



Fisheries Act 1994

Current as at 28 May 2019

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Queensland

Fisheries Act 1994

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Fisheries Act 1994

An Act for the management, use, development and protection of fisheries resources and fish habitats, the management of aquaculture activities and helping to prevent shark attacks, and for related purposes

Part 1 Preliminary

Division 1 Introduction

1 Short title

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

2 Commencement

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

Division 2 Objectives

3 Particular purposes of Act

- (1) The main purpose of this Act is 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.

- (2) In balancing the principles, each principle is to be given the relative emphasis appropriate in the circumstances, having regard to ensuring access to the fisheries resources is allocated in a way that maximises the potential economic, social and cultural benefits to the community.
- (3) Despite the main purpose of this Act, a further purpose of this Act is to reduce the possibility of shark attacks on humans in coastal waters of the State adjacent to coastal beaches used for bathing.
- (4) Subsections (1) and (3) do not limit the purposes of this Act.
- (5) In this section—

ecologically sustainable development means using, conserving and enhancing the community's fisheries resources and fish habitats so that—

- (a) the ecological processes on which life depends are maintained; and
- (b) the total quality of life, both now and in the future, can be improved.

precautionary principle means the principle that, if there is a threat of serious or irreversible environmental damage, lack of scientific certainty should not be used as a reason to postpone measures to prevent environment degradation, or possible environmental degradation, because of the threat.

principles of ecologically sustainable development means the following principles—

- (a) enhancing individual and community wellbeing through economic development that safeguards the wellbeing of future generations;
- (b) providing fairness within and between generations;
- (c) protecting biological diversity, ecological processes and life-support systems;
- (d) in making decisions, effectively integrating fairness and short and long-term economic, environmental and social considerations;

- (e) considering the global dimension of environmental impacts of actions and policies;
- (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;
- (h) that decisions and actions should provide for broad community involvement on issues affecting them;
- (i) the precautionary principle.

3A How particular purposes are to be primarily achieved

- (1) The main purpose of this Act is to be primarily achieved by providing for—
 - (a) the management and protection of fish habitats; and
 - (b) the management of commercial, charter, recreational and indigenous fishing; and
 - (c) the management of aquaculture.
- (2) The main purpose of this Act is to be achieved, so far as is practicable—
 - (a) in consultation with, and having regard to the views and interests of, all persons involved in commercial, charter, recreational or indigenous fishing and the community generally; and
 - (b) using a transparent and responsive approach to the management of access to fisheries resources.
- (3) The further purpose of this Act under section 3(3) is to be primarily achieved by the chief executive establishing and managing a program for particular coastal waters of the State adjacent to coastal beaches used for bathing.
- (4) The program is the *shark control program*.

Division 3 Interpretation

Subdivision 1 Dictionary

4 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

Subdivision 2 Key definitions

5 Meaning of *fish*

- (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
 - (c) sponges, annelid worms, *bêche-de-mer* and other holothurians; 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) pests under the *Pest Management Act 2001*; or
 - (d) animals prescribed by 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 *Statutory Instruments Act 1992*, section 24 or 25.

7 Meaning of *fishery*

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 by regulation.

8 Meaning of *marine plant*

- (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 by regulation to be a marine plant.
- (2) *Marine plant* does not include a plant that is—
- (a) prohibited matter or restricted matter under the *Biosecurity Act 2014*; or
- Notes—*
- 1 See the *Biosecurity Act 2014*, schedule 1 or schedule 2.
 - 2 See also the note to the *Biosecurity Act 2014*, schedules 1 and 2.
- (b) controlled biosecurity matter or regulated biosecurity matter under the *Biosecurity Act 2014*.

Division 4 Operation of Act

10 Act binds all persons

This Act binds all persons, including the State.

11 General application of Act

- (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; or
 - (e) the taking and keeping of fish under a collection authority issued under the *Biodiscovery Act 2004*.
- (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.

12 When Act does not apply

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.

13 Exemptions from Act

- (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.

14 Defence for Aborigines and Torres Strait Islanders for particular offences

- (1) It is a defence in a proceeding against a person for an offence against this Act relating to the taking, using or keeping of fisheries resources, or the using of fish habitats, for the person to prove—
 - (a) the person is an Aborigine, who at the time of the offence was acting under Aboriginal tradition, or the person is a Torres Strait Islander, who at the time of the offence was acting under Island custom; and
 - (b) the taking, using or keeping of the fisheries resources, or the using of the fish habitats, was for the purpose of satisfying a personal, domestic or non-commercial communal need of the Aborigine or Torres Strait Islander; and

- (c) depending on whichever of the following applies—
 - (i) for an offence relating to the taking or using of fisheries resources, or the using of fish habitats—the taking or using of the fisheries resources, or using of the fish habitats, was carried out using prescribed fishing apparatus in waters other than prescribed waters;
 - (ii) for an offence relating to the keeping of fisheries resources—
 - (A) the fisheries resources kept were taken using prescribed fishing apparatus in waters other than prescribed waters; and
 - (B) at the time of the offence, the fisheries resources were not in prescribed waters.
- (2) However, subsection (1) is subject to a provision of a regulation that expressly applies to acts done under Aboriginal tradition or Island custom.
- (3) In this section—

prescribed fishing apparatus means—

- (a) fishing apparatus that is recreational fishing apparatus under a regulation or declaration; or
- (b) fishing apparatus that is used under Aboriginal tradition or Island custom, and prescribed specifically under a regulation for the purpose of this section.

prescribed waters means waters—

- (a) that are regulated waters under a regulated waters declaration; and
- (b) that are prescribed specifically under a regulation for the purpose of this section; and
- (c) where the taking of any fish, or the possession of any fish taken, by any person is prohibited.

Part 2 Functions of Minister

Division 1 Harvest strategies

Subdivision 1 Preliminary

15 Definitions for division

In this division—

approved harvest strategy policy means the document called ‘Queensland Harvest Strategy Policy’—

- (a) approved by the Minister; and
- (b) published on the department’s website.

public notice means a notice published—

- (a) in a newspaper circulating generally throughout Queensland; and
- (b) on the department’s website.

Subdivision 2 Harvest strategy

16 Approval of harvest strategy

- (1) The Minister may approve a harvest strategy prepared by the chief executive if the Minister is satisfied—
 - (a) the harvest strategy is consistent with the main purpose of this Act; and
 - (b) this subdivision has been complied with for the harvest strategy.
- (2) As soon as practicable but no more than 3 months after the chief executive gives the Minister a harvest strategy prepared under this subdivision, the Minister must—

- (a) approve the harvest strategy; or
 - (b) approve the harvest strategy subject to stated changes being made to the strategy; or
 - (c) decide not to approve the harvest strategy.
- (3) If the Minister approves the harvest strategy (including subject to stated changes being made), a copy of the approved harvest strategy must be published on the department's website.
- (4) The Minister must give public notice of the Minister's decision under subsection (2) within 14 days after the decision is made.
- (5) The public notice must state—
- (a) the reasons for the Minister's decision; and
 - (b) if the Minister approves the harvest strategy (including subject to stated changes being made)—that a copy of the approved harvest strategy is available on the department's website.

17 Preparation and notice of draft harvest strategy

- (1) The chief executive may prepare a harvest strategy complying with section 19 for a fishery.
- (2) In preparing the draft harvest strategy, the chief executive must comply with the approved harvest strategy policy.
- (3) The chief executive must give public notice of the draft harvest strategy stating—
- (a) the fishery to which the draft harvest strategy applies; and
 - (b) that a copy of the draft harvest strategy is available for inspection, without charge—
 - (i) during normal business hours at each office of the department; and
 - (ii) on the department's website; and

- (c) that written submissions may be made to the chief executive about the draft harvest strategy within a stated reasonable period of at least 28 days after the notice is published on the department's website.

18 Preparation and submission of final harvest strategy

- (1) This section applies if the chief executive prepares a draft harvest strategy for a fishery under section 17.
- (2) The chief executive must prepare a final harvest strategy complying with section 19 for the fishery.
- (3) The final harvest strategy must be prepared having regard to each submission made about the draft harvest strategy within the period stated in the public notice.
- (4) The chief executive must give the Minister—
 - (a) the final harvest strategy; and
 - (b) a written report about—
 - (i) the submissions made about the draft harvest strategy within the period stated in the public notice, including, whether any changes were made to the draft harvest strategy because of any of the submissions; and
 - (ii) other consultation undertaken by the chief executive in preparing the draft or final harvest strategy.

19 Content of harvest strategy

- (1) The draft and final harvest strategy must state—
 - (a) the fishery to which it applies; and
 - (b) the ecological, economic and social objectives for the fishery; and
 - (c) the allocation of access to fisheries resources for the fishery—

- (i) to each fishing sector; and
 - (ii) to another purpose or group of persons (if any); and
- (d) a framework for the management of the fishery, including—
 - (i) the targets and limits for maintaining fisheries resources at levels that achieve the ecological, economic and social objectives for the fishery; and
 - (ii) the triggers for when action must be taken under this Act to ensure the ecological, economic and social objectives for the fishery are being achieved; and
 - (iii) how the performance of the fishery against the matters mentioned in subparagraphs (i) and (ii) is to be measured; and
 - (iv) action that must be taken under this Act to ensure the ecological, economic and social objectives for the fishery are being achieved.
- (2) The draft and final harvest strategy may also—
 - (a) state when the performance of the fishery must be assessed under section 25; or
 - (b) state when the harvest strategy must be reviewed under section 26, which must be at least once every 5 years; or
 - (c) provide for other matters for achieving the main purpose of this Act.

Subdivision 3 Amendment of harvest strategy

20 Amendment of harvest strategy

- (1) The Minister may approve an amendment of an approved harvest strategy prepared by the chief executive if the Minister is satisfied—

- (a) the harvest strategy, as amended, would be consistent with the main purpose of this Act; and
 - (b) this subdivision has been complied with for the amendment.
- (2) As soon as practicable but no more than 3 months after the chief executive gives the Minister an amendment of an approved harvest strategy prepared under this subdivision, the Minister must—
- (a) approve the amendment; or
 - (b) approve the amendment subject to stated changes being made to the amendment; or
 - (c) decide not to approve the amendment.
- (3) If the Minister approves the amendment (including subject to stated changes being made), a copy of the approved amendment, and a copy of the approved harvest strategy including the amendment, must be published on the department's website.
- (4) The Minister must give public notice of the Minister's decision under subsection (2) within 14 days after the decision is made.
- (5) The public notice must state—
- (a) the reasons for the Minister's decision; and
 - (b) if the Minister approves the amendment (including subject to stated changes being made)—that a copy of the approved amendment, and a copy of the approved harvest strategy including the approved amendment, is available on the department's website.

21 Preparation and notice of draft amendment

- (1) The chief executive may prepare an amendment of an approved harvest strategy.
- (2) In preparing the draft amendment, the chief executive must comply with the approved harvest strategy policy.

- (3) The chief executive must give public notice of the draft amendment stating—
 - (a) the approved harvest strategy to which the amendment applies; and
 - (b) that a copy of the draft amendment is available for inspection, without charge—
 - (i) during normal business hours at each office of the department; and
 - (ii) on the department’s website; and
 - (c) that written submissions may be made to the chief executive about the draft amendment within a stated reasonable period of at least 28 days after the notice is published on the department’s website.
- (4) Subsection (3) does not apply to a minor amendment to—
 - (a) correct an error in the approved harvest strategy; or
 - (b) make a change other than a change of substance.

22 Preparation and submission of final amendment

- (1) This section applies if the chief executive prepares an amendment of an approved harvest strategy under section 21.
- (2) The chief executive may prepare a final amendment of the harvest strategy.
- (3) The final amendment must be prepared having regard to each submission made about the draft amendment within the period stated in the public notice.
- (4) The chief executive must give the Minister—
 - (a) the final amendment; and
 - (b) a written report about—
 - (i) the submissions made about the draft amendment within the period stated in the public notice, including, whether any changes were made to the

draft amendment because of any of the submissions; and

- (ii) other consultation undertaken by the chief executive in preparing the draft or final amendment.

Subdivision 4 Implementation of harvest strategy

23 Action under Act must be consistent with harvest strategy

- (1) The chief executive or another person involved in the administration of this Act must not make a decision or do another thing under this Act that is inconsistent with an approved harvest strategy.
- (2) Subsection (1) does not apply to a person acting under a direction given under section 24.

24 Ministerial direction about action inconsistent with harvest strategy

- (1) The Minister may direct the chief executive or another person involved in the administration of this Act to make a decision or do another thing under this Act that is inconsistent with an approved harvest strategy if—
 - (a) the chief executive or other person is authorised to make the decision or do the thing under this Act; and
 - (b) the Minister is satisfied making the decision or doing the thing is consistent with the main purpose of this Act.
- (2) The chief executive or other person must comply with the direction.
- (3) The direction remains in force for 3 months after it is given.
- (4) The Minister must give public notice of the direction within 14 days after the direction is given.
- (5) The public notice must state—

- (a) the direction and to whom it has been given; and
- (b) the reasons for the direction; and
- (c) the period for which the direction remains in force.

Subdivision 5 Reviews relating to harvest strategy

25 Assessment of performance of fishery

- (1) The chief executive must assess the performance of a fishery against the approved harvest strategy for the fishery.
- (2) The assessment must be conducted—
 - (a) if the harvest strategy states when the assessment must be conducted—at the stated time; or
 - (b) otherwise—annually.
- (3) The chief executive must give the Minister a written report about the assessment within 21 days after completing the assessment.
- (4) The report must state the action the chief executive considers should be taken to address any concerns about the performance of the fishery against the harvest strategy.
- (5) Unless the Minister directs otherwise within 21 days after the Minister is given the report, the chief executive must take the action mentioned in subsection (4) as soon as practicable after the 21 days have passed.

26 Review of harvest strategy

- (1) The chief executive must review each approved harvest strategy to assess whether it is achieving the main purpose of this Act in an appropriate and effective way.
- (2) The review must be conducted—
 - (a) if the harvest strategy states when the review must be conducted—at the stated time; or

-
- (b) otherwise—within 5 years after the harvest strategy was approved by the Minister or, if applicable, the last time the harvest strategy was reviewed.
 - (3) The chief executive must give the Minister a written report about the review within 21 days after completing the review.
 - (4) The report must state the action the chief executive considers should be taken to address any concerns about the harvest strategy, including, for example—
 - (a) whether the harvest strategy should be amended and, if so, how; and
 - (b) whether the Minister should issue a direction under section 24 or make a reallocation decision under division 2.

Division 2 Resource reallocation

27 Reallocation decision

- (1) The Minister may decide to reallocate access to fisheries resources for a fishery if the Minister is satisfied the reallocation is necessary to maximise the potential economic, social and cultural benefits to the community.
- (2) The Minister may make a decision under subsection (1) (a *reallocation decision*) on application by a person (including, for example, the chief executive of a department) or on the Minister's own initiative.
- (3) For making a reallocation decision, the Minister must obtain, and have regard to, advice about the reallocation from—
 - (a) the chief executive; and
 - (b) the applicant for the reallocation, if any; and
 - (c) representatives of the affected fishing sectors; and
 - (d) any advisory committee or other body established by the Minister under section 29 to help the Minister make the decision; and

- (e) other entities the Minister considers appropriate.
- (4) If the Minister makes a reallocation decision, the chief executive must give public notice of the decision within 14 days after the decision is made.
- (5) The public notice must state—
 - (a) the reallocation decision; and
 - (b) the reasons for the reallocation decision; and
 - (c) if known, the action proposed to be taken under this Act to implement the reallocation decision.
- (6) In this section—

reallocation, in relation to access to fisheries resources, means a reallocation of the entitlement to take the fisheries resources—

 - (a) from a fishing sector to another fishing sector; or
 - (b) from a fishing sector to another purpose or group of persons; or
 - (c) from a purpose or group of persons to a fishing sector or another purpose or group of persons.

