



Western Australia

## **Aquatic Resources Management Act 2016**

Compare between:

[15 Sep 2017, 00-b0-00] and [27 Feb 2018, 00-c0-00]





Western Australia

## **Aquatic Resources Management Act 2016**

**An Act to provide for —**

- **the ecologically sustainable development and management of the State's aquatic resources; and**
- **the development of strategies and plans for the conservation of aquatic resources and the protection of aquatic ecosystems; and**
- **the development and management of aquaculture that is compatible with the protection of aquatic ecosystems; and**
- **the management of aquatic biosecurity; and**
- **the repeal of the *Fish Resources Management Act 1994* and the *Pearling Act 1990*; and**
- **consequential amendments to various other written laws, and for incidental and related purposes.**

The Parliament of Western Australia enacts as follows:



## **Part 1 — Preliminary**

### **1. Short title**

This is the *Aquatic Resources Management Act 2016*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

*[3-8. Have not yet come into operation<sup>2</sup>.]*

*[Pt. 2-20. Have not yet come into operation<sup>2</sup>.]*

## Notes

- <sup>1</sup> This is a compilation of the *Aquatic Resources Management Act 2016* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Aquatic Resources Management Act 2016</i> s. 1 and 2	53 of 2016	29 Nov 2016	29 Nov 2016 (see s. 2(a))

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Aquatic Resources Management Act 2016</i> s. 3-8, Pt. 2-19 <sup>2</sup>	53 of 2016 <a href="#">(as amended by No. 8 of 2017 s. 8)</a>	29 Nov 2016	To be proclaimed (see s. 2(b))
<i>Aquatic Resources Legislation Amendment Act 2016</i> Pt. 2 <sup>3</sup>	40 of 2016	29 Nov 2016	Operative on commencement of the <i>Aquatic Resources Management Act 2016</i> s. 263 (see s. 2(b))
<del><i>Port Kennedy Development Act 2017</i> s. 8<sup>4</sup></del>	<del>8 of 2017</del>	<del>15 Sep 2017</del>	<del>To be proclaimed (see s. 2(b))</del>

- <sup>2</sup> On the date as at which this compilation was prepared the *Aquatic Resources Management Act 2016* s. 3-8 and Pt. ~~2-19~~ [\(as amended by No. 8 of 2017 s. 8\)](#) had not come into operation. They read as follows:

#### 3. Terms used

- (1) In this Act, unless the contrary intention appears —  
*Aboriginal body corporate* means —

- (a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth); or
- (b) an incorporated association under the *Associations Incorporation Act 2015* the membership of which is wholly or principally composed of Aboriginal persons;

**Aboriginal person** means a person who is wholly or partly descended from the original inhabitants of Australia;

**Abrolhos Islands reserve** means Reserve No. 20253 being a class A reserve for the purposes of the *Land Administration Act 1997*;

**approved** means approved by the CEO;

**aquaculture** means —

- (a) the keeping, breeding, hatching, culturing or harvesting of aquatic organisms; or
- (b) the culturing or harvesting of pearls;

**aquaculture gear** means any vessel, equipment, implement, device, apparatus or other thing used or designed for use for, or in connection with, aquaculture and includes —

- (a) gear used for navigational lighting or marking as a part of aquaculture safety; and
- (b) gear used to delineate the area of an aquaculture licence, temporary aquaculture permit or aquaculture lease;

**aquaculture lease** means a lease granted under section 88;

**aquaculture licence** means an aquaculture licence granted under section 77;

**aquatic eco-tourism** means tourism relating to aquatic organisms in their natural environment and includes the viewing and feeding of aquatic organisms but does not include the taking of aquatic organisms;

**aquatic environment**, subject to subsection (2), means organisms living in or adjacent to waters, their physical, biological and social surroundings, and interactions between all of those;

**aquatic habitat protection area** means an area set aside under section 117(1) as an aquatic habitat protection area;

**aquatic organism** means an organism of any species that lives in or adjacent to waters and —

- (a) includes —
  - (i) the eggs, spat, spawn, seeds, spores, fry, larva and other source of reproduction or offspring of an aquatic organism; and
  - (ii) a dead aquatic organism; and

- (iii) a part only of an aquatic organism including the shell or tail; and
  - (iv) live rock and live sand;
- but
- (b) does not include —
    - (i) an aquatic mammal; or
    - (ii) an aquatic reptile; or
    - (iii) an aquatic bird; or
    - (iv) an amphibian;

**aquatic resource** has the meaning given in section 4;

**aquatic resource management strategy (ARMS)**, in relation to a managed aquatic resource, means a strategy approved for the aquatic resource under section 20(1) as in force from time to time;

**aquatic resource use plan (ARUP)**, in relation to a managed aquatic resource, means a resource use plan made in respect of the aquatic resource under section 24(1) as in force from time to time;

**authorisation** means —

- (a) an aquaculture licence; or
- (b) a managed fishery licence; or
- (c) any other licence provided for in the regulations;

**bed**, in relation to any waters, means the land permanently or intermittently covered by the waters or the land over which the waters permanently or intermittently flow;

**boat** means a vessel, craft or floating platform of any description that is capable of use in or on water, whether floating or submersible;

**broodstock** means aquatic organisms taken or kept for breeding;

**CALM Act** means the *Conservation and Land Management Act 1984*;

**CALM Minister** means the Minister who administers the CALM Act;

**catch entitlement** means an entitlement registered under section 37(3), 38(3) or 47(4)(b);

**CEO** means the Chief Executive Officer of the Department;

**commercial fishing** means fishing for a commercial purpose and includes taking aquatic organisms for broodstock or other aquaculture purposes;

**commercial purpose** means the purpose of sale or any other purpose that is directed to gain or reward;

**Commonwealth Act** means the *Fisheries Management Act 1991* (Commonwealth);



**compliance officer** means a person designated as a compliance officer under section 159(1);

**customary fishing** means fishing by an Aboriginal person that —

- (a) is in accordance with the Aboriginal customary law and tradition of the area being fished; and
- (b) is for the purpose of satisfying personal, domestic, ceremonial, educational or other non-commercial communal needs;

**declared organism** has the meaning given in section 98;

**Department** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**disease** means —

- (a) a disease that is capable of having a detrimental effect on an animal or a plant and includes —
  - (i) a micro-organism; and
  - (ii) a disease agent; and
  - (iii) an infectious agent; and
  - (iv) a parasite at any stage of its life cycle;
- or
- (b) a genetic disorder of an animal or plant;

**document** includes a tape, a disk and any other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**engage** in conduct means —

- (a) do an act; or
- (b) omit to do an act;

**entitlement** means an entitlement that a person has from time to time under a managed fishery licence;

**exemption** means an exemption granted under section 7;

**export** means to take out of, or cause to be taken out of, Western Australia for any purpose;

**fishery** means —

- (a) one or more stocks or parts of stocks of aquatic organisms that can be treated as a unit for the purposes of conservation or management; or
- (b) a class of fishing activities in respect of those stocks or parts of stocks of aquatic organisms;

**fishing** or **fishing activity** means —

- (a) taking an aquatic organism in any way; or

- (b) searching for an aquatic organism, or any other activity that can reasonably be expected to result in taking the organism; or
- (c) any activity in support of, or in preparation for, any activity described in this definition;

***fishing boat*** means a boat that is used for commercial fishing;

***fishing gear*** means any equipment, implement, device, apparatus or other thing used or designed for use for, or in connection with, fishing;

***fishing period*** has the meaning given in section 16(1)(e);

***fishing tour*** means a tour that has a central purpose of providing an opportunity for recreational fishing and may include the provision of fishing guidance, fishing gear, accommodation or transport;

***foreign boat*** has the same meaning as in the Commonwealth Act section 4(1);

***honorary compliance officer*** means an honorary compliance officer appointed under section 160(1);

***managed aquatic resource*** means an aquatic resource that has been declared to be a managed aquatic resource under section 14;

***managed fishery*** means a fishery declared by a management plan to be a managed fishery;

***managed fishery licence***, in relation to a managed fishery, means a licence granted under section 54 or renewed under section 58 in respect of that fishery;

***management plan*** means a management plan continued under section 273(2) as in force from time to time;

***marine management area*** has the meaning given in the CALM Act section 3;

***marine nature reserve*** has the meaning given in the CALM Act section 3;

***marine park*** has the meaning given in the CALM Act section 3;

***master***, in relation to a boat, means the person for the time being having the command, charge or management of the boat;

***noxious substance*** means any substance that may be harmful to aquatic organisms;

***organism*** means —

- (a) a living thing, except a human being or part of a human being; or
- (b) a prion or other prescribed organic agent that can cause disease; or

- (c) a disease;

**pearl** includes natural or cultured, whole, half, baroque, seedless and blister pearl;

**place** means any land, waters, building, structure (whether permanent or temporary), tent or vehicle or any part of any land, waters, building, structure, tent or vehicle;

**possession** includes having under control in any place, whether for the use or benefit of the person in relation to whom the term is used or another person, and whether or not another person has the actual possession or custody of the thing in question;

**prescribed** means prescribed by regulation;

**private land** means any land that —

- (a) is alienated from the Crown for any estate of freehold; or
- (b) is the subject of a conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple in that land;

**process** means cut up, break up, shell, skin, shuck, fillet, cook, void, purge, pack, chill, freeze, can, preserve or otherwise treat any aquatic organism and, in relation to aquatic organisms of a prescribed class, includes hold the aquatic organisms live for export and consign the aquatic organisms live for export;

**protected aquatic organism** has the meaning given in section 125(1);

**purchase** includes —

- (a) to take in exchange; and
- (b) to agree or offer to take in exchange; and
- (c) to receive, accept or take delivery under an agreement to take in exchange; and
- (d) to attempt to purchase,

but does not include to conduct a transaction of a prescribed type if the transaction is conducted by an Aboriginal person;

**quantity**, in relation to the taking of an aquatic resource, means a quantity of aquatic organisms that comprise the resource that is, or may be, taken by reference to one or more of the following —

- (a) the weight or volume of aquatic organisms;
- (b) the number of aquatic organisms by reference to sex, size, weight, reproductive cycle or any other characteristic;
- (c) the time spent fishing for the aquatic organisms;
- (d) the quantity and type of fishing gear used in fishing for the aquatic organisms;

**record** includes any document, whether or not it has been completed;

**recreational fishing** means fishing other than commercial fishing;

**recreational fishing licence** means a licence granted under the regulations authorising an individual to undertake recreational fishing;

**register** means the register kept under section 150(1);

**registrable interest** means any of the following —

- (a) an authorisation;
- (b) a temporary aquaculture permit;
- (c) an aquaculture lease;
- (d) an exemption;
- (e) a resource share;
- (f) catch entitlement;
- (g) a share option;

**regulate** includes prohibit;

**resource share** means a share in respect of a managed aquatic resource that is made available under the ARMS for the resource;

**security holder** means a person noted on the register as having a security interest in a registrable interest;

**security interest**, in relation to a registrable interest referred to in section 153, means an interest in the registrable interest (however arising) which secures payment of a debt or other pecuniary obligation or the performance of any other obligation;

**sell** includes each of the following —

- (a) to auction;
- (b) to put out to tender;
- (c) to barter or exchange;
- (d) to supply for profit;
- (e) to offer for sale;
- (f) to receive or possess for sale;
- (g) to expose for sale;
- (h) to consign or deliver for sale;
- (i) to dispose of by way of raffle, lottery or other game of chance,

but does not include to conduct a transaction of a prescribed type if the transaction is conducted by an Aboriginal person;

**share option** means an option granted under section 42(2);

**species** includes subspecies, hybrid and variant;

**specified** means specified in the regulation, ARMS, ARUP, management plan, authorisation, order, notice or other instrument in relation to which the term is used;

**surety**, in relation to an authorisation, means surety for the authorisation required or provided under section 39 and includes a substituted surety provided with the approval of the CEO under section 41(4);

**take** includes each of the following —

- (a) to catch;
- (b) to capture;
- (c) to entrap;
- (d) to enclose;
- (e) to gather;
- (f) to remove;
- (g) to poison;
- (h) to stun;
- (i) to kill;
- (j) to destroy;

**temporary aquaculture permit** means a temporary aquaculture permit granted under section 87;

**total allowable catch (TAC)** means the quantity of a managed aquatic resource that may be taken by the commercial and recreational fishing sectors in a fishing period for the resource;

**vary**, in relation to an authorisation, means to vary anything in the authorisation and includes to substitute any boat, place or other thing in respect of which the authorisation is granted;

**vehicle** includes a train, a boat, an aircraft and any other thing used as a means of transport;

**WA waters** has the meaning given in section 5;

**waters** includes —

- (a) the bed or subsoil (if any) under any waters; and
  - (b) the airspace above any waters.
- (2) For the purposes of the definition of **aquatic environment** in subsection (1), the social surroundings of human beings are the aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by physical or biological surroundings.
- (3) For the purposes of this Act a class of fishing activity may be defined by reference to one or more of the following —
- (a) a species or type of aquatic organism;

- (b) a description of aquatic organisms by reference to sex, weight, size, reproductive cycle or any other characteristic;
- (c) an area of land or waters;
- (d) a method of fishing;
- (e) a type of fishing gear;
- (f) a class of boat or other vehicle;
- (g) a class of persons;
- (h) a purpose of activities.

**4. Meaning of aquatic resource**

- (1) In this Act, a reference to an aquatic resource is a reference to —
  - (c) a population of one or more identifiable groups of aquatic organisms; or
  - (d) one or more identifiable groups of aquatic organisms in a bioregion, area, habitat or ecosystem.
- (2) Without limiting subsection (1), an identifiable group of aquatic organisms includes —
  - (a) a species of aquatic organisms; and
  - (b) a species of aquatic organisms limited by reference to sex, weight, size, reproductive cycle or any other characteristic.

**5. Meaning of WA waters**

- (1) In this Act, a reference to WA waters is a reference to —
  - (a) all waters within the limits of the State; and
  - (b) except as provided in subsection (2), any waters not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone; and
  - (c) any waters to which the legislative powers of the State extend for purposes relating to —
    - (i) fishing activities that are to be managed in accordance with the laws of the State under an arrangement made under Part 15; and
    - (ii) the management of recreational fishing, within the meaning of the Commonwealth Act, other than recreational fishing carried on by the use of a foreign boat or recreational fishing prohibited or regulated by a plan of management determined under the Commonwealth Act section 17.

- (2) For purposes relating to a fishing activity that is to be managed in accordance with a law of the Commonwealth under Part 15, WA waters does not include waters not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone.

**6. Aboriginal persons not required to hold authorisation in certain circumstances**

An Aboriginal person is not required to hold an authorisation to take aquatic organisms if the organisms are taken for the purposes of the person or the person's family and not for a commercial purpose.

**7. Exemptions from Act**

- (1) The Minister may, by notice in writing, exempt a specified person or specified class of persons from all or any of the provisions of this Act.
- (2) The Minister may only grant an exemption under subsection (1) for one or more of these purposes —
  - (a) research;
  - (b) environmental protection;
  - (c) public safety;
  - (d) public health;
  - (e) commercial purposes;
  - (f) education purposes;
  - (g) enforcement purposes.
- (3) An application for an exemption may be made to the Minister.
- (4) An application —
  - (a) must be in an approved form; and
  - (b) must be accompanied by the prescribed fee, if any.
- (5) An exemption may be granted subject to any conditions specified in the notice.
- (6) The Minister may, by further notice in writing —
  - (a) cancel or amend an exemption; or
  - (b) delete, amend or add to any conditions imposed in relation to an exemption.
- (7) An exemption is of no effect at any time when a condition of the exemption is being contravened.
- (8) A person who contravenes a condition of an exemption commits an offence.  
Penalty: a fine of \$10 000.

**8. Crown bound**

- (1) This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the State, or the Crown in any of its other capacities, liable to be prosecuted for an offence.

**Part 2 — Objects**

**9. Objects of Act**

The objects of this Act are —

- (a) to ensure the ecological sustainability of the State's aquatic resources and aquatic ecosystems for the benefit of present and future generations; and
- (b) to ensure that the State's aquatic resources are managed, developed and used having regard to the economic, social and other benefits that the aquatic resources may provide.

**10. Means of achieving objects of Act**

The objects of this Act are to be achieved in particular by —

- (a) conserving and protecting aquatic resources and aquatic ecosystems and where necessary, restoring aquatic ecosystems; and
- (b) managing aquatic resources and aquatic ecosystems on the basis of relevant scientific data and principles; and
- (c) encouraging the sustainable development of fishing, aquaculture and other activities reliant on aquatic resources; and
- (d) encouraging members of the public to actively participate in decisions about the management and conservation of aquatic resources and aquatic ecosystems; and
- (e) ensuring that the interests of different sectors of the community that use aquatic resources or aquatic ecosystems are identified and considered; and
- (f) managing aquatic resources and aquatic ecosystems in a manner that is as practical, efficient and cost effective as possible.

**11. Regard to be had to objects of Act**

A person or body performing or exercising a function or power under this Act must have regard to the objects set out in section 9 and the means of achieving them set out in section 10.



## **Part 3 — Managed aquatic resources**

### **Division 1 — Preliminary**

#### **12. Terms used**

In this Part —

**consultation period**, in relation to a draft strategy, means the period of 2 months commencing on the day on which notice required by section 17(1)(b) in respect of the draft strategy is published in the *Gazette*;

**draft strategy** means the draft of an ARMS prepared by the CEO under section 17(1)(a);

**recreational fishing** does not include customary fishing;

**risk assessment** means an assessment undertaken under section 13(b).

### **Division 2 — Strategy and planning**

#### **Subdivision 1 — Declaration of managed aquatic resources**

#### **13. Monitoring aquatic resources**

The Minister must ensure that —

- (a) the condition of aquatic resources and the aquatic environment is kept constantly under consideration; and
- (b) an assessment of the risk to the ecological sustainability of an aquatic resource is undertaken if the Minister is of the opinion that there is reason to do so.

#### **14. Declaration of managed aquatic resources**

- (1) The Minister may, by notice in writing, declare that a specified aquatic resource is a managed aquatic resource if the Minister is of the opinion that there is reason to do so.
- (2) Subsection (1) applies whether or not a risk assessment in respect of the aquatic resource has been undertaken.
- (3) The Minister must make a declaration under subsection (1) if a risk assessment in respect of an aquatic resource concludes that there is evidence that —
  - (a) overexploitation of the resource is occurring or is likely to occur; or
  - (b) the resource is so severely depleted, diminished, damaged or otherwise affected as to be considered at threat of being ecologically unsustainable.
- (4) A notice under subsection (1) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

**Subdivision 2 — Aquatic resource management strategies**

**15. Requirement for ARMS**

As soon as is practicable after an aquatic resource is declared to be a managed aquatic resource an aquatic resource management strategy (ARMS) must be approved under section 20 in respect of the aquatic resource.

**16. Content of ARMS**

- (1) An ARMS for a managed aquatic resource must set out the following things —
  - (a) a description of the aquatic resource that is to be managed;
  - (b) the main objective to be achieved by managing the aquatic resource;
  - (c) the minimum quantity of the aquatic resource that is considered necessary to be maintained for the resource to be ecologically sustainable;
  - (d) the activities that should be regulated in respect of the aquatic resource;
  - (e) the details of each period for which activities in respect of the aquatic resource are to be regulated (***fishing period***);
  - (f) the quantity of the aquatic resource that is to be available in a fishing period for customary fishing and public benefit uses;
  - (g) the method to be used in calculating the total allowable catch (TAC) for the aquatic resource;
  - (h) the proportion of the TAC that is to be available for recreational fishing for the resource;
  - (i) the proportion of the TAC that is to be available for commercial purposes, including —
    - (i) the proportion of the TAC to be available for commercial fishing for the resource; and
    - (ii) the proportion of the TAC that is to be available for taking incidentally in the course of commercial fishing for other aquatic resources;
  - (j) the number of shares in the resource that are to be available to the commercial sector;
  - (k) the scientific parameters to be used to assess how effectively the aquatic resource is being managed;

- (l) the consultation to be carried out in relation to the making, amendment or revocation of an aquatic resource use plan (ARUP) to implement the ARMS.
- (2) For the purposes of subsection (1)(d), the activities that should be regulated in respect of the aquatic resource may include the taking of other aquatic resources incidentally in the course of commercial fishing for the aquatic resource.

**17. Draft ARMS**

- (1) As soon as is practicable after an aquatic resource is declared to be a managed aquatic resource the CEO must —
  - (a) prepare a draft of an ARMS for the resource; and
  - (b) give public notice of the proposal for an ARMS.
- (2) The public notice of the proposal for an ARMS must —
  - (a) contain information about the draft strategy; and
  - (b) specify where copies of the draft strategy may be obtained without charge; and
  - (c) invite interested persons to make submissions to the CEO on the draft strategy within a specified period; and
  - (d) specify how those submissions may be made.
- (3) The public notice of the proposal for an ARMS —
  - (a) must be published in the *Gazette*; and
  - (b) may be published in any other manner that the CEO considers appropriate to bring the proposal to the attention of persons who will, or may be, affected if the draft strategy becomes an ARMS, which may include the following —
    - (i) publishing the notice in a newspaper circulating generally throughout the State;
    - (ii) posting the notice on a website maintained by the CEO.
- (4) Subsection (3) does not prevent the CEO from adopting any additional means of publicising the proposal for an ARMS.

**18. CEO to consult on proposal for ARMS**

- (1) The CEO must, within the consultation period for a draft strategy, make reasonable efforts to consult any public authority, person or body that the CEO considers likely to be affected if the draft strategy becomes an ARMS.
- (2) Consultation under subsection (1) may be undertaken in any way that the CEO considers appropriate in the circumstances, having

regard to the number of public authorities, persons or bodies considered likely to be affected as described in subsection (1).

- (3) If the description in the draft strategy of the aquatic resource to be managed does not describe the resource by reference to a particular area of the State, then consultation must be carried out under subsection (1) as if the draft strategy had relevance for the whole of the State.

**19. Revision of draft strategy following consultation**

- (1) A person may make submissions to the CEO in relation to a draft strategy in the manner and within the period specified in the relevant notice required by section 17(1)(b).
- (2) After the end of the consultation period for a draft strategy the CEO —
  - (a) must consider —
    - (i) any submissions made in accordance with subsection (1); and
    - (ii) any views expressed by a public authority, person or body consulted under section 18(1);
  - and
  - (b) may revise the draft strategy to any extent the CEO considers appropriate.
- (3) The CEO must submit to the Minister not later than 2 months after the end of the consultation period for a draft strategy —
  - (a) a copy of the draft strategy, including any revisions made under subsection (2)(b); and
  - (b) a report on the development of the draft strategy.
- (4) The CEO must include in a report under subsection (3)(b) the reasons for any revision of the draft strategy.

**20. Approval of ARMS**

- (1) The Minister may, in writing, approve or refuse to approve a draft strategy submitted by the CEO under section 19(3) or subsection (4) as the ARMS for a managed aquatic resource.
- (2) The Minister is not to approve a draft strategy as the ARMS for a managed aquatic resource under subsection (1) unless the Minister is satisfied that the draft strategy is consistent with the objects of this Act.
- (3) If the Minister refuses to approve a draft strategy submitted by the CEO under section 19(3) or subsection (4) as the ARMS for a managed aquatic resource the Minister may request the CEO to

revise the draft strategy taking into account any matters referred to in the request.

- (4) The CEO must, within 2 months of a request under subsection (3) or such longer period as the Minister allows, submit to the Minister —
  - (a) a copy of the draft strategy as revised taking into account the matters referred to in the request; and
  - (b) a report on the revisions that have been made.
- (5) Notice of an approval under subsection (1) must be published in the *Gazette*.
- (6) An ARMS comes into effect on the day after the day on which the relevant notice is published in the *Gazette* or on a later day specified in the notice.

**21. Amendment and revocation of ARMS**

- (1) The Minister may, in writing, approve an amendment to an ARMS for a managed aquatic resource.
- (2) This Subdivision applies in respect of an amendment to an ARMS as if a reference to an ARMS included a reference to an amended ARMS.
- (3) An ARMS for a managed aquatic resource is revoked if the declaration under section 14 in respect of the aquatic resource is revoked.

**22. Regulations for ARMSs**

Regulations may be made for purposes relating to ARMSs.

**Subdivision 3 — Aquatic resource use plans**

**23. Terms used**

In this Subdivision —

**ARMS**, in relation to an ARUP, means the ARMS identified in the ARUP in accordance with section 25(1)(b);

**resource** means a managed aquatic resource, and in relation to an ARUP, means the managed aquatic resource to which the ARUP relates.

**24. Minister to make ARUP for managed aquatic resource**

- (1) The Minister must make an ARUP, or more than one ARUP, to implement an ARMS that is in effect for a managed aquatic resource.

- (2) The Minister is not to make an ARUP for a resource unless —
  - (a) the consultation required in relation to the making of the ARUP set out in the ARMS for the resource has been carried out; and
  - (b) in the opinion of the Minister, the plan is consistent with —
    - (i) the ARMS for the resource; and
    - (ii) all other ARUPs made for the resource, or that apply to or in relation to the resource; and
    - (iii) regulations made under section 22 in relation to the ARMS for the resource.
- (3) An ARUP is subsidiary legislation for the purposes of the *Interpretation Act 1984*, and section 42 of that Act applies to and in relation to a plan as if the plan were a regulation.

**25. Content of ARUPs**

- (1) An ARUP must —
  - (a) identify the resource to which the ARUP relates; and
  - (b) identify the ARMS that the ARUP is to implement; and
  - (c) set out the objectives to be achieved by the ARUP; and
  - (d) identify the activities regulated under the ARUP; and
  - (e) identify the class or classes of persons that may undertake the activities regulated under the ARUP; and
  - (f) specify the type of authorisation (if any) required to undertake activities regulated under the ARUP; and
  - (g) specify the form and the minimum and maximum amounts of surety (if any) that may be required to be provided for an authorisation to undertake activities regulated under the ARUP; and
  - (h) specify the number of resource shares (if any) in the aquatic resource available under the ARUP; and
  - (i) set out the method for allocating any resource shares available under the ARUP at the commencement of the ARUP; and
  - (j) set out any restrictions in relation to persons who are eligible to be holders of resource shares available under the ARUP; and
  - (k) set out procedures for monitoring the quantity of the resource that is taken in a fishing period; and
  - (l) set out any conditions that are to apply in respect of the transfer of catch entitlement for the resource; and

- (m) set out any circumstances in which the CEO may, by notice published in the *Gazette*, modify provisions in the ARUP in order to ensure that the objectives to be achieved by the ARUP are achieved.
- (2) An ARUP may include any provision that, in the Minister's opinion, is necessary for —
  - (a) the protection or management of the resource; or
  - (b) the protection of the aquatic environment, other aquatic resources, aquatic mammals, aquatic reptiles, aquatic birds and amphibians from activities related to the resource.
- (3) The objectives to be achieved by an ARUP are to be consistent with, but not limited to, the main objective of the ARMS that the ARUP is to implement.

**26. Method for allocating shares under ARUP**

- (1) In making an ARUP that sets out a method for allocating resource shares the Minister must have regard to the following —
  - (a) the interests of persons who have a history of involvement in taking the resource;
  - (b) the interests of persons who have entitlements to take the resource under this Act immediately before the commencement of the ARUP;
  - (c) any option granted under section 42(2) in respect of the resource or a component of the resource.
- (2) A method for allocating resource shares set out in an ARUP may include, but is not limited to —
  - (a) allocation based on converting previous entitlement to take the resource to a specified share entitlement; or
  - (b) allocation based on converting options granted under section 42(2) to a specified share entitlement; or
  - (c) grant by the CEO on application, including payment of an application fee if applicable, and on the basis of specified criteria; or
  - (d) sale by public tender or auction.
- (3) An ARUP that sets out a method for allocating resource shares other than by sale by public tender or auction must provide —
  - (a) that a decision not to allocate a resource share is a reviewable decision for the purposes of sections 146 and 147; and

- (b) that a person who is affected by a decision about allocation of a resource share is an affected person for the purposes of those sections.

**27. Form of surety**

The form of surety for an authorisation specified in an ARUP may be one or more of the following —

- (a) a monetary bond to be paid to the CEO;
- (b) nomination of a number of resource shares in the resource to which the ARUP relates;
- (c) surety in a form prescribed for the purposes of this section.

**28. Effect of ARUP on management plans and regulations**

- (1) The Minister may amend or revoke a management plan that applies in respect of all or part of an aquatic resource on the making of an ARUP for the resource.
- (2) If a management plan is inconsistent with an ARUP then, to the extent of the inconsistency, the ARUP prevails.
- (3) If an ARUP is inconsistent with the regulations then, to the extent of the inconsistency, the ARUP prevails.

**29. Effect of revocation of ARMS**

If an ARMS is revoked, each ARUP made to implement the ARMS is revoked.

**30. Regulations for ARUPs**

Regulations may be made for purposes relating to ARUPs.

**31. Contravening ARUP or regulations relating to ARUPs**

- (1) In this section —  
*commercial ARUP* means an ARUP that specifies a number of resource shares that are available under the ARUP;  
*prohibited conduct* means —
  - (a) conduct that contravenes a provision of an ARUP, the contravention of which is specified to be an offence; or
  - (b) conduct that contravenes a provision of the regulations that relates to an ARUP, the contravention of which is prescribed to be an offence to which this section applies.
- (2) A person who engages in prohibited conduct commits an offence against this subsection if the person —
  - (a) intends to contravene a provision of an ARUP or a provision of the regulations that relates to an ARUP; or



- (b) is reckless as to whether or not a provision of an ARUP or a provision of the regulations that relates to an ARUP is contravened.

Penalty:

- (a) for a first offence in relation to a commercial ARUP, a fine of \$40 000;
  - (b) for a first offence in relation to any other ARUP —
    - (i) a fine of \$10 000; or
    - (ii) if the ARUP provides for a penalty of a fine of a lesser amount, a fine of that lesser amount;
  - (c) for a second or subsequent offence in relation to a commercial ARUP, a fine of \$80 000 and imprisonment for 12 months;
  - (d) for a second or subsequent offence in relation to any other ARUP —
    - (i) a fine of \$15 000; or
    - (ii) if the ARUP provides for a penalty of a fine of a lesser amount for a second or subsequent offence, a fine of that lesser amount.
- (3) A person who engages in prohibited conduct commits an offence.
- Penalty:
- (a) for an offence in relation to a commercial ARUP, a fine of \$15 000;
  - (b) for an offence in relation to any other ARUP, a fine of \$5 000.
- (4) A person charged with an offence against subsection (2) may be convicted of an offence against subsection (3) if that offence is established by the evidence.

### **Division 3 — Administrative matters for managed aquatic resources**

#### **Subdivision 1 — Preliminary**

#### **32. Terms used**

In this Division —

***allocated catch***, in relation to a resource share, means the catch allocated for the resource share for a fishing period in accordance with a notice given under section 33(1);

***catch*** means a quantity of aquatic organisms;

**relevant ARUP**, in relation to a resource share, means the ARUP under which the share is made available.

**33. CEO to notify TAC and catch**

- (1) At least 30 days before the commencement of each fishing period for a managed aquatic resource the CEO must publish in the *Gazette* a notice setting out the following in respect of the fishing period —
  - (a) the TAC for the resource;
  - (b) the quantity of TAC available for commercial fishing for the resource;
  - (c) the quantity of TAC available for recreational fishing for the resource;
  - (d) the catch to be allocated for a resource share in the resource.
- (2) For the purposes of subsection (1), the TAC and the quantity of TAC available for commercial fishing and for recreational fishing are to be calculated in accordance with the ARMS for the resource.
- (3) For the purposes of subsection (1)(d), the catch to be allocated for a resource share for a fishing period is the quantity of TAC referred to in subsection (1)(b) divided by the number of shares in the resource.

