



Queensland

# **Fisheries and Other Legislation Amendment Regulation (No. 1) 2006**

## **Explanatory Notes for SL 2006 No. 26**

made under the

*Fisheries Act 1994*

*State Penalties Enforcement Act 1999*

*Transport Operations (Marine Safety) Act 1994*

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## **General outline**

### **Provision of Acts under which legislation is made**

The *Fisheries Regulation 1995* is amended under section 223 of the *Fisheries Act 1994* (the Act). Subsection 223(1) provides that the Governor-in-Council may make regulations under the Act.

The *Transport Operations (Marine Safety) Regulation 2000* is amended under sections 207, 208, 209 and 218 of the *Transport Operations (Marine Safety) Act 1994*.

The *State Penalties Enforcement Regulation 2000* is amended under section 165 of the *State Penalties Enforcement Act 1999*.

Section 24AA of the *Acts Interpretation Act 1954* provides that if an Act authorises or requires the making of an instrument (which includes a regulation) the power includes power to amend or repeal the instrument.

## **Policy objectives of the legislation**

The proposed legislative amendments are intended to—

- Ensure the framework and basis for sustainable use and management of Queensland's fisheries resources;
- Deliver competition reforms to the commercial fisheries sectors by simplifying and updating Queensland's commercial fisheries licensing arrangements;
- Better reflect the proprietary nature of fishing rights in law through greater durability, certainty and divisibility of commercial fishing access rights;
- Provide for the use, conservation and enhancement of the community's fisheries resources by setting commercial fishery access fees in a way that reflects the value of the rights being purchased;
- Increase the fees paid by both commercial and recreational fishers, which have been set in a logical, equitable and legally valid manner;
- Provide a more equitable basis for setting fees for service based on the cost of the services; and
- Remove a range of legislative restrictions currently impeding the ability of fishers to fully exercise their fishing rights and their capacity to operate a business efficiently and profitably.

## **Reasons for policy objectives**

The National Competition Policy (NCP) review of fisheries legislation identified a range of concerns associated with the licensing and fee arrangements applying to Queensland's commercial fisheries. The NCP review recommended the simplification of commercial licensing arrangements through the removal of a number of licence types that were seen as unnecessary in meeting the objectives of the *Fisheries Act 1994*. The review also expressed concern over the extent to which the Government was subsidising the cost of managing Queensland's commercial fisheries.

Under the provisions of the Competition Principles Agreement of 1995 between the Australian and Queensland governments, the Queensland government is required to address the recommendations stemming from the NCP review of fisheries legislation, including issues pertaining to fisheries licensing and fees.

Under current legislative arrangements the licensing requirements to undertake commercial fishing are extremely complex. In many cases commercial fishers are required to hold up to nine separate licences to undertake their fishing operation. The changes proposed in the Regulation will significantly streamline licensing arrangements for commercial fishing.

The fees currently applying to commercial fishing in Queensland are also overly complex and bear little relationship to the value of the fishing rights that are held. Under current arrangements large operators in Queensland's fisheries pay only marginally more than small family operators despite the fact they have more significant fishing rights with a much higher market value.

The commercial fishery licence fees implemented in this legislation resolve the inequities of the current fee arrangements through the introduction of a model where the fees paid are directly proportional to the value of the fishing rights held. Under this "rights based" model, operators with large fishing ventures will pay significantly more than the small family fishing business. In addition, the level of subsidy from government to the commercial fishing sector will be reduced through the phasing in of fee increases over a five year period and the level of subsidy to the recreational sector will be reduced by the increase in the Private Pleasure Vessel levy.

Industry was supportive of the revised option for commercial fisheries licence fees included in the legislation. However, significant concern was expressed that current legislation imposed a number of impediments that restricted fishers from fully exercising their fishing rights and hence reduced the viability of their fishing operations. Industry participants contended that if these impediments could be removed concurrently with the proposed changes to licensing and fee arrangements, they would be in a better position to afford the proposed fee increases.

In response to these concerns, the legislation removes a number of management restrictions that are no longer required in meeting the resource sustainability requirements of the Act.

## **The way in which policy objectives are to be achieved by the legislation and why this way of achieving them is reasonable and appropriate**

The following reforms to the commercial fisheries licensing arrangements will simplify licensing arrangements, remove redundant and anti-competitive licences and barriers to entry—

- Removing the need for tender boat, assistant fisher and storage licences;
- Retaining buyer licences but removing the high first year fee. The current exemption for bait shops will be retained;
- Removing the requirement for a separate storage licence;
- Maintaining carrier boat licences but removing high first year fee;
- Transitioning "authorities to take" to harvest fishery licences;
- Introducing a separate developmental fishery permit and indigenous fisheries permit in recognition of the special nature of these permits;
- Providing perpetual licences through the removal of the current requirement to renew licences annually;

The following reforms to fisheries fees are implemented through the legislation to provide a legally valid, more equitable and logical basis for setting of fees—

- Transitioning to a creditor-based system of licence fee payments which require fees to be paid quarterly and in arrears, as opposed to the current system of annual up-front payments;
- Establishing a rights-based model as the basis for setting commercial fishing access fees;
- Increasing revenue to government from the commercial fishing sector, phased-in over five years with no net increase in revenue in the first year;
- Realigning fishery symbol and quota fees to better reflect the relative values of different fishing rights and ensuring that the

monetary value of each access fee does not exceed the value of the rights obtained;

- Establishing fees for service that reflect the cost to the government of providing the service; and
- Increasing the recreational fishing Private Pleasure Vessel levy.

It is the expectation and intention of government that the proposed licensing fees will not be passed on to consumers of fisheries resources because of the availability of imports, the fact that the monetary value of each access fee will not exceed the value of the rights obtained and that the market sets fish prices.

It is proposed to remove certain management restrictions that are no longer required in meeting the resource sustainability requirements of the Act through—

- Removing restrictions on the transfer of fishery symbols between existing fishing boat licences;
- Removing minimum quota holding rules in Spanish mackerel fishery;
- Removing restrictions on the amalgamation and tradability of harvest fishery symbols;
- Removing restrictions on the tradability of beam trawl fishery symbols;
- Allowing commercial fishers to undertake recreational fishing when not fishing commercially;
- Changing the measurement units in which Spanish mackerel are reported;
- Relaxing the deadline tolerances for Spanish mackerel reporting;
- Amalgamating L4 and L5 fisheries in the Gulf of Carpentaria Line Fishery (Queensland Fisheries Joint Authority No.1 and No.2); and
- Removing the L9 fishery (multiple hook – Queensland Fisheries Joint Authority), B2 (beche-de-mer (Torres Strait)) and J2 (Trochus (Torres Strait)) fisheries. These fisheries have no participants and are redundant.

It is also proposed to extend the Stocked Impoundment Permit Scheme (SIPS) to include the Storm King Dam at existing permit fee levels.

## **How the legislation is consistent with the policy objectives of the authorising law**

The amendment regulation is consistent with the main purpose of the Act under section 3, namely to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to—

- (a) apply and balance the principles of ecologically sustainable development; and
- (b) promote ecologically sustainable development.

The amendment regulation applies and balances the principles of ecological sustainable development in order to promote ecologically sustainable development, in particular the following principles are provided for in subsection 3(3)—

- (a) enhancing individual and community wellbeing through economic development that safeguards the wellbeing of future generations;
- (f) considering the need to maintain and enhance competition, in an environmentally sound way;
- (g) considering the need to develop a strong, growing and diversified economy that can enhance the capacity for environmental protection; and
- (h) that decisions and actions should provide for broad community involvement on issues affecting them.

The amendment regulation ensures that management arrangements for fisheries are as least restrictive as possible, licensing and administration are streamlined, the competitive environment is maximised and effective resource sustainability measures are reinforced.

**Any reasonable alternative way of achieving the policy objectives (including the option of not making subordinate legislation) and why the alternative was not adopted**

It is considered that there are no practical alternatives to the policy objectives because they either remove or amend existing legislative provisions.