28 Chief executive to implement reallocation decision

- (1) The chief executive must take all necessary steps to give effect to a reallocation decision, including, for example—
 - (a) preparing an amendment of an approved harvest strategy and giving it to the Minister for approval under division 1; or
 - (b) making or amending a declaration under part 5, division 1.
- (2) In acting under subsection (1), the chief executive may advise the Minister of, and seek the Minister's approval for, alternative ways to give effect to the Minister's decision.

Division 3 Ministerial advisory bodies

29 Minister may establish advisory bodies

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

Part 3 Shark control program

30 Management of shark control program

- (1) The chief executive must establish and manage a shark control program for the coastal waters of the State the chief executive considers necessary or desirable.
- (2) The shark control program may be established and managed despite the main purpose of this Act under section 3(1).
- (3) To remove any doubt, it is declared that it is not a function of the chief executive to establish or manage the shark control program other than to the extent mentioned in subsection (1).

31 Exclusion zone

- (1) A person must not, without a reasonable excuse, be in the exclusion zone for shark control apparatus.

Maximum penalty—200 penalty units.

Note—

The locations of shark control apparatus are available on the department's website.

- (2) Subsection (1) does not apply to a person who is authorised, in writing, by the chief executive or an inspector to be in the exclusion zone for shark control apparatus for—
 - (a) installing, repairing or maintaining the apparatus; or
 - (b) freeing animals, persons or things caught in the apparatus.

- (3) Also, subsection (1) does not apply to a person on a boat that transits through the exclusion zone for shark control apparatus—
- (a) in a straight line or in the most appropriate or direct route, taking into account the circumstances of the waters; and
 - (b) without stopping.
- (4) In this section—

exclusion zone, for shark control apparatus, means the area within 20m of the shark control apparatus.

shark control apparatus means any thing placed in or near water by the chief executive as part of the shark control program, including, for example—

- (a) a net or line; and
- (b) a buoy, float, hook, sinker or other thing connected to or otherwise associated with a net or line.

Part 4 Accepted development requirements

32 Accepted development requirements for Planning Act

A regulation may, for the Planning Act, state the requirements (the *accepted development requirements*) that fisheries development must comply with to be categorised as accepted development under that Act.

Part 5 Fisheries management

Division 1 Chief executive declarations

Subdivision 1 Fisheries declarations

33 Power to make declarations

- (1) The chief executive may make the declarations mentioned in this subdivision (each a *fisheries declaration*).
- (2) A fisheries declaration 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.

- (3) A fisheries declaration made under this subdivision is subordinate legislation.

34 Regulated fish declaration

A fisheries declaration (a *regulated fish declaration*) may regulate the taking, purchase, sale, possession or use of particular fish.

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

- 1 A limit may be placed on the size or number of a species or type of fish that may be taken, purchased, sold, used or possessed.
- 2 The taking, possessing or selling of fish of a particular species or type may be prohibited.
- 3 The fish may be regulated by way of fillet size or other form in which they may be possessed after they are taken.

35 Regulated waters declaration

- (1) A fisheries declaration (a *regulated waters declaration*) may regulate all or any of the following in particular waters—
 - (a) the taking or possessing of fish;
 - (b) engaging in stated activities;
 - (c) using or possessing a boat, aquaculture furniture, fishing apparatus or anything else.
- (2) However, a regulated waters declaration does not apply to an activity authorised by a development approval unless the declaration expressly states that it applies to the activity.

36 Other fisheries declarations

- (1) A fisheries declaration (a *regulated fishing apparatus declaration*) may regulate the purchase, sale, possession or use of particular fishing apparatus.
- (2) A fisheries declaration (a *regulated fishing method declaration*) may regulate how fish may be taken.

Subdivision 2 Quota declarations

37 Quota declaration

- (1) The chief executive may make a declaration (a *quota declaration*) about the total quota entitlement for a fishery or part of a fishery.
- (2) A regulation may provide for the proportion of the total quota entitlement allocated for each quota authority for the fishery or part of the fishery.
- (3) The total quota entitlement, and the quota entitlement for a quota authority, may be by reference to 1 or more of the following—
 - (a) an amount of fish;
 - (b) an amount of effort;

- (c) another matter prescribed by regulation.
- (4) A quota declaration made under this subdivision is subordinate legislation.

Subdivision 3 Other declarations

38 Urgent declaration

The chief executive may make a fisheries declaration or a quota declaration (in either case an *urgent declaration*) under this subdivision if the chief executive is satisfied that urgent action is needed—

- (a) to deal with a significant threat to fisheries resources or a fish habitat; or
- (b) to deal with a significant threat caused by fishing to a thing that is not fish; or
- (c) for another emergency.

39 Authorising declaration

- (1) This section applies if—
 - (a) any of the following happens—
 - (i) a natural disaster, accident or other event;
 - (ii) the chief executive makes an urgent declaration; and
 - (b) the chief executive is satisfied—
 - (i) because of the event or declaration, holders of particular authorities are prevented from doing things authorised under the authorities for a temporary period to an extent that their entitlement under the authorities is significantly decreased; and
 - (ii) urgent action is needed to authorise the doing of a stated thing for the temporary period to maintain

continuous access to fisheries resources or to offset the decrease in entitlement; and

(iii) authorising the doing of the stated thing for the temporary period—

(A) does not create an unacceptable risk to fisheries resources or fish habitat; and

(B) is consistent with the principles of ecologically sustainable development.

(2) The chief executive may make a declaration (an ***authorising declaration***) that authorises holders of the particular authorities to do the stated thing for the temporary period.

Examples of what an authorising declaration may authorise—

- 1 taking of stated fish in a stated area as if the particular authorities authorised the taking of the fish in the area
- 2 using stated fishing apparatus in a stated fishery under the particular authorities despite a regulated fishing apparatus declaration

40 Making urgent declaration or authorising declaration

(1) The chief executive makes an urgent declaration or authorising declaration by publishing it on the department's website.

(2) The urgent declaration or authorising declaration must—

- (a) state whether it is an urgent declaration or an authorising declaration; and
- (b) outline the reason for making the declaration; and
- (c) be signed by the chief executive.

(3) The chief executive must take all reasonable steps to ensure persons who may be affected by the urgent declaration or authorising declaration are made aware of the declaration.

Examples of steps the chief executive may take—

- 1 publishing notice of the declaration (or a copy of the declaration) in relevant newspapers or on social media

- 2 electronically communicating notice of the declaration (or a copy of the declaration) to holders of relevant authorities, including, for example, by email or SMS
- (4) The *Statutory Instruments Act 1992*, sections 49, 50 and 51 apply to an urgent declaration or authorising declaration as if it were subordinate legislation.

41 Duration of urgent declaration or authorising declaration

- (1) The chief executive must repeal an urgent declaration or authorising declaration as soon as practicable after the chief executive is satisfied the reason for making it no longer exists.
- (2) Unless it is earlier repealed, the urgent declaration or authorising declaration expires 3 months after it is made.
- (3) However, if the urgent declaration or authorising declaration is inconsistent with a regulation or a declaration under subdivision 1 or 2, the urgent declaration or authorising declaration expires 21 days after it is made unless it is earlier repealed.

Subdivision 4 Relationships between regulations and declarations

42 Relationships between regulations and declarations

- (1) If there is an inconsistency between a regulation and a declaration under subdivision 1 or 2, the regulation prevails to the extent of the inconsistency.
- (2) If there is an inconsistency between a declaration under subdivision 3 and a regulation or a declaration under subdivision 1 or 2, the declaration under subdivision 3 prevails to the extent of the inconsistency.
- (3) If there is an inconsistency between an urgent declaration and an authorising declaration, the urgent declaration prevails to the extent of the inconsistency.

- (4) If there is an inconsistency between 2 or more urgent declarations, the more recently made urgent declaration prevails to the extent of the inconsistency.
- (5) If there is an inconsistency between 2 or more authorising declarations, the more recently made authorising declaration prevails to the extent of the inconsistency.

Division 2 Compensation for particular regulatory amendment

Subdivision 1 Right to compensation in particular circumstances

43 Right to compensation

- (1) This section applies to a person if—
 - (a) the person is, other than because of a temporary transfer, the holder of an authority (the *eligible authority*) that—
 - (i) is a licence, or a quota authority or another authority to which a quota entitlement applies; and
 - (ii) authorises the taking of fish for trade or commerce in a fishery described under a regulation as a commercial fishery; and
 - (b) a regulation, or a fisheries declaration or quota declaration other than an urgent declaration, is amended (the *relevant amendment*); and
 - (c) because of the relevant amendment, an entitlement to take fisheries resources that the person had under the eligible authority immediately before the relevant amendment commences is lost or reduced.
- (2) Subject to sections 44 and 48D, the person is entitled to be paid compensation by the State for the value of the loss or reduction.

- (3) However, the compensation is only payable if, under subdivision 2, a claim for the compensation has been made and the chief executive has decided to grant the claim.
- (4) This section does not prevent a regulation, fisheries declaration or quota declaration providing for payment of compensation for the making, amendment or repeal of an urgent declaration.
- (5) In this section—
amend, in relation to a regulation, fisheries declaration or quota declaration, includes—
 - (a) make; and
 - (b) repeal.

44 Limits to compensation payable

- (1) The entitlement under section 43 arises only if the cause, or one of the causes, of the loss or reduction was—
 - (a) a reallocation, under the relevant amendment, of the entitlement to take fisheries resources to persons who do not hold an authority to which section 43 applies; or
 - (b) a restriction or prohibition, under the relevant amendment, of the exercise of the entitlement in an area, if the purpose of the restriction or prohibition was to protect a thing that is not fish.
- (2) Compensation is not payable for the loss or reduction if—
 - (a) compensation under section 43 has already been paid for the loss or reduction to a previous or another holder of the eligible authority; or
 - (b) compensation is payable for a similar loss or reduction of an entitlement under another Act or law of the State, another State or the Commonwealth.

45 No general right to compensation

- (1) To remove any doubt, it is declared that, other than as provided for under section 43, no one has an entitlement under or in relation to this Act to claim or to be paid an amount from the State for or in connection with—
 - (a) the making, amendment or repeal of a regulation or declaration; or
 - (b) something previously permitted under a regulation or declaration becoming prohibited or regulated because of an amendment to the regulation or declaration.
- (2) Subsection (1) applies whether the amount is claimed as compensation, reimbursement or otherwise.

Subdivision 2 Claiming and payment of compensation

46 Application of subdivision

This subdivision applies for a claim for compensation under section 43.

47 Requirements for making claim

- (1) The claim must—
 - (a) be made in writing to the chief executive; and
 - (b) be signed by all holders of the eligible authority; and
 - (c) state each of the following—
 - (i) the entitlement to take fisheries resources the subject of the claim;
 - (ii) the ground under section 44(1) on which the claim is made;
 - (iii) the amount of the compensation claimed;
 - (iv) how the claimant has worked out the amount.

- (2) The claim must be made within 6 months after the day the relevant amendment commences.

48 Chief executive may require claimant to give further information

- (1) The chief executive may, by written notice to the claimant, require the claimant to give the chief executive within a stated reasonable period—
 - (a) additional information about, or a document relating to, the claim; or
 - (b) a statutory declaration verifying information included in the claim or additional information required under paragraph (a).
- (2) The notice may be given at any time before the claim is decided.
- (3) If the claimant does not comply with the requirement within the following period, the claimant is taken to have withdrawn the claim—
 - (a) generally—the period stated in the notice;
 - (b) if, within the period stated in the notice, the chief executive agrees in writing to a longer period to comply with the requirement—the longer period.

48A Deciding claim

- (1) Subject to sections 48B and 48C, the chief executive must, within a reasonable period after the making of the claim, decide—
 - (a) to grant or refuse the claim; and
 - (b) if the chief executive decides to grant the claim—the amount of the compensation payable.
- (2) If the chief executive decides to refuse the claim or decides an amount of compensation that is less than the amount claimed

or agreed to by the claimant, the chief executive must give the claimant an information notice for the decision.

- (3) In deciding what is a reasonable period for subsection (1), the chief executive must have regard to—
 - (a) whether the chief executive may need to give a notice under section 48 or obtain other information or evidence under section 48B; and
 - (b) the period that may be needed to consider the information or document the subject of the notice or the information or evidence that may need to be obtained.

48B Chief executive may obtain information or evidence from other persons

- (1) Before making the decision under section 48A, the chief executive may obtain from a person other than the claimant the further information or evidence the chief executive considers necessary to make the decision.
- (2) If the chief executive obtains further information or evidence under subsection (1) and the chief executive proposes to act on the information or evidence adversely to the claimant—
 - (a) the chief executive must give the claimant a written notice stating—
 - (i) the further information or evidence; and
 - (ii) that the claimant may respond in writing to the further information or evidence within a stated reasonable period after the giving of the notice; and
 - (b) the chief executive must not make the decision unless the claimant has given the response or the following period has ended—
 - (i) generally—the period stated in the notice;
 - (ii) if, within the period stated in the notice, the chief executive agrees in writing to a longer period for the giving of the response—the longer period.

48C Amount of compensation that may be decided

- (1) The amount of compensation decided may only be for—
 - (a) either—
 - (i) if the eligible authority continued in force after the relevant commencement—the difference between its market value immediately before the relevant commencement and its market value immediately after the relevant commencement; or
 - (ii) if, under the relevant amendment, the eligible authority ended—its market value immediately before the relevant commencement; and
 - (b) the loss, for no more than 3 years from the relevant commencement, of probable taxable income from fishing lost or reduced because of the lost or reduced entitlement to take fisheries resources the subject of the claim.
- (2) In working out the market value immediately before the relevant commencement, any reduction in the value of the eligible authority caused by the making, or the prospect of the making, of the relevant amendment must be disregarded.
- (3) In working out the lost or reduced fishing income, regard may be had only to income from fishing under the eligible authority as stated in taxation returns lodged by the claimant and relevant notices of assessment accompanying the claim or given to the chief executive by or for the claimant.
- (4) Subsection (5) applies if the chief executive considers—
 - (a) a ground on which the claim is made was not the sole cause of the loss or reduction claimed; and
 - (b) the other cause or causes of the loss or reduction were not causes for which compensation may be claimed under subdivision 1.
- (5) The chief executive may reduce the amount worked out under subsection (1) to reflect the other cause or causes.
- (6) In this section—

relevant commencement means when the relevant amendment commenced.

taxable income means taxable income under the *Income Tax Assessment Act 1997* (Cwlth).

48D Restriction on payment if someone other than the claimant has a registered interest in the eligible authority

- (1) This section applies if—
 - (a) the claim and an amount of compensation has been decided under this subdivision; and
 - (b) a person other than the claimant has a registered interest in the eligible authority.
- (2) The chief executive must not pay the claimant the amount unless the other person has agreed in writing to the chief executive making the payment.

Division 3 Authorities issued under Act

Subdivision 1 General

49 Authorities that may be issued

- (1) The chief executive may issue the following authorities under this Act—
 - (a) a licence;
 - (b) a permit;
 - (c) a quota authority;
 - (d) a resource allocation authority;
 - (e) another authority prescribed by regulation.
- (2) A regulation may provide that an authority of a particular kind may or may not be issued for a stated activity or thing.

52 Things authorised by authorities

- (1) An authority authorises the holder of the authority to do the things permitted under a regulation or declaration or stated in the authority.
- (2) A regulation or declaration, 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.
- (4) Also, a resource allocation authority does not confer on the holder—
 - (a) any right of ownership or tenure over the land, waters or resources mentioned in the authority; or
 - (b) the right to carry out the development mentioned in the authority, unless the development is also authorised under the Planning Act.

Note—

See also section 76T and the Planning Act, section 163.