**Subdivision 2 — Commercial fishing**

**34. Allocation of resource shares**

- (1) When an ARUP comes into operation any resource shares in an aquatic resource available under the ARUP vest in the Minister.
- (2) The Minister must, as soon as is practicable after an ARUP comes into operation, allocate the resource shares in accordance with the method set out in the ARUP.
- (3) A person to whom a resource share is allocated may request the CEO to register the person as the holder of the resource share.
- (4) A request must —
  - (a) be in an approved form; and
  - (b) be accompanied by the fee (if any) that is set out in the relevant ARUP or the regulations.
- (5) On receipt of a request under subsection (3) the CEO must register the person as the holder of the resource share.

**35. Nature of resource shares**

- (1) Subject to section 37, a person who is the holder of a resource share in an aquatic resource at the beginning of a fishing period for the aquatic resource is entitled to be registered as the holder of the allocated catch for the share for that fishing period.
- (2) A resource share —
  - (a) is transferrable as provided by this Act; and
  - (b) is capable of devolution by will or by operation of law.
- (3) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 in paragraph (b) of the definition of **personal property**, a resource share is declared not to be personal property for the purposes of that Act.

**36. Transfer of resource shares**

- (1) The holder of a resource share in an aquatic resource may, in accordance with the relevant ARUP or the regulations, request the CEO to transfer the share to another person (the **recipient**).
- (2) On receipt of a request under subsection (1) the CEO must transfer the share by registering the recipient as the holder of the resource share unless subsection (3) applies.
- (3) The CEO must not transfer a resource share if —
  - (a) a fee or fine payable by the holder of the share under this Act is outstanding; or
  - (b) the share is nominated as surety for an authorisation; or
  - (c) the recipient is a person who is not eligible under the relevant ARUP to hold the share; or
  - (d) the CEO has, under section 156, given details of the request to a security holder unless —
    - (i) 21 days has expired from the day on which the details were given; or
    - (ii) the CEO has the written consent of the holder of the share and the security holder to do so.

**37. Registration of catch entitlement**

- (1) The holder of a resource share in an aquatic resource may request the CEO to register the holder of the resource share as the holder of catch entitlement of an amount equal to the allocated catch for the share.
- (2) The request must —
  - (a) be in an approved form; and

- (b) be accompanied by the fee that is set out in the relevant ARUP or the regulations.
- (3) Subject to subsections (4) and (5), the CEO must register the applicant as the holder of catch entitlement in accordance with the request.
- (4) Before registering the holder of a resource share as the holder of the catch entitlement the CEO must reduce the amount of the allocated catch in accordance with section 41(7)(a) or 210(2)(b) if applicable.
- (5) The CEO must not register the holder of a resource share as the holder of catch entitlement for the share if —
  - (a) a fee or fine payable by the holder of the share under this Act is outstanding; or
  - (b) the share is nominated as surety for an authorisation and the authorisation is suspended under section 209 at the beginning of the fishing period to which the catch relates.
- (6) If the holder of a resource share does not make a request under subsection (1) within 90 days of the commencement of the fishing period in respect of which the catch is allocated the CEO may, by notice in writing, require the holder to pay the fee referred to in subsection (2)(b) within the period specified in the notice.
- (7) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 in paragraph (b) of the definition of ***personal property***, catch entitlement is declared not to be personal property for the purposes of that Act.

**38. Transfer of catch entitlement**

- (1) A person who is registered as the holder of catch entitlement may request the CEO to transfer to another person (the ***recipient***) part or all of the catch entitlement.
- (2) The request must be made in an approved manner and form.
- (3) Following the receipt of a request, the CEO must register the recipient as the holder of catch entitlement up to the amount specified in the request —
  - (a) in accordance with the regulations; and
  - (b) subject to any conditions set out in the ARUP under which the catch entitlement is allocated.
- (4) A person who makes a request referred to in subsection (1) may withdraw the request to the extent that the recipient has not been registered as the holder of an amount of catch entitlement specified in the request —

- (a) in accordance with the regulations; and
- (b) subject to any conditions in respect of the withdrawal of a request to transfer the catch entitlement set out in the ARUP under which catch entitlement is allocated.

**39. Provision of surety for authorisation**

- (1) In this section —  
*notice* means a notice given under subsection (2) and includes a notice amended under subsection (5).
- (2) The CEO may, by notice in writing, require a person who is the holder of an authorisation to undertake activities regulated under an ARUP to provide surety for the authorisation if the person is charged with, or convicted of, an offence against —
  - (a) this Act; or
  - (b) a written law other than this Act if the offence relates to the fishing, aquaculture, fishing tour or aquatic eco-tourism industries; or
  - (c) a law of the Commonwealth, or of another State or a Territory, relating to the management or regulation of aquatic resources.
- (3) A notice must specify —
  - (a) the form and amount of the surety; and
  - (b) the day on, or before which, the surety is to be provided.
- (4) For the purposes of subsection (3)(a) —
  - (a) the form of the surety must be a form specified in the relevant ARUP; and
  - (b) the amount of surety must not be —
    - (i) less than the minimum amount specified in the relevant ARUP; or
    - (ii) more than the maximum amount specified in the relevant ARUP.
- (5) The CEO may, by notice in writing, amend or revoke a notice given under subsection (2).
- (6) If a person required by a notice to provide surety for an authorisation does not provide the surety on or before the specified day, the authorisation is suspended for the period —
  - (a) commencing on the day after the specified day; and
  - (b) ending on —
    - (i) the day on which surety is provided; or
    - (ii) if the notice is earlier revoked, on the day on which the notice is revoked.

**40. Registration of surety**

- (1) On receipt of surety for an authorisation the CEO must —
  - (a) record on the register the provision of the surety for the authorisation; and
  - (b) if the surety is provided in the form of the nomination of one or more resource shares, record on the register the nomination of each nominated share as surety for the authorisation.
- (2) If, under section 156, the CEO gives written details of the nomination of a resource share as surety for an authorisation to a security holder the CEO must not record the nomination of the resource share as surety for the authorisation unless —
  - (a) 21 days has expired from the day on which the details were given; or
  - (b) the CEO has the written consent of the holder of the resource share and the security holder to do so.

**41. Return or substitution of surety for authorisation**

- (1) In this section —

**balance**, in relation to surety, means the surety that remains after any forfeiture ordered under section 50(2) has been effected;

**terminates**, in relation to an authorisation, means —

  - (a) expires without being renewed; or
  - (b) is cancelled under section 134(1) or 208(1); or
  - (c) ceases to have effect in accordance with section 135(2).
- (2) A person who has provided surety for an authorisation may request the CEO to —
  - (a) return the balance of the surety; or
  - (b) return the balance of the surety on the provision of a substitute surety for the authorisation.
- (3) On a request made under subsection (2) the CEO may return the balance of the surety in accordance with the regulations.
- (4) The CEO may agree to the provision of a substitute surety for an authorisation if the CEO is satisfied that the substituted surety is —
  - (a) in a form specified in the ARUP in respect of which the authorisation is granted; and
  - (b) of an equivalent value to the original surety.

- (5) The CEO may refuse to return the balance of surety for an authorisation —
  - (a) if in the CEO's opinion, the holder of the authorisation or a person acting for or on behalf of the holder of the authorisation may be liable to prosecution for an offence that is prescribed for the purposes of section 209; or
  - (b) until a conviction required to be recorded in respect of the surety under section 210(1) has been recorded.
- (6) Subject to subsections (5) and (7), if an authorisation for which surety has been provided terminates, the CEO must return the balance of the surety to the holder of the authorisation in accordance with the regulations.
- (7) If the surety for an authorisation that terminates has one or 2 convictions recorded in respect of it under section 210(1) in the period of 10 years before the CEO returns the balance of the surety —
  - (a) and the surety is in the form of the nomination of one or more resource shares, the allocated catch for each resource share in the fishing period following the return of the surety is to be reduced by two-thirds; or
  - (b) otherwise, the amount of the surety to be returned is one-third of the balance of the surety as determined in accordance with the regulations.

**42. Grant of share options**

- (1) If an ARUP is revoked, whether or not the ARMS in respect of which the ARUP is made is also revoked —
  - (a) the resource shares provided for under the ARUP are void; and
  - (b) the registration of any catch entitlement relating to a share referred to in paragraph (a) is cancelled.
- (2) The CEO must grant a share option in respect of each resource share under a revoked ARUP to the person who, immediately before the ARUP was revoked, was the holder of the resource share.
- (3) Subsection (2) does not apply if —
  - (a) a new ARUP is made in respect of the aquatic resource covered by the revoked plan; and
  - (b) the new plan provides for persons who held shares under the revoked plan to be allocated resource shares with an equivalent value under the new plan.

**43. Notice of entitlement to convert share options**

- (1) If an ARUP provides that resource shares are to be allocated on the basis of converting share options of a specified type to resource shares the CEO must provide written advice about the following to each holder of a share option of the specified type —
  - (a) the basis on which the person is entitled to be allocated resource shares;
  - (b) the procedures to be followed if the person wants to take up all or part of the entitlement;
  - (c) the date by which the person must advise the CEO if the person wants to take up the entitlement.
- (2) A share option lapses if a person to whom a notice has been given under subsection (1) —
  - (a) advises the CEO that the person does not want to take up the entitlement to be allocated resource shares in respect of the share option; or
  - (b) does not advise the CEO that the person wants to take up the entitlement to be allocated resource shares in respect of the share option by the date specified in the notice.

**Subdivision 3 — Recreational fishing**

**44. Term used: recreational TAC**

In this Subdivision —

***recreational TAC***, in relation to a fishing period, means the quantity of a managed aquatic resource set out in a notice referred to in section 33(1) as being available for recreational fishing in the fishing period.

**45. Monitoring usage of recreational TAC**

The CEO must ensure that the quantity of a managed aquatic resource that is taken by the recreational fishing sector during each fishing period for the resource is monitored in accordance with procedures set out in an ARUP for the resource.

**46. CEO to notify overuse of TAC for recreational fishing**

- (1) The CEO must notify the Minister if the CEO has reason to believe that the quantity of a managed aquatic resource that is likely to be taken by the recreational sector may exceed the recreational TAC for the resource in a fishing period.
- (2) The notification must include advice on any actions that the CEO considers should be taken to reduce the quantity of the managed aquatic resource that is taken by the recreational sector in the remainder of the fishing period.



**47. Minister may arrange allocation of excess recreational TAC**

- (1) In this section —  
*recreational fishing body* means a body that represents the interests of the recreational fishing sector in accordance with an agreement made under section 222(1).
- (2) The Minister may, by notice in writing published in the *Gazette* —
  - (a) determine that a specified quantity of recreational TAC for a managed aquatic resource in a fishing period is to be made available instead for commercial purposes for that fishing period; and
  - (b) specify the manner in which entitlement to the catch specified in the notice is to be allocated and registered.
- (3) The Minister may not make a determination under subsection (2) unless —
  - (a) the Minister is satisfied on reasonable grounds that the quantity of catch specified in the notice is excess to the requirements of the recreational fishing sector for the fishing period; and
  - (b) the Minister is requested by a recreational fishing body to make the quantity of catch specified in the notice available for commercial purposes for the fishing period.
- (4) If the Minister makes a determination under subsection (2) the CEO must —
  - (a) arrange, in the manner specified in the notice, for the allocation of entitlement to the catch; and
  - (b) register, as specified in the notice, a person who is allocated an entitlement as the holder of the entitlement.
- (5) The proceeds of the allocation of an entitlement under this section are to be paid into the Recreational Fishing Account.

**48. Increase of TAC for recreational fishing**

The recreational TAC for a managed aquatic resource in a fishing period is increased by the amount of any catch entitlement for the resource purchased in the fishing period by the application of money from the Recreational Fishing Account.

**Division 4 — Offences relating to managed aquatic resources**

**49. Contravening condition of authorisation relating to managed aquatic resources**

(1) In this section —

**commercial authorisation** means a relevant authorisation that relates to an ARUP that specifies that a number of resource shares are available under the plan;

**prohibited conduct** means conduct that contravenes a condition of a relevant authorisation;

**relevant authorisation** means an authorisation to undertake an activity in respect of a managed aquatic resource specified in an ARUP for the aquatic resource.

(2) A person who engages in prohibited conduct commits an offence against this subsection if the person —

- (a) intends to contravene a condition of a relevant authorisation; or
- (b) is reckless as to whether or not a condition of a relevant authorisation is contravened.

Penalty:

- (a) for a first offence in relation to a commercial authorisation, a fine of \$40 000;
- (b) for a first offence in relation to any other relevant authorisation —
  - (i) a fine of \$10 000; or
  - (ii) if the ARUP in respect of which the authorisation is granted provides for a penalty of a fine of a lesser amount, a fine of that lesser amount;
- (c) for a second or subsequent offence in relation to a commercial authorisation, a fine of \$80 000 and imprisonment for 12 months;
- (d) for a second or subsequent offence in relation to any other relevant authorisation —
  - (i) a fine of \$20 000; or
  - (ii) if the ARUP in respect of which the authorisation is granted provides for a penalty of a fine of a lesser amount for a second or subsequent offence, a fine of that lesser amount.

- (3) A person who engages in prohibited conduct commits an offence.  
Penalty:
- (a) for an offence in relation to a commercial authorisation, a fine of \$15 000;
  - (b) for an offence in relation to any other relevant authorisation, a fine of \$5 000.
- (4) A person charged with an offence against subsection (2) may be convicted of an offence against subsection (3) if that offence is established by the evidence.

**50. Court to order forfeiture of surety for authorisation**

- (1) In this section —
- determined value***, in relation to surety, means —
- (a) if the surety is in the form of nominated resource shares, the number of resource shares in a managed aquatic resource that corresponds to the quantity of the resource for which the person did not hold catch entitlement calculated in accordance with the regulations; or
  - (b) if the surety is in any other form, an amount that is equivalent to the value, at the time the offence was committed, of the number of resource shares that would apply if the surety had been provided in the form of nominated resource shares;
- relevant authorisation*** —
- (a) in relation to an offence against section 31(2) or (3), means an authorisation granted in respect of the ARUP to which the offence relates;
  - (b) in relation to an offence against section 49(2) or (3) means the authorisation to which the offence relates.
- (2) A court that convicts a person of an offence against section 31(2) or (3) or 49(2) or (3) must order that any surety for a relevant authorisation be forfeited to the State to the determined value if the court is satisfied that —
- (a) the person was the holder of the relevant authorisation when the offence was committed; and
  - (b) the offence relates to the taking of a quantity of the aquatic resource for which the person did not hold catch entitlement at a time, or during a period, prescribed for the purposes of this section; and
  - (c) the quantity of the resource for which the person did not hold catch entitlement can be ascertained by the court.

- (3) If a court makes an order under this section the court may make any other order necessary or expedient to give effect to the order.
- (4) If the court orders the forfeiture of surety that is in the form of a number of nominated resource shares the CEO may allocate the forfeited resource shares in the way specified in the relevant ARUP.
- (5) If a resource share is forfeited under this section the CEO must, before allocating the forfeited share —
  - (a) remove the notation of any security interest in respect of that share that was recorded in the register; and
  - (b) cancel the nomination of the resource share as surety for the authorisation in respect of which it was nominated; and
  - (c) remove the details of any conviction that was recorded in respect of the share in accordance with section 210(1).

## **Part 4 — Management of fisheries**

### **Division 1 — Preliminary**

#### **51. Terms used**

In this Part —

***management plan***, in relation to a managed fishery licence, means the management plan in respect of which the managed fishery licence is granted;

***unit***, in relation to an entitlement, means a unit as defined from time to time in the relevant management plan.

### **Division 2 — Administrative matters relating to management of fisheries**

#### **52. Application for grant, renewal, variation or transfer of managed fishery licence or entitlement**

- (1) A person may apply to the CEO for —
  - (a) a managed fishery licence to undertake a fishing activity in a managed fishery; or
  - (b) the renewal of a managed fishery licence; or
  - (c) the variation of a managed fishery licence; or
  - (d) the transfer of a managed fishery licence to another person; or
  - (e) the transfer of part of the entitlement under a managed fishery licence to another managed fishery licence; or

- (f) the transfer of the whole or part of an entitlement under a managed fishery licence to another managed fishery licence for a limited period.
- (2) An application must —
  - (a) be made in an approved form; and
  - (b) be accompanied by the fee (if any) prescribed or specified in the management plan; and
  - (c) be accompanied by any information that the CEO reasonably requires for a proper consideration of the application.

**53. Further information**

- (1) The CEO may, in writing, require an applicant to —
  - (a) provide the CEO with such further information relevant to the application as the CEO requires; and
  - (b) verify any information by statutory declaration.
- (2) The CEO may specify in the requirement a reasonable time within which the applicant must comply with the requirement.
- (3) The CEO may refuse to consider an application if the applicant does not comply with a requirement under subsection (1) within the time specified in the requirement, or if no time is so specified, within a reasonable time.

**54. Grant of managed fishery licence**

- (1) The CEO may grant a managed fishery licence to an applicant if —
  - (a) the CEO is satisfied that the applicant meets any criteria for the grant of the managed fishery licence specified in the management plan; and
  - (b) the applicant is selected in accordance with any procedure for determining which persons are to be granted a managed fishery licence specified in the management plan.
- (2) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 in paragraph (d) of the definition of **licence**, a managed fishery licence is declared not to be personal property for the purposes of that Act.

**55. Form of managed fishery licence**

A managed fishery licence is to be issued in an approved form.

**56. Effect of managed fishery licence**

- (1) Subject to this Act, the holder of a managed fishery licence, or a person acting on behalf of the holder, may undertake fishing or any fishing activity of a specified class in a specified managed fishery.
- (2) The entitlement the holder has under a managed fishery licence may be limited by reference to one or more of the following —
  - (a) a quantity of aquatic organisms that may be taken;
  - (b) a quantity of fishing gear that may be used or carried;
  - (c) the type, size or number of boats or other vehicles that may be used;
  - (d) a number of persons that may operate;
  - (e) an area of land or waters;
  - (f) a period of time;
  - (g) any other factor.
- (3) For the purposes of subsection (2), the extent of an entitlement under a managed fishery licence may be expressed in terms of units of entitlement defined in the management plan.
- (4) The authority conferred by a managed fishery licence is of no effect at any time when —
  - (a) a condition of the managed fishery licence is being contravened; or
  - (b) the managed fishery licence is suspended.

**57. Duration of managed fishery licence**

- (1) A managed fishery licence has effect from the day it is granted or renewed.
- (2) A managed fishery licence, unless sooner cancelled, remains in force for —
  - (a) the period specified in the managed fishery licence; or
  - (b) if no period is specified in the managed fishery licence, the period specified in the management plan; or
  - (c) if no period is specified in the managed fishery licence or the management plan, a period of 12 months.
- (3) A managed fishery licence is cancelled if the management plan for the fishery in respect of which the managed fishery licence is granted is revoked.

**58. Renewal of managed fishery licence**

- (1) In this section —  
*expiry day*, in relation to a managed fishery licence, means the day on which the managed fishery licence expires.
- (2) Subject to this section and section 134, the CEO must, on an application referred to in section 52(1)(b), renew the managed fishery licence.
- (3) An application for the renewal of a managed fishery licence must be made to the CEO before the expiry day.
- (4) The CEO may, by written notice, accept an application for the renewal of a managed fishery licence made within 180 days after the expiry day if —
  - (a) the application is accompanied by —
    - (i) the prescribed fee for making an application for renewal of the managed fishery licence after expiry; and
    - (ii) the additional fee referred to in subsection (7) if applicable;
  - and
  - (b) the CEO is satisfied that special circumstances warrant acceptance of the application.
- (5) For the purposes of subsection (4)(b), the CEO may be satisfied that special circumstances warrant acceptance of an application for renewal of a managed fishery licence if the application is made —
  - (a) on or before a day that is prescribed by the regulations for the purposes of this paragraph; and
  - (b) within 60 days after the expiry day.
- (6) If a managed fishery licence is renewed on an application accepted under subsection (4), the managed fishery licence is taken —
  - (a) to have been renewed from the day on which the renewal was effected; and
  - (b) to have been of no effect during the period from the expiry day until the day on which it was renewed; and
  - (c) to be renewed for a period ending on the day on which the managed fishery licence would have expired if it had been renewed on an application for renewal made before the expiry day.
- (7) The regulations may prescribe, or a management plan may specify, an additional fee payable by way of penalty for a managed

fishery licence renewed on an application accepted under subsection (4).

**59. Conditions on managed fishery licence**

- (1) A managed fishery licence is subject to —
  - (a) any condition specified in the management plan; and
  - (b) any condition imposed by the CEO under this section.
- (2) The CEO may impose conditions on a managed fishery licence —
  - (a) when granting, renewing, varying or transferring the managed fishery licence; or
  - (b) during the currency of the managed fishery licence.
- (3) The CEO may vary or revoke a condition imposed under subsection (2).
- (4) The imposition, variation or revocation of a condition during the currency of the managed fishery licence does not take effect until written notice, including notice of any right of review under section 147, is given to the holder of the managed fishery licence.

**60. Transfer of managed fishery licence and entitlement**

- (1) On an application referred to in section 52(1)(d), the CEO must transfer the managed fishery licence unless the CEO is satisfied that —
  - (a) the proposed transferee —
    - (i) is not a fit and proper person to hold the managed fishery licence; or
    - (ii) does not satisfy guidelines under section 255 relating to foreign persons holding, controlling or having an interest in a managed fishery licence;
  - or
  - (b) the applicant, or a person acting for or on behalf of the applicant, may be liable to prosecution for an offence that is prescribed for the purposes of section 209; or
  - (c) the managed fishery licence is suspended; or
  - (d) the transfer is prohibited on prescribed grounds or grounds specified in the management plan.
- (2) On an application referred to in section 52(1)(e), the CEO must transfer the part of the entitlement unless the CEO is satisfied that —
  - (a) the applicant, or a person acting for or on behalf of the applicant may be liable to prosecution for, an offence that is prescribed for the purposes of section 209; or



- (b) the entitlement to be transferred is under a managed fishery licence —
    - (i) that is suspended; or
    - (ii) in respect of which a conviction is recorded under section 209;
  - (c) the transfer is prohibited on prescribed grounds or grounds specified in the management plan.
- (3) On an application referred to in section 52(1)(f), the CEO may transfer the whole or part of an entitlement under the managed fishery licence for a limited period if the management plan or the regulations authorise the transfer.
- (4) If, under section 156, the CEO gives written details of an application referred to in this section to a security holder the CEO must not transfer the managed fishery licence or the part of the entitlement unless —
  - (a) 21 days has expired from the day on which the details were given; or
  - (b) the CEO has the written consent of the holder of the managed fishery licence and the security holder to do so.

**61. Other licences do not authorise fishing in fishery**

A commercial fishing licence or any other licence granted under the regulations does not authorise a person to undertake a fishing activity or to use a boat for fishing in a managed fishery.

**62. Grant or renewal of managed fishery licence in certain marine reserves**

The CEO must not grant or renew a managed fishery licence in relation to —

- (a) an area of a marine nature reserve; or
- (b) an area, or part of an area, of a marine park from which commercial fishing is excluded under the CALM Act section 13B(6A)(a); or
- (c) an area, or part of an area, of a marine park if the managed fishery licence would authorise commercial fishing that is of a type or class —
  - (i) specified in a declaration under the CALM Act section 13B(3B)(c); and
  - (ii) excluded under the CALM Act section 13B(6)(b) from that area or part.

**63. Managed fishery licence is subject to restrictions in relation to certain marine reserves**

- (1) A managed fishery licence is subject to the CALM Act sections 13A and 13B.
- (2) Subsection (1) does not apply to a managed fishery licence granted or renewed in relation to an area which is affected, after the grant or renewal of the managed fishery licence, by a reservation under the CALM Act section 13, or by a notice under section 62 of that Act.

**Division 3 — Offences**

**64. Contravening management plan**

- (1) In this section —  
***prohibited conduct*** means conduct that contravenes a provision of a management plan the contravention of which is specified in the plan to be an offence.
- (2) A person who engages in prohibited conduct commits an offence against this subsection if the person —
  - (a) intends to contravene a condition of a management plan; or
  - (b) is reckless as to whether or not a condition of a management plan is contravened.

Penalty:

- (a) for a first offence, a fine of \$40 000;
  - (b) for a second or subsequent offence, a fine of \$80 000 and imprisonment for 12 months.
- (3) A person who engages in prohibited conduct commits an offence.  
Penalty: a fine of \$15 000.
- (4) A person charged with an offence against subsection (2) may be convicted of an offence against subsection (3) if that offence is established by the evidence.

**65. Contravening condition of managed fishery licence**

- (1) In this section —  
***prohibited conduct*** means conduct that contravenes a condition of a managed fishery licence.
- (2) A person who engages in prohibited conduct commits an offence against this subsection if the person —
  - (a) intends to contravene a condition of a managed fishery licence; or

- (b) is reckless as to whether or not a condition of a managed fishery licence is contravened.

Penalty:

- (a) for a first offence, a fine of \$40 000;
  - (b) for a second or subsequent offence, a fine of \$80 000 and imprisonment for 12 months.
- (3) A person who engages in prohibited conduct commits an offence.  
Penalty: a fine of \$15 000.
  - (4) A person charged with an offence against subsection (2) may be convicted of an offence against subsection (3) if that offence is established by the evidence.

**66. Court to order reduction of entitlement in certain circumstances**

- (1) This section applies to an entitlement limited by reference to —
  - (a) a quantity of aquatic organisms that may be taken; or
  - (b) a quantity of fishing gear that may be used or carried; or
  - (c) a period of time that a person may undertake fishing.
- (2) A court must order that an entitlement be reduced by an amount by which the entitlement has been exceeded if —
  - (a) the court convicts a person of an offence against section 64 or 65; and
  - (b) the court is satisfied that the person —
    - (i) has exceeded the entitlement; or
    - (ii) has done anything in order to exceed the entitlement or in order to conceal the fact that the entitlement had been exceeded;

and

  - (c) the amount by which the entitlement was exceeded or was to be exceeded can be ascertained by the court.
- (3) For the purposes of subsection (2), the court must round the amount by which an entitlement is to be reduced up to the nearest unit if —
  - (a) the entitlement was defined by reference to a number of units; and
  - (b) the amount by which the entitlement was exceeded or was to be exceeded is not an exact unit.
- (4) If the court orders the reduction of an entitlement under subsection (2) —
  - (a) the CEO must reduce the entitlement accordingly; and

- (b) the CEO may sell the amount by which the entitlement has been reduced —
  - (i) to any person who satisfies the criteria specified in the management plan; and
  - (ii) in the way specified in the management plan.

## **Part 5 — Aquaculture**

### **Division 1 — Preliminary**

#### **67. Terms used**

In this Part —

***appropriate tenure*** means —

- (a) in relation to private land —
  - (i) an estate of freehold; or
  - (ii) a conditional purchase agreement; or
  - (iii) a lease; or
  - (iv) a concession;
- (b) in relation to other land or WA waters — an aquaculture lease;

***aquaculture zone*** means an area declared to be a zone under section 72(1);

***coastal waters***, in relation to the State, has the meaning given in the Commonwealth Act section 5;

***management and environmental monitoring plan (MEMP)***, in relation to an aquaculture licence or a proposed aquaculture licence, means a plan prepared in respect of the licence that complies with section 75(3);

***private land*** does not include land that is the subject of an aquaculture lease.

#### **68. Relationship between aquaculture licence and aquaculture lease**

- (1) An aquaculture lease does not authorise the use of the leased area without an aquaculture licence.
- (2) Subject to the provisions of this Act, an aquaculture licence in respect of an area that is the subject of an aquaculture lease —
  - (a) vests in the licence holder the exclusive right during the currency of the licence to conduct the activities authorised under the lease; and
  - (b) vests in the licence holder the ownership of all aquatic organisms or pearls within the leased area that are kept, bred, hatched, cultured or harvested under the licence.

- (3) If an aquaculture licence authorising the activity being carried out in an area the subject of an aquaculture lease is cancelled or not renewed, the lease is, by virtue of this subsection, terminated.
- (4) If an aquaculture lease is terminated or expires —
  - (a) an aquaculture licence that authorises an activity being carried out only in an area that was the subject of the lease is, by virtue of this subsection, cancelled; or
  - (b) an aquaculture licence that authorises an activity being carried in an area that was the subject of the lease and in another area is, by virtue of this subsection, varied so that it no longer authorises the activities being carried out in the area that was the subject of the lease.

## **Division 2 — Managing aquaculture**

### **69. Undertaking aquaculture without authorisation**

- (1) In this section —  
*aquaculture* does not include the keeping, breeding, hatching, culturing, harvesting or sale of aquatic organisms of a prescribed class, for a prescribed purpose or in a prescribed area.
- (2) A person who undertakes aquaculture without being authorised to do so by an aquaculture licence or a temporary aquaculture permit commits an offence.  
Penalty:
  - (a) for a first offence, a fine of \$10 000;
  - (b) for a second or subsequent offence, a fine of \$20 000.

### **70. Regulations about aquaculture**

The regulations may make provision in relation to any of the following matters —

- (a) aquaculture and activities associated with aquaculture;
- (b) the sale or purchase of aquatic organisms in, or taken from, waters on private land;
- (c) aquaculture leases, including the subdivision, subletting, amalgamation and transfer of leases by the Minister.

### **71. CEO's powers to reduce risk of accidental introduction of declared organisms into WA waters**

- (1) In this section —  
*intervene*, in relation to aquatic organisms, includes to inspect, seize and destroy aquatic organisms.

- (2) The CEO may direct a compliance officer to intervene in relation to an aquatic organism if —
  - (a) the aquatic organism is kept in connection with an activity that is excluded from the definition of **aquaculture** in section 69(1); and
  - (b) in the circumstances, intervention will or could minimise the risk of the accidental introduction of declared organisms into WA waters.

### **Division 3 — Developing aquaculture**

#### **72. Minister may declare zones for aquaculture**

- (1) The Minister may, by notice in writing, declare that an area of WA waters, other than inland waters, described in the notice is a zone for the purposes of carrying out aquaculture or a specified type of aquaculture.
- (2) The Minister must not make a declaration under subsection (1) in respect of waters within the limits of the State or coastal waters unless the Minister —
  - (a) has the agreement of the Minister who administers the *Land Administration Act 1997*; and
  - (b) has consulted with the CALM Minister.
- (3) A type of aquaculture may be specified by reference to one or both of the following —
  - (a) the species of aquatic organisms that may be farmed;
  - (b) the activities that may be carried out.
- (4) A notice under subsection (1) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

#### **73. Minister may offer area in aquaculture zone for lease**

The Minister may offer areas of WA waters in an aquaculture zone for aquaculture leases by means of public auction, public tender, ballot or private treaty.

