

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Torres Strait Fisheries Bill 1983

EXPLANATORY MEMORANDUM

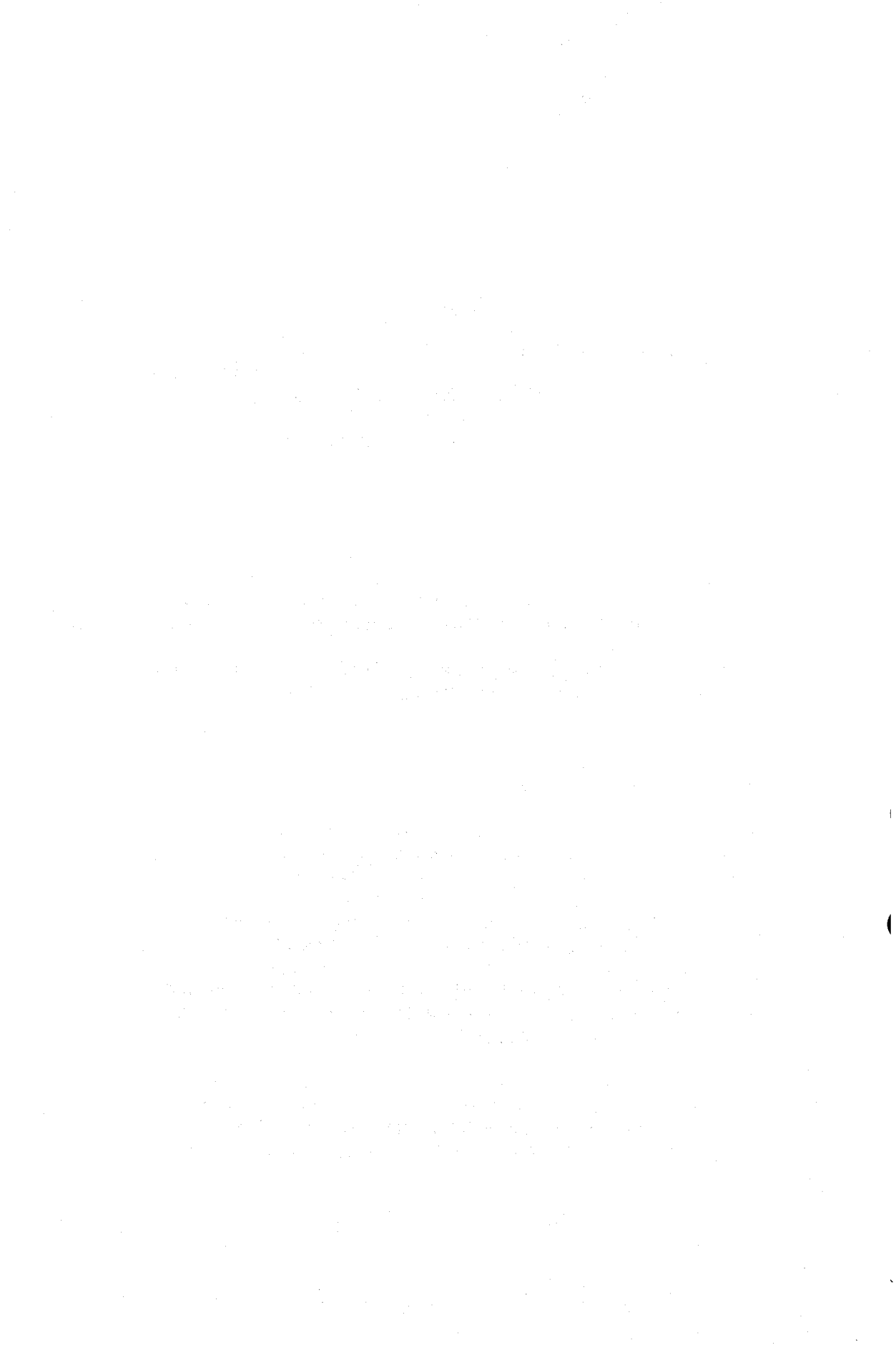
(Circulated by the Minister for Primary Industry  
The Hon. John Kerin, MP)



## OUTLINE

The Bill provides inter alia for matters necessary to give effect in Commonwealth law to the fisheries elements of the Torres Strait Treaty ("the Treaty"). The Bill has been the subject of discussions with the Papua New Guinea and Queensland Governments to ensure the compatibility of the laws enacted by the three Parliaments for that purpose.