53 Form, content and term of authorities

An authority—

- (a) must be in the approved form; and
- (b) must contain the particulars decided by the chief executive; and
- (c) is issued—
 - (i) for the term stated in it; or
 - (ii) if no term is stated in the authority—until it is cancelled or surrendered or it otherwise expires under this Act.

Subdivision 2 Issue and renewal

54 Application for authority

- (1) An application for the issue of an authority must—
 - (a) be made to the chief executive in the approved form; and
 - (b) be accompanied by the fees prescribed by regulation.
- (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.

55 Consideration of application for issue of authority

- (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 declaration.

56 Application for renewal of authority (other than permit)

- (1) The holder of an authority (other than a permit) may apply for its renewal to the chief executive.
- (2) Also, a person may apply to renew an expired former authority if—
 - (a) the person held the former authority immediately before its expiry; and
 - (b) the application is—
 - (i) for an authority of the same type, and on substantially the same terms, as the former authority; and
 - (ii) made within 3 months after the expiry.
- (3) However, the chief executive may, at any time, extend the period for applying to renew an expired former authority.

- (4) An application under this section must—
 - (a) be made in the approved form; and
 - (b) be accompanied by the fees prescribed by regulation.
- (5) If asked by the chief executive, the applicant must give the further relevant information or evidence the chief executive requires to decide the application.

57 Permit not renewable

- (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 providing for payment of compensation.

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

- (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 declaration.
- (3) If the application is an application under section 56(2) to renew an expired former authority and the chief executive decides to renew it—
 - (a) the chief executive must fix the term of the renewed authority from the day after the former authority expired; but
 - (b) the renewed authority takes effect only from the day the renewed authority is issued.

59 Refusal to issue or renew

- (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 a fisheries offence.
 - 3 The applicant has had any of the following (a **fisheries authority**) cancelled or suspended—
 - a licence, permit, concession or other authority issued under fisheries legislation
 - a fisheries development approval.
 - 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 by regulation.
 - 9 The applicant has not paid fees payable under this Act.
 - 10 Another matter specified in a relevant regulation.
- (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 providing for payment of compensation.

60 Notice of refusal of application for issue or renewal etc.

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

- (a) give the applicant an information notice for the refusal; and
- (b) refund the fees paid by the applicant, other than fees for assessing the application.

Subdivision 2A Additional requirements for deciding applications for resource allocation authorities

60A Matters chief executive must consider

In deciding an application for a resource allocation authority, the chief executive must have regard to the impact of the development mentioned in the authority on each of the following—

- (a) coastal management under the *Coastal Protection and Management Act 1995*;
- (b) the protection of Queensland waters as required under the *Environmental Protection Act 1994*;

Note—

See the *Environmental Protection (Water) Policy 2009* for the way the environmental values of Queensland waters are to be protected.

- (c) the management of marine parks under the *Marine Parks Act 2004*.

Subdivision 3 Conditions

61 Conditions imposed on issue or renewal—general

- (1) When the chief executive issues or renews an authority, the chief executive may impose reasonable and relevant conditions, including, for example—
 - (a) for an authority, other than a permit, for a fishery or a part of a fishery for which no quota declaration is in force—a condition fixing a quota entitlement 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.
- (2) The conditions must be stated in the authority.
- (3) In fixing a quota entitlement for an authority, the chief executive must comply with any relevant regulation or declaration.
- (4) If the chief executive imposes a condition on an authority, the chief executive must give the holder of the authority an information notice for the decision to impose the condition.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.

- (9) Compensation is not payable if conditions are imposed on an authority, or anything previously permitted is prohibited or regulated under the authority.
- (10) However, subsection (9) does not prevent a regulation providing for payment of compensation.

62 Conditions imposed by regulation

- (1) An authority is also subject to the conditions prescribed by regulation.
- (2) To remove any doubt, any condition that may be imposed on an authority by the chief executive may be prescribed by regulation.

Subdivision 4 Amendment

63 Amendment of authority

- (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
 - (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 an information notice for the decision.
- (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.
- (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 providing for payment of compensation.

64 Notice to return authority for alteration after amendment

- (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

65 Transfer of authority (other than permit)

- (1) Subject to registration under this subdivision, an authority other than a permit may be transferred unless, under a regulation, the authority is not transferable either generally or in the circumstances relating to the particular authority.
- (2) A transfer, or purported transfer, of an authority is of no effect unless the transfer is registered under section 65B.
- (3) On registration of the transfer, all rights and liabilities attaching to the authority vest in the transferee.

65A Application to register transfer of authority

- (1) An application to register the transfer of an authority must—
 - (a) be made to the chief executive in the approved form; and
 - (b) be made by—
 - (i) if the transfer is a temporary transfer of a quota authority—the transferor under the transfer; or
 - (ii) otherwise—each holders of the authority immediately before the transfer.
- (2) Without limiting what the approved form may require, it must include—
 - (a) a sufficient description of the authority; and
 - (b) a written declaration by the applicant that—

- (i) the information in or accompanying the application provided by the applicant is true; and
 - (ii) the applicant has complied with the requirements under this Act that relate to the authority; and
 - (iii) each transferee under the transfer has complied with the requirements under this Act that relate to the authority.
- (3) Unless the transfer is a temporary transfer of a quota authority, the application must be accompanied by—
 - (a) the written approval of each person, other than the holder, who has a registered interest in the authority; and
 - (b) if a fee payable under this Act for, or relating to, the authority has not been paid—the chief executive’s written approval to the registration of the transfer.
- (4) Also, the application must be accompanied by the fee prescribed by regulation, unless—
 - (a) the application is made by the internet system mentioned in section 65BA; or
 - (b) the fee is waived under section 65E.

65B Registration of transfer of authority

- (1) An application to register the transfer of an authority is a properly made application if the application complies with section 65A and the transferor and the transferee have complied with any requirements under subsection (2).
- (2) The chief executive may, by written notice, require the transferor or the transferee (the *applicant*) to give the chief executive further documents or information to enable the chief executive to register the transfer.
- (3) The chief executive must register the transfer of an authority if the chief executive receives a properly made application in relation to the authority.

65BA Internet system for transfer registration applications

- (1) The chief executive may establish an internet system under which—
 - (a) applications may be made to register authority transfers; and
 - (b) the following are made or done automatically on the internet—
 - (i) the decision about whether an application to register a transfer, or a transfer of a particular type, is a properly made application for section 65A;
 - (ii) registration of the transfer.
- (2) However, the use of the system may allow the decision to be made only if the information that the system requires to be given in making the application shows the application is, on its face, a properly made application for section 65A.
- (3) For section 196, a decision made under the system is taken to be a decision of the chief executive under section 65B.

65C Temporary transfers

- (1) A transfer of an authority may be for a stated period (a *temporary transfer*).
- (2) The stated period—
 - (a) may, subject to paragraphs (b) and (c), be fixed by reference to the happening of a stated event; and
Example for paragraph (a)—

If the authority is subject to a quota entitlement, the start or end of the period may be fixed by reference to the start or end of the period to which the quota entitlement applies.
 - (b) must not start before the day the chief executive registers the transfer; and
 - (c) must not be longer than the term of the authority.
- (3) If an authority is subject to a temporary transfer (the *first transfer*), a further temporary transfer of the authority may be

registered for a stated period not longer than the period of the first transfer.

- (4) If the chief executive registers a temporary transfer, the chief executive must, as soon as practicable, give the applicants for registration of the temporary transfer written notice stating the temporary transfer of the authority has been registered.

65D Effect of temporary transfer

- (1) This section applies for a temporary transfer until—
 - (a) generally—the end of the period for which the transfer is registered; or
 - (b) if, during the period, the chief executive receives a signed notice from each interested party that the transfer has ended—the chief executive’s receipt of the notice.
- (2) A reference in the following to the holder of the transferred authority, or to the holder of an authority, is, if the context permits, taken to include a reference to the transferee as if the transferee were the holder of the transferred authority—
 - (a) a provision of this Act, other than section 4, 56, 57, 63(4)(d) and (5), 72 or 73;
 - (b) a regulation or declaration;
 - (c) the conditions of the transferred authority.
- (3) The things authorised by the transferred authority—
 - (a) may be done by the transferee as if the transferee were the person who was the holder of the authority immediately before the temporary transfer was registered (the *original holder*); and
 - (b) can not be done by the original holder.
- (4) Despite the temporary transfer, the original holder continues to be the holder of the transferred authority.
- (5) If a further temporary transfer is registered for the transferred authority, subsections (2) to (4) apply to the transferee under

the first temporary transfer as if a reference to the original holder includes that transferee.

- (6) Each of the following is an interested party under subsection (1)—
- (a) the transferor under the temporary transfer;
 - (b) the transferee under the temporary transfer;
 - (c) unless the transfer is a temporary transfer of a quota authority—anyone else who has a registered interest in the authority the subject of the temporary transfer.

65E Waiver of fee or requirement on transfer or amendment

- (1) This section applies if the chief executive is satisfied a transfer or an amendment of an authority is necessary—
- (a) to give effect to—
 - (i) a settlement between spouses or former spouses; or
 - (ii) bankruptcy; or
 - (iii) winding up or administration under the Corporations Act; or
 - (iv) section 70C(3); or
 - (b) to administer a deceased estate; or
 - (c) because of the loss, at sea, of the boat being used in relation to the authority, through storm, capsizе, collision or fire.
- (2) On an application made under subsection (3), the chief executive must, according to the application—
- (a) waive the prescribed fee for an application for amendment or registration of a transfer of the authority; or
 - (b) waive the requirement under a regulation, on application to amend or register the transfer of the authority, to do any of the following before the chief executive grants the application—

- (i) surrender another authority;
 - (ii) apply to amend another authority by removing a fishery symbol;
 - (iii) amend the authority in some other way that is not beneficial to the authority holder.
- (3) An application for the waiver of a prescribed fee or a requirement—
 - (a) must be made jointly by each holder of the authority and any proposed transferee; and
 - (b) must be made to the chief executive in the approved form; and
 - (c) must be accompanied by—
 - (i) the application for amendment or registration of a transfer; and
 - (ii) sufficient documentary evidence to support the application for waiver.

Examples of documentary evidence—

insurance report, will, death certificate, court order

- (4) If asked by the chief executive, the applicant must give the further relevant information or evidence the chief executive reasonably requires to decide the application.
- (5) In this section—

holder, of an authority of a type prescribed under section 70C, includes the personal representative of a deceased holder.

66 Permits not transferable

A permit can not be transferred.

Subdivision 6 Suspension and cancellation

67 **Suspension or cancellation of authority by chief executive**

- (1) The chief executive may suspend or cancel an authority if the chief executive is satisfied the suspension or cancellation is necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats.

Example—

The examples mentioned in section 59(1) are examples of the bases on which the chief executive may be satisfied.

- (2) In acting under subsection (1), the chief executive may disregard any third party interests in the authority.
- (3) This section does not affect the suspension or cancellation of an authority under a regulation.

68 **Procedure for cancellation or suspension by chief executive**

- (1) If the chief executive considers grounds exist under section 67(1) 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
 - (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.

[s 68A]

- (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 be an information notice for the decision.
- (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) Compensation is not payable if the chief executive suspends or cancels an authority.
- (7) However, subsection (6) does not prevent a regulation providing for payment of compensation.
- (8) This section does not affect the suspension or cancellation of an authority under a regulation.

68A Suspension or cancellation of authority for dishonoured payment

- (1) If a person's cheque for payment of the prescribed fee relating to an authority is dishonoured—
 - (a) if the fee is for an application for the authority—the authority is void from the day it was issued; or
 - (b) if the fee is for an application to renew the authority—the authority is suspended from the renewal date until a valid payment is made; or

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- (c) if the fee is for an application to transfer or amend the authority—the transfer or amendment does not take effect until a valid payment is made; or
 - (d) if the fee is an annual fee—the authority is suspended from the day the fee was due until a valid payment is made; or
 - (e) if the fee is any other prescribed fee—the authority is suspended from the day the fee was due until a valid payment is made.
- (2) If the State incurs expense because a person's cheque is dishonoured—
- (a) the person must reimburse the State for the expense incurred; and
 - (b) the amount of the expense may be recovered as a debt payable by the person to the State.
- (3) In this section—
- cheque* includes a method of payment other than by cash.
- dishonoured* includes not honoured on presentation.

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

- (1) This section applies if—
- (a) a fee payable under this Act for or relating to an authority is not paid; and
 - (b) the authority is not suspended under section 68A; and
 - (c) the fee is not for an application to which section 68A(1)(c) applies.
- (2) The chief executive may give the holder of the authority a notice warning the holder that, under this section—
- (a) the authority will be suspended unless the fee is paid or a repayment agreement for the fee is made within 30 days after the giving of the notice; and

- (b) if the authority is a commercial fisher licence—it will be cancelled unless the fee is paid or a repayment agreement for the fee is made within 90 days after the giving of the notice.
- (3) If the fee is not paid or a repayment agreement for the fee is not made within 30 days after the giving of the notice the authority is suspended.
- (4) The suspension ends if the fee is paid within 90 days after the giving of the notice.
- (5) If—
 - (a) the authority is a commercial fisher licence; and
 - (b) the fee is not paid or a repayment agreement for the fee is not made within 90 days after the giving of the notice;the authority is cancelled.
- (6) Otherwise, the suspension continues until and unless the fee is paid or a repayment agreement for the fee is made.
- (7) In this section—

commercial fisher licence means an authority that, under a regulation, is described as a commercial fisher licence.

repayment agreement, for a fee, means a written agreement between the holder of the authority and the chief executive for the payment of the fee.

68AC Suspension of quota entitlement for investigation

- (1) This section applies if—
 - (a) an inspector starts an investigation under part 9 relating to the holder of a quota authority contravening an information requirement about the quantity of fisheries resources taken under the quota entitlement for the authority; and
 - (b) the chief executive is satisfied it is necessary to suspend a part of the quota entitlement for the quota authority to

ensure the quota entitlement is not, or does not continue to be, contravened.

- (2) The chief executive may, by written notice to the holder of the quota authority, suspend a stated part of the quota entitlement for the authority for a stated period.
- (3) The stated period—
 - (a) must not end more than 6 months after the day the investigation is started; and
 - (b) must end on or before the end of the period to which the quota entitlement applies.
- (4) If the chief executive suspends a part of the quota entitlement for the quota authority, the quota entitlement is taken to be the amount of the quota entitlement originally granted by the quota authority less the stated part that has been suspended.
- (5) If the investigation ends before the stated period ends and a proceeding for an offence against this Act is not started against the holder of the quota authority—
 - (a) the chief executive must cancel the suspension by written notice to the holder of the authority; and
 - (b) the quota entitlement for the authority is taken to be the amount of the quota entitlement originally granted by the authority.
- (6) If a proceeding for an offence against this Act against the holder of the quota authority is started before the stated period ends and the period to which the quota entitlement applies has not ended, the chief executive may, by written notice to the holder of the authority, suspend a stated part of the quota entitlement for a further period ending at the earlier of the following—
 - (a) the end of the period to which the quota entitlement applies;
 - (b) when the proceeding is decided.
- (7) A notice under subsection (2) or (6) must be an information notice.

(8) In this section—

information requirement means—

- (a) an information requirement under section 118(1); or
- (b) a requirement to give the chief executive information under a condition of an authority.

68B Suspension or cancellation of authority by court

- (1) This section applies if a court convicts the holder of an authority of a serious fisheries offence, whether or not a conviction is recorded.
- (2) The court may, in addition to, or instead of, imposing the fine prescribed under this Act for the offence, suspend or cancel the authority.
- (3) In acting under subsection (2), the court—
 - (a) may disregard any third party interests in the authority; and
 - (b) must have regard to—
 - (i) the criteria prescribed by regulation for suspension or cancellation of an authority; and
 - (ii) the fine the court imposes for the offence.
- (4) The court may, if considered appropriate in the circumstances, have regard to any previous conviction of the authority holder under this Act.
- (5) The court may impose a cumulative or concurrent suspension period, as the court considers appropriate, if—
 - (a) the court convicts the holder of more than 1 serious fisheries offence; or
 - (b) during the suspension period, the holder is again convicted of a serious fisheries offence.
- (6) This section does not affect the suspension or cancellation of an authority under a regulation.