Further, in 1995 the States and the Commonwealth signed the Competition Principles Agreement (CPA) which obliges each jurisdiction to review all of its legislation to ensure compliance with a set of nationally agreed principles. That agreement is binding and significant financial penalties will accrue to Queensland if the Queensland Government has not implemented its obligations in a comprehensive and timely manner.

In meeting the Queensland Government's obligations under the CPA, a review of Queensland's fisheries legislation, including the Act and the Fisheries Regulation, was undertaken. The Government considered the final report of the review in October 2001. The review found a number of licences to be anticompetitive, unnecessary and redundant. A number of licence fees were also found to contain elements that were anti-competitive barriers to entry.

The NCP review also identified subsidisation of the commercial and recreational sectors as being non-compliant and this matter also needs to be addressed in order to comply with the CPA. Failure to do this may result in withheld Competition Payments from the Commonwealth that could also ultimately be converted into permanent annual deductions from the Competition Payments to which the State of Queensland is otherwise entitled, unless these matters are satisfactorily addressed.

Maintaining the status quo is therefore not an acceptable option, as doing so would expose the State to the very real risk of Competition Payments deductions if the National Competition Council (NCC) makes an unfavourable assessment of the State's progress in regard to achieving reform of the Fisheries Regulation to meet NCP requirements.

## **Brief assessment of the benefits and costs of implementing legislation**

### **Quantify benefits and costs of implementing legislation**

The proposed increase in revenue to government from the commercial fishing industry from \$3.51M to \$5.94M is to occur over a five year period, with no increase in the first year. This represents an increased cost to industry of one percent of Gross Value of Production (GVP) over five years. It is believed that this approach will provide fishing businesses adequate time to adjust their operations to the changing circumstances.

In addition revenue from the recreational fishing sector will increase from \$3.217M to \$3.41M.

The Government has invested \$2.8M in the development of a new fisheries licensing system and upgrading fisheries information technology.

Approximately \$0.1M will be spent on a further series of port visits and extension material to assist stakeholders adapt to the new licensing system and its administration.

### **Impact on competition**

The proposed legislative amendments do not introduce any new anti-competitive elements and will remove a number of existing ones. They therefore do not impose greater restrictions to competition than apply at present.

The proposed amendments remove a range of redundant licence types from the Fisheries Regulation, thereby simplifying the regulatory framework. Commercial fishers will only require one licence for their business and a personal licence to ensure that they have the necessary skills and qualifications to carry out commercial fishing.

The proposed amendments will significantly improve competition by removing barriers to entry into the processing sector of the industry, barriers to the trading of fishing rights and cross subsidisation between certain user groups. They will also result in significant cost-efficiencies for business by streamlining the fisheries licensing system.



**Public benefit**

The proposed amendments provide a significant net public benefit. The range of initiatives in this package provide for a more secure, flexible, profitable and viable fishing industry including—

- fishers' rights will be better recognised and protected;
- access fees will reflect the value of the rights owned;
- licences unnecessary for achieving the objectives of the Act will be removed;
- financial barriers to market entry will be removed;
- restrictions on businesses being able to structure themselves according to their needs will be removed; and
- restrictions on trading fishery symbols and authorities will be removed.

This reduces regulation, the costs of doing business and undue interference in fishing operations. As such it is considered that employment opportunities and job security in the fishing industry will be enhanced. In general, the changes proposed in this submission will provide a significantly enhanced environment for investment into commercial, recreational and charter fishing which is a positive development for regional communities. Accordingly it is considered the proposed legislation is generally beneficial and there will be a net public benefit from its implementation.

**Options considered**

As discussed earlier, no other options are considered practical and there are no less restrictive ways of meeting the objectives of the legislation.

**Brief assessment of the consistency of the legislation with fundamental legislative principles**

As required by the *Legislative Standards Act 1992*, the legislation has sufficient regard to the—

- (a) rights and liberties of individuals; and
- (b) the institution of Parliament.

The legislation does not adversely affect rights and liberties because there is no loss of rights of rights of any persons. In many instances fishery access rights are enhanced through greater transferability, divisibility and certainty. Further, financial barriers to entry are removed. Specific issues demonstrating compliance with fundamental legislative principles are as follows—

- Where licences have been discontinued, the authorisations have been retained, and in many cases expanded. This means that, for example, assistant fishers, crew, storage and certain buyers are no longer are required to be licensed and pay fees. However, they can carry on the same activities and in many cases, more activities than under the old licence;
- L5 fishery symbols have been discontinued, however the entitlement has been absorbed into the L4 fishery symbol entitlement. While most fishers had both an L4 and L5 fishery symbol, any that only had an L5 are being issued an L4 fishery symbol. Therefore, despite the removal of the L5 fishery symbol holders have a greater access right in the L4 fishery, which is larger than and includes the L5 fishery;
- The authority to take has been discontinued and the authorisations now converted into a commercial harvest fishery licence. The new licence provides greater rights than the former authority. The rights are now equivalent to the commercial fishing boat licence;
- Access to the L9, B2 and J2 fisheries has been removed because there are no participants and no prospect of future participants entering these now redundant fisheries;
- The coral limestone licence has been discontinued because there are no participants and any future application to quarry coral limestone would be more appropriately dealt with in the *Coastal Protection and Management Act 1995*;
- Fees paid under the former schedule 10 are being credited to the fees payable under the new schedule 10; and
- The proposed amendments do not extinguish the right for Aboriginal and Torres Strait Islanders to take, use or keep

fisheries resources in accordance with Aboriginal tradition or under Torres Strait Islander custom.

The way consultation was carried out, an outline of the results of consultation and a brief explanation of any changes made to the legislation because of the consultation

The Regulatory Impact Statement and a draft Public Benefit Test were mailed out to 7,500 licence and permit holders, industry representatives, Fishery Management Advisory Committee members, fish stocking groups and government agencies. The consultation documents were also posted on the department's web site. An additional 500 copies were mailed out on request and a further 1,000 copies were distributed at meetings in key Queensland fishing ports.

In response to requests made by the community and key stakeholder groups, the timeframe for formal responses to the RIS was extended from 1 July 2005 to 31 July 2005. Five hundred and fifty one written submissions were received.

A series of 16 port meetings were held between 21 May 2005 and 8 June 2005 at key fishing ports from the Gulf of Carpentaria to the NSW-Queensland border and a number of meetings were held over the same period with peak industry bodies. Following the first round of fishing port visits, the views of the stakeholders attending the fishing port visits were collated into a "Draft Outcomes of the First Round of Port Meetings" document which was subsequently mailed out to the same stakeholders as the RIS and also posted on the DPI&F website.

A second round of 16 fishing port visits was held between 12 September 2005 and 6 October 2005. At these meetings, the opportunity was taken to discuss with stakeholders amongst other things—

- a phasing in of the proposed fees over five years;
- the proprietary nature of fishing rights and how, from fishers perspective, these rights could be better defined and protected; and
- confirmation of the record of the first round of port visits as an accurate reflection of the issues raised.

During the consultation period, departmental officers met with all key peak industry bodies including the Queensland Seafood Industry

Association (QSIA), Sunfish, the Independent Trawler Association, Ecofish, the Queensland Charter Fishing Association and the Queensland Seafood Marketers Association. Officers also attended and briefed the Queensland Fisheries Joint Authority, Crab Management Advisory Committee, Trawl Management Advisory Committee, Harvest Management Advisory Committee, Reef Management Advisory Committee and Gulf Management Advisory Committee, three QSIA board meetings and the Sunfish board meeting. The Great Barrier Reef Marine Park Authority (GBRMPA) was also consulted.

## **Notes on provisions**

### **Short title**

Clause 1 provides that the short title of this subordinate legislation is the *Fisheries and Other Legislation Amendment Regulation (No. 1) 2006* (the amendment regulation).

### **Commencement**

Clause 2 provides for the commencement of the amendment regulation. All provisions commence on 1 July 2006.

### **Regulation amended in Part 2**

Clause 3 provides that Part 2 and the schedule of the amendment regulation make amendments to the *Fisheries Regulation 1995* (the Regulation).

