



Queensland

# **Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019**

**Act No. 6 of 2019**

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**An Act to amend the Fisheries Act 1994, the Public Interest Disclosure Act 2010 and the Transport Operations (Marine Safety) Act 1994 for particular purposes**

**[Assented to 7 March 2019]**





Queensland

# Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	9
2	Commencement . . . . .	9
<b>Part 2</b>	<b>Amendment of Fisheries Act 1994</b>	
<b>Division 1</b>	<b>Preliminary</b>	
3	Act amended . . . . .	9
<b>Division 2</b>	<b>Amendments commencing on assent</b>	
4	Insertion of new pt 8, div 1A . . . . .	10
	Division 1A Preliminary	
	139A Reference to document includes reference to reproductions from electronic document . . . . .	10
5	Amendment of s 140A (Functions of inspectors) . . . . .	10
6	Amendment of s 144 (Production or display of inspector's identity card) . . . . .	11
7	Amendment of s 145 (Entry to places) . . . . .	11
8	Insertion of new s 145A . . . . .	11
	145A Entry of premises used for trade or commerce . . . . .	11
9	Replacement of s 146 (Boarding of boats and entry of vehicles)	12
	146 Boarding of boats and entry of vehicles generally . . . . .	12
	146A Exercise of power to board boat or enter vehicle . . . . .	14
10	Amendment of s 148 (Warrants) . . . . .	14
11	Amendment of s 148A (Monitoring warrants for abalone) . . . . .	15
12	Insertion of new s 148B . . . . .	15
	148B Monitoring warrants for marine plants or fish habitat . . . . .	15
13	Replacement of s 149 (Warrants—applications made other than in person) . . . . .	17

Contents

---

	149	Electronic application	17
	149A	Additional procedure if electronic application	18
	149B	Defect in relation to a warrant	20
14		Amendment of s 150 (Inspector’s general powers for places, boats and vehicles)	20
15		Insertion of new ss 150A–150C	21
	150A	No tampering with marked or sealed container or thing	21
	150B	Requirement to comply with help requirement	22
	150C	Requirement to take required action	22
16		Amendment of s 165 (Where and how to start appeal)	22
17		Amendment of s 173 (Power to require production of documents)	23
18		Insertion of new ss 173A and 173B	23
	173A	Power relating to fishing apparatus in water	23
	173B	Additional power of police officer for executing warrant	24
19		Insertion of new pt 8, div 4A	25
	Division 4A	Obtaining criminal history reports	
	173C	Purpose of division	25
	173D	Definitions for division	26
	173E	Chief executive may obtain criminal history report	26
20		Replacement of s 174 (Restraining orders against persistent offenders)	27
	174	Orders against persistent offenders	27
	174A	Recovery of particular costs of investigation	28
21		Insertion of new s 181A	29
	181A	Use of body-worn cameras	29
22		Insertion of new s 216A	30
	216A	Immunity from prosecution	30
23		Replacement of s 217A (Authority to disclose personal information)	30
	217A	Exchange of information with prescribed government entity	30
	217B	Confidentiality of information	31
24		Insertion of new ss 222 and 222A	33
	222	Delegations	33
	222A	Electronic notices for authority holders	34
25		Insertion of new pt 12, div 11	34
	Division 11	Transitional provisions for Fisheries (Sustainable	