68C Effect of suspension on entitlement

If an authority has been suspended, it does not authorise the holder of the authority to do anything during the period of the suspension other than possess fishing apparatus the holder is entitled to possess under section 52(1) or (2).

69 Effect of suspension on renewal

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

69A Effect of suspension on issue or transfer of another authority

- (1) If an authority (the *suspended authority*) has been suspended, the chief executive may not accept an application—
 - (a) to issue another authority, or register a transfer of another authority, to the holder of the suspended authority, if the other authority would allow the holder to carry out the activities otherwise allowed under the suspended authority, during the period the suspended authority is suspended; or
 - (b) to register a transfer of the authority to another person during the period the suspended authority is suspended.
- (2) However, subsection (1)(b) does not apply if—
 - (a) the suspension is under section 68AB; and
 - (b) the chief executive has, under section 65A(3)(b), given written approval to the registration of the transfer.
- (3) To remove any doubt, it is declared that subsection (2) does not affect the suspension under section 68AB.
- (4) If a part of a quota entitlement for a quota authority has been suspended under section 68AC, the chief executive may not accept an application—

- (a) to issue another quota authority, or register a transfer of another quota authority, to the holder of the quota authority to which the suspended quota entitlement applies, if the other quota authority would give the holder an entitlement to take fisheries resources the holder would otherwise be authorised to take under the suspended quota entitlement; or
- (b) to register a transfer of the quota authority to which the suspended quota entitlement applies to another person during the period of the suspension.

69B Further fees continue to be payable despite suspension

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

70 Authority to be returned

- (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 6A Death of authority holder

70A Application of sdiv 6A

This subdivision applies if an individual is a holder of an authority and the individual dies.

70B General effect of death

Subject to section 70C, on the individual's death—

- (a) the individual ceases to be a holder of the authority; and
- (b) the individual's entitlement as a holder of the authority ceases.

70C Continuance of particular authorities

- (1) This section applies only if the authority is of a type prescribed by regulation.
- (2) If, immediately before the individual's death, the individual was the only holder of the authority—
 - (a) the authority continues in force, subject to this Act; and
 - (b) the individual's personal representative becomes the holder of the authority.
- (3) If, immediately before the death, there was more than 1 holder of the authority—
 - (a) the individual's personal representative becomes a holder of the authority; and
 - (b) the other holders of the authority continue to be holders of the authority, unaffected by the individual's death.
- (4) A personal representative who, under this section, becomes a holder takes the entitlement the individual had under the authority immediately before the death.

70D Provisions for changeover to personal representative

- (1) This section applies if, under section 70C, a personal representative (the *new holder*) becomes a holder of the authority.
- (2) The change in the holdership to the new holder is taken to be a circumstance for section 73(3).
- (3) Until the change is recorded in the register, a notice under this Act from the chief executive to the new holder may be given at the deceased individual's address last known to the chief executive.

Subdivision 7 Replacement and surrender

71 Replacement of authorities

- (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 approved form; and
 - (b) be accompanied by the fees prescribed by regulation.
- (3) The chief executive may replace the authority if the chief executive is satisfied it has been lost, damaged or destroyed.

72 Surrender of authorities

- (1) The holder of an authority may surrender it by giving notice of surrender to the chief executive.
- (2) The notice must be in an approved form and be accompanied by the authority.

Subdivision 8 Registers and certificates

73 Registers of authorities and fisheries development approvals

- (1) The chief executive must keep a register of—
 - (a) authorities issued by the chief executive; and
 - (b) fisheries development approvals.
- (2) The register must contain the particulars prescribed by regulation and may include other particulars decided by the chief executive.
- (3) Within 21 days after a change in circumstances prescribed by regulation, the holder of an authority must give the chief executive written particulars of the change in the approved form.

Maximum penalty—300 penalty units.

- (4) A person may, on payment of the fee prescribed by regulation 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 approved form to have noted on the register an interest that a specified person has in the authority.

74 Certificates about authorities

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

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- (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 about an authority that is in the register.
- (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 approved form; and
 - (b) be accompanied by the fees prescribed by regulation.

Subdivision 9 Offences about authorities and registers

75 False representations about authorities

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.

76 Offences about registers

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 about an authority; 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 the register about an authority.

Maximum penalty—1,000 penalty units.

Division 3A Fisheries development approvals

Subdivision 1 Particular fisheries development also requires a resource allocation authority

76A Application of sdiv 1

This subdivision applies to the following development—

- (a) development categorised as assessable development under a regulation made under the Planning Act that is building work in a declared fish habitat area or operational work completely or partly within a declared fish habitat area, to the extent the development is carried out in Queensland waters or on land other than freehold land (*prescribed declared fish habitat area development*);
- (b) development categorised as assessable development under a regulation made under the Planning Act that is making a material change of use of premises for aquaculture, if it is carried out completely in Queensland waters or on unallocated tidal land (*prescribed aquaculture development*).

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

- (1) A fisheries development approval authorises a person to carry out development under the approval only if the person also holds—

- (a) for prescribed declared fish habitat area development—a resource allocation authority for interfering with a declared fish habitat area; or
- (b) for prescribed aquaculture development—a resource allocation authority for interfering with fish habitat in Queensland waters or on unallocated tidal land.

Note—

See also section 88B (Carrying out particular development without resource allocation authority).

- (2) Also, despite the Planning Act, section 73, the approval attaches to the area mentioned in the resource allocation authority for the development.

Subdivision 3 Fish movement exemption notices

76E Application for fish movement exemption notice

- (1) A person intending to make a development application for the construction or raising of a waterway barrier works in an area may apply to the chief executive for a fish movement exemption notice for the area.
- (2) The application must be—
 - (a) made in the approved form; and
 - (b) accompanied by the prescribed fee; and
 - (c) made before the person makes the development application.
- (3) If asked by the chief executive, the applicant must give, within the period stated by the chief executive, the further relevant information or evidence the chief executive requires to decide the application.
- (4) The stated period must be at least 28 days after the further information is requested.

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- (5) If the applicant does not give the chief executive the further information within the stated period, the chief executive may decide the application without the further information.

76F Deciding application for fish movement exemption notice

- (1) The chief executive must consider the application for a fish movement exemption notice for an area and give or refuse to give the notice.
- (2) In considering the application, the chief executive must have regard to—
- (a) if the application relates to tidal waters—the *Coastal Protection and Management Act 1995*; or
 - (b) if the application relates to non-tidal waters—the *Water Act 2000*.
- (3) The chief executive may give the notice only if the chief executive is reasonably satisfied it is not necessary or desirable, for the best management, use, development or protection of fisheries resources or fish habitats, for a proposed construction or raising of a waterway barrier works in the area to provide for the movement of fish across the barrier works.

Examples, for subsection (3), of the bases on which the chief executive may be satisfied—

- 1 Allowing for fish movement in the area is not necessary because—
 - (a) there are no fish located in the area; or
 - (b) it is not necessary for the fish located in the area to access the fish habitat upstream of the area.
 - 2 There are other barriers in the area which prevent the movement of fish located in the area.
- (4) The notice must state the period, not longer than 4 years, for which the exemption notice applies.
- (5) If the chief executive refuses to give the notice, the chief executive must give the applicant an information notice for the refusal.

Subdivision 4 Environmental offset conditions on fisheries development approvals

76H Relationship between sdiv 4 and Planning Act

This subdivision applies subject to the Planning Act, chapter 3, part 3, division 3.

76IA Environmental offset conditions

- (1) Under the Planning Act, section 65, the conditions imposed on a fisheries development approval may include environmental offset conditions.
- (2) An environmental offset condition may relate to an environmental offset undertaken to counterbalance the impacts of the development on fisheries resources or fish habitat including, for example—
 - (a) an environmental offset to enhance or rehabilitate a fish habitat; and
 - (b) the exchange of another fish habitat for a fish habitat affected by the development; and
 - (c) a contribution to fish habitat research.

Subdivision 6 Provisions about development offences

76S Purpose of sdiv 6

This subdivision states—

- (a) the penalties that are to apply to particular offences under the Planning Act; and
- (b) an additional requirement for persons carrying out, under the Planning Act, development in an emergency.

Note—

See the Planning Act, section 225(1) for the application of provisions, of an Act other than the Planning Act, about particular matters that the Planning Act also has provisions about.

76T Penalties for carrying out assessable development without permit

- (1) This section applies to fisheries development if it is assessable development.
- (2) For the Planning Act, section 163(1), the maximum penalty for an offence against the section is—
 - (a) for development categorised as assessable development under a regulation made under the Planning Act that is building work in a declared fish habitat area, operational work completely or partly within a declared fish habitat area or operational work that is the removal, destruction or damage of a marine plant—3,000 penalty units; or
 - (b) for development categorised as assessable development under a regulation made under the Planning Act that is making a material change of use of premises for aquaculture—1,665 penalty units; or
 - (c) for development categorised as assessable development under a regulation made under the Planning Act that is operational work that is the constructing or raising of a waterway barrier works—2,000 penalty units.

76U Penalties for noncompliance with particular development approvals

- (1) This section applies to a fisheries development approval for the construction or raising of a waterway barrier works if conditions about either or both of the following are imposed on the approval—
 - (a) the design or construction of a fish way for the waterway barrier works;

- (b) monitoring or operation of a fish way.
- (2) For the Planning Act, section 164, the maximum penalty for not complying with the condition is 2,000 penalty units.

76V Additional requirement for development carried out in emergency

- (1) This section applies to a person carrying out an activity that is fisheries development if the Planning Act, section 166(3) or (4) applies to the activity.
- (2) For the Planning Act, section 166(4)(b) and (6)(a)(ii), the person must give notice that the person has been carrying out the activity to the chief executive as soon as reasonably practicable after starting the activity.
- (3) In this section—
activity see the Planning Act, section 166(1).

Division 4 Fisheries offences

Subdivision 1 Fisheries management generally

77 Contravention of particular fisheries declarations

- (1) A person to whom a regulated fishing apparatus declaration or regulated fishing method declaration applies must comply with the declaration.
Maximum penalty—300 penalty units.
- (2) A person to whom a regulated waters declaration applies must comply with the declaration.
Maximum penalty—1,000 penalty units.

77A Exemptions for contravention of regulated fishing apparatus declaration

- (1) Section 77(1) does not apply to the sale, purchase, use or possession of commercial fishing apparatus regulated under a regulated fishing apparatus declaration if the apparatus is used or to be used—
 - (a) in sporting activities, other than fishing; or
Examples—
indoor cricket and school sports, other than fishing
 - (b) to protect trees or collect fruit from trees; or
 - (c) for display or decorative purposes; or
Examples—
for use in shopfitting or as part of a restaurant's decor
 - (d) for other purposes prescribed by regulation or declared by a declaration.
- (2) Section 77(1) does not apply to the possession of fishing apparatus regulated under a regulated fishing apparatus declaration if the apparatus is stowed and secured on a boat lawfully passing through waters.
- (3) Section 77(1) does not apply to the possession of commercial fishing apparatus regulated under a regulated fishing apparatus declaration if the person possessing the apparatus—
 - (a) is a genuine maker, dealer in or repairer of fishing apparatus; or
 - (b) is a person acting for a person mentioned in paragraph (a); or
 - (c) is transporting the fishing apparatus to or from the place where it is made, used, dealt in, repaired or stored for a person who has an authority to use or possess the apparatus.
- (4) In this section—
stowed and secured has the meaning prescribed by regulation.

78 Prohibited acts about regulated fish

- (1) A person must not unlawfully take, possess, use 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.

79 Quota offences

A person must not unlawfully contravene the quota entitlement for a quota authority.

Maximum penalty—2,000 penalty units.

79A Contravening a condition of an authority

A person to whom a condition of an authority applies must comply with the condition.

Maximum penalty—100 penalty units.

80 Vessel tracking

- (1) This section applies in relation to—
 - (a) an authority prescribed by regulation as an authority to which this section applies; and
 - (b) each boat (a *relevant boat*) prescribed by regulation for the authority for this section.
- (2) The holder of, or another person acting under, the authority must ensure—
 - (a) each relevant boat used under the authority has approved vessel tracking equipment for the boat installed on it, in the way prescribed by regulation; and
 - (b) the approved vessel tracking equipment is working properly during the periods prescribed by regulation.

Maximum penalty—1,000 penalty units.

- (3) A person must not interfere with the operation of approved vessel tracking equipment installed on a relevant boat.

Maximum penalty—1,000 penalty units.

- (4) A regulation may prescribe requirements that apply if the approved vessel tracking equipment installed on a relevant boat is malfunctioning during a period mentioned in subsection (2)(b).

- (5) If the requirements prescribed under subsection (4) are complied with for a relevant boat on which approved vessel tracking equipment is malfunctioning, the holder or other person who is required to comply with subsection (2)(b) in relation to the boat is taken to have complied with the subsection.

- (6) In this section—

malfunction, of approved vessel tracking equipment, means a failure of the equipment—

- (a) to work entirely; or
(b) to send details of the location of the boat on which it is installed to the chief executive at the intervals stated in the approval for the equipment.

working properly, for approved vessel tracking equipment, means the equipment sends details of the location of the boat on which it is installed to the chief executive at the intervals stated in the approval for the equipment.

81 Use of explosives etc. prohibited

- (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
- (e) possess fish taken by a device mentioned in paragraph (c).

Maximum penalty—2,000 penalty units.

- (2) Subsection (1)(a), (b) and (d) does not apply to an activity carried out by a person if the person—
 - (a) is acting under a contract made by the chief executive for the establishment or management of the shark control program; and
 - (b) is authorised under an authority to carry out the activity.
- (3) 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.

82 Offence to do prescribed act

A person must not unlawfully do an act prescribed by regulation or declared by a declaration as an act that must only be done by the holder of an authority.

Maximum penalty—1,000 penalty units.

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

- (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.

87 Interference etc. with aquaculture activity or fishing apparatus

- (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—
 - (i) the removal of fisheries resources; and
 - (ii) haul, pull, draw or reel in, or otherwise bring out of water; and
 - (iii) damage, destroy, mark, remove and trample.

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

- (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.

88A Possessing fish taken in contravention of other fisheries legislation

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.

88B Carrying out particular development without resource allocation authority

- (1) This section applies to—
- (a) the following development categorised as assessable development under a regulation made under the Planning Act—
 - (i) building work in a declared fish habitat area;
 - (ii) making a material change of use of premises for aquaculture;
 - (iii) operational work completely or partly within a declared fish habitat area; and
 - (b) development categorised as accepted development under a regulation made under the Planning Act that is operational work that is the removal, destruction or damage of a marine plant if the removal, destruction or damage is of dead marine wood on unallocated State land for trade or commerce.
- (2) A person must not carry out the development unless the person also holds a resource allocation authority for the development.

Maximum penalty—

-
- (a) for development mentioned in paragraph (a)(i) or (iii) or (b)—3,000 penalty units; or
 - (b) for development mentioned in paragraph (a)(ii)—1,665 penalty units.
- (3) Subsection (2) does not apply to a person if—
- (a) the person starts development because of an emergency endangering—
 - (i) the life or health of a person; or
 - (ii) the structural safety of a building; and
 - (b) the person gives, as soon as practicable after starting the development, written notice of the development to the relevant person for the development; and
 - (c) the person is not required to stop carrying out the development by an enforcement notice or order under the Planning Act.
- (4) In this section—
- dead marine wood*** means a branch or trunk that—
- (a) is a part of a dead marine plant; or
 - (b) was a part of a marine plant.
- relevant person***, for development, means—
- (a) the chief executive; and
 - (b) if the development is assessable development—the person who would be the assessment manager if a development application were made for the development.

