against this section if the information sought by the inspector is not in fact relevant to the offence.

Power to require production of documents

173.(1) An inspector may require a person to produce for inspection—

- (a) a document required to be kept by the person under this Act; or
- (b) if the person is engaged in the business of buying or selling fisheries resources by wholesale or retail—a document about the buying or selling of fisheries resources in the person's possession.

(2) A person required under this Act to have a document available for immediate inspection must produce it immediately for inspection by the inspector or someone else specified by the inspector, unless the person has a reasonable excuse for not producing it.

Maximum penalty—500 penalty units.

(3) In any other case, a person required under this Act to keep a document must produce it immediately, or within a reasonable time allowed by the inspector, for inspection by the inspector or someone else specified by the inspector, unless the person has a reasonable excuse for not producing it.

Maximum penalty—200 penalty units.

(4) The inspector may keep the document to make a copy of it.

(5) The inspector must return the document to the person as soon as practicable after making the copy.

Division 5—Other enforcement matters

Restraining orders against persistent offenders

174.(1) The chief executive may apply to the District Court for an order restraining a person from—

- (a) continuing or repeating a particular activity; or
- (b) committing an offence against this Act.

(2) The court may make an order under subsection (1)(a) if it is satisfied—

- (a) the person will commit an offence against this Act if the person continues or repeats the activity; and
- (b) the activity may seriously harm fisheries resources or a fish habitat.

(3) The court may make an order under subsection (1)(b) if it is satisfied that the person has been convicted of an offence against this Act on at least 3 separate occasions.

(4) If a person contravenes an order under this section, the person commits an offence against this subsection.

Maximum penalty for subsection (4)—1 000 penalty units.

False or misleading information

175.(1) A person must not—

- (a) state anything to an inspector the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an inspector anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—500 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states the statement made was false or misleading to the person's knowledge.

False, misleading or incomplete documents

176.(1) A person must not give the chief executive or an inspector a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—500 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive or inspector, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the chief executive or inspector if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

Forfeiture on conviction

177.(1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of any of the following—

- (a) anything (including a boat or vehicle) used to commit the offence;
- (b) fisheries resources the subject of the offence or, if the fisheries resources have been sold by the chief executive, the net proceeds of sale;
- (c) anything else the subject of the offence.

(2) The court may make an order under subsection (1) in relation to a thing or fisheries resources—

- (a) whether or not the thing or fisheries resources have been seized under this Act; and
- (b) if the thing or fisheries resources have been seized—whether or not the thing or fisheries resources have been returned to its or their owner.

(3) The court may make any order to enforce the forfeiture that it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Dealing with forfeited things

178.(1) On the forfeiture of a thing (including fisheries resources or net proceeds of sale), the thing becomes the property of the State and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may—

- (a) sell it to its previous owner or a person who had a legal or beneficial interest in it; or
- (b) sell it to anyone else (by auction, tender or otherwise); or
- (c) destroy it or give it away.

Compensation

179.(1) A person may claim compensation from the chief executive if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) However, the court may not order payment of compensation for the lawful seizure, or lawful seizure and forfeiture, of anything under this part.

Inspector to give notice of damage

180.(1) An inspector who, in the exercise or purported exercise of a power under this part, damages anything must immediately give written notice of the particulars of the damage.

(2) The notice must be given to—

- (a) for damage to a boat or vehicle or a thing on a boat or vehicle—the person in control of the boat or vehicle; or
- (b) for damage to anything else—the person who appears to the inspector to be the owner of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2),

the inspector must—

- (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a reasonably secure way and in a conspicuous position.
- (4) This section does not apply to a police officer.

Consent to entry

181.(1) This section applies if an inspector intends to seek the consent of an occupier of a place to an inspector entering the place under this part.

(2) This section also applies if an inspector intends to seek the consent of the owner or person in control of an unattended boat to an inspector entering a secured part of the boat under this part.

(3) Before seeking the consent, the inspector must inform the occupier, owner or other person (the “**person**”)—

- (a) of the purpose of the search; and
- (b) that anything seized during the search may be used in evidence in court; and
- (c) that the person is not required to consent.

(4) If the consent is given, the inspector may ask the person to sign an acknowledgment of the consent.

(5) The acknowledgment must—

- (a) state the person was informed—
 - (i) of the purpose of the search; and
 - (ii) that anything seized during the search may be used in evidence in court; and
 - (iii) that the person was not required to consent; and
- (b) state the person gave the inspector consent under this part—
 - (i) to enter the place or secured part of the boat; and
 - (ii) to exercise powers under this Act; and
- (c) state the time and date the consent was given.

(6) If the person signs an acknowledgment of consent, the inspector must immediately give a copy to the person.

