



# **Torres Strait Fisheries Amendment Regulations 2005 (No. 1)<sup>1</sup>**

## **Select Legislative Instrument 2005 No. 295**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Torres Strait Fisheries Act 1984*.

Dated 15 December 2005

P. M. JEFFERY  
Governor-General

By His Excellency's Command

IAN MACDONALD  
Minister for Fisheries, Forestry and Conservation

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**1 Name of Regulations**

These Regulations are the *Torres Strait Fisheries Amendment Regulations 2005 (No. 1)*.

**2 Commencement**

These Regulations commence on the day of registration.

**3 Amendment of *Torres Strait Fisheries Regulations 1985***

Schedule 1 amends the *Torres Strait Fisheries Regulations 1985*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Before regulation 1**

*insert*

**Part 1 Preliminary**

**[2] After regulation 2**

*insert*

**Part 2 Regulation of fishing**

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**[3] After regulation 14**

*insert*

**Part 3 Detention of suspected illegal foreign fishers etc**

**Division 1 Training for officers**

**15 Training for officers and detention officers**

For subclause 6 (1) of Schedule 2 to the Act, the minimum training is the course of training provided by AFMA known as Authorised Officer Training, which provides training on the following matters:

- (a) conducting searches;
- (b) maintaining the health, safety and welfare of detainees;
- (c) controlling persons by the use of empty-hand techniques;
- (d) the use of authorised officers' powers under the *Fisheries Management Act 1991* and the *Torres Strait Fisheries Act 1984*.

**Division 2 Identifying detainees**

**16 Personal identifiers**

For paragraph 26 (1) (g) of Schedule 2 to the Act, the personal identifiers are as follows:

- (a) a sample of a person's handwriting;
- (b) a photograph of a tattoo, scar or other identifying mark of a person, if the obtaining of the photograph does not involve:
  - (i) the removal of any of the person's clothing; or
  - (ii) the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.

*Note* Subsection 23WA (1) of the *Crimes Act 1914* provides that ***intimate forensic procedure*** means any of the following forensic procedures:

- (a) an external examination of the genital or anal area, the buttocks or, in the case of a female or a transgender person who identifies as a female, the breasts;
- (b) the taking of a sample of blood;
- (c) the taking of a sample of saliva, or a sample by buccal swab;
- (d) the taking of a sample of pubic hair;
- (e) the taking of a sample by swab or washing from the external genital or anal area, the buttocks or, in the case of a female or a transgender person who identifies as a female, the breasts;
- (f) the taking of a sample by vacuum suction, by scraping or by lifting by tape from the external genital or anal area, the buttocks or, in the case of a female or a transgender person who identifies as a female, the breasts;
- (g) the taking of a dental impression;
- (h) the taking of a photograph or video recording of, or an impression or cast of a wound from, the genital or anal area, the buttocks or, in the case of a female or a transgender person who identifies as a female, the breasts.

## **17 Personal identifiers detainees must provide**

For paragraph 28 (2) (e) of Schedule 2 to the Act, the types of personal identifier are as follows:

- (a) an audio or a video recording of the detainee (other than a video recording under clause 37 of Schedule 2 to the Act);
- (b) an iris scan of the detainee's eyes;
- (c) a sample of the detainee's handwriting;
- (d) a photograph of a tattoo, scar or other identifying mark of the detainee, if the obtaining of the photograph does not involve:
  - (i) the removal of any of the detainee's clothing; or
  - (ii) the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.

*Note* See the note after regulation 16 for the meaning of ***intimate forensic procedure*** for section 23WA of the *Crimes Act 1914*.

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**18 Personal identifiers officers must require non-citizens to provide by way of identification tests**

For paragraph 29 (1) (a) of Schedule 2 to the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of the non-citizen (including those taken using paper and ink or digital livescanning technologies);
- (b) a measurement of the non-citizen's height and weight;
- (c) a photograph or other image of the non-citizen's face and shoulders;
- (d) an audio or a video recording of the non-citizen (other than a video recording under clause 37 of Schedule 2 to the Act);
- (e) an iris scan of the non-citizen's eyes;
- (f) the non-citizen's signature;
- (g) a sample of the non-citizen's handwriting;
- (h) a photograph of a tattoo, scar or other identifying mark of the non-citizen, if the obtaining of the photograph does not involve:
  - (i) the removal of any of the non-citizen's clothing; or
  - (ii) the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.

*Note* See the note after regulation 16 for the meaning of intimate forensic procedure for section 23WA of the *Crimes Act 1914*.