### **Replacement of ss 3 and 4**

Clause 4 omits and reinserts sections 3 and 4 which assist in the working out of boundaries. The old section 3 provided for references to boundaries, lines, shores and other points. The new section 3 merely simplifies the section by consolidating the subsections into a single section. The example is also removed as it does not add anything further to the section. The old section 4 provided for

reference to waterways. The new section 4 expands on this reference by adding that a reference to a waterway is a reference to the foreshores of the waterway.

### **Replacement of s 7 (References to certain commercial fishing boats)**

Clause 5 omits and reinserts a new section 7. The old section dealt with references to a primary commercial fishing boat's tender commercial fishing boat and vice versa. The new section explains the meaning of various references to the new terms 'primary boat' and 'tender boat'. The references reflect that tender boats are no longer required to be separately licensed as this licence is no longer seen as necessary to achieve the purposes of the Act. It is therefore an unnecessary financial and administrative burden on business. The authorisation to use a tender boat is now provided for as part of the authorisations for a primary boat in section 53.

### **Insertion of new s 9A**

Clause 6 inserts a new provision about references to possession of fish. This provision is based on a similar provision that was in some of the fisheries Management Plans. See for example, section 10 of the *Fisheries (East Coast Trawl) Management Plan 1999* prior to the amendments. To ensure consistency, the provision has been taken from the various Management Plans and placed in the Regulation. Accordingly it now applies to the Regulation and Management Plans.

### **Amendment of s 21 (Measurement of size and weight of fish)**

Clause 7 deals with the measurement of fish to decide if they are regulated. It has been expanded to include how the total volume of fish is to be measured by referring to schedule 4A, part 3.

### **Omission of ss 25B, 32, 82, 103 and 109.**

Clause 8 omits sections 25B, 25P, 32, 82, 103 and 109.

Section 25B dealt with how a volume of prawns was to be measured. It has been moved to schedule 4A which contains other provisions about measuring fish. Further, the section has been broadened to now

apply to measuring the volume of fish, rather than just prawns. The definition of fish in section 5 of the Act includes prawns.

Section 32 is omitted because there is no longer a requirement to hold a crew licence and the licence has been discontinued. Crew are now authorised under the commercial fisher licence as ‘assistant fishers’ as set out in section 52.

Section 82 provided that only certain persons were allowed on board a commercial fishing boat and created an offence if the holder of a commercial fishing boat licence or a commercial fisher allowed other persons on board. This prohibition has been removed as it is more relevant to shipboard safety and more appropriately covered under the *Transport Operations (Marine Safety) Act 1994*.

Section 103 is omitted as the requirements about the marking of boats have been moved to subdivision 1B of Part 7. The requirements are now licence conditions.

Section 109 is omitted because it is superfluous to section 118 of the Act.

### **Amendment of s 25F (Meaning of entitlement of SM unit holder)**

Clause 9 amends section 25F by—

- Removing subsection 3 because the SM fishery licence is no longer identified in the SM unit certificate issued to the holder for the SM year. This change is necessary to give effect to the recognition of fishing rights as proprietary rights and provides for greater business and operational flexibility by enabling fishers to take Spanish mackerel on any boat on which they hold a valid licence;
- Adding a new subsection 3 to clarify that the holder’s entitlement only applies while the holder holds an SM fishery licence that is in force to ensure that Spanish mackerel quota can only be taken under a valid licence; and
- Adding a new subsection 4 to remove doubt that the entitlement is still subject to any prohibitions and restrictions in the regulation, management plan, the SM unit or SM licence.

**Amendment of s 25G (When SM unit entitlement is used for an SM year)**

Clause 10 amends section 25G to ensure that SM units may be used under any SM fishery licence held by the SM unit holder. This change results from the recognition of fishing rights as proprietary rights and provides for greater business and operational flexibility by enabling fishers to take Spanish mackerel on any boat on which they hold a valid licence.

**Amendment of s 25H (No carrying forward of unused entitlement)**

Clause 11 amends section 25H, as per section 25G above, to ensure that that SM units may be used under any SM fishery licence held by the SM unit holder. This change results from the recognition of fishing rights as proprietary rights and provides for greater business and operational flexibility by enabling fishers to take Spanish mackerel on any boat on which they hold a valid licence.

**Amendment of s 25I (SM unit certificates)**

Clause 12 amends section 25I as follows—

- Subsection 1 is omitted and replaced by a new section requiring that chief executive must issue a single certificate to each person who holds SM units. Now, the SM unit certificate is now simply concerned with the unit holder's ownership and will be issued when the unit holder transfers or acquires units rather than each year. This amendment, along with the amendments to section 25H and 25G ensure that SM units may be used under any SM fishery licence held by the SM unit holder. This change results from the recognition of fishing rights as proprietary rights and provides for greater business and operational flexibility by enabling fishers to take Spanish mackerel on any boat on which they hold a valid licence; and
- Subsection 2 omits certain paragraphs to ensure that the SM unit certificate is not linked to the SM unit holder's licence. Rather, the SM unit certificate is now simply concerned with the unit holder's ownership and will be issued when the unit holder transfers or acquires units rather than each year. This achieves the

policy position of breaking the link between units and the licence so that units may be used under any SM licence held by the holder.

### **Amendment of s 25J (Evidentiary provision for SM unit certificate)**

Clause 13 amends section 25J(a) to reflect that the SM unit certificate is now simply concerned with the unit holder's ownership and will be issued under section 25I and when the unit holder transfers or acquires units, rather than each year. The amendment ensures that SM units may be used under any SM fishery licence held by the SM unit holder, similar to sections 25I, 25G and 25H above. This change results from the recognition of fishing rights as proprietary rights and provides for greater business and operational flexibility by enabling fishers to take Spanish mackerel on any boat on which they hold a valid licence.

### **Replacement of s 25L (Purpose and application of div 4)**

Clause 14 replaces section 25L to refer to the circumstances of transferability, rather than preconditions of approval of a transfer application, to better reflect the transfer process under the Act. Section 65 of the Act now provides for a right to apply for registration of a transfer provided any circumstances affecting transferability under the Regulation are met.

### **Replacement of s 25O and 25P**

Clause 15 replaces section 25O to provide that the chief executive gives effect to registered permanent transfers by changing the relevant SM unit certificates.

The clause also omits section 25P. The section provided that all the SM units could not be transferred by the holder of a licence unless the SM symbol was also removed from the licence. By omitting this section, a person can transfer all SM units from their licence and retain their SM symbol should they wish to obtain SM units at some time in the future. Effectively, this removes a requirement to have a minimum quota holding as it is a barrier to trade which is not consistent with the National Competition Principles.



**Amendment of s 25R (Entitlement of transferee)**

Clause 16 amends section 25R for consistency with the Act, which provides for the chief executive to register, rather than approve, transfers on application.

**Omission of pt 5C, div 5 (Substituting fishery symbol 'SM' to another authority)**

Clause 17 omits pt 5C, div 5. The division provided a process to substitute the single SM licence related to a person's SM unit holding to another SM licence held by the unit holder. A person would utilise this process under the Regulation prior to the amendments use a different primary boat to the one to which the quota was initially allocated. It is no longer necessary as the amendment regulation provides for quota to be used in conjunction with any SM licence held by the SM unit holder. This change results from the recognition of fishing rights as proprietary rights and provides for greater business and operational flexibility by enabling fishers to take Spanish mackerel on any boat on which they hold a valid licence.

**Replacement of s 30 (Licences chief executive may issue)**

Clause 18 omits and replaces section 30, which provides for the types of licences the chief executive may issue.

The key changes are—

- Boat licences
  - The primary commercial fishing boat licence is transitioned to a commercial fishing boat licence.
  - Tender commercial fishing boat licences are discontinued. They are not necessary to achieve the purposes of the Act and therefore are an unnecessary financial and administrative burden on business. Tender boats now derive their authorisation from the commercial fishing boat licence under section 53.
  - Carrier boat licences continue, however they are now a licence in their own right rather than a category of primary commercial fishing boat licence.

