

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

FISHERIES ADMINISTRATION BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister  
for Primary Industries and Energy,  
the Hon Simon Crean MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE  
BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED



## FISHERIES ADMINISTRATION BILL 1990

### GENERAL OUTLINE

The proposed Act will establish new arrangements for the administration of Commonwealth fisheries management activities. The new arrangements which will be administered by the Australian Fisheries Management Authority, were announced in December 1989 in the Government's policy statement 'New Directions for Commonwealth Fisheries Management in the 1990's'. In respect of this Bill they include the establishment of the Australian Fisheries Management Authority, the Australian Fisheries Management Authority Selection Committee and the Fishing Industry Policy Council.

The fish resources of the Australian fishing zone belong to the Australian community and the Authority is to be responsible for the management and sustainable development of those fisheries for which the Commonwealth has jurisdiction. The Authority, as a statutory authority, will be able to operate with greater independence, and greater responsiveness to the needs of the fishing industry and the community generally, than is possible for a Department of State.

The relationship between the Authority and the Minister will be at the strategic level, based particularly on Ministerial approval of the Authority's corporate and annual operational plans and Ministerial acceptance of an annual report for tabling in Parliament. The corporate and annual operational plans will be prepared in consultation with the peak industry body and will, once approved, provide the blueprint for the Authority. The Minister will be able to seek a variation to the plans and will have the power of direction over the affairs of the Authority. The Authority in turn will oversee the development of and seek approval of management plans for each of the fisheries for which it is responsible. These will be prepared to be consistent with the corporate and annual operational plans and will be reported on in the annual report.

In preparing its plans the Authority is required to have regard to the objectives and policies of the Government in relation to the sustainable development of a community owned resource. There will also be strong accountability particularly through consultation in the development of plans and through the annual report, its tabling in Parliament and presentation to industry and public meetings. This Bill thus ensures responsiveness to Government policies, proper Ministerial control and strong accountability to Parliament, the industry and the community.

### FINANCIAL IMPACT STATEMENT

The Bill will not have any significant affect on Government expenditure. The Authority will be funded on the same basis as that currently in place for the Australian Fisheries Service of the Department, with its operating budget being met by the industry and the Government in proportion to the benefit that the industry and the community receive from fisheries management. Currently 90% of attributable management costs are being recovered from the fishing industry. Some Government funding may initially be required to cover transitional arrangements. The Industry Commission is to review the basis of cost recovery for fisheries management prior to December 1991 and every five years thereafter. The Government, as custodian of the marine resources of the Australian fishing zone, will always retain certain responsibilities and costs for the conservation and management of those resources.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short Title

1. Provides for the Act to be cited as the *Fisheries Administration Act 1990*.

#### Clause 2 - Commencement

2. This clause provides for the Act to commence on the earlier of either a date to be fixed by Proclamation, or six months after Royal Assent.
3. The Government's aim is for the Authority to commence operations on or before 1 July 1991. The Bill's entry into force on Proclamation is to provide flexibility for the passage of the Bill and for those procedures necessary for the establishment of the Authority, such as the selection of the Board, to be conducted in an orderly manner.

#### Clause 3 - Object of the Act

4. This clause defines the objects of the *Fisheries Administration Bill 1990* as being to establish the Australian Fisheries Management Authority to manage fisheries on behalf of the Commonwealth and to establish the Fishing Industry Policy Council to provide members of the fishing industry and other interested persons with the opportunity to participate in the formulation of fisheries policy.

#### Clause 4 - Interpretation

5. This clause defines certain terms used in subsequent clauses of the Bill.

### PART 2 - AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY

#### Division 1 - Establishment, functions and powers of Authority

#### Clause 5 - Establishment

6. This clause establishes the Australian Fisheries Management Authority.

#### Clause 6 - Objectives

7. This clause defines the objectives that the Authority must pursue to provide sound administration in the performance of its functions.

#### Clause 7 - Functions

8. This clause generally defines the functions of the Authority.

9. Some functions of the Authority are specifically mentioned in the clause, while other functions in relation to the management of Commonwealth fisheries are conferred on the Authority by other Acts, particularly the Fisheries Management Bill 1991 which is proposed for introduction to Parliament and passage in the Autumn sitting.

#### **Clause 8 - Powers**

10. Subclause (1) confers general power on the Authority, over and above specific powers in the Act, in relation to the performance of its functions.

11. Subclause (2) provides specific examples of power conferred on the Authority, including power to enter into agreements and contracts; to acquire, hold and dispose of real and personal property; to collect information and data relevant to the management of fisheries; to charge fees and impose charges for the provision of work, services or information; to accept gifts, grants, bequests and devises made to it and to act as trustee of money and other property vested in it on trust.

#### **Clause 9 - Consultation**

12. Subclause (1) permits the Authority to consult as appropriate with commercial, recreational, government, scientific and other relevant persons or bodies.

13. Subclause (2) gives the Authority discretionary powers in relation to the payment of travel and other expenses incurred by individuals during the consultation process.