	Fisheries Strategy) Amendment Act 2019	
	Subdivision 1	Preliminary
	266	Definitions for division . . . . . 35
	Subdivision 2	Provisions for amendments commencing on assent
	267	Application of new section 165 . . . . . 35
	268	Orders under former section 174 . . . . . 35
	269	Orders under new section 174 . . . . . 36
	270	Orders under new section 174A . . . . . 36
26		Amendment of schedule (Dictionary) . . . . . 36
<b>Division 3</b>	<b>Amendments commencing by proclamation</b>	
27		Amendment of s 3 (Particular purposes of Act) . . . . . 38
28		Amendment of s 3A (How particular purposes are to be primarily achieved) . . . . . 38
29		Amendment of s 4 (Definitions) . . . . . 39
30		Omission of s 9 (Meaning of quota) . . . . . 39
31		Replacement of pts 2 and 3 . . . . . 39
	Part 2	Functions of Minister
	Division 1	Harvest strategies
	Subdivision 1	Preliminary
	15	Definitions for division . . . . . 39
	Subdivision 2	Harvest strategy
	16	Approval of harvest strategy . . . . . 40
	17	Preparation and notice of draft harvest strategy . . . . 41
	18	Preparation and submission of final harvest strategy 41
	19	Content of harvest strategy . . . . . 42
	Subdivision 3	Amendment of harvest strategy
	20	Amendment of harvest strategy . . . . . 43
	21	Preparation and notice of draft amendment . . . . . 44
	22	Preparation and submission of final amendment . . . . 45
	Subdivision 4	Implementation of harvest strategy
	23	Action under Act must be consistent with harvest strategy . . . . . 46
	24	Ministerial direction about action inconsistent with harvest strategy . . . . . 46
	Subdivision 5	Reviews relating to harvest strategy
	25	Assessment of performance of fishery . . . . . 47

Contents

---

	26	Review of harvest strategy .....	48
	Division 2	Resource reallocation	
	27	Reallocation decision .....	49
	28	Chief executive to implement reallocation decision ..	50
	Division 3	Ministerial advisory bodies	
	29	Minister may establish advisory bodies .....	51
	Part 3	Shark control program	
	30	Management of shark control program .....	51
	31	Exclusion zone .....	51
32		Renumbering of s 23 (Accepted development requirements for Planning Act) .....	52
33		Replacement of pt 5, divs 1–2 .....	52
	Division 1	Chief executive declarations	
	Subdivision 1	Fisheries declarations	
	33	Power to make declarations .....	53
	34	Regulated fish declaration .....	53
	35	Regulated waters declaration .....	54
	36	Other fisheries declarations .....	54
	Subdivision 2	Quota declarations	
	37	Quota declaration .....	54
	Subdivision 3	Other declarations	
	38	Urgent declaration .....	55
	39	Authorising declaration .....	55
	40	Making urgent declaration or authorising declaration	56
	41	Duration of urgent declaration or authorising declaration	57
	Subdivision 4	Relationships between regulations and declarations	
	42	Relationships between regulations and declarations	58
	Division 2	Compensation for particular regulatory amendment	
	Subdivision 1	Right to compensation in particular circumstances	
	43	Right to compensation .....	59
	44	Limits to compensation payable .....	60
	45	No general right to compensation .....	61
	Subdivision 2	Claiming and payment of compensation	
	46	Application of subdivision .....	61
	47	Requirements for making claim .....	61
	48	Chief executive may require claimant to give further	

	information . . . . .	62
48A	Deciding claim . . . . .	63
48B	Chief executive may obtain information or evidence from other persons . . . . .	63
48C	Amount of compensation that may be decided . . . . .	64
48D	Restriction on payment if someone other than the claimant has a registered interest in the eligible authority . . . . .	66
34	Replacement of s 49 (Authorities that may be issued under Act)	66
	49 Authorities that may be issued . . . . .	66
35	Amendment of s 52 (Things authorised by authorities) . . . . .	67
36	Amendment of s 55 (Consideration of application for issue of authority) . . . . .	67
37	Amendment of s 58 (Consideration of application for renewal of authority (other than permit)) . . . . .	67
38	Amendment of s 61 (Conditions imposed on issue or renewal—general) . . . . .	67
39	Amendment of s 63 (Amendment of authority) . . . . .	68
40	Amendment of s 65 (Transfer of authority (other than permit)) . . . . .	68
41	Amendment of s 65C (Temporary transfers) . . . . .	69
42	Amendment of s 65D (Effect of temporary transfer) . . . . .	69
43	Insertion of new s 68AC . . . . .	69
	68AC Suspension of quota entitlement for investigation . . . . .	69
44	Amendment of s 68B (Suspension or cancellation of authority by court) . . . . .	71
45	Insertion of new s 68C . . . . .	72
	68C Effect of suspension on entitlement . . . . .	72
46	Amendment of s 69A (Effect of suspension on issue or transfer of another authority) . . . . .	72
47	Amendment of s 69B (Further fees continue to be payable for suspended authority) . . . . .	73
48	Insertion of new pt 5, div 4, sdiv 1 hdg . . . . .	73
49	Amendment of s 77A (Exemptions for contravention of regulated fishing apparatus declaration) . . . . .	73
50	Replacement of s 79 (Quota offences) . . . . .	74
	79 Quota offences . . . . .	74
51	Insertion of new s 80 . . . . .	74
	80 Vessel tracking . . . . .	74
52	Amendment of s 82 (Offence to do prescribed act) . . . . .	76