Subdivision 2 Trafficking in priority fish

89 Definitions for subdivision

In this subdivision—

commercial quantity, of priority fish, means the quantity of the fish, which must be at least 5 times the recreational limit or at least 5 times the weight equivalent of the recreational limit for the fish, prescribed by regulation.

engages in a trafficking activity see section 89B.

priority fish see section 89A.

recreational limit, for fish, means the maximum quantity of the fish that a recreational fisher, within the meaning of a regulation under this Act, may possess under a regulated fish declaration.

89A Meaning of *priority fish*

- (1) A **priority fish** is a fish of any of the following species or group of species—
- (a) barramundi;
 - (b) black jewfish;
 - (c) coral trout;
 - (d) mud crab;
 - (e) Murray cod;
 - (f) prawn;
 - (g) ray;
 - (h) redthroat emperor;
 - (i) sea cucumber;
 - (j) shark;
 - (k) snapper;
 - (l) spanish mackerel;
 - (m) tropical rocklobster;
 - (n) another species or group of species prescribed by regulation under subsection (2).

-
- (2) The Minister may recommend to the Governor in Council the making of a regulation to prescribe a species or group of species of fish as priority fish if the Minister is satisfied—
- (a) there has been—
 - (i) a significant increase in contraventions of this Act relating to the taking, possessing, using or selling of the species or group; or
 - (ii) a significant increase in demand for the species or group that is likely to cause a significant increase in contraventions of this Act as mentioned in subparagraph (i); and
 - (b) prompt action is required to declare the species or group to be priority fish to prevent contraventions or further contraventions of this Act as mentioned in paragraph (a)(i).

89B When a person *engages in a trafficking activity* for priority fish

- (1) For this subdivision, a person *engages in a trafficking activity* for a priority fish if—
- (a) a commercial quantity of the priority fish—
 - (i) has been unlawfully taken; or
 - (ii) has been lawfully taken but not reported to the chief executive as required under this Act, including, for example, by an information requirement; and
 - (b) the person knows, or ought reasonably to know, the fish was unlawfully taken, or lawfully taken but not reported, as mentioned in paragraph (a), whether or not the person took the fish; and
 - (c) the person does any of the following in trade or commerce—
 - (i) possesses all or some of the fish;
 - (ii) processes all or some of the fish;

- (iii) sells all or some of the fish;
 - (iv) receives all or some of the fish from, or delivers all or some of the fish to, another person;
 - (v) transports all or some of the fish from a place to another place;
 - (vi) otherwise deals with all or some of the fish;
 - (vii) does a combination of 2 or more things mentioned in any of subparagraphs (i) to (vi).
- (2) In this section—
- information requirement* means—
- (a) an information requirement under section 118(1); or
 - (b) a requirement to give the chief executive information under a condition of an authority.

89C Offence to engage in trafficking activity for priority fish

A person must not engage in a trafficking activity for a priority fish.

Maximum penalty—

- (a) if the person does a thing mentioned in section 89B(1)(c) in relation to a commercial quantity of the priority fish—3,000 penalty units or 3 years imprisonment; or
- (b) otherwise—1,000 penalty units.

Division 5 Non-indigenous fisheries resources and aquaculture fish

90 Non-indigenous fisheries resources not to be released

- (1) A person must not unlawfully release non-indigenous fisheries resources, or cause non-indigenous fisheries resources to be placed or released, into Queensland waters.

Maximum penalty—2,000 penalty units.

- (2) Subsection (1) does not apply to the release or placing of non-indigenous fisheries resources into Queensland waters in the circumstances prescribed by regulation.

91 Aquaculture fisheries resources not to be released

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

Maximum penalty—2000 penalty units.

92 Duty of person who unlawfully takes or possesses non-indigenous plants

- (1) A person who unlawfully takes or possesses a non-indigenous plant must immediately destroy it.

Maximum penalty—2,000 penalty units.

- (2) Subsection (1) does not apply to a non-indigenous plant prescribed by regulation.

- (3) In this section—

non-indigenous plant means a non-indigenous fisheries resource that is a plant.

93 Recovery of costs of removing particular fisheries resources

- (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 7 Orders for destruction

108 Order for taking and removing, or destroying, non-indigenous fisheries resources or aquaculture fish

- (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) non-indigenous 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.

109 Order to stop or delay escape of non-indigenous fisheries resources or aquaculture fish

- (1) If the chief executive is satisfied there is no practicable way to take and remove, or destroy, non-indigenous 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.

110 Recovery of costs of complying with order

- (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 9 Fisheries Fund

117 Fisheries Fund

- (1) The Fisheries Fund (the *fund*) is continued in existence.
- (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 Accountability Act 2009* and made available by the department for the fund; and
 - (b) penalties, costs and fees recovered or received by the chief executive; and
 - (c) amounts received for payment into the fund; and
 - (d) 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, dissemination of information, or publication of material, for or about fisheries 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 Accountability Act 2009*, section 69.

departmental financial-institution account, of a department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

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

Division 10 General

118 Information requirements

- (1) A regulation or declaration, a condition of an authority, or the chief executive by written notice, may require (an *information requirement*) a person to—
- (a) obtain and keep for stated periods, in the approved form, stated documents or information (the *required information*) about a fisheries matter; or
 - (b) give the chief executive or another stated person documents or information mentioned in paragraph (a) (also the *required information*), in writing or in another stated way, or at stated intervals or times.

Example of another stated person—

if the person of whom the requirement is made is a buyer of fisheries resources, the person who sold them to the buyer

Examples of another stated way—

- by a telephonic automated interactive voice response system
 - by the approved vessel tracking equipment for a boat
 - by recording the information on the department's website
 - by using an electronic logbook provided by the chief executive
- (2) However, an information requirement may apply to or be made of a person only if the required information relates to the person, or could reasonably be expected to relate to the person.
- (3) To remove any doubt, it is declared that, subject to subsection (2), subsection (1) is capable of applying to a person whether or not the person performs activities by way of fishing or other activities.
- (4) A person to whom an information requirement applies, or of whom an information requirement has been made, must comply with the requirement unless, in the circumstances, the person could not reasonably have been expected to have, or to be able to obtain, the required information.

Maximum penalty—

- (a) 1,000 penalty units if—
 - (i) the required information is a docket or other document about the buying or selling of fisheries resources in trade or commerce; or
 - (ii) the person carries on a business that includes the processing of abalone and the required information relates to the business or the processing; or
 - (b) otherwise—500 penalty units.
- (5) In a proceeding for an offence against subsection (4), it is not necessary for the prosecution to prove that a person failed to comply with the information requirement at a particular time if it is proved that—
- (a) the documents or information kept by the person for a particular period are incomplete in a material particular; and
 - (b) the incompleteness has, or can only have, resulted from the contravention of the information requirement during that period.
- (6) In this section—
- fisheries matter*** means—
- (a) aquaculture, aquaculture fisheries resources, fishing, a fishery or fisheries resources; or
 - (b) trade or commerce related to aquaculture, aquaculture fisheries resources, fishing, a fishery or fisheries resources; or
 - (c) the effect on a protected animal caused by aquaculture, aquaculture fisheries resources, fishing, a fishery or fisheries resources.
- protected animal*** means—
- (a) a protected animal under the *Nature Conservation Act 1992*; or

- (b) an animal of a listed threatened species, listed migratory species or listed marine species under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

Part 6 Protection and conservation of fish habitats

120 Declaration of fish habitat areas

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

122 Protection of fisheries resources in declared fish habitat area

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.

123 Protection of marine plants

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

124 Chief executive may rehabilitate or restore land etc.

- (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) the land, waters, marine plants or fish habitat area has been removed, destroyed or damaged; and
 - (b) the chief executive reasonably believes the removal, destruction or damage was caused by an act or omission that constituted a failure to comply with any of the following—
 - (i) this Act or the Planning Act, so far as it relates to fisheries development;
 - (ii) a former Act;
 - (iii) the repealed *Fisheries Act 1957*;
 - (iv) a condition of an authority or a fisheries development approval.
- (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 who caused the removal, destruction or damage to the State.
- (3) If the person is convicted of an offence against this Act constituted by the removal, destruction or damage, 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.

125 Notice to restore fish habitat etc.

- (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
 - (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 by regulation 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.

125A Codes of practice

- (1) The chief executive may make a code of practice for a declared fish habitat area.
- (2) A code of practice may, for example, state ways that persons may carry out activities in the declared fish habitat area in compliance with this Act.
- (3) In preparing a code of practice, the chief executive must take reasonable steps to engage in consultation about the code with persons the chief executive considers appropriate.

Examples of persons for subsection (3)—

industry representatives, relevant experts and key stakeholders

- (4) The chief executive must—
 - (a) publish a copy of each code of practice on the department's website; and
 - (b) keep a copy of each code of practice available for inspection at the department's head office.

Part 7

Commonwealth–State management of fisheries

126 Functions and powers of Minister

- (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.

127 Minister to table reports of Joint Authorities

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.

128 Judicial notice

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.

129 Functions of Joint Authorities

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

130 Delegation

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

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- (a) the chief executive, a local government or an entity prescribed by 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.

131 Proceedings of Joint Authorities

- (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.

132 Making of Joint Authority and other Commonwealth–State arrangements

- (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 remove any doubt, the arrangement is a statutory instrument to which the *Acts Interpretation Act 1954*, section 17 applies under the *Statutory Instruments Act 1992*, section 14.

132A Variation of Commonwealth–State arrangements

A Commonwealth–State arrangement may be varied in the way provided for under the Commonwealth Fisheries Act.

133 Ending of Commonwealth–State arrangements

- (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 and declarations made, for the fishery expire.

134 Application of Queensland law to fisheries

- (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.

135 Additional functions of Joint Authority for fishery under Queensland law

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.

136 Exercise of powers for Joint Authority fishery under Queensland law

- (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 chief executive, all the chief executive's functions and powers for the fishery.
- (4) This Act and other laws apply to the Joint Authority as if, for the fishery, it were the chief executive.
- (5) On the fishery becoming a Joint Authority fishery, but subject to any regulation made under this part, all regulations, 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.

137 Application of provisions about offences

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.

138 Presumption about certain statements in arrangements

- (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.

139 Instruments for Commonwealth–State fisheries under Queensland law

- (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.
- (3) If an issue is to be decided about whether a regulation 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 1A Preliminary

139A Reference to document includes reference to reproductions from electronic document

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Division 1 Inspectors

140 Appointment

- (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 by 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.

140A Functions of inspectors

An inspector has the function of conducting investigations and inspections—

- (a) to monitor and enforce compliance with—
 - (i) this Act; and
 - (ii) the *Biosecurity Act 2014*, so far as it relates to fisheries resources or fish habitats; and
 - (iii) the *Planning Act*, so far as it relates to fisheries development; and

- (b) to facilitate the administration of this Act, including, for example, by helping the chief executive perform the chief executive's functions under this Act.

141 Limitation of inspector's powers

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.

142 Inspector's conditions of appointment

- (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.

143 Inspector's identity card

- (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 an approved form; and
 - (c) be signed by the inspector; and
 - (d) identify the person as an inspector under this Act.

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- (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.

144 Production or display of inspector's identity card

- (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 (2), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.
- (4) For subsection (2), an inspector does not exercise a power in relation to another person only because the inspector has entered a place as mentioned in section 145(1)(b).
- (5) Failure to comply with this section does not affect the validity of the exercise of a power under this Act.

Division 2 Powers of inspectors for places, boats and vehicles

145 Entry to places

- (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, a fisheries development approval or an accepted development requirement 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, approval or accepted development requirement 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) an order under this Act for the taking and removal, or destruction, of fisheries resources; or

Note—

This order is made under section 108 (Order for taking and removing, or destroying, non-indigenous fisheries resources or aquaculture fish).

- (ii) an order under this Act for the taking of action to stop or delay fisheries resources or plants from escaping; or

Note—

This order is made under section 109 (Order to stop or delay escape of non-indigenous fisheries resources or aquaculture fish).

- (f) it is premises used for trade or commerce and the entry is made under section 145A.
- (2) An inspector may also enter a place if—
- (a) the place is not within a city or town under the *Local Government Act 2009*; 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.

145A Entry of premises used for trade or commerce

- (1) An inspector may enter premises used for trade or commerce to find out whether this Act is being complied with if—
- (a) the trade or commerce relates to fisheries resources; and
 - (b) any of the following applies—
 - (i) the occupier of the premises is present;
 - (ii) a person other than the occupier of the premises is present and conducting activities for the trade or commerce;
 - (iii) the premises are otherwise open for entry; and
 - (c) the inspector—
 - (i) is wearing a body-worn camera that is working; or
 - (ii) if the body-worn camera is not working—has activated an alternative device to record images or sound, or both, for the period of the entry.
- (2) Before entering premises under subsection (1), the inspector must give the occupier of the premises at least 20 days notice of the entry unless the giving of notice would defeat the purpose of the entry.

146 Boarding of boats and entry of vehicles generally

- (1) An inspector may board a boat or enter a vehicle if the boarding or entry—
- (a) is made with the consent of the owner or person in control of the boat or vehicle; or

- (b) is permitted by a warrant; or
 - (c) is made under subsection (2), (3) or (5).
- (2) An inspector may board a boat to find out whether this Act is being complied with.
- (3) An inspector may enter a vehicle to find out whether this Act is being complied with if the inspector believes, on reasonable grounds, the vehicle—
 - (a) is being, or has just been, used in connection with a fishing activity; or
 - (b) contains fish being transported for sale or another commercial purpose.
- (4) Subsection (3) does not apply to—
 - (a) a caravan; or
 - (b) another vehicle used, or reasonably expected to be used, predominantly for residential purposes, including for temporary periods.
- (5) An inspector may board a boat or enter a vehicle if the inspector suspects, on reasonable grounds—
 - (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.
- (6) In this section—

fishing activity means—

 - (a) taking fish; or
 - (b) purchasing, selling, possessing or using fishing apparatus regulated under a regulated fishing apparatus declaration.

146A Exercise of power to board boat or enter vehicle

- (1) This section applies to an inspector who may board a boat or enter a vehicle under this division.
- (2) The inspector may board an unattended boat or enter an unattended vehicle only if, before boarding the boat or entering the vehicle, the inspector takes reasonable steps to advise the owner or person in control of the boat or vehicle of the inspector's intention to board the boat or enter the vehicle.
- (3) However, the inspector may enter a secured part of an unattended boat or unattended vehicle only if the owner or person in control of the boat or vehicle consents to the entry or the entry is permitted by a warrant.
- (4) If the inspector considers it would be more appropriate in the circumstances to do so, the inspector may decide not to board a boat or enter a vehicle and exercise powers under this part from immediately alongside or outside of the boat or vehicle.
- (5) An inspector who acts under subsection (4) is taken to have boarded the boat or entered the vehicle for the exercise of powers under this part.

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

- (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.

148 Warrants

- (1) An inspector may apply to a magistrate for a warrant for a place, boat or vehicle.
- (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, on the boat or in the vehicle.
- (5) The warrant must state—
- (a) a stated inspector or any inspector may, with necessary and reasonable help and force, enter the place, board the boat or enter the vehicle, 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.

148A Monitoring warrants for abalone or commercial fish

- (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 or commercial fish are at the place; and
 - (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 or commercial fish.
- (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 or another inspector should have access to the place for the

purpose of finding out whether this Act is being complied with in relation to abalone or commercial fish.

- (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.

- (6) In this section—

commercial fish means fish taken or possessed in trade or commerce.