14. These provisions have the intention of ensuring that the Authority in its deliberations is fully informed and cognizant of industry and other relevant views and positions. It seeks also to ensure that the industry body and other agencies are able to contribute effectively in meaningful consultations.

### **Division 2 - Constitution and meetings of Authority**

#### **Clause 10 - Authority is a body corporate**

15. Subclause (1) provides for the Authority to be a body corporate with perpetual succession, to have a seal and sue or be sued in its corporate name.

16. Subclause (2) relates to the custody and use of the Authority's seal.

17. Subclause (3) requires judicial notice to be taken of the seal of the Authority and where it appears on a document it must be presumed that the document was properly sealed.

#### **Clause 11 - Constitution of Authority**

18. This clause provides for the membership of the Authority. The Authority is to consist of 8 persons, namely the Chairperson, the Government Director, the Managing Director and five nominated directors. The Authority is to be expertise based so that it can fulfil the essential requirements of fisheries management.

## **Clause 12 - Appointment of Directors**

19. Subclause (1) provides for members of the Authority, other than the Managing Director, to be appointed by the Minister. Directors will be selected for their expertise rather than their representation of particular fisheries or organisations.

20. Subclause (2) prevents a person from being appointed as the Chairperson of the Authority, or as a nominated director, for more than three consecutive terms.

21. Subclause (3) requires that the person appointed as the Government Director must possess knowledge of and experience in public administration and public policy formulation.

22. Subclause (4) states that nominated directors, other than the first five such directors, must be chosen from suitable candidates nominated by the Selection Committee in accordance with the provisions of clause 31. The first five nominated directors may be appointed by the Minister from recommendations made by a shadow selection committee until the Selection Committee is formally established on Proclamation of the Bill. The early selection of the Board is essential if the Authority is to commence operations on or before 1 July and any delay in the selection process would result in a later commencement date for the Authority.

23. Subclause (5) validates the appointment of a director despite any defect or irregularity in the appointment process.

24. Subclause (6) requires the Minister to endeavour that as far as is practicable, the first five nominated directors collectively possess expertise in all of the fields referred to in clause 30 of the Bill.

## **Clause 13 - Deputy Chairperson**

25. Subclauses (1) and (2) require the Minister, following consultation with the Chairperson, to appoint one of the nominated directors as Deputy Chairperson of the Authority.

26. Subclauses (3), (4) and (5) provide for the appointment to be terminated by the Minister at any time, the Deputy Chairperson ceases to hold office on vacating his or her position as a nominated director of the Authority and for the Deputy Chairperson to resign that office by writing to the Minister.

27. Subclauses (6) and (7) provide for the Deputy Chairperson to act as Chairperson during the absence of the Chairperson or during a vacancy in that office and endow the Deputy Chairperson with all the powers and entitlements of that office.

28. Subclause (8) validates the actions of a Deputy Chairperson merely because of an irregularity in the appointment process for certain specified reasons.

## **Clause 14 - Certain members of peak industry body not eligible for appointment to Authority**

29. This clause specifies that a member of the governing body of the peak industry

body is ineligible for appointment to the Authority. A director of the Authority ceases to hold office once appointed to the governing body of the peak industry body. The purpose of this provision is to safeguard against possible conflict of interest and to enable effective accountability to take place between the Authority and the governing body of the peak industry body.

#### **Clause 15 - Term of office**

30. This clause specifies a maximum appointment period of 3 years for members of the Authority (other than the Managing Director and the Government Director), but provides that a member is eligible for re-appointment. The Government Director holds office at the Minister's pleasure.

31. This provision has the aims of ensuring strong accountability over the performance of the Authority and to ensure that the Authority board remains vital.

#### **Clause 16 - Directors (other than the Managing Director) hold office on a part-time basis**

32. Directors, other than the Managing Director, will be part-time members of the Authority.

#### **Clause 17 - Remuneration and allowances**

33. Subclause (1) provides for the remuneration of directors (other than the Managing Director) to be determined by the Remuneration Tribunal. If no such determination is in operation, the directors are to be paid such remuneration as is prescribed.

34. Subclause (2) provides for prescribed allowances to be paid to directors.

35. Subclause (3) states that remuneration or allowances are not to be paid to directors who are members of a State Parliament, or candidates for parliamentary election, where such payments would make that person ineligible for Parliamentary service. These directors are to be reimbursed any expenses incurred in association with their participation on the Authority.

36. Subclause (4) requires directors who are members of a State Parliament but not affected by subclause (3) above, or in the full-time service or employment of a State or holding or performing the duties of an office under the laws of a State, to repay to that State an amount equal to that received in respect of their participation on the Authority within one month of receiving the payment.

37. Subclause (5) declares any moneys paid by the Authority under subclause (4) to be a debt to the State and provides for the State to institute recovery action.

38. Subclause (6) provides that this clause has effect subject to the Remuneration Tribunals Act 1973.

39. Subclause (7) excludes the Managing Director from the provisions of this clause.

40. Subclause (8) defines "Parliament" and "State" for the purposes of this section of the Bill.

#### **Clause 18 - Leave of Absence**

41. Subclause (1) makes provision for the Minister to grant the Chairperson leave of absence and to determine the terms and conditions of any such leave.

