

# AQUATIC RESOURCES MANAGEMENT BILL 2015

## EXPLANATORY MEMORANDUM

### Overview of the Bill

The *Aquatic Resources Management Bill* has been designed to replace the *Fish Resources Management Act 1994* (FRMA) and the *Pearling Act 1990* (Pearling Act) as the primary legislation for the management of Western Australia's fisheries and aquatic biological resources.

The focus of the Bill is to ensure the ecologically sustainable development of Western Australia's living aquatic biological resources and ecosystems by protecting these resources from over-exploitation and the threats posed by diseases and harmful imported organisms, while encouraging the development of the industries and activities associated with their use.

The Western Australian Government's Fisheries Policy Statement (March 2012)<sup>1</sup> provides an overview of the Government's management philosophy and future direction for the management of the State's aquatic biological resources.

This Bill is a fundamental element in implementing this new direction. It incorporates an up-to-date and innovative conceptual framework for integrated resource management based on the principles of Ecologically Sustainable Development (ESD) and will provide the legal framework for improved governance in eight key policy areas:

- Ensuring ecological sustainability.
- Risk-based assessment and transparent, outcome-focused resource use planning.
- Integration of resource protection and use across all sectors.
- Security of resource access and allocation of proportional harvest entitlements for the fishing sectors.
- Management of aquaculture activities.
- Protection from the negative impacts of aquatic disease and harmful organisms (biosecurity).
- Devolution and delegation of decision-making, and deregulation.
- Co-operative management arrangements with the non-government sector.

Since the commencement of the FRMA and the Pearling Act there have been significant changes in pressures on our aquatic environment and fisheries.

These pressures include population growth, coastal development, and competition for priority uses in the marine environment from many different interest groups. Rapidly advancing fish finding, fishing and communications technologies are making fish more vulnerable to fishing than ever before, while changing ocean temperatures and climatic conditions that have become evident in the past 15 years appear to be driving changes in the population cycles and abundance of many aquatic species. On top of these factors, an increase in international shipping and transport of live organisms has heightened the severe risk posed to our ecological communities through the introduction of harmful organisms and diseases.

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<sup>1</sup> Western Australian Government Fisheries Policy Statement, published in March 2012 by Department of Fisheries.

In the national context, there has also been increasing recognition by the Australian and State Governments of the need to manage the conservation and use of aquatic biological resources in a more integrated fashion. The agreed policy principles are described in the National Strategy for Ecologically Sustainable Development (ESD)<sup>2</sup>.

The Bill also aims to better complement and support other State policy initiatives, by establishing a clearer statutory planning framework for all harvest sectors, and provide greater scope for integrating sustainable non-harvest activities based on aquatic resources.

Certain aspects of natural resource management, as they now exist, are preserved under the new Act. The planning and establishment of marine reserves will continue under the State Government's "New Horizons" policy (1998) in accordance with the *Conservation and Land Management Act 1984* (CALM Act).

Responsibility for the management of marine mammal, reptile and bird populations remains under the *Wildlife Conservation Act 1950* and the CALM Act.

The Bill extends the transparency and focus of historic fisheries management by establishing an integrated cross-sectoral planning and management framework for aquatic biological resources, which sets up clear sustainability goals, and provides for statutory access rights for all sectors within this context.

The planning framework also provides for explicit consideration of ecosystem issues and customary fishing when sustainable harvest levels and other resource use parameters are set, consistent with State, Commonwealth and international agreements on ecologically sustainable development.

The Bill creates an explicit decision-making process based on the assessment of levels of risk to the ecological sustainability of biological resources, with broadly scoped head powers to enable a clear statutory planning process which will drive specific resource use plans for each sector. The Bill also provides for a range of more "social" regulations for lower risk resources which aim to reduce the complexity and volume of subsidiary legislation for non-critical resources over time.

Importantly, the Bill will create an administrative environment in which greater devolution of responsibility will allow the separation of the strategic Government role in decision making from the operational decision making needed to ensure that plans stay "on track" in meeting their approved objectives.

The Bill also provides for the continuity of existing management arrangements and fishing access rights for the State's commercial fishing and pearling industries until each is separately migrated to the new legislative framework.

A clause by clause commentary of the content of the Bill is provided below.

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<sup>2</sup> Refer to <http://www.environment.gov.au/about/esd/publications/strategy/index.html> and [http://www.fish.wa.gov.au/Documents/management\\_papers/fmp157.pdf](http://www.fish.wa.gov.au/Documents/management_papers/fmