

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Maritime Powers Act 2013*

*Maritime Powers Regulations 2023*

### **Legislative Authority**

The *Maritime Powers Act 2013* (Maritime Powers Act) sets out the Commonwealth's maritime enforcement regime. The powers under the Maritime Powers Act provide for the administration and enforcement of a diverse range of Australia's laws including foreign fishing, customs, migration, people smuggling, and import-export offences, and relevant international agreements and international decisions.

The Maritime Powers Act establishes a system of authorisations under which a maritime officer may exercise enforcement and monitoring powers in the maritime domain. The comprehensive powers under the Maritime Powers Act are available to enforce and monitor a diverse range of Australia's maritime laws, including those related to foreign fishing, customs, migration, quarantine and drug trafficking, as well as Australia's obligations under international agreements and decisions at sea.

Section 122 of the Maritime Powers Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

### **Background**

For the purposes of the Maritime Powers Act, the *Maritime Powers Regulation 2014* (2014 Regulation) prescribes matters required to be prescribed under the Maritime Powers Act. Specifically, those matters include:

- Commonwealth laws in respect of which enforcement and monitoring powers could be exercised by maritime officers;
- a range of international agreements and decisions, which enable the exercise of maritime powers by a maritime officer if the authorising officer suspects, on reasonable grounds, that the agreement or decision applies to a particular vessel, installation or aircraft;
- Commonwealth laws that could be enforced by maritime officers in Australia's contiguous zone to investigate or prevent a contravention of a customs or immigration law occurring in Australia;
- additional types of maritime officers in uniform who would be exempt from the usual requirement to produce identification, when requested by the person in charge of a vessel, installation or aircraft, after boarding the vessel, installation or aircraft; and
- additional types of maritime officers in uniform who would be exempt from the usual requirement to produce identification, when requested by the person in charge of the land, after entering onto the land.

On 1 April 2024, the 2014 Regulation will sunset, and as such will be automatically repealed by operation of Part 4 of the *Legislation Act 2003* (Legislation Act). The *Maritime Powers Regulations 2023* (2023 Regulations) repeals and remakes the 2014 Regulation.

## **Purpose and effect**

The 2023 Regulations:

- ensure that Australia's on-water enforcement agencies continue to be able to exercise a similar scope of maritime powers in relation to an aircraft, vessel, ship, port or installation;
- ensure compliance with the relevant fisheries conservation measures and the safety and security of Australia's ports and maritime domain.

The operation of the 2023 Regulations is substantially the same as the 2014 Regulation, but updates previously prescribed international decisions and agreements, and add new international decisions and resolutions. The effect of these changes is that the new international decisions and resolutions can also apply in circumstances where a maritime officer seeks to exercise powers under those decisions and resolutions on a vessel, installation or aircraft in the maritime domain.

## **Consultation**

The Australian Border Force consulted with the Department of Foreign Affairs and Trade, the Australian Federal Police, Department of Industry, Science and Resources, Department of Agriculture, Fisheries and Forestry, Department of Climate Change, Energy, the Environment and Water, Department of Defence, the Australian Fisheries Management Authority and the Attorney-General's Department on the development of the 2023 Regulations, including on applicable international decisions. Following feedback from those agencies, new relevant international decisions since the making of the 2014 Regulation are included in the 2023 Regulations.

## **Details and operations**

The 2023 Regulations are a legislative instrument for the purposes of the Legislation Act and are not exempt from sunseting framework under that Act.

Parts 1 to 5 of the 2023 Regulations, and anything not covered by Part 2 of Schedule 1, commence on the day after the Regulations are registered on the Federal Register of Legislation. Part 2 of Schedule 1 to the 2023 Regulations, which prescribes certain Conservation and Management Measures, will commence on the later of: the point in time immediately after the commencement of the provisions covered by table item 1, and 1 October 2023.

Details of the 2023 Regulations are set out in the **Attachment A**.

## **Other**

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at **Attachment B**.

**Details of the *Maritime Powers Regulation 2023***

**Part 1—Preliminary**

Section 1 – Name

This section provides that the name of the instrument is the *Maritime Powers Regulations 2023* (2023 Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the 2023 Regulations commence.