42. Subclause (2) allows the Chairperson to grant directors, other than the Managing Director, leave of absence from the Authority.

#### **Clause 19 - Resignation**

43. This clause permits a director (other than the Managing Director) to resign by writing to the Minister.

#### **Clause 20 - Disclosure of Interests**

44. This clause requires a director to disclose at a meeting of the Authority, any direct or indirect pecuniary interest in a matter to be considered by the Authority as soon as he or she becomes aware of a potential conflict of interest. All such disclosures must appear in the minutes of the meeting.

#### **Clause 21 - Termination of Appointment**

45. This clause allows the Minister to terminate the appointment of an Authority member (other than the Managing Director) for misbehaviour, physical or mental incapacity, or inefficiency or incompetence. The Minister may also terminate an appointment on grounds relating to bankruptcy, failure to disclose interest and unapproved absence from three consecutive meetings.

#### **Clause 22 - Terms and conditions of appointment not provided for by Act**

46. Provides for terms and conditions not provided for by the Act or the Remuneration Tribunal to be determined by the Minister.

#### **Clause 23 - Meetings**

47. Subclause (1) empowers the Authority to determine times and places for its meetings.

48. Subclause (2) empowers the Chairperson to convene meetings of the Authority at any time.

49. Subclause (3) requires the Chairperson to preside at all meetings where he or she is present.

50. Subclause (4) provides for the appointment of a presiding member when the Chairperson and the Deputy Chairperson are not present.

51. Subclause (5) defines a quorum as 5 out of the 8 Authority members. Issues are to be determined by a majority vote with the Chairperson or the presiding director having both a deliberate and a casting vote.

52. Subclause (6) specifies that minutes must be kept of Authority meetings.

53. Subclause (7) permits non-members to attend meetings of the Authority in an advisory capacity.

#### **Clause 24 - Resolutions without formal meeting**

54. This clause allows the Authority, where it so determines, to pass resolutions without actually meeting and specifies the procedures for so doing.

### Division 3 - Nomination and selection process for directors of Authority

#### **Clause 25 - Presiding Member**

55. This clause requires the Minister to appoint the Presiding Member of the Australian Fisheries Management Authority Selection Committee. The appointment is part-time and for a maximum period of 3 years. The Presiding Member is eligible for one re-appointment.

#### **Clause 26 - Acting Presiding Member**

56. Subclause (1) provides for the appointment of an acting Presiding Member during the absence of the Presiding Member or during a vacancy in that office for a period not exceeding twelve months. The Minister is to determine the terms and conditions of the appointment of an acting Presiding Member and can terminate the appointment at any time.

57. Subclause (2) validates the actions of an acting Presiding Member despite an irregularity in the appointment process for certain specified reasons.

#### **Clause 27 - Request for nominations**

58. The Minister can request the Presiding Member to establish a Selection Committee and nominate suitable candidates for appointment to the Authority. The Committee must finalise its nominations within the timeframe specified in the Ministerial request.

#### **Clause 28 - Selection Committee**

59. This clause empowers the Presiding Member to establish the Australian Fisheries Management Authority Selection Committee. The Presiding Member will be the only standing member of the Selection Committee. He or she will request nominations of other persons to the Committee when requested to provide nominations.



60. Subclause (1) requires the Presiding Member to seek nominations of suitable persons to participate on the Selection Committee from the peak industry body and the Australian Fisheries Council.

61. The Presiding Member must inform the public and other groups as appropriate, that nominations are being sought for appointment(s) to the Australian Fisheries Management Authority. The advice, which may be by advertisement in a newspaper circulated throughout the Commonwealth, depending on what steps the Selection Committee considers are reasonably required in this regard, must also include details of the necessary qualifications specified in clause 30 of the Bill.

62. Subclause (2) specifies the function of the Selection Committee.

63. Subclause (3) confers general power upon the Selection Committee in relation to the performance of its functions.

#### **Clause 29 - Membership of Selection Committee**

64. The Selection Committee is to consist of the Presiding Member, two members determined by the Minister (one of whom has knowledge of environmental/conservation issues), two members nominated by the peak industry body and one member nominated by the Australian Fisheries Council. Members are to be appointed by the Minister and hold office on a part-time basis.

#### **Clause 30 - Selection of nominees**

65. The Authority is to be expertise-based and to operate in a corporate manner. Persons nominated by the Selection Committee for appointment to the Authority must possess expertise in one or more of the fields specified in this Bill and where possible, collectively possess expertise in all those fields.

66. Members of the Selection Committee undertaking selections are ineligible for nomination for appointment to the Authority. The Selection Committee must not nominate more than two persons who, at the time of selection, are engaged in commercial fishing or other fishing industry operations and must not nominate a person who would be ineligible for appointment under clause 12(2).

#### **Clause 31 - Nomination**

67. This clause specifies the procedure to be followed by the Selection Committee when processing nominations for appointment to the Authority.