The provisions of the Bill follow those of the Fisheries Act 1952 to the extent necessary to create the powers required for effective management of fisheries in and in the vicinity of the Torres Strait Protected Zone. As well, the Bill contains provisions giving effect to the Treaty insofar as it provides a basis for co-operation between Australia and Papua New Guinea in managing those fisheries. Provisions disapplying the Fisheries Act 1952 and the Continental Shelf (Living Natural Resources) Act 1968 in the Protected Zone are contained in the Torres Strait (Miscellaneous Amendments) Bill.



PROVISIONS OF THE BILL

NO. OF  
CLAUSE

EXPLANATION

PART 1 - PRELIMINARY

- |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Short title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 2 | Entry into force on a date fixed by Proclamation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3 | Follows the <u>Fisheries Act 1952</u> or the Treaty, where appropriate. Additional definitions include                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|   | <ul style="list-style-type: none"><li>- "area of Australian jurisdiction", based on the Protected Zone established by Article 10 of the Treaty and the fisheries and seabed jurisdiction lines established under Article 4; normally excludes the coastal waters of Queensland unless the Commonwealth and Queensland agree otherwise;</li><li>- "area of Papua New Guinea jurisdiction", based on the same Treaty provisions;</li><li>- "community fishing", meaning commercial fishing carried out by traditional inhabitants of Australian nationality or persons employed by traditional inhabitants or Governments to advise on fishing techniques. Commercial fishing by traditional inhabitants under obligations to other persons is not community fishing;</li><li>- "foreign boat", meaning one which is not an Australian or a Papua New Guinea boat;</li><li>- "Papua New Guinea boat", meaning a boat licensed under Papua New Guinea (PNG) law or used by PNG citizens for traditional fishing;</li><li>- "Protected Zone", the area described in Annex 9 of the Treaty and including areas outside but near that area declared by PNG to be in the Protected Zone (for similar power in Australian law, see clause 15);</li></ul> |

- "traditional fishing", by traditional inhabitants for their own or their dependants' use or for use in traditional activities, but excluding fishing by methods or boats of a kind declared in sub-clause 2;
- "traditional inhabitants", indigenous people who live in the Protected Zone or adjacent coastal areas of Australia or PNG, are citizens of one or other country and maintain traditional customary associations with the region;
- "Treaty endorsement", on a licence nominated by the PNG Government, authorising, in the area of Australian jurisdiction, participation in a fishery subject of an arrangement under Article 22 of the Treaty.

Sub-clause (3) empowers the Minister to declare adjacent coastal areas of Australia and PNG, in which traditional inhabitants, as defined for purposes of the Bill, reside. Sub-clause (4) empowers the Minister to authorise officers to perform duties under the Bill. Sub-clause (5) by excluding "traditional fishing" from the scope of "private purpose" fishing, establishes clear limits to the fishing activities of traditional inhabitants that the Bill will regulate.

- 4 Follows the Fisheries Act 1952 (S.4A) in declaring the breadth of Protected Zone coastal waters of Queensland to be three nautical miles.
- 5 By sub-clauses (1) and (2), the Bill will not apply in Protected Zone coastal waters of Queensland except where there is an arrangement under Part V by which the law of the Commonwealth is to apply to the fishery. Sub-clauses (3) and (4) limit the applicability of the Bill in areas outside but near the Protected Zone and declared under clause 15, to the activities which the declaration authorises in those areas.
- 6 Self-explanatory.
- 7 In the Protected Zone beyond Queensland coastal waters, confirms the power of the Queensland Parliament, (already declared by the Fisheries Act 1952 (S 5A(2))), to make laws regulating non-commercial fishing (other than traditional fishing) with the use of an Australian boat