Table item 1 and 2 provides for Parts 1 to 5 of, and anything not covered by Part 2 of Schedule 1 to, the 2023 Regulations to commence on the day after those Regulations are registered on the Federal Register of Legislation.

Table item 3 provides for Part 2 to commence at the later of: the point in time immediately after the commencement of the provision covered by table item 1, and 1 October 2023.

This item is necessary because CMM11-2015 (Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area) referred to in subparagraph 9(1)(c)(i) of the 2023 Regulations will be superseded by CMM 11-2023 (Conservation and Management Measure for High Seas Boarding and Inspection Procedures for the South Pacific Regional Fisheries Management Organisation).

The note under the table in subsection (1) indicates that the table only relates to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

Section 3 – Authority

This section provides that the 2023 Regulations are made under the *Maritime Powers Act 2013* (Maritime Powers Act).

Section 4 – Schedules

This section is the enabling provision for the Schedules to the 2023 Regulations and provides that each instrument that is specified in a Schedule to the 2023 Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms.

Part 1 of Schedule 1 to the 2023 Regulations repeals *Maritime Powers Regulation 2014* (2014 Regulation).

Part 2 of Schedule 1 to the 2023 Regulations repeals and substitutes subparagraph 9(1)(c)(i) of the Regulations.

## Section 5 – Definitions

This section sets out the definitions for the purpose of the 2023 Regulations, and defines *Act* to mean the Maritime Powers Act.

In addition, the note in this section clarifies that a number of expressions used in the 2023 Regulations have the same meaning as defined in the Maritime Powers Act. Specifically:

- *international agreement* means an agreement or arrangement between Australia and one or more other countries.
- *international decisions* means a decision made by:
  - (a) the Security Council of the United Nations; or
  - (b) another international body that, under international law, makes decisions that are binding on its members.
- *maritime officer* means:
  - (a) a member of the Australian Defence Force;
  - (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
  - (c) a member or special member of the Australian Federal Police;
  - (d) a person appointed as a maritime officer by the Minister.

## **Part 2—Australian laws and monitoring laws**

### Section 6 – Laws that are not Australian laws

This section replicates the operation of section 5 of the 2014 Regulation to maintain the scope and effect of that provision.

Section 8 of the Maritime Powers Act defines *Australian law* to mean:

- (a) a law of the Commonwealth or a State or Territory, and includes the Act; but
- (b) does not include a law prescribed by the regulations.

In accordance with paragraph (b) of the definition of *Australian law*, certain laws, or parts of laws, may be prescribed by the regulation as not falling within the meaning of an *Australian law*.

When a law is prescribed, an authorisation for the exercise of maritime powers under section 17 of the Maritime Powers Act cannot be made in respect of that law. Laws may be prescribed, for example, if it is not appropriate for maritime powers under the Maritime Powers Act to be exercised in relation to those laws.

Section 6 prescribes the following laws for the purposes of excluding them from the definition of Australian law in section 8 of the Maritime Powers Act:

- (a) the *Aviation Transport Security Act 2004*;
- (b) the *Aviation Transport Security Regulations 2005*;
- (c) the *Maritime Transport and Offshore Facilities Security Act 2003*; and
- (d) the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

Consistent with section 5 of the 2014 Regulation, prescribing these laws in the 2023 Regulations minimises the possibility of unintended interaction between maritime enforcement legislation and preventive security legislation.

## Section 7 – Laws that are monitoring laws

This section replicates the operation of section 6 of the 2014 Regulation to maintain the scope and effect of that provision.

Section 8 of the Maritime Powers Act defines a *monitoring law* to mean:

- (a) the *Customs Act 1901*; or
- (b) the *Fisheries Management Act 1991*; or
- (c) the *Migration Act 1958*; or
- (d) the *Torres Strait Fisheries Act 1984*; or
- (e) section 72.13 or Division 73 or 307 of the *Criminal Code*; or
- (f) clause 8 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*; or
- (g) a law prescribed by the regulations.