#### **Clause 32 - Rejection of nominations**

68. This clause empowers the Minister to reject a nomination put forward by the Selection Committee and to seek a new nomination for the position in question.

#### **Clause 33 - Meetings of the Selection Committee**

69. Subclauses (1) and (2) provide for the Selection Committee to hold such meetings as are necessary for the performance of its functions and empower the Presiding Member to

call meetings at any time.

70. Subclause (3) states that a quorum is to comprise the Presiding Member and 3 of the 5 members. The three members must include one of the members nominated by the peak industry body and one nominated by the Minister.

71. Subclause (4) requires the Presiding Member to preside at all meetings at which he or she is present.

72. Subclauses (5) and (6) state that all issues are to be determined by a majority vote and the Presiding Member has both a deliberate and a casting vote.

73. Subclause (7) requires Committee proceedings to be recorded.

74. Subclause (8) empowers the Committee to determine its own meeting procedures.

#### **Clause 34 - Remuneration and allowances**

75. The remuneration of Selection Committee members is to be determined by the Remuneration Tribunal. Where no determination exists, members will be paid such remuneration as is prescribed. Provision is made for the payment of prescribed allowances to members. This clause has effect subject to the Remuneration Tribunals Act 1973.

#### **Clause 35 - Leave of Absence**

76. Subclause (1) allows the Minister to grant the Presiding Member leave of absence from a meeting of the Selection Committee.

77. Subclause (2) permits the Presiding Member to grant another member leave of absence from a meeting.

#### **Clause 36 - Resignation**

78. This clause permits a member to resign by writing to the Minister.

#### **Clause 37 - Termination of appointment of member of Selection Committee**

79. Subclause (1) allows the Minister to terminate the appointment of a member of the Selection Committee for misbehaviour, physical or mental incapacity or inefficiency or incompetence. The Minister may also terminate an appointment on grounds relating to bankruptcy, disclosure of interests or unapproved absence from three consecutive meetings.

#### **Clause 38 - Disclosure of interests by members of Selection Committees**

80. A member of the Selection Committee must disclose at a meeting of the Committee, any direct or indirect pecuniary interest in a matter being considered by the Selection Committee as soon as he or she becomes aware of a potential conflict of interest. All such disclosures must appear in the minutes of the meeting.

**Clause 39 - Resolutions without meetings**

81. The Committee may make decisions without meeting provided such decisions are agreed to by the Presiding Member and at least three other members. A resolution is to be taken as passed on the day the document was signed by at least four members who would constitute a quorum at a meeting of the Committee.

**Clause 40 - Consultants**

82. This clause empowers the Presiding Member to engage suitably qualified persons as consultants or to provide other services (clerical/administrative) as required to assist the Selection Committee in the performance of its functions. The Committee will determine appropriate terms and conditions of such engagements.

**Clause 41 - Presiding Member to abolish Selection Committee**

83. The Presiding Member must abolish the Committee where appointment action to the Authority is completed or where there are no outstanding Ministerial requests still to be actioned by the Committee.

**Clause 42 - Annual reports of Selection Committee**

84. The Selection Committee is required to produce an annual report and for reasons of efficiency and cost effectiveness, that report may, subject to agreement between the Presiding Member and the Chairperson of the Authority, be included in the Authority's annual report.

**Division 4 - Managing Director****Clause 43 - Managing Director**

85. This clause establishes the position of Managing Director of the Australian Fisheries Management Authority.

**Clause 44 - Duties**

86. This clause specifies that the duty of the Managing Director is to manage the Authority in accordance with the policies and directions of the Authority and that anything done by the Managing Director is deemed to have been done by the Authority.

**Clause 45 - Appointment**

87. The Managing Director is to be appointed by the Authority. Members occupying other positions on the Board are ineligible for selection as Managing Director. The appointment of a person as Managing Director is valid despite an irregularity in the appointment process.

**Clause 46 - Term of appointment**

88. This clause specifies that the Managing Director holds office during the Authority's pleasure.

**Clause 47 - Terms and conditions of appointment**

89. Terms and conditions of office, including remuneration and allowances, for the Managing Director, are to be determined by the Authority and approved by the Minister.

**Clause 48 - Application of Remuneration Tribunal Act**

90. The position of Managing Director is not a public office within the meaning of the Remuneration Tribunals Act 1973. This enables terms and conditions to be set by the Authority with the Minister's approval.

**Clause 49 - Managing Director not to engage in other paid employment**

91. This clause prevents the Managing Director from engaging in any paid work outside the Authority unless the Authority approves such an arrangement.

**Clause 50 - Leave of absence**

92. The Chairperson of the Authority may, with the written approval of the Minister, grant the Managing Director leave of absence on terms and conditions determined by the Authority.

**Clause 51 - Resignation**

93. The Managing Director may resign by writing to the Chairperson of the Authority.

**Clause 52 - Disclosure of interests**

94. This clause requires the Managing Director to disclose all direct or indirect pecuniary interests in any business or body corporate to the Chairperson of the Authority.