- Buyers class A and B
  - Class 'A' and class 'B' licences for buyers are replaced by a single licence authorising a person to buy fisheries resources that are taken from Queensland waters.
- Charter fishing licence
  - Charter fishing trips (formerly described as commercial fishing tours) are now to be conducted under a charter fishing licence, rather than a permit.
- Commercial harvest fishery licence
  - Commercial harvest fishery licences are now to be issued instead of an authority to take fish in trade or commerce. Authorities to take fish in trade or commerce were issued under section 36 which is now omitted.
- Coral limestone licence
  - This licence is being discontinued as there are none in existence. No licences of this category will be issued in the future under the Act. Any future consideration of this form of quarrying will be done under either the *Environmental Protection Act 1994* or the *Coastal Protection and Management Act 1999*.
- Crew licences
  - This licence is discontinued. The authorisation for crew is now covered by the authorisation for assistant fishers under the commercial fisher licence in section 52. No particular skills or qualifications were required as a prerequisite for obtaining it. Therefore it served no purpose in achieving the main purpose of the Act and was an unnecessary financial and administrative burden on business.
- Fisher licences
  - Assistant fisher licences have been discontinued. Assistant fishers are now authorised by the commercial fisher under the commercial fisher licence. No particular skills or qualifications were required as a prerequisite for obtaining it. Therefore it served no purpose in achieving the main purpose of the Act and was an unnecessary financial and administrative burden on business.

- The commercial fisher licence has been retained. It is a skills-based personal licence. It is a requirement that commercial fishing boat operations be under the supervision of a person with the appropriate skills.
- Storage licences
  - The requirement for a storage licence to store fish commercially has been abolished. It not necessary to achieve the purposes of the Act and therefore is an unnecessary financial and administrative burden on business.

### **Replacement of s 33 (Restriction on issue of tender commercial fishing boat licences)**

Clause 19 omits and replaces section 33. The original section 33 restricted the issue of tender boat licences to boats under 7 m in length.

The new section applies if the chief executive decides to issue a commercial fishing boat licence. The number of tender boats authorised for use under each fishery symbol written on the commercial fishing boat licence for section 53 is denoted by a number in brackets immediately after the fishery symbol on the licence. If the decision is that there is no limit to the number of tender boats that may be used, just the fishery symbol will appear on the licence. For example, a licence marked either RQ(0), RQ(2) or RQ would authorise a fisher to use respectively 0, 2 and an unlimited number of tender boats in the RQ fishery.

The requirement that a tender boat be no more than 7m in length is now at section 58AC(6)(a) consolidating this provision with other restrictions on use of tenders.

### **Amendment of s 34 (Permits chief executive may issue)**

Clause 20 amends section 34 by providing that the chief executive may issue two new permits—developmental fishing permits and indigenous fishing permits, in addition to general fishing permits. Further, the amendment ensures that general fisheries permits must not be issued for activities that may be authorised under another authority. The amendment also removes any doubt by clarifying that

general fishing permits may be issued to authorise activities that are otherwise unlawful under the regulation or management plans, rather than listing the types of purposes or activities that may be carried out under the permit as was done under the old subsection 35(1).

It is considered that developmental and indigenous fishing requires separate and unique consideration warranting these activities being issued under more specific permits than a general fishing permit.

### **Amendment of s 35 (Restrictions on issue of general fisheries permits)**

Clause 21 amends subsection 35(1) by removing the list of purposes or activities that may be carried out under a general fisheries permit. The authorisations are now found in section 34.

Subsection 35(2) is amended to ensure that developmental fishing permits and indigenous fishing permits, in addition to general fishing permits, may not be issued in relation to certain activities involving purse seine nets and taking or possession of maray or pilchards for trade or commerce.

Further amendments are made to renumber the remaining subsections and to ensure references to subsections within sections are consistent with the renumbering.

### **Replacement of pt 7, div 3, hdg (Other authorities)**

Clause 22 amends the heading to division three to reflect that the division now deals with resource allocation authorities only. Authorities to take fish for trade or commerce are no longer issued by the chief executive and are therefore no longer included in this division. Instead, the authorisations are provided through the new commercial harvest fishing licence in section 54.

### **Replacement of s 36 (Other authorities chief executive may issue)**

Clause 23 replaces section 36 which provided that the chief executive may issue an authority to take fish for trade or commerce in a commercial fishery and resource allocation authorities. The new section deals with the power to issue resource allocation authorities

only. As stated in clause 22, authorities to take fish for trade for commerce are no longer issued by the chief executive and are therefore no longer included in this division. Instead, the authorisations are provided through the issue of the new commercial harvest fishing licence which is provided for in section 30.

## **Replacement of ss 41 to 42**

Clause 24 omits sections 41, 41A, 41B and 42 replacing them with sections 41 (General provision for writing fishery symbol), 42 (Restriction on writing multiple fishery symbol), 42A (Restrictions on writing fishery symbol 'SM') and 42B (Restrictions on writing fishery symbol 'L4') and restructures the old Division 4 into subdivision 1 and subdivision 2. Subdivision 1 provides for when fishery symbols may be written on an authority. Clause 26 below inserts a new subdivision 2 dealing with general provisions about fishery symbols.

Section 41(1) provided that if an authority (other than a tender commercial fishing boat licence) allowed a person to do something in a commercial fishery, the chief executive must write the fishery symbol for the commercial fishery on the authority. This provision is considered redundant, as it is the writing of the fishery symbol on an authority that allows the person to do something in a commercial fishery.

Subsections (2) & (4) dealt with crew and assistant fisher licences which have been discontinued. Subsection (3) has been omitted because the requirement to consider approvals has been reviewed and is potentially anti-competitive and un-necessary in achieving the purpose of the Act.

The new section 41 at subsection 1 clarifies that fishery symbols may only be written on a commercial fishing boat licence or commercial harvest fishery licence.

Subsection 2 allows any fishery symbol to be written on a commercial fishing boat licence but only fishery symbols under schedule 15 of the Regulation or the fishery symbol 'E' under the *Fisheries (Freshwater) Management Plan 1999* may be written on a commercial harvest fishery licence.

Section 42 removes any doubt that more than one type of fishery symbol must not be written on an authority. An exception to this is the fishery symbol 'C3'.

The existing section 41A relating to restrictions on writing the fishery symbol 'SM' has been moved to section 42A. An additional authorisation has been added to 42A allowing the chief executive to write the fishery symbol 'SM' to enable a fishery symbol movement application.

The new 42B allows the writing of the fishery symbol 'L4' on a commercial fishing boat licence only under fishery symbol movement application or where the licence is a replacement licence. This is to ensure that no new 'L4' fishery symbols are written.

### **Amendment of s 43 (Restrictions on writing fishery symbols on authorities allowing the use of boats of certain lengths in commercial fisheries)**

Clause 25 amends section 43 by omitting subsection 2 and restructures the section. Subsection 2 is redundant as commercial fishing boat licences are no longer required to be renewed every year.

### **Insertion of new pt 7, div 4, sdiv2 hdg**

Clause 26 inserts a new subdivision heading titled 'General provisions about fishery symbols'. The subdivision provides general provisions about fishery symbols as discussed in clause 24 above.

### **Amendment of s 45 (Restriction on things authorised by an authority with more than 1 fishery symbol on it)**

Clause 27 amends section 45 to insert a more specific reference to commercial fishing boat licences and commercial harvest fishing licences rather than authorities generally, as the provision will only apply to these specific licences rather than to authorities generally.

### **Replacement of s 47 (When effect of certain fishery symbols end)**

Clause 28 omits section 47 which is considered redundant, given the ability of the chief executive to approve fishery symbol movement applications to facilitate trading of fishery symbols as part of the recognition of fishing rights as proprietary in nature.

The new section 47 allows licence holders to transfer fishery symbols between their licences, whether they are held by the same or different persons. The mechanism to achieve this is through an application by the transferor and transferee to the chief executive to amend both the transferor and transferee's licences.

The chief executive's power to amend the licences without a show cause notice at the holder's requests is found in subsection 63(4) of the Act. Further, the chief executive's decision to amend the authorities is discretionary in accordance with subsection 63(5) of the Act. This amendment enables licence holders to restructure their fishing businesses and fish in those fisheries most suited to their personal circumstances and business plan by transferring symbols without having to surrender their licence as was previously the case.