For the purposes of the Maritime Powers Act, a *monitoring law* is a specified law under which officers may exercise maritime powers related to the monitoring of people or things, provided the powers are exercised for the purposes of administering or ensuring compliance with that law. Monitoring laws may include a range of maritime-related obligations and other regulatory matters.

The definition lists some primary monitoring laws in relation to which maritime powers are expected to be exercised. Paragraph (g) of the definition of *monitoring law* allows additional laws to be prescribed as monitoring laws, as appropriate.

Consistent with section 6 of the 2014 Regulation, section 7 of the 2023 Regulations prescribes the following laws as monitoring laws for the purposes of paragraph (g) in the definition of *monitoring law* in section 8 of the Maritime Powers Act:

- (a) the *Biosecurity Act 2015*;
- (b) regulations and other legislative instruments made under the *Biosecurity Act 2015*;
- (c) the *Environment Protection (Sea Dumping) Act 1981*;
- (d) the *Customs (International Obligations) Regulation 2015*;
- (e) the *Customs (Prohibited Exports) Regulations 1958*;
- (f) the *Customs (Prohibited Imports) Regulations 1956*;
- (g) the *Customs Regulation 2015*;
- (h) the *Fisheries Management (International Agreements) Regulations 2009*;
- (i) the *Fisheries Management Regulations 2019*;
- (j) the *Migration Regulations 1994*;
- (k) the *Migration (United Nations Security Council Resolutions) Regulations 2007*;
- (l) the *Torres Strait Fisheries Regulations 1985*.

## **Part 3—International agreements and decisions**

### Section 8 – International agreements

This section substantially replicates the operation of subsection 7(1) of the 2014 Regulation, but updates and includes the Australian Treaties Series reference to enable access to the international agreements.

Section 12 of the Maritime Powers Act sets out when an *international agreement* (as defined in section 8 of the Maritime Powers Act; see the notes for section 5 of 2023 Regulations) will apply to a vessel, installation or aircraft for the purposes of the Maritime Powers Act. This will occur if there is an international agreement that provides for the exercise of enforcement powers by Australia in relation to the relevant vessel, installation or aircraft. The international agreement must either be prescribed by the regulations or the Minister must have approved the exercise of powers under that agreement, and that approval must not have lapsed.

Once an *international agreement* applies under section 12 of the Maritime Powers Act, section 19 of that Act permits an authorising officer to authorise the exercise of maritime powers in relation to a vessel, installation or aircraft if the officer suspects on reasonable grounds that the international agreement applies to that particular vessel, installation or aircraft.

For example, the Agreement referred to in paragraph 8(a) of the 2023 Regulations, known as the ‘United Nations Fish Stocks Agreement’ would be prescribed because that international agreement contains powers for States that are parties to the Agreement, to board and inspect fishing vessels flying the flag of another State Party to the Agreement in the circumstances specified in Article 21. These include the power to board and inspect vessels for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks (such as tuna stocks) established by a regional or subregional fisheries management organisation or arrangement.

Section 8 of the 2023 Regulations prescribes the following international agreements for the purposes of subparagraph 12(b)(i) of the Maritime Powers Act:

- (a) the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York on 4 December 1995;
- (b) the Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands, done at Paris on 8 January 2007;
- (c) the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at Rome on 22 November 2009;
- (d) the Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters, done at Sydney on 18 December 1978;
- (e) the Treaty between Australia and the Democratic Republic of Timor Leste Establishing Their Maritime Boundaries in the Timor Sea, done at New York on 6 March 2018;
- (f) the Treaty between the Government of Australia and the Government of the French Republic on cooperation in the maritime areas adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands, done at Canberra on 24 November 2003;
- (g) the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

The international agreements prescribed are the agreements referred to in subsection 7(1) of the 2014 Regulation. The version of the agreements referred to in section 8 of the 2023 Regulations is the version in force for Australia at the commencement of that provision.

The notes under each of the agreements listed in section 8 of the 2023 Regulations indicates where, in the Australian Treaties Library, the agreements can be accessed free of charge.

Section 8 of the 2023 Regulations has the effect of maintaining the scope and operation of subsection 7(1) of the 2014 Regulation for the purposes of subparagraph 12(b)(i) of the Maritime Powers Act.