Contents

---

53	Amendment of s 87 (Interference etc. with aquaculture activity or fishing apparatus) . . . . .	76
54	Insertion of new pt 5, div 4, sdiv 2 . . . . .	76
	Subdivision 2     Trafficking in priority fish	
	89         Definitions for subdivision . . . . .	76
	89A        Meaning of priority fish . . . . .	77
	89B        When a person engages in a trafficking activity for priority fish . . . . .	78
	89C        Offence to engage in trafficking activity for priority fish . . . . .	79
55	Replacement of s 90 (Non-indigenous fisheries resources not to be possessed, released etc.) . . . . .	79
	90         Non-indigenous fisheries resources not to be released . . . . .	80
56	Replacement of s 92 (Duty of person who takes or possesses non-indigenous fisheries resources) . . . . .	80
	92         Duty of person who unlawfully takes or possesses non-indigenous plants . . . . .	80
57	Amendment of pt 5, div 9 hdg (Fisheries Research Fund) . . . . .	80
58	Amendment of s 117 (Fisheries Research Fund) . . . . .	81
59	Amendment of s 118 (Information requirements) . . . . .	81
60	Omission of s 119 (Codes of practice) . . . . .	83
61	Insertion of new s 125A . . . . .	83
	125A       Codes of practice . . . . .	83
62	Amendment of s 184 (Evidentiary provisions) . . . . .	84
63	Replacement of pt 9 (Review of decisions by QCAT) . . . . .	84
	Part 9        Interstate agreements	
	185         Power to enter into agreements . . . . .	84
	186         Reciprocal powers . . . . .	85
	Part 10       Review of decisions	
	Division 1     Preliminary	
	187         Definitions for part . . . . .	86
	Division 2     Internal review	
	188         Review process must start with internal review . . . . .	87
	189         Who may apply for internal review . . . . .	88
	190         Requirements for application . . . . .	88
	191         Internal review . . . . .	89
	Division 3     External review	
	192         Applying for external review . . . . .	90



64	Replacement of s 220 (Start of offence proceedings) . . . . .	90
	220 Summary offences and indictable offences . . . . .	90
	220A Proceedings for summary offences . . . . .	90
	220B Proceedings for indictable offences . . . . .	91
65	Amendment of s 223 (Regulation-making power) . . . . .	92
66	Insertion of new pt 12, div 11, sdiv 3 . . . . .	92
	Subdivision 3 Provisions for amendments commencing by proclamation	
	271 Compensation for relevant amendments . . . . .	92
	272 Existing emergency fisheries declaration . . . . .	93
	273 Application of new section 68AC . . . . .	93
	274 Application of former section 68B . . . . .	93
	275 The fund . . . . .	94
	276 Existing codes of practice . . . . .	94
	277 Existing review rights . . . . .	94
	278 Existing reviews . . . . .	94
67	Amendment and numbering of the schedule (Dictionary) . . . . .	95
<b>Part 3</b>	<b>Amendment of other Acts</b>	
<b>Division 1</b>	<b>Amendment of Public Interest Disclosure Act 2010</b>	
68	Act amended . . . . .	99
69	Amendment of sch 2 (Offences or contraventions endangering the environment) . . . . .	99
<b>Division 2</b>	<b>Amendment of Transport Operations (Marine Safety) Act 1994</b>	
70	Act amended . . . . .	99
71	Amendment of s 186A (Chief executive (fisheries) must disclose information) . . . . .	99
<b>Schedule 1</b>	<b>Minor and consequential amendments of Fisheries Act 1994</b>	101



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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019*.