## **Replacement of pt 7, div 5, sdiv 1, (General conditions and authorisations)**

Clause 29 provides for a major restructure of licensing authorisations and conditions. The old division 5, sub division 1 has been separated into new subdivision 1, dealing with general authorisations of authorities, subdivision 1A, dealing with general conditions of licences and subdivision 1B dealing with boat mark conditions. This restructure simplifies division 5 by consolidating similar provisions in a logical, more readable manner.

## **New Subdivision 1 General authorisations**

### **Section 48 Operation of sdiv 1**

Section 48 is a new provision that—

- provides for what things may be done under an authority;
- does not intent limit what may be done under an authority; and
- removes any doubt by declaring that a thing authorised under the subdivision is subject to any relevant prohibitions or restrictions (for example, section 44 of the Regulation).

The Regulation prior to the amendments did not contain a section 48.

**Section 49 Buyer licence**

The old section 49 provided for authorisations under the assistant fisher licence. As discussed at clause 18 above, this licence is abolished and assistant fishers are no longer required to be licensed. They will derive their authorisations through the commercial fisher licence as set out under section 52 below.

The new section 49 provides the authorisations for the buyer licence. As discussed at clause 18 above, class A and class B categories of licence under the old section 50 have been removed. All holders will have the same authorisations under the section. Additionally, the holder of a buyer licence may authorise someone else to do the things the holder may do. This will enable, for example, companies that hold a buyer licence to authorise persons to do certain things under the licence.

The conditions about catch disposal records in the old subsections 50(3) & (4) are now located at section 58 below.

**Section 50 Carrier boat licence**

The old section 50 contained provisions about the old buyer's licence which are discussed in section 49 above.

The new section 50 now contains the authorisations for the carrier boat licence.

**Section 51 Charter fishing licence**

The old section 51 provided for authorisations for the carrier boat licence, which are now found at section 50 above.

The new section 51 provides the authorisations for the charter fishing licence. The licence enables the holder, or a person authorised by the holder, to conduct charter fishing trips. The licence is issued to authorise a business activity and are not attached to a particular boat. Under the Regulation prior to the amendments, the authorisations and conditions for conducting charter fishing trips, formerly known as charter fishing tours, were provided through a general fisheries permit. Under the new provision, a licence is only required where trips are conducted in offshore waters. Offshore waters are defined in the Regulation as waters that are at least 2m deep and not in a waterway



or on a foreshore. It is intended that a licence is not required where the trip is conducted in waterways, including in non-tidal waters. However, a licence is required where the trip is wholly or partly conducted in offshore waters.

## **Section 52 Commercial fisher licence**

This section deals with the commercial fisher licence, both under the Regulation prior to the amendments and in the amended Regulation. The key changes to the section are—

- To remove any doubt, processing fish is now expressly authorised;
- The section contains the authorisation for a person to act as an assistant fisher. A commercial fisher can authorise another person (this person is an ‘assistant fisher’) to do anything the commercial fisher can do in assisting in the commercial fishing operation. However, for some activities, the assistant fisher must be acting under the direction in the presence of the fisher, or for other activities, on the instructions of the commercial fisher. This authorisation replaces the former requirement to hold separate assistant fisher and crew licences;
- In subsection 52(3)(a), the authorisation in subsection 52(1)(g) is limited to where the assistant fisher is acting under direction. Acting under direction is defined in schedule 17, section 12; and
- Under subsection 52(3)(b), buying commercial fishing apparatus and possessing, selling and processing fish may be done by an assistant fisher who is following the licence holder’s instructions. This allows the assistant fisher to travel away from the licence holder and the boat to carry out these activities.

## **Section 53 Commercial fishing boat licence**

The old section 53 provided authorisations and a condition for the crew licence. The crew licence has now been discontinued. Crew will be no longer required to be licensed and now will be authorised as ‘assistant fishers’ in section 52 above.

The new section 53 provides the authorisations for the commercial fishing boat licence. These were previously located at section 54. The key differences between the provisions are—

- The holder of the licence may authorise someone else to do anything the holder may do;
- Subsection 53(1)(b) authorises the holder to use the number of tender boats authorised to be used under section 33. This authorisation replaces the tender boat licence which derived authorisations under the old section 56; and
- To remove any doubt, the authorisations have been expanded to include processing fish, in addition to taking fish and selling fish.

The new transitional provision section 117 ensures that the number of tender boats a licence holder is currently authorised to use under a fishery symbol will be carried over to the new commercial fishing boat licence.

As discussed in clause 24, section 41 above, any fishery symbol may be written on a commercial fishing boat licence.

The following table sets out where some of the authorisations, or similar authorisations, under the new section 53 were originally located.

<b>New provision</b>	<b>Old provision</b>
53(1)(a)	54(1)
53(1)(b)	56(1)
53(1)(c)	56(4)
53(1)(d)	72(4)
53(1)(e)	54(3)
53(1)(f)	none
53(2)	none
53(3)	56(7)
53(4)	56(5)
53(5)	56(6)
53(6)	56(7)

## **Section 54 Commercial harvest fishery licence**

The old section 54 contained the authorisations for the primary commercial fishing boat licence. The terminology has now changed to commercial fishing boat licence and the authorisations moved to section 53 above.

The new section 54 provides for the authorisations for the new commercial harvest fishery licence. This licence replaces the former authority to take fish for trade or commerce. The licence holder may authorise certain persons to do anything that the holder may do. As discussed in clause 24, section 41 only fishery symbols under schedule 15 of the Regulation or the fishery symbol 'E' under the *Fisheries (Freshwater) Management Plan 1999* may be written on a commercial harvest fishery licence.

## **Section 55 Developmental fishing permit**

The old section 55 provided the authorisations for a storage licence. This licence has now been discontinued and a licence is no longer needed for any person to carry out this activity.

The new section 55 provides the authorisations for the new developmental fishing permits, which allows the assessment of the commercial viability of a fishing activity, fishing apparatus or boat for a fishery that is not a commercial fishery. A person identified in the permit may do all or any of the things that a holder is authorised to do.

## **Section 56 Indigenous fishing permit**

The old section 56 contained the authorisations and conditions for the tender commercial fishing boat licence. This licence has been discontinued. The authorisations for tender boats are now under section 53.

The new section 56 provides the authorisations for the new indigenous fishing permits, which allows indigenous persons or communities to assess the commercial viability of a fishing activity, fishing apparatus or boat proposed to be carried out in a commercial fishery. The holder and anyone else identified in the permit may do all or any of the things that a holder is authorised to do. A community of indigenous persons is intended to include any group of indigenous persons.

**Section 57 Resource allocation authority**

This section remains unchanged apart from the rewording of the opening phrase and removal of the cross-referencing note and is included in subdivision 1 as it contains the authorisations for resource allocation authorities.

**Subdivision 1A****Section 58 Buyer licence**

The old section 58 provided certain conditions for authorities allowing sale of fisheries resources. These conditions have been relocated to section 58AD.

The new section 58 contains conditions for the buyer's licence about catch disposal records that have been relocated from the old subsections 50(3) & (4).

**Section 58AA Charter fisher licence**

This new provision provides a condition for charter fishing licences similar to the old section 70(3) relating to the taking of maray or pilchards during the trip.

**Section 58AB Commercial fisher licence**

This is a new condition for commercial fisher licences inserted to remove any doubt. The holder must not act, or direct an assistant fisher to act in the same commercial fishery under more than 1 commercial fishing boat licence at the same time. This is intended to prevent commercial fishers and assistant fishers from acting under multiple commercial fishing boat licences at the same time.

**Section 58AC Commercial fishing boat licence**

This new provision provides the conditions to which a commercial fishing boat licence is subject. Subsections 3, 4 & 5 allow a primary boat and its tenders to take fish in the N6 fishery (see Schedule 13, Part 1—Net Fishery (bait no.1) and Gulf Plan) without having the symbol written on the licence. This can be done providing the N6

fishery provisions are complied with and the fish are not sold. Fish taken in the N6 fishery may only be sold if taken under a commercial fishing boat licence with an N6 fishery symbol written on it. This amendment is intended to allow commercial fishers to take fish for bait without the need to have an N6 symbol written on the commercial fishing boat licence.