### Section 9 – International decisions

This section substantially replicates subsections 7(2) and (3) of the 2014 Regulation, but updates the international decisions prescribed and adds new decisions.

Section 12 of the Maritime Powers Act sets out when an *international decision* (as defined in section 8 of the Maritime Powers Act; see the notes for section 5 of the 2023 Regulations) will apply to a vessel, installation or aircraft for the purposes of the Maritime Powers Act. This will occur if there is an international decision that provides for the exercise of enforcement powers by Australia in relation to the relevant vessel, installation or aircraft. The international decision must either be prescribed by the regulations or the Minister must have approved the exercise of powers under that decision, and that approval must not have lapsed.

Once an *international decision* applies under section 12 of the Maritime Powers Act, section 19 of that Act permits an authorising officer to authorise the exercise of maritime powers in relation to a vessel, installation or aircraft if the officer suspects on reasonable grounds that the international decision applies to that particular vessel, installation or aircraft.

For example, members of the Commission for the Conservation of Antarctic Marine Living Resources, including Australia, have adopted a System of Inspection (referred to in paragraph 9(1)(g) of the 2023 Regulations). The System of Inspection prescribed in the 2023 Regulations because the related international decision contains powers for member countries to board and inspect fishing and fisheries research vessels flying the flag of another member, in the Area of the Convention on the Conservation of Antarctic Marine Living Resources, for the purpose of verifying compliance with conservation measures adopted under the Convention.

Subsection 9(1) of the 2023 Regulations prescribes the following international decisions for the purposes of subparagraph 12(b)(i) of the Maritime Powers Act:

- (a) the following Conservation and Management Measures adopted by the Western and Central Pacific Fisheries Commission under the Convention on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean:
  - (i) CMM 2006-08, Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures;
  - (ii) CMM 2017-02, Conservation and Management Measure on Minimum Standards for Port State Measures;
- (b) the following Conservation and Management Measures adopted by the Meetings of the Parties to the Southern Indian Ocean Fisheries Agreement under that Agreement:

- (i) CMM 2020/08, Conservation and Management Measure establishing a Port Inspection Scheme;
- (ii) CMM 2021/14, Conservation and Management Measure for High Seas Boarding and Inspection Procedures for the Southern Indian Ocean Fisheries Agreement;
- (c) the following Conservation and Management Measures adopted by the South Pacific Regional Fisheries Management Organisation under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean:
  - (i) CMM 11-2015, Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area;
  - (ii) CMM 07-2022, Conservation and Management Measure on Minimum Standards of Inspection in Port;
- (d) the following Resolutions adopted by the Indian Ocean Tuna Commission under the Agreement for the Establishment of the Indian Ocean Tuna Commission:
  - (i) Resolution 05/03, Relating to the establishment of an IOTC programme of inspection in port;
  - (ii) Resolution 16/11, On port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;
- (e) the Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port, agreed to by the Extended Commission for the Conservation of Southern Bluefin Tuna under the Convention for the Conservation of Southern Bluefin Tuna;
- (f) Conservation Measure 10-03 (2019), Port inspections of fishing vessels carrying Antarctic marine living resources, adopted by the Commission for the Conservation of Antarctic Marine Living Resources under the Convention on the Conservation of Antarctic Marine Living Resources;
- (g) the System of Inspection established by the Commission for the Conservation of Antarctic Marine Living Resources under the Convention on the Conservation of Antarctic Marine Living Resources.

Other than subparagraphs 9(1)(a)(i) and (d)(ii), and paragraphs 9(1)(f) and (g), of the 2023 Regulations, the international decisions covered by provisions in subsection 9(1) are new. The new international decisions are necessary to capture new Conservation and Management Measures and Resolutions covered by paragraphs 9(1)(a) to (e) of the 2023 Regulations that applies to Australia.

The version of the decisions referred to in subsection 9(1) of the 2023 Regulations is the version in force for Australia at the commencement of that provision.

The notes under each of the decisions listed in subsection 9(1) of the 2023 Regulations indicates where the decisions can be accessed free of charge, including in the Australian Treaties Library.