**Clause 53 - Acting Managing Director**

95. This clause provides for the appointment of an acting Managing Director during a vacancy in that office or during the absence of the Managing Director for a period not exceeding twelve months. The actions of an acting Managing Director are validated by this clause despite an irregularity in his or her appointment for certain specified reasons.

**Division 5 - Committees****Clause 54 - Committees**

96. This clause empowers the Authority to establish committees to assist in the performance and exercise of its functions and powers and to abolish those committees as

appropriate.

**Clause 55 - Committees other than management advisory committees**

97. This clause provides for the membership of committees, other than management advisory committees and procedural arrangements for those committees.

98. A member of a general committee must disclose any direct or indirect pecuniary interests in a matter being considered by the Committee as soon as the member becomes aware of a potential conflict of interest. All such disclosures must appear in committee records.

**Clause 56 - Management advisory committees**

99. Subclause (1) empowers the Authority to establish management advisory committees to assist in the performance of its functions and the exercise of its powers.

100. Subclause (2) requires the Authority to establish a management advisory committee where a plan of management includes such a requirement.

101. Subclause (3) empowers the Authority to vary the functions and powers of management advisory committees.

102. Subclause (4) states that the Authority must not abolish a management advisory committee established under the provisions of a plan of management.

**Clause 57 - Functions of management advisory committees**

103. This clause empowers the Authority to determine the functions of management advisory committees. Management advisory committees may advise the Authority in relation to fisheries management, act as a liaison mechanism between the Authority and the fishermen concerned and assist in keeping the Authority informed about the biological and economic status of the fishery.

**Clause 58 - Powers of management advisory committee**

104. Subclause (1) confers general powers on management advisory committees to act on behalf of the Authority in the performance of its functions, subject to conditions specified in clause 58.

105. Subclause (2) deems all acts done by a management advisory committee on behalf of the Authority are deemed to have been done by the Authority.

**Clause 59 - Management advisory committee to act in accordance with policies of Authority**

106. This clause requires management advisory committees to act in accordance with the policies and directions of the Authority.

**Clause 60 - Constitution of management advisory committees**

107. This clause provides for the membership of management advisory committees. With a view to efficient and effective operations of Committees, their size is limited to a maximum of 9 members. This includes the Chairperson, the Authority member responsible for the management of a particular fishery and up to 7 other members selected by the Authority after consultation with the industry, relevant State or Territory Governments and relevant members of the research community. A vacancy in membership does not prevent a management advisory committee from discharging its functions.

**Clause 61 - Acting Chairperson**

108. This clause allows the Authority to appoint an acting Chairperson of a management advisory committee during the absence of the Chairperson or during a vacancy in that office for a period not exceeding 12 months. The actions of an acting Chairperson are valid despite an irregularity in his or her appointment for certain specified reasons.

**Clause 62 - Appointment of members**

109. This clause empowers the Authority to appoint members of management advisory committees. The appointment of a member is valid despite an irregularity in his or her appointment.

110. The Authority retains final responsibility for the membership of committees and is not required to appoint a particular person, a representative of a particular group or of a State or Territory government organisation as a member of a committee as provided in clause 60(c).

**Clause 63 - Term of office**

111. Appointments to management advisory committees will be for a maximum period of three years, with the member remaining eligible for re-appointment. Provision is made for the appointment of a replacement member (if necessary) to hold office until the end of the original member's term.

**Clause 64 - Application of certain provisions to members of management advisory committees**

112. Provisions relating to leave of absence, resignation, disclosure of interests, termination of appointment and resolutions without formal meetings for the operation of management advisory committees are to operate in the same way as presented in clauses 18 to 21 and clause 24 for the operation of the Authority.

**Clause 65 - Meetings**

113. This clause empowers the Authority to determine procedural arrangements for management advisory committee meetings including the convening of meetings, the constitution of a quorum, the presiding member, voting, the keeping of minutes and the attendance of advisers. The committee has the power to determine other procedural

aspects for its meetings.

#### **Clause 66 - Arrangements relating to staff, facilities**

114. The provision of staff, consultants and general facilities necessary for the proper functioning of management advisory committees is to be arranged with the Chairperson of the Authority.

#### **Clause 67 - Remuneration and allowances**

115. Subclauses (1) and (2) provide for the Remuneration Tribunal to determine the remuneration of the Chairperson of management advisory committees. Where no determinations exist, he or she will be paid such remuneration as is prescribed. The Chairperson is to be paid prescribed allowances. These subclauses have effect subject to the Remuneration Tribunals Act 1973.

116. Subclause (4) stipulates that a member of a committee established under clause 54, other than the Chairperson of a management advisory committee or a member who is a director or employee of the Authority, is to be paid a prescribed allowance. The Remuneration Tribunals Act 1973 does not apply in respect of these members.

### Division 6 - Employees and consultants

#### **Clause 68 - Employees**

117. This clause allows the Authority to employ staff as considered necessary to perform its functions. Staff will be employed on such terms and conditions as are determined by the Authority. No staff member is to be employed on terms and conditions more favourable than those applying to the office of Managing Director.