### **2 Commencement**

The following provisions commence on a day to be fixed by proclamation—

- (a) part 2, division 3;
- (b) part 3, division 1;
- (c) section 71(2);
- (d) schedule 1.

## **Part 2 Amendment of Fisheries Act 1994**

### **Division 1 Preliminary**

#### **3 Act amended**

This part and schedule 1 amend the *Fisheries Act 1994*.

[s 4]

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## **Division 2                      Amendments commencing on assent**

### **4                      Insertion of new pt 8, div 1A**

Part 8, before division 1—

*insert—*

#### **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.

### **5                      Amendment of s 140A (Functions of inspectors)**

Section 140A, from ‘inspections’—

*omit, insert—*

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.

**6 Amendment of s 144 (Production or display of inspector's identity card)**

Section 144—

*insert—*

- (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.

**7 Amendment of s 145 (Entry to places)**

Section 145(1)—

*insert—*

- (f) it is premises used for trade or commerce and the entry is made under section 145A.

**8 Insertion of new s 145A**

After section 145—

*insert—*

**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

[s 9]

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- (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.

## **9 Replacement of s 146 (Boarding of boats and entry of vehicles)**

Section 146—

*omit, insert—*

### **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.





*omit, insert—*

a stated inspector or any inspector may, with necessary and reasonable help and force, enter the place, board the boat or enter the vehicle

## 11 Amendment of s 148A (Monitoring warrants for abalone)

(1) Section 148A, after ‘abalone’—

*insert—*

or commercial fish

(2) Section 148A(4), after ‘the inspector’—

*insert—*

or another inspector

(3) Section 148A—

*insert—*

(6) In this section—

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

## 12 Insertion of new s 148B

After section 148A—

*insert—*

### **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—

[s 12]

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- (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.

### **13 Replacement of s 149 (Warrants—applications made other than in person)**

Section 149—

*omit, insert—*

#### **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

[s 13]

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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

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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.

[s 14]

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(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).

#### **14 Amendment of s 150 (Inspector's general powers for places, boats and vehicles)**

(1) Section 150(1)—

*insert—*

(fa) 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

(2) Section 150(1)(h) and (i) and (8), 'to (g)'—

*omit, insert—*

to (h)

- (3) Section 150(1)(j) and (9), ‘(8)’—

*omit, insert—*

(5)

- (4) Section 150(1)(fa) to (j)—

*renumber* as section 150(1)(g) to (k).

- (5) Section 150(2) to (5)—

*omit.*

- (6) Section 150—

*insert—*

- (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.

- (7) Section 150(6) and (7), ‘subsection (1)(i)’—

*omit, insert—*

subsection (1)(j)

- (8) Section 150(6) to (9)—

*renumber* as section 150(3) to (6).

## 15 Insertion of new ss 150A–150C

After section 150—

*insert—*

### **150A No tampering with marked or sealed container or thing**

A person must not unlawfully break, remove or

[s 16]

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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.

## **16 Amendment of s 165 (Where and how to start appeal)**

- (1) Section 165—

*insert—*



(2A) Also, the person may not appeal if the fisheries resources are returned to the wild under section 159(2).

(2) Section 165(4), ‘subsection (3)(b)’—

*omit, insert—*

subsection (4)(b)

(3) Section 165(2A) to (5)—

*renumber* as section 165(3) to (6).

## **17 Amendment of s 173 (Power to require production of documents)**

(1) Section 173(1)—

*insert—*

(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) Section 173—

*insert—*

(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.