Obstruction etc. of inspector

182. A person must not obstruct, hinder or resist an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—1 000 penalty units.

Impersonation of inspector

183. A person must not pretend to be an inspector.

Maximum penalty—1 000 penalty units.

Division 6—Evidence

Evidentiary provisions

184.(1) This section applies to a proceeding under this Act or other fisheries legislation.

(2) The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of—

- (a) the appointment; or
- (b) the inspector's power to do anything under this Act.

(3) A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by a person mentioned in subsection (3) and stating any of the following matters is evidence of the matter—

- (a) a stated document is—
 - (i) an authority or a copy of an authority; or
 - (ii) an order, direction, requirement or decision, or a copy of an order direction, requirement or decision, given or made

Fisheries Act 1994

under this Act; or

- (iii) a notice, or a copy of a notice, given under this Act; or
- (iv) a record, or a copy of a record, kept under this Act; or
- (v) a document, or a copy of a document, kept under this Act;
- (b) on a stated day, or during a stated period, a stated person was or was not the holder of an authority or a stated authority;
- (c) a stated authority was or was not in force on a stated day or during a stated period;
- (d) on a stated day, an authority—
 - (i) was suspended for a stated period; or
 - (ii) was cancelled;
- (e) on a stated day, a stated person was given a stated notice, order, requirement or direction under this Act;
- (f) a stated fee or other amount is payable by a stated person to the chief executive and has not been paid;
- (g) anything else prescribed by regulation.

(5) A certificate purporting to be signed by a person mentioned in subsection (3) stating that, at a stated time on a stated day, the person, using equipment prescribed under a regulation, located a signal coming from the VMS equipment for a stated boat at a stated place is evidence that the boat was at the place at the time.

(6) In this section—

“VMS equipment for a stated boat” means the VMS equipment required by an authority to be carried on the stated boat.

PART 9—ADMINISTRATIVE APPEALS

Division 1—Fisheries Tribunal

Establishment

185. The Fisheries Tribunal is established.

Composition

186.(1) The tribunal consists of the following members—

- (a) the chairperson who must be a barrister or solicitor; and
- (b) 2 other members, at least 1 of whom must have wide knowledge and experience of the fishing industry and other fisheries issues.

(2) The members are to be appointed by the Governor in Council.

(3) A person is not eligible to be appointed as a member of the tribunal if the person is a member of the Legislative Assembly, a House of Parliament of the Commonwealth or another State, or the legislature of a territory.

(4) A member of the tribunal must be appointed for a 3 year term.

(5) The office of a member of the tribunal becomes vacant if the member—

- (a) resigns by signed notice of resignation given to the Minister; or
- (b) is absent from 3 consecutive sittings of the tribunal without the chairperson's or Minister's leave and without reasonable excuse; or
- (c) is convicted of an indictable offence; or
- (d) becomes employed by, or a contractor of, the department; or
- (e) is removed from office by the Governor in Council under subsection (6).

(6) The Governor in Council may remove a member of the tribunal from office if the member—

- (a) engages in misbehaviour; or

- (b) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (c) is incompetent; or
- (d) becomes a person who, because of subsection (3), would not be eligible to be appointed as a member of the tribunal; or
- (e) uses the office for party political purposes; or
- (f) is convicted of an offence against this Act.

Acting members

187. The Governor in Council may appoint a person to act as a member of the tribunal—

- (a) during a vacancy in the office of a member; or
- (b) for a period, or all periods, when the member is absent or can not, for any reason, perform the duties of the office.

Fees and allowances

188. The members of the tribunal are entitled to be paid the fees and allowances decided by the Governor in Council.

Division 2—Proceedings of tribunal

Places of sitting

190. Sittings of the tribunal are to be held at the places fixed by the chairperson.

Decisions of tribunal

191.(1) The tribunal may be formed by the chairperson and 1 or 2 other members to hear an appeal.

(2) If the tribunal is formed by 3 members, the decision in which a majority of the members agrees is the tribunal's decision.

(3) If the tribunal is formed by 2 members, the decision of the chairperson is the tribunal's decision if there is a disagreement.

Evidence and procedure

192.(1) The tribunal is not bound by the rules of evidence and may inform itself in a way it considers appropriate, but must observe natural justice.

(2) Subject to procedural rules prescribed under a regulation, the tribunal may decide its own procedures.

(3) A party to an appeal may appear personally or by an agent before the tribunal but may be represented by a barrister or solicitor only with leave of the tribunal or the chairperson.

(4) The tribunal, formed by the chairperson alone, may conduct a preliminary hearing of an appeal to decide interlocutory and other preliminary matters.

