



# **Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006**

**No. 8, 2006**

**An Act to amend the *Fisheries Management Act 1991*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2
<b>Schedule 1—Objectives</b>		3
	<i>Fisheries Administration Act 1991</i>	3
	<i>Fisheries Management Act 1991</i>	4
<b>Schedule 2—Cooperative arrangements</b>		6
	<i>Fisheries Administration Act 1991</i>	6
	<i>Fisheries Management Act 1991</i>	6





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## **An Act to amend the *Fisheries Management Act 1991*, and for related purposes**

[Assented to 23 March 2006]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006*.

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## **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Objectives**

### ***Fisheries Administration Act 1991***

#### **1 Subsection 4(1)**

Insert:

*principles of ecologically sustainable development* has the meaning given by section 6A.

#### **2 Paragraph 6(b)**

Omit “and the exercise of the precautionary principle”, substitute “(which include the exercise of the precautionary principle)”.

#### **3 Paragraph 6(c)**

Repeal the paragraph, substitute:

- (c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and

#### **4 After section 6**

Insert:

#### **6A Principles of ecologically sustainable development**

The following principles are *principles of ecologically sustainable development*:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

### ***Fisheries Management Act 1991***

#### **5 Paragraph 3(1)(b)**

Omit “and the exercise of the precautionary principle”, substitute “(which include the exercise of the precautionary principle)”.

#### **6 Paragraph 3(1)(c)**

Repeal the paragraph, substitute:

- (c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and

#### **7 After section 3**

Insert:

### **3A Principles of ecologically sustainable development**

The following principles are *principles of ecologically sustainable development*:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
  - (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
  - (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
  - (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
  - (e) improved valuation, pricing and incentive mechanisms should be promoted.
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**8 Subsection 4(1)**

Insert:

*principles of ecologically sustainable development* has the meaning given by section 3A.

## Schedule 2—Cooperative arrangements

### *Fisheries Administration Act 1991*

#### **1 At the end of section 4**

Add:

- (3) If an arrangement under Division 3 of Part 5 of the *Fisheries Management Act 1991* is varied, a reference in this Act to the arrangement is a reference to the arrangement as varied.

#### **2 Subsection 91(5)**

Repeal the subsection, substitute:

- (5) If, in respect of a fishery, there is in force an arrangement under Division 3 of Part 5 of the *Fisheries Management Act 1991* under which:
- (a) a Joint Authority has the management of the fishery; and
  - (b) the fishery, or a part of the fishery identified in the arrangement, is to be managed in accordance with the law of the Commonwealth;
- references in this section to the Minister are taken, in relation to the fishery or the part of the fishery, to be references to the Joint Authority.

### *Fisheries Management Act 1991*

#### **3 At the end of section 4**

Add:

- (8) If an arrangement under Division 3 of Part 5 is varied, a reference in this Act to the arrangement is a reference to the arrangement as varied.

#### **4 Subsection 45(1)**

Omit “or a Joint Authority managing a fishery in accordance with the law of the Commonwealth”, substitute “, or a Joint Authority managing a fishery that is (or part of which is) managed in accordance with the law of the Commonwealth,”.

## **5 Subsection 60(2)**

After “this Part” (first occurring), insert “, including the Minister’s functions and powers”.

## **6 Subsections 71(2) and (3)**

Repeal the subsections, substitute:

- (2) An arrangement with only one State must provide that:
  - (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
  - (b) the fishery is to be managed in accordance with the law of the State; or
  - (c) the fishery is to be managed in accordance with the law of the Commonwealth and the law of the State.
- (3) An arrangement with 2 or more States must provide that:
  - (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
  - (b) the fishery is to be managed in accordance with the law of one or more of the States concerned; or
  - (c) the fishery is to be managed in accordance with the law of the Commonwealth and the law of one or more of the States concerned.
- (4) An arrangement that provides that a fishery is to be managed in accordance with the law of more than one jurisdiction must identify, by reference to areas that do not overlap, the parts of the fishery that are to be managed in accordance with each law.
- (5) If, under an arrangement:
  - (a) a fishery is to be managed in accordance with the law of a State; or
  - (b) a part of a fishery is to be managed in accordance with the law of a State;the arrangement may, if required by the Commonwealth, provide for giving effect to Australia’s obligations under international law (including international agreements) in relation to the fishery or part of the fishery.

## **7 Section 72**

Before “The”, insert “(1)”.

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## **8 At the end of section 72**

Add:

- (2) If, under an arrangement, a fishery is to be managed in accordance with the law of a State, the arrangement may, if required by the Commonwealth, provide for giving effect to Australia's obligations under international law (including international agreements) in relation to the fishery.

## **9 Subsection 74(1)**

Repeal the subsection, substitute:

- (1) An arrangement under this Division is to be made by instrument approved by:
  - (a) the Commonwealth Minister on behalf of the Commonwealth; and
  - (b) the appropriate Minister or Ministers of the State or States concerned.