148B Monitoring warrants for marine plants or fish habitat

- (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 satisfied—
- (a) the place is a part of a direct reasonable route for gaining access to a body of water; and
 - (b) the body of water—
 - (i) includes marine plants or fish habitat; or

- (ii) has just been or is about to be used for a fishing activity; and
 - (c) it is necessary for an inspector to access the body of water to find out if this Act is being complied with in relation to the marine plants or fish habitat or the fishing activity.
- (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 unless 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—
 - (a) it is reasonably necessary that the inspector or another inspector should have access to the body of water to find out if this Act is being complied with in relation to marine plants or fish habitat or a fishing activity; and
 - (b) the place is a part of a direct reasonable route for gaining access to the body of water.
- (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

Examples of conditions—

- 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.
- (e) the date, within 2 months after the warrant's issue, the warrant ends.
- (6) In this section—
- fishing activity* means—
- (a) taking, possessing or using fisheries resources; or
 - (b) possessing or using fishing apparatus or aquaculture furniture.

149 Electronic application

- (1) An application under section 148, 148A or 148B may be made by phone, fax, email, radio, videoconferencing or another form of electronic 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) The application—
 - (a) may not be made before the inspector prepares the written application under section 148, 148A or 148B; but
 - (b) may be made before the written application is sworn.

149A Additional procedure if electronic application

- (1) For an application made under section 149, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—

- (a) it was necessary to make the application under section 149; and
 - (b) the way the application was made under section 149 was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
 - (b) otherwise—
 - (i) the magistrate must tell the inspector the information required to be stated in the warrant under section 148, 148A or 148B; and
 - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in subparagraph (i).
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 148, 148A or 148B; and
 - (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 148, 148A or 148B.
 - (8) In this section—
relevant magistrates court, in relation to a magistrate, means the court that the magistrate constitutes under the *Magistrates Act 1991*.

149B Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
 - (a) the warrant; or
 - (b) compliance with this division;unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
warrant includes a duplicate warrant mentioned in section 149A(3).

150 Inspector's general powers for places, boats and vehicles

- (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) produce an image or writing from an electronic document at the place, on the boat, or in the vehicle, or, to the extent that is not practicable, take either or both of the following to another place to produce an image or writing from an electronic document—
 - (i) a thing containing an electronic document;
 - (ii) an article or device reasonably capable of producing an electronic document; or
- (h) 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
- (i) 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 (h); or
- (j) 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 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 (h); or
- (k) 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 (5).

- (2) If an inspector takes from the place, boat or vehicle a thing, article or device for producing an image or writing from an electronic document, the inspector must produce the image or writing from the document and return the thing, article or device to the place, boat or vehicle as soon as practicable.
- (3) If, for any reason, it is not practicable to make a requirement under subsection (1)(j) by written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.
- (4) Nothing in this section prevents an inspector making a further requirement under subsection (1)(j) 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.
- (5) 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 (h) in relation to that part, unless the inspector is accompanied by the person in control of the boat or vehicle.
- (6) Subsection (5) 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.

150A No tampering with marked or sealed container or thing

A person must not unlawfully break, remove or change a mark or seal placed on a container or other thing by an inspector under section 150(1)(c).

Maximum penalty—200 penalty units.

150B Requirement to comply with help requirement

- (1) A person who is required by an inspector under section 150(1)(i) to give the inspector reasonable help must

comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) If the person is an individual and the help is required to be given by answering a question or producing a document, 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.
- (3) Subsection (2) does not apply to a requirement to produce a document that is an authority or other document required to be kept by the person under this Act.

150C Requirement to take required action

A person who is required by an inspector under section 150(1)(j) to take action in relation to a boat or vehicle must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

151 Power to seize evidence from places etc.

- (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.

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

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.

153 Additional power to seize fisheries resources etc.

- (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*).

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- (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.

154 Seizure of fisheries resources in heap etc.

- (1) In this section—

declared fisheries resources means fisheries resources declared under a regulation to be fisheries resources to which this section applies.

forfeiture offence means an offence against this Act declared under a regulation to be an offence to which this section applies.

threshold percentage for declared fisheries resources means the percentage (which may be nil) prescribed by regulation 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.

155 Power to seize explosives etc.

- (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.

156 Powers in support of seizure

- (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

157 Receipt to be given

- (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.

158 Inspector to allow inspection etc.

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.

159 Inspector may dispose of fisheries resources taken unlawfully

- (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 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.

160 When seized fisheries resources become property of State

- (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) However, this section stops applying if the fisheries resources are sold under section 160A.
- (3) 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.
- (4) 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.

- (5) 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.
- (6) However, if the fisheries resources are not fish that were live when they were seized and 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.

160A Chief executive's power to sell particular live seized fish

- (1) This section applies if—
 - (a) seized fisheries resources mentioned in section 160(1) were live fish when they were seized; and
 - (b) the fish have not, under section 160, become the property of the State.
- (2) The chief executive may sell the fish at any time after the seizure as if the fish were the property of the State.
- (3) However, the sale must be carried out in a reasonable way decided by the chief executive or in a way agreed with the owner of the fish.
- (4) Also, until the end of the period under section 163(2), the chief executive must hold the net proceeds of the sale on trust for whoever will, under that section, be entitled to the net proceeds.

161 Chief executive may return seized things etc.

- (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.

162 Obligation to return seized things (other than fisheries resources)

- (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.

163 Obligation to pay net proceeds of sale of fisheries resources

- (1) This section applies if—
 - (a) fisheries resources are seized under this Act; and
 - (b) the fisheries resources—
 - (i) are sold after becoming property of the State; or
 - (ii) are fish that have been sold under section 160A.
- (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.

164 Chief executive may order forfeiture of particular things

- (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

165 Where and how to start appeal

- (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) Also, the person may not appeal if the fisheries resources are returned to the wild under section 159(2).
- (4) 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.
- (5) Without limiting subsection (4)(b), the chief executive is given a copy of the notice if a copy is given to the inspector who seized the fisheries resources.
- (6) The notice of appeal must state the grounds of the appeal.

166 Hearing procedures

- (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.

167 Powers of Magistrates Court on appeal

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.

168 Court may give directions about disposal of seized fisheries resources

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

169 Appeal to District Court on questions of law only

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

170 Power to stop persons

- (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.

171 Power to require name and address

- (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.

172 Power to require information from certain persons

- (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.

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- (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.

173 Power to require production of documents

- (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; or
 - (c) if a document required to be kept by the person under this Act is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document.

- (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.
- (6) For an electronic document, compliance with a requirement under subsection (1) requires the making available or

production of a clear written reproduction of the electronic document.

173A Power relating to fishing apparatus in water

- (1) This section applies if an inspector suspects, on reasonable grounds, that an offence against this Act has been, or is being, committed by a person in relation to fishing apparatus that is in the water.
- (2) The inspector may require the person to haul, pull, draw or reel in the fishing apparatus, or otherwise bring the fishing apparatus onto a boat or land.
- (3) When making the requirement, the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (4) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

173B Additional power of police officer for executing warrant

- (1) This section applies to a police officer who—
 - (a) is an inspector exercising powers under a warrant issued under this Act; or
 - (b) is helping an inspector, who is not a police officer, exercise powers under a warrant issued under this Act.
- (2) If the police officer suspects, on reasonable grounds, the presence of a person places the safety of an inspector or a police officer at risk, the police officer may direct the person—
 - (a) to remain in a stated position at the place or on the boat or in the vehicle where the powers are being exercised, while the police officer or an inspector exercises the powers; or

- (b) to accompany the police officer while the police officer or an inspector exercises the powers; or
 - (c) to leave the place, boat or vehicle where the powers are being exercised and not return to the place, boat or vehicle while the police officer or an inspector is exercising the powers.
- (3) When giving the direction, the police officer must warn the person it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.
- (4) A direction given under this section is taken to have been given under the *Police Powers and Responsibilities Act 2000* for the purposes of section 791 of that Act.
- (5) If an inspector who is not a police officer asks a police officer to help exercise powers under a warrant issued under this Act, the inspector must explain to the police officer the powers the police officer has under this section.

Division 4A Obtaining criminal history reports

173C Purpose of division

The purpose of this division is to help an inspector to decide whether the inspector's entry of a place, boat or vehicle under this part would create an unacceptable level of risk to the inspector's safety.

173D Definitions for division

In this division—

criminal history, for a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

173E Chief executive may obtain criminal history report

- (1) This section applies if an inspector suspects, on reasonable grounds, a person—
 - (a) may be present at a place, boat or vehicle when the inspector enters the place, boat or vehicle under this part; and
 - (b) may create an unacceptable level of risk to the inspector's safety.
- (2) The chief executive may ask the commissioner of the police service for a written report about the criminal history of the person that includes a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) The commissioner of the police service must comply with the request.
- (4) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.
- (5) The chief executive must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving conduct, behaviour or circumstances that suggest the person's presence at the place, boat or vehicle may endanger the inspector's safety.
- (6) The chief executive may give the inspector information in the report about the offences identified under subsection (5).
- (7) The chief executive must ensure the report, and any information in the report given to an inspector in writing, is destroyed as soon as practicable after the report is no longer needed for the purpose for which it was requested.

Division 5 Other enforcement matters

174 Orders against persistent offenders

- (1) This section applies if—
- (a) a person is convicted of a serious fisheries offence; and
 - (b) the person has been convicted of the same, or a different, serious fisheries offence at least 2 other times in the previous 5 years.
- (2) If the court convicting the person considers it necessary to stop the person from committing further serious fisheries offences, the court may make an order—

- (a) prohibiting the person from carrying out a particular activity relating to fishing; or

Examples of order under paragraph (a)—

- an order prohibiting a person from fishing
- an order prohibiting a person from possessing fishing apparatus

- (b) prohibiting the person from carrying out a particular activity relating to fishing except in particular circumstances; or

Example of order under paragraph (b)—

an order prohibiting a person from fishing unless the person uses a boat installed with vessel tracking equipment that is working properly and the details of which have been given to the chief executive

- (c) any other order the court considers appropriate.
- (3) A person must not contravene an order made under subsection (2).

Maximum penalty—3,000 penalty units or 2 years imprisonment.

174A Recovery of particular costs of investigation

- (1) This section applies if—

- (a) a court convicts a person of an offence against this Act; and
 - (b) the chief executive applies to the court for an order against the person for the payment of particular costs incurred by the State for the investigation of the offence; and
 - (c) the court finds the costs—
 - (i) were not, and could not reasonably have been, expected to be incurred for the investigation of the offence; and
 - (ii) were reasonably incurred.
- (2) The court may order the person to pay the State an amount equal to the costs if it is satisfied it would be just to make the order in the circumstances of the particular case.
- (3) In deciding whether to make the order, the court must have regard to—
- (a) the extent to which the person’s conduct during the investigation contributed to the costs being incurred; and
 - (b) whether the offence was committed, wholly or partly, for a commercial purpose; and
 - (c) any other relevant matter.
- (4) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.
- (5) An application to a court under this section, and any order made by the court on the application, is a judgment in the court’s civil jurisdiction.
- (6) Any issue is to be decided on the balance of probabilities.

175 False or misleading information

- (1) A person must not—
- (a) state anything to the chief executive or an inspector the person knows is false or misleading in a material particular; or

- (b) omit from a statement made to the chief executive or 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.

176 False, misleading or incomplete documents

- (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.

177 Forfeiture on conviction

- (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.

178 Dealing with forfeited things

- (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.

179 Compensation

- (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.

180 Inspector to give notice of damage

- (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.

181 Consent to entry

- (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 acknowledgement of the consent.
- (5) The acknowledgement 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 acknowledgement of consent, the inspector must immediately give a copy to the person.

181A Use of body-worn cameras

- (1) It is lawful for an inspector to use a body-worn camera to record images or sounds while the inspector is exercising a power under this part.
- (2) Use of a body-worn camera by an inspector under subsection (1) includes use that is—
 - (a) inadvertent or unexpected; or
 - (b) incidental to use while exercising the inspector's power.
- (3) Subsection (1) does not affect an ability the inspector has at common law or under fisheries legislation or another Act to record images or sounds.
- (4) To remove any doubt, it is declared that subsection (1) is a provision authorising the use by an inspector of a listening device, for the purposes of the *Invasion of Privacy Act 1971*, section 43(2)(d).

182 Obstruction etc. of inspector

- (1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.
Maximum penalty—1,000 penalty units.
- (2) In this section—
obstruct includes assault, hinder, resist and attempt or threaten to obstruct.

183 Impersonation of inspector

A person must not pretend to be an inspector.
Maximum penalty—1,000 penalty units.

Division 6 Evidence

184 Evidentiary provisions

- (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 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; or
 - (vi) a decision, or a copy of a decision, made by the chief executive, under the Planning 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;

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- (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 signed by a person mentioned in subsection (3) stating that the person used stated equipment to retrieve data, sent from the approved vessel tracking equipment for a stated boat, that recorded the equipment's position to be at a stated place at a stated time on a stated day is evidence that the boat was at the place at the time on the day.
- (6) A single certificate may be issued for data sent at more than 1 time on a day or on more than 1 day.

Example for subsections (5) and (6)—

An inspector signs a certificate stating that, on 21 January 2004, the inspector, using ABC equipment retrieved data, sent from the approved vessel tracking equipment for XYZ boat, that recorded the equipment's position to be—

- (a) at latitude 24°33'07" south and longitude 152°57'25" east at 9.30a.m. on 1 January 2002; and
- (b) at latitude 24°28'00" south and longitude 152°55'32" east at 12.45p.m. on 5 January 2002.

The inspector's certificate is evidence the XYZ boat was at the places stated in paragraphs (a) and (b) at the times and on the days stated.

- (7) If it is relevant to establish a person took fish, evidence that the person possessed the fish at any time is evidence that the person took the fish.

Part 9 Interstate agreements

185 Power to enter into agreements

- (1) The Minister may enter into an agreement with a Minister administering a law of another State about fishing, fisheries resources or fish habitat, for the purpose of cooperation in achieving the purposes of this Act or the purposes (however called) of the law of the other State.
- (2) The agreement may provide for—
 - (a) the exercise of powers under this Act in the other State; and
 - (b) the exercise in Queensland of powers under the law of the other State; and
 - (c) the exchange of information between the Minister and the Minister of the other State about—
 - (i) any action taken under this Act or the law of the other State in relation to fishing, fisheries resources or fish habitat; and
 - (ii) any information in relation to fishing, fisheries resources or fish habitat obtained under this Act or the law of the other State, other than confidential information.
- (3) In this section—

confidential information means information the confidentiality of which must be maintained under an Act, or a law of the Commonwealth or another State.

186 Reciprocal powers

- (1) This section has effect in relation to another State if—
 - (a) the Minister has entered into an agreement under section 185 with a Minister of the other State; and

- (b) a law of the other State contains a provision corresponding, or substantially corresponding, to this section.
- (2) To the extent envisaged by the agreement—
- (a) an inspector may, in Queensland or the other State, exercise a power in relation to a fisheries matter that is conferred on—
 - (i) inspectors under this Act; or
 - (ii) interstate officers under a law of the other State; and
 - (b) an interstate officer may, in Queensland or the other State, exercise a power in relation to a fisheries matter that is conferred on—
 - (i) interstate officers under a law of the other State; or
 - (ii) inspectors under this Act.
- (3) Anything done or omitted to be done by an inspector under subsection (2)(a) is taken to have been done under this Act as well as under the law of the other State.
- (4) A regulation may make provision for the exercise of a power under this section.
- (5) In this section—

fisheries matter means fishing, fisheries resources or fish habitat.

interstate officer means a person who holds a position, however called, equivalent to an inspector under a law of the other State.

Part 10 Review of decisions

Division 1 Preliminary

187 Definitions for part

In this part—

affected person means—

- (a) for an original decision mentioned in the definition *original decision*, paragraph (a)—a person who must be given an information notice under this Act for the decision; or
- (b) for an original decision mentioned in the definition *original decision*, paragraph (b)—the person of whom the requirement is made; or
- (c) for an internal review decision—the person who applied for the internal review.

internal review, of an original decision, see section 189(1).

internal review decision means a decision made, or taken to have been made, under section 191 on an application for internal review of an original decision.

original decision means—

- (a) a decision for which an information notice must be given under this Act; or
- (b) a requirement made by the chief executive under section 118(1).