(5) In a preliminary hearing, the tribunal may—

- (a) make orders for the conduct of the appeal; or
- (b) require parties to make discovery or allow inspection of evidentiary material; or
- (c) require parties to file pleadings; or
- (d) give a party leave to be represented by a barrister or solicitor; or
- (e) strike out the appeal on the ground that it is frivolous or vexatious; or
- (f) stay a decision of the chief executive.

Costs

193.(1) Each party in an appeal bears the party's own costs of the appeal.

(2) If the tribunal of its own initiative requires a person to appear before the tribunal, the person's witness fees are to be paid by the chief executive.

(3) However, if the tribunal strikes out an appeal because it is frivolous or vexatious, the tribunal may order the appellant to pay the chief executive the

amount the tribunal considers to be the cost to the State of the tribunal's expenses for the appeal.

(4) The amount may be recovered as a debt payable to the State by the appellant.

Powers in relation to witnesses etc.

194.(1) The chairperson, or a person who has the chairperson's written permission, may, by written notice given to a person, require the person to appear before the tribunal at a specified time and place to give evidence or to produce specified documents.

(2) The chairperson, or a person permitted by the chairperson, may administer an oath or affirmation to a person appearing as a witness before the tribunal.

(3) A person who is given a notice under subsection (1) must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the chairperson until excused from further attendance.

Maximum penalty—40 penalty units.

(4) A person appearing as a witness before the tribunal must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the chairperson; or
- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under subsection (1).

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

(6) A person required to appear as a witness before the tribunal is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the witness fees decided by the chairperson.

Questions of law etc. to be decided by chairperson

195. The tribunal, formed by the chairperson alone, must—

- (a) decide a question of law in a proceeding; and
- (b) deal with a proceeding in which a consent order is to be made.

Division 3—Jurisdiction of tribunal**Appeals to tribunal**

196.(1) A person whose interests are adversely affected by an order, direction, requirement or other decision of the chief executive, and who is dissatisfied with the decision, may appeal against the decision to the tribunal but only on 1 or more of the following grounds—

- (a) the decision of the chief executive was contrary to this Act;
- (b) the decision of the chief executive was manifestly unfair;
- (c) the decision of the chief executive will cause severe personal hardship to the appellant.

(2) However, the following decisions can not be appealed against—

- (a) the chief executive about policy;
- (b) a decision of the chief executive about starting or continuing a prosecution against a person for an offence against this Act;
- (c) a decision of the chief executive about an officer or employee of the department in the person's capacity as an officer or employee;
- (d) a decision of the chief executive about delegating a power by the chief executive;
- (e) a decision of the chief executive about making a management plan or declaration;
- (f) a decision of the chief executive about appointing a person as an inspector.

(3) In this section, a reference to a decision includes a reference to a failure to make a decision within a reasonable time.

How to start an appeal

197.(1) An appeal is started by filing a written notice of appeal with the tribunal in the form approved by the tribunal.

(2) The notice of appeal must be accompanied by the fees prescribed under the regulations.

(3) The tribunal must give a copy of the notice to the chief executive.

(4) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

(5) The tribunal may at any time extend the period for filing the notice of appeal.

(6) The notice of appeal must state the grounds of the appeal.

Stay of operation of decisions etc.

198.(1) The tribunal may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on conditions the tribunal considers appropriate; and

(b) operates for the period specified by the tribunal; and

(c) may be revoked or amended by the tribunal.

(3) The period of a stay specified by the tribunal must not extend past the time when the tribunal decides the appeal.

(4) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

Powers of tribunal on appeal

199.(1) In deciding an appeal, the tribunal may—

(a) confirm the decision appealed against; or

(b) set the decision aside and substitute another decision; or

(c) set the decision aside and return the matter to the chief executive

with directions the tribunal considers appropriate.

(2) In substituting another decision, the tribunal has the same powers as the chief executive.

Example—

The tribunal may decide that an unsuccessful applicant for an authority be issued the authority and state specified conditions in it.

(3) If the tribunal substitutes another decision, the substituted decision is taken, for the purposes of this Act, to be the decision of the chief executive.

PART 11—MISCELLANEOUS

Attempts to commit offences

215.(1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

(2) Section 4 (Attempts to commit offences) of the Criminal Code applies to subsection (1).

Responsibility for acts or omissions of representatives

216.(1) In this section—

“**representative**” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

“**state of mind**” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

(2) Subsections (3) and (4) apply in a proceeding for an offence against this Act.

(3) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(4) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the act or omission.

Protection from liability

217.(1) In this section—

“**official**” means—

- (a) the chief executive; or
- (b) an officer or employee of the department; or
- (d) an inspector; or
- (e) a person helping an inspector at the inspector's direction.