## **18 Insertion of new ss 173A and 173B**

Part 8, division 4—

*insert—*

### **173A Power relating to fishing apparatus in water**

(1) This section applies if an inspector suspects, on reasonable grounds, that an offence against this

[s 18]

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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.

## 19 Insertion of new pt 8, div 4A

Part 8—

*insert—*

### **Division 4A      Obtaining criminal history reports**

#### **173CPurpose 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.

## 20 Replacement of s 174 (Restraining orders against persistent offenders)

Section 174—

*omit, insert—*

### 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

[s 20]

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- (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.

## 21 Insertion of new s 181A

After section 181—

*insert—*

### **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.

[s 22]

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- (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).

## 22 Insertion of new s 216A

After section 216—

*insert—*

### **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.

## 23 Replacement of s 217A (Authority to disclose personal information)

Section 217A—

*omit, insert—*

### **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—
    - (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—

[s 23]

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- (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.
- (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*.

## 24 Insertion of new ss 222 and 222A

After section 221A—

*insert—*

### **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

[s 25]

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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*.

## **25 Insertion of new pt 12, div 11**

Part 12—

*insert—*

### **Division 11**

### **Transitional provisions for Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019**

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## 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

[s 26]

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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.

## **26 Amendment of schedule (Dictionary)**

- (1) Schedule, definition *serious fisheries offence*—  
*omit.*
- (2) Schedule—  
*insert—*

***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.

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

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

***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.

(3) Schedule, definition *waterway*, after ‘watercourse’—

*insert—*

, drainage feature

[s 27]

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## **Division 3                      Amendments commencing by proclamation**

### **27            Amendment of s 3 (Particular purposes of Act)**

Section 3(2), after ‘circumstances’—

*insert—*

, 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

### **28            Amendment of s 3A (How particular purposes are to be primarily achieved)**

(1) Section 3A(1)—

*omit, insert—*

- (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.
- (1A) 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.



- (2) Section 3A(1A) to (3)—  
*renumber* as section 3A(2) to (4).

**29 Amendment of s 4 (Definitions)**

Section 4, ‘the schedule’—  
*omit, insert*—  
schedule 1

**30 Omission of s 9 (Meaning of *quota*)**

Section 9—  
*omit.*

**31 Replacement of pts 2 and 3**

Parts 2 and 3—  
*omit, insert*—

**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.

[s 31]

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*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

[s 31]

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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

[s 31]

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- (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.

[s 31]

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- (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.

[s 31]

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- (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—

[s 31]

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- (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—

[s 32]

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- (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.

**32 Renumbering of s 23 (Accepted development requirements for Planning Act)**

Section 23—

*renumber* as section 32.

**33 Replacement of pt 5, divs 1–2**

Part 5, divisions 1 to 2—

*omit, insert*—

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## 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

[s 33]

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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

[s 33]

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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.

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## **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

[s 33]

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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

[s 33]

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- (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.

[s 33]

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- (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.

[s 34]

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*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.

**34 Replacement of s 49 (Authorities that may be issued under Act)**

Section 49—

*omit, insert—*

**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.

**35 Amendment of s 52 (Things authorised by authorities)**

Section 52(1) and (2), ‘management plan’—

*omit, insert*—

declaration

**36 Amendment of s 55 (Consideration of application for issue of authority)**

Section 55(2), ‘management plan’—

*omit, insert*—

declaration

**37 Amendment of s 58 (Consideration of application for renewal of authority (other than permit))**

Section 58(2), ‘management plan’—

*omit, insert*—

declaration

**38 Amendment of s 61 (Conditions imposed on issue or renewal—general)**

(1) Section 61(1)(a)—

*omit, insert*—

(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

(2) Section 61(1)(d)—

*omit.*

(3) Section 61(3)—

*omit, insert*—

[s 39]

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- (3) In fixing a quota entitlement for an authority, the chief executive must comply with any relevant regulation or declaration.
- (3A) 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.
- (4) Section 61(9), from ‘subsection (8)’ to ‘or management plan’—  
*omit, insert—*  
subsection (9) does not prevent a regulation
- (5) Section 61(3A) to (9)—  
*renumber* as section 61(4) to (10).