PART II - ADMINISTRATION

8. Requires regard to be had in administering the Act, to the Treaty and preservation of traditional life-styles of traditional inhabitants.
9. Provides standard powers of delegation (sub-clauses (1) to (5)). Sub-clause (6) limits to the Secretary of the Department of Primary Industry the powers of suspending licences; revoking or suspending entries in licences or Treaty endorsements; revoking or varying scientific permits; consulting PNG about proposals to licence foreign boats or nominating Australian boats to receive PNG endorsement; cancelling licences; disposing of property ordered forfeit; consenting to the determination in an Australian court of legal proceedings against persons or PNG boats.  
  
Sub-clause (7) limits to officers in the Department of Primary Industry, the powers of licensing foreigners and foreign boats; granting or making entries in a Treaty endorsement; licensing boats that process or carry the catches of other boats; varying entries in licences for foreign boats or in Treaty endorsements; authorising officers to perform duties; and granting scientific permits.
10. Requires the keeping of registers of licences and Treaty endorsements at places where the Minister directs.
11. Empowers the Minister to cause research, stock assessment or development activities to be undertaken in areas of Australian jurisdiction.
12. Authorises the issue of permits to fish for scientific purposes and indemnifies a permit-holder and his agents from criminal liability in relation to activities authorised under the permit, which may be granted subject to conditions and revoked or varied at any time by notice in writing to the permit holder.
13. Requires the Minister when he considers it appropriate, to seek the views of the Australian traditional inhabitants who are members of the Torres Strait Joint Advisory Council, about administration of the Bill that could affect the interests of Australian traditional inhabitants.

PART III - REGULATION OF FISHING

14

Sub-clauses (1) and (2) empower the Minister to require the master of an Australian boat or a foreign boat licenced under clause 19 in areas of both Australian and PNG jurisdiction, or of a PNG boat in an area of Australian jurisdiction, to provide details of the boat's commercial catch in a specified fishery

Sub-clauses (3), (4) and (15) provide for the furnishing of information, by the master of a licensed fish carrier or processing boat or the operator of a fish processing establishment in Australia, about community fishing catches from specified fisheries in areas of both Australian and PNG jurisdiction, delivered to that boat or establishment.

Sub-clauses (6), (7) and (8) empower the Minister to prohibit boats within the jurisdiction of the Bill in relation to an area, from undertaking commercial fishing other than community fishing, or community fishing, in areas of either Australian or PNG jurisdiction, in a fishery to which any of sub-clauses (1) to (4) refers.

Notices requiring the furnishing of information come into force at least one month after publication in the Gazette. Notices closing a fishery come into force not earlier than 7 days after the date of publication and operate until the anniversary of the relevant closure notice or until earlier revoked. The regulations may prescribe the manner of publishing the contents of a notice other than in the Gazette or by broadcasting them.

Penalty - for failing to provide required information, \$1,000. For knowingly providing false or misleading information - \$5,000 and/or two years gaol. For fishing after publication of a closure notice - \$5,000. For the master of a licensed processing or carrier boat or the operator of a shore establishment convicted of failing to pass information to the Minister about the catch from a community fishery within 5 days - \$1,000.