## **10 At the end of section 74**

Add:

- (4) An instrument approved under subsection (1) is not a legislative instrument.

## **11 After section 74**

Insert:

### **74A Arrangements—how varied etc.**

- (1) An arrangement under this Division is to be varied by instrument approved by:
  - (a) the Commonwealth Minister on behalf of the Commonwealth; and
  - (b) the appropriate Minister or Ministers of the State or States concerned.
- (2) The Commonwealth Minister must cause a copy of every instrument so approved to be published in the *Gazette*, and the instrument takes effect on the date of publication or on a later date specified in the instrument.

- (3) Subject to the requirements of section 23, after an arrangement under this Division has been varied but before the variation takes effect, the following things may be done for the purposes of the operation of this Act as affected by the variation as if the variation had taken effect:
- (a) plans of management, permits or other instruments may be determined, granted or executed;
  - (b) fishing rights may be granted;
- but such a plan, instrument or right does not have effect before the variation takes effect.
- (4) Upon the variation of an arrangement under this Division:
- (a) plans of management, fishing permits, scientific permits and other instruments determined, granted, executed or published; and
  - (b) statutory fishing rights granted;
- for the purposes of the operation of this Act as affected by the variation cease to have effect to the extent (if any) they are inconsistent with the arrangement as varied.
- (5) An instrument approved under subsection (1) is not a legislative instrument.

## **12 Subsection 75(1)**

Repeal the subsection, substitute:

- (1) An arrangement under this Division may be terminated by instrument approved by:
- (a) the Commonwealth Minister on behalf of the Commonwealth; and
  - (b) the appropriate Minister or Ministers of the State or States concerned.

## **13 Paragraph 75(3)(a)**

Omit “Governor-General”, substitute “Commonwealth Minister”.

## **14 Paragraph 75(3)(b)**

Omit “Governor of the State”, substitute “ appropriate Minister of the State”.

## **15 At the end of section 75**

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Add:

- (9) An instrument approved under subsection (1) is not a legislative instrument.

**16 Section 76**

Before “Where”, insert “(1)”.

**17 At the end of section 76**

Add:

- (2) If an arrangement under this Division provides that:
  - (a) a part of a fishery is to be managed in accordance with the law of the Commonwealth; and
  - (b) that part of the fishery is so identified that it is, or may be, carried on partly within the coastal waters of a State;  
the coastal waters of that State are taken to be in the AFZ for the purposes of the application of this Act in relation to that part of the fishery.

**18 Section 77**

Repeal the section, substitute:

**77 Exclusion of this Act (except this Division)**

If an arrangement under this Division provides that:

- (a) a particular fishery is to be managed in accordance with the law of a State; or
- (b) a part of a particular fishery is to be managed in accordance with the law of a State;

this Act, other than this Division, does not apply in relation to that fishery, or that part of the fishery, except in relation to:

- (c) foreign boats; and
- (d) operations on and from foreign boats; and
- (e) persons on foreign boats; and
- (f) matters that occurred before the arrangement took effect.

**19 Section 78**

Before “If”, insert “(1)”.

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## **20 At the end of section 78**

Add:

(2) If:

- (a) an arrangement is in force under this Division under which a Joint Authority has the management of a fishery; and
- (b) a part of the fishery is to be managed in accordance with the law of the Commonwealth;

then:

- (c) AFMA has the same powers in relation to the part of the fishery as it would have if the part of the fishery were under the management of AFMA; and
- (d) references in sections 18 and 20 to the Minister are taken, in relation to the part of the fishery, to be references to the Joint Authority.

## **21 Section 163**

Omit “and 20”, substitute “, 20, 74, 74A and 75”.

## **22 Savings and application provision**

- (1) Subject to subitem (2), an arrangement in force under section 71 or 72 of the *Fisheries Management Act 1991* immediately before the commencement of this item:
  - (a) continues in force after that commencement as if it had been made under section 71 or 72 (as the case may be) of that Act as amended by this Act; and
  - (b) may be varied or terminated in the same way as an arrangement made under that section after that commencement may be varied or terminated.
- (2) The amendments made by this Schedule do not start to apply to a participating State until the day specified, in relation to the State, in a notice referred to in subitem (5).
- (3) For the purposes of this item, a State is a *participating State* if there is a declaration in force under subitem (4) in relation to the State.
- (4) The Minister may, in writing, declare in relation to a State that a law of the State corresponds to Division 3 of Part 5 of the *Fisheries Management Act 1991*.

**Schedule 2** Cooperative arrangements

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- (5) The Minister must announce by notice in the *Gazette* the day on which the amendments made by this Schedule start to apply in relation to a participating State specified in the notice.
  - (6) A declaration under subitem (4) is not a legislative instrument.
  - (7) A notice under subitem (5) is not a legislative instrument.
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*[Minister's second reading speech made in—  
Senate on 7 December 2005  
House of Representatives on 28 February 2006]*

(192/05)