#### **74. Minister's powers as to aquaculture facilities**

- (1) The Minister may —
  - (a) establish or manage aquaculture facilities to be used for community or commercial purposes; or
  - (b) arrange for aquaculture facilities established by the Minister to be managed or used for community or commercial purposes; or

- (c) arrange for other persons to establish and manage aquaculture facilities on —
    - (i) land owned by the Minister, including in fee simple; or
    - (ii) any reserve the care, control and management of which have been placed under the *Land Administration Act 1997* section 46 with the Minister for the purposes of aquaculture.
- (2) The Minister may do all things necessary or convenient to be done for or in connection with the exercise of the Minister's powers under subsection (1) which may include any of the following —
  - (a) to acquire, hold, take on lease, let, sublet, issue licences in respect of and exchange real or personal property;
  - (b) to construct or erect buildings or other works and to improve, develop or alter property;
  - (c) to make land, buildings and other facilities available for the use of persons undertaking aquaculture or associated activities;
  - (d) to provide advisory or administrative services for or in connection with establishing, conducting or developing any activity associated with the aquaculture industry;
  - (e) to demand and receive payment with respect to the provision of services or the performance of any work by or on behalf of the Minister.
- (3) Subsection (2) does not operate to give the Minister any power in relation to property that would be inconsistent with —
  - (a) the terms of any reserve or management order under the *Land Administration Act 1997*; or
  - (b) any lease, other document or provision of a written law by which the Minister holds that property.

#### **Division 4 — Aquaculture licences**

##### **75. Application for grant or renewal of aquaculture licence**

- (1) A person may apply to the CEO for —
  - (a) an aquaculture licence to undertake aquaculture; or
  - (b) the renewal of an aquaculture licence; or
  - (c) the variation of an aquaculture licence; or
  - (d) the transfer of an aquaculture licence.
- (2) An application must —
  - (a) be made in an approved form; and

- (b) be accompanied by the prescribed fee for the application;  
and
  - (c) if the application is for the renewal of a licence, be accompanied by the fee for the renewal of the licence;  
and
  - (d) unless the applicant is exempt under subsection (4), be accompanied by a management and environmental monitoring plan (MEMP) for the licence or proposed licence identifying how the applicant will manage any risks to the environment and public safety in relation to the activity to which the licence applies or will apply; and
  - (e) be accompanied by any information that the CEO reasonably requires for a proper consideration of the application.
- (3) A MEMP for an aquaculture licence must deal with the following matters to the extent that is relevant to the application in accordance with guidelines issued under section 254 —
- (a) the species of aquatic organism to be farmed;
  - (b) the quantity of aquatic organisms to be farmed;
  - (c) the area of land or waters on or in which the aquatic organisms are to be farmed;
  - (d) the class of land or waters on or in which the aquatic organisms are to be farmed;
  - (e) the method of farming the aquatic organisms;
  - (f) the aquaculture gear to be used;
  - (g) proposed stocking densities;
  - (h) the carrying capacity of the area to be used for farming the aquatic organisms;
  - (i) water quality (including discharged water quality) and relevant response protocols;
  - (j) sediment quality and relevant response protocols;
  - (k) disease testing and relevant response protocols;
  - (l) maximum nutrient loads and response thresholds;
  - (m) environmental monitoring and relevant response protocols;
  - (n) translocation;
  - (o) biosecurity and quarantine;
  - (p) the impact on protected aquatic organisms and other aquatic fauna;
  - (q) the impact on benthic communities;
  - (r) the audit mechanisms for the MEMP;



- (s) any other relevant matter.
- (4) The CEO may exempt an application from the requirements of subsection (2)(d) if the application relates to aquaculture of prescribed aquatic organisms on private land.

**76. Further information**

- (1) The CEO may, in writing, require an applicant under section 75 to —
  - (a) provide the CEO with such further information relevant to the application as the CEO requires; and
  - (b) verify any information by statutory declaration.
- (2) The CEO may specify in the requirement a reasonable time within which the applicant must comply with the requirement.
- (3) The CEO may refuse to consider an application if the application does not comply with a requirement under subsection (1) within the time specified in the requirement, or if no time is so specified, within a reasonable time.

**77. Grant of aquaculture licence**

- (1) Subject to section 85, the CEO may grant an aquaculture licence to an applicant if the CEO is satisfied —
  - (a) that the applicant is a fit and proper person to hold an aquaculture licence; and
  - (b) that the applicant has, or will have, appropriate tenure over the land or waters on or in which the activities under the licence are to be conducted; and
  - (c) that the applicant satisfies guidelines under section 255 relating to foreign persons holding, controlling or having an interest in an aquaculture licence; and
  - (d) that the activities to be carried out under the licence will be carried out in a way that is unlikely to adversely affect other aquatic organisms or the aquatic environment; and
  - (e) that the activities to be carried out under the licence have been approved by all other relevant authorities; and
  - (f) that it is in the better interests of the State and the community to grant the licence; and
  - (g) of any other matters prescribed for the purposes of this subsection.
- (2) The CEO may seek the advice of any relevant authority in order to determine whether or not subsection (1)(e) is satisfied.
- (3) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 in paragraph (d) of the definition of

*licence*, an aquaculture licence is declared not to be personal property for the purposes of that Act.

**78. Form of aquaculture licence**

An aquaculture licence is to be issued in an approved form.

**79. CEO to publish notice of certain decisions relating to aquaculture licences**

- (1) Before giving effect to a decision to grant, vary or transfer an aquaculture licence the CEO must —
  - (a) cause notice of the decision to be published in a newspaper, or in a fishing magazine, circulating generally in the State or in such other manner as is prescribed; and
  - (b) allow sufficient time for any affected person to make an application under Part 9 for a review of the decision and for the review application to be determined.
- (2) A notice under subsection (1) must —
  - (a) give details of the decision; and
  - (b) state that an affected person may, under section 147, apply for a review of the decision.

**80. Effect of aquaculture licence**

- (1) Subject to this Act, the holder of an aquaculture licence or a person acting on behalf of the holder, may carry out aquaculture or any aquaculture activity of a specified class in a specified area.
- (2) The activities authorised by an aquaculture licence may be limited by reference to one or more of the following —
  - (a) the species of aquatic organisms that may be farmed;
  - (b) a quantity and type of gear that may be used;
  - (c) the type, size or number of boats or other vehicles that may be used;
  - (d) an area of land or waters;
  - (e) any other factor.
- (3) The authority conferred by an aquaculture licence is of no effect at any time when —
  - (a) a condition of the licence is being contravened; or
  - (b) the licence is suspended.

**81. Duration of aquaculture licence**

- (1) An aquaculture licence has effect from the day it is granted or renewed.

- (2) An aquaculture licence, unless sooner cancelled, remains in force for —
  - (a) a period of 12 months; or
  - (b) such other period as may be specified in the licence.

**82. Renewal of aquaculture licence**

Subject to sections 85 and 134, the CEO —

- (a) must, on an application for the renewal of an aquaculture licence made more than 30 days before the day on which the licence expires, renew the licence; and
- (b) may, on an application for the renewal of an aquaculture licence made in the period of 30 days ending on the day on which the licence expires, renew the licence.

**83. Conditions on aquaculture licences**

- (1) An aquaculture licence is subject to the following conditions —
  - (a) that the licence holder has appropriate tenure over the land or waters to which the licence applies;
  - (b) any prescribed conditions;
  - (c) that the requirements set out in the MEMP (if any) for the licence are complied with;
  - (d) any conditions imposed by the CEO under this section.
- (2) The CEO may impose conditions on an aquaculture licence —
  - (a) when granting, renewing, varying or transferring the licence; or
  - (b) during the currency of the licence.
- (3) The CEO may vary or revoke conditions imposed under subsection (2).
- (4) The imposition, variation or revocation of a condition during the currency of the licence does not take effect until written notice, including notice of any right of review under section 147, is given to the holder of the licence.

**84. Transfer of aquaculture licence**

- (1) On an application by the holder of an aquaculture licence for the transfer of the licence to another person, the CEO must transfer the licence unless the CEO is satisfied that —
  - (a) the proposed transferee —
    - (i) is not a fit and proper person to hold the licence; or

- (ii) does not, or will not have, appropriate tenure over the land or waters to which the licence relates; or
  - (iii) does not satisfy guidelines under section 255 relating to foreign persons holding, controlling or having an interest in the licence;
- or
- (b) the transfer is prohibited on prescribed grounds.
- (2) If, under section 156, the CEO gives written details of an application for the transfer of an aquaculture licence to a security holder the CEO must not transfer the aquaculture licence unless —
  - (a) 21 days has expired from the day on which the details were given; or
  - (b) the CEO has the written consent of the holder of the aquaculture licence and the security holder to do so.

**85. Grant or renewal of aquaculture licence in certain marine reserves**

- (1) For the purposes of this section —
  - (a) an aquaculture licence is *unattached* if it does not relate to any area under an aquaculture lease; and
  - (b) where an aquaculture licence relates in part to an area under an aquaculture lease and in part to areas not under an aquaculture lease, the licence must be treated as 2 separate licences, being —
    - (i) an aquaculture licence in relation to the areas under an aquaculture lease; and
    - (ii) an aquaculture licence in relation to the areas not under an aquaculture lease.
- (2) The CEO must not grant or renew an aquaculture licence in relation to —
  - (a) an area of a marine nature reserve; or
  - (b) an area of a marine park from which aquaculture is excluded under the CALM Act section 13B.
- (3) Unless subsection (4) applies, the CEO must not, without the approval of the CALM Minister, renew an aquaculture licence that would authorise a person to carry out aquaculture in —
  - (a) an area of a marine park from which aquaculture is not excluded under the CALM Act section 13B; or
  - (b) an area of a marine management area.

- (4) The CEO may renew an unattached aquaculture licence that would authorise a person to carry out aquaculture in an area referred to in subsection (3) if —
  - (a) a management plan applies to the area under the CALM Act and the renewal is consistent with the management plan; or
  - (b) the Minister has consulted the CALM Minister on the renewal and has taken into account any recommendation of that Minister.
- (5) Nothing in this section prevents an aquaculture licence from being renewed in respect of a part of an area to which the licence relates if the remainder of the area becomes —
  - (a) an area of a marine nature reserve; or
  - (b) an area of a marine park; or
  - (c) an area of a marine management area.
- (6) Subsections (2) and (3) do not affect the validity of a licence granted or renewed in relation to an area which is affected, after the grant or renewal of the licence, by a reservation under the CALM Act section 13, or by a notice under section 62 of that Act.

**86. Contravening aquaculture licence**

A person who contravenes a condition of an aquaculture licence commits an offence.

Penalty:

- (a) for a first offence, a fine of \$10 000;
- (b) for a second or subsequent offence, a fine of \$20 000.

**87. Temporary aquaculture permits**

- (1) The CEO may grant a temporary aquaculture permit to the holder of an aquaculture licence authorising the licence holder to carry on, for the period specified, the activities authorised under the licence in an area (an *alternative area*) other than the area (the *original area*) in respect of which the licence is in force.
- (2) A temporary aquaculture permit may be granted only in circumstances prescribed for the purposes of this section.
- (3) A temporary aquaculture permit cannot be granted for a period of more than 12 months.
- (4) A temporary aquaculture permit has the effect, for the period specified, of —
  - (a) suspending the licence holder's authority to carry on the activities authorised under the licence in the original area; and

- (b) authorising the licence holder to carry on those activities in accordance with the permit in the alternative area.

### **Division 5 — Aquaculture leases**

#### **88. Grant or renewal of aquaculture lease**

- (1) Subject to section 93, the Minister may grant to any person an aquaculture lease or renew such a lease if the Minister is satisfied —
  - (a) that the person is a fit and proper person to hold the lease; and
  - (b) that the applicant will make, or has made, effective use of the area of land or water the subject of the lease for aquaculture purposes; and
  - (c) that the activities to be, or that are being, conducted under the lease are unlikely to adversely affect other aquatic organisms or the aquatic environment; and
  - (d) that it is in the better interests of the State and the community to grant or renew the lease; and
  - (e) of any other matters prescribed for the purposes of this subsection.
- (2) The Minister must not grant a lease under this section in respect of an area of land or an area of land and waters adjacent to that land unless the area is vested in the Minister for that purpose.
- (3) If the Minister grants a lease under this section, the Minister must cause notice of the grant to be published in the *Gazette*.

#### **89. Effect of aquaculture lease**

An aquaculture lease authorises the lease holder, or persons acting on that person's behalf, to occupy or use an area of land or waters for the purposes of aquaculture.

#### **90. Duration of aquaculture lease**

- (1) An aquaculture lease may be granted for an initial term not exceeding 21 years.
- (2) An aquaculture lease may be renewed by the Minister, subject to section 93, for further periods not exceeding 21 years in each case.

#### **91. Conditions of aquaculture lease**

- (1) An aquaculture lease is subject to the following conditions —
  - (a) that the provisions of the lease are complied with;
  - (b) any prescribed conditions;
  - (c) any conditions imposed by the Minister under this section.

- (2) The Minister may impose conditions on an aquaculture lease —
  - (a) when granting, renewing or varying the lease; or
  - (b) during the currency of the lease.
- (3) The Minister may vary or revoke conditions imposed under subsection (2).
- (4) The conditions that may be imposed on a lease under subsection (2) may include, but are not limited to, the following —
  - (a) a requirement for payment of money to the Minister;
  - (b) a requirement for security to be given for the observance of any terms, covenants, restrictions or conditions of the lease;
  - (c) a requirement for the lease holder to pay an amount to secure payment of any amount that becomes due under section 96(2)(b).
- (5) The imposition, variation or revocation of a condition during the currency of the lease does not take effect until written notice, including notice of any right of review under section 147, is given to the holder of the lease.

**92. Variation of aquaculture lease**

An aquaculture lease may be varied —

- (a) in the manner provided in the lease; or
- (b) by the Minister in the manner prescribed under section 70(c).

**93. Grant or renewal of lease in certain marine reserves**

- (1) An aquaculture lease must not be granted or renewed in relation to —
  - (a) an area of a marine nature reserve; or
  - (b) an area of a marine park from which aquaculture is excluded under the CALM Act section 13B.
- (2) Unless subsection (3) applies, the Minister must not, without the approval of the CALM Minister, grant or renew an aquaculture lease in relation to —
  - (a) an area of a marine park from which aquaculture is not excluded under the CALM Act section 13B; or
  - (b) an area of a marine management area.
- (3) The Minister may grant or renew an aquaculture lease in relation to an area for which an aquaculture licence has been renewed under section 85(4) if —

- (a) a management plan applies to the area under the CALM Act and the grant or renewal is consistent with a management plan; or
  - (b) the Minister has consulted the CALM Minister on the grant or renewal and has taken into account any recommendation of that Minister.
- (4) Nothing in this section prevents an aquaculture lease from being renewed in respect of a part of an area to which the lease relates if the remainder of the area becomes —
  - (a) an area of a marine nature reserve; or
  - (b) an area of a marine park; or
  - (c) an area of a marine management area.
- (5) This section does not affect the validity of —
  - (a) an aquaculture lease granted or renewed before the commencement of the *Acts Amendment (Marine Reserves) Act 1997* section 53; or
  - (b) an aquaculture lease granted or renewed in relation to an area which is affected, after the grant or renewal of the lease, by a reservation under the CALM Act section 13, or by a notice under section 62 of that Act.

**94. Contravening conditions of aquaculture lease**

- (1) In this section —
  - jointly owned***, in relation to an aquaculture licence or an aquaculture lease, means that the licence or lease is held by 2 or more persons;
  - prohibited conduct*** means conduct that contravenes a condition of an aquaculture lease.
- (2) The holder of an aquaculture lease who engages in prohibited conduct commits an offence.
- (3) The holder of an aquaculture licence in respect of an area to which an aquaculture lease relates who engages in conduct that would have been prohibited conduct if engaged in by the lease holder commits an offence.
- (4) If a person who is a holder of a jointly owned aquaculture licence commits an offence against subsection (3) each other person who is a holder of the licence is taken to have also committed the offence.
- (5) If the holder of an aquaculture licence in respect of an area to which an aquaculture lease relates commits or is taken to have committed an offence against subsection (3) or (4), the lease holder is taken to have also committed the offence.



- (6) If an offence is committed or is taken to have been committed under subsection (2), (3), (4) or (5) in respect of a jointly owned aquaculture lease each person who is a holder of the lease is taken to have committed the offence.
- (7) The penalty for an offence committed under subsection (2) or (3) or arising under subsection (4), (5) or (6) is —
  - (a) for a first offence, a fine of \$10 000;
  - (b) for a second or subsequent offence, a fine of \$20 000.
- (8) It is a defence to a charge arising under subsection (4), (5) or (6) to prove that —
  - (a) the conduct that was, or would have been, prohibited conduct was engaged in without the consent or connivance of the person; and
  - (b) the person took all reasonable measures to prevent the conduct being engaged in.
- (9) A person may be charged with and convicted of an offence arising under subsection (4), (5) or (6) whether or not another person has been charged with or convicted of an offence against subsection (2) or (3) or arising under subsection (4), (5) or (6).

**95. Termination of aquaculture lease**

- (1) The Minister may, by notice in writing given to the lessee, terminate an aquaculture lease if, in the Minister's opinion, the leased area —
  - (a) is no longer being used for the purposes for which the lease was granted; or
  - (b) is being used for purposes other than the purposes for which the lease was granted.
- (2) An aquaculture lease may be terminated on any other grounds provided in the lease and in the manner provided in the lease.

**96. Clean-up and rehabilitation of former leased area**

- (1) If an aquaculture lease is terminated or expires, the CEO may direct the former lease holder to clean up and rehabilitate the former leased area.
- (2) If the former lease holder contravenes the direction —
  - (a) the CEO may clean up and rehabilitate the area; and
  - (b) the reasonable cost of any action taken under paragraph (a) is recoverable as a debt due to the State from the former lease holder.

- (3) Any structure, equipment or aquatic organism that has not been removed from a former leased area within 3 months after the day on which the lease for the area is terminated or expires is, by virtue of this section, forfeited to the State.

## **Part 6 — Aquatic biosecurity**

### **Division 1 — Preliminary**

**97. Application of Part**

This Part applies despite the *Biosecurity and Agriculture Management Act 2007*.

**98. Terms used**

In this Part —

***aquatic biosecurity management plan*** means a plan made under section 102;

***biosecurity*** means protection from the adverse impact an organism has or may have on —

- (a) an aquatic organism; or
- (b) a human being; or
- (c) the aquatic environment or part of the aquatic environment; or
- (d) fishing, aquaculture or related commercial activities carried on, or intended to be carried on, in the aquatic environment;

***control***, in relation to an organism, includes eradicate, destroy, prevent the presence or spread of, manage, examine or test for, survey for or monitor the presence or spread of, and treat;

***declared organism*** means an organism that has been declared under section 99 to be a declared organism;

***high impact organism*** means a declared organism that has been prescribed under section 100 to be a high impact organism;

***potential carrier*** means —

- (a) anything that is capable of carrying an organism; or
- (b) anything that is capable of carrying anything else that is capable of carrying an organism;

***prescribed potential carrier*** means a potential carrier that has been prescribed for the purposes of this Part;

***supply*** includes to offer to supply.

**Division 2 — Regulations relating to biosecurity**

**99. Declared organisms**

- (1) The Minister may declare that an organism of a kind specified or described in the declaration is a declared organism for an area if there are reasonable grounds for believing that the organism —
  - (a) has or may have an adverse impact on —
    - (i) an aquatic organism in the area; or
    - (ii) a human being in the aquatic environment in the area; or
    - (iii) the aquatic environment or part of the aquatic environment in the area; or
    - (iv) fishing, aquaculture or related commercial activities carried out, or intended to be carried out, in the aquatic environment in the area;
  - or
  - (b) may have an adverse effect on any of those things if it were present in the area, or if it were present in the area in greater numbers or to a greater extent.
- (2) A declaration under this section may assign the declared organism to a category designated by the regulations.
- (3) A declaration under this section may state that the declared organism is a reportable declared organism for the purposes of section 105.
- (4) The area for which an organism may be declared to be a declared organism may be the whole or part of the State or WA waters.

**100. High impact organisms**

The regulations may prescribe a declared organism to be a high impact organism if —

- (a) the Minister is satisfied that the organism has the potential to cause severe damage to the aquatic environment; and
- (b) the organism —
  - (i) is not, to the knowledge of the Minister, present in the State or WA waters; or
  - (ii) has been eradicated from the State and WA waters or is under effective control.

**101. Regulations about biosecurity**

- (1) The regulations may make provision in relation to any of the following matters —
  - (a) the import, export or control of organisms or potential carriers that may pose a biosecurity risk to the aquatic environment or part of the aquatic environment;
  - (b) the keeping, breeding, cultivation, movement and supply of declared organisms;
  - (c) the entry into, the movement or use within, or the removal from, the aquatic environment or part of the aquatic environment of boats or equipment on or attached to boats that may pose a biosecurity risk;
  - (d) the movement of aquatic organisms or potential carriers into the State or WA waters or between different areas of the State or WA waters;
  - (e) measures, whether mechanical, biological, chemical or otherwise, to be taken to control aquatic organisms that may pose a biosecurity risk or to prevent such organisms from entering the State or WA waters.
- (2) Despite section 263(4) regulations made for the purpose of this section may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$50 000 and a daily penalty not exceeding a fine of \$500.

**Division 3 — Aquatic biosecurity management plans**

**102. Aquatic biosecurity management plans**

- (1) The Minister may make a plan for the management of an area of the State or WA waters for biosecurity purposes.
- (2) The area may be the whole or part of the State and WA waters.
- (3) An aquatic biosecurity management plan must —
  - (a) identify the area or areas to which the plan relates; and
  - (b) set out the objectives to be achieved by the plan; and
  - (c) set out the practices to be followed under the plan; and
  - (d) specify any obligations that are imposed on persons or classes of persons specified in the plan for the purposes of the plan.
- (4) If a provision of an aquatic biosecurity management plan is inconsistent with a regulation, the regulation prevails to the extent of the inconsistency.

- (5) An aquatic biosecurity management plan is subsidiary legislation for the purposes of the *Interpretation Act 1984*, and section 42 of that Act applies to and in relation to a plan as if the plan were a regulation.

**103. Consultation with affected persons**

- (1) Before making an aquatic biosecurity management plan, the Minister must, as far as is appropriate and practicable, consult with the public authorities and any other persons which or who appear to the Minister to be likely to be —
  - (a) required to take part in implementing the plan; or
  - (b) put to expense in complying with the plan; or
  - (c) affected, or interested, in a significant way by the operation of the plan.
- (2) Consultation may be undertaken in any way that the Minister thinks appropriate in the circumstances, having regard to the proposed plan and the number of persons likely to be affected by its operation.

**104. Contravening aquatic biosecurity management plan**

- (1) In this section —  
***prohibited conduct*** means conduct that contravenes a provision of an aquatic biosecurity management plan the contravention of which is specified in the plan to be an offence.
- (2) A person who engages in prohibited conduct commits an offence against this subsection if the person —
  - (a) intends to contravene a condition of an aquatic biosecurity management plan; or
  - (b) is reckless as to whether or not a condition of an aquatic biosecurity management plan is contravened.

Penalty:

- (a) for a first offence, a fine of \$40 000;
  - (b) for a second or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
- (3) A person who engages in prohibited conduct commits an offence.  
Penalty: a fine of \$15 000.
- (4) A person charged with an offence against subsection (2) may be convicted of an offence against subsection (3) if that offence is established by the evidence.

**Division 4 — Offences relating to biosecurity**

**105. Duty to report certain declared organisms**

- (1) In this section —
- presence**, in relation to an organism that is a reportable declared organism, means the presence on or in a place in an area for which the organism is a declared organism of —
- (a) the declared organism; or
  - (b) an organism or thing that is infected or infested with the declared organism;
- reportable declared organism** means a declared organism that is stated to be a reportable declared organism in the declaration made under section 99 in relation to the organism.
- (2) A person who finds or suspects the presence of a reportable declared organism commits an offence if the person does not report the presence or suspected presence to the CEO or a compliance officer in accordance with subsection (3).
- Penalty:
- (a) a fine of \$20 000;
  - (b) if the declared organism is a high impact organism, a fine of \$100 000 and imprisonment for 12 months.
- (3) A report —
- (a) may be made orally or in writing; and
  - (b) must indicate, as far as is practicable, where the reportable declared organism, or the infected or infested organism or thing, was found, or the reasons for suspecting its presence; and
  - (c) must give any other relevant information within the person's knowledge; and
  - (d) must be made within the prescribed period or, if no period is prescribed, as soon as practicable after finding the reportable declared organism or suspecting its presence; and
  - (e) must be made in accordance with the regulations (if any); and
  - (f) must be made in accordance with any aquatic biosecurity management plan that applies to the area for which the organism is a reportable declared organism.
- (4) It is a defence to a charge under subsection (2) to prove that the person did not know, and could not reasonably be expected to have known, that an organism was a reportable declared organism.

**106. Import restrictions**

- (1) A person who imports an organism into a part of the State or WA waters for which the organism is a declared organism without being authorised to do so by the regulations commits an offence.

Penalty:

- (a) a fine of \$50 000;
- (b) if the declared organism is a high impact organism, a fine of \$100 000 and imprisonment for 12 months.

- (2) A person who imports a prescribed potential carrier into the State or WA waters without being authorised to do so by the regulations commits an offence.

Penalty:

- (a) a fine of \$50 000;
- (b) if the prescribed potential carrier is prescribed as a potential carrier of a high impact organism, a fine of \$100 000 and imprisonment for 12 months.

**107. Supply of unlawful import**

- (1) A person who supplies a declared organism or a prescribed potential carrier that was imported in contravention of section 106 commits an offence.

Penalty:

- (a) a fine if \$50 000;
- (b) if the declared organism is a high impact organism or the prescribed potential carrier is prescribed as a potential carrier of a high impact organism, a fine of \$100 000 and imprisonment for 12 months.

- (2) It is a defence to a charge under subsection (1) to prove that the person did not know, and could not reasonably be expected to have known, that the declared organism or prescribed potential carrier was imported in contravention of section 106.

**108. Master of boat to ensure boat free of declared organisms**

The master of a boat that enters an area for which an organism is a declared organism commits an offence if the master does not take all reasonable measures to ensure that when the boat enters the area it does not have attached to it, or contained within it, the declared organism.

Penalty:

- (a) a fine if \$50 000;
- (b) if the declared organism is a high impact organism, a fine of \$100 000 and imprisonment for 12 months.

**109. Dealing with declared organisms**

(1) In this section —

*deal*, in relation to a declared organism, means —

- (a) to keep, breed, cultivate or supply the declared organism; or
- (b) to keep, breed, cultivate or supply an animal, plant or other thing that is infected or infested with the declared organism; or
- (c) to put the declared organism into a container or receptacle in which it may remain alive; or
- (d) to release into the aquatic environment the declared organism, or an animal, plant or other thing that is infected or infested with the declared organism; or
- (e) to intentionally infect or infest, or expose to infection or infestation, a plant, animal or other thing with a declared organism.

(2) A person who deals with an organism in an area for which the organism is a declared organism without being authorised to do so by the regulations or an aquatic biosecurity management plan commits an offence.

Penalty:

- (a) a fine of \$50 000;
- (b) if the declared organism is a high impact organism, a fine of \$100 000 and imprisonment for 12 months.

(3) The regulations or an aquatic biosecurity management plan may provide that a person must not move a declared organism, or an animal, plant or other thing that is infected or infested with the declared organism, from the place where it is found.

(4) A person who contravenes a provision in a regulation or aquatic biosecurity management plan referred to in subsection (3) commits an offence.

Penalty:

- (a) a fine if \$50 000;
- (b) if the declared organism is a high impact organism, a fine of \$100 000 and imprisonment for 12 months.

**110. Duty to control declared organism**

(1) In this section —

*required control measures*, in relation to waters or land, means measures that are prescribed or are specified in an aquatic biosecurity management plan to control —



- (a) a declared organism that is present, or likely to be present, in the waters or on the land; or
  - (b) an organism or thing in the waters or on the land that has been, or is likely to have been, infected or infested by a declared organism.
- (2) The owner or occupier of waters or land who does not take the required control measures for the waters or land commits an offence.  
Penalty: a fine of \$50 000.
- (3) It is a defence to a charge under subsection (2) to prove that the person did not know, and could not reasonably have been expected to know, at the time of the alleged offence, that —
  - (a) a declared organism was present or was likely to be present in the waters or on the land; or
  - (b) an organism or thing in the waters or on the land was infected or infested or was likely to be infected or infested by a declared organism.
- (4) If the regulations or an aquatic biosecurity management plan provide for required control measures to be taken in relation to waters or land, the regulations or aquatic biosecurity management plan may provide that —
  - (a) the CEO may carry out the required control measures in circumstances specified in the regulations or management plan; and
  - (b) the reasonable cost of any action taken under paragraph (a) is recoverable as a debt due to the State from the person who was required to take the required control measures.

#### **Division 5 — Pollution in aquatic environment**

##### **111. Regulations about pollution in aquatic environment**

The regulations may make provision in relation to any of the following matters —

- (a) the carriage of any firearm, explosive or noxious substance on any boat;
- (b) activities that may result in the deposit of any refuse or waste in any waters;
- (c) activities that might pollute any waters.

##### **112. Activities that pollute waters**

- (1) The Minister may, by notice in writing served on any person, prohibit the person from undertaking any activity if in the

Minister's opinion the activity is polluting, or is likely to pollute, the aquatic environment.

- (2) A notice under this section —
  - (a) may apply generally or at specified times or in specified circumstances; and
  - (b) remains in force for such period as is specified or, if no period is specified, until revoked; and
  - (c) may be varied or revoked at any time by the Minister by notice in writing served on the person; and
  - (d) must include notice of the right of review under section 147.
- (3) A person who contravenes a notice served on the person under this section commits an offence.  
Penalty: a fine of \$50 000.
- (4) If a court convicts a person of an offence against subsection (3), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

#### **Division 6 — Emergency powers to deal with biological threats**

**113. Term used: biological threat**

In this Division —

***biological threat*** means a serious threat posed to the aquatic environment by an organism.

**114. CEO's powers to deal with biological threats**

- (1) This section applies if the CEO considers that it is necessary to exercise powers under this section immediately because of a biological threat posed by an organism.
- (2) The CEO may take, or may direct the person whom the CEO considers responsible for causing, or contributing to the spread of, the biological threat to take, the steps that the CEO considers appropriate —
  - (a) to prevent the organism from entering the aquatic environment or part of the aquatic environment; or
  - (b) to prevent or control the spread of the organism in the aquatic environment or part of the aquatic environment; or
  - (c) to eradicate or remove the organism from the aquatic environment or part of the aquatic environment.
- (3) A direction under subsection (2) may be given orally or in writing.

- (4) A person who, without reasonable excuse, fails to comply with a direction given to the person under this section commits an offence.  
Penalty: a fine of \$10 000.
- (5) If a person contravenes a direction given under subsection (2) —
  - (a) the CEO may take the steps specified in the direction; and
  - (b) the reasonable cost of any action taken under paragraph (a) is recoverable as a debt due to the State from the person.
- (6) The CEO must give the Minister a copy of the direction.

**115. CEO may give directions for urgent measures to control declared organisms**

- (1) Where, in the opinion of the CEO, a measure or action must be carried out immediately to control a declared organism, the CEO may, in writing, direct a compliance officer to carry out that measure or action.
- (2) The direction must specify the measure or action to be carried out.
- (3) Despite any other provision of this Act or any other law, a compliance officer is authorised to carry out a measure or action in accordance with a direction under this section.
- (4) The CEO must give the Minister a copy of the direction and a written report on the measure or action carried out.