- 15 Empowers the making of Proclamations declaring areas outside but near the Protected Zone to be areas in which the Bill will apply to a commercial fishery specified in the Proclamation or to traditional fishing by PNG citizens (see also Torres Strait (Miscellaneous Amendments) Bill, clauses 4 and 14, which respectively disapply the Continental Shelf (Living Natural Resources) Act 1968 and the Fisheries Act 1952 to that fishery in areas so declared). Sub-clause (3) requires the agreement of the Commonwealth and Queensland Ministers before declaring any area of coastal waters of that State under this clause.
- 16 Empowers the Minister to publish notices in the Gazette to regulate commercial fishing by
- total prohibitions on taking specified fish\*
  - legal minimum or maximum lengths or weights of whole fish or parts of fish\*
  - prohibitions on use of specified fishing equipment or kinds of boats\*
  - reserving specified fisheries as community fisheries
  - prohibiting the use of an Australian boat, a PNG boat or a foreign boat in a fishery
  - controlling the maximum quantity of a specific kind of fishing equipment permitted to be used from a boat
  - prohibiting the use of fishing gear not registered under Queensland or PNG law when the permitted quantity of that gear is controlled
  - prohibiting the taking of eggs of specified (marine) reptiles\* (the definition of "fish" extends to include these)
  - prohibiting the taking away alive of sedentary organisms from the area where they were fished\*
  - controlling the number of people permitted to fish from a specified kind of boat

- prohibiting possession or control on a boat of fishing equipment not stowed and secured.

(Controls denoted by an asterisk may also be applied to traditional fishing).

A notice may apply at all or specified times in a specified area or in the whole area of Australian jurisdiction. Notices reserving a fishery as a community fishery may apply to activities ashore. Any notice may provide for exemptions or may specify that it is one from which boats may be exempted by an entry made in a licence. The regulations may prescribe the manner of publishing the contents of a notice other than in the Gazette or by broadcasting them.

#### PART IV - LICENSING, ENDORSEMENTS AND ENTRIES

17. Empowers the Minister to publish a notice declaring a specified fishery to be one in which boats used for community fishing are required to be licensed. The notice will come into force at least a month after publication and the regulations may prescribe the manner of publishing its contents other than in the Gazette or by broadcasting them.
18. Requires the Minister to approve forms of application and licences, etc.
19. Empowers the Minister at his discretion to grant licences authorising a person to be the master-fisherman in charge of a boat used for commercial fishing other than community fishing, to use a boat to take fish and process and carry its own catch or to use a boat to process/carry the catches of other boats. The Minister must consult his PNG counterpart about proposals to license third-country boats and may not license such a boat without the concurrence of the PNG Minister as the Treaty requires.
20. Empowers the Minister to make a Treaty endorsement on the PNG licence for a boat nominated by the PNG Government so as to authorise the use of the boat in an area of Australian jurisdiction to take, process and carry its own catch or to process and carry the catches of other boats. An endorsement expires when

the licence to which it is attached expires and may be revoked on written notice. The Minister may nominate Australian boats or licensed foreign boats to have their licences endorsed for operations in areas of PNG jurisdiction.

21. Empowers the Minister to make an entry in a boat licence or a Treaty endorsement, authorising the conduct from the boat of activities otherwise prohibited by a notice under clause 16.

Sub-clause (2) empowers the Minister to make an entry in a licence for a foreign boat or in a Treaty endorsement, authorising the bringing of the boat to a place in Australia in the Protected Zone or the landing in Australia of fish on board the boat.

An entry may be made at any time, expires when the licence or Treaty endorsement in which it is made expires and may, on written notice, be revoked, suspended or varied.

22. Licences or Treaty endorsements are subject to conditions specified in them at the time of granting the licence or Treaty endorsement. The Minister may give notice to a licence-holder of variation or revocation of a licence condition or specify further conditions, with effect from the giving of the notice.
23. Licences or renewals are valid for up to 12 months from the date of issue. The holder of a licence may surrender it.
24. A licence may be renewed on application by the holder lodged not more than 2 months or less than one month before the expiry date.
25. Empowers the Minister to transfer a boat licence, on application by both parties to the transaction.
26. Empowers the Minister, by written notice to a licence-holder, to suspend the licence on reasonably suspecting that there has been a breach of a licence condition or that the holder has breached a prohibition in clause 14 or clause 16 or that the application for the licence was knowingly made falsely or misleadingly

The suspension power may be exercised only once in relation to a particular event. Suspension operates for a maximum of one month unless the person is charged during that period with an offence relating to the same event; in that case, suspension runs to the completion of the legal proceedings unless sooner revoked.