118. As background to this provision, the Transitional and Consequential Amendments to the Bill will provide for those persons, who are currently employed by the Australian Fisheries Service within the Department of Primary Industries and Energy and who transfer to the Authority, to continue to enjoy employment under the Public Service Act 1922. Should they so wish and if the Authority chooses to offer alternate terms and conditions, they will be free to accept these as an alternative to those terms and conditions under the Public Service Act 1922.

#### **Clause 69 - Superannuation benefits**

119. This clause is to be omitted. It allowed the Australian Fisheries Management Authority (AFMA) to establish its own staff superannuation scheme. This has been a standard provision for statutory authorities not staffed under the Public Service Act 1922. However the Superannuation Benefits (Supervisory Mechanisms) Act 1990 now gives the Minister for Finance the power to approve separate superannuation schemes for employees of Commonwealth statutory authorities. Clause 69 is therefore redundant.

**Clause 70 - Consultants**

120. This clause empowers the Authority to engage suitably qualified persons as consultants and to determine appropriate terms and conditions of such engagements.

**Clause 71 - Human resources development program**

121. This clause requires the Authority to develop and implement a human resources development program. Officers of the Authority exercising powers in relation to the employment of staff must have regard to that program.

**Clause 72 - Merit principle to apply**

122. Staff will be employed on the basis of merit.

### Division 7 - Corporate and annual operational plans

**Clause 73 - Development of corporate plan**

123. This clause requires the Authority to provide the Minister, before 1 May 1992 and 1 May in each subsequent calendar year, with a corporate plan setting out its goals for at least three years. The plan is to be developed in consultation with the peak industry body and other bodies as considered appropriate and must define strategies and policies designed to achieve the Authority's goals and indicators developed by the Authority to enable assessment of its performance. The plan should also incorporate the Authority's human resources development program.

**Clause 74 - Approval of corporate plan**

124. This clause allows the Minister to approve or request a variation to the Authority's corporate plan. Revised plans must be resubmitted for Ministerial approval. A plan takes effect at the commencement of the period to which the plan relates, or on receipt of Ministerial approval, whichever is the later.

**Clause 75 - Variation of corporate plans by Authority**

125. The Authority cannot make substantial variations to its corporate plan without Ministerial approval. Under this clause the Minister may approve or reject a proposal from the Authority to vary its corporate plan. The Authority can make minor variations without Ministerial approval but should inform the Minister of any such changes as soon as possible.

**Clause 76 - Variation at request of Minister**

126. This clause empowers the Minister to request a variation to the Authority's corporate plan at any time. The Act stipulates how such Ministerial requests should be handled by the Authority.



**Clause 77 - Date of effect of variations**

127. Variations to a corporate plan, approved by the Minister in accordance with clauses 75 and 76 come into force on the day the Minister's advice is received by the Authority. A minor variation to the plan comes into force on the day the Authority makes the variation.

**Clause 78 - Development of annual operational plan**

128. This clause requires the Authority to prepare annual operational plans which specify how, in the specific year in question, the Authority intends to achieve the objectives detailed in the corporate plan and, what initiatives it intends to introduce to fulfil its obligations under the human resource development program. The annual operational plan should include details of any fisheries management plan that may be introduced during the period in question. The plan will also provide performance indicators to enable the assessment of the particular actions outlined in the annual operational plan. The Authority must submit an annual operational plan to the Minister before 1 June 1992 and before 1 June in each subsequent calendar year.

**Clause 79 - Approval of annual operational plan**

129. This clause empowers the Minister to approve or request a variation to an annual operational plan. Revised plans must be resubmitted for Ministerial approval. Annual operational plans are to come into force at the commencement of the period in question, or on receipt of the Minister's approval, whichever is the later.

**Clause 80 - Variation of annual operational plans**

130. Provisions in clauses 75, 76 and 77 relating to the variation of corporate plans also apply to the variation of annual operational plans.

## Division 8 - Finance

**Clause 81 - Payments of amounts of levy**

131. This clause previously referred to levy Acts associated with the Fisheries Act 1952, under which moneys would be collected, part of which would go to AFMA. The Fisheries Management Bill 1991 has its own set of levy Bills, these will replace the existing levy Acts as fishing licences etc, issued under the Fisheries Act 1952, expire and are replaced with instruments under the new Bill. This clause has therefore been amended to include all Acts and Bills under which moneys payable to AFMA will be collected.

**Clause 82 - Money of the Authority**

132. Money of the Authority consists of levy payments appropriated from the Commonwealth Revenue Fund under clause 81, Parliamentary appropriations and any other money payable to, or received by, the Authority under this Act or other Acts.

**Clause 83 - Expenditure of money of the Authority**

133. This clause specifies the circumstances under which the Authority can expend its money.

**Clause 84 - Borrowing of money**

134. This clause allows the Authority to borrow moneys, including foreign currency. The Authority is empowered to borrow up to \$500,000 and beyond that limit any borrowings must be on such terms and conditions as approved by the Treasurer.