**Part 7 — Aquatic habitat protection areas and Abrolhos Islands reserve**

**Division 1 — Aquatic habitat protection areas**

**116. Application of Division to other Acts**

Nothing in this Division affects, or is to be taken to derogate from, the operation of the *Mining Act 1978*, the *Offshore Minerals Act 2003*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum (Submerged Lands) Act 1982*, any other Act relating to minerals or petroleum, or any Government agreement as defined in the *Government Agreements Act 1979* section 2.

**117. Creating aquatic habitat protection areas**

- (1) The Minister may, by order published in the *Gazette*, set aside an area of WA waters as an aquatic habitat protection area.

- (2) An area may be set aside as an aquatic habitat protection area for one or more of the following purposes —
  - (a) the conservation and protection of aquatic organisms, aquatic organism breeding areas, fossils of aquatic organisms or the aquatic ecosystem;
  - (b) the culture and propagation of aquatic organisms and related experimental purposes;
  - (c) the management of aquatic organisms and activities relating to the appreciation or observation of aquatic organisms.
- (3) An order must —
  - (a) identify the area of waters that constitutes the aquatic habitat protection area; and
  - (b) specify the purpose or purposes for which the area is set aside.

**118. Aquatic habitat protection area not permitted in certain marine reserves**

- (1) An area in a marine nature reserve, a marine park or a marine management area must not be set aside under section 117 as an aquatic habitat protection area.
- (2) An area ceases to be an aquatic habitat protection area or part of an aquatic habitat protection area if —
  - (a) a marine nature reserve, marine park or marine management area is established in respect of the area; and
  - (b) a management plan for the reserve, park or management area (as the case may be) comes into operation.

**119. Determination of plan for aquatic habitat protection area**

Before setting aside an area as an aquatic habitat protection area under section 117 the Minister must approve a plan for the management of the area.

**120. Notice of proposal to create aquatic habitat protection area**

- (1) Not less than 2 months before making an order under section 117 the Minister must give public notice of the proposal to make the order and the notice must —
  - (a) contain information about the area that is proposed to be set aside and the purposes for which it is to be set aside; and

- (b) advise that a draft plan for the management of the area has been prepared and specify where copies of the draft plan may be obtained without charge; and
  - (c) invite interested persons to make submissions on the proposal to the Minister within a specified period, being a period of not less than 30 days after the publication of the notice; and
  - (d) specify how those submissions are to be made.
- (2) The notice required by subsection (1) —
  - (a) must be published in the *Gazette*; and
  - (b) may be published in any other manner that the Minister considers appropriate to bring the proposal to the attention of persons who will, or may be, affected if the order is made, which may include the following —
    - (i) publishing the notice in a newspaper circulating generally throughout the State;
    - (ii) publishing the notice in a newspaper circulating near the area of the proposed aquatic habitat protection area;
    - (iii) posting the notice on a website maintained by the CEO.
- (3) Subsection (2) does not prevent the Minister from adopting any additional means of publicising the proposal to make the order.
- (4) A person may make submissions to the Minister in relation to the proposed order within the period specified in the relevant notice required by subsection (1).
- (5) The Minister —
  - (a) must consider any submissions made in accordance with subsection (4); and
  - (b) may revise the proposed order to any extent the Minister considers appropriate.

**121. Control and management of aquatic habitat protection areas**

- (1) The Minister may, by notice published in the *Gazette*, vest the control and management of an aquatic habitat protection area or part of an aquatic habitat protection area in a body recognised for that purpose under section 221.
- (2) The notice must —
  - (a) specify the aquatic habitat protection area or the part of the aquatic habitat protection area to which the notice relates; and

- (b) specify the body in whom the control and management of the aquatic habitat protection area or the part of the aquatic habitat protection area is vested; and
  - (c) specify the date on which the vesting takes effect and the period for which the control and management of the aquatic habitat protection area or the part of the aquatic habitat protection area is vested; and
  - (d) specify the purpose for which the control and management of the aquatic habitat protection area or the part of the aquatic habitat protection area is vested; and
  - (e) include notice of the agreement referred to in subsection (3).
- (3) If the Minister vests the control and management of an aquatic habitat protection area or part of an aquatic habitat protection area in a body recognised for that purpose under section 221 the Minister must enter into an agreement under section 222 with the body in relation to the control and management of the aquatic habitat protection area or the part of the aquatic habitat protection area.

**122. Regulations about aquatic habitat protection areas**

The regulations may make provision in relation to any matter necessary for the protection or management of an aquatic habitat protection area including, but not limited to, the following —

- (a) entry to an aquatic habitat protection area by persons, vehicles or other things;
- (b) activities carried out in an aquatic habitat protection area;
- (c) moorings, jetties, rafts and other constructions in an aquatic habitat protection area;
- (d) use of land or facilities in an aquatic habitat protection area;
- (e) fees and charges.

**Division 2 — Abrolhos Islands reserve**

**123. Application of *Parks and Reserves Act 1895* to reserve**

For the purposes of this Act, the *Parks and Reserves Act 1895* sections 7A(2) and (3), 7C, 12A and 12B apply to and in relation to the Abrolhos Islands reserve as if a reference in those sections to —

- (a) an authorised person were a reference to a compliance officer; and

- (b) a by-law were a reference to a regulation referred to in section 124; and
- (c) a Board were a reference to the Governor, the Minister, the CEO or a compliance officer (as the context requires).

**124. Regulations about reserve**

The regulations may make provision in relation to any matter necessary for the protection or management of the Abrolhos Islands reserve including, but not limited to, the following —

- (a) entry to the reserve by persons, vehicles or other things;
- (b) activities carried out in or on the reserve or in waters adjacent to the reserve;
- (c) the protection and conservation of fauna and flora (whether aquatic or otherwise) in the reserve;
- (d) use of any land or facilities in the reserve;
- (e) the use, safety and preservation of buildings, structures, fixtures, fittings and chattels in the reserve;
- (f) the collection and use of potable water and the disposal of waste water;
- (g) the collection, removal, disposal or incineration of any rubbish, sewage, litter, building or structure in the reserve and for the recovery of the cost of that collection, removal, disposal or incineration;
- (h) fees and charges.

**Part 8 — Regulation of various activities**

**Division 1 — General regulation of activities**

**125. Minister may prohibit activities**

- (1) In this section —

***class***, in relation to aquatic organisms, means —

- (a) a species or type of aquatic organism; or
- (b) an aquatic organism by reference to sex, weight, reproductive cycle or any other characteristic; or
- (c) aquatic organisms in an area of land or waters;

***protected aquatic organism*** means a class of aquatic organism prescribed for the purpose of this section.

- (2) The Minister may, by order published in the *Gazette*, prohibit persons or any specified class of persons from undertaking a specified activity —
- (a) in a specified aquatic environment; or
  - (b) in relation to a specified protected aquatic organism.

- (3) An order may prohibit the activity at all times or during any specified period.
- (4) A person who contravenes an order commits an offence.  
Penalty:
  - (a) for a first offence, a fine of \$10 000;
  - (b) for a second or subsequent offence, a fine of \$20 000.
- (5) A person who has in the person's possession any aquatic organism taken in contravention of an order commits an offence.  
Penalty:
  - (a) for a first offence, a fine of \$10 000;
  - (b) for a second or subsequent offence, a fine of \$20 000.
- (6) It is a defence to a charge under subsection (5) to prove that the person did not know, and could not reasonably be expected to have known, that the aquatic organism had been taken in contravention of an order.
- (7) A person who has in the person's possession any fishing gear or other thing intended to be used to undertake an activity that the person is prohibited from undertaking by an order commits an offence.  
Penalty:
  - (a) for a first offence, a fine of \$10 000;
  - (b) for a second or subsequent offence, a fine of \$20 000.
- (8) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act applies to and in relation to an order as if the order were a regulation.

**126. Regulations restricting take or possession of aquatic organisms**

The regulations may make provision in relation to the quantity of an aquatic organism that a person may take or have in the person's possession.

**Division 2 — Trafficking in aquatic organisms**

**127. Terms used**

In this Division —

***commercial quantity***, of an aquatic organism, means —

- (a) a quantity of the aquatic organism that exceeds the quantity prescribed by or determined under the regulations; or



- (b) a quantity of the aquatic organism the value of which exceeds the value prescribed by or determined under the regulations;

**priority aquatic organisms** means —

- (a) aquatic organisms of a species that is declared by the regulations to be a priority species; or
- (b) aquatic organisms belonging to a group of 2 or more species that is declared by the regulations to be a priority group of species;

**traffic**, in an aquatic organism, has the meaning given in section 128.

**128. Trafficking in aquatic organisms defined**

- (1) A person traffics in aquatic organisms if the person deals with aquatic organisms in any of the following ways —
  - (a) takes aquatic organisms;
  - (b) is in possession or control of aquatic organisms;
  - (c) sells or purchases aquatic organisms;
  - (d) delivers aquatic organisms to, or receives aquatic organisms from, another person;
  - (e) processes aquatic organisms;
  - (f) transports aquatic organisms;
  - (g) conceals aquatic organisms or any dealing with aquatic organisms referred to in paragraphs (a) to (f);
  - (h) engages in conduct preparatory to any dealing with aquatic organisms referred to in paragraphs (a) to (g).
- (2) A person traffics in aquatic organisms if the person does any of the following things in relation to any dealing with aquatic organisms referred to in subsection (1) —
  - (a) controls, directs or supervises the dealing;
  - (b) provides facilities, finance or any other thing for the purpose of enabling or facilitating the dealing;
  - (c) enters into an agreement in relation to the dealing;
  - (d) is knowingly concerned otherwise in the dealing.

**129.      Trafficking in commercial quantity of priority aquatic organisms**

A person who traffics in a commercial quantity of priority aquatic organisms without being authorised under this Act to do so commits a crime.

Penalty:

- (a) for a first offence, a fine of \$400 000 and imprisonment for 4 years;
- (b) for a second or subsequent offence, a fine of \$600 000 and imprisonment for 10 years.

Summary conviction penalty:

- (a) for a first offence, a fine of \$200 000 and imprisonment for 2 years;
- (b) for a second or subsequent offence, a fine of \$400 000 and imprisonment for 4 years.

**130.      Regulations about trafficking in aquatic organisms**

The regulations may make provision in relation to —

- (a) methods for determining commercial quantities of priority aquatic organisms; or
- (b) the exemption of persons from the application of section 129.

**Division 3 — Licensing of activities and equipment**

**131.      Regulations about licensing**

The regulations may make provision in relation to the licensing of any of the following —

- (a) persons undertaking commercial fishing;
- (b) Aboriginal bodies corporate undertaking commercial fishing, but a licence granted or renewed under this provision cannot be transferred despite any other provision of this Act;
- (c) masters of boats used for purposes relating to commercial fishing;
- (d) persons undertaking diving for purposes relating to commercial fishing, aquaculture or aquatic eco-tourism;
- (e) persons taking aquatic organisms (including protected aquatic organisms) for broodstock and other aquaculture purposes;
- (f) individuals undertaking recreational fishing;
- (g) boats (including foreign boats) used for purposes relating to recreational fishing;

- (h) fishing boats;
- (i) boats used for transporting or trans-shipping aquatic organisms for a commercial purpose;
- (j) boats used in connection with aquaculture;
- (k) charter boats;
- (l) persons providing aquatic eco-tourism or fishing tours for a commercial purpose;
- (m) persons who possess, unload, transport, consign, process, handle, label, deliver, receive, store, package, purchase or sell aquatic organisms.

**132. Licensing of activities in certain marine reserves**

- (1) In this section —  
*fishing activity* means —
  - (a) commercial fishing; or
  - (b) recreational fishing; or
  - (c) a type or class of commercial or recreational fishing.
- (2) The regulations may not make provision for licensing that would authorise a person to undertake a fishing activity in —
  - (a) an area of a marine nature reserve; or
  - (b) an area of a marine park from which the fishing activity is excluded under the CALM Act section 13B.
- (3) Despite subsection (2), the validity of a licence issued or renewed in accordance with the regulations in relation to an area which is affected, after the issue or renewal of the licence, by a reservation under the CALM Act section 13, or by a notice under section 62 of that Act is not affected by the reservation or notice.
- (4) Subsection (2) does not prevent the regulations from making provision for the renewal of a licence in respect of part of an area to which the licence relates if the remainder of the area becomes —
  - (a) an area of a marine nature reserve; or
  - (b) an area of a marine park from which the fishing activity authorised by the licence is excluded under the CALM Act section 13B.

**Division 4 — Variation, suspension, non-renewal, cancellation and surrender of authorisations**

**133. Varying authorisations**

- (1) The CEO may vary an authorisation if —
  - (a) the holder of the authorisation applies to the CEO for the variation; or
  - (b) it is necessary to correct any error in the authorisation; or
  - (c) it is necessary to give effect to the provisions of this Act; or
  - (d) it is necessary to give effect to a decision of the State Administrative Tribunal.
- (2) Subject to subsection (3), if a person applies to the CEO for the variation of an authorisation the person is not entitled to the variation as of right.
- (3) The CEO must vary an authorisation if —
  - (a) a person applies to the CEO for the variation of the authorisation; and
  - (b) a management plan or an ARUP specifies criteria for the variation of an authorisation of that type; and
  - (c) the CEO is satisfied that the criteria have been satisfied.
- (4) If, under section 156, the CEO gives written details of an application to vary an authorisation to a security holder the CEO must not vary the authorisation unless —
  - (a) 21 days has expired from the day on which the details were given; or
  - (b) the CEO has the written consent of the holder of the registrable interest and the security holder to do so.

**134. Suspension, non-renewal and cancellation of authorisations**

- (1) The CEO may, by notice in writing given to the holder of an authorisation, suspend for any period, refuse to renew or cancel the authorisation —
  - (a) if the holder, or a person acting for or on behalf of the holder, has been convicted of an offence against —
    - (i) this Act; or
    - (ii) a written law other than this Act if the offence relates to the fishing, aquaculture, fishing tour or aquatic eco-tourism industries; or
    - (iii) a law of the Commonwealth, or of another State or a Territory, relating to the management or regulation of aquatic resources;

or

- (b) if a condition of the authorisation has been or is being contravened; or
- (c) if the CEO is satisfied that the holder is no longer a fit and proper person to hold the authorisation; or
- (d) if the authorisation was obtained by fraud or misrepresentation; or
- (e) if the holder has —
  - (i) failed to keep any record, or to submit or lodge any return, that is required to be kept or submitted or lodged under this Act; or
  - (ii) made an entry or statement in such a record or return that is false or misleading in a material particular;

or

- (f) if the holder does not satisfy guidelines under section 255 relating to foreign persons holding, controlling or having an interest in an authorisation; or
  - (g) if any fee, charge or levy payable in respect of the authorisation, or any other amount payable under this Act by the holder, has not been paid when it becomes due; or
  - (h) on any other ground specified in a relevant management plan or ARUP.
- (2) The fact that an authorisation has not been cancelled or suspended under section 208 or 209 is not to be taken to prevent the CEO from cancelling, suspending or refusing to renew the authorisation under this section.

**135. Voluntary surrender of authorisation**

- (1) The holder of an authorisation may at any time, by notice in writing given to the CEO, give notice of the holder's intention to surrender the authorisation.
- (2) The authorisation ceases to have effect 28 days after the day on which notice is given to the CEO under subsection (1).
- (3) Subsection (2) does not apply if, within the period referred to in that subsection, the holder, by further notice in writing given to the CEO, withdraws the notice referred to in subsection (1).

**136. CEO may require return of authorisation**

- (1) The CEO may, by notice in writing given to the holder of an authorisation, require the person to return the authorisation to the CEO within a specified period if —
  - (a) the authorisation has been cancelled, suspended or expires without being renewed; or
  - (b) the person has surrendered the authorisation; or
  - (c) it is necessary to record or endorse anything on the authorisation or to vary the authorisation.
- (2) A person who, without reasonable excuse, refuses or fails to comply with a requirement made under subsection (1) commits an offence.  
Penalty: a fine of \$5 000.

**Division 5 — Miscellaneous offences**

**137. Explosives and noxious substances not to be used**

- (1) A person who, without lawful excuse, uses or attempts to use any explosive or noxious substance in WA waters in circumstances where the use of the explosive or noxious substance could reasonably be expected to result in the taking of any aquatic organism commits an offence.  
Penalty: a fine of \$60 000 and imprisonment for 9 months.
- (2) If a court convicts a person of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

**138. Impeding lawful fishing activities**

- (1) A person who, without reasonable excuse, impedes a lawful fishing activity commits an offence.  
Penalty: a fine of \$10 000.
- (2) For the purposes of subsection (1), a person impedes a lawful fishing activity if the person does one or more of the following —
  - (a) prevents a person from lawfully undertaking fishing or aquaculture;
  - (b) hinders a person who is lawfully undertaking fishing or aquaculture;
  - (c) places or leaves anything that obstructs the use of fishing nets in an area or waters that is or are used regularly or intermittently for net fishing.

- (3) If a court convicts a person of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

**139. Interfering with fishing or aquaculture gear**

- (1) A person who, without reasonable excuse, interferes with fishing or aquaculture gear commits an offence.  
Penalty: a fine of \$60 000 and imprisonment for 9 months.
- (2) For the purposes of subsection (1), a person interferes with fishing or aquaculture gear if the person does one or more of the following —
  - (a) removes aquatic organisms from fishing or aquaculture gear;
  - (b) interferes with the operation of fishing or aquaculture gear;
  - (c) removes fishing or aquaculture gear from a place where it is being used;
  - (d) appropriates fishing or aquaculture gear for the person's own use;
  - (e) damages or otherwise modifies fishing or aquaculture gear.

**140. Purchase or sale of aquatic organisms taken unlawfully**

- (1) A person who purchases or sells an aquatic organism taken in contravention of this Act commits an offence.  
Penalty: a fine of \$60 000 and imprisonment for 9 months.
- (2) It is a defence to a charge under subsection (1) to prove —
  - (a) that at the time of the alleged offence the person did not know, and could not reasonably be expected to have known, that the aquatic organism had been taken in contravention of this Act; and
  - (b) if the aquatic organisms were purchased for a commercial purpose, that the aquatic organisms were purchased —
    - (i) from a person whose usual business was the selling of such aquatic organisms; and
    - (ii) in the ordinary course of that business.

**141. Use of foreign boat for certain activities**

- (1) A person who, in WA waters, uses a foreign boat for an aquatic resource activity commits an offence.  
Penalty: a fine of \$200 000 and imprisonment for 2 years.

- (2) For the purposes of subsection (1), a person uses a foreign boat for an aquatic resource activity if the person —
  - (a) uses a foreign boat for fishing; or
  - (b) uses a foreign boat for processing, storing or carrying aquatic organisms that have been taken by the use of that boat or another boat.
- (3) It is a defence to a charge under subsection (1) to prove that, at the time of the alleged offence, there was in force an authorisation authorising the use of the boat for the relevant purpose in the area where the offence is alleged to have been committed.

**142. Possession of foreign boat equipped with fishing gear**

- (1) A person who, in WA waters, has in the person's possession or in the person's charge a foreign boat equipped with fishing gear commits an offence.  
Penalty: a fine of \$200 000 and imprisonment for 2 years.
- (2) It is a defence to a charge under subsection (1) to prove that, at the time of the alleged offence —
  - (a) there was in force an authorisation authorising the use of the boat for fishing in the area where the offence is alleged to have been committed; or
  - (b) the boat's fishing gear was stored and secured and the boat was travelling by the shortest practicable route —
    - (i) to or from a port in the State; or
    - (ii) from a point outside WA waters to another point outside those waters.

**143. Mandatory maximum sentences for individuals convicted of third or subsequent offences under s. 141 or 142**

- (1) A court sentencing an offender who is an individual and has been convicted of a third or subsequent offence against section 141(1) or 142(1) must, despite any other written law but subject to the *Young Offenders Act 1994* section 46(5a), impose both the maximum fine and the maximum term of imprisonment that may be imposed by a court under section 141(1) or 142(1), as the case requires.
- (2) For the purpose of determining whether an individual has been convicted of —
  - (a) a third or subsequent offence against section 141(1), a conviction of an offence against section 142(1) is taken to be a conviction of an offence against section 141(1); or



- (b) a third or subsequent offence against section 142(1), a conviction of an offence against section 141(1) is taken to be a conviction of an offence against section 142(1).

**144. Interfering with aquatic organisms to prevent identification**

- (1) A person who interferes with an aquatic organism to prevent the identification of the aquatic organism commits an offence.  
Penalty: a fine of \$25 000.
- (2) For the purposes of subsection (1), a person interferes with an aquatic organism to prevent the identification of the aquatic organism if the person —
  - (a) alters, mutilates or disfigures the aquatic organism with the intention of preventing the determination of whether or not the organism is —
    - (i) a component of a managed aquatic resource; or
    - (ii) a protected aquatic organism; or
    - (iii) a declared organism;
  - or
  - (b) alters, mutilates or disfigures any device attached to, or marking made on, an aquatic organism with the intention of preventing the identification of the aquatic organism.

**Part 9 — Review**

**145. Reviewable decisions**

For the purposes of this Part —

- (a) a *reviewable decision* is —
  - (i) a decision to do something referred to in an item in the Table; or
  - (ii) a decision prescribed by the regulations or an ARUP to be a reviewable decision;
- and
- (b) an *affected person* —
  - (i) in relation to a reviewable decision referred to in an item in the Table, is a person referred to in the same item;
  - (ii) in relation to any other reviewable decision, is a person specified in the regulations or an ARUP to be an affected person in relation to that decision.

**Table**

<b>Item</b>	<b>Reviewable decision</b>	<b>Affected person</b>
1.	Refuse to grant an authorisation other than an aquaculture licence	The person who applied for the authorisation
2.	Give a notice varying any conditions of, or imposing new conditions on, an authorisation	The holder of the authorisation
3.	Give notice under section 39(2) requiring the provision of an amount of surety for an authorisation that is more than the minimum amount set out in the relevant ARUP	The holder of the authorisation
4.	Refuse to accept an application for renewal of an authorisation under section 58(4)	The holder of the authorisation
5.	To grant, vary or transfer an aquaculture licence	A person who holds an aquaculture licence and is likely to be significantly affected by the decision
6.	Refuse to grant, vary or transfer an aquaculture licence	The applicant for the grant, variation or transfer of the licence

<b>Item</b>	<b>Reviewable decision</b>	<b>Affected person</b>
7.	Refuse to renew an aquaculture licence on an application made in the period referred to in section 82(b)	The holder of the licence
8.	Give a notice under section 112(1)	A person who is served with the notice
9.	Cancel, suspend or refuse to renew, an authorisation under section 134(1)	The holder of the authorisation
10.	Refuse to vary an authorisation after a person has applied for the variation	The holder of the authorisation
11.	Refuse to transfer an authorisation, or the whole or part of an entitlement under an authorisation, after a person has applied for the transfer	The holder of the authorisation and the proposed transferee

**146. CEO to notify persons of reviewable decisions**

- (1) Before giving effect to a reviewable decision, other than a decision referred to in item 5 or 8 of the Table to section 145, the CEO must —
  - (a) give to each affected person notice in writing, or in such other manner as is prescribed, of the decision; and
  - (b) allow sufficient time for the person to make an application under this Part for a review of the decision and for the application for review to be determined.

- (2) A notice under subsection (1)(a) must —
  - (a) give details of the decision and the reasons for it; and
  - (b) state that the affected person may, under section 147, apply for a review of the decision.

**147. Review by SAT of reviewable decisions**

- (1) An affected person may apply to the State Administrative Tribunal for a review of a reviewable decision.
- (2) An affected person applying under subsection (1) for a review must give the CEO a copy of the application on the day on which it is lodged with the State Administrative Tribunal.

**148. CEO to give notice of when reviewable decision has effect**

- (1) When the CEO gives effect to a reviewable decision the CEO must give notice in accordance with this section.
- (2) If the reviewable decision relates to an authorisation other than an aquaculture licence notice must be given —
  - (a) to each person who was given notice under section 146(1)(a) in respect of the reviewable decision; and
  - (b) in writing or in such other manner as is prescribed.
- (3) If the reviewable decision relates to an aquaculture licence the notice must be given in the same manner as the notice of the decision was given under section 79(1)(a).

**149. SAT to give notice of decision on review**

- (1) When the State Administrative Tribunal determines an application made under section 147 the State Administrative Tribunal must give notice of its decision and the reasons for its decision in accordance with this section.
- (2) If the application relates to a reviewable decision in respect of an authorisation other than an aquaculture licence the notice must be given —
  - (a) to each person who was given notice under section 146(1)(a) in respect of the reviewable decision; and
  - (b) in writing or in such other manner as is prescribed.
- (3) If the application relates to a reviewable decision in respect of an aquaculture licence the notice must be given in the same manner as the notice of the reviewable decision was given under section 79(1)(a).

## **Part 10 — Register**

### **Division 1 — General**

#### **150. Register of registrable interests**

- (1) The CEO must keep a register of registrable interests in such manner and form as the CEO determines.
- (2) The register must set out the following details in respect of each registrable interest —
  - (a) the nature of the registrable interest;
  - (b) the name and business address of the person who holds the registrable interest;
  - (c) details in relation to surety for an authorisation that the CEO is required to record under section 40(1);
  - (d) details relating to any security interest in the registrable interest that the CEO is required to note on the register under section 153;
  - (e) details of any conviction required to be recorded on the register —
    - (i) under section 209(2) in respect of the authorisation; or
    - (ii) under section 210(1) in respect of a resource share that is nominated as surety for the authorisation;
  - (f) any other prescribed details.

#### **151. Inspection of register**

- (1) The register must be available for public inspection, subject to payment of the prescribed fee (if any) during prescribed hours and at a prescribed place.
- (2) A person may, upon application to the CEO and payment of the prescribed fee (if any) obtain a copy of an entry in, or an extract from, the register.
- (3) The CEO may, subject to payment of the prescribed fee (if any) allow a person access to the register in electronic form.
- (4) Despite subsections (1), (2) and (3), details of recreational fishing licences must not be made available to the public.

#### **152. Regulations about register**

The regulations may —

- (a) prescribe fees and charges payable in respect of anything done under this Part; and

- (b) provide for any other matter relating to the register.

**Division 2 — Security interest in registrable interest**

**153. Application to have security interest in certain registrable interests noted**

- (1) The holder of registrable interest of a type set out in the Table may apply to the CEO to have noted on the register that a specified person has a security interest in the registrable interest.

**Table**

<b>Item</b>	<b>Type of interest</b>
1.	Aquaculture lease
2.	Aquaculture licence
3.	Licence granted under the regulations authorising a person to operate fishing tours
4.	Managed fishery licence
5.	Resource share

- (2) An application must —
- (a) be made in an approved form; and
  - (b) be accompanied by the prescribed fee (if any) for the application.

**154. Notation of security interest**

- (1) The CEO must, on an application made under section 153, make a notation in accordance with the application.
- (2) The notation must set out the following details in respect of the security interest —
- (a) a general description of the nature of the security interest;
  - (b) the name and business address of the person who has the security interest;
  - (c) any other prescribed details.

**155. Irrelevant matters for purpose of s. 154**

- (1) The CEO is not to be concerned with —
  - (a) the nature of any security interest that is the subject of an application under section 153; or
  - (b) whether or not the person specified in the application as having the security interest actually has that interest.
- (2) A notation on the register that a person has a security interest in a registrable interest does not give the security interest any force that it would not have had if this Division had not been enacted.

**156. Security holder noted in register to be notified of certain events affecting security**

The CEO must, as soon as is practicable, give to a person who is noted on the register as having a security interest in a registrable interest written details of any of the following events that occur in respect of the registrable interest —

- (a) the holder of the registrable interest or a person acting for or on behalf of the holder, is convicted of a prescribed offence against this Act;
- (b) if the registrable interest is a managed fishery licence or an aquaculture licence (an *authorisation*) —
  - (i) application is made to the CEO to vary the authorisation or to transfer the authorisation or the whole or part of an entitlement under the authorisation;
  - (ii) a fisheries adjustment scheme, as defined in the *Fisheries Adjustment Schemes Act 1987* section 3(1), is established in respect of authorisations of the class to which the authorisation belongs;
  - (iii) the CEO proposes to cancel, suspend or not to renew the authorisation;
  - (iv) the holder of the authorisation gives notice of the holder's intention to surrender the authorisation;
- (c) if the registrable interest is an aquaculture lease —
  - (i) the lease is to be varied or transferred;
  - (ii) the Minister proposes to terminate the lease;
  - (iii) the holder of the lease gives notice of the holder's intention to terminate the lease;

- (d) if the registrable interest is a resource share —
  - (i) a request is made to the CEO for the share to be transferred;
  - (ii) the holder of the share gives notice of the holder's intention to nominate the share as surety for an authorisation;
  - (iii) the Minister proposes to revoke an ARMS or ARUP under which the resource share is held.

**157. Removing or varying notation of security interest**

- (1) If the register contains a notation that a person has a security interest in a registrable interest, the holder of the registrable interest may apply to the CEO in an approved form to —
  - (a) remove the notation from the register; or
  - (b) vary any details relating to the security interest.
- (2) The CEO must give notice of an application made under subsection (1) to the security holder.
- (3) Subject to subsection (4), the CEO must, on an application made under subsection (1), remove the notation of the security interest from the register or vary the details relating to the security interest in accordance with the application.
- (4) The CEO must not remove the notation of the security interest from the register or vary the details of the security interest in the register (as the case requires) unless —
  - (a) 21 days has expired from the day on which notice is given under subsection (2); or
  - (b) the CEO has the written consent of the holder of the registrable interest and the security holder to do so.
- (5) The CEO is not to be concerned with the reasons for the application.

## **Part 11 — Compliance**

### **Division 1 — Preliminary**

**158. Terms used**

In this Part —

***compliance purposes*** means the purposes of —

- (a) monitoring whether this Act has been, or is being, complied with; or
- (b) investigating a suspected contravention of this Act;

***entry warrant*** means a warrant issued under Division 4;



**occupier**, of a place, includes any person who appears to have the control or management of the place;

**relevant record** means a record that —

- (a) is required to be kept under this Act; or
- (b) contains information that is or may be relevant to a contravention of this Act; or
- (c) relates to a fishing activity, the carrying out of aquaculture or the use of an aquatic resource;

**unauthorised structure** means any hut, shack or other structure on land other than private land the erection of which has not been authorised under a written law.

## **Division 2 — Compliance officers**

### **159. Compliance officers**

- (1) The CEO may, by instrument in writing, designate any of the following persons as a compliance officer for the purposes of this Act —
  - (a) a public service officer;
  - (b) a person employed or engaged under the *Public Sector Management Act 1994* section 100 by the employing authority of the Department.
- (2) A person may be designated as a compliance officer for a fixed or indefinite period.
- (3) The CEO may, by instrument in writing, revoke a designation at any time.

### **160. Honorary compliance officers**

- (1) The CEO may, by instrument in writing, appoint any person to be an honorary compliance officer for the whole or any specified area of the State.
- (2) An honorary compliance officer has, in respect of the State, or the area of the State for which he or she is appointed, such of the powers conferred by or under this Act on a compliance officer as are specified in the instrument of appointment and to that extent is taken to be such an officer.
- (3) A person may be appointed as an honorary compliance officer for a fixed or indefinite period.
- (4) The CEO may, by instrument in writing, revoke an appointment at any time.