The Minister, in his discretion, may cancel a licence by giving written notice to the holder following conviction of the latter for an offence against Commonwealth, State or PNG laws, relating to fisheries. If the person convicted is an employee of the holder of a boat licence, the Minister may, on giving written notice to the holder, cancel that licence (see also sub-clause 44(4) which deems an employer to have done certain acts committed by an employee).

27. Regulations may prescribe fees for licences, entries, transfers or renewals. A person surrendering a licence may request to have the unexpired portion of the fee applied to the licence for a new boat. Fees for boats in different classes or subject to different conditions may differ.

#### PART V - ARRANGEMENTS WITH QUEENSLAND

- 28 Provides for interpretation of terms in Part V. Lists the principal elements by reference to which a fishery may be described in an instrument under the Act. Combines Protected Zone waters under Australian jurisdiction within and beyond the 3-mile limit in a single legal concept of "waters adjacent to Queensland".
- 29 Facilitates administration at times when Ministers are being represented by Acting Ministers.
- 30 Establishes Protected Zone joint authority comprising the Commonwealth Minister and the Queensland Minister or their appointed deputies.
31. Vests Protected Zone joint authority with the management of such fisheries in waters adjacent to Queensland as may be agreed by arrangement between the Commonwealth and Queensland, in accordance with either

Commonwealth or Queensland law. Where a fishery subject of an arrangement is for a sedentary species, the arrangement does not apply in the part of the area of Australian jurisdiction north of the seabed jurisdiction line established by the Treaty.

32. Specifies the procedure for making and terminating arrangements. Every instrument for those purposes is to be published in the Gazette. Any party wishing to terminate an arrangement must give six months notice or such shorter period as the arrangement provides. Notification of intention to terminate must be published not less than 3 months, or such shorter period as the arrangement provides, before termination is to take effect. Administrative preparations may be implemented between the making of an arrangement and its formal commencement but do not have effect until the latter time. Administrative instruments made in pursuance of an arrangement cease to have effect on the date of termination. The Minister may make administrative preparations to take effect after the date an arrangement terminates.
33. Where there is an arrangement to manage a fishery under Queensland law in the Protected Zone or waters proclaimed under clause 15, Commonwealth law will continue to apply in respect of foreign boats and to matters that occurred while the Commonwealth law applied and that have not been resolved before the arrangement took effect.
34. Specifies the functions of the Protected Zone joint authority, in relation to a fishery which it manages under an arrangement, to be:
- . to keep the condition of the fishery under review,
  - . to formulate policies and plans for the good management of the fishery;
  - . to exercise statutory powers and functions;
  - . to co-operate and consult with other authorities.
35. Vests Protected Zone joint authority with the power of the Minister to make and publish notices under sections 14, 16 and 17 and to grant permits under section 12 in relation to any joint authority fishery. The Minister may not exercise those powers in relation to such a fishery.

- 36       Vests Protected Zone joint authority with the power of the Minister to grant, endorse, transfer, cancel or suspend licences, entries or endorsements in respect of fisheries under its management. Instruments so granted are limited in their effect to joint authority fisheries. The joint authority may make an entry in a licence issued by the Minister, to extend its validity to a fishery under the management of the joint authority. Such an entry has the same period of validity as the licence and may be varied, suspended or revoked separately from the licence. The regulations may prescribe fees for entries in a licence. Power to take action in respect of licences for foreign boats in a joint authority fishery is reserved to the Minister.
- 37       Provides that offences capable of being committed under the Act may equally be committed with respect to matters within the management of the joint authority.
- 38       A joint authority may delegate its powers and functions under the Act, other than the power to delegate or to cancel or suspend a licence. Provision is made for actions of delegates to have the force of actions of the joint authority, for delegating powers only to Commonwealth or State officers, for delegates to exercise their powers in accordance with the joint authority's directions, for revocation of delegations and for evidentiary aspects of delegations.
- 39       Requires the joint authority, when it considers it appropriate, to seek the views of the Australian traditional inhabitants who are members of the Torres Strait Joint Advisory Council, about joint authority matters that could affect the interests of Australian traditional inhabitants.
- 40       At meetings of joint authorities, the Commonwealth Minister presides. When a meeting is attended only by deputies, the deputy of the Commonwealth Minister presides. If neither of these applies, the Queensland Minister presides. The Commonwealth Minister convenes meetings, as necessary or at the request of the other member. A quorum is 2. The Commonwealth Minister may decide a matter alone if the members fail to agree, subject to delaying his decision while further consultations take place if the Queensland Minister