The inclusion of new international decisions in subsection 9(1) of the 2023 Regulations has effect that those new decisions may also be decisions that apply to a vessel, installation or aircraft in accordance with section 19 of the Maritime Powers Act.

Subsection 9(2) of the 2023 Regulations substantially replicates subsection 7(3) of the 2014 Regulation, but:

- omits United Nations Security Council Resolution 2101 (2013);
- adds United Nations Security Council Resolution 2146 (2014);



- adds United Nations Security Council Resolution 2292 (2016);
- adds United Nations Security Council Resolution 2375 (2017); and
- adds United Nations Security Council Resolution 2397 (2017).

The new international decisions are necessary to capture new United Nations Security Council Resolutions that applies to Australia.

The version of the decisions referred to in subsection 9(2) of the 2023 Regulations is the version in force for Australia at the commencement of that provision.

The note after subsection 9(2) would indicate where the decisions can be accessed free of charge.

Similar to the inclusion of new international decisions under subsection 9(1) of the 2023 Regulations, the inclusion of new decisions of the United Nations Security Council Resolutions in subsection 9(2) has effect that those new decisions may also be decisions that apply to a vessel, installation or aircraft in accordance with section 19 of the Maritime Powers Act.

#### **Part 4—Exercising powers between countries**

##### Section 10 – Customs, fiscal, immigration and sanitary laws

This section replicates the operation of section 8 of the 2014 Regulation to maintain the scope and effect of that provision.

Section 41 of the Maritime Powers Act does not authorise the exercise of powers in relation to a *foreign vessel* (as defined in section 8 of the Maritime Powers Act) at a place between *Australia* (as defined in section 8 of the Maritime Powers Act) and another *country* (as defined in section 8 of the Maritime Powers Act) unless the exercise of the powers occurs under certain circumstances.

In accordance with paragraph 41(1)(c) of the Maritime Powers Act, one of the circumstances in which powers may be exercised against a foreign vessel is in the contiguous zone of Australia to:

- (i) investigate a contravention of a customs, fiscal, immigration or sanitary law prescribed by the regulations that occurred in Australia (as permitted by Article 33 of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982); or
- (ii) prevent a contravention of such a law occurring in Australia.

Consistent with section 8 of the 2014 Regulation, section 10 of the 2023 Regulations prescribes the following laws for the purposes of subparagraph 41(1)(c)(i) of the Maritime Powers Act:

- (a) the *Biosecurity Act 2015*;
- (b) regulations and other legislative instruments made under the *Biosecurity Act 2015*;
- (c) the *Customs Act 1901*;
- (d) the *Customs (International Obligations) Regulation 2015*;
- (e) the *Customs (Prohibited Exports) Regulations 1958*;
- (f) the *Customs (Prohibited Imports) Regulations 1956*;

- (g) the *Customs Regulation 2015*;
- (h) the *Migration Act 1958*;
- (i) the *Migration Regulations 1994*;
- (j) the *Migration (United Nations Security Council Resolutions) Regulations 2007*.

## **Part 5—Maritime powers**

### Section 11 – Prescribed maritime officers

This section substantially replicates the operation of section 9 of the 2014 Regulation, but would make minor drafting changes.

Section 52 of the Maritime Powers Act allows a maritime officer to board a vessel, installation or aircraft. For example, it may be necessary to board a vessel where it is suspected of fishing illegally to determine whether there is evidence of such activity. When a vessel, installation or aircraft is boarded, the person in charge of such places may require the maritime officer to produce identification or other evidence of their identity. If the officer fails to produce this evidence, they must leave the vessel, installation or aircraft.

However, pursuant to subsection 52(4) of the Maritime Powers Act, if the officer is one of the following in uniform:

- (a) a member of the Australian Defence Force;
- (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
- (c) a member or special member of the Australian Federal Police;
- (d) an officer prescribed by the regulations,

then the officer will not be subject to these requirements.