**161. Identity cards**

- (1) The CEO must give to each person designated under section 159 or appointed under section 160 an identity card.
- (2) An identity card must —
  - (a) identify the person as a compliance officer or an honorary compliance officer as the case may be; and
  - (b) if the person is an honorary compliance officer, specify the area of the State for which the person is appointed and the powers conferred on the person; and
  - (c) contain a recent photograph of the person.
- (3) A person who, without a reasonable excuse, fails to return the person's identity card to the CEO on ceasing to be a compliance officer or an honorary compliance officer commits an offence.  
Penalty: a fine of \$5 000.
- (4) A person given an identity card under subsection (1) must carry his or her identity card at all times when exercising powers or performing functions as a compliance officer unless it is impracticable to do so.

**162. Production or display of identity card**

- (1) A person given an identity card under section 161(1) may exercise a power as a compliance officer in relation to someone only if —
  - (a) the person first produces the person's identity card for the other person's inspection; or
  - (b) the person has the identity card displayed so it is clearly visible to the other person.
- (2) Subsection (1) only applies if the compliance officer is in the physical presence of the person in relation to whom the power is to be exercised.
- (3) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the person may exercise the power and then produce the identity card for inspection by the other person at the first reasonable opportunity.

**163. Police officers to have powers of compliance officers**

For the purposes of this Act, a police officer has the powers of a compliance officer under this Act and is taken to be such an officer.

**164. Naval officers to have powers of compliance officers in dealing with foreign boats**

- (1) For the purposes of this Act, an officer in command of any boat of the naval force of the Commonwealth has the powers of a compliance officer under this Act and is taken to be such an officer in respect of —
  - (a) foreign boats; and
  - (b) operations on or from foreign boats; and
  - (c) persons on foreign boats.
- (2) An officer may delegate to a person under the officer's command any of the powers of a compliance officer conferred on the officer under subsection (1) and that person has, and may exercise, those powers.

**Division 3 — Powers in relation to compliance**

**165. Entry powers**

- (1) A compliance officer may, for compliance purposes, at any reasonable time enter and remain in or on the following places —
  - (a) a place in respect of which there is an authorisation in force under this Act;
  - (b) a place that is being used for the purpose of selling aquatic organisms, or storing aquatic organisms for a commercial purpose;
  - (c) a place ordinarily used for the purpose of manufacturing, repairing or selling boats or fishing or aquaculture gear;
  - (d) a place where records are required to be kept for the purposes of this Act;
  - (e) a vehicle;
  - (f) a tent, camp or unauthorised structure if the compliance officer suspects on reasonable grounds that it contains any aquatic organisms or fishing gear;
  - (g) a place where the compliance officer suspects on reasonable grounds that —
    - (i) a contravention of this Act has occurred, is occurring or is likely to occur; or
    - (ii) there is something that may afford evidence of a contravention of this Act.
- (2) A compliance officer is not entitled under subsection (1) to enter a place used as a residence unless —
  - (a) the occupier of the place consents; or

- (b) the compliance officer —
    - (i) suspects on reasonable grounds that a person has committed an offence against this Act; and
    - (ii) has pursued the person without interruption from the place, or near the place, where the offence was suspected to have been committed to the place used as a residence;
  - or
  - (c) the compliance officer has the authority of an entry warrant.
- (3) A compliance officer may enter any land for the purpose of passing through the land unless the land is attached to a building or other structure.

**166. Powers after entry for compliance purposes**

- (1) A compliance officer who enters a place under section 165(1) or under the authority of an entry warrant may, for compliance purposes, do one or more of the following —
- (a) inspect the place and any thing at the place;
  - (b) search the place and any thing at the place;
  - (c) examine, measure, test, photograph or film the place and any thing at the place;
  - (d) operate a computer or other thing at the place;
  - (e) take any thing, or a sample of or from any thing, at the place for analysis or testing;
  - (f) make a copy of, take an extract from, or download or print out, any record that the compliance officer suspects on reasonable grounds is a relevant record;
  - (g) seize any thing that is or may afford evidence of a contravention of this Act;
  - (h) if a thing found in or on the place cannot be conveniently removed, secure it against interference;
  - (i) seize a record that the compliance officer suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;
  - (j) direct a person who is at the place to do one or more of the following —
    - (i) state the person's full name, date of birth, the address of where the person is living and the address of where the person usually lives;
    - (ii) answer (orally or in writing) questions asked by the compliance officer;

- (iii) produce relevant records in the person's custody or under the person's control;
  - (iv) operate a computer or other thing at the place;
  - (v) provide access (free of charge) to photocopying equipment at the place to enable the copying of documents;
  - (vi) give the compliance officer a translation, code, password or other information necessary to gain access to or interpret and understand a record;
  - (vii) give other assistance the compliance officer reasonably requires.
- (2) If a compliance officer takes any thing away from the place, the compliance officer must give the occupier of the place a receipt for the thing.

**167. Obtaining information and documents**

- (1) A compliance officer may, for compliance purposes, do one or more of the following —
- (a) direct a person —
    - (i) to give to the compliance officer such information as the compliance officer reasonably requires; or
    - (ii) to answer a question put to the person;
  - (b) direct a person to produce to the compliance officer a relevant record in the person's custody or under the person's control;
  - (c) examine and make a copy of a relevant record produced in response to a direction given under paragraph (b).
- (2) A direction given under subsection (1)(a) —
- (a) may be given orally or in writing; and
  - (b) must specify the time at, or within which, the information or answer must be given to the compliance officer; and
  - (c) may require that the information or answer —
    - (i) be given orally or in writing; or
    - (ii) if it is directed to be given in writing, be given by means specified in the direction; or
    - (iii) be verified by a statutory declaration.
- (3) A direction given under subsection (1)(b) —
- (a) must be given in writing to the person required to produce the record; and

- (b) must specify the time at, or within which, the record is to be produced to the compliance officer; and
- (c) may require that the record be produced to the compliance officer —
  - (i) at a place specified in the direction; and
  - (ii) by a means specified in the direction.

**168. Other powers**

- (1) A compliance officer may, for compliance purposes, do one or more of the following —
  - (a) signal or direct the person in control of a vehicle —
    - (i) to stop the vehicle; or
    - (ii) not to move the vehicle;
  - (b) at any time enter into and pass along (whether by boat or otherwise) any waters or the banks or borders of any waters;
  - (c) direct a person to produce to the compliance officer for inspection all things in the person's actual possession if the compliance officer suspects on reasonable grounds that any of the things may afford evidence of the commission of an offence against this Act;
  - (d) direct a person to haul, pull, draw, reel in or otherwise recover or bring onto land, any gear used in connection with fishing, aquaculture or aquatic eco-tourism;
  - (e) direct any person who has any aquatic organisms, or any fishing gear, in the person's possession to wait at a place indicated by the compliance officer until the compliance officer is able to inspect the aquatic organisms or the fishing gear;
  - (f) direct the master of a boat or the owner or person in apparent control of any other vehicle or the owner or occupier of any place, to secure the boat, vehicle or place against interference for a specified period;
  - (g) direct the master of any boat —
    - (i) to bring the boat to a specified place; and
    - (ii) not to remove the boat from that place until further directed by a compliance officer;
  - (h) direct the master of any boat or the person in control of any other vehicle to deliver any aquatic organisms or any gear or equipment used in connection with fishing, aquaculture, fishing tours or aquatic eco-tourism that is on or attached to the boat or vehicle to a specified place;

- (i) direct the master of any boat not to proceed to sea unless a compliance officer is on board the boat;
  - (j) conduct any inspection, examination or inquiry the compliance officer considers necessary to ascertain whether or not this Act or any condition imposed under this Act has been complied with;
  - (k) one or more of the powers referred to in section 166(1)(c) to (j) in respect of a place, if, following the exercise of a power referred to in paragraph (a) to (j) of this subsection, a compliance officer suspects on reasonable grounds that —
    - (i) an offence against this Act has been, is being or about to be committed in or on the place; or
    - (ii) there is in or on the place any thing that may afford evidence of the commission of an offence against this Act.
- (2) A compliance officer may only exercise a power referred to in subsection (1)(a) in respect of a train or aircraft if the compliance officer suspects on reasonable grounds that —
  - (a) an offence against this Act has been, is being or is about to be committed in or on the train or aircraft; or
  - (b) there is in or on the train or aircraft any thing that may afford evidence of the commission of an offence against this Act.
- (3) A vehicle may only be detained under subsection (1)(a)(ii) or (g) for such period as is reasonably necessary for the purposes of this Act.
- (4) A person may only be detained under subsection (1)(e) for such period as is reasonably necessary for the purposes of this Act.
- (5) A person who, without reasonable excuse, refuses or fails to comply with a direction or signal given under subsection (1) commits an offence.  
Penalty: a fine of \$10 000.
- (6) For the purposes of subsection (5), it is a reasonable excuse for a person to refuse or fail to comply with a signal or direction given under subsection (1)(a) if —
  - (a) the person reasonably believes that to obey the signal or direction immediately would endanger the person, another person or the vehicle; and
  - (b) the person complies with the signal or direction as soon as it is practicable to obey it.

**169. Powers to arrest without warrant**

- (1) A compliance officer may arrest without warrant a person if —
  - (a) the person does not state his or her name, principal place of residence or date of birth to the compliance officer when directed to do so under section 167(1)(a); or
  - (b) the compliance officer suspects on reasonable grounds that the person has given a false name, principal place of residence or date of birth to the compliance officer; or
  - (c) the person assaults a compliance officer when the compliance officer is performing any duty, or exercising any power, under this Act; or
  - (d) the compliance officer suspects on reasonable grounds that the person has committed an offence against this Act and that the offence is likely to continue or recur if the person is not arrested; or
  - (e) the compliance officer suspects on reasonable grounds that the person has committed an offence against this Act and that any other procedure for dealing with that offence would not be effective.
- (2) A person arrested by a compliance officer under subsection (1) who escapes, or attempts to escape, from the custody of the compliance officer commits an offence.  
Penalty: a fine of \$10 000.

**170. Powers to seize things**

- A compliance officer may seize any of the following things —
- (a) any aquatic organism that the compliance officer suspects on reasonable grounds has been the subject of an offence against this Act;
  - (b) any thing that the compliance officer suspects on reasonable grounds has been used, or is intended to be used, in the commission of an offence against this Act;
  - (c) any thing that the compliance officer suspects on reasonable grounds is the proceeds of the sale of any aquatic organisms in contravention of this Act;
  - (d) any thing that the compliance officer suspects on reasonable grounds may afford evidence of the commission of an offence against this Act;
  - (e) any declared organism, any receptacle or container containing a declared organism and any medium in which the declared organism is being held;



- (f) if more than 1/20<sup>th</sup> of the total number of aquatic organisms contained in a vehicle, receptacle or container are protected aquatic organisms —
  - (i) all aquatic organisms contained in the vehicle, receptacle or container; and
  - (ii) any receptacle or container containing the aquatic organisms;
- (g) if the compliance officer suspects on reasonable grounds that an offence against section 141(1) or 142(1) has been committed, any thing that the compliance officer believes may become liable to forfeiture under section 203(3) as a result of the offence.

**171. Powers to deal with seized aquatic organisms**

- (1) If any aquatic organism is seized under this Act and, in the opinion of a compliance officer, it is practicable to return the organism to its natural environment, the compliance officer may return the organism to its natural environment.
- (2) If any aquatic organism is seized under this Act and, in the opinion of a compliance officer, the organism is likely to perish if no action is taken to protect it, the compliance officer may sell, preserve or otherwise dispose of the organism in the prescribed way.
- (3) Except as provided in subsection (4), proceeds of the sale of any aquatic organism under subsection (2) are to be paid to the credit of an account referred to in Part 14 Division 3 that is prescribed or, if no account is prescribed, then into the Consolidated Account.
- (4) The proceeds of the sale of an aquatic organism sold in accordance with subsection (2) (less any costs incurred by the compliance officer in selling the organism) are to be paid to the person from whom the organism was seized if —
  - (a) the aquatic organism was seized by a compliance officer in connection with a suspected offence; and
  - (b) a decision is subsequently made not to commence proceedings in respect of the offence or after proceedings for the offence have been completed no person is convicted of the offence.
- (5) No compensation is payable to any person in respect of any action taken under this section in respect of any aquatic organism.

**172. Powers in respect of certain fishing gear or abandoned aquatic organisms**

- (1) A compliance officer may seize any fishing gear found unattended in, or adjacent to, any waters if —
  - (a) fishing in those waters, or the use of that type of fishing gear in those waters, is prohibited under this Act; or
  - (b) the fishing gear does not comply with the requirements of this Act; or
  - (c) the fishing gear appears to have been lost or abandoned.
- (2) A compliance officer may destroy or render inoperative fishing gear referred to in subsection (1) if, in the compliance officer's opinion, it is not practicable to seize the fishing gear.
- (3) A compliance officer may seize any aquatic organism found in, or adjacent to, any waters if the organism appears to have been abandoned.

**173. Powers under *Animal Welfare Act 2002* to prevent cruelty to aquatic organisms**

A compliance officer may, for the purpose of enforcing regulations made in relation to the welfare, safety and health of aquatic organisms, exercise the powers conferred by the *Animal Welfare Act 2002* on general inspectors under that Act as if —

- (a) the compliance officer was such an inspector; and
- (b) aquatic organisms were animals for all purposes under that Act; and
- (c) an offence against those regulations was an offence against Part 3 of that Act.

**174. Powers under *Biosecurity and Agriculture Management Act 2007* in relation to biosecurity**

A compliance officer may, for purposes related to biosecurity in the aquatic environment, exercise the powers conferred by the *Biosecurity and Agriculture Management Act 2007* on inspectors under that Act as if —

- (a) declared organisms were declared pests for all purposes under that Act; and
- (b) an offence against Part 6 was an offence against that Act.

**175. Use of assistance and reasonable force**

- (1) A compliance officer may use assistance and force that is reasonably necessary in the circumstances when exercising a power under this Act.

- (2) A compliance officer may request a police officer or other person to assist the compliance officer in exercising powers under this Act.
- (3) Without limiting subsection (2), a compliance officer may request the master of a boat or a person in charge of any other vehicle to make the boat or other vehicle available for the use of the compliance officer.
- (4) If a boat or other vehicle is made available for the use of a compliance officer under this section, the person who would otherwise have been entitled to the use of the boat or vehicle at that time may apply to the CEO for compensation for loss of use of the boat or other vehicle.
- (5) If a person applies to the CEO for compensation under subsection (4), the CEO is to pay to the person such amount of compensation as the CEO thinks fit.
- (6) A person, while assisting a compliance officer at the request of the compliance officer and in accordance with this Act —
  - (a) has the same powers as conferred on a compliance officer; and
  - (b) is subject to the same responsibilities as a compliance officer; and
  - (c) has the same protection from liability as a compliance officer.
- (7) Nothing in this section derogates from the powers of a police officer.

**176. Duty to try to minimise damage**

In exercising any power under this Part, a compliance officer must try, as far as is practicable, to minimise damage to any property.

**177. Obstructing compliance officers**

- (1) A person who obstructs a compliance officer commits an offence.  
Penalty: a fine of \$60 000 and imprisonment for 9 months.
- (2) For the purposes of subsection (1), a person obstructs a compliance officer if the person does one or more of the following —
  - (a) fails to facilitate by all reasonable means the boarding of a boat by a compliance officer;
  - (b) abuses, threatens or insults a compliance officer when the compliance officer is performing any duty, or exercising any power, under this Act;

- (c) assaults, hinders or obstructs a compliance officer when the compliance officer is performing any duty, or exercising any power, under this Act;
- (d) incites or encourages another person to do anything referred to in paragraph (b) or (c);
- (e) impersonates a compliance officer;
- (f) without reasonable excuse, refuses to allow a search to be made that is authorised under this Act.

**178. Interfering with seized property**

- (1) In this section —  
*interfere* includes to remove, to damage and to destroy.
- (2) A person who interferes with any thing seized under this Act without being authorised by the CEO or a compliance officer to do so commits an offence.  
Penalty: a fine of \$10 000.
- (3) If a court convicts a person of an offence against subsection (2), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to the CEO or to any other person.

**179. Giving false or misleading information to compliance officer**

- (1) A person who gives false or misleading information to a compliance officer commits an offence.  
Penalty: a fine of \$60 000 and imprisonment for 9 months.
- (2) For the purposes of subsection (1), a person gives false or misleading information to a compliance officer if the person does one or more of the following —
  - (a) states anything to the compliance officer that the person knows is false or misleading in a material particular;
  - (b) omits from a statement made to the compliance officer anything without which the statement is, to the person's knowledge, misleading in a material particular;
  - (c) gives or produces any document to the compliance officer that —
    - (i) the person knows is false or misleading in a material particular; or
    - (ii) omits anything without which the document is, to the person's knowledge, misleading in a material particular.

**180. Directions generally**

- (1) Except as otherwise provided in this Division, a direction under this Division may be given orally or in writing.
- (2) A person who, without reasonable excuse, fails to comply with a direction given to the person under this Division commits an offence.

Penalty: a fine of \$10 000.

**Division 4 — Entry warrants**

**181. Warrants to enter place**

- (1) A compliance officer may apply to a justice of the peace for an entry warrant authorising the entry of a place for compliance purposes.
- (2) A compliance officer may apply for an entry warrant for a place even if, under this Act, the compliance officer may enter the place without an entry warrant.
- (3) The application must be made in accordance with the *Criminal Investigation Act 2006* section 13 and section 13(8) of that Act applies in relation to an entry warrant.
- (4) An application for an entry warrant must —
  - (a) describe with reasonable particularity the place to be entered; and
  - (b) state that the compliance officer has reasonable grounds for believing that entry to the place is necessary for compliance purposes; and
  - (c) state the purposes for which entry to the place is required; and
  - (d) include any other information that is prescribed.

**182. Issue of entry warrant**

- (1) A justice of the peace to whom an application is made under section 181 may issue an entry warrant if satisfied that there are reasonable grounds for believing that entry and inspection of the place are necessary for compliance purposes.
- (2) An entry warrant must contain the following information —
  - (a) a reasonably particular description of the place to which it relates;
  - (b) a reasonably particular description of the purposes for which entry to the place is required;
  - (c) the period, not exceeding 7 days, in which it may be executed;

- (d) the name of the justice of the peace who issued it;
- (e) the date and time when it was issued.

**183. Effect of entry warrant**

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by a justice of the peace.
- (3) An entry warrant authorises the compliance officer executing the warrant to, during the period of the warrant —
  - (a) enter the place described in the warrant; and
  - (b) exercise the powers referred to in section 166(1).

**184. Execution of entry warrant**

- (1) An entry warrant may be executed by a compliance officer to whom it is issued or by any other compliance officer.
- (2) A compliance officer executing an entry warrant must, at the reasonable request of a person apparently in charge of the place, produce the warrant.

## **Part 12 — Legal proceedings**

### **Division 1 — Proceedings and infringement notices**

**185. Prosecutions**

- (1) Proceedings for an offence against this Act may be instituted by the CEO, a police officer, a compliance officer or any other person authorised in writing to do so by the CEO.
- (2) Proceedings for an offence against a provision listed in the Table must be commenced within 5 years after the offence was allegedly committed.

**Table**

s. 31(2) and (3)	s. 49(2) and (3)
s. 64(2) and (3)	s. 65(2) and (3)
s. 104(2) and (3)	s. 105(2)
s. 106(1) and (2)	s. 107(1)
s. 108	s. 109(2)

- (3) Proceedings for an offence against a provision listed in the Table or a provision of the regulations that is prescribed for the purposes of this subsection must be commenced within 2 years after the offence was allegedly committed.

**Table**

s. 110(2)	s. 112(3)
s. 125(4)	s. 137(1)
s. 140(1)	s. 141(1)
s. 142(1)	s. 211(4) and (5)
s. 260(1) and (2)	

- (4) In any proceedings for an offence against this Act, unless evidence is given to the contrary, proof is not required —
- (a) of the authority of a person to institute proceedings for an offence against this Act; or
  - (b) that a signature on a prosecution notice is the signature of a person authorised to institute proceedings for an offence against this Act.
- (5) A compliance officer authorised for the purpose by the CEO may appear on behalf of the CEO or any other officer of the Department in any proceedings under this Act in a court of summary jurisdiction.

**186. Infringement notices and the *Criminal Procedure Act 2004***

- (1) If this Act is a prescribed Act for the purposes of the *Criminal Procedure Act 2004* Part 2, this section applies in relation to the service of an infringement notice under that Part by an authorised officer in relation to an alleged offence under this Act.
- (2) The infringement notice must be served within 45 days after the day on which the alleged offence is believed to have been committed.
- (3) The *Criminal Procedure Act 2004* Part 2 is modified to the extent necessary to give effect to this section.

**Division 2 — Responsibility of certain persons**

**187. Masters' liability**

- (1) If a person (the *principal offender*) commits an offence against this Act the master of a boat on which, or by the use of which, the offence was committed is taken to have committed the same offence.
- (2) It is a defence in proceedings against the master of a boat for an offence against this Act by the application of subsection (1) for the master to prove that —
  - (a) the conduct that constituted the offence was engaged in without the consent or connivance of the master; and
  - (b) the master took all reasonable measures to prevent the conduct being engaged in.
- (3) A master may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the principal offender has been proceeded against and convicted of the offence.

**188. Liability of person in charge of a fishing tour**

- (1) In this section —  
*fishing tour* means a fishing tour provided by a person who holds a licence granted under the regulations that authorises the person to provide fishing tours;  
*person in charge of a fishing tour* means the individual in charge of the day-to-day operation of the tour, who is not necessarily the person who holds the licence under which the tour is provided.
- (2) If a person (the *principal offender*) commits an offence against this Act while taking part in a fishing tour, the person in charge of the fishing tour is taken to have committed the same offence.
- (3) It is a defence in proceedings against a person in charge of a fishing tour for an offence against this Act by the application of subsection (2) for that person to prove that —
  - (a) the conduct that constituted the offence was engaged in without the consent or connivance of the person in charge of the fishing tour; and
  - (b) the person in charge of the fishing tour took all reasonable measures to prevent the conduct being engaged in.
- (4) A person in charge of a fishing tour may be proceeded against and convicted of an offence against this Act by virtue of subsection (2)



whether or not the principal offender has been proceeded against and convicted of the offence.

**189. Liability of co-holders of authorisation**

- (1) If an authorisation is held by 2 or more persons and any of those persons commits an offence against this Act while acting or purporting to act as a holder of the authorisation, each of those persons is taken to have committed the offence.
- (2) It is a defence in proceedings against a person for an offence against this Act by the application of subsection (1), for that person to prove that —
  - (a) the conduct that constituted the offence was engaged in without the consent or connivance of the person; and
  - (b) the person took all reasonable measures to prevent the conduct being engaged in.
- (3) A person may be charged with and convicted of an offence against this Act by virtue of subsection (1) whether or not another person has been charged with or convicted of the offence.

**190. Liability of holders of authorisation for offence by agent**

- (1) If a person (the *agent*) acting for or on behalf of the holder of an authorisation commits an offence against this Act, the holder is taken to have committed the same offence.
- (2) It is a defence in proceedings against the holder of an authorisation for an offence against this Act by the application of subsection (1) for the holder to prove that —
  - (a) the conduct that constituted the offence was engaged in without the consent or connivance of the holder; and
  - (b) the holder took all reasonable measures to prevent the conduct being engaged in.
- (3) The holder of an authorisation may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the agent has been proceeded against and convicted of the offence.
- (4) If a decision is made to proceed against an agent of the holder of an authorisation the CEO must give written notice of the decision to the holder.

**191. Liability of officers of body corporate for offence by body**

- (1) In this section —  
*officer*, in relation to a body corporate, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

- (2) This section applies to —
- (a) a provision listed in the Table; or
  - (b) a provision of the regulations that is prescribed for the purposes of this section.

**Table**

s. 7(8)	s. 31(2) and (3)
s. 49(2) and (3)	s. 64(2) and (3)
s. 65(2) and (3)	s. 69(2)
s. 86	s. 94(2), (3), (4), (5) and (6)
s. 104(2) and (3)	s. 106(1) and (2)
s. 107(1)	s. 109(2) and (4)
s. 110(2)	s. 112(3)
s. 114(4)	s. 125(4)
s. 129	s. 138(1)
s. 140(1)	s. 141(1)
s. 211(4)	s. 260(1) and (2)

- (3) If a body corporate is guilty of an offence to which this section applies, an officer of the body corporate is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.
- (4) In determining whether things done or omitted to be done by the officer constitute reasonable steps, a court must have regard to —
- (a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate; and
  - (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
  - (c) any other relevant matter.

**192. Further provisions relating to liability of officers of body corporate**

- (1) Section 191 does not affect the liability of a body corporate for any offence.
- (2) Section 191 does not affect the liability of an officer, or any other person, under Chapters II, LVII, LVIII and LIX of *The Criminal Code*.
- (3) An officer of a body corporate may be charged with, and convicted of, an offence in accordance with section 191 whether or not the body corporate is charged with, or convicted of, the principal offence committed by the body corporate.
- (4) If an officer of a body corporate who is charged with an offence in accordance with section 191 claims that the body corporate would have a defence if it were charged with the offence —
  - (a) the onus of proving the defence is on the officer; and
  - (b) the standard of proof required is the standard that would apply to the body corporate in relation to the defence.
- (5) Subsection (4) does not limit any other defence available to the officer.

**Division 3 — Evidentiary provisions**

**193. Certain matters taken to be proved if alleged in prosecution notice**

In proceedings for an offence against this Act an allegation in the prosecution notice of any matter listed in the Table is, in the absence of evidence to the contrary, taken to be proved.

**Table**

Item	Matter
1.	That a person, boat, vehicle or other thing referred to in the charge was in a particular area of land or waters
2.	That aquatic organisms were taken from a particular area of land or waters
3.	That an act occurred in a particular area of land or waters
4.	That a boat was, at the time of the alleged offence, a foreign boat

Item	Matter
5.	That an act occurred for a particular purpose
6.	That something was done with a particular intent

**194. Certain matters taken to be proved if stated in certificate**

- (1) In this section —  
***authorised person*** means a person designated under subsection (2) to be an authorised person.
- (2) The Minister may by notice published in the *Gazette* designate a person to be an authorised person for the purposes of this section.
- (3) In proceedings for an offence against this Act, production of a certificate purporting to be signed by the CEO and stating any of the matters listed in the Table is, without proof of the CEO's signature, evidence of the facts stated in the certificate.

**Table**

Item	Matter
1.	That on any date or during any period a person was or was not authorised to do any thing under an authorisation, temporary aquaculture permit or aquaculture lease
2.	That on any date or during any period a person was or was not exempted from this Act or specified provisions of this Act by an exemption
3.	That on any date or during any period any boat, place or other thing was or was not the subject of an authorisation, temporary aquaculture permit or exemption
4.	That on any date or during any period an authorisation or temporary aquaculture permit was cancelled, suspended or for any other reason of no effect
5.	That on any date or during any period an aquaculture lease was terminated or for any other reason of no effect

<b>Item</b>	<b>Matter</b>
6.	That on any date or during any period an authorisation, temporary aquaculture permit, aquaculture lease or exemption was subject to any specified condition or conditions
7.	That on any date or during any period surety was required or provided for an authorisation
8.	That on any date or during any period a person was or was not registered as the holder of a resource share
9.	That on any date or during any period a person was or was not registered as the holder of catch entitlement of a specified quantity
10.	That on any date or during any period a person was a compliance officer

- (4) In proceedings for an offence against this Act, production of a certificate purporting to be signed by an authorised person and stating any of the matters listed in the Table is, without proof of the authorised person's signature, evidence of the facts stated in the certificate.

**Table**

<b>Item</b>	<b>Matter</b>
1.	That an aquatic organism was of a particular species or type or had a particular characteristic
2.	That a species or type of aquatic organism is or is not found in a particular area
3.	That any fishing gear is of a particular type or is designed, used or capable of being used for a particular purpose or for taking a particular species of aquatic organism

- (5) Subsections (3) and (4) only apply if —
- (a) at least 28 days before the hearing, notice in writing has been given to the accused of the prosecutor's intention to produce the certificate; and

- (b) the accused has not within 14 days of receipt of the notice delivered to the prosecutor a notice requiring that the evidence of the CEO or the authorised person be given in person.
- (6) The court before which proceedings are held may, in addition to making any other order as to costs, make such order as it thinks fit as to the expenses and remuneration to be paid for the services of the CEO or the authorised person.

**195. Proof of certain matters as evidence of other matters**

- (1) In this section —  
*container* includes a package and any other receptacle;  
*label*, in relation to a container, means a mark or label on, in or attached to the inside or outside of the container;  
*restricted-access electronic reporting system* means a system operated by or on behalf of the Department that —
  - (a) allows for information or data to be recorded, submitted or lodged electronically; and
  - (b) is accessed using a personal identification number, a password, an access code, an encryption key or any other information or device.
- (2) In any proceedings for an offence against this Act, proof of a matter listed in the second column of an item in the Table is evidence of the matter listed in the third column of that item, unless the contrary is proved.

**Table**

Item	Matter proved	Evidence of
1.	That a container had a label indicating that the container contained an aquatic organism or a particular class of aquatic organism	That the container contained the organism or the class of organism
2.	That a container had a label indicating that the container contained a specified quantity of an aquatic organism	That the container contained that quantity of the organism

<b>Item</b>	<b>Matter proved</b>	<b>Evidence of</b>
3.	That a container had a label indicating that the container was packed or consigned by or for a particular person	That the container was packed or consigned by or for that person
4.	That aquatic organisms — (a) were on a fishing boat; and (b) were taken by, or were in the possession of, a person on that boat	That the organisms were taken by, or in the possession of, the person for the purpose of sale
5.	That aquatic organisms — (a) were at a place in, or from which, aquatic organisms were ordinarily sold (whether for meals or otherwise); and (b) were in the possession of a person at the place (other than a customer)	That the aquatic organisms were in the possession of the person for the purpose of sale
6.	That aquatic organisms — (a) were at a place in which aquatic organisms were ordinarily commercially processed; and (b) were in the possession of a person at the place	That the aquatic organisms were in the possession of the person for the purpose of sale
7.	That aquatic organisms — (a) were at a place in which aquatic organisms were ordinarily received for commercial purposes; and (b) were in the possession of a person at the place	That the aquatic organisms were in the possession of the person for the purpose of sale

Item	Matter proved	Evidence of
8.	That a record or return was recorded, submitted or lodged for the purposes of this Act using a restricted-access electronic reporting system	That the record or return was recorded, submitted or lodged by the person whose personal identification number, password, access code, encryption key or other information or device was used to access the system for the purpose of recording, submitting or lodging the record or return

**196. Onus of proving certain matters**

In any proceedings for an offence against this Act, the onus of proving a matter listed in the Table lies with the person asserting the matter.

**Table**

Item	Matter
1.	That at the time of the alleged offence a person was not required in accordance with section 6 to hold an authorisation
2.	That conduct was engaged in with lawful excuse or reasonable excuse
3.	That a person, boat or thing referred to in the charge was not in WA waters
4.	That an aquatic organism was taken from waters other than WA waters
5.	That conduct was engaged in in waters other than WA waters

**197. Proof as to aquatic organisms taken for sale**

- (1) In any proceedings for an offence against this Act, proof that any aquatic organism taken by a person was subsequently sold by or on behalf of the person is conclusive evidence that the aquatic organism was taken by the person for the purpose of sale.



- (2) In any proceedings for an offence against this Act, proof that any aquatic organism in a person's possession was subsequently sold by or on behalf of the person is conclusive evidence that the person had the organism in the person's possession for the purpose of sale.