requests. Either member may submit a matter for consideration and decision by the joint authority. The joint authority may establish advisory committees and adopt its own rules of procedure. The Commonwealth Minister is to cause written records of the decisions to be kept for judicial purposes.

41. Requires the joint authority to report annually and for the Commonwealth Minister to cause the reports to be tabled in both Houses of the Parliament. Provides for the period to which the first annual report is to relate.

PART VI - ENFORCEMENT

42. Specifies the powers of officers to:
- (a) board and search boats including breaking into closed spaces reasonably suspected of containing evidence
  - (b) enter land, using force if necessary and upon a warrant if the occupier does not consent; to search premises including breaking into closed spaces reasonably suspected of containing evidence and take possession of evidence
  - (c) examine anything found during an authorised search of a boat
  - (d) seize, etc.,
    - (i) fish believed to have been taken contrary to the Act
    - (ii) any boat (except a PNG boat) believed to have been used contrary to the Act
    - (iii) any document reasonably believed to afford evidence of a breach of the Act
  - (e) detain a PNG boat suspected of contravening the Act
  - (f) arrest offenders against the Act without warrant if the officer considers proceeding by summons will not be effective

- (g) require the master to bring a boat suspected of being used in commission of an offence, to one or more specified places in Australia or at sea and remain there in charge of the boat until an officer permits him to depart
- (h) bring a boat suspected of being used in commission of an offence to a place in Australia or at sea and remain in charge of the boat until legal proceedings have been determined
- (j) require the master to give information about the boat and persons on board it
- (k) require persons on boats required to be licensed to state their names and addresses
- (m) require the master to state whether he is licensed and to produce the licence for copying, etc.
- (n) require the master of a boat required to be licensed to produce the licence for copying, etc
- (o) require the lifting from the sea of fishing gear suspected of being used contrary to the Act
- (p) require persons on boats at sea to say whether they have been fishing during the current voyage
- (q) sell seized fish.

Officers may exercise powers under this clause in any waters not under PNG jurisdiction except that the power under (g) above may be exercised in waters under PNG jurisdiction in relation to an Australian boat. Standard provisions are included for obtaining warrants to enter premises against the consent of the occupier. "Document" is defined to include any device from which sounds or images may be reproduced and any other record.

43. Creates offences involving obstruction of officers, etc. Penalty - \$1,000 or 6 months gaol. Creates the offence of knowingly providing false or misleading information when lawfully required by an officer or in an application under the Bill Penalty - \$5,000 and/or 2 years gaol



44. Creates the offences of contravening a notice under clause 16, having possession or control of a fish protected by such notice or using a boat to search for a protected species of fish for commercial purposes. The act of an employee in contravention of a notice is deemed also to have been done by the employer.  
Penalty - If a foreign boat was involved, for the master, \$5,000 on summary conviction, \$50,000 on conviction on indictment; for any other person, \$2,000 and \$10,000 respectively. In any other case, \$1,000. Defences - that the taking of the fish found in the person's possession or control did not contravene the notice or did not occur in the area of Australian jurisdiction.
45. Sub-clause 45(1) creates a number of offences relating to fishing in areas of Australian jurisdiction. It will be an offence -
- (a) to engage in commercial fishing other than community fishing on a boat not covered by a licence or Treaty endorsement
  - (b) for an Australian traditional inhabitant to use an unlicensed boat for community fishing in a fishery declared under sub-clause 17(1)
  - (c) to be in charge of a boat being used for commercial fishing other than community fishing unless licensed as a master fisherman
  - (d) for the holder of a licence to contravene or fail to comply with a condition of the licence
  - (e) for the holder of a boat licence to permit an employee on the boat to contravene or fail to comply with a licence condition
  - (f) for an employee of the holder of a boat licence to contravene or fail to comply with a condition of the licence
  - (g) for the holder of a Treaty endorsement to contravene or fail to comply with a condition of the Treaty endorsement
  - (h) for the holder of a Treaty endorsement to permit an employee on the boat to contravene or fail to comply with a condition of the Treaty endorsement