(2) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

Identification of boundaries

218. If, under this Act, a place or area is prescribed under a regulation or is specified in another way under this Act or in a document issued under this Act, the boundaries of the place or area may be described—

- (a) by reference to posts, stakes, buoys, marks or natural features; or
- (b) by reference to points or areas identified from satellite navigation data, latitude or longitude or map grid references; or

- (c) in another way that is reasonably adequate to identify the place or area.

Holder of authority responsible for ensuring Act complied with

219.(1) The holder of an authority must ensure that everyone acting under the authority complies with this Act.

(2) If another person acting under the authority commits an offence against a provision of this Act, the holder of the authority also commits an offence, namely, the offence of failing to ensure the other person complied with the provision.

Maximum penalty—the penalty prescribed for contravention of the provision.

(3) Evidence that the other person has been convicted of an offence against the provision while acting under the authority is evidence that the holder of the authority committed the offence of failing to ensure the other person complied with the provision.

(4) However, it is a defence for the holder of the authority to prove—

- (a) the holder issued appropriate instructions and used all reasonable precautions to ensure compliance with this Act; and
- (b) the offence was committed without the holder's knowledge; and
- (c) the holder could not by the exercise of reasonable diligence have stopped the commission of the offence.

Start of offence proceedings

220. A proceeding for an offence against this Act may be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

Inspector not to have interest in authority

221.(1) An inspector must not hold or have an interest in an authority.

Maximum penalty—500 penalty units.

(2) This section does not apply to an authority prescribed under a regulation or in circumstances prescribed under a regulation.

Regulation making power

223.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may—

- (a) impose fees; or
- (b) create offences and prescribe penalties of not more than 100 penalty units for each offence; or
- (c) prescribe circumstances in which an act or omission that is otherwise an offence under this Act is not an offence.

PART 12—TRANSITIONAL PROVISIONS*Division 1—Transitional references***Application of division**

224. This division applies to references in Acts or documents.

Fisheries Act 1976 references

225. A reference to the *Fisheries Act 1976* is taken to be a reference to this Act.

Fishing Industry Organisation and Marketing Act 1982 references

226. A reference to the *Fishing Industry Organisation and Marketing Act 1982* is taken to be a reference to this Act.

Division 2—Savings and transitional provisions for Primary Industries and Natural Resources Legislation Amendment Act 2000**Definitions for div 2**

227. In this division—

“amending Act” means the *Primary Industries and Natural Resources Legislation Amendment Act 2000*.

“Authority” means the Queensland Fisheries Management Authority in existence immediately before the commencement.

“commencement” means the commencement of section 5 of the amending Act.

“contract employee” means a person who, immediately before the commencement, was employed by the Authority under a written contract, whether or not for a fixed term.

Dissolution of Authority

228. On the commencement, the Authority is dissolved and its members go out of office.

Vesting of assets, rights and liabilities

229. On the commencement—

- (a) the assets, rights and liabilities of the Authority vest in the State; and
- (b) the State is substituted for the Authority in all contracts to which the Authority is a party.

Decisions, documents etc. of Authority

230. A decision or recommendation made, licence, notice or other document made or given, or other action taken, before the commencement, by the Authority is taken to have been made, given or taken by the chief executive.

Legal proceedings

231. A legal proceeding that could have been started or continued by or against the Authority before the commencement may be started or continued by or against the State.

References to Authority

232. A reference in an Act or document in existence immediately before the commencement to the Authority is—

- (a) if the reference is to the ownership or vesting of property in the Authority—a reference to the State; and
- (b) otherwise—a reference to the chief executive.

Duty to register transfer of property

233.(1) The registrar of titles and all persons who keep registers of dealings in property must, if asked by the State, make in the register all entries necessary to record the vesting of stated properties in the State by this division.

- (2) The request is not liable to fees.

Employees of the Authority

234.(1) On the commencement, a person who, immediately before the commencement, was an employee of the Authority—

- (a) becomes a public service employee; and
- (b) has a right to a salary or wage rate not lower than the person's salary or wage rate immediately before the commencement.

(2) For subsection (1)(a)—

- (a) a person who, immediately before the commencement was a permanent employee of the Authority is taken to be a public service officer; and
- (b) a person who, immediately before the commencement was a temporary employee of the Authority is taken to be a temporary employee; and
- (c) a person who, immediately before the commencement was a casual employee of the Authority is taken to be a temporary employee on a casual basis.

(3) This section does not apply to a contract employee.

Contract employees

235.(1) On the commencement, a contract employee becomes a public service officer.

(2) Despite anything in the *Public Service Act 1996*—

- (a) the person continues to be engaged and employed in the department under the terms of the person's contract with the Authority; and
- (b) to remove doubt, it is declared that, if the person's employment under the contract is terminated under the terms of the contract, the termination does not affect any rights to compensation to which the person is entitled under the terms of the contract.