**198. Determining characteristics of aquatic organisms**

The size, weight or any other characteristic of an aquatic organism is, for the purposes of this Act, to be determined using any method that is prescribed.

**199. Accuracy of compliance officers' equipment**

In any proceedings for an offence against this Act, proof is not required of the accuracy of any communications, navigational, measuring or recording equipment (including electronic equipment) used by a compliance officer, unless evidence is given to the contrary.

**200. Accuracy of approved devices**

- (1) In this section —  
*approved electronic information device* means an electronic device of a type approved in accordance with the regulations that records information or data or transmits recorded information or data.
- (2) In any proceedings for an offence against this Act, information recorded on, or transmitted by means of, an approved electronic information device is to be taken to be accurate and correct, unless the contrary is proved.

**201. Determining positions on Earth**

- (1) If, for the purposes of this Act, it is necessary to determine the position on the surface of the Earth of a point, line or area, that reference is to be determined by reference to the prescribed Australian datum.
- (2) Regulations that prescribe a datum for the purposes referred to in subsection (1), or amend that datum or prescribe another datum to replace that datum, may make any transitional or savings provisions that are necessary or convenient to be made —
- (a) in relation to an authorisation, temporary aquaculture permit or aquaculture lease granted before the regulations take effect; or
  - (b) in relation to an application for an authorisation, temporary aquaculture permit or aquaculture lease pending when the regulations take effect; or

- (c) in relation to a management plan, ARMS, ARUP, order, notice or other instrument made under this Act and in force when the regulations take effect; or
  - (d) for any other purpose.
- (3) Regulations referred to in subsection (2) may modify or otherwise affect the operation of this Act.

#### **Division 4 — Forfeiture**

##### **202. Return of seized things**

- (1) The CEO may authorise the return of anything seized under this Act to —
  - (a) the owner or person entitled to the possession of the thing; or
  - (b) the person from whom the thing was seized.
- (2) The CEO may impose conditions on the return of the thing including a condition that the person give security to the CEO for payment of the value of the thing if it is forfeited.
- (3) If the thing is forfeited to the State any security given to the CEO in lieu of the thing is taken to be forfeited to the State.
- (4) A person who contravenes a condition imposed under subsection (2) commits an offence.  
Penalty: a fine of \$10 000.
- (5) If a court convicts a person of an offence against subsection (4), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

##### **203. Court orders for forfeiture of certain things**

- (1) Subject to subsection (3), if a court convicts a person of an offence against this Act, the court may, in addition to any other penalty imposed under this Act, order the forfeiture to the State of any —
  - (a) aquatic organisms the subject of the offence; and
  - (b) fishing gear or aquaculture gear used, or intended to be used, in the commission of the offence; and
  - (c) boat, other vehicle or other thing used in the commission of the offence; and
  - (d) trailer used to transport a boat referred to in paragraph (c); and
  - (e) resource shares or catch entitlement the subject of the offence; and

- (f) money, cheque or other thing that is the proceeds of the sale of any aquatic organism in contravention of this Act.
- (2) A court must not make an order for the forfeiture of anything under subsection (1) unless the prosecutor, or a person acting for or on behalf of the prosecutor, applies for the order.
- (3) If a court convicts a person of an offence against section 141(1) or 142(1) in relation to a foreign boat, the court must, in addition to any other penalty imposed under this Act, order the forfeiture to the State of —
  - (a) the foreign boat and any aquatic organism, fishing gear or other thing that could be forfeited to the State under subsection (1); and
  - (b) any aquatic organism or other animal or any fishing gear, money, cheque or other thing that, at the time of the offence, was on or attached to the foreign boat; and
  - (c) any aquatic organism, fishing gear, money or cheque that, at the time of the offence, was in the possession of any person on board the foreign boat; and
  - (d) any aquatic organism or other animal on or attached to any fishing gear used, or intended to be used, in the commission of the offence.

**204. Forfeiture of unclaimed seized things**

- (1) The CEO must give notice in the prescribed way if anything is seized under this Act and its owner cannot be found.
- (2) The notice must include the following —
  - (a) details of the thing seized;
  - (b) advice that the thing is being held;
  - (c) details of how the thing may be claimed by its owner.
- (3) A thing that is the subject of a notice under subsection (1) is forfeited to the State if —
  - (a) 3 months has expired from the day on which the notice was given; and
  - (b) the thing has not been claimed by its owner.

**205. Forfeiture of certain seized things**

- (1) In this section —  
***seized thing*** means any of the following things seized under this Act —
  - (a) a protected aquatic organism;
  - (b) a quantity of aquatic organisms in excess of a quantity provided for in regulations made under section 126;

- (c) a quantity of aquatic organisms in excess of a quantity or value that is prescribed for the purposes of the definition of *commercial quantity* in section 127;
  - (d) a declared organism;
  - (e) an aquatic organism other than a protected aquatic organism if the aquatic organism is seized under section 170(f);
  - (f) a receptacle, container or medium containing an aquatic organism referred to in this section.
- (2) A seized thing is, on seizure, taken to have been forfeited to the State.

**206. Disposal of forfeited things**

- (1) Any thing forfeited to the State under this Act may be sold, destroyed or otherwise disposed of in the prescribed way.
- (2) Proceeds of the sale of any thing forfeited to the State under this Act are to be paid into —
- (a) an account referred to in Part 14 Division 3 that is prescribed; or
  - (b) if no account is prescribed, the Consolidated Account.

**Division 5 — Additional provisions about penalties**

**207. Additional penalty based on value of aquatic organisms**

- (1) This section applies to an offence against —
- (a) a provision listed in the Table; or
  - (b) a provision of the regulations that is prescribed for the purposes of this section.

**Table**

s. 31(2) and (3)	s. 49(2) and (3)
s. 64(2) and (3)	s. 65(2) and (3)
s. 125(4)	s. 129
s. 140(1)	

- (2) If a court convicts a person of an offence against a provision referred to in subsection (1), in addition to any penalty imposed under that provision, the court must impose on the person an additional penalty that —
  - (a) is equal to 10 times the prescribed value of any aquatic organisms the subject of the offence; or
  - (b) if subsection (3) applies, is less than 10 times that value but is at least equal to that value.
- (3) The court can only impose an additional penalty under subsection (2)(b) —
  - (a) on the application of the CEO; and
  - (b) if the court is satisfied that the imposition of the additional penalty under subsection (2)(a) would be harsh, oppressive or not otherwise in the interests of justice.
- (4) A court may determine the prescribed value of any aquatic organisms the subject of the offence by reference to either the weight of the organisms or the number of organisms.
- (5) A court is to determine the prescribed value of any aquatic organism the subject of the offence —
  - (a) if the court is determining the value of the aquatic organisms by reference to the weight of the organisms, by multiplying the weight by the value per unit of weight prescribed in respect of an aquatic organism of that class; and
  - (b) if the court is determining the value of the aquatic organisms by reference to the number of organisms, by multiplying the number by the value per organism prescribed in respect of an aquatic organism of that class.
- (6) The additional penalty referred to in subsection (2)(a) or (b) may not be reduced in mitigation despite the provisions of any other Act.
- (7) A provision of the regulations may be prescribed for the purposes of subsection (1)(b) by reference to the circumstances in which the offence is committed.

**208. Court's power to cancel or suspend authorisation**

- (1) If a court convicts a person of an offence against this Act the court may, in addition to any other penalty imposed under this Act, cancel, or suspend for any period, any authorisation held by the person.

- (2) A court must not cancel or suspend an authorisation under subsection (1) unless the prosecutor, or a person acting for or on behalf of the prosecutor, applies for the cancellation or suspension.

**209. Automatic suspension of authorisation if 3 offences committed in 10 year period**

- (1) In this section —  
**authorisation** includes an authorisation that has been cancelled, or has expired or been surrendered.
- (2) The CEO must, as soon as is practicable, record a conviction of a prescribed offence against this Act on the register in respect of an authorisation if the CEO is satisfied that —
  - (a) the offence relates to conduct engaged in, or purporting to be engaged in, under the authorisation; and
  - (b) the person convicted of the offence was, at the time the offence was committed, the holder of the authorisation or a person acting for or on behalf of the holder.
- (3) The CEO may transfer the record of a conviction in respect of an authorisation (the **original authorisation**) to another authorisation (the **new authorisation**) if —
  - (a) the original authorisation was granted in respect of a managed fishery or managed aquatic resource; and
  - (b) the management plan for the fishery or the ARUP for the aquatic resource has been revoked; and
  - (c) a management plan or an ARUP provides for the granting of the new authorisation to the person who was the holder of the original authorisation.
- (4) The CEO may transfer the record of a conviction in respect of an authorisation (the **original authorisation**) to another authorisation (the **new authorisation**) if —
  - (a) the original authorisation has expired without being renewed or has been surrendered by the holder; and
  - (b) the new authorisation is the same type of authorisation as the original authorisation; and
  - (c) the new authorisation is held by the person who was the holder of the original authorisation immediately before it expired or was surrendered.
- (5) If the CEO transfers the record of a conviction in respect of an authorisation under subsection (3) or (4), the record of the conviction is to be taken to have been recorded on the new authorisation on the date that it was recorded on the original authorisation.

- (6) If the CEO records 3 or more convictions in respect of an authorisation in any 10 year period the CEO must, by notice in writing given to the holder of the authorisation, suspend the authorisation for the period of one year commencing on the day that the authorisation is next renewed or such other day as is prescribed.
- (7) An authorisation suspended under subsection (6) remains suspended after the time period referred to in that subsection has elapsed until the CEO is satisfied that all outstanding fines have been paid in respect of —
  - (a) the convictions recorded with respect to the authorisation under this section; and
  - (b) any other conviction of the holder of the authorisation under this Act.
- (8) For the purposes of this section —
  - (a) it is irrelevant that, at the time the authorisation is suspended under subsection (6), the authorisation is held by a person other than the person who has been convicted of all or any of the offences;
  - (b) if 2 or more offences arose out of one set of facts those offences are to be regarded as one offence;
  - (c) a conviction may be recorded in respect of more than one authorisation.

**210. Effect of conviction on surety provided for authorisation**

- (1) The CEO must record a conviction of a prescribed offence against this Act on the register in respect of a surety if —
  - (a) the surety is provided for an authorisation; and
  - (b) a conviction is recorded on the register in respect of the authorisation in accordance with section 209.
- (2) If the CEO records 3 or more convictions in respect of a surety in any 10 year period —
  - (a) if the surety is provided in the form of a monetary bond, the bond is forfeited to the State; and
  - (b) if the surety is provided in the form of nomination of one or more resource shares, the allocated catch for each resource share is reduced to zero in the fishing period following the recording of the third conviction; and
  - (c) if the surety is provided in any other form, the surety is to be dealt with in accordance with regulations.

- (3) The following things are irrelevant for the purposes of this section —
  - (a) that, at the time the surety is dealt with under subsection (2), the surety is surety for an authorisation which is, or is not, suspended under section 209;
  - (b) that, at the time the surety is dealt with under subsection (2), the authorisation for which the surety was provided is held by a person other than the person who has been convicted of all or any of the offences;
  - (c) when the surety was provided.
- (4) For the purposes of this section, if 2 or more offences arose out of one set of facts those offences are to be regarded as one offence.

**211. Court's power to impose prohibitions on offender**

- (1) If a court convicts a person of an offence against this Act, in addition to any other penalty that may be imposed for the offence, the court may by order prohibit the person from doing one or more of the following —
  - (a) being on board a specified boat or any boat of a specified class;
  - (b) being at a specified place or any place of a specified class;
  - (c) undertaking a specified activity related to fishing or aquaculture, including —
    - (i) being employed in, or managing, operating or holding an interest in, a business; and
    - (ii) being in control or possession of aquatic organisms or aquatic organisms of a specified class; and
    - (iii) being in control or possession of fishing or aquaculture gear or fishing or aquaculture gear of a specified class;
  - (d) being on or near specified waters.
- (2) A court must not make an order under subsection (1) unless —
  - (a) the prosecutor, or a person acting for or on behalf of the prosecutor, applies for the order; and
  - (b) the court is satisfied that —
    - (i) the relevant offence is of a serious nature; and
    - (ii) the person is likely to commit further offences against this Act if the order is not made.



- (3) An order —
  - (a) may apply generally or at specified times or in specified circumstances; and
  - (b) has effect for such period as is specified in the order or, if no period is specified, until the order is rescinded; and
  - (c) may be rescinded or varied at any time.
- (4) A person who contravenes an order made under this section commits an offence.  
Penalty:
  - (a) for a first offence, a fine of \$40 000;
  - (b) for a second or subsequent offence, a fine of \$80 000 and imprisonment for 12 months.
- (5) A person who allows or permits another person to contravene an order made under this section commits an offence.  
Penalty:
  - (a) for a first offence, a fine of \$40 000;
  - (b) for a second or subsequent offence, a fine of \$80 000 and imprisonment for 12 months.
- (6) It is a defence to a charge under subsection (5) to prove that the person did not know that the conduct engaged in by the other person contravened an order made under this section.

**212. Offence taken to be first offence in some circumstances**

For the purposes of this Act (other than section 143), in determining the penalty for an offence (the *relevant offence*) of which a person is convicted under a provision of this Act, the relevant offence is to be taken to be a first offence under that provision if the person had not been convicted of an offence under that provision during the period of 10 years ending on the day of the conviction for the relevant offence.

## **Part 13 — Administration**

### **Division 1 — Delegation**

**213. Delegation by Minister**

- (1) The Minister may delegate to a person any power the Minister has under another provision of this Act other than a power conferred under a section listed in the Table.

**Table**

s. 14	s. 20
s. 72	s. 112
s. 117	s. 120
s. 254	s. 255
s. 273	

- (2) The delegation must be in writing signed by the Minister.
- (3) A person to whom a power is delegated under this section cannot delegate that power.
- (4) A person exercising a power that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) This section does not limit the ability of the Minister to exercise a power through an officer or agent.

**214. Delegation by CEO**

- (1) The CEO may delegate to a person any power the CEO has under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) A person to whom a power is delegated under this section cannot delegate that power.
- (4) A person exercising a power that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) This section does not limit the ability of the CEO to exercise a power through an officer or agent.

**215. Minister may carry out research and other activities**

The Minister may cause to be carried out any research, exploration, experiments, works or operations of any kind for the purposes of this Act.

**Division 2 — AR Ministerial body**

**216. Term used: AR Ministerial body**

In this Division —

***AR Ministerial Body*** means the body corporate of that name established by section 217.

**217. AR Ministerial Body**

- (1) The AR Ministerial Body is established.
- (2) The AR Ministerial Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the AR Ministerial Body in its corporate name.
- (4) The AR Ministerial Body is to be governed by the Minister.
- (5) The AR Ministerial Body has the status, immunities and privileges of the Crown.

**218. Purpose and nature of AR Ministerial Body**

- (1) The AR Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under this Act that can more conveniently be performed by a body corporate than an individual.
- (2) Any acts or things done through the AR Ministerial Body as described in subsection (1) are to be regarded as —
  - (a) services under the control of the Department for the purposes of the *Financial Management Act 2006* section 52; and
  - (b) operations of the Department for the purposes of Part 5 of that Act.
- (3) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the AR Ministerial Body, the AR Ministerial Body and those officers are not an organisation for the purposes of that Act.

**219. Execution of documents by AR Ministerial Body**

- (1) The AR Ministerial Body is to have a common seal.
- (2) A document is duly executed by the AR Ministerial Body if —
  - (a) the common seal of the AR Ministerial Body is affixed to it in accordance with subsections (3) and (4); or

- (b) it is signed on behalf of the AR Ministerial Body by the Minister; or
  - (c) it is signed on behalf of the AR Ministerial Body, as authorised under subsection (5), by the CEO or another person.
- (3) The common seal of the AR Ministerial Body is not to be affixed to a document except as authorised by the AR Ministerial Body.
- (4) The common seal of the AR Ministerial Body is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.
- (5) The AR Ministerial Body may, by writing under its seal, authorise the CEO or another person to execute deeds or other documents on behalf of the AR Ministerial Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by the CEO or another person under this section without the common seal of the AR Ministerial Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).
- (8) When a document is produced bearing a seal purporting to be the common seal of the AR Ministerial Body, it is to be presumed that the seal is the common seal of the AR Ministerial Body until the contrary is shown.
- (9) For the purposes of this Act, a facsimile of —
  - (a) the AR Ministerial Body's seal; or
  - (b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

**Division 3 — Use of outside bodies in performance of functions**

**220. Term used: agreement**

In this Division —

***agreement*** means an agreement entered into under section 222.

**221. Minister may recognise body**

The Minister may, by instrument in writing —

- (a) formally recognise a body corporate as suitable to carry out a function referred to in section 222(2); or
- (b) vary or revoke an instrument referred to in paragraph (a).

**222. Minister may enter agreement with recognised body**

- (1) The Minister may enter into a written agreement with a body to carry out a function for the purposes of this Act if the Minister has recognised the body as suitable to carry out that function.
- (2) The agreement may relate to any of the following functions —
  - (a) collection and analysis of data relevant to an aquatic resource;
  - (b) advising the Minister about the management of an aquatic resource;
  - (c) developing plans for the management of an aquatic resource;
  - (d) the management of specified aspects of an aquatic resource;
  - (e) restricting access to an aquatic resource on a specified basis, including for a specified period;
  - (f) the conduct of trading resource shares in an aquatic resource;
  - (g) representing the interests of the commercial fishing sector;
  - (h) representing the interests of the recreational fishing sector;
  - (i) providing education and training about the management of an aquatic resource to persons who have, or want to have, access to the aquatic resource;
  - (j) the control and management of an aquatic habitat protection area or part of an aquatic habitat protection area;
  - (k) the control and management of a declared organism;
  - (l) any other prescribed functions.
- (3) An agreement must include the following —
  - (a) details of the parties to the agreement;
  - (b) details of the function or functions to be carried out under the agreement;
  - (c) the term of the agreement;

- (d) the financial arrangements under which the agreement is to operate which may include arrangements in relation to any of the following matters —
    - (i) payments to be made by the Minister to the body for carrying out functions under the agreement;
    - (ii) fees that may be payable to the body by persons other than the Minister;
    - (iii) fees or payments to be made by the body to the Minister;
  - (e) the conditions under which the agreement may be varied or terminated;
  - (f) penalties that apply in the event that the body fails to comply with the terms of the agreement.
- (4) The Minister must —
- (a) cause notice of an agreement to be published in the *Gazette* as soon as is practicable after the agreement is made; and
  - (b) make the agreement available for inspection by members of the public at times and places specified in the notice.

**223. Effect of agreement**

- (1) Nothing in an agreement limits the power of the Minister to carry out a function under this Act.
- (2) If there is any inconsistency between fees payable under the regulations made under this Act and fees payable for the same service under an agreement, the fees payable under the agreement prevail to the extent of the inconsistency.

**Division 4 — Advisory Committees**

**224. Establishment and functions of advisory committees**

- (1) The Minister may, by instrument in writing, establish advisory committees, consisting of persons considered by the Minister to be suitable, to provide information and advice to the Minister or the CEO on matters related to one or more of the following —
  - (a) the protection and management of an aquatic resource;
  - (b) the management of a fishing activity;
  - (c) the management of aquaculture;
  - (d) the administration of this Act.
- (2) The CEO may, by instrument in writing, establish advisory committees, consisting of persons considered by the CEO to be suitable, to provide information and advice to the CEO on matters relating to one or more of the following —

- (a) the protection and management of an aquatic resource;
  - (b) the management of a fishing activity;
  - (c) the management of aquaculture;
  - (d) the administration of this Act.
- (3) The instrument establishing an advisory committee —
  - (a) must specify the functions, and identify the members, of the committee; and
  - (b) may provide for any other matter that, in the opinion of the person establishing the committee, is necessary for the operation of the committee.
- (4) The person establishing the committee may, by further instrument in writing, amend or revoke an instrument made under this section.

**225. Regulations about operation of committees**

The regulations may provide for any matter necessary for the operation of a committee established under this Division.

**Part 14 — Financial provisions**

**Division 1 — Preliminary**

**226. Term used: levy**

In this Part —

*levy* means a levy imposed under the *Fishing Industry Promotion Training and Management Levy Act 1994*.

**Division 2 — Collection of levy imposed under *Fishing Industry Promotion Training and Management Levy Act 1994***

**227. When and to whom levy is payable**

- (1) A levy is due and payable at a time or times ascertained in accordance with the regulations.
- (2) A levy is payable to the Minister.

**228. Payment by instalments**

- (1) The regulations may provide for the payment of a levy by instalments.
- (2) If the regulations provide for the payment of a levy by instalment —
  - (a) each instalment is due and payable at a time ascertained in accordance with the regulations; and
  - (b) if an instalment is not paid at or before the time due for the payment of the instalment, the whole amount of the levy becomes due and payable at that time.

**229. Exemption from levy**

- (1) The Minister may, by notice in writing, exempt a person wholly or in part from payment of the levy if the Minister is satisfied that to require the person to pay a levy would cause the person undue hardship.
- (2) The Minister may, by notice in writing given to a person exempted under subsection (1), vary or revoke the exemption.

**230. Penalty for non-payment**

If an amount of a levy remains unpaid after the day on which it becomes due for payment, the person liable to pay the levy is liable to pay to the Minister, in addition to the amount of the levy, an amount calculated at the rate of 20% per annum on the amount of the levy from time to time remaining unpaid.

**231. Recovery of levy**

The following amounts may be recovered by the Minister in a court of competent jurisdiction as debts due to the Minister —

- (a) a levy that is due and payable;
- (b) an amount payable under section 230.

**Division 3 — Accounts**

**232. Aquatic Resources Research and Development Account**

- (1) The Aquatic Resources Research and Development Account (the **R&D Account**) is an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) The R&D Account is to be administered by the Minister.
- (3) The R&D Account is to be credited with the following —
  - (a) fees and charges paid in respect of —
    - (i) authorisations (other than recreational fishing licences), temporary aquaculture permits and exemptions;
    - (ii) registration of resource shares;
    - (iii) registration of catch entitlement;
    - (iv) the register;
    - (v) services relating to commercial fishing and aquaculture;
    - (vi) the management of aquatic habitat protection areas or the Abrolhos Islands reserve;
  - (b) fees or other moneys paid to the Minister under an agreement referred to in section 222;



- (c) monetary bonds paid to the CEO as surety for an authorisation;
  - (d) fees, royalties or other money paid in respect of aquaculture leases or aquaculture facilities;
  - (e) rent or other money paid to the Minister under leases or licences issued under management orders as defined in the *Land Administration Act 1997* in respect of aquatic habitat protection areas, the Abrolhos Islands reserve or any other reserve the care, control and management of which have been placed under section 46 of that Act with the Minister;
  - (f) payments received under section 74(2)(e);
  - (g) costs recouped from prosecutions relating to commercial fishing;
  - (h) costs paid to the CEO in accordance with an order of the State Administrative Tribunal relating to commercial fishing;
  - (i) proceeds of the sale on behalf of the Department of any —
    - (i) forfeited property if the regulations provide that the proceeds are to be paid into the R&D Account;
    - (ii) capital assets purchased using moneys from the R&D Account;
    - (iii) publication, advertising rights or intellectual property;
    - (iv) entitlement;
    - (v) aquatic organisms bred on behalf of the Department;
  - (j) moneys provided for the purposes of the R&D Account —
    - (i) by any statutory authority or government (whether Commonwealth, State or otherwise); or
    - (ii) otherwise by way of donations or bequests;
  - (k) income derived from the investment of moneys forming part of the R&D Account, as determined by the Treasurer;
  - (l) any other moneys lawfully payable to the credit of the R&D Account.
- (4) The R&D Account may be applied by the Minister for the following purposes —

- (a) to develop and manage aquaculture or aquatic resources for commercial purposes including by means of one or more of the following —
  - (i) the conduct of scientific, technological or economic research;
  - (ii) the purchase of any authorisation, entitlement, resource share, catch entitlement, boat or fishing or aquaculture gear;
  - (iii) the conduct of programmes and provision of extension services, including publicity programmes;
  - (iv) the purchase of required capital assets;
  - (v) the provision of assistance to the fishing industry or any body (whether incorporated or not) whose objects include the provision of assistance to, or the promotion of, the fishing industry;
  - (vi) refund of monetary bonds provided as surety for an authorisation;
  - (vii) the payment of consideration for the surrender of an aquaculture lease;
  - (viii) the maintenance of the marking and lighting of areas used for aquaculture;
  - (ix) the clean up and rehabilitation of areas previously used for aquaculture purposes;
  - (x) repayment of any amount paid under section 91(4)(c) that is not required to satisfy a debt due under section 96(2)(b);
  - (xi) to defray the costs of commercial fishing and aquaculture administration and management;
- (b) to make payments under an agreement referred to in section 222;
- (c) to defray the costs of the administration and management of customary fishing;
- (d) the purposes set out in section 117(2) for which an area may be set aside as an aquatic habitat protection area;
- (e) the care, control and management of the Abrolhos Islands reserve;
- (f) to conduct enforcement, operations and compliance programmes;
- (g) in payment to the Fisheries Adjustment Schemes Trust Account under the *Fisheries Adjustment Schemes*

- Act 1987* for the benefit of the fishing industry or the aquaculture industry;
- (h) in payment of compensation under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* section 12 and of the costs of administering that Act;
- (i) in payment of any administrative costs under Part 9;
- (j) to defray any costs —
  - (i) incurred in the management of a marine park or marine management area; and
  - (ii) attributable to aquaculture activity that is authorised under this Act;
- (k) in payment of the costs of administering the R&D Account;
- (l) any other purpose for which moneys may be lawfully paid from the R&D Account.

**233. Recreational Fishing Account**

- (1) The Recreational Fishing Account (the **RF Account**) is an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) The RF Account is to be administered by the Minister.
- (3) The RF Account is to be credited with the following —
  - (a) fees and charges paid in respect of —
    - (i) recreational fishing licences;
    - (ii) services relating to recreational fishing;
    - (iii) the management of aquatic habitat protection areas or the Abrolhos Islands reserve relating to recreational fishing;
    - (iv) licences for charter boats used for recreational fishing;
    - (v) licences for persons providing aquatic eco-tourism or fishing tours;
  - (b) proceeds of the allocation of an entitlement to take a quantity of TAC under section 47(4);
  - (c) costs recouped from prosecutions relating to recreational fishing;
  - (d) costs paid to the CEO in accordance with an order of the State Administrative Tribunal relating to recreational fishing;
  - (e) moneys provided for the purposes of the RF Account —

- (i) by any statutory authority or government (whether Commonwealth, State or otherwise); or
    - (ii) otherwise by way of donations or bequests;
  - (f) proceeds of the sale of any —
    - (i) forfeited property if the regulations provide that the proceeds are to be paid into the RF Account;
    - (ii) capital assets purchased using moneys from the RF Account;
  - (g) income derived from programmes, extension services, publications, research or other services provided using moneys from the RF Account;
  - (h) income derived from the investment of moneys forming part of the RF Account, as determined by the Treasurer;
  - (i) any other moneys lawfully payable to the credit of the RF Account.
- (4) The RF Account may be applied by the Minister for the following purposes —
  - (a) to develop and manage recreational fishing including by means of one or more of the following —
    - (i) the purchase of any authorisation, entitlement, catch entitlement, boat or fishing gear;
    - (ii) the conduct of research, or publicity and educational programmes;
    - (iii) the provision of required capital assets;
    - (iv) the payment of consideration for the surrender of an aquaculture lease;
    - (v) the provision of assistance to any body (whether incorporated or not) whose objects include the promotion of recreational fishing;
    - (vi) to defray the costs of recreational fishing administration and management;
  - (b) in payment to the Fisheries Adjustment Schemes Trust Account under the *Fisheries Adjustment Schemes Act 1987*;
  - (c) to conduct enforcement, operations and compliance programmes;
  - (d) in payment of the costs of administering the RF Account;
  - (e) any other purpose for which moneys may be lawfully paid from the RF Account.

**234. Fishing Industry Promotion Training and Management Levy Account**

- (1) The Fishing Industry Promotion Training and Management Levy Account (the ***Levy Account***) is an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) The Levy Account is to be administered by the Minister.
- (3) The Levy Account is to be credited with the following —
  - (a) any levy paid;
  - (b) any amount paid under section 230;
  - (c) moneys provided for the purposes of the Levy Account by way of donations or bequests;
  - (d) income derived from the investment of moneys forming part of the Levy Account, as determined by the Treasurer;
  - (e) any other moneys lawfully payable to the credit of the Levy Account.
- (4) The Levy Account may be applied by the Minister for the following purposes —
  - (a) in payment to Levy Account programmes promoted by industry bodies and approved by the Minister (after consultation with such persons as the Minister thinks fit), including programmes relating to —
    - (i) seafood promotion;
    - (ii) promotion of the fishing or aquaculture industry;
    - (iii) fishing or aquaculture industry training;
    - (iv) fishing or aquaculture industry management;
  - (b) in payment of the costs of administering the Levy Account (including the costs of collecting levies and penalties).
- (5) Moneys in the Levy Account may be paid by the Minister to an industry body to conduct a programme promoted by that body.
- (6) The payment of money to a body under subsection (5) is subject to the conditions that —
  - (a) the moneys are only expended for the purposes of the programme and in accordance with any terms imposed by the Minister; and
  - (b) at such time or times as are prescribed, a special purpose audit is carried out by a registered company auditor of allocation and expenditure of the moneys; and

- (c) a report on the audit is prepared by the auditor and a copy of the report is provided to the Minister as soon as is practicable after it is prepared.
- (7) A body to which money is paid under subsection (5) that fails to ensure that a condition referred to in subsection (6) is complied with commits an offence.  
Penalty: a fine of \$10 000.

**235. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to each account referred to in this Division.
- (2) The administration of each account referred to in this Division is for the purposes of the *Financial Management Act 2006* section 52 to be regarded as a service of the Department.

**Part 15 — Arrangements with other jurisdictions**

**Division 1 — Preliminary**

**236. Terms used**

In this Part —

***arrangement*** means an arrangement for the management of a fishing activity or a class of fishing activities made by the State under this Part with one or more of the following —

- (a) the Commonwealth;
- (b) another State or other States;

***Commonwealth Minister*** means the Minister for the time being administering the Commonwealth Act and any other Minister exercising powers and performing functions under the Commonwealth Act section 60;

***Commonwealth regulated fishing activity*** means a fishing activity in respect of which there is in force an arrangement under which the fishing activity is to be managed in accordance with the law of the Commonwealth, whether or not it is also to be managed under some other law;

***corresponding law*** means a law of the Commonwealth or another State declared by the regulations to be a law corresponding to this Act;

***fishing activity*** includes aquaculture;

**Joint Authority** means —

- (a) the Western Australian Fisheries Joint Authority continued in existence under the *Fisheries Legislation (Consequential Provisions) Act 1991* (Commonwealth); or
- (b) any other Joint Authority established under the Commonwealth Act of which the Minister is a member;

**regional fishing activity** means a fishing activity in respect of which there is in force an arrangement under which the fishing activity is to be managed in accordance with a corresponding law (other than a law of the Commonwealth), whether or not it is also to be managed under some other law;

**State** includes a Territory;

**WA regulated fishing activity** means a fishing activity in respect of which there is in force an arrangement under which the fishing activity is to be managed in accordance with the law of this jurisdiction, whether or not it is also to be managed under some other law.

## **Division 2 — Joint Authorities**

### **237. Functions of Joint Authority**

A Joint Authority has the functions in relation to the management of a fishing activity conferred on it by the law in accordance with which the fishing activity is to be managed.