- (i) for an employee of the holder of a Treaty endorsement to contravene or fail to comply with a condition of the Treaty endorsement
- (j) to use a boat in respect of which there is no processing or carrier boat licence or similar Treaty endorsement, for processing or carrying fish taken with the use of another boat
- (k) to trans-ship fish to a boat in respect of which there is no processing or carrier boat licence or similar Treaty endorsement.

Penalties:

- (a) for offences involving a foreign boat -
  - (i) engaging in commercial fishing, from a boat not covered by a licence or Treaty endorsement
    - in the case of the master of the boat, \$5,000 on summary conviction or \$250,000 on conviction on indictment,
    - in any other case, \$2,000 on summary conviction and \$10,000 on indictment.
  - (ii) for fishing without a master fisherman's licence and for offences relating to contravention of, or failure to comply with, licence conditions or contravention of prohibition notices under section 16
    - in the case of the master of the boat, \$5,000 on summary conviction or \$50,000 on conviction on indictment
    - in any other case, \$2,000 on summary conviction, or \$10,000 on indictment.
- (b) for an offence not involving a foreign boat
  - \$1,000

- 46 Provides discretionary power for a court convicting a person for breach of a condition of a licence or for taking fish in contravention of a notice under section 16, to order that the person, for a specified period, not engage in commercial fishing on a boat in an area of Australian jurisdiction.
- Penalty for contravention of a court order - \$2,000 or 6 months gaol.
- 47 Creates the offence of a person, not the owner of fishing equipment, removing fish from the equipment without the authority of the owner. Penalty - \$2,000 or 6 months gaol.
48. Creates the offence of fishing for private purposes in an area of Australian jurisdiction with the use of a foreign boat. Penalty - \$1,000.
- 49 Creates the offence of bringing a foreign fishing boat, or a PNG fishing boat other than a boat used for traditional fishing, to a place in Australia within the Protected Zone except as authorised in a licence or Treaty endorsement. Penalty - \$5,000 on summary conviction or \$10,000 on conviction on indictment. Defence - that there was an unforeseen emergency which endangered the boat or human life.
50. Creates the offence of unauthorised landing of fish, other than in the course of traditional fishing, at a place in the Protected Zone from a foreign or a PNG boat. Penalty - \$5,000 on summary conviction or \$10,000 on conviction on indictment. Defences - that the fish were one or more of
- authorised imports under the Customs Act
  - exempt from Customs control
  - previously landed outside Australia
  - goods ordered forfeit by a court.
- 51 Creates the offence of being in possession or control, in an area of Australian jurisdiction, of an unlicensed boat equipped for fishing and being used other than for community fishing or traditional

fishing. Penalty - in the case of a foreign boat, \$5,000 on summary conviction or \$250,000 on conviction on indictment. In the case of an Australian or PNG boat, \$1,000. Defences - that the equipment on the boat for taking fish was stowed and secured and that the boat was transiting the area of Australian jurisdiction by the shortest practicable route.