**39 Amendment of s 63 (Amendment of authority)**

Section 63(4)(e)—  
*omit.*

**40 Amendment of s 65 (Transfer of authority (other than permit))**

- (1) Section 65(1), ‘or management plan’—  
*omit.*
- (2) Section 65(2)—  
*renumber* as section 65(3).
- (3) Section 65—  
*insert—*
  - (2) A transfer, or purported transfer, of an authority is of no effect unless the transfer is registered under section 65B.

---

**41 Amendment of s 65C (Temporary transfers)**

(1) Section 65C(2)(a)—

*omit, insert—*

- (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.

(2) Section 65C(2)(ca)—

*omit.*

**42 Amendment of s 65D (Effect of temporary transfer)**

(1) Section 65D(2)(b), ‘management plan’—

*omit, insert—*

declaration

(2) Section 65D(6)(c), ‘temporary quota transfer’—

*omit, insert—*

temporary transfer of a quota authority

**43 Insertion of new s 68AC**

After section 68AB—

*insert—*

**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

[s 43]

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- 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.

**44 Amendment of s 68B (Suspension or cancellation of authority by court)**

- (1) Section 68B(2), ‘and any quota relating to the authority’—  
*omit.*
- (2) Section 68B(3)—  
*omit.*
- (3) Section 68B(4)(b)(i), ‘under a regulation or a management plan’—  
*omit, insert—*  
by regulation
- (4) Section 68B(7), ‘or management plan’—  
*omit.*

[s 45]

---

- (5) Section 68B(4) to (7)—  
*renumber* as section 68B(3) to (6).

**45 Insertion of new s 68C**

After section 68B—

*insert—*

**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).

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

Section 69A—

*insert—*

- (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.

**47 Amendment of s 69B (Further fees continue to be payable for suspended authority)**

- (1) Section 69B, heading, ‘for suspended authority’—

*omit, insert—*

**despite suspension**

- (2) Section 69B(1), after ‘authority’—

*insert—*

, or a quota entitlement for a quota authority,

- (3) Section 69B(2), after ‘authority’—

*insert—*

or quota authority to which the suspended quota entitlement applies

- (4) Section 69B(3), after ‘authority’—

*insert—*

, or quota authority to which the suspended quota entitlement applies,

**48 Insertion of new pt 5, div 4, sdiv 1 hdg**

Before section 77—

*insert—*

**Subdivision 1 Fisheries management generally**

**49 Amendment of s 77A (Exemptions for contravention of regulated fishing apparatus declaration)**

- (1) Section 77A(1)(d), ‘under a regulation or management plan’—

*omit, insert—*

by regulation or declared by a declaration

[s 50]

---

(2) Section 77A—

*insert—*

(4) In this section—

*stowed and secured* has the meaning prescribed by regulation.

## 50 Replacement of s 79 (Quota offences)

Section 79—

*omit, insert—*

### 79 Quota offences

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

Maximum penalty—2,000 penalty units.

## 51 Insertion of new s 80

After section 79A—

*insert—*

### 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.

[s 52]

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**52 Amendment of s 82 (Offence to do prescribed act)**

Section 82, ‘under a regulation or management plan’—

*omit, insert*—

by regulation or declared by a declaration

**53 Amendment of s 87 (Interference etc. with aquaculture activity or fishing apparatus)**

Section 87(2), definition *interfere with*, paragraph (b)—

*omit, insert*—

(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.

**54 Insertion of new pt 5, div 4, sdiv 2**

After section 88B—

*insert*—

**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,

[s 54]

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- 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.