**19 Information to be provided before carrying out identification tests**

- (1) For paragraph 30 (1) (b) of Schedule 2 of the Act, the matters about which the authorised officer must inform the non-citizen before carrying out an identification test are:
  - (a) the reason why a personal identifier is required to be provided; and
  - (b) how a personal identifier may be collected; and
  - (c) how any personal identifier that is collected may be used; and

- (d) if the non-citizen is a minor or an incapable person — how a personal identifier is to be obtained from a minor or incapable person.

*Note* See Division 3 of Part 5 of Schedule 2 to the Act in relation to the identification of minors and incapable persons.

- (2) Also, the authorised officer must inform the non-citizen:
  - (a) that a personal identifier may be produced in evidence in a court or tribunal in relation to the non-citizen who provided the personal identifier; and
  - (b) that the *Privacy Act 1988* applies to personal information, including personal identifiers, and that the non-citizen has a right to make a complaint to the Privacy Commissioner about the handling of the non-citizen's personal information; and
  - (c) that:
    - (i) the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and of its agencies; and
    - (ii) the non-citizen has a right, under that Act, to seek:
      - (A) access to that information or those documents; and
      - (B) amendment of records containing personal information that is incomplete, incorrect, out of date or misleading.
- (3) For subclause 30 (3) of Schedule 2 of the Act, if a form is to be given to a non-citizen setting out any information mentioned in subregulation (1) or (2), it must be given to the non-citizen at a time that gives the non-citizen enough time to read and understand the form before the identification test is conducted.

## **20 Authorising access to video recordings — limitations**

For subclause 41 (3) of Schedule 2 to the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of a non-citizen (including those taken using paper and ink or digital liveness scanning technologies);

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- (b) a measurement of a non-citizen's height and weight;
  - (c) a photograph or other image of a non-citizen's face and shoulders;
  - (d) an audio or a video recording of a non-citizen (other than a video recording under clause 37 of Schedule 2 to the Act);
  - (e) an iris scan of a non-citizen's eyes;
  - (f) a non-citizen's signature;
  - (g) a sample of a non-citizen's handwriting;
  - (h) a photograph of a tattoo, scar or other identifying mark of a non-citizen.

## **21 Providing video recordings — permitted provision**

- (1) Subregulation (2) applies for paragraph 42 (2) (f) of Schedule 2 to the Act.
- (2) The provision of a video recording to the Human Rights and Equal Opportunity Commission is a permitted provision of the recording if the provision is for the purpose of the Commission inquiring into the operation of provisions of the Act relating to carrying out an identification test.

## **22 Providing video recordings — limitations**

For paragraph 42 (3) (a) of Schedule 2 to the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of a non-citizen (including those taken using paper and ink or digital liveness technologies);
- (b) a measurement of a non-citizen's height and weight;
- (c) a photograph or other image of a non-citizen's face and shoulders;
- (d) an audio or a video recording of a non-citizen (other than a video recording under clause 37 of Schedule 2 to the Act);
- (e) an iris scan of a non-citizen's eyes;
- (f) a non-citizen's signature;
- (g) a sample of a non-citizen's handwriting;
- (h) a photograph of a tattoo, scar or other identifying mark of a non-citizen.

## **Division 3                      Disclosure of identifying information**

### **23                      Authorising access to identifying information**

For subclause 52 (3) of Schedule 2 of the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of a non-citizen (including those taken using paper and ink or digital livescanning technologies);
- (b) a measurement of a non-citizen's height and weight;
- (c) a photograph or other image of a non-citizen's face and shoulders;
- (d) an audio or a video recording of a non-citizen (other than a video recording under clause 37 of Schedule 2 to the Act);
- (e) an iris scan of a non-citizen's eyes;
- (f) a non-citizen's signature;
- (g) a sample of a non-citizen's handwriting;
- (h) a photograph of a tattoo, scar or other identifying mark of a non-citizen.

### **24                      Authorising disclosure of identifying information**

For subclause 54 (1) of Schedule 2 to the Act, AFMA may authorise the following Agencies to disclose identifying information under that subclause:

- (a) the Department of Foreign Affairs and Trade;
- (b) the Australian Customs Service.