52. Provides discretionary power for a court to order forfeiture to the Commonwealth of a boat (except a PNG boat or a boat used for traditional or community fishing), equipment or fish, on convicting a person for certain serious offences under the Act. Empowers the Minister to direct how forfeited goods are to be disposed of.
53. Creates an offence by which, when there is evidence on a boat of contravention of the Act but no evidence identifying the particular person who committed the offence, the master of the boat is liable as if he committed the offence. Penalty - as if the person who actually committed the offence was convicted.
54. Creates the offence of Australian citizens, persons (other than Australian citizens) on Australian boats, and all persons on licensed foreign boats, contravening Papua New Guinea fisheries law in an area of PNG jurisdiction. Penalty - \$1,000. Defence - that the person charged has been prosecuted in PNG for an offence against Papua New Guinea law in relation to the same contravention. "Papua New Guinea law" means written law relating to fishing and applicable in the Protected Zone. Courts convicting persons under this clause may have regard to written or unwritten law of PNG to the extent necessary to give effect to Article 28 of the Treaty. See also Clause 58.

#### PART VII - MISCELLANEOUS

55. Offences are punishable summarily except those relating to commercial fishing in the Protected Zone with the use of a foreign boat, possession in the Protected Zone of an unlicensed foreign boat equipped for taking fish, breaching a management notice with the use of a foreign boat, bringing of an unlicensed

foreign or PNG boat to a place in Australia within the Protected Zone, or landing fish in Australia from unlicensed foreign or PNG boats, which are indictable offences.

A court of summary jurisdiction may hear and determine an indictable offence on being satisfied that it is proper to do so and when the defendant and the prosecutor consent.

- 56 To give effect to Article 28 of the Treaty, requires the consent of the Minister or the Protected Zone joint authority, as the case may be, to a prosecution for an offence committed with the use of or in relation to a PNG licensed boat, by a person holding a PNG commercial fishing licence, or by a PNG traditional inhabitant in the course of traditional fishing. Charges must be laid within 14 days of the commission of the offence. Procedures relating to arrest, charge, remand in custody or bail may go ahead before expiry of the time by which the Minister or the joint authority is required to consent to the prosecution. Consent is not required for prosecution of a person for an offence under clause 43.
57. Confirms the persuasive onus borne by the Crown in cases where officers give evidence of their suspicions about certain matters of which only the defendant has knowledge. Provides for the issue by the Minister or an authorised person of certificates of matters relating to status of areas of waters, nationality of boats and the holding or otherwise of licences and for such certificates to be prima facie evidence of matters specified in them.
- 58 Provides the courts with guidelines about the kinds of evidence of the written and unwritten law of PNG that may be admissible in a prosecution of an Australian for breach of a PNG law under clause 54. In a prosecution of an Australian resident for breach of PNG law, the prosecution may aver the area of waters where an alleged offence occurred, whether a person held a licence or PNG endorsement or the conditions of such a licence, as prima facie evidence thereof. The courts may admit evidence by affidavit of a PNG resident except where a party to the proceedings wishes to cross-examine that person.

59. Specifies procedures for service of notices under the Act.
60. Empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient for carrying out or giving effect to the Act.

In particular, the regulations may prescribe

- penalties not exceeding \$500 for breaches of the regulations
- conditions of licences or Treaty endorsements, or classes of conditions
- matters facilitating the exercise of enforcement powers of officers
- short methods of reference to areas of Australian jurisdiction or to classes of fishing activities
- methods for the marking of boats and fishing equipment
- in relation to areas of Australian jurisdiction
  - .. signals and rules of navigation
  - .. rights of priority and rules of fishing
  - .. rules of trans-shipping fish
  - .. procedures for the reporting of positions of foreign boats, and the carrying of nominated persons on commercial fishing boats.

The regulations may also prescribe the furnishing of returns containing information in relation to

- the taking or processing of fish in areas of Australian jurisdiction and the sale or disposal of fish so taken or processed, and
- the taking of fish with the use of Australian boats or the processing of fish taken with the use of Australian boats in areas of PNG jurisdiction and the sale and disposal of fish so taken or processed.

The Minister is required to cause statistics to be compiled from returns of information furnished under the regulations and from any other source. The use of information derived from returns furnished under the regulations is restricted to use for statistical purposes only. Information may not be withheld by a person on the ground that it may tend to incriminate that person. However, the information is not admissible in evidence against that person, other than proceedings in respect of false information contained in the return or in respect of a refusal or failure to include information in the return.