Section 56 of the Maritime Powers Act allows a maritime officer to enter onto land. This power is necessary as sections 46 and 47 of the Maritime Powers Act provide some circumstances in which maritime officers are permitted to exercise powers on land. For example if a vessel is chased, it lands on a beach and the crew run onto nearby land, then this provision would allow maritime officers to continue to pursue those persons onto the land.

Similar to section 52 of the Maritime Powers Act, when land is entered on, the person in charge of the land may require the maritime officer to produce identification or other evidence of their identity. If the officer fails to produce this evidence, they must leave the land.

Pursuant to subsection 56(4) of the Maritime Powers Act, if a maritime officer is one of the following in uniform:

- (a) a member of the Australian Defence Force;
- (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
- (c) a member or special member of the Australian Federal Police;
- (d) an officer prescribed by the regulations,

then the officer will not be subject to these requirements.

Consistent with section 9 of the 2014 Regulation, section 11 of the 2023 Regulations prescribes the following maritime officers for the purposes of paragraphs 52(4)(d) and 56(4)(d) of the Maritime Powers Act:

- (a) a maritime officer who performs duties in the Department administered by the Minister administering the *Migration Act 1958*;
- (b) a maritime officer who is appointed under section 83 of the *Fisheries Management Act 1991* to be an officer for the purposes of that Act;
- (c) a maritime officer who is authorised under subsection 3(4) of the *Torres Strait Fisheries Act 1984* to perform duties under that Act;
- (d) a maritime officer who is a member of a police force or police service of a State or Territory.

## **Schedule 1—Repeals and amendments**

### **Part 1—Repeals**

#### ***Maritime Powers Regulation 2014***

##### **Item 1 The whole of the instrument**

This item repeals the 2014 Regulation, which is redundant as a result of the 2023 Regulations.

### **Part 2—Amendments**

#### ***Maritime Powers Regulations 2023***

##### **Item 2 Subparagraph 9(1)(c)(i)**

This item repeals and substitutes subparagraph 9(1)(c)(i) of the 2023 Regulations.

Subparagraph 9(1)(c)(i) of the 2023 Regulations, for the purposes subparagraph 12(b)(i) of the Maritime Powers Act, prescribes CMM 11-2015 (Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area) as an international decision that could apply to a vessel, installation or aircraft in accordance with section 19 of the Maritime Powers Act.

The CMM 11-2015 will be replaced by CMM 11-2023 (Conservation and Management Measure for High Seas Boarding and Inspection Procedures for the South Pacific Regional Fisheries Management Organisation).

The purpose of this amendment is to ensure that the updated Conservation and Management Measure is covered by subparagraph 9(1)(c)(i) of the 2023 Regulations.

The version of the CMM 11-2023 (Conservation and Management Measure for High Seas Boarding and Inspection Procedures for the South Pacific Regional Fisheries Management Organisation) referred to in subsection 9(1) of the 2023 Regulations, is the version in force for Australia at the commencement of Part 2 of Schedule 1 to the 2023 Regulations. CMM 11-2023 (Conservation and Management Measure for High Seas Boarding and Inspection Procedures for the South Pacific Regional Fisheries Management Organisation) is accessible free of charge on the website of the South Pacific Regional Fisheries Management Organisation (<https://www.sprfmo.int>).

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Maritime Powers Regulation 2023***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

The *Maritime Powers Act 2013* (Maritime Powers Act) sets out the Commonwealth's maritime enforcement regime. The powers under the Maritime Powers Act provide for the administration and enforcement of a diverse range of Australia's laws including foreign fishing, customs, migration, people smuggling, and import-export offences, and relevant international agreements and international decisions.

The Maritime Powers Act establishes a system of authorisations under which a maritime officer may exercise enforcement and monitoring powers in the maritime domain. The comprehensive powers under the Maritime Powers Act are available to enforce and monitor a diverse range of Australia's maritime laws, including those related to foreign fishing, customs, migration, quarantine and drug trafficking, as well as Australia's obligations under international agreements and decisions at sea.

Section 122 of the Maritime Powers Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

On 1 April 2024, the *Maritime Powers Regulation 2014* (2014 Regulation) will sunset, and as such, will be automatically repealed by operation of Part 4 of the *Legislation Act 2003*.