The following table sets out where similar authorisations in the section were originally located—

<b>New provision</b>	<b>Old provision</b>
58AC(2)	54(2)(a) & 56(2)
58AC(3)	54(2)(b)
58AC(4)	New
58AC(5)	New
58AC(6)(a)	33(1)
58AC(6)(b)	56(3)
58AC(7)	New

### **Section 58AD Authority that authorises the sale of fisheries resources**

This new provision prescribes that for an authority authorising the sale of fisheries resources, a person may only sell the fisheries resources in a way allowed under a fisheries provision if a symbol is written on a licence, or as stated in an authority. The Act generally allows for reasonable and relevant conditions to be imposed on authorities. It is intended that reasonable and relevant conditions about selling fisheries resources could be imposed on authorities that have fishery symbols written on them.

### **Subdivision 1B Boat mark conditions**

#### **Sections 58AE, AF, AG and AH**

This new subdivision creates sections 58AE, AF, AG and AH. These sections consolidate and restructure various existing restrictions around boat marks as outlined in the table below and change the nature of the restrictions from stand-alone offence provisions to

licence conditions. Section 85 of the Regulation creates the offence of contravening a condition of an authority.

Key points include—

- 58AF(1)(b) and (2) are new provisions. Tender boats are no longer licensed and are authorised under the primary boat licence. Accordingly there is no unique boat mark for each tender as it was in practice derived from the boat licence number. Now the boat mark for each tender will now include the stated or notified sequence of letters or numbers from the primary boat licence, a dash, and then a unique number chosen by the authority holder. For example, a primary boat with the mark FXXX and four tenders may mark the tenders as follows: FXXX – 1, FXXX – 2, FXXX – 3, FXXX – 4. Any number may be used after the dash as long as no other tender boats for that particular primary boat share the number. This will allow patrol officers to easily identify at sea how many tender boats are being used under a primary boat. It does not matter how many tenders a fisher marks in this way, only that the tenders being used do not exceed the number authorised for that fishery;
- 58AF(3) is new and removes doubt that other legislation may require other markings on primary and tender boats;
- The defence of reasonable excuse has been added to section 58AG, formerly subsection 103(4);
- 58AH(1)(d), read in conjunction with subsection 58AH(2), replaces 103(3)(c) on the advice of the Office of Queensland Parliamentary Counsel. This is because it better meets the intention to have the boat mark clearly visible from a distance either from the air or at sea; and
- 58AH(2)(b) has been reworded to correct a error in the old regulation where the entire width of each letter, rather than each stroke of the letter, was confined to 2–2.5cm, 3.5–4cm and 6–6.5cm in paragraphs (i), (ii) & (iii) respectively.

The following table sets out the new provisions and where the previous restrictions were located.

<b>New provision</b>	<b>Old provision</b>
58AE(a)	103(1)(a)
58AE(b)	103(1)(b)

<b>New provision</b>	<b>Old provision</b>
58AF(1)	103(2)
58AF(1)(a)	103(3)(b)
58AF(1)(b)	new
58AF(2)	new
58AF(3)	new
58AG	103(4)
58AH(1)(a)	103(2)
58AH(1)(b)	103(3)(a)
58AH(1)(c)	103(5)(a)
58AH(1)(d) replaces	103(3)(c)
58AH(2)	103(5)(b)(i)
58AH(3)	103(5)(b)(ii)
58AH(4)	103(5)(b)(iii)

### **Amendment of s 58A (Purpose of sdiv2)**

Clause 30 amends section 58A by removing the term ‘assistant fisher’ to reflect that the assistant fisher licence has been abolished and that assistant fishers now are authorised by under the commercial fisher licence.

### **Amendment of s 58B (Definitions for sdiv 2)**

Clause 31 amends various definitions in section 58B.

The definition of ‘authorised boat’ is amended in subsection 1 by removing reference to a tender boat licence as these have now been discontinued. The definition also uses the terminology ‘primary boat’ rather than ‘primary commercial fishing boat’. The new definition is restructured to reflect that tender boats derive their authorisations from the primary boat.

The definition of ‘complying number’ has been omitted. The definition provided that a one percent error margin above and below was allowed in respect of the Spanish mackerel notified in the prior notice. The meaning of ‘complying number’ is now provided under section 58G as ‘a number that is the same as the number stated in the

prior notice or is, having regard to the circumstances, close to that number', as set out in clause 33 below.

The deadline for amending prior notices has been changed to allow fishers to continue to take up to 5 more Spanish mackerel after the prior notice, provided they amend the first notice to include the fish before they enter the area within 0.5 nautical miles of the landing place. The intention is to allow some further fishing to continue during the period the boat is returning to land even where this is within an hour of the notified landing time, as Spanish mackerel can continue to be taken close to shore.

The definition of the 'prior notice particulars' has been redrafted so that the particulars must be entered if prompted by the Automatic Interactive Voice Response (AIVR) system. The AIVR system is used by fishers to give reports about the use of SM units, including the prior notice. The change builds greater flexibility in the reporting system, allowing the chief executive to tailor the content of prior notices more specifically to the practices of particular fishing operations, for example, to remove prompts for particulars that are never of relevance to that fisher. This allows the time and cost expended in giving notices using the AIVR system to be minimised.

### **Amendment of s 58C (Requirements for taking or possessing Spanish mackerel on authorised boat)**

Clause 32 amends section 58C by omitting subsections (2) to (4). This amendment is intended to allow commercial fishers acting under a SM fishery licence to take Spanish mackerel recreationally.

### **Amendment of s 58G (General requirements after prior notice given)**

Clause 33 amends section 58G to remove the reference to 'complying number' in relation to a prior notice. It is replaced, as discussed at clause 31 above, with a broader concept being 'a number that is the same as the number stated in the prior notice or is, having regard to the circumstances, close to that number'. Further, when deciding what is 'close to that number', regard must be had to the degree of difficulty in counting the fish with complete accuracy. This recognises that in some cases, for example, counting a large number of live fish in a tank, the error would be expected to be larger than in other cases where



the error would expected to be very marginal or non-existent, for example, counting dead fish.

### **Amendment of s 58H (Additional requirements if prior notice stated Spanish mackerel will be unloaded)**

Clause 34 amends section 58H to allow fishers acting under SM units to continue to take fish within an hour of the landing time advised in the prior notice. No more than 5 additional fish above that reported in the prior notice may be taken and the prior notice must be amended to add the fish to the reported catch before the first of the boats being used under the SM licence and units enters within 0.5 nautical miles of the landing place.

### **Amendment of s 58K (Additional requirements for unloading Spanish mackerel if prior notice given)**

Clause 35 amends section 58K to refer simply to a ‘tender boat’ as defined in section 7 above, rather than the discontinued term ‘tender commercial fishing boat’.

### **Amendment of s 58N (Notices to chief executive under this subdivision)**

Clause 36 amends section 58N to update the cross referencing in the section to the definition of retained fish notice.

### **Amendment of s 58O (Criteria for suspending SM units)**

Clause 37 amends section 58O(2)(a) to remove the reference to a SM unit holder taking excess quota ‘under the holder’s SM licence’. The relevant authority in this context is the SM unit and the reference to the licence is superfluous. The clause also amends section 58O(2)(b) so that it applies if any of the holder’s SM licences are suspended. This follows from the change allowing the holder to use SM units in conjunction with any one or more of the holder’s SM licences, rather than only the specified licence.

**Replacement of s 59 (Authorities that are not transferable)**

Clause 38 replaces section 59 to reflect that crew and assistant fisher licences are now discontinued. Further, the only licence that is non-transferable is the commercial fisher licence. Former authorities with a fishery symbol for the peal fishery have been converted into commercial harvest fishery licences as discussed at section 118 in clause 52 below. Fishery symbols for the beche-de-mer (Torres Strait), pearl fishery and trochus fishery (Torres Strait) have been discontinued as they are redundant, as discussed at clause 60 below. Commercial harvest fishery licences are made fully transferable in recognition of these fishing rights as a form of proprietary right.