### **238. Delegation by Joint Authority**

- (1) A Joint Authority may delegate to a person any of its powers under this Act.
- (2) The delegation must be in writing executed by the Joint Authority.
- (3) A delegation under this section may be expressed as a delegation to the person from time to time holding or performing the duties of a specified office, including an office —
  - (a) in the service of; or
  - (b) in the service of an authority of; or
  - (c) under the law of,the Commonwealth or another State.
- (4) A person to whom a power is delegated under this section cannot delegate that power.
- (5) A person exercising or performing a power that has been delegated to the person under this section is to be taken to do so in

accordance with the terms of the delegation unless the contrary is shown.

- (6) Nothing in this section —
- (a) limits the ability of the Joint Authority to perform a function through an agent; or
  - (b) limits the operation of the *Interpretation Act 1984* sections 58 and 59; or
  - (c) is intended to prevent the delegation by a Joint Authority, in accordance with the law of the Commonwealth, of powers conferred on the Joint Authority by that law.

**239. Procedure of Joint Authorities**

The Commonwealth Act sections 66 to 68 (inclusive) apply to and in relation to the performance by a Joint Authority of its functions under a written law of this jurisdiction.

**240. Evidentiary matters**

- (1) All courts, judges and persons acting judicially are to take judicial notice of —
  - (a) the fact that a person is or was a member of a Joint Authority or a deputy of a member of a Joint Authority; and
  - (b) the official signature of such a person.
- (2) A document signed by the Commonwealth Minister, or a deputy of that Minister, purporting to be a record or copy of a decision of a Joint Authority is, in the absence of evidence to the contrary, proof of the matters stated in it.
- (3) In any legal proceedings, an instrument or other document signed, on behalf of a Joint Authority, by a member of that Joint Authority —
  - (a) is to be taken to have been duly executed by the Joint Authority; and
  - (b) unless the contrary is proved, is to be taken to be in accordance with a decision of the Joint Authority.
- (4) This section is in addition to and does not affect the operation of the *Evidence Act 1906*.

**241. Report of Joint Authority**

The Minister must cause a copy of a report of a Joint Authority prepared under the Commonwealth Act section 70 to be laid before each House of Parliament as soon as is practicable after the preparation of the report.



**Division 3 — Arrangements for management of particular fishing activities**

**242. Arrangement for management under Commonwealth Act**

- (1) The State may, in accordance with the Commonwealth Act section 74, make an arrangement referred to in section 71 or 72 of that Act for the management of a particular fishing activity or class of fishing activity.
- (2) An arrangement may be terminated as provided by the Commonwealth Act.
- (3) After an arrangement has been made but before the arrangement takes effect authorisations, regulations, orders and instruments may be granted, renewed, made or determined for the purposes of the operation of this Act as affected by the arrangement as if the arrangement had taken effect.
- (4) An authorisation, regulation, order or instrument referred to in subsection (3) does not have effect before the arrangement takes effect.
- (5) Any authorisation, regulation, order and instrument granted, renewed, made or determined, for the purposes of the operation of this Act as affected by an arrangement ceases to have effect on the termination of the arrangement.
- (6) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect authorisations, regulations, orders and instruments may be granted, renewed, made or determined for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated.
- (7) An authorisation, regulation, order or instrument referred to in subsection (6) does not have effect before the termination of the arrangement takes effect.

**243. Minister may enter into arrangements with other States**

The Minister may enter into an arrangement with a Minister administering a corresponding law, or with an authority of another State concerned in the administration of that law, for the purpose of cooperation in furthering the objects of this Act (whether in this State or in that other State).

**244. Application of Act to fishing activities under arrangements**

The provisions of this Act apply to and in relation to a WA regulated fishing activity.

**245. Application of Commonwealth law to fishing activities under arrangements**

Within the limits of the State, the law of the Commonwealth applies as a law of the State to and in relation to a Commonwealth regulated fishing activity.

**246. Application of corresponding laws to fishing activities under arrangements**

Within the limits of the State, a corresponding law applies as a law of the State to and in relation to a regional fishing activity that is regulated under the corresponding law.

**247. Minister's powers and functions under Commonwealth Act or corresponding law**

- (1) The Minister may exercise any power and perform any function conferred on the Minister by the Commonwealth Act or a corresponding law, including any power or function conferred on the Minister as a member of a Joint Authority.
- (2) If the Minister, acting in his or her capacity as a member of a Joint Authority, appoints a person to be his or her deputy, the deputy may exercise the powers and perform the functions conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.

**248. Functions of Joint Authority**

- (1) If a WA regulated fishing activity is managed by a Joint Authority the Joint Authority has the functions of —
  - (a) keeping constantly under consideration the condition of the aquatic resource in respect of which the fishing activity is managed; and
  - (b) formulating policies and plans for the good management of the aquatic resource; and
  - (c) for the purposes of the management of the fishing activity —
    - (i) exercising the powers conferred on it by this Act; and
    - (ii) cooperating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.
- (2) In the performance of its functions in relation to a WA regulated fishing activity, a Joint Authority must have regard to the objects of this Act and the means of carrying them out in accordance with section 11.

**249. Exercise of powers by Joint Authority**

- (1) Except as provided in this section, an authorisation granted or renewed under this Act otherwise than by virtue of this section does not authorise the doing of any act or thing in or in relation to a fishing activity that is managed by a Joint Authority.
- (2) If a WA regulated fishing activity is managed by a Joint Authority —
  - (a) the powers (including powers with respect to authorisations) conferred on the Minister or another person under this Act (this Part excepted) are exercisable by the Joint Authority instead of the Minister or other person; and
  - (b) references in the relevant provisions to the Minister and to another person authorised to exercise a power, are taken to be references to the Joint Authority.
- (3) An authorisation granted by a Joint Authority must be limited (whether by conditions or otherwise) to apply only in relation to a fishing activity, or fishing activities, managed by the Joint Authority.
- (4) A Joint Authority may endorse an authorisation (including an authorisation granted by the Joint Authority or another Joint Authority) to extend the operation of the authorisation to matters to which the licensing powers of the Joint Authority under this Act are applicable.
- (5) If an endorsement referred to in subsection (4) is made —
  - (a) the endorsement ceases to have effect if the authorisation ceases to have effect; and
  - (b) the Joint Authority may suspend or cancel the endorsement as if it were an authorisation granted by the Joint Authority.
- (6) Subject to section 252, if a Joint Authority commences the management of a fishing activity, a regulation, order or instrument made or determined under this Act that would, but for this subsection, apply to the fishing activity, ceases to apply to the fishing activity.
- (7) This section does not empower a Joint Authority to grant, or to take other action in respect of, an authorisation in respect of a foreign boat or to endorse such an authorisation.

**250. Application of offence provision in Act to fishing activity managed by Joint Authority**

Provisions of this Act that relate to offences, enforcement and legal proceedings apply in relation to a fishing activity managed by a Joint Authority and in respect of anything done to, or in relation to, aquatic resources in respect of which the fishing activity is managed and the provisions are to be read —

- (a) as if any reference in the provisions to an authorisation were a reference to an authorisation or an endorsement of an authorisation, as the case may be, granted, renewed or made by the relevant Joint Authority, in relation to the person alleged to have committed the offence or the boat alleged to have been used in the commission of the offence; and
- (b) as if any reference in the provisions to aquatic resources were a reference to aquatic resources to which the fishing activity relates.

**251. Presumptions in relation to certain statements in arrangements**

A statement in an arrangement must be conclusively presumed to be correct if it is to the effect that specified waters —

- (a) in the case of an arrangement to which the Commonwealth and the State are the only parties, are waters adjacent to the State; and
- (b) in the case of any other arrangement, are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States.

**252. Regulations, orders and instruments in respect of fishing activities under arrangements**

- (1) If a WA regulated fishing activity is managed by a Joint Authority, the Governor may, for the purpose of giving effect to a decision of the Joint Authority —
  - (a) make regulations for the management of the fishing activity; or
  - (b) make a regulation applying to the fishing activity a regulation made otherwise than under this section; or
  - (c) amend a regulation made otherwise than under this section so that it is expressed to apply to the fishing activity, whether or not it also applies to another fishing activity.

- (2) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1)(a) or (b) or the amendment of a regulation in the manner referred to in subsection (1)(c).
- (3) For the purpose of giving effect to a decision of a Joint Authority that manages a WA regulated fishing activity, the Minister may —
  - (a) make an order that applies to the fishing activity; or
  - (b) by order published in the *Gazette* apply to the fishing activity an order under this Act made otherwise than under this section; or
  - (c) by order published in the *Gazette* amend an order under this Act made otherwise than under this section so that it is expressed to apply to the fishing activity, whether or not it also applies to another fishing activity.
- (4) The power conferred on the Minister to make orders otherwise than under subsection (3) does not extend to the making of an order of a kind referred to in subsection (3)(a) or (b) or the amendment of an order in the manner referred to in subsection (3)(c).
- (5) For the purpose of giving effect to a decision of a Joint Authority that manages a WA regulated fishing activity, the Minister may, by notice published in the *Gazette* —
  - (a) approve an ARUP to regulate the fishing activity; or
  - (b) apply to the fishing activity a management plan or an ARUP under this Act made or approved otherwise than under this section; or
  - (c) amend a management plan or ARUP under this Act made or approved otherwise than under this section so that it is expressed to apply to the fishing activity, whether or not it also applies to another fishing activity.
- (6) The power conferred on the Minister to make or approve instruments otherwise than under subsection (5) does not extend to the making or approval of an instrument of a kind referred to in subsection (5)(a) or (b) or the amendment of a management plan or an ARUP in the manner referred to in subsection (5)(c).
- (7) A regulation, order or instrument affecting a Joint Authority fishing activity that is expressed to be made under this section must be conclusively presumed to be made for the purpose of giving effect to a decision of the Joint Authority.

## **Part 16 — Miscellaneous**

### **253. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

### **254. Administrative guidelines**

- (1) This section relates to guidelines for any of the following purposes —
  - (a) providing practical guidance to persons who have duties or obligations under this Act or any other Act administered by the Minister;
  - (b) providing information to industry and the public.
- (2) The Minister may issue, amend or revoke guidelines.
- (3) The Minister must ensure that guidelines are published in the prescribed way.

### **255. Guidelines about foreign interests**

- (1) This section relates to guidelines about foreign persons holding, controlling or having an interest in resource shares, catch entitlement or authorisations.
- (2) The Minister may issue, amend or revoke guidelines.
- (3) The Minister must ensure that guidelines are published in the prescribed way.

### **256. Consultation in relation to guidelines**

Before issuing, amending or revoking a guideline referred to in section 254 or 255 the Minister must consult with any industry body the Minister thinks appropriate and may consult with any other person the Minister thinks appropriate.

### **257. Guidelines to be taken into account**

- (1) In performing a function under this Act or another Act administered by the Minister, a person must take into account any

guidelines referred to in section 254 or 255 that are relevant to the performance of the function.

- (2) Nothing in subsection (1) —
  - (a) derogates from the duty of a person to exercise a discretion in a particular case; or
  - (b) precludes a person from taking into account matters not set out in guidelines; or
  - (c) requires a person to take into account a guideline if the guideline is inconsistent with a provision of the Act under which the function is conferred.

**258. Inquiry into holder of resource shares or authorisation**

- (1) In this section —  
***appointed person*** means a person appointed by the CEO under subsection (2) to conduct an inquiry.
- (2) The CEO may appoint a person or persons to conduct an inquiry to determine who controls or has an interest in a resource share or an authorisation and to report to the CEO the findings of the inquiry.
- (3) For the purposes of subsection (2), an appointed person may —
  - (a) direct a person —
    - (i) to give to the appointed person such information as the appointed person requires; or
    - (ii) to answer a question put to the person;
  - (b) direct a person to produce to the appointed person a relevant record in the person's custody or under the person's control;
  - (c) examine and make a copy of any record produced in response to a direction given under paragraph (b) that is relevant to the inquiry.
- (4) A direction given under subsection (3)(a) —
  - (a) may be given orally or in writing; and
  - (b) must specify the time at or within which the information or answer must be given to the appointed person; and
  - (c) may require that the information or answer —
    - (i) be given orally or in writing; or
    - (ii) if it is directed to be given in writing, be given by means specified in the direction; or
    - (iii) be given on oath or affirmation or by statutory declaration.

- (5) An appointed person may administer an oath or affirmation or witness a statutory declaration for the purposes of subsection (4)(c)(iii).
- (6) A direction given under subsection (3)(b) —
  - (a) must be given in writing to the person required to produce the record; and
  - (b) must specify the time at or within which the record is to be produced to the appointed person; and
  - (c) may require that the record be produced to the appointed person —
    - (i) at a place specified in the direction; and
    - (ii) by a means specified in the direction.
- (7) A person who, without reasonable excuse, fails to comply with a direction given to the person under this section commits an offence.  
Penalty: a fine of \$10 000.
- (8) For the purposes of subsection (7), it is not a reasonable excuse for a person to refuse or fail to answer any question on the ground that the answer to the question might incriminate the person.
- (9) If a person claims before answering a question that the answer may tend to incriminate him or her, the answer is not admissible in evidence against the person in any criminal proceedings other than proceedings for an offence against this section.

**259. Confidentiality of information**

- (1) In this section —  
***confidential information*** means information contained in —
  - (a) an application made under this Act and any information provided in support of an application; or
  - (b) a record that is required to be kept under this Act; or
  - (c) a return that has been submitted or lodged as required under this Act; or
  - (d) a record that has been voluntarily provided to the Department for the purposes of research.
- (2) A person who misuses confidential information obtained by reason of any function that the person has, or at any time had, in the administration of this Act commits an offence.  
Penalty: a fine of \$10 000.
- (3) A person misuses confidential information if the person, directly or indirectly, records, uses or discloses to another person the information other than —



- (a) in the course of duty; or
  - (b) under this law or any other written law; or
  - (c) with the written permission of the CEO; or
  - (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
  - (e) for the purposes of any other legal action arising out of the administration of this Act; or
  - (f) with the consent of the person or persons to whom the information relates; or
  - (g) in prescribed circumstances.
- (4) This section does not prevent the disclosure of statistical or other aggregated information —
- (a) that could not reasonably be expected to lead to the identification of any person to whom it relates; or
  - (b) relating to a fishing activity even though it could reasonably be expected to lead to the identification of a person who is authorised to undertake the activity (a **participant**) because of the small number of participants.
- (5) Despite any law to the contrary, a person who has confidential information obtained by reason of any function that the person has, or at any time had, in the administration of this Act is not to be required by subpoena or otherwise to produce or divulge that information to any court or tribunal.
- (6) This section has effect despite any provision of the *Freedom of Information Act 1992*.

**260. False or misleading information**

- (1) A person who does any of the things set out in subsection (3) in relation to an application made under this Act commits an offence.  
Penalty: a fine of \$25 000.
- (2) A person who does any of the things set out in subsection (3) in relation to a record or return that is required to be kept, submitted or lodged under this Act commits an offence.  
Penalty: a fine of \$25 000.
- (3) The things to which subsections (1) and (2) apply are —
- (a) making a statement that the person knows —
    - (i) is false or misleading in a material particular; or
    - (ii) omits anything without which the statement is misleading in a material particular;
- or

- (b) providing, or causing to be provided, information that the person knows —
  - (i) is false or misleading in a material particular; or
  - (ii) omits anything without which the information is misleading in a material particular.

**261. Minister to be notified of waterway works**

- (1) In this section —

*fish way* means a structure or device that enables aquatic organisms to pass through, by or over a dam, weir or reservoir;

*public authority* means —

- (a) a Minister of the State; or
- (b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994*; or
- (c) a body, corporate or unincorporate, that is established or continued for a public purpose by the State, regardless of the way it is established; or
- (d) a local government or a regional local government;

*waterway* means a river, creek or other naturally flowing stream of water.

- (2) If a public authority proposes to construct, alter or modify a dam, weir or reservoir on a waterway, the public authority must —
- (a) notify the Minister of the proposal; and
  - (b) if the Minister so requests, include as part of the works for the dam, weir or reservoir, or for its alteration or modification, a suitable fish way.

**262. Death of individual who holds authorisation**

- (1) This section applies in relation to —

- (a) an aquaculture licence;
- (b) a managed fishery licence;
- (c) a licence of a type prescribed for the purposes of this section.

- (2) On the death of an individual who, immediately before death, held an authorisation exclusively or as a tenant in common, the authorisation or the deceased's share in the authorisation (as the case requires) is taken to be held by the deceased's personal representative.

- (3) On the death of an individual who, immediately before death, held an authorisation as a joint tenant, the authorisation is taken to be held by the surviving joint tenants.

**263. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) The regulations may make provision in relation to any of the following matters —
  - (a) the taking of aquatic organisms;
  - (b) the possession, sale, packaging, labelling and transport of aquatic organisms;
  - (c) the import or export of aquatic organisms;
  - (d) the welfare, safety and health of aquatic organisms;
  - (e) the protection, restoration or improvement of stocks of aquatic organisms;
  - (f) the operation of aquatic eco-tourism and fishing tours;
  - (g) the identification and tagging of aquatic organisms;
  - (h) the naming of aquatic organisms;
  - (i) the exchange of information for law enforcement purposes between departments or other agencies of the State and departments or other agencies of the Commonwealth, other States or Territories;
  - (j) fees and charges.
- (3) The regulations may apply, adopt or incorporate a provision of any code of practice, standard or other document relating to the purposes of this Act —
  - (a) with or without modifications; or
  - (b) as in force at a particular time or from time to time.
- (4) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$10 000 and a daily penalty not exceeding a fine of \$100.
- (5) A fee prescribed under subsection (2)(j) may include one or more of the following —
  - (a) an amount in respect of the extent or value of any authority conferred by an authorisation;
  - (b) an amount in connection with any purpose referred to in section 232(4) or 233(4) that is relevant to an authorisation;
  - (c) if the fee is for the issue of an aquaculture licence, an amount in respect of the area to which the licence relates;

- (d) an amount in respect of the costs of administering this Act.

**264. Service of documents**

- (1) In this section —  
**business address**, in relation to the holder of a registrable interest, means the address set out in the register as the business address of the holder of the interest.
- (2) If the Act requires or permits a document to be served on the holder of a registrable interest, the document may be served by —
  - (a) posting the document by pre-paid post addressed to the holder at the holder's business address; or
  - (b) delivering or leaving the document addressed to the holder at the holder's business address.
- (3) Nothing in subsection (2) limits the operation of the *Interpretation Act 1984* section 76.

**265. CEO to make plans and strategies publicly available**

- (1) In this section —  
**aquatic biosecurity management plan** has the meaning given in section 98.
- (2) The CEO must make available for public inspection in the prescribed manner a copy of each document listed in the Table that is in force under this Act.

**Table**

Document
ARMS
ARUP
Aquatic biosecurity management plan
Management plan
Order
Regulation

- (3) The regulations may prescribe a fee for obtaining a copy of a document listed in the Table.

**266. Annual report of Department**

The annual report of the Department prepared for the purposes of the *Financial Management Act 2006* Part 5 is to include a report on the state of fisheries and aquatic resources managed under this Act.

**Part 17 — Repeals**

**267. *Fish Resources Management Act 1994* repealed**

The *Fish Resources Management Act 1994* is repealed.

**268. *Pearling Act 1990* repealed**

The *Pearling Act 1990* is repealed.

**Part 18 — Transitional provisions**

**Division 1 — Preliminary**

**269. Interpretation Act not affected**

This Part does not affect the operation of the *Interpretation Act 1984* in relation to the repeals effected by sections 267 and 268.

**270. Transitional regulations**

- (1) In this section —  
*transitional matter* —
  - (a) means a matter that needs to be dealt with for the purpose of effecting the transitions from the provisions of the *Fish Resources Management Act 1994* or the *Pearling Act 1990* to the provisions of this Act; and
  - (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of a written law —
  - (a) do not apply to or in relation to any matter; or
  - (b) apply with specified modifications to or in relation to the matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this

section comes into operation, the regulations have effect according to their terms.

- (5) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Regulations made under subsection (2) in relation to a matter referred to in subsection (3) must be made within such period as is reasonably and practicably necessary to deal with a transitional matter that arises as a result of the enactment of this Act.

**Division 2 — Transitional provisions for *Fish Resources Management Act 1994***

**271. Terms used**

In this Division —

***commencement day*** means the day on which section 267 comes into operation;

***FRMA authorisation*** means a lease or authorisation issued under the repealed Act;

***repealed Act*** means the *Fish Resources Management Act 1994*.

**272. Exemptions**

An exemption that was in force under section 7 of the repealed Act immediately before commencement day is to be taken to be an exemption granted under section 7 on the conditions applying to the exemption immediately before commencement day.

**273. Management plans**

- (1) In this section —

***required consultation*** means consultation with the person or persons specified for that purpose in a management plan.

- (2) A management plan determined under section 54(1) of the repealed Act that was in effect immediately before commencement day continues to have effect for the purposes of this Act until it is revoked under subsection (4) or section 28(1).

- (3) For the purposes of subsection (2) —
  - (a) a declaration in a management plan that a fishery is an interim managed fishery is to be taken to be a declaration that the fishery is a managed fishery; and
  - (b) a management plan referred to in paragraph (a) is amended to delete any provision that provides that the plan only has effect for a specified period.
- (4) The Minister may, by instrument in writing published in the *Gazette*, amend or revoke a management plan.
- (5) The Minister must undertake the required consultation before amending or revoking a management plan.
- (6) Despite subsection (5), the Minister may amend a management plan without undertaking the required consultation if, in the Minister's opinion, the amendment is —
  - (a) required urgently; or
  - (b) of a minor nature.
- (7) If the Minister amends a management plan in the circumstances referred to in subsection (6)(a) the Minister must undertake the required consultation as soon as is practicable after the management plan has been amended.
- (8) An amended management plan may only include matters that could have been included in the management plan before commencement day.
- (9) An instrument under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*, and section 42 of that Act applies to and in relation to an instrument as if the instrument were a regulation.

**274. Authorisations**

- (1) An FRMA authorisation of a type referred to in an item in the Table that was in effect immediately before commencement day is, on and from commencement day, to be taken to be a lease, permit or authorisation of a type referred to in the same item on the conditions applying to the FRMA authorisation immediately before commencement day.

**Table**

<b>Item</b>	<b>FRMA authorisation</b>	<b>Type of lease or authorisation</b>
1.	Managed fishery licence	Managed fishery licence
2.	Interim managed fishery permit	Managed fishery licence
3.	Aquaculture licence	Aquaculture licence
4.	Aquaculture lease	Aquaculture lease
5.	Temporary aquaculture permit	Temporary aquaculture permit
6.	Authorisation granted under the regulations	Authorisation of a type prescribed for the purposes of this item

- (2) An application that was made under the repealed Act, but not decided before commencement day, for the grant of an FRMA authorisation of a type referred to in an item in the Table to subsection (1), is to be taken to be an application for the grant of a lease, permit or authorisation of a type referred to in the same item of that Table.
- (3) An application that was made under the repealed Act, but not decided before commencement day, for the renewal or transfer of an FRMA authorisation of a type referred to in an item in the Table to subsection (1), is to be taken to be an application for the grant or renewal of a lease, permit or authorisation of a type referred to in the same item of that Table.
- (4) An application that was made under the repealed Act, but not decided before commencement day, for the temporary transfer of the whole or part of an entitlement under an FRMA authorisation of a type referred to in an item in the Table to subsection (1), is to be taken to be an application for the temporary transfer of the whole or part of the entitlement under an authorisation of a type referred to in the same item of that Table.
- (5) A review under section 149 of the repealed Act that was started, but not finalised, before commencement day must be dealt with as if the repealed Act had not been repealed, and an FRMA



authorisation of a type referred to in an item in the Table to subsection (1) that is issued or varied as a result of such a review is to be taken to be a lease, permit or authorisation of a type referred to in the same item of that Table on the conditions applying to the FRMA authorisation on its issue or variation.

**275. Matters relating to replacement authorisations**

- (1) In this section —  
***replacement authorisation***, in relation to an FRMA authorisation, means the lease, permit or authorisation that the FRMA authorisation is taken to be in accordance with section 274(1).
- (2) A conviction recorded in respect of an FRMA authorisation under section 224 of the repealed Act is to be recorded on the register in respect of the replacement authorisation.
- (3) If, immediately before commencement day, there was a notation on the register that a person has a security interest in an FRMA authorisation the CEO must note on the register that the person has a security interest in the replacement authorisation.
- (4) An application that was made under the repealed Act, but not decided before commencement day, for the renewal or transfer of, or the temporary transfer of the whole or part of an entitlement under an FRMA authorisation, is to be taken to be an application for the renewal or transfer of, or the temporary transfer of the whole or part of an entitlement under, the replacement authorisation.
- (5) An application that was made under the repealed Act, but not decided before commencement day, for a notation to be made on the register that a person has a security interest in an FRMA authorisation is to be taken to be an application for a notation to be made on the register that the person has a security interest in the replacement authorisation.
- (6) An application that was made under section 131(1) of the repealed Act, but not decided before commencement day, for the removal or variation of a notation made on the register that a person has a security interest in an FRMA authorisation is to be taken to be an application for the removal or variation of a notation on the register that the person has a security interest in the replacement authorisation.
- (7) A conviction after commencement day in respect of an offence committed before commencement day that, in accordance with section 224 of the repealed Act, is to be recorded on the register in respect of an authorisation that was in effect immediately before

commencement day is to be recorded on the replacement authorisation under section 209.

**276. Transition from former body corporate to AR Ministerial Body**

- (1) In this section —  
*former body corporate* means the body corporate that was constituted by the Minister under section 9 of the repealed Act.
- (2) On and from commencement day the AR Ministerial Body is to be regarded as being a continuation of, and the same legal entity as, the former body corporate for the purposes of —
  - (a) matters relating to assets, rights, liabilities, obligations or proceedings of or involving the former body corporate; and
  - (b) other transitional matters.

**277. Arrangements with Commonwealth or other State or Territory**

An arrangement made under Part 3 of the repealed Act that is in force immediately before commencement day is to be taken to be an arrangement for the purposes of the definition of *arrangement* in section 236.

**278. Continuation of accounts**

- (1) The Aquatic Resources Research and Development Account referred to in section 232 is a continuation of the Fisheries Research and Development Account established under the *Fish Resources Management Act 1994*.
- (2) The Recreational Fishing Account referred to in section 233 is a continuation of the Recreational Fishing Account established under the *Fish Resources Management Act 1994*.
- (3) The Fishing Industry Promotion Training and Management Levy Account referred to in section 234 is a continuation of the Fishing Industry Promotion Training and Management Levy Account established under the *Fish Resources Management Act 1994*.
- (4) On and from commencement day, any reference in an agreement or other document to an account established under the repealed Act and referred to in an item in the Table is, unless the context otherwise requires, to be read and have effect as if it were a reference to an account referred to in the same item.

**Table**

<b>Item</b>	<b>Account established under repealed Act</b>	<b>Account continued under this Act</b>
1.	Fisheries Research and Development Account	Aquatic Resources Research and Development Account
2.	Recreational Fishing Account	Recreational Fishing Account
3.	Fishing Industry Promotion Training and Management Levy Account	Fishing Industry Promotion Training and Management Levy Account

**279. Register**

All the information that was, immediately before commencement day, included on the register kept under section 125 of the repealed Act is to be transferred to and included on the register kept under section 150.

**280. Fish habitat protection areas**

- (1) If, immediately before commencement day, an area was set aside under section 115 of the repealed Act as a fish habitat protection area then on and from commencement day —
  - (a) the area is to be taken to be an aquatic habitat protection area; and
  - (b) the area is to be taken to have been set aside as an aquatic habitat protection area for the purpose or purposes for which it was set aside as a fish habitat protection area; and
  - (c) a plan approved for the management of the area under section 117 of the repealed Act is to be taken to be a plan for the management of the area approved under section 119.
- (2) If, immediately before commencement day, the control and management of a fish habitat protection area that is to be taken to be an aquatic habitat protection area under subsection (1) was vested under section 119 of the repealed Act in a body corporate, the control and management of the aquatic habitat protection area is to be taken to have been vested under section 121 in the body corporate on the conditions applying to the vesting of the control and management of the fish habitat protection area.

**281. Seized and forfeited things**

- (1) A thing seized under the repealed Act before commencement day is to be taken to have been seized under this Act.
- (2) If, under section 217 of the repealed Act, the CEO authorised the return of a thing seized under the repealed Act the CEO is to be taken to have authorised the return of the thing under section 202 subject to the conditions that applied to the return of the thing under the repealed Act.
- (3) A thing forfeited under the repealed Act before commencement day is to be taken to have been forfeited under this Act and may be disposed of as provided for in this Act.

**282. Prohibitions on offenders**

An order made by a court under section 225 of the repealed Act prohibiting an offender from doing something is to be taken to be an order made by the court under section 211 with modifications as necessary to describe the prohibition in terms that are consistent with section 211.

**Division 3 — Transitional provisions for *Pearling Act 1990***

**283. Terms used**

In this Division —

*commencement day* means the day on which section 268 comes into operation;

*repealed Act* means the *Pearling Act 1990*.

**284. Arrangements with Commonwealth or other State or Territory**

An arrangement made under Part 7 of the repealed Act that is in force immediately before commencement day is to be taken to be an arrangement for the purposes of the definition of *arrangement* in section 236.

**285. Licences, leases and permits**

- (1) In this section —  
*Pearling Act authorisation* means a lease, licence or permit issued under the repealed Act.
- (2) A Pearling Act authorisation of a type referred to in an item in the Table that was in effect immediately before commencement day is, on and from commencement day, to be taken to be a lease or authorisation of a type referred to in the same item on the conditions applying to the Pearling Act authorisation immediately before commencement day.

**Table**

<b>Item</b>	<b>Pearling Act authorisation</b>	<b>Type of lease or authorisation</b>
1.	Pearl oyster farm lease	Aquaculture lease
2.	Pearling licence	Aquaculture licence
3.	Pearl oyster hatchery licence	Aquaculture licence
4.	Pearl diver's licence	Authorisation of a type prescribed for the purposes of this item
5.	Pearl boat licence	Authorisation of a type prescribed for the purposes of this item
6.	Pearl boat master's licence	Authorisation of a type prescribed for the purposes of this item
7.	Pearling permit	Authorisation of a type prescribed for the purposes of this item
8.	Pearl oyster hatchery permit	Aquaculture licence

- (3) An application that was made under the repealed Act, but not decided before commencement day, for the grant of a Pearling Act authorisation referred to in an item in the Table to subsection (2), is to be taken to be an application for the grant of a lease or authorisation of a type referred to in the same item of that Table.
- (4) A review under section 33 of the repealed Act that was started, but not finalised, before commencement day must be dealt with as if the repealed Act had not been repealed, and a Pearling Act authorisation of a type referred to in an item in the Table to subsection (2) that is issued or varied as a result of such a review is to be taken to be a lease or authorisation of a type referred to in the same item of that Table on the conditions applying to the Pearling Act authorisation on its issue or variation.

**286. MEMP requirements for transitioned authorisations**

- (1) In this section —

**MEMP** means a management and environmental monitoring plan as defined in section 67;

**transitioned aquaculture licence** means an aquaculture licence referred to in section 285(2).

- (2) Despite section 75(2)(d), an application for the renewal of a transitioned aquaculture licence that is made in the period of 2 years after commencement day does not have to be accompanied by a MEMP for the licence.
- (3) Unless the licence holder is exempt under subsection (4), a transitioned aquaculture licence is subject to the condition that the licence holder must, within 2 years after commencement day, prepare a MEMP for the licence and lodge it with the CEO.
- (4) The CEO may exempt a licence holder from the requirements of subsection (3) if the licence relates to the aquaculture of prescribed aquatic organisms on private land.