(3) Subject to subsection (2), the person's contract with the Authority is taken to be a contract under the *Public Service Act 1996*, and that Act applies to the contract as if it were a contract for a fixed term under that Act.

(4) The *Public Service Act 1996*, section 71,¹⁶ does not apply to the person.

(5) A reference in the contract to the Authority as the employer under the contract is taken to be a reference to the chief executive.

¹⁶ *Public Service Act 1996*, section 71 (Tenure on termination etc. of certain contracts)

Accrued entitlements

236. A person who becomes a public service employee under this division keeps all entitlements to recreation, sick, long service and other leave, superannuation and other benefits accrued by the person, immediately before the commencement, as an employee of the Authority.

Industrial instruments

237. Industrial instruments under the *Industrial Relations Act 1999* in force immediately before the commencement, and applying to an employee of the Authority, continue in force under that Act after the commencement and apply to the person as a public service employee.

Amendment of management plan

238. Sections 33 and 39(1) do not apply to an amendment of a management plan that is merely consequential on the enactment of the *Primary Industries and Natural Resources Legislation Amendment Act 2000*, part 2.

ENDNOTES

1 Index to endnotes

	Page
2 Date to which amendments incorporated	120
3 Key	120
4 Table of earlier reprints	121
5 List of legislation	121
6 List of annotations	122

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 July 2000. Future amendments of the Fisheries Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 87 of 1994	23 February 1995
1A	to Act No. 13 of 1996	19 July 1996
1B	to Act No. 59 of 1996	4 April 1997
1C	to Act No. 59 of 1996	27 June 1997
1D	to Act No. 73 of 1997	10 February 1998
2	to Act No. 73 of 1997	29 May 1998
2A	to Act No. 19 of 1999	21 May 1999
2B	to Act No. 45 of 1999	27 October 1999

5 List of legislation

Fisheries Act 1994 No. 37

date of assent 8 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 27 January 1995 (1995 SL No. 9)

as amended by—

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 2

date of assent 1 December 1994

commenced on date of assent

Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 ss 1–2, 9 sch 2

date of assent 16 June 1995

commenced on date of assent

Primary Industries Legislation Amendment Act 1996 No. 13 pts 1, 6

date of assent 23 May 1996

commenced on date of assent

Statutory Bodies Financial Arrangements Amendments Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Primary Industries Legislation Amendment Act (No. 2) 1996 No. 59 pts 1, 6

date of assent 5 December 1996

commenced on date of assent

Primary Industries Legislation Amendment Act (No. 2) 1997 No. 73 pts 1, 5

date of assent 1 December 1997

ss 1–2 commenced on date of assent

remaining provisions commence 19 December 1997 (1997 SL No. 475)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Financial Administration Legislation Amendment Act 1999 No. 29 ss 1–2, 50 sch

date of assent 16 June 1999

ss 1–2, 50 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 122 and see 1999 SL No. 119, 1999 SL No. 70 s 2(3))

Primary Industries Legislation Amendment Act 1999 No. 45 ss 1, 2(4) pt 5

date of assent 17 September 1999

commenced on date of assent (see s 2(4))

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 373 schs 2–3

date of assent 23 March 2000

ss 1–2, 373 sch 2 commenced on date of assent (see s 2(2))

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Primary Industries and Natural Resources Legislation Amendment Act 2000 No. 26 ss 1, 2(1) pt 2 s 13 sch 2

date of assent 27 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced at 6 p.m. on 30 June 2000 (see s 2(1))

6 List of annotations

Objectives of Act and their achievement

s 3 amd 1996 No. 59 s 32; 2000 No. 26 s 13 sch 2

Definitions

s 4 def “**abalone**” ins 1999 No. 45 s 22
 def “**Authority**” om 2000 No. 26 s 13 sch 2
 def “**fisheries agency**” om 2000 No. 26 s 13 sch 2
 def “**owner**” amd 2000 No. 26 s 13 sch 2
 def “**Policy Council**” om 1996 No. 59 s 33
 def “**VMS equipment**” ins 1997 No. 73 s 26

Meaning of “fisheries agency”

s 6 om 2000 No. 26 s 13 sch 2

PART 2—MINISTERIAL ADVISORY BODIES

pt hdg sub 1996 No. 59 s 34

Aborigines’ and Torres Strait Islanders’ rights to take fisheries resources etc.