**Clause 85 - Guarantee of borrowings**

135. This clause empowers the Treasurer to enter into a contract to guarantee repayment of borrowings by the Authority. Various provisions that may be incorporated into such contracts are included in the Bill.

**Clause 86 - Borrowing not otherwise permitted**

136. The Authority cannot borrow moneys other than as provided for in this part of the Bill.

**Clause 87 - Authority may give security**

137. This clause empowers the Authority to give security over all or part of its assets in meeting its obligations arising from borrowings, including reimbursement to the Commonwealth for any payments made pursuant to a guarantee made under clauses 84 and 85.

**Clause 88 - Liability to taxation**

138. The Authority is liable for Commonwealth taxes (other than income tax) and certain State taxes such as stamp duty on transactions and instruments and documents executed by or on behalf of the Authority.

**Clause 89 - Provisions relating to Division 2 of Part XI of Audit Act**

139. This clause declares the Authority to be a public authority to which Division 2 of Part XI of the Audit Act 1901 applies.

140. Subclause (1) defines the period to which the first annual report of the Authority under that Act is to relate.

141. Subclause (2) specifies details which must be included in the Authority's annual report under that Act.

## Division 9 - Miscellaneous

### **Clause 90 - Peak industry body to be given copy of report**

142. This clause requires the Chairperson of the Authority to give a copy of the annual report, following its tabling in Parliament, to the peak industry body. The Chairperson must meet with the governing body and account for the Authority's activities during the past year.

### **Clause 91 - Public meetings**

143. The clause requires the Authority to hold public meetings at least once a year to consult with persons engaged in the fishing industry and any other interested parties and account for the activities of the Authority. The Minister is empowered to direct the Authority to convene an additional public meeting and the Authority must comply with this direction.

### **Clause 92 - Minister may give directions**

144. Subclause (1) empowers the Minister to give directions to the Authority on its functions an exercise of powers and requires the Authority to comply with these directions.

145. Subclause (2) states that the Minister must not give such a direction unless the direction is necessary to avoid conflict between the Authority's performance of its powers and functions and major Government policy. Before issuing a direction under this clause, the Minister is required to give prior notice to the Authority and to give the Chairperson of the Authority an opportunity to discuss the direction with the Minister.

146. Under subclause (3) the Minister is required to publish a notice in the Gazette, giving details of the direction to the Authority and to table that notice in both Houses of Parliament within 15 sittings days after its publication.

147. The Authority's annual report of that year must give details of the direction and its impact on the operations of the Authority.

148. Subclause (4) states that the Minister may determine not to publish details of a direction made under this section if such action is considered prejudicial to the national interest of Australia.

### **Clause 93 - Delegation by the Authority**

149. This clause empowers the Authority to delegate any of its powers and functions to office holders, committees established under clause 54, an employee of the Authority or a person engaged by the Authority under contract, for the efficient and effective operation of the Authority. In exercising delegated powers, the delegate is subject to the directions of the Authority.

**Clause 94 - Delegation by the Managing Director**

150. This clause empowers the Managing Director to delegate to an employee of the Authority any of the powers associated with that office.

**Clause 95 - Limit - fees and charges**

151. Charges or fees imposed under this Act must not be such as to amount to taxation.

**PART 3 - THE FISHING INDUSTRY POLICY COUNCIL**

Division 1 - Preliminary

**Clause 96 - Interpretation**

152. This clause defines certain terms used in clauses in this part of the Bill.

Division 2 - Establishment, functions and powers of the  
Fishing Industry Policy Council

**Clause 97 - Establishment of Council**

153. This clause establishes the Fishing Industry Policy Council.

**Clause 98 - Objectives**

154. This clause defines the objectives of the Council as being to facilitate an exchange of views and develop a unified approach on matters affecting the fishing industry.

**Clause 99 - Functions of Council**

155. Subclause (1) generally defines the functions of the Council as being to inquire into and advise the Minister, the relevant industry sectors and the community generally on matters affecting the well-being of the fishing industry. This includes the development of recommendations and guidelines to protect or promote the industry. The Council will provide an independent and wide ranging source of information on the fishing industry.

156. Subclause (2) permits the Council to adopt the reports of its working groups established under clause 110.

157. Subclause (3) empowers the Council to consider any issues arising from industry conferences convened under clause 101.

**Clause 100 - Powers of Council**

158. This clause confers general powers on the Council in relation to the performance of its functions.

### **Clause 101 - Industry conferences**

159. This clause empowers the Chairperson of the Council to convene industry conferences as he or she considers appropriate or upon the request of Council. The purposes of a conference are defined in the Act as are the persons entitled to attend. The Chairperson must preside at all industry conferences.

### **Clause 102 - Publication of Council reports**

160. This clause provides for the publication of Council reports and allows the Minister to use his or her discretion as to the level and extent of publication. Council cannot publish a report prior to Ministerial publication. Reports must specify any disagreement within Council relating to findings or recommendations and identify the dissenting parties.