## **55 Replacement of s 90 (Non-indigenous fisheries resources not to be possessed, released etc.)**

Section 90—

[s 56]

---

*omit, insert—*

**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.

**56 Replacement of s 92 (Duty of person who takes or possesses non-indigenous fisheries resources)**

Section 92—

*omit, insert—*

**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.

**57 Amendment of pt 5, div 9 hdg (Fisheries Research Fund)**

Part 5, division 9, heading, ‘Research’—

*omit.*

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**58 Amendment of s 117 (Fisheries Research Fund)**

- (1) Section 117, heading, ‘Research’—  
*omit.*
- (2) Section 117(1)—  
*omit, insert—*
  - (1) The Fisheries Fund (the *fund*) is continued in existence.
- (3) Section 117(5)(a), ‘training of persons,’—  
*omit.*
- (4) Section 117(5)(b)—  
*omit.*
- (5) Section 117(5)(c)—  
*renumber* as section 117(5)(b).

**59 Amendment of s 118 (Information requirements)**

- (1) Section 118(1), ‘management plan’—  
*omit, insert—*

declaration
- (2) Section 118(1)(a), from ‘about’—  
*omit, insert—*

about a fisheries matter; or
- (3) Section 118(1)(b), examples of another stated way, second and third dot points—  
*omit, insert—*
  - by the approved vessel tracking equipment for a boat
  - by recording the information on the department’s website

[s 59]

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- by using an electronic logbook provided by the chief executive
- (4) Section 118(4), penalty, ‘for subsection (4)’—  
*omit.*
- (5) Section 118—  
*insert—*
- (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*

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*and Biodiversity Conservation Act 1999*  
(Cwlth).

**60 Omission of s 119 (Codes of practice)**

Section 119—

*omit.*

**61 Insertion of new s 125A**

Part 6—

*insert—*

**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.

[s 62]

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## **62 Amendment of s 184 (Evidentiary provisions)**

(1) Section 184(4)(a)—

*insert—*

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

(2) Section 184(5), from ‘equipment prescribed’ to ‘position’—

*omit, insert—*

stated equipment to retrieve data, sent from the approved vessel tracking equipment for a stated boat, that recorded the equipment’s position

(3) Section 184(6), example, from ‘, being’ to ‘position’—

*omit, insert—*

retrieved data, sent from the approved vessel tracking equipment for XYZ boat, that recorded the equipment’s position

(4) Section 184(8)—

*omit.*

## **63 Replacement of pt 9 (Review of decisions by QCAT)**

Part 9—

*omit, insert—*

### **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—

[s 63]

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- (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

[s 64]

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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.

## **64      Replacement of s 220 (Start of offence proceedings)**

Section 220—

*omit, insert—*

### **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).

[s 65]

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## **65 Amendment of s 223 (Regulation-making power)**

(1) Section 223(2)(a) to (d)—

*renumber* as section 223(2)(c) to (f).

(2) Section 223(2)—

*insert*—

(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.

## **66 Insertion of new pt 12, div 11, sdiv 3**

Part 12, division 11 as inserted by this Act—

*insert*—

### **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.

## 67 Amendment and numbering of the schedule (Dictionary)

- (1) Schedule, definitions *authority*, *declaration*, *eligible authority*, *emergency fisheries declaration*, *fisheries declaration*, *information notice*, *management plan*, *quota*, *regulated fish declaration*, *regulated fishing apparatus declaration*, *regulated fishing method declaration*, *regulated waters declaration*, *relevant amendment*, *stowed and secured*, *temporary quota transfer*, *tribunal* and *VMS equipment*—

*omit.*

- (2) Schedule—

*insert—*

***affected person***, for part 10, see section 187.

***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.

***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.

[s 67]

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

**declaration** means a declaration made by the chief executive under part 5, division 1.

**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.

**fisheries declaration** see section 33(1).

**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.

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

**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.

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

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

***original decision***, for part 10, see section 187.

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

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

***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.

***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).

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

***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.

***urgent declaration*** see section 38.

[s 67]

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

- (3) Schedule, definition *accepted development requirements*, ‘section 23’—

*omit, insert—*

section 32

- (4) Schedule, definition *noxious substance*, paragraph (b), ‘under a regulation or management plan’—

*omit, insert—*

by regulation or declared by a declaration

- (5) Schedule, definition *offence against this Act*, ‘section 220’—

*omit, insert—*

sections 220 to 220B

- (6) Schedule, definition *shark control program*, ‘section 3A(3)’—

*omit, insert—*

section 3A(4)

- (7) Schedule, definition *transfer*, paragraph (b), after ‘quota’—

*insert—*

authority

- (8) Schedule—

*number* as schedule 1.