s 14 amd 2000 No. 26 s 13 sch 2

Minister may establish advisory bodies

s 15 sub 1996 No. 59 s 34

Functions

s 16 om 1996 No. 59 s 34

Composition

s 17 om 1996 No. 59 s 34

Meetings

s 18 om 1996 No. 59 s 34

Committees

s 19 om 1996 No. 59 s 34

Chief executive's functionss 20 amd 2000 No. 26 s 13 sch 2
(prev s 26) reloc to s 20(1A) 2000 No. 26 s 13 sch 2**Powers**s 20A (prev s 27) amd 2000 No. 26 s 13 sch 2
renum and reloc 2000 No. 26 s 13 sch 2**Chief executive may delegate**

s 21 amd 2000 No. 26 s 13 sch 2

PART 4—QUEENSLAND FISHERIES MANAGEMENT AUTHORITY

pt hdg om 2000 No. 26 s 13 sch 2

Division 1—Establishment of Authority

div hdg om 2000 No. 26 s 4

Establishment

s 23 om 2000 No. 26 s 4

Authority is a body corporate etc.

s 24 om 2000 No. 26 s 4

Division 2—Functions and powers of Authority

div hdg om 2000 No. 26 s 13 sch 2

Authority's primary function and its achievement

s 25 om 2000 No. 26 s 13 sch 2

Authority's other functionss 26 amd 1996 No. 59 s 35; 2000 No. 26 s 13 sch 2
reloc to s 20(1A) 2000 No. 26 s 13 sch 2**Powers**

s 27 renum and reloc as s 20A 2000 No. 26 s 13 sch 2

Delegation

s 28 om 2000 No. 26 s 13 sch 2

Division 3—Reserve powers of Minister

div hdg om 2000 No. 26 s 13 sch 2

Reserve power of Minister to notify Authority of public sector policies

s 29 om 2000 No. 26 s 13 sch 2

Reserve power of Minister to give directions in public interest

s 30 om 2000 No. 26 s 13 sch 2

Details of notices and directions etc. to be included in annual report

s 31 om 2000 No. 26 s 13 sch 2

Making management plans

prov hdg sub 2000 No. 26 s 13 sch 2

s 32 amd 2000 No. 26 s 13 sch 2

Procedure to make management plan

s 33 amd 2000 No. 26 s 13 sch 2

What management plan may deal with

s 36 amd 1997 No. 73 s 27; 2000 No. 26 s 13 sch 2

Management plan to protect things that are not fish

s 38A ins 1997 No. 73 s 28

Amendment or repeal of management plan

s 39 amd 2000 No. 26 s 13 sch 2

Declaration of closed season, closed waters etc.

s 43 amd 2000 No. 26 s 13 sch 2

Declaration of quotas

s 44 amd 2000 No. 26 s 13 sch 2

Declaration to protect things that are not fish

s 45A ins 1997 No. 73 s 29

Emergency fisheries declarations

s 46 amd 1997 No. 73 s 30; 2000 No. 26 s 13 sch 2

Who issues authorities (other than permits)

s 50 amd 2000 No. 26 s 13 sch 2

Who issues permits

s 51 amd 2000 No. 26 s 13 sch 2

Form, content and term of authorities

s 53 amd 2000 No. 26 s 13 sch 2

Application for authority

s 54 amd 2000 No. 26 s 13 sch 2

Consideration of application for issue of authority

s 55 amd 2000 No. 26 s 13 sch 2

Application for renewal of authority (other than permit)

s 56 amd 2000 No. 26 s 13 sch 2

Permit not renewable

s 57 amd 2000 No. 26 s 13 sch 2

Consideration of application for renewal of authority (other than permit)

s 58 amd 2000 No. 26 s 13 sch 2

Refusal to issue or renew

s 59 amd 2000 No. 26 s 13 sch 2

Notice of refusal of application for issue or renewal etc.

s 60 amd 2000 No. 26 s 13 sch 2

Conditions imposed on issue or renewal

s 61 amd 1997 No. 73 s 31; 2000 No. 26 s 13 sch 2

Conditions imposed under regulations and management plans

s 62 amd 2000 No. 26 s 13 sch 2

Amendment of authority

s 63 amd 2000 No. 26 s 13 sch 2

Notice to return authority for alteration after amendment

s 64 amd 2000 No. 26 s 13 sch 2

Transfer of authority (other than permit)

s 65 amd 2000 No. 26 s 13 sch 2

Suspension or cancellation of authorities

s 67 amd 2000 No. 26 s 13 sch 2

Procedure for cancellation or suspension

s 68 amd 2000 No. 26 s 13 sch 2

Authority to be returned

s 70 amd 2000 No. 26 s 13 sch 2

Replacement of authorities

s 71 amd 2000 No. 26 s 13 sch 2

Surrender of authorities

s 72 amd 2000 No. 26 s 13 sch 2

Registers of authorities

s 73 amd 2000 No. 26 s 13 sch 2

Certificates about authorities

s 74 amd 2000 No. 26 s 13 sch 2

Offences about registers

s 76 amd 2000 No. 26 s 13 sch 2

Dockets for wholesale sale of fisheries resources etc.

