Fisheries Legislation Amendment Bill (No. 2) 2010

No. , 2010

(Agriculture, Fisheries and Forestry)

A Bill for an Act to amend various Acts relating to fisheries, and for related purposes
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A Bill for an Act to amend various Acts relating to fisheries, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment Act (No. 2) 2010*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
## Commencement information

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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>2. Schedules 1, 2 and 3</td>
<td>The 28th day after this Act receives the Royal Assent.</td>
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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Fisheries Administration Act 1991

1 Subsection 4(1)
Insert:

co-management arrangement has the meaning given in section 88.

2 Subsection 4(1)
Insert:

primary stakeholder in relation to a fishery means:
(a) the holder of a fishing concession in the fishery; or
(b) an incorporated body that represents those holders (including a peak body, for example); or
(c) a person prescribed by the regulations.

3 Paragraph 7(1)(g)
Repeal the paragraph, substitute:

(fa) to consult and exchange information with an entity in a State, Territory or foreign country that has similar functions to the Authority’s functions;
(g) to make its expertise in fisheries management available to the following entities (including by providing information technology, services or technical experts, for example):
(i) an entity in the Commonwealth, a State, a Territory or a foreign country;
(ii) another person;

4 Section 54
Omit ‘‘, subject to subsection 56(4),’’.

5 Subsection 56(4)
Repeal the subsection.

6 After section 87
Insert:
88 Co-management arrangements

The Authority may enter into an arrangement (a co-management arrangement) with stakeholders in a fishery under which the stakeholders assist the Authority to perform the Authority’s functions and powers for the sustainable management of the fishery.

7 After paragraph 93(1)(e)

Insert:

or (f) a primary stakeholder under a co-management arrangement;
Schedule 2—Amendment of the Fishing Levy Act 1991

1 Section 7
Before “Levy”, insert “(1)”.

2 At the end of section 7
Add:

(2) In this section, holder of a fishing concession means:
   (a) the person to whom the fishing concession was granted; or
   (b) if the fishing concession has been transferred—the person to
       whom the fishing concession was last transferred.
Schedule 3—Amendment of the Fisheries Management Act 1991

1 Subsection 4(1)
   Insert:

   *holder* of a licence, permit or right:
   
   (a) means:
   
   (i) the person to whom the licence, permit or right was granted; or
   
   (ii) if the permit or right has been transferred—the person to whom the permit or right was last transferred; and
   
   (b) in the case of a statutory fishing right that is leased to another person by a lease registered under section 46—includes the lessee of the statutory fishing right.

2 Subsection 4(1)
   Insert:

   *primary stakeholder* has the meaning given in the *Fisheries Administration Act 1991*.

3 Subsection 17(5)
   Omit “is to set out”, substitute “may set out”.

4 Subsections 17(5A) and (5B)
   Repeal the subsections.

5 Subsection 17(6B)
   Repeal the subsection, substitute:

   (6B) A determination made by AFMA under paragraph (6)(aa) is a legislative instrument.

6 Subsection 17(11)
   Repeal the subsection, substitute:
(11) AFMA may, by writing under its common seal, delegate any 
powers conferred on it under a plan of management for a fishery in 
accordance with paragraph (6)(aa) to:
(a) the CEO; or
(b) a primary stakeholder who is to assist AFMA to manage the 
fishery under a co-management arrangement (within the 
meaning of the *Fisheries Administration Act 1991*).

7 Subsections 19(2) and (3)

Repeal the subsections.

8 At the end of section 20

Add:

(6) However, subsection (2) of this section, subsections 17(1B) to (4), 
and sections 18 and 19 do not apply to an amendment of a plan of 
management that merely:
(a) corrects an error in the plan (including a factual, 
grammatical, mapping or typographical error, for example); 
or
(b) changes the format or presentation of the plan; or
(c) changes a matter in the plan to make the plan consistent with:
   (i) this or another Act; or
   (ii) the regulations; or
(d) removes conditions from the plan if conditions for the plan’s 
fishery about the same subject matter have been prescribed in 
the regulations, whether or not the conditions are in the same 
terms.

(7) Also, subsections 17(1B) to (4) and section 19 do not apply to an 
amendment of a plan of management to remove a provision from 
the plan if, within 1 year before the proposed amendment is to take 
effect, the following entities have been given at least 28 days 
written notice of the proposed amendment:
(a) if there is a management advisory committee for the plan’s 
fishery—the management advisory committee;
(b) if a peak body represents the holders of statutory fishing 
rights under the plan—the peak body;
(c) if there is no management advisory committee or peak body—the holders of the licences, permits or rights for the fishery.

(8) However, section 18 applies to an amendment mentioned in subsection (7) in the same way as section 18 applies to a plan of management.

9 Subsections 41A(1) and (2)

Repeal the subsections, substitute:

(1) This section applies to a fishery in respect of which fishing concessions, scientific permits or foreign master fishing licences are in force.

(2) If, after consultation with:
   (a) the management advisory committee for the fishery; or
   (b) if there is no management advisory committee for the fishery—the holders of fishing concessions, scientific permits or foreign master fishing licences for the fishery;

   AFMA may direct that fishing not be engaged in any part of the fishery, or in a particular part of the fishery, during a period or periods specified in the direction.

(2A) At least 7 days before the direction takes effect, AFMA must tell the holders of the fishing concessions, scientific permits or foreign master fishing licences, in writing, about the direction.

(2B) However, if a direction is given in an emergency:
   (a) subsection (2A) does not apply; and
   (b) AFMA must tell the holders of the fishing concessions, scientific permits or foreign master fishing licences, in writing, about the direction as soon as it can practicably do so.

(2C) AFMA may, by writing under its common seal, delegate the power to give a direction under subsection (2) to:
   (a) the CEO; or
   (b) a primary stakeholder who is to assist AFMA to manage the fishery under a co-management arrangement (within the meaning of the Fisheries Administration Act 1991).
10 After section 42A

Insert:

42B Regulation-making power for conditions

(1) The regulations may prescribe conditions that apply to fishing concessions or foreign master fishing licences.

(2) A provision of a plan of management has no effect to the extent that it is inconsistent with regulations made for the purposes of this section.

11 Paragraph 57H(1)(a)

Omit “person to whom the permit is granted”, substitute “holder of the permit”.