**Amendment of s 62 (Particulars to be contained in register of authorities)**

Clause 39 amends section 62 by removing and adding certain details of what must be recorded in the public register about authorities issued by the chief executive. This simplifies the register and ensures consistent information is recorded for different types of authorities. For all the fisheries where there are units for the fishery symbols, namely SM line units in the regulation; ITQ units under the Spanner Crab Plan; T1 effort units or T2 effort units under the East Coast Trawl Plan; and CT line units, OS line units or RTE line units under the Coral Reef Plan, the same information is intended to be recorded in each case. That is, the holder, the units held, any conditions on the units and any suspensions. Further, the amendments remove certain requirements, such as references to particular licences and boat details. These amendments support other amendments in the regulation and management plans that ensure that units for fishery symbols are no longer attached to particular licences held by a person. It is intended that persons who hold firstly, units for fishery symbols, and secondly, multiple licences for those fishery symbols, be allowed to use the units against any licence, rather than one particular licence as was the case under the regulation and management plans prior to the amendments.

**Amendment of s 64B (Meaning of *ready to fish*)**

Clause 40 amends section 64B to remove reference to 'crew' and replace it with 'assistant fishers' This is because the crew licence has

been abolished and crew would now obtain their authorisations as assistant fishers under the commercial fisher licence as discussed under amendments to the commercial fisher licence in clause 29 above.

### **Omission of pt 7, div 7, sdiv 3 (Changing fishery symbol 'SM' to another authority)**

Clause 41 omits sections 64E, 64F and 64G which together allowed a person to change the fishery symbol SM to another primary boat licence of the holder. This process is now superseded by section 47 which provides for fishery symbol movement applications, as discussed at clause 28 above. Accordingly this subdivision is no longer required.

### **Replacement of s 68 to s 70**

Clause 42 replaces section 68 to 70.

Section 68 provided that a person could only use, buy or possess commercial fishing apparatus if they held an authority allowing them to do the activity. The new section allows the holder of an authority, and a person authorised under the authority to carry out the activity. This amendment recognises that persons, for example crew and assistant fishers, now derive their authorisation from under the commercial fisher licence.

Section 69 provided that a person may only use a boat or be in control of a boat while it is used for taking fish for trade or commerce only if the person is duly authorised. The new subsection (1) applies the changes to authorisations of persons acting a commercial boat licence and a commercial fisher. Subsection (2) provides authorisation to persons using a boat under a commercial harvest fishery licence.

Section 70 provided only the holder of a charter fishing licence may conduct a charter fishing trip where there is a boat involved and any part of the trip is conducted in offshore waters. The condition about taking maray or pilchards in the old section has been relocated to section 58AA. Also, under section 51, a licence is only required where trips are conducted in offshore waters. Offshore waters are defined in the regulation as waters that are at least 2m deep and not in a waterway or on a foreshore. It is intended that a licence is not required

where the trip is conducted in waterways, including in non-tidal waters. However, a licence is required where the trip is wholly or partly conducted in offshore waters.

### **Amendment of s 71 (Taking fish)**

Clause 43 has changed to reflect that under the amended regulation persons may derive authorisation for taking fish by acting under an authority, in addition to holding an authority that allows taking fish.

### **Amendment of s 72 (Carrying fish)**

Clause 44 amends section 72. The section provides for the circumstances in which a boat may be used to carry fish, namely that person may only use the boat if they hold a carrier boat licence or other authority allowing the boat's use for carrying fish. Subsection 2 provides an exception in certain circumstances north of a certain latitude. The subsection is amended to expand the operation of the exception to apply in any Queensland waters.

Subsection 3 is omitted because it is superceded by the authorisations in the new commercial fishing boat licence in subsection 53(d) in clause 28 above.

### **Replacement of ss 73 to 76**

Clause 45 replaces sections 73 to 76. These sections provided certain acts about processing, storing, selling and buying fish or fisheries resources must only be done by the holder of certain authorities.

The new sections are intended to broaden significantly the number of persons who can buy, sell and process fisheries resources without an authority. The intention is that the only persons who require a licence to process, sell or buy fish are the person who took the fish, and the first person to buy the fish from the taker. The person who took the fish is required to be authorised to sell or process fish. The first person to buy the fish is required to be authorised to process the fish, buy the fish from the taker, and also to on-sell the fish. Any person who then buys or sells or processes the fish does not require an authorisation, provided the initial sales from the taker to the first buyer and then from the first buyer to any person were done under an authority.

For example—

Mr A takes the fish and sells to B Pty Ltd. B Pty Ltd scales and guts the fish and then sells to Mrs C. Mrs C then fillets the fish and sells to Miss D, who then sells the fish by retail sale.

In this scenario, Mr A requires an authorisation to sell the fish. B Pty Ltd requires authorisation to buy, process and sell the fish. Provided that these authorisations were in place, then Mrs C and Miss D do not require any authorisation to buy, process or sell the fish.

The requirement that a person can only store fish if authorised under a storage licence has also been removed.

### **Amendment of s. 91 (Possessing certain crabs or crab meat)**

Clause 46 amends section 91 to reflect that the authorisations in relation to crabs are now under the new sections 73, 74 and 75.

### **Insertion of new s 95B**

Clause 47 inserts a new section to remove any doubt that commercial fishers may also fish recreationally while acting in the capacity as a commercial fisher. The fisher must ensure the recreational rules are complied with, such as individual bag limits. The section makes it clear that a commercial fisher acting as a recreational fisher is subject to any restrictions or prohibitions in the regulation or management plans. A key restriction is in the Spanish mackerel and coral reef fisheries. Here, where a commercial fisher acts under SM units or line units, any fish taken recreationally are taken off the entitlement to use quota. The catch will also be subject to reporting obligations.

### **Replacement of s 105 (Prescribed authorities Act, s70C)**

Clause 48 replaces section 105. This is necessary to reflect that certain licences have been discontinued and new ones created, as discussed in clause 18 above. Further, the section now refers to SM units, effort units, ITQ units and line units as these terms are now defined in the dictionary in schedule 17.

**Amendment of s 108AA (Definitions for div 2)**

Clause 49 amends section 108AA to remove reference to the discontinued commercial fishing tour permit and refer instead to the new charter fishing licence. Also, the discontinued term ‘primary commercial fishing boat’ is replaced by ‘primary boat’, which is defined in section 7.

**Replacement of s 112 (Other fees payable under the Act)**

Clause 50 replaces section 112. The old section provided generally that fees for authorities as set out in schedule 10 were payable annually, apart from ITQ units under the *Fisheries (Spanner Crab) Management Plan 1999* which were payable 90 days after the unit holder was issued with an ITQ certificate.

The new section 112 provides that fees are now payable in arrears at the end of each quarter. That is individuals will be billed each quarter for the rights they owned in the previous three months. Each fishery symbol written on a licence will incur a fee payable in Schedule 10, table 1. The amount of the fee is the amount stated for the symbol, or in certain cases, the amount stated for each unit or area. The fee is payable by the holder of a licence rather than, for example, a person to whom the licence has been transferred temporarily. Any registration fee is payable in addition to the fee for a fishery symbol. The new section also removes any doubt that fees become a debt payable to the State if they are not paid. The chief executive decides the likely reasonable cost of deciding a fee for a matter where it is stated to be at reasonable cost but no more than actual cost. Where the fee paid is more than the actual cost of deciding the application, the difference must be refunded to the applicant.

**Replacement of Part 13 heading (Transitional provision for the  
*Fisheries Amendment Regulation (No.1) 2004*)**

Clause 51 amends the heading to provide that the transitional provisions are for this amendment regulation, replacing the transitional provisions for amendments in 2004 which are now spent.

**Insertion of new pt 13, div2**

Clause 52 inserts a new part 13, div 2 which contains transitional provisions for this amendment regulation.

Section 115 contains the definition of Regulation prior to the amendments for the transitional part.