s 86 amd 1999 No. 45 s 23

Records for processing abalone

s 86A ins 1999 No. 45 s 24

Possessing fish taken in contravention of other fisheries legislation

s 88A ins 1999 No. 45 s 25

Duty of person who takes or possesses noxious or nonindigenous fisheries resources

s 92 amd 2000 No. 26 s 13 sch 2

Recovery of costs of removing noxious fisheries resources etc.

s 93 amd 2000 No. 26 s 13 sch 2

Order for taking and removing, or destroying, noxious, nonindigenous or diseased fisheries resources or aquaculture fish

s 108 amd 2000 No. 26 s 13 sch 2

Order to stop or delay escape of noxious, nonindigenous or diseased fisheries resources or aquaculture fish

s 109 amd 2000 No. 26 s 13 sch 2

Recovery of costs of complying with order

s 110 amd 2000 No. 26 s 13 sch 2

Fisheries Research Fund

s 117 amd 1999 No. 29 s 50 sch; 2000 No. 26 s 13 sch 2

Statistical returns to be kept

s 118 amd 2000 No. 26 s 13 sch 2

Codes of practice

s 119 amd 2000 No. 26 s 13 sch 2

Protection of marine plants

s 123 sub 1999 No. 45 s 26

Delegation

s 130 amd 2000 No. 26 s 13 sch 2

Appointment

s 140 amd 2000 No. 26 s 13 sch 2

Production or display of inspector's identity card

s 144 amd 1996 No. 13 s 16; 2000 No. 5 s 373 sch 2

Monitoring warrants for abalone

s 148A ins 1999 No. 45 s 27

Seizure of fisheries resources in heap etc.

s 154 amd 1994 No. 87 s 3 sch 2

Seized fisheries resources become property of State

prov hdg sub 2000 No. 26 s 13 sch 2

s 160 amd 2000 No. 26 s 13 sch 2

Chief executive may return seized things etc.

prov hdg sub 2000 No. 26 s 13 sch 2

s 161 amd 2000 No. 26 s 13 sch 2

Obligation to return seized things (other than fisheries resources)