QCAT information notice, for an internal review decision, means a notice complying with the QCAT Act, section 157(2).

Division 2 Internal review

188 Review process must start with internal review

An affected person for an original decision may apply to QCAT for a review of the decision only if a decision on an application for internal review of the decision has been made, or taken to have been made, under this division.

189 Who may apply for internal review

- (1) An affected person for an original decision may apply to the chief executive for a review of the decision under this division (an *internal review*).
- (2) If the affected person has not been given an information notice for the original decision, the affected person may ask the chief executive for an information notice for the decision.
- (3) A failure by the chief executive to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

190 Requirements for application

- (1) An application for internal review of an original decision must—
 - (a) be in the approved form; and
 - (b) for a person who has been given an information notice for the decision—include enough information to enable the chief executive to decide the application; and
 - (c) be made to the chief executive within—
 - (i) for a person who has been given an information notice for the decision—28 days after the day the person is given the notice; or

- (ii) for a person who has not been given an information notice for the decision—28 days after the day the person becomes aware of the decision.
- (2) The chief executive may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the original decision or prevent the decision being implemented.

191 Internal review

- (1) The chief executive must, within 20 days after receiving an application for internal review of an original decision—
 - (a) review the original decision; and
 - (b) decide to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision; and
 - (c) give the affected person for the original decision a QCAT information notice for the chief executive's decision under paragraph (b).
- (2) The chief executive and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the chief executive to comply with the subsection.
- (3) The application may be dealt with only by a person who—
 - (a) did not make the original decision; and
 - (b) holds a more senior office than the person who made the original decision.
- (4) Subsection (3) does not apply to an original decision made by the chief executive personally.
- (5) If the chief executive does not give the affected person a QCAT information notice within the period required under

subsection (1) or a longer period agreed under subsection (2), the chief executive is taken to confirm the original decision.

Division 3 External review

192 Applying for external review

- (1) This section applies to a person who must be given a QCAT information notice for an internal review decision.
- (2) The person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of the internal review decision, either on application by a person or on its own initiative.

Part 11 Miscellaneous

215 Attempts to commit offences

- (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 of the Criminal Code applies to subsection (1).

216 Responsibility for acts or omissions of representatives

- (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.

216A Immunity from prosecution

- (1) An inspector is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done—
- (a) under the direction of the Minister or chief executive; or
 - (b) in the exercise of a power or performance of a function under this Act.
- (2) A person acting under the direction of the Minister, chief executive or an inspector is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done under the direction.

217 Protection from liability

- (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.

217A Exchange of information with prescribed government entity

- (1) The chief executive may enter into an arrangement (an *information-sharing arrangement*) with a prescribed government entity for the purpose of sharing or exchanging information—
- (a) held by the chief executive or the prescribed government entity; or
 - (b) to which the chief executive or the prescribed government entity has access.
- (2) An information-sharing arrangement may relate only to information that helps—
- (a) the chief executive or an inspector perform functions under this Act; or
 - (b) the prescribed government entity, or a person employed or engaged by the entity, perform functions under a law of the State, another State or the Commonwealth.
- (3) Under an information-sharing arrangement, the chief executive and the prescribed government entity are, despite another Act or law, authorised to—

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- (a) ask for and receive information held by the other party to the arrangement or to which the other party has access; and
 - (b) disclose information to the other party.
- (4) However, the information may be used by the chief executive or the prescribed government entity only for the purpose for which it was given under the arrangement.
- (5) In this section—
- prescribed government entity* means—
- (a) the chief executive of a department; or
 - (b) an entity of, or representing, the Commonwealth or another State.

217B Confidentiality of information

- (1) This section applies to a person who—
- (a) is, or has been, any of the following—
 - (i) the chief executive;
 - (ii) an inspector;
 - (iii) a public service employee;
 - (iv) a local government or prescribed entity;
 - (v) an officer or employee of a local government or prescribed entity;
 - (vi) an officer or employee of the Commonwealth or another State;
 - (vii) a person to whom an entity mentioned in subparagraph (iv), (v) or (vi) has subdelegated, under this Act, a function or power delegated to the entity under this Act; and
 - (b) obtains confidential information about another person in administering, or performing functions or exercising powers under, this Act.

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- (2) The person must not use or disclose the confidential information unless the use or disclosure is—
- (a) in the performance of a function or exercise of a power under this Act; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) otherwise required or permitted by law.

Maximum penalty—50 penalty units.

- (3) In this section—

confidential information—

- (a) means any information that—
 - (i) could identify an individual; or
 - (ii) is about a person’s current financial position or financial background; or
 - (iii) would be likely to damage the commercial activities of a person to whom the information relates; but
- (b) does not include—
 - (i) information that is publicly available; or
 - (ii) statistical or other information that could not reasonably be expected to result in the identification of the individual to whom it relates.

prescribed entity means an entity prescribed under—

- (a) section 222(1)(b); or
- (b) section 21(1)(c), as in force before its repeal by the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019*.

218 Identification of boundaries

If, under this Act, a place or area is prescribed by 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.

219 Holder of authority responsible for ensuring Act complied with

- (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.

220 Summary offences and indictable offences

- (1) An offence against this Act other than section 89C is a summary offence.
- (2) An offence against section 89C is a misdemeanour.

220A Proceedings for summary offences

A summary proceeding under the *Justices Act 1886* for a summary offence against this Act must start within whichever of the following periods ends later—

- (a) 1 year after the commission of the offence;
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

220B Proceedings for indictable offences

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
 - (a) by way of a summary proceeding under the *Justices Act 1886*; or
 - (b) on indictment.
- (2) However, a magistrate must not hear an indictable offence against this Act summarily if the magistrate is satisfied, on application made by the defence, that because of exceptional circumstances the offence should not be heard and decided summarily.
- (3) If subsection (2) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
 - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken

to be evidence in the proceeding for the committal of the person for trial or sentence; and

- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

221 Inspector not to have interest in authority

- (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 by regulation or in circumstances prescribed by regulation.

221A Approved forms

The chief executive may approve forms for use under this Act, other than for part 9.

222 Delegations

- (1) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified—
- (a) public service employee; or
 - (b) officer or employee of a local government or an entity prescribed by regulation; or
 - (c) officer or employee of the Commonwealth or another State.
- (2) If a function of the chief executive is delegated to an officer or employee of an entity, the officer or employee may subdelegate the function to another appropriately qualified officer or employee of the same entity.
- (3) In this section—
functions include powers.

222A Electronic notices for authority holders

- (1) The chief executive or an inspector may give a notice or other document to the holder of an authority under this Act by electronic communication to an electronic address of the holder if the holder—
 - (a) gave the address to the chief executive for the purpose of communicating with the holder; and
 - (b) has not asked the chief executive to discontinue use of the address.

Examples of an electronic address—

an email address or mobile phone number

- (2) This section does not limit the *Electronic Transactions (Queensland) Act 2001*.

223 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) prescribe matters for the management of any of the following—
 - (i) a fishery;
 - (ii) a fish habitat;
 - (iii) a declared fish habitat area;
 - (iv) a fish way;
 - (v) fisheries resources;
 - (vi) aquaculture; or
 - (b) provide for the protection of things that are not fish; or

Example for paragraph (b)—

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

- (c) prescribe the fees payable under this Act; or

- (d) state, for the Planning Act, the types of development applications, and change applications, relating to fisheries development that is building work that do not require referral to a referral agency under that Act; or
 - (e) create offences and prescribe penalties of not more than 100 penalty units for each offence; or
 - (f) prescribe circumstances in which an act or omission that is otherwise an offence under this Act is not an offence.
- (3) In this section—
- change application*—
- (a) means a change application under the Planning Act; but
 - (b) does not include a change application for a minor change to a development approval, as defined in that Act.

Part 12 Transitional provisions

Division 1 Transitional references

224 Application of division

This division applies to references in Acts or documents.

225 Fisheries Act 1976 references

A reference to the *Fisheries Act 1976* is taken to be a reference to this Act.

226 Fishing Industry Organisation and Marketing Act 1982 references

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**

227 **Definitions for div 2**

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.

228 **Dissolution of Authority**

On the commencement, the Authority is dissolved and its members go out of office.

229 **Vesting of assets, rights and liabilities**

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.

230 Decisions, documents etc. of Authority

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.

231 Legal proceedings

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.

232 References to Authority

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.

233 Duty to register transfer of property

- (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.

234 Employees of the Authority

- (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.

235 Contract employees

- (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, 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.

236 Accrued entitlements

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.

237 Industrial instruments

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.

Division 3 Transitional provision for Fisheries Amendment Act 2001

239 Validation of renewals of expired former authorities

- (1) This section applies if, under former section 58, a fisheries agency renewed, or purported to renew, an expired former authority (other than a permit) that expired before the relevant renewal application was made.
- (2) The renewal, or purported renewal, is taken to be, and to have always been, validly made under this Act whether or not it could lawfully have been made under former section 58.
- (3) In this section—

fisheries agency means the chief executive or the former Queensland Fisheries Management Authority.

former section 58 means section 58 of this Act, as in force from time to time before the *Fisheries Amendment Act 2001* commenced.

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

Subdivision 1 **Definitions**

240 **Definitions for div 4**

In this division—

amending Act means the *Primary Industries and Other Legislation Amendment Act 2003*.

currency period, for a development permit, means the relevant period mentioned in the repealed *Sustainable Planning Act 2009*, section 341 in relation to the permit.

relevant authority means any of the following—

- (a) an aquaculture licence;
- (b) an approval, under section 114 of the unamended Act, to build a waterway barrier works;
- (c) a permit to perform works or related activity in a declared fish habitat area;
- (d) a permit to remove, destroy or damage marine plants.

unamended Act means this Act as in force before the commencement of section 241.

Subdivision 2 **Continuing effect of particular authorities or approvals**

241 **Continuing effect of existing licences or permits**

- (1) This section applies to the following authorities in force immediately before the commencement of this section or issued under section 252—

- (a) an aquaculture licence other than an aquaculture licence for harvesting wild oysters from foreshores;
 - (b) a permit for the performance of works in a declared fish habitat area;
 - (c) a permit for the removal, destruction or damage of marine plants.
- (2) From the commencement, the authority has effect as if—
- (a) the authority were a development permit, for which the chief executive was the assessment manager, for—
 - (i) if the authority is an aquaculture licence—a material change of use of premises; or
 - (ii) if the authority is a permit for the performance of works in a declared fish habitat area or for the removal, destruction or damage of marine plants—operational works; and
 - (b) the conditions of the authority, to the extent they relate to development, were conditions of the development permit; and
 - (c) the term of the authority were the currency period of the development permit; and
 - (d) if the development under a development permit would, if the development permit was applied for after the commencement, require a resource allocation authority for Queensland waters, unallocated tidal land or declared fish habitat area—
 - (i) the relevant resource allocation authority for the development had been issued; and
 - (ii) the conditions of the authority, to the extent they relate to the use of a declared fish habitat area, Queensland waters or unallocated tidal land, were conditions of the resource allocation authority; and
 - (iii) the term of the authority were the term of the resource allocation authority.

Editor's note—

See section 76B for developments that require a resource allocation authority.

- (3) However, subsection (2) applies only to authorise the holder of the authority to carry out activities for which an authority mentioned in subsection (1) could have been granted under the unamended Act.
- (4) If the currency period does not end within 6 months after the commencement, the chief executive must, as soon as practicable, issue the holder of the authority—
 - (a) a development permit; and
 - (b) if the development under a development permit would, if the development permit was applied for after the commencement, require a resource allocation authority for Queensland waters, unallocated tidal land or declared fish habitat area—a relevant resource allocation authority for the development.
- (5) A development permit or resource allocation authority issued under subsection (4) must state—
 - (a) for the permit—the currency period for, and conditions of, the permit; or
 - (b) for the authority—the term and conditions of the authority.

242 Continuing effect of existing approvals for waterway barrier works

- (1) This section applies to an approval to build or raise a waterway barrier works—
 - (a) given under the unamended Act before the commencement of this section; and
 - (b) in force immediately before the commencement.
- (2) From the commencement, the approval has effect as if—

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- (a) the approval were a development permit for operational works, for which the chief executive was the assessment manager; and
- (b) any direction given, under section 116 of the unamended Act, in relation to the approval were a condition of the development permit; and
- (c) the currency period for the development permit started on the day the approval was given and ends on the day 2 years after the approval was given.

243 Continuing effect of existing aquaculture licences for wild oyster harvesting

- (1) This section applies to an aquaculture licence for harvesting wild oysters from foreshores, in force immediately before the commencement of this section or issued under section 252.
- (2) From the commencement, the licence, and any conditions of the licence, have effect as if the licence were an authority to take fish for trade or commerce in a commercial fishery.
- (3) Subsection (2) has effect only for the term of the licence.

Subdivision 3 Effect of commencement on particular applications in progress

244 Applications in progress for particular relevant authorities

- (1) This section applies to an application for a relevant authority, other than an aquaculture licence for harvesting wild oysters from foreshores, if the application is not finally decided before the commencement of this section.
- (2) From the commencement, the application is taken to be a development application for which the chief executive is the assessment manager.
- (3) Also—

- (a) for an application for development that must be supported by evidence of the existence of a resource allocation authority for the development—the following applies—
 - (i) the application is taken to also be an application for the relevant resource allocation authority for the development;
 - (ii) the part of the application for the resource allocation authority must be decided first;
 - (iii) if the part of the application for the resource allocation authority is refused—the whole application is taken to have been withdrawn;
 - (iv) if the part of the application for the resource allocation is granted—the day the part of the application is granted is taken to be—
 - (A) if the chief executive has received, for the application, further relevant information under section 54(2)—the day the decision stage for the development application starts under the repealed Planning Act; or
 - (B) otherwise—the day the information and referral stage for the development application starts under the repealed Planning Act; or
- (b) for another application—the day this section commences is taken to be—
 - (i) if the chief executive has received, for the application, further relevant information under section 54(2)—the day the decision stage for the development application starts under the repealed Planning Act; or
 - (ii) otherwise—the day the information and referral stage for the development application starts under the repealed Planning Act.

(4) In this section—

repealed Planning Act means the repealed *Sustainable Planning Act 2009*.

245 Applications in progress for aquaculture licences for wild oyster harvesting

- (1) This section applies to an application for an aquaculture licence for harvesting wild oysters from foreshores if the application is not finally decided before the commencement of this section.
- (2) From the commencement, the application is taken to be an application for an authority to take fish for trade or commerce in the commercial fishery.

Subdivision 5 Effect of commencement on prescribed criteria

253 Continuing effect of criteria prescribed for s 67

Criteria prescribed for section 67(2)(b)(i) and in force immediately before the commencement of this section are, after the commencement, subject to any amendment or repeal, taken to be criteria prescribed for section 68B(4)(b)(i).

Division 5 Transitional provisions for Fisheries Amendment Act 2006

254 Existing contracts to provide services relating to sharks

- (1) This section applies to a contract made before the commencement of this section for someone to provide to the State services involving the placement in coastal waters of the State adjacent to a beach of nets or baited drumlines, for the purpose of catching sharks.
- (2) The contract is taken to be, and to have always been, validly made under this Act.

- (3) From the commencement, the contract is taken to have been made for the shark control program.

255 Existing general fisheries permits relating to sharks

- (1) The general fisheries permits or former general fisheries permits issued under the *Fisheries Regulation 1995* with the following numbers are taken to be, and to have always been, validly issued under this Act—
- PRM37037A
 - PRM37441E
 - PRM37965D
 - PRM37971I
 - PRM04051G
 - PRM04058D
 - PRM04060F
 - PRM04063K
 - PRM04092D
 - PRM04097E
 - PRM04172F
 - PRM04173D
 - PRM04949B
 - PRM05108J.
- (2) If, under section 63(4) and (5), the chief executive amends any of the permits to authorise the holder to authorise someone else to do any thing that the holder may do under the permit, the amendment is taken to have had effect from—
- (a) if the relevant notice under section 63(5) states a day of effect—the day of effect; or
 - (b) if no day of effect is stated in the notice—when the permit was issued.