161. For the purpose of this clause, the term "report" also refers to part of a report.

## **Division 3 - Constitution and meetings of Council**

### **Clause 103 - Constitution of Council**

162. Subclause (1) defines the membership of the Council. The broad composition of the Council is essential for it to be able to provide the wide ranging source of information required of it.

163. Subclauses (2) and (3) allow for the appointment of members on a part time basis and, apart from the Chairperson of the Authority and the Chairperson of the Fishing Industry Research and Development Council, members are to be appointed by the Minister for a maximum period of three years.

164. Subclause (4) declares directors of the Authority (other than the Authority Chairperson) ineligible for appointment to the Council. Persons other than the Chairperson of the Authority and the Chairperson of the Fishing Industry Research and Development Council are ineligible for appointment for more than 3 consecutive terms.

165. Subclause (5) defines the terms and conditions associated with appointment to the Council.

166. Subclause (6) preserves the Council's power to discharge its functions despite vacant positions on the Council.

### **Clause 104 - Acting Chairperson**

167. This clause empowers the Minister to appoint an acting Chairperson of Council during a vacancy in that office or during the absence of the Chairperson for a period not exceeding twelve months. The actions of an acting Chairperson are valid despite any irregularity in his or her appointment for certain specified reasons.

**Clause 105 - Deputies of members**

168. Under this clause the Minister may appoint a deputy for a member specified in clause 99. The Minister must, if requested by the nominating body or person, terminate the appointment of a deputy. Deputies are entitled to attend meetings in the absence of members and for all purposes are deemed to be members. Deputies may resign by writing to the Minister. The actions of a deputy are valid despite any irregularity in his or her appointment for certain specified reasons.

**Clause 106 - Resignation of members**

169. A member may resign from the Council by writing to the Minister.

**Clause 107 - Termination of appointments**

170. Subclause (1) requires the Minister to terminate the appointment of a member nominated by the National Fishing Industry Training Council Limited or the peak industry body under clause 103 should the Minister receive such a request from those bodies.

171. Subclause (2) empowers the Minister to terminate the appointment of a member of Council for misbehaviour, physical or mental incapacity or on grounds relating to bankruptcy, disclosure of interests or unapproved absence from 3 consecutive meetings of Council.

172. The clause also makes provision for the withdrawal of entitlements and allowances from members.

173. For the purpose of this clause "appointed member" means a member other than the Chairperson of the Authority or the Chairperson of the Fishing Industry Research and Development Council.

**Clause 108 - Disclosure of interests**

174. A member must disclose at a meeting of Council, any direct or indirect pecuniary interest in a matter being considered by the Council as soon as the member becomes aware of a potential conflict of interest. All such disclosures must appear in the minutes of meeting.

**Clause 109 - Meetings**

175. This clause allows the Chairperson to convene meetings of Council as he or she considers appropriate or upon receipt of a written request from 4 members. The Chairperson must preside at all meetings when present; however in his or her absence, the members present are to appoint a presiding member.

176. A quorum for a meeting of Council is five members. Issues are to be determined by a majority vote with the Chairperson or the presiding member having both a deliberative and a casting vote. Minutes must be kept of all Council meetings. Non-members are permitted to attend meetings in an advisory capacity.

#### Division 4 - Working groups of Council

##### Clause 110 - Working groups of Council

177. This clause provides for the establishment of working groups of the Fishing Industry Policy Council. Council will determine the constitution of such groups, appoint Chairpersons and determine procedural arrangements for the working groups.

178. A working group can be established for a period of six months, with provision for extensions if Council considers appropriate. Working groups must submit a written report to Council as soon as practicable and include in that report, details of any disagreement within the group relating to its findings or recommendations.

##### Clause 111 - Disclosure of interests of members of working groups

179. A member of a working group must disclose at a meeting of the Group, any direct or indirect pecuniary interests in a matter to be considered by the group, as soon as the member becomes aware of a potential conflict of interest. All such disclosures must appear in the records of the meeting.

#### Division 5 - Miscellaneous

##### Clause 112 - Remuneration and allowances

180. Remuneration for the Chairperson of the Council is to be determined by the Remuneration Tribunal. Where no such determination exists, the Chairperson is to be paid the prescribed remuneration. Provision is also made for the Chairperson to receive prescribed allowances. Remuneration and allowances for the Chairperson are set under the Remuneration Tribunals Act 1973.

181. Only the Chairperson is entitled to remuneration. Members of the Council and members of working groups are not covered by the Remuneration Tribunals Act 1973 and are only entitled to receive prescribed allowances.

##### Clause 113 - Arrangements relating to staff, facilities

182. Staff and associated facilities to service the Fishing Industry Policy Council are to be provided under an arrangement between the Chairperson of the Council and the Secretary of the Department of Primary Industries and Energy. These staff will take direction from the Council.

##### Clause 114 - Annual report

183. This clause requires the Council to provide the Minister with a report on its operations prior to 30 June each year. The Minister will table the report in both houses of Parliament within fifteen sitting days of receiving the report.

**PART 4 - MISCELLANEOUS**

**Clause 115 - Regulations**

184. This clause empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.