s 162 amd 2000 No. 26 s 13 sch 2

Obligation to pay net proceeds of sale of fisheries resources

s 163 amd 2000 No. 26 s 13 sch 2

Chief executive may order forfeiture of unclaimed things

prov hdg sub 2000 No. 26 s 13 sch 2

s 164 amd 2000 No. 26 s 13 sch 2

Where and how to start appeal

s 165 amd 2000 No. 26 s 13 sch 2

Court may give directions about disposal of seized fisheries resources

prov hdg sub 2000 No. 26 s 13 sch 2

s 168 amd 2000 No. 26 s 13 sch 2

Appeal to District Court on questions of law only

s 169 amd 1999 No. 19 s 3 sch

Power to require name and address

s 171 amd 2000 No. 5 s 373 sch 3

Restraining orders against persistent offenders

s 174 amd 2000 No. 5 s 373 sch 3; 2000 No. 26 s 13 sch 2

False, misleading or incomplete documents

s 176 amd 2000 No. 26 s 13 sch 2

Forfeiture on conviction

s 177 amd 2000 No. 26 s 13 sch 2

Dealing with forfeited things

s 178 amd 2000 No. 26 s 13 sch 2

Compensation

s 179 amd 2000 No. 26 s 13 sch 2

Inspector to give notice of damage

s 180 amd 2000 No. 5 s 373 sch 3

Evidentiary provisions

s 184 amd 1997 No. 73 s 32; 2000 No. 26 s 13 sch 2

Composition

s 186 amd 1996 No. 59 s 36; 2000 No. 26 s 13 sch 2

Tribunal expenses

s 189 om 2000 No. 26 s 13 sch 2

Evidence and procedure

s 192 amd 2000 No. 26 s 13 sch 2

Costs

s 193 amd 2000 No. 26 s 13 sch 2

Appeals to tribunal

s 196 amd 2000 No. 26 s 13 sch 2

How to start an appeal

s 197 amd 2000 No. 26 s 13 sch 2

Powers of tribunal on appeal

s 199 amd 2000 No. 26 s 13 sch 2

PART 10—OTHER PROVISIONS ABOUT THE AUTHORITY

pt hdg om 2000 No. 26 s 13 sch 2

Division 1—Membership of Authority

div hdg om 2000 No. 26 s 13 sch 2

Composition

s 200 amd 1996 No. 59 s 37
om 2000 No. 26 s 13 sch 2

Selection committee

s 201 om 1996 No. 59 s 38

Selection of members for appointment

s 202 om 1996 No. 59 s 38

Duration of appointment

s 203 amd 1996 No. 59 s 39; 1999 No. 29 s 50 sch
om 2000 No. 26 s 13 sch 2

Fees and allowances

s 204 om 2000 No. 26 s 13 sch 2

Division 2—Proceedings of Authority

div hdg om 2000 No. 26 s 13 sch 2

Time and place of meeting

s 205 om 2000 No. 26 s 13 sch 2

Procedures governing conduct of proceedings

s 206 om 2000 No. 26 s 13 sch 2

Disclosure of interests

s 207 om 2000 No. 26 s 13 sch 2

Minutes

s 208 om 2000 No. 26 s 13 sch 2

Division 3—Employees

div hdg om 2000 No. 26 s 13 sch 2

Employees

s 209 om 2000 No. 26 s 13 sch 2

Division 4—Other matters about the Authority

div hdg om 2000 No. 26 s 13 sch 2

Superannuation schemes

s 210 amd 1995 No. 36 s 9 sch 2
om 2000 No. 26 s 13 sch 2

Seal

s 211 om 2000 No. 26 s 13 sch 2

Committees

s 212 om 2000 No. 26 s 13 sch 2

Application of certain Acts

s 213 amd 1996 No. 54 s 9 sch
om 2000 No. 26 s 13 sch 2

Authority to give reports to Minister

s 214 om 2000 No. 26 s 13 sch 2

Protection from liability

s 217 amd 2000 No. 26 s 13 sch 2

Penalties etc. to be paid to Authority

s 222 om 2000 No. 26 s 13 sch 2

Application of division

s 224 amd 1994 No. 87 s 3 sch 2

Division 2—Savings and transitional provisions for Primary Industries and Natural Resources Legislation Amendment Act 2000

div hdg prev div hdg exp 10 September 1995 (see s 228(2) and 1995 SL No. 56)
pres div hdg ins 2000 No. 26 s 5

Definitions for div 2

s 227 sub 2000 No. 26 s 5

Dissolution of Authority

s 228 prev s 228 exp 10 September 1995 (see s 228(2) and 1995 SL No. 56)
pres s 228 ins 2000 No. 26 s 5

Vesting of assets, rights and liabilities

s 229 prev s 229 exp 10 March 1995 (see s 229(6) and 1995 SL No. 56)
pres s 229 ins 2000 No. 26 s 5

Decisions, documents etc. of Authority

s 230 prev s 230 exp 10 March 1995 (see s 230(3) and 1995 SL No. 56)
pres s 230 ins 2000 No. 26 s 5

Legal proceedings

s 231 prev s 231 exp 10 March 1995 (see s 231(3) and 1995 SL No. 56)
pres s 231 ins 2000 No. 26 s 5

References to Authority

s 232 prev s 232 exp 10 March 1995 (see s 232(2) and 1995 SL No. 56)
pres s 232 ins 2000 No. 26 s 5

Duty to register transfer of property

s 233 prev s 233 exp 10 March 1995 (see s 233(3) and 1995 SL No. 56)
pres s 233 ins 2000 No. 26 s 5

Employees of the Authority.

s 234 prev s 234 exp 10 March 1995 (see s 234(2) and 1995 SL No. 56)
pres s 234 ins 2000 No. 26 s 5

Contract employees

s 235 prev s 235 exp 10 March 1996 (see s 235(6) and 1995 SL No. 56)
pres s 235 ins 2000 No. 26 s 5

Accrued entitlements

s 236 prev s 236 exp 10 March 1995 (see s 236(2) and 1995 SL No. 56)
pres s 236 ins 2000 No. 26 s 5

Industrial instruments

s 237 prev s 237 exp 10 March 1995 (see s 237(2) and 1995 SL No. 56)
pres s 237 ins 2000 No. 26 s 5

Amendment of management plan

s 238 prev s 238 exp 10 March 1995 (see s 238(2) and 1995 SL No. 56)
pres s 238 ins 2000 No. 26 s 5

Transitional regulations

s 239 exp 10 March 1995 (see s 239(3) and 1995 SL No. 56)

Members of former Tribunal

s 240 exp 10 March 1995 (see s 240(3) and 1995 SL No. 56)

Unfinished appeals

s 241 exp 10 March 1995 (see s 241(2) and 1995 SL No. 56)

Fisheries Research Fund

s 242 exp 27 January 1995 (see s 242(2))

PART 13—REPEALS AND AMENDMENTS

pt hdg om R1 (see RA s 37)

Repeals—Sch 1

s 243 om R1 (see RA s 40)

Amendments—Sch 2

s 244 om R1 (see RA s 40)

SCHEDULE 1—ACTS REPEALED

om R1 (see RA s 40)

SCHEDULE 2—ACTS AMENDED

om R1 (see RA s 40)