## 25 Disclosure of identifying information to Australian bodies

For paragraph 54 (1) (d) of Schedule 2 to the Act, AFMA may authorise the disclosure of identifying information under subclause 54 (1) of that Schedule to any of the bodies mentioned in the following table:

Item	Name of body
1	Attorney-General's Department
2	Australian Crime Commission
3	Australian Customs Service
4	Australian Federal Police
5	Australian Quarantine and Inspection Service
6	Australian Securities and Investments Commission
7	Australian Security Intelligence Organisation
8	Australian Taxation Office
9	Australian Transaction Reports and Analysis Centre (AUSTRAC)
10	CrimTrac
11	Department of Agriculture, Fisheries and Forestry
12	Department of Defence
13	Department of Foreign Affairs and Trade
14	Department of Health
15	Department of Immigration, Multicultural and Indigenous Affairs
16	New South Wales Department of Primary Industries
17	New South Wales Office of Director of Public Prosecutions
18	New South Wales Police Service
19	Office of Director of Public Prosecutions, Victoria
20	Victorian Department of Justice
21	Victorian Department of Primary Industries
22	Victorian Police

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<b>Item</b>	<b>Name of body</b>
23	Queensland Department of Primary Industries and Fisheries
24	Queensland Office of Director of Public Prosecutions
25	Queensland Police Service
26	Office of Director of Public Prosecutions for Western Australia
27	Western Australian Department of Fisheries
28	Western Australian Department of Justice
29	Western Australian Police Service
30	South Australian Department of Primary Industries and Resources
31	South Australian Office of Director of Public Prosecutions
32	South Australian Police
33	Tasmanian Department of Primary Industries
34	Tasmanian Office of the Director of Public Prosecutions
35	Tasmanian Police
36	Northern Territory Department of Business, Industry and Resource Development
37	Northern Territory Office of Director of Public Prosecutions
38	Northern Territory Police

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## **26 Disclosure of identifying information to international organisations**

For paragraph 54 (1) (e) of Schedule 2 to the Act, AFMA may authorise the disclosure of identifying information under clause 54 of that Schedule to any of the following organisations:

- (a) Interpol;
- (b) the United Nations;
- (c) any of the Intergovernmental Organisations known as ***Regional Fisheries Bodies*** mentioned in the following table:

Item	Name of Intergovernmental Organisation
1	Advisory Committee on Fishery Research (ACFR)
2	Asia-Pacific Fishery Commission (APFIC)
3	Atlantic Africa Fisheries Conference (AAFC)
4	Bay of Bengal Programme (BOBP-IGO)
5	Comisión de Pesca Continental Para America Latina (COPESCAL)
6	Comisión Interamericana del Atún Tropical (CIAT)
7	Comisión Permanente del Pacifico Sur (CPPS)
8	Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)
9	Commission for the Conservation of Southern Bluefin Tuna (CCSBT)
10	Committee for Inland Fisheries of Africa (CIFA)
11	Coordinating Working Party on Fisheries Statistics (CWP)
12	Council of the Eastern Pacific Tuna Fishing Agreement (CEPTFA)
13	European Inland Fisheries Advisory Commission (EIFAC)
14	Fishery Committee for the Eastern Central Atlantic (CECAF)
15	Forum Fisheries Agency (FFA)
16	General Fisheries Commission for the Mediterranean (GFCM)
17	Indian Ocean Tuna Commission (IOTC)
18	Inter-American Tropical Tuna Commission (IATTC)
19	International Baltic Sea Fishery Commission (IBSFC)
20	International Commission for the Conservation of Atlantic Tunas (ICCAT)
21	International Council for Exploration of the Sea (ICES)
22	International Pacific Halibut Commission (IPHC)

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<b>Item</b>	<b>Name of Intergovernmental Organisation</b>
23	International Whaling Commission (IWC)
24	La Commission Sous-Régionale des Pêches (CSRП)
25	Lake Victoria Fisheries Organization (LVFO)
26	Latin American Fisheries Development Organization (OLDEPESCA)
27	Marine Mammal Commission (MMC)
28	Mekong River Commission (MRC)
29	Network of the Aquaculture Centres in Asia-Pacific (NACA)
30	North Atlantic Fisheries Organisation (NAFO)
31	North Atlantic Salmon Conservation Organization (NASCO)
32	North East Atlantic Fisheries Commission (NEAFC)
33	North Pacific Anadromous Fish Commission (NPAFC)
34	North Pacific Marine Science Organisation (PICES)
35	Northwest Atlantic Fisheries Organization (NAFO)
36	Pacific Salmon Commission (PSC)
37	Regional Commission for Fisheries (RECOFI)
38	Regional Fisheries Advisory Committee for the Southwest Atlantic (CARPAS)
39	Regional Fisheries Committee for the Gulf of Guinea (COREP)
40	Secretariat of the Pacific Community (SPC)
41	Southeast Asian Fisheries Development Center (SEAFDEC)
42	South East Atlantic Fisheries Organisation (SEAFO)
43	Southwest Indian Ocean Fisheries Commission (SWIOFC)
44	Western and Central Pacific Fisheries Commission (WCPFC)

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Item	Name of Intergovernmental Organisation
45	Western Central Atlantic Fishery Commission (WECAFC)
46	Western Indian Ocean Tuna Organization (WIOTO)

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).