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## **Part 3                      Amendment of other Acts**

### **Division 1                      Amendment of Public Interest Disclosure Act 2010**

#### **68            Act amended**

This division amends the *Public Interest Disclosure Act 2010*.

#### **69            Amendment of sch 2 (Offences or contraventions endangering the environment)**

(1) Schedule 2, entry for *Fisheries Act 1994*, first dot point—

*omit, insert—*

- section 90 (Non-indigenous fisheries resources not to be released)

(2) Schedule 2, entry for *Fisheries Act 1994*, third dot point—

*omit, insert—*

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

### **Division 2                      Amendment of Transport Operations (Marine Safety) Act 1994**

#### **70            Act amended**

This division amends the *Transport Operations (Marine Safety) Act 1994*.

#### **71            Amendment of s 186A (Chief executive (fisheries) must disclose information)**

(1) Section 186A(3), ‘section 217A’—

*omit, insert—*

[s 71]

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section 217B

- (2) Section 186A(6), definition *relevant information*—  
*omit, insert—*

***relevant information*** means data sent from approved vessel tracking equipment, within the meaning of the *Fisheries Act 1994*, installed on a boat as required under section 80 of that Act.

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# Schedule 1      **Minor and consequential amendments of Fisheries Act 1994**

section 3

## 1      **Particular references to prescribed under a regulation**

Each of the following provisions is amended by omitting the words ‘under a regulation’ or ‘under the regulations’ and inserting the words ‘by regulation’—

- section 5(3)(d)
- section 7(i)
- section 54(1)(b)
- section 56(4)(b)
- section 65A(4)
- section 71(2)(b)
- section 73(4)
- section 74(3)(b)
- section 125(1)(b)(iv)
- section 130(1)(a)
- section 140(1)(d)
- section 218
- section 221(2)
- the following provisions of schedule 1, as numbered by this Act—
  - definition *aquaculture*
  - definition *fisheries legislation*, paragraph (d)(ii)
  - definition *net proceeds of sale*, paragraph (b).

## **2 Particular references to prescribed under a regulation or management plan**

Each of the following provisions is amended by omitting the words from ‘prescribed under’ to ‘management plan’ and inserting the words ‘prescribed by regulation’—

- section 8(1)(c)
- section 59(1), example 8
- section 62(1) and (2)
- section 70C(1)
- section 73(2) and (3)
- section 82
- section 154(1), definition *threshold percentage*.

## **3 Particular references to management plan**

Each of the following provisions is amended by omitting the words ‘or management plan’—

- section 57(4)
- section 59(1), example 10
- section 59(3)
- section 63(8)
- section 65E(2)(b)
- section 67(3)
- section 68(7) and (8)
- section 154(1), definitions *declared fisheries resources* and *forfeiture offence*.

## **4 Other particular references to management plan**

Each of the following provisions is amended by omitting the words ‘, management plans’ or ‘, management plan’—

- section 133(2)



- section 136(5)
- section 139(3).

**5 Section 14(3), definition *prescribed fishing apparatus*, paragraph (a), ‘under this Act’—**

*omit, insert—*

or declaration

**6 Section 14(3), definition *prescribed waters*, paragraph (a), ‘regulation under this Act’—**

*omit, insert—*

regulated waters declaration

**7 Section 62, heading, from ‘under’ to ‘plans’—**

*omit, insert—*

**by regulation**

**8 Section 65A(1)(b)(i) and (3), ‘temporary quota transfer’—**

*omit, insert—*

temporary transfer of a quota authority

**9 Section 145(4)—**

*omit.*