**287. Recording of previous convictions on authorisation**

For the purposes of section 209, an offence against section 8 of the repealed Act is to be taken to be a prescribed offence against this Act if the conviction for the offence occurred in the period of 10 years before commencement day.

**288. Seized and forfeited things**

- (1) A thing seized under the repealed Act before commencement day is to be taken to have been seized under this Act.
- (2) A thing forfeited under the repealed Act before commencement day is to be taken to have been forfeited under this Act and may be disposed of as provided for in this Act.

**Part 19 — Consequential amendments to other Acts**

**Division 1 — *Biodiversity Conservation Act 2016* amended**

**289. Act amended**

This Division amends the *Biodiversity Conservation Act 2016*.

**290. Section 5 amended**

- (1) In section 5(1) delete the definitions of:

***fish***

***pearl oyster***

- (2) In section 5(1) insert in alphabetical order:

***aquatic organism*** has the meaning given in the *Aquatic Resources Management Act 2016* section 3(1);

- (3) In section 5(1) in the definition of ***biodiversity conservation measures*** delete paragraph (g)(v) and insert:

- (v) aquatic resource use plans and management plans under the *Aquatic Resources Management Act 2016* and measures under Part 6 of that Act relating to the control of declared organisms or biological threats;

- (4) In section 5(1) in the definition of ***fauna processing establishment*** delete “fish or pearl oyster,” and insert:

aquatic organisms,

**291. Section 7 amended**

In section 7(1) in the definition of ***relevant authorisation*** delete paragraphs (d) and (e) and insert:

- (d) the *Aquatic Resources Management Act 2016*; or

**292. Section 12 amended**

Delete section 12(1) and insert:

- (1) This Act, other than Part 9, does not apply to or in relation to any aquatic organism that is the subject of —
- (a) aquaculture, as defined in the *Aquatic Resources Management Act 2016* section 3(1); or
  - (b) commercial fishing, as defined in the *Aquatic Resources Management Act 2016* section 3(1); or
  - (c) recreational fishing, as defined in the *Aquatic Resources Management Act 2016* section 3(1).

**293. Section 54 amended**

In section 54(2)(b) delete “*Fish Resources Management Act 1994.*” and insert:

*Aquatic Resources Management Act 2016.*

**294. Section 132 amended**

Delete section 132(3)(a)(ii) and (iii) and insert:

- (ii) if the species to which the order relates is a species of aquatic organism — the Minister responsible for the administration of the *Aquatic Resources Management Act 2016*;

**295. Section 145 amended**

In section 145 in the definition of *fauna* delete “fish or pearl oyster.” and insert:

aquatic organisms.

**296. Section 151 amended**

- (1) In section 151(1)(a) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and

- (2) In section 151(2)(a)(i) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and

**297. Section 153 amended**

- (1) In section 153(3)(a) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and



- (2) In section 153(4)(a)(i) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and

**298. Section 158 amended**

In section 158(1) in the definition of *fauna* delete “fish or pearl oyster.” and insert:

aquatic organisms.

**299. Section 166 amended**

In section 166 in the definition of *flora* delete “fish.” and insert:

aquatic organisms.

**300. Section 190 amended**

In section 190 in the definition of *aquatic eco tourism* delete “*Fish Resources Management Act 1994* section 4(1);” and insert:

*Aquatic Resources Management Act 2016* section 3(1);

**301. Section 194 amended**

In section 194(3) delete “*Fish Resources Management Act 1994*” and insert:

*Aquatic Resources Management Act 2016*

**302. Section 274 amended**

In section 274(1) in the definition of *information sharing agency* —

(a) after paragraph (a) insert:

(aa) the department of the Public Service principally assisting in the administration of the *Aquatic Resources Management Act 2016*;

(b) delete paragraphs (e) and (h).

**303. Schedule 1 amended**

In Schedule 1 item 2 delete “fish or pearl oyster,” and insert:

aquatic organisms),

**Division 2 — *Biosecurity and Agriculture Management Act 2007* amended**

**304. Act amended**

This Division amends the *Biosecurity and Agriculture Management Act 2007*.

**305. Section 3 amended**

In section 3(1)(a)(iv) delete “pearling” and insert:

aquaculture

**306. Section 4 amended**

After section 4(2)(b) insert:

(ca) the *Aquatic Resources Management Act 2016*;

**307. Section 6 amended**

(1) In section 6 delete the definitions of:

*fish*

*fisheries officer*

*Minister for Fisheries*

*pearl oyster*

(2) In section 6 insert in alphabetical order:

*aquatic compliance officer* means a compliance officer designated under the *Aquatic Resources Management Act 2016* section 159(1);

*aquatic organism* has the meaning given to that term in the *Aquatic Resources Management Act 2016* section 3(1);

**aquaculture** has the meaning given to that term in the *Aquatic Resources Management Act 2016* section 3(1);

**Minister for Aquatic Resources** means the Minister administering the *Aquatic Resources Management Act 2016*;

- (3) In section 6 in the definition of **biosecurity** paragraph (d) delete “pearling” and insert:

aquaculture

- (4) In section 6 in the definition of **identification card** paragraph (b) delete “a fisheries officer, an inspector as that term is defined in the *Pearling Act 1990*,” and insert:

an aquatic compliance officer,

- (5) In section 6 in the definition of **inspector**:

(a) delete paragraph (b) and insert:

(b) in relation to aquatic organisms — an inspector appointed under section 162 or an aquatic compliance officer; and

(b) in paragraph (c) delete “fish —” and insert:

an aquatic organism —

- (6) In section 6 in the definition of **land** delete paragraph (e) and insert:

(e) in respect of aquatic organisms managed by the State under an arrangement with the Commonwealth under the *Aquatic Resources Management Act 2016*, the waters of the Australian fishing zone as defined by the *Fisheries Management Act 1991* (Commonwealth);

**308. Section 9 amended**

In section 9(2) in the definition of *basic animal feed* delete “fish” and insert:

aquatic organisms

**309. Section 12 amended**

In section 12(1)(a)(iv) delete “pearling” and insert:

aquaculture

**310. Section 22 amended**

In section 22(2)(a)(iv) delete “pearling” and insert:

aquaculture

**311. Section 45 amended**

In section 45(5):

- (a) in paragraph (a) delete “fish,” and insert:

an aquatic organism,

- (b) in paragraph (a) delete “Fisheries Minister; or” and insert:

Minister for Aquatic Resources; or

- (c) in paragraph (b) delete “a fish,” and insert:

an aquatic organism,

**312. Section 184 amended**

In section 184 in the definition of *information sharing agency* paragraph (e) delete “*Fish Resources Management Act 1994*,” and insert:

*Aquatic Resources Management Act 2016*;

**Division 3 — Conservation and Land Management  
Act 1984 amended**

**313. Act amended**

This Division amends the *Conservation and Land Management Act 1984*.

**314. Section 3 amended**

- (1) In section 3 delete the definitions of:

*aquaculture*

*commercial fishing*

*Fisheries Department*

*Minister for Fisheries*

*pearling activity*

*recreational fishing*

- (2) In section 3 insert in alphabetical order:

*aquaculture* has the meaning given in the *Aquatic Resources Management Act 2016* section 3(1);

*aquatic authorisation* means an authorisation as defined in the *Aquatic Resources Management Act 2016* section 3(1);

*Aquatic Resources Department* means the Department as defined in the *Aquatic Resources Management Act 2016* section 3(1);

*commercial fishing* has the meaning given in the *Aquatic Resources Management Act 2016* section 3(1);

*Minister for Aquatic Resources* means the Minister to whom the administration of the *Aquatic Resources Management Act 2016* is committed;

*recreational fishing* has the meaning given in the *Aquatic Resources Management Act 2016* section 3(1);

- (3) In section 3 in the definition of *forest products* delete “same meaning as it has” and insert:

meaning given

**315. Section 8A amended**

- (1) In section 8A(9) delete “Fisheries,” and insert:

Aquatic Resources,

- (2) In section 8A(12) delete “Fisheries” (each occurrence) and insert:

Aquatic Resources

**316. Section 13A amended**

Delete section 13A(2) and insert:

- (2) Subject to section 13D, aquaculture, commercial fishing and recreational fishing shall not be carried out in a marine nature reserve.

**317. Section 13B amended**

- (1) In section 13B(3):

- (a) delete “*Fish Resources Management Act 1994*,” and insert:

*Aquatic Resources Management Act 2016*,

- (b) delete “*Fish Resources Management Act 1994*” and insert:

*Aquatic Resources Management Act 2016*

- (2) Delete section 13B(4).

- (3) In section 13B(5) delete “authorisation issued under the *Fish Resources Management Act 1994*,” and insert:

aquatic authorisation,

- (4) In section 13B(6) delete “authorisation issued under the *Fish Resources Management Act 1994*,” and insert:

aquatic authorisation,

- (5) In section 13B(7) delete “*Fish Resources Management Act 1994*,” and insert:

*Aquatic Resources Management Act 2016*,

- (6) Delete section 13B(8).

**318. Section 13C amended**

- (1) In section 13C(2) in the definition of *commercial purposes* delete paragraph (a) and insert:

(a) aquaculture and commercial fishing; and

- (2) In section 13C(3) delete “*Fish Resources Management Act 1994*,” and insert:

*Aquatic Resources Management Act 2016*,

- (3) In section 13C(4) delete “*Fish Resources Management Act 1994*” and insert:

*Aquatic Resources Management Act 2016*

- (4) Delete section 13C(5) and (6).

**319. Section 13D replaced**

Delete section 13D and insert:

**13D. Effect of s. 13A, 13B and 13C on certain authorisations for fishing or aquaculture**

- (1) Sections 13A and 13B do not affect the validity of an aquatic authorisation which authorises activity in relation to an area affected, after the issue or renewal of the authorisation, by a reservation under section 13 or by a notice under section 62.
- (2) Sections 13A and 13B do not prohibit activities authorised by an aquatic authorisation to which subsection (1) applies.
- (3) Sections 13A and 13B do not affect the validity of an aquaculture lease under the *Aquatic Resources Management Act 2016* granted or renewed in relation to an area which is affected, after the grant or renewal, by a reservation under section 13 or by a notice under section 62.
- (4) Sections 13A and 13B do not prevent the renewal of an aquaculture licence under the *Aquatic Resources Management Act 2016* if the licence —
  - (a) is held by the holder of an aquaculture lease referred to in subsection (3); and
  - (b) authorises aquaculture activity in the area under the lease.
- (5) Sections 13A, 13B and 13C do not affect an aquatic management plan if the plan was made in relation to an area affected, after the making of the plan, by a reservation under section 13 or by a notice under section 62, except as they affect an authorisation issued in relation to the area under the plan.
- (6) In subsection (5) —

***aquatic management plan*** means —

  - (a) an aquatic resource use plan made under the *Aquatic Resources Management Act 2016* section 24(1); or
  - (b) a management plan continued under section 273 of that Act.

**320. Section 14 amended**

- (1) In section 14(1a)(b) delete “Fisheries” and insert:

Aquatic Resources



- (2) In section 14(6)(b) delete “Fisheries” and insert:

Aquatic Resources

**321. Section 17 amended**

In section 17(6) delete “Fisheries” and insert:

Aquatic Resources

**322. Section 26H amended**

In section 26H(1)(b) delete “Fisheries” and insert:

Aquatic Resources

**323. Section 49 amended**

Delete section 49(c) and (d) and insert:

- (c) the CEO as defined in the *Aquatic Resources Management Act 2016* section 3(1); and
- (d) a compliance officer as defined in the *Aquatic Resources Management Act 2016* section 3(1).

**324. Section 59 amended**

- (1) In section 59(3)(b) delete “Fisheries; and” and insert:

Aquatic Resources; and

- (2) In section 59(5) delete “Fisheries” and insert:

Aquatic Resources

**325. Section 60 amended**

In section 60(2a):

- (a) delete “Fisheries” and insert:

Aquatic Resources

- (b) in paragraph (a) delete “aquaculture,” and insert:

aquaculture or

- (c) in paragraph (a) delete “or pearling activity”;  
(d) in paragraph (b) delete “*Fish Resources Management Act 1994* or the *Pearling Act 1990*.” and insert:

*Aquatic Resources Management Act 2016*.

**326. Section 62 amended**

In section 62(3)(c) delete “Fisheries” and insert:

Aquatic Resources

**327. Section 101B amended**

- (1) In section 101B(2a) delete “fish and pearl oyster)” and insert:

aquatic resources as defined in the *Aquatic Resources Management Act 2016* section 3(1))

- (2) Delete section 101B(3)(a) and (b) and insert:

- (a) the *Aquatic Resources Management Act 2016*,

**328. Section 130 amended**

Delete section 130(2a) and insert:

- (2A) The Governor must not make regulations under subsection (1) that impose any restriction on the taking, in a marine park or marine management area, of an aquatic resource as defined in the *Aquatic*

*Resources Management Act 2016* section 3(1) in accordance with the provisions of that Act relating to aquaculture or commercial or recreational fishing.

**Division 4 — *Criminal Investigation (Covert Powers)***  
***Act 2012 amended***

**329. Act amended**

This Division amends the *Criminal Investigation (Covert Powers) Act 2012*.

**330. Section 3 amended**

- (1) In section 3 delete the definitions of:

***fisheries department***

***fisheries officer***

- (2) In section 3 insert in alphabetical order:

***aquatic resources department*** means the department principally assisting in the administration of the *Aquatic Resources Management Act 2016*;

***compliance officer*** has the meaning given in the *Aquatic Resources Management Act 2016* section 3(1);

- (3) In section 3 in the definition of ***authorising officer*** paragraph (a) delete “fisheries” and insert:

aquatic resources

- (4) In section 3 in the definition of ***chief officer*** paragraph (c) delete “fisheries” and insert:

aquatic resources

- (5) In section 3 in the definition of ***law enforcement agency*** delete paragraph (c) and insert:

- (c) the aquatic resources department;

- (6) In section 3 in the definition of *law enforcement officer* delete paragraph (d) and insert:
- (d) a compliance officer holding a prescribed office in the aquatic resources department;
- (7) In section 3 in the definition of *Minister* delete paragraph (c) and insert:
- (c) in relation to the aquatic resources department, means the Minister administering the *Aquatic Resources Management Act 2016*;
- (8) In section 3 in the definition of *this jurisdiction* paragraph (b):
- (a) delete “fisheries” and insert:
- aquatic resources
- (b) delete “*Fish Resources Management Act 1994* section 5(b) to (d).” and insert:
- Aquatic Resources Management Act 2016* section 5(1)(b) and (c).

**331. Section 5 amended**

In section 5 in the definition of *relevant offence*:

- (a) before paragraph (b)(i) insert:
- (ia) the *Aquatic Resources Management Act 2016*;
- (b) delete paragraph (b)(iv).

**332. Section 43 amended**

In section 43(1) in the definition of *senior officer* paragraph (c):

- (a) delete “fisheries” (1<sup>st</sup> occurrence) and insert:
- aquatic resources

- (b) delete “fisheries” (2<sup>nd</sup> occurrence) and insert:

compliance

**333. Section 48 amended**

In section 48(4)(c) delete “fisheries” and insert:

aquatic resources

**334. Section 79 amended**

In section 79(1) in the definition of *senior officer* paragraph (c):

- (a) delete “fisheries” (1<sup>st</sup> occurrence) and insert:

aquatic resources

- (b) delete “fisheries” (2<sup>nd</sup> occurrence) and insert:

compliance

**335. Section 83 amended**

In section 83(1)(b)(iii) delete “fisheries” and insert:

compliance

**336. Section 105 amended**

In section 105(1) in the definition of *senior officer* paragraph (c):

- (a) delete “fisheries” (1<sup>st</sup> occurrence) and insert:

aquatic resources

- (b) delete “fisheries” (2<sup>nd</sup> occurrence) and insert:

compliance

**Division 5 — *Fisheries Adjustment Schemes Act 1987* amended**

**337. Act amended**

This Division amends the *Fisheries Adjustment Schemes Act 1987*.

**338. Long title amended**

In the long title delete “*Fish Resources Management Act 1994*” and insert:

*Aquatic Resources Management Act 2016*

**339. Section 3 amended**

- (1) In section 3(1) delete the definitions of:

***Fisheries Research and Development Account***

***Recreational Fishing Account***

- (2) In section 3(1) insert in alphabetical order:

***Aquatic Resources Research and Development Account*** means the Aquatic Resources Research and Development Account referred to in the *Aquatic Resources Management Act 2016* section 232;

***Recreational Fishing Account*** means the Recreational Fishing Account referred to in the *Aquatic Resources Management Act 2016* section 233;

- (3) In section 3(2) delete “*Fish Resources Management Act 1994*.” and insert:

*Aquatic Resources Management Act 2016*.

**340. Section 3A amended**

In section 3A(1) delete “*Fish Resources Management Act 1994*.” and insert:

*Aquatic Resources Management Act 2016*.

Note: The heading to amended section 3A is to read:

**Application of Act to Aquatic Resources Management Act 2016**

**341. Section 5 amended**

In section 5(2)(ba) delete “Fisheries” and insert:

Aquatic Resources

**342. Section 9 amended**

In section 9:

- (a) in paragraph (aa) delete “Fisheries” and insert:

Aquatic Resources

- (b) in paragraph (c) delete “Fisheries” and insert:

Aquatic Resources

**343. Section 14C amended**

In section 14C(a) delete “*Fish Resources Management Act 1994*; and” and insert:

*Aquatic Resources Management Act 2016*; and

**Division 6 — *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* amended**

**344. Act amended**

This Division amends the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*.

**345. Long title amended**

In the long title:

- (a) delete “permits under the *Fish Resources Management Act 1994* and *Pearling Act 1990*” and insert:

resource shares under the *Aquatic Resources Management Act 2016*

- (b) delete the passage that begins with “**matters,**” and ends with “**Act 1987.**” and insert:

**matters.**

**346. Section 3 amended**

- (1) In section 3(1) in the definition of **authorisation**:
  - (a) delete paragraph (e) and insert:
    - (e) a licence granted under the *Aquatic Resources Management Act 2016* in relation to the processing of aquatic organisms; or
  - (b) delete paragraphs (g) to (l).
- (2) In section 3(1) in the definition of **commercial activity** delete paragraphs (c) and (d).
- (3) In section 3(1) in the definition of **Minister** delete “*Fish Resources Management Act 1994*,” and insert:

*Aquatic Resources Management Act 2016*;

- (4) In section 3(2) delete “*Fish Resources Management Act 1994* or the *Pearling Act 1990*” and insert:

*Aquatic Resources Management Act 2016*

- (5) In section 3(1) in the definition of **authorisation** after each of paragraphs (a) to (d) insert:

or

**347. Section 4 amended**

Delete section 4(a).



**348. Section 5 amended**

(1) In section 5(2):

- (a) delete paragraph (d) and insert:
  - (d) the authorisation relates to an area and will not be able to be renewed in relation to that area without the recommendation of the CALM Minister being taken into account under the *Aquatic Resources Management Act 2016* section 85(4)(b) or 93(3)(b);
- (b) in paragraph (f) delete “or a fish processor’s licence,” and insert:
  - or a licence granted under the *Aquatic Resources Management Act 2016* in relation to the processing of aquatic organisms,
- (c) in paragraph (f) delete “licences, managed fishery licences or interim managed fishery permits” and insert:

licences or managed fishery licences

(2) In section 5(4) delete “section 140(2)(b) of the *Fish Resources Management Act 1994*,” and insert:

the *Aquatic Resources Management Act 2016* section 60(1)(d) or 84(1)(b),

Note: The heading to amended section 5 is to read:  
**Compensation for loss suffered in respect of authorisations**

**349. Section 6A inserted**

After section 5 insert:

**6A. Compensation for loss suffered in respect of resource shares**

- (1) A person who holds a resource share in a managed aquatic resource is entitled to fair compensation for any loss suffered by the person as a result of a relevant event.

- (2) For the purposes of subsection (1) a person suffers loss if, and only if, the market value of the resource share held by the person is reduced because —
- (a) an aquatic resource use plan under which the resource share was allocated is amended so that it no longer applies to an area; and
  - (b) as a result of the amendment the amount of allocated catch for the resource share for a fishing period after the amendment is made will be less than it would have been if the amendment had not been made.

**350. Section 12 amended**

Delete section 12(2)(b) and insert:

- (b) credited to the Aquatic Resources Research and Development Account referred to in the *Aquatic Resources Management Act 2016* section 232.

**351. Section 14 deleted**

Delete section 14.

**352. Schedule 1 deleted**

Delete Schedule 1.

**Division 7 — *Fishing Industry Promotion Training and Management Levy Act 1994* amended**

**353. Act amended**

This Division amends the *Fishing Industry Promotion Training and Management Levy Act 1994*.

**354. Long title amended**

In the long title delete “**permits under the *Fish Resources Management Act 1994*.**” and insert:

**resource shares under the *Aquatic Resources Management Act 2016*.**

**355. Section 3 amended**

Delete section 3(1) and insert:

- (1) In this Act —  
*principal Act* means the *Aquatic Resources Management Act 2016*.

**356. Section 4 amended**

- (1) In section 4(1):
- (a) delete “section 240” and insert:  
  
section 232
  - (b) delete paragraphs (c) and (d) and insert:
  - (c) licences granted under the principal Act in relation to the processing of aquatic organisms;
  - (c) in paragraph (e) delete “licences.” and insert:  
  
licences;
  - (d) after paragraph (e) insert:
  - (f) resource shares.
- (2) In section 4(2) delete “or permits”.

**357. Section 6 amended**

In section 6:

- (a) delete “permit” and insert:  
  
resource share

- (b) delete “permit.” and insert:

resource share.

Note: The heading to amended section 6 is to read:  
**Levy payable by holder of licence or resource share**

**Division 8 — *Offshore Minerals Act 2003* amended**

**358. Act amended**

This Division amends the *Offshore Minerals Act 2003*.

**359. Section 38A amended**

- (1) In section 38A(4)(b) delete “fisheries” and insert:

aquatic resources

- (2) In section 38A(6) delete “fisheries” and insert:

aquatic resources

- (3) In section 38A(9) delete “a fish” and insert:

an aquatic

- (4) In section 38A(10) delete “fisheries” and insert:

aquatic resources

- (5) In section 38A(11) delete the definitions of:

***fish habitat protection area***

***fisheries Minister***

- (6) In section 38A(11) insert in alphabetical order:

***aquatic habitat protection area*** has the meaning given in the  
*Aquatic Resources Management Act 2016* section 3(1);

***aquatic resources Minister*** means the Minister for the time being  
administering the *Aquatic Resources Management Act 2016*;

Note: The heading to amended section 38A is to read:

**Exploration and mining in marine reserves and aquatic habitat protection areas**

**360. Section 38B amended**

In section 38B:

- (a) in paragraph (b) delete “*Fish Resources Management Act 1994*; and” and insert:

*Aquatic Resources Management Act 2016*; and

- (b) in paragraph (d) delete “*1981*; and” and insert:

*1981*.

- (c) delete paragraph (e).

**361. Section 44 amended**

- (1) Delete section 44(1)(c) and insert:

- (c) fishing or aquaculture; or

- (2) Delete section 44(2) and insert:

- (2) In subsection (1)(c) —

***aquaculture*** and ***fishing*** have the same meanings as they have in the *Aquatic Resources Management Act 2016* section 3(1).

**Division 9 — Other Acts amended**

**362. *Animal Welfare Act 2002* amended**

- (1) This section amends the *Animal Welfare Act 2002*.  
(2) In section 5(1) delete the definition of ***Fisheries Western Australia***.  
(3) In section 5(1) insert in alphabetical order:

***Aquatic Resources Department*** means the department of the Public Service principally assisting with the administration of the *Aquatic Resources Management Act 2016*;

- (4) In section 5(1) in the definition of ***animal*** delete “a fish (as defined in the *Fish Resources Management Act 1994*);” and insert:

an aquatic organism (as defined in the *Aquatic Resources Management Act 2016*);

- (5) Delete section 5(2).

- (6) In section 33(2):

(a) after paragraph (a)(ii) insert:

(iia) the Aquatic Resources Department; or

(b) delete paragraph (a)(iv).

- (7) In section 64(1):

(a) after paragraph (b) insert:

(ca) the Aquatic Resources Department; and

(b) delete paragraph (d).

- (8) In section 33(2) after each of paragraph (a)(i), (ii) and (iii) insert:

or

- (9) In section 64(1) after each of paragraphs (a), (b) and (c) insert:

and

**363. *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* amended**

- (1) This section amends the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*.

- (2) Delete section 89.

**364. *Constitution Acts Amendment Act 1899* amended**

- (1) This section amends the *Constitution Acts Amendment Act 1899*.

- (2) In Schedule V Part 3 delete “Any advisory committee established or continued in existence under Part 4 of the *Fish Resources Management Act 1994*.” and insert:

Any advisory committee established under the *Aquatic Resources Management Act 2016* section 224(1).

**365. *Control of Vehicles (Off-road Areas) Act 1978* amended**

- (1) This section amends the *Control of Vehicles (Off-road Areas) Act 1978*.
- (2) Delete section 38(2)(g) and insert:

(g) a compliance officer as defined in the *Aquatic Resources Management Act 2016* section 3(1); or

- (3) In section 38(2) after each of paragraphs (a), (b), (e), (f) and (ga) insert:

or

**366. *Environmental Protection Act 1986* amended**

- (1) This section amends the *Environmental Protection Act 1986*.
- (2) In Schedule 6 item 14 delete “a licence or permit within the meaning of the *Fish Resources Management Act 1994*.” and insert:

an authorisation within the meaning of the *Aquatic Resources Management Act 2016* section 3(1).

**367. *Litter Act 1979* amended**

- (1) This section amends the *Litter Act 1979*.
- (2) Delete section 26(2)(c)(vii) and insert:

(vii) a compliance officer as defined in the *Aquatic Resources Management Act 2016* section 3(1);  
or

- (3) In the Third Schedule delete the item relating to Fisheries officers and insert:

Compliance officers as defined in the  
*Aquatic Resources Management Act 2016*  
section 3(1)

The CEO as defined in  
the *Aquatic Resources*  
*Management Act 2016*  
section 3(1)

**368. Marine Navigational Aids Act 1973 amended**

- (1) This section amends the *Marine Navigational Aids Act 1973*.  
(2) In section 3A(3) in the definition of ***fishing boat*** delete “*Fish Resources Management Act 1994* or the *Pearling Act 1990*.” and insert:

*Aquatic Resources Management Act 2016*.

**369. Mining Act 1978 amended**

- (1) This section amends the *Mining Act 1978*.  
(2) In section 24A(3)(b) delete “fisheries” and insert:

aquatic resources

- (3) In section 24A(6) delete “fisheries” and insert:

aquatic resources

- (4) In section 24A(9) delete the definition of ***fisheries Minister***.  
(5) In section 24A(9) insert in alphabetical order:

***aquatic resources Minister*** means the Minister for the time being charged with the administration of the *Aquatic Resources Management Act 2016*;



- (6) In section 25(2B) delete “*Fish Resources Management Act 1994*” and insert:

*Aquatic Resources Management Act 2016*

**370. *Spear-guns Control Act 1955* amended**

- (1) This section amends the *Spear-guns Control Act 1955*.  
(2) In section 3 in the definition of **Inspector** delete “fisheries officer referred to in the *Fish Resources Management Act 1994*,” and insert:

compliance officer as defined in the *Aquatic Resources Management Act 2016* section 3(1),

**371. *State Administrative Tribunal Act 2004* amended**

- (1) This section amends the *State Administrative Tribunal Act 2004*.  
(2) In Schedule 1 delete these items:

*Fish Resources Management Act 1994*  
*Pearling Act 1990*

- (3) In Schedule 1 insert in alphabetical order:

*Aquatic Resources Management Act 2016*

**372. *Swan and Canning Rivers Management Act 2006* amended**

- (1) This section amends the *Swan and Canning Rivers Management Act 2006*.  
(2) In Schedule 5:  
    (a) before item 1(b) insert:  
  
    (a) the *Aquatic Resources Management Act 2016*;  
  
    (b) delete item 1(g).

**373. *Volunteers and Food and Other Donors (Protection from Liability) Act 2002 amended***

- (1) This section amends the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*.
- (2) In section 4(1) in the definition of **volunteer** delete paragraph (b) and insert:
  - (b) performing a function as an honorary compliance officer as defined in the *Aquatic Resources Management Act 2016* section 3(1); or
- (3) In section 4(1) in the definition of **volunteer** after paragraph (a) insert:

or

**374. *Waterways Conservation Act 1976 amended***

- (1) This section amends the *Waterways Conservation Act 1976*.
- (2) Delete section 61(5)(a)(ii) and insert:
  - (ii) a compliance officer as defined in the *Aquatic Resources Management Act 2016* section 3(1);

**375. *Western Australian Marine (Sea Dumping) Act 1981 amended***

- (1) This section amends the *Western Australian Marine (Sea Dumping) Act 1981*.
- (2) Delete section 14(8)(c)(i) and insert:
  - (i) the CEO as defined in the *Aquatic Resources Management Act 2016* section 3(1) in relation to aquatic resources matters; and

**376. *Western Australian Marine Act 1982 amended***

- (1) This section amends the *Western Australian Marine Act 1982*.
- (2) In section 3(1) insert in alphabetical order:

***aquatic compliance officer*** means a compliance officer designated under the *Aquatic Resources Management Act 2016* section 159(1);

(3) Delete section 28(3)(b) and insert:

(b) an aquatic compliance officer; or

**377. Various references to *Fish Resources Management Act 1994* amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “*Fish Resources Management Act 1994*” and insert:

*Aquatic Resources Management Act 2016*

**Table**

<i>Duties Act 2008</i>	s. 136
<i>Planning and Development Act 2005</i>	Sch. 2 cl. 7(2)(e)
<del><i>Port Kennedy Development Agreement Act 1992</i></del>	<del>s. 12(3)(e)</del>
<i>Wildlife Conservation Act 1950</i>	s. 17(2)(e) and (g) and s. 17A(d)

Note: In the *Duties Act 2008*, the heading to amended section 136 is to read:  
**Business licences held under Aquatic Resources Management Act 2016**

[\[Section 377 amended by No. 8 of 2017 s. 8.\]](#)

<sup>3</sup> On the date as at which this compilation was prepared the *Aquatic Resources Legislation Amendment Act 2016* Pt. 2 had not come into operation. It reads as follows:

**Part 2 — *Aquatic Resources Management Act 2016* amended**

**3. Act amended**

This Part amends the *Aquatic Resources Management Act 2016*.

**4. Section 263 amended**

After section 263(5) insert:

- (6) To the extent that the regulations prescribe under subsection (2)(j) a fee that includes an amount referred to in subsection (5) that is a tax, the regulations may impose the tax.

<sup>4</sup> ~~On the date as at which this compilation was prepared, the *Port Kennedy Development Act 2017* s. 8 had not come into operation. It reads as follows:~~

~~**8. *Aquatic Resources Management Act 2016* amended**~~

~~(1) This section amends the *Aquatic Resources Management Act 2016*.~~

~~(2) In section 377 in the Table delete the item relating to the *Port Kennedy Development Agreement Act 1992*.~~