For the purposes of the Maritime Powers Act, the 2014 Regulation prescribes matters required to be prescribed under the Maritime Powers Act. Specifically, those matters include:

- Commonwealth laws in respect of which enforcement and monitoring powers could be exercised by maritime officers;
- a range of international agreements and decisions, which enable the exercise of maritime powers by a maritime officer if the authorising officer suspects, on reasonable grounds, that the agreement or decision applies to a particular vessel, installation or aircraft;
- Commonwealth laws that could be enforced by maritime officers in Australia's contiguous zone to investigate or prevent a contravention of a customs or immigration law occurring in Australia;
- additional types of maritime officers in uniform who would be exempt from the usual requirement to produce identification, when requested by the person in charge of a vessel, installation or aircraft, after boarding the vessel, installation or aircraft; and

- additional types of maritime officers in uniform who would be exempt from the usual requirement to produce identification, when requested by the person in charge of the land, after entering onto the land.

The *Maritime Powers Regulations 2023* (Disallowable Legislative Instrument) repeals and remakes the 2014 Regulation.

The purpose of the Disallowable Legislative Instrument is to prescribe matters prescribed in the 2014 Regulation, and as such, have the effect of:

- ensuring that Australia's on-water enforcement agencies continues to be able to exercise a similar scope of maritime powers in relation to an aircraft, vessel, ship, port or installation;
- ensuring compliance with the relevant fisheries conservation measures and the safety and security of Australia's ports and maritime domain.

The operation of the Disallowable Legislative Instrument is substantially the same as the 2014 Regulation, but with changes to update the prescribed international decisions and agreements, and to add new international decisions and agreements.

The changes are as follows:

- the CMM 2017-02, Conservation and Management Measure on Minimum Standards for Port State Measures adopted by the Western and Central Pacific Fisheries Commission under the Convention on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean is added;
- the following Conservation and Management Measures adopted by the Meeting of the Parties to the Southern Indian Ocean Fisheries Agreement under that Agreement are added:
  - CMM 2020/08, Conservation and Management Measure establishing a Port Inspection Scheme;
  - CMM 2021/14, Conservation and Management Measure for High Seas Boarding and Inspection Procedures for the Southern Indian Ocean Fisheries Agreement;
- the following Conservation and Management Measures adopted by the South Pacific Regional Fisheries Management Organisation under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean are added:
  - CMM 11-2015, Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area;
  - CMM 07-2022, Conservation and Management Measure on Minimum Standards of Inspection in Port;
- the Resolution 05/03, Relating to the establishment of an IOTC programme of inspection in port adopted by the Indian Ocean Tuna Commission under the Agreement for the Establishment of the Indian Ocean Tuna Commission is added;
- the United Nations Security Council Resolution 2101 (2013) is omitted;
- the United Nations Security Council Resolution 2146 (2014) is added;
- the United Nations Security Council Resolution 2292 (2016) is added;
- the United Nations Security Council Resolution 2375 (2017) is added; and
- the United Nations Security Council Resolution 2397 (2017) is added.

Section 12 of the Maritime Powers Act sets out when an *international decision* (as defined in section 8 of the Maritime Powers Act) will apply to a vessel, installation or aircraft for the purposes of the Maritime Powers Act. This will occur if there is an international decision that provides for the exercise of enforcement powers by Australia in relation to the relevant vessel, installation or aircraft. The international decision must either be prescribed by the regulations or the Minister must have approved the exercise of powers under that decision, and that approval must not have lapsed.

Once an *international decision* applies under section 12 of the Maritime Powers Act, section 19 of that Act permits an authorising officer to authorise the exercise of maritime powers in relation to a vessel, installation or aircraft if the officer suspects on reasonable grounds that the international decision applies to that particular vessel, installation or aircraft.

The effect of the addition of new international decisions and resolutions is that the new international decisions and resolutions can also apply to a vessel, installation or aircraft in the maritime domain.

### **Human Rights implications**

The Disallowable Legislative Instrument is technical in nature and does not engage any of the applicable human rights or freedoms.

### **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Clare O’Neil MP, Minister for Home Affairs**