Section 116 provides that existing buyer, carrier boat and commercial fisher licences that currently have fixed term and are subject to annual renewal are now taken to have a term that ends only upon its surrender, cancellation or expiry under the Act. The intention is to provide greater future certainty for owners of these rights.

Section 117 provides transitional arrangements for primary commercial fishing boat licences as follows—

- Primary licences are taken to be commercial fishing boat licences which now provide the authorisation to use both primary and, if applicable, tender boats in particular commercial fisheries;
- Due to the amalgamation of the L5 fishery and L4 fishery, any primary boat licence that has an L5 symbol but not an L4 symbol is taken to have a L4 fishery symbol;
- The authorisation to use a number of tender boats, currently provided by a separate tender boat licence, will be represented by writing the number of tenders on the commercial fishing boat licence in accordance with section 33; and
- All commercial fishing boat licences are taken to have a term that ends only upon its surrender, cancellation or expiry under the Act. The intention is to provide greater future certainty for owners of these rights.

Section 118 transitions discontinued authorities to take into commercial harvest fishery licences with a term that ends only upon its surrender, cancellation or expiry under the Act.

Section 119 transitions existing general fishing permits into the following, if applicable—

- Commercial harvest fishery licences with a term that ends only upon its surrender, cancellation or expiry under the Act;
- Indigenous fishing permits; or
- Developmental fishing permits.

Section 120 provides that if a person pays a fee under the old schedule 10 prior to commencement and the amount paid is more than what is payable under the new schedule 10, the chief executive must credit this amount to future fees payable by the person. The section does not limit the chief executive's power in section 113 to refund a fee.

### **Amendment of schedule 4A (Measurement of particular fish)**

Clause 53 amends the heading so that it applies to fish generally, rather than particular fish. However, the schedule does not apply to Gulf fin fish, which are measured under section 14(2) of the Gulf plan. The clause also inserts a new part 3 which deals with volumetric measurement. Previously this provision only dealt with the measurement of prawns. Other volumetric measurements were found in the management plans and these have now been incorporated into the regulation under this provision.

### **Amendment of sch 5B (Special provisions for the Spanish mackerel fishery)**

Clause 54 amends schedule 5B to make terminology changes consequential to changes to the licensing system.

### **Replacement of sch 10 (Other fees)**

Clause 55 replaces schedule 10 with a new schedule 10. The new schedule is structured into table 1 and table 2.

Table 1 contains the new commercial fishery access fees that are to be phased in over five years. The table contains the final fees for implementation in the 2010-2011 financial year, based on the value of access being obtained. Lesser amounts are included for each year of the phase in from the 2007-2007 financial year. The table also contains licence registration fees.

The fishery access fees are based on two forms of access, firstly limited access fisheries and secondly, limited effort and quota fisheries.

In the limited access fisheries, all fishers pay the same fee on the basis that each individual participating in that fishery holds the same rights of access, regardless of whether they have chosen to fully exercise that



right or not. These fisheries include all fisheries in table 1 where a unit or area for the fishery symbol is not stated.

The limited effort and quota fisheries have either a unit or area fee where the value of the unit or area remains the same. In these fisheries, because the rights of individual fishers vary according to the size of their unit or area holdings, their total fee will be directly proportional (number of units held multiplied by the unit/area fee) to their share of the total access rights to the fishery. The fee per unit or area is paid regardless of whether the access right to the allocated share of the resources is exercised or not. Where area fees apply, access to the fishery is managed by particular areas allocated to fishers. The limited effort and quota fisheries also have the following characteristics—

- there is no expectation of a linkage between unit or area fees and the price of fish, because of the availability of imports and because the market sets fish prices;
- quotas and effort unit entitlements have been scientifically set in a manner which are expected to ensure the sustainability of these fisheries and which accounts for the likely impact of recreational fishing; and
- the fee for each unit or area will not exceed the value of the right obtained under each unit or area.

Licence registration fees in table 1 are the annual registration to be paid by individuals or businesses who hold the various licences.

Table 2 contains miscellaneous one-off fees for services provided on request, for example, searches of the register of authorities, issuing new authorities, amending authorities and lodging appeals. These fees are based on the cost of providing the service. Further, the table provides for Stocked Impoundment Permit Scheme fees for recreational fishing in certain stocked impoundments.

The new schedule 10 also removes existing higher first year fees for licences. The elimination of these fees removes a financial barrier to entry into the buyer and commercial fisher sectors. The retention of higher first year fees was not necessary to achieve the purposes of the Act and therefore was considered an unnecessary financial burden on business and a constraint on competition.

**Amendment of sch 12 (Line fisheries (commercial))**

Clause 56 removes the L5 fishery which has been combined with the L4 fishery, removes the L9 fishery because there are no participants and no prospect of future participants entering this now redundant fishery, and makes consequential amendments to refer to primary and tender boats in accordance with the definition of these terms in section 7.

**Amendment of sch 13 (Net fisheries (commercial))**

Clause 57 makes consequential amendments to refer to primary and tender boats in accordance with the definition of these terms in section 7. It also clarifies the wording of provisions dealing with two commercial fishers operating jointly in certain net fisheries. However the substance of the fishery provision is retained unchanged.

**Amendment of sch 14 (Trawl fishery (fin fish))**

Clause 58 amends the heading to schedule to ensure it is identified as a commercial fishery.

**Insertion of new s 14A**

Clause 59 Inserts a heading for the new schedule 14A.

**Amendment of sch 15 (Other fisheries (commercial))**

Clause 60 makes various changes to schedule 15 including—

- replacing the heading with the more meaningful description of the fisheries provided for it as ‘commercial harvest fisheries’;
- the beche-de-mer (Torres Strait) and trochus fishery (Torres Strait) are also removed as they are redundant;
- relocates the fishery provisions for the commercial crayfish and rock lobster fishery into its own schedule. It was previously located in schedule 15, which provides for the harvest fisheries; and
- makes consequential terminology updates.

**Amendment of sch 17**

Clause 61 makes consequential changes to definitions including:

- relocating definitions from the management plans to the Regulation;
- terminology changes; and
- creating definitions of terms introduced as a result of these amendments.

**Part 3 Amendment of *State Penalties Enforcement Regulation 2000*****Regulation amended in Part 3**

Clause 62 provides that this part amends the *State Penalties Enforcement Regulation 2000* (SPER).

Clause 63 amends schedule 5 of SPER to reflect the renumbering of certain offence provisions under the regulation.

**Part 4 Amendment of *Transport Operations (Marine Safety) Regulation 2004*****Regulation amended in Part 4**

Clause 64 provides that this part amends the *Transport Operations (Marine Safety) Regulation 2004*.

**Amendment of s 20 (Application of div 4)**

Clause 65 substitutes a reference to the *Fisheries Regulation 1995* with the *Fisheries Act 1994*. The reference to the primary legislation is more appropriate in this instance and includes its subordinate legislation.

**Amendment of s 24 (Fishing ship less than 10 m or licensed as a commercial fishing boat)**

Clause 66 amends section 24 by substituting the new term ‘tender boat’ for ‘tender to a commercial fishing boat’ and referring to the primary legislation.

**Amendment of s 60 (Application of Act, pt 5, div 2)**

Clause 67 amends section 60 by substituting the new term ‘tender boat’ for ‘tender to a commercial fishing boat’ and referring to the primary legislation.

**Amendment of s 79 (Markings for particular tenders)**

Clause 68 amends section 79 by making some minor structural changes to substitute the new term ‘tender boat’ for ‘tender to a commercial fishing boat’ and to refer to the primary legislation.

**Amendment of sch 10 (Fees and charges)**

Clause 69 increases the recreational use component for a recreational ship from \$12.60 to \$15.00.

**Amendment of sch 15 (Dictionary)**

Clause 70 amends schedule 15 by changing the definition of fishing ship to reflect that tender boats are no longer required to be licensed. Rather, they are authorised under the commercial boat licence.

**Schedule Other amendments of *Fisheries Regulation 1995***

These amendments make miscellaneous minor changes consequential to these amendments and as recommended by the Office of Queensland Parliamentary Counsel.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Primary Industries and Fisheries.