- (3) This section does not prevent the amendment or repeal of the *Fisheries Regulation 1995*.

256 Activities carried out under existing contracts relating to sharks

Section 81(1)(a), (b) and (d) does not apply to an activity carried out by a person before the commencement of this section if, when the activity was carried out, the person—

- (a) was acting under a contract mentioned in section 254; and
- (b) was authorised under a general fisheries permit mentioned in section 255 to carry out the activity.

Division 6 Transitional provisions for Sustainable Planning Act 2009

257 Continuing application of pt 5, div 3A, sdivs 1 to 4

- (1) This section applies to a development application made but not decided under the repealed *Integrated Planning Act 1997* before the commencement.
- (2) Part 5, division 3A, subdivisions 1 to 4 as in force before the commencement continue to apply to the development application as if the *Sustainable Planning Act 2009* had not commenced.
- (3) In this section—
commencement means the day this section commences.

Division 7 **Transitional provision for Trade
Measurement Legislation Repeal
Act 2009**

258 **Amendment of fisheries management plan by Trade
Measurement Legislation Repeal Act 2009 does not affect
powers of chief executive or Governor in Council**

The amendment of the *Fisheries (Coral Reef Fin Fish) Management Plan 2003* by the *Trade Measurement Legislation Repeal Act 2009* does not affect—

- (a) the power of the chief executive to further amend the management plan or to repeal it; or
- (b) the power of the Governor in Council to approve a matter mentioned in paragraph (a).

Division 8 **Transitional provisions for
Environmental Offsets Act 2014**

259 **Continued effect to make payment**

- (1) This section applies if, immediately before the commencement of this section, an environmental offset condition required a person to make a monetary payment to the Fisheries Research Fund and the payment had not been made.
- (2) Despite the repeal of section 76IA(3) by the *Environmental Offsets Act 2014*, the person is still required to make the payment.

Division 9 **Transitional provision for State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014**

261 Existing development applications

- (1) This section applies to a development application mentioned in previous section 76DA, 76DB or 76DC made, but not decided, before the commencement of the amending Act, section 107.
- (2) Previous sections 76DA, 76DB and 76DC continue to apply to the development application as if the amending Act, section 107, had not commenced.
- (3) In this section—

amending Act means the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014*.

previous, for a provision of this Act, means the provision as in force immediately before the repeal of the provision under the amending Act.

Division 10 **Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016**

262 Definitions for division

In this division—

amending Act means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

former, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

repealed Planning Act means the repealed *Sustainable Planning Act 2009*.

263 Existing particular development applications for fisheries development

- (1) This section applies to an existing development application for fisheries development, if the chief executive was the assessment manager or a concurrence agency for the application under the repealed Planning Act.
- (2) The following provisions continue to apply in relation to the application as if the amending Act had not been enacted—
 - (a) former sections 76D and 76G;
 - (b) former part 5, division 3A, subdivision 4.
- (3) A decision of the chief executive about the application can not be reviewed by QCAT.
- (4) In this section—

existing development application means a development application made under the repealed Planning Act, to which the Planning Act, section 288 applies.

264 Existing appeals—amendment of fisheries development approval conditions

- (1) This section applies if—
 - (a) a person appealed to the Planning and Environment Court before the commencement under former section 76Q(1); and
 - (b) the appeal had not been decided before the commencement.
- (2) The Planning and Environment Court must hear, or continue to hear, and decide the appeal under former sections 76Q and

76R as if the amending Act had not been enacted and the repealed Planning Act had not been repealed.

- (3) To remove any doubt, it is declared that former section 76Q(2), (4) and (5) applies for the appeal.

265 Existing right to appeal—amendment of fisheries development approval conditions

- (1) This section applies if—
- (a) before the commencement, a person could have appealed to the Planning and Environment Court under former section 76Q(1); and
 - (b) the person has not appealed before the commencement.
- (2) The person may appeal, and the Planning and Environment Court must hear and decide the appeal, under former sections 76Q(1), (2)(a), (3) and (4) and 76R(2), as if the amending Act had not been enacted.
- (3) The *Planning and Environment Court Act 2016*, part 5, with any changes the court considers appropriate, applies to the appeal as if the appeal were a Planning Act appeal under that Act.

Division 11 Transitional provisions for Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019

Subdivision 1 Preliminary

266 Definitions for division

In this division—

amendment Act means the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019*.

former, for a provision of this Act, means the provision as in force before the commencement of the provision in which the term is used.

new, for a provision of this Act, means the provision as in force on the commencement of the provision in which the term is used.

Subdivision 2 Provisions for amendments commencing on assent

267 Application of new section 165

Section 165(3) does not apply in relation to fisheries resources seized under this Act before the commencement.

268 Orders under former section 174

- (1) This section applies if—
 - (a) before the commencement, the chief executive made an application to the District Court for an order under former section 174; and
 - (b) at the commencement, the application has not been decided.
- (2) The District Court may continue to hear and decide the application under former section 174 as if the amendment Act had not been enacted.

269 Orders under new section 174

- (1) A court convicting a person of a serious fisheries offence may make an order under new section 174 in relation to the person only if the offence was committed after the commencement.
- (2) Subsection (1) does not prevent a court from considering serious fisheries offences committed by the person before the commencement for applying new section 174(1)(b).

270 Orders under new section 174A

Section 174A applies only to a person convicted of an offence against this Act committed after the commencement.

Subdivision 3 Provisions for amendments commencing by proclamation

271 Compensation for relevant amendments

- (1) Former part 5, division 1A continues to apply in relation to an amendment of a regulation or management plan happening before the commencement, as if the amendment Act had not been enacted.
- (2) New part 5, division 2 applies in relation to the making, amendment or repeal of a regulation, or a fisheries declaration or quota declaration other than an urgent declaration, happening after the commencement.
- (3) In this section—

management plan means a management plan in force under section 32 or 42 as in force before the commencement.

272 Existing emergency fisheries declaration

- (1) An existing emergency fisheries declaration is taken to be an urgent declaration made by the chief executive under section 38.
- (2) In this section—

existing emergency fisheries declaration means an emergency fisheries declaration—

 - (a) made by the chief executive under former section 46; and
 - (b) in force under this Act immediately before the commencement.

273 Application of new section 68AC

Section 68AC applies only in relation to an investigation under part 9 starting after the commencement.

274 Application of former section 68B

Former section 68B continues to apply in relation to a proceeding for an offence started before the commencement as if the amendment Act had not been enacted.

275 The fund

The Fisheries Research Fund continued in existence under former section 117(1) continues in existence as the Fisheries Fund under section 117(1).

276 Existing codes of practice

A code of practice under former section 119 for a declared fish habitat area is, from the commencement, taken to have been made under section 125A.

277 Existing review rights

- (1) This section applies if—
 - (a) immediately before the commencement, a person could have applied to QCAT for a review of a matter under former part 9; and
 - (b) at the commencement—
 - (i) the person has not applied for the review; and
 - (ii) the period within which the person may apply for the review has not ended.
- (2) The person may apply for the review, and QCAT may hear and decide the review, under former part 9 as if the amendment Act had not been enacted.

278 Existing reviews

- (1) This section applies to a review started under former part 9 before the commencement that has not been decided at the commencement.
- (2) QCAT may continue to hear, and decide, the review under former part 9 as if the amendment Act had not been enacted.

Schedule 1 Dictionary

section 4

abalone means a mollusc of the genus *Haliotis*.

accepted development requirements see section 32.

affected person, for part 10, see section 187.

amending Act, for part 12, division 4, see section 240.

approved form means a form approved by the chief executive under section 221A.

approved harvest strategy means a harvest strategy approved by the Minister under section 16.

approved harvest strategy policy, for part 2, division 1, see section 15.

approved vessel tracking equipment, for a boat, means vessel tracking equipment—

- (a) of a kind approved by the chief executive and published on the department's website; and
- (b) whose serial number or other identifying details have been given to, and recorded by, the chief executive for the boat.

aquaculture means the cultivation of live fisheries resources for sale other than in circumstances prescribed by 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).

assessable development means development categorised as assessable development under the Planning Act.

assessment manager means an assessment manager under the Planning Act.

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

authorising declaration see section 39(2).

authority means a licence, permit, quota authority, resource allocation authority or other authority issued, and in force, under this Act.

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.

body-worn camera means a device—

- (a) worn on clothing or otherwise secured on a person; and
- (b) designed to be used to—
 - (i) record images; or
 - (ii) record images and sounds.

building work see the Planning Act, schedule 2.

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.

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

commercial quantity, for part 5, division 4, subdivision 2, see section 89.

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, and includes a Joint Authority arrangement, and includes, in each case, the arrangement as varied.

Note—

Part 7 deals with Commonwealth–State fisheries management arrangements.

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 made by the chief executive under part 5, division 1.

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

Note—

Section 120 deals with declaration of fish habitat areas.

development application means a development application under the Planning Act.

development approval means a development approval under the Planning Act.

development permit means a development permit under the Planning Act.

drainage feature means a drainage feature within the meaning given by the *Water Act 2000*, schedule 4, definition *drainage feature*, paragraph (b).

electronic document means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

eligible authority, for part 5, division 2, see section 43(1)(a).

engages in a trafficking activity, for part 5, division 4, subdivision 2, see section 89B.

entitlement, for the holder of an authority, means the things that, under section 52, the holder is authorised to do as the holder of the authority.

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

environmental offset see the *Environmental Offsets Act 2014*, section 7(2).

environmental offset condition means a condition of a development approval that requires or otherwise relates to an environmental offset.

executive officer, for a corporation, means a person who is concerned with, or takes part in, its management, whether or not the person is a director or the person's position is given the name of executive officer.

fee includes a charge or tax.

fish see section 5.

fisheries declaration see section 33(1).

fisheries development means development that relates to aquaculture, fisheries resources, fish habitat or waterway barrier works.

fisheries development approval means a development approval for fisheries development if the chief executive, or the chief executive of the department in which the Planning Act is administered, was the assessment manager or a referral agency under that Act for the application for the approval.

fisheries legislation includes—

- (a) this Act or a former Act; and
- (b) the Commonwealth Fisheries Act or the *Fisheries Act 1952* (Cwlth); and
- (c) the *Marine Parks Act 2004* 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 by regulation.

fisheries offence means an offence against—

- (a) fisheries legislation; or
- (b) the Planning Act, if the offence relates to fisheries development.

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.

fishing sector means a part of the fishing industry representing—

- (a) commercial fishing; or
(b) charter fishing; or
(c) recreational fishing; or
(d) indigenous fishing.

fish movement exemption notice, in relation to a development application for the construction or raising of a waterway barrier works, means a written notice stating the applicant is not required to ensure the waterway barrier works adequately provides for the movement of fish across the barrier.

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.

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*.

harvest strategy means a harvest strategy prepared under part 2, division 1.

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.

indigenous fisheries resources means fisheries resources—

- (a) in relation to a particular area—
(i) spawned, born or grown, other than by aquaculture, in the area; and

- (ii) belonging to a species of fisheries resources native to the area; or
- (b) without reference to a particular area—
 - (i) spawned, born or grown, other than by aquaculture, in Queensland; and
 - (ii) belonging to a species of fisheries resources native to Queensland.

indigenous fishing means fishing conducted by Aboriginal people or Torres Strait Islanders.

information notice, for a decision, means a written notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may ask for a review of the decision under this Act;
- (d) how, and the period within which, the review may be started.

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

internal review, for part 10, see section 187.

internal review decision, for part 10, see section 187.

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, whether or not it is also made with another State.

Note—

Part 7 deals with Commonwealth–State fisheries management arrangements.

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.

marine plant see section 8.

material change of use see the Planning Act, schedule 2.

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 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 by regulation.

netting material includes material of any type formed into mesh.

non-indigenous fisheries resources means fisheries resources that—

- (a) in relation to a particular area—do not fall in the category mentioned in this schedule, definition *indigenous fisheries resources*, paragraph (a); or
- (b) without reference to a particular area—do not fall in the category mentioned in this schedule, definition *indigenous fisheries resources*, paragraph (b).

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

noxious substance means anything that—

- (a) is harmful, or produces conditions that are harmful, to fisheries resources or fish habitats; or
- (b) is prescribed by regulation or declared by a declaration 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.

offence against this Act, other than for sections 220 to 220B, includes an offence against the Planning Act so far as it relates to fisheries development.

operational work see the Planning Act, schedule 2.

original decision, for part 10, see section 187.

owner, for a thing that has been seized under this Act means—

- (a) if the chief executive is aware of the actual owner of the thing immediately before the seizure—the actual owner; or
- (b) otherwise—a person who would be entitled to possession of the thing had it not been seized.

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.

Planning Act means the *Planning Act 2016*.

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.

prescribed aquaculture development see section 76A(b).

prescribed declared fish habitat area development see section 76A(a).

priority fish, for part 5, division 4, subdivision 2, see section 89A.

public notice, for part 2, division 1, see section 15.

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.

QCAT information notice, for part 10, see section 187.

quota authority means a quota authority issued by the chief executive under this Act.

quota declaration see section 37(1).

quota entitlement, for an authority, means a quota applying to the entitlement to take fisheries resources under the authority for a fishery or part of a fishery.

reallocation decision see section 27(2).

recreational limit, for part 5, division 4, subdivision 2, see section 89.

register, when used as a noun, means the register the chief executive keeps under section 73(1).

registered interest, in an authority, means an interest in the authority that is noted on the register.

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

regulated fish declaration see section 34.

regulated fishing apparatus declaration see section 36(1).

regulated fishing method declaration see section 36(2).

regulated waters declaration see section 35(1).

release includes place.

relevant amendment, for part 5, division 2, see section 43(1)(b).

relevant authority, for part 12, division 4, see section 240.

renew an authority (other than a permit) includes the renewal of a former authority made because of an application under section 56(2).

resource allocation authority means a resource allocation authority issued, and in force, under part 5, division 3, subdivision 2A.

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—

- (a) an offence against any of the following provisions—

- (i) section 77(1) or (2);
 - (ii) section 78;
 - (iii) section 79;
 - (iv) section 79A;
 - (v) section 80;
 - (vi) section 81(1);
 - (vii) section 82;
 - (viii) section 89C;
 - (ix) section 90(1);
 - (x) section 118(4);
 - (xi) section 176(1);
 - (xii) section 182(1); or
- (b) an offence against section 219(2) committed by a person acting under an authority in relation to a provision mentioned in paragraph (a); or
- (c) another fisheries offence prescribed by regulation to be a serious fisheries offence.

shark control program see section 3A(4).

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

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.

temporary transfer see section 65C(1).

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

total quota entitlement, for a fishery or part of a fishery, means the maximum combined quota entitlements for all authorities for the fishery or part.

trade or commerce includes—

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

transfer, of an authority, includes—

- (a) transfer by a joint holder of the authority, of all or part of the holder's interest in the authority, to the other joint holders of the authority; and
- (b) if the authority is a quota authority relating to another authority—transfer by the holder of the quota authority, from the authority to which it relates, to another authority held by the same holder.

unallocated tidal land means tidal land that is unallocated State land under the *Land Act 1994*, schedule 6.

unamended Act, for part 12, division 4, see section 240.

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

urgent declaration see section 38.

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

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

watercourse see the *Water Act 2000*, schedule 4.

waterway includes a river, creek, stream, watercourse, drainage feature or inlet of the sea.

waterway barrier works means a dam, weir or other barrier across a waterway if the barrier limits fish stock access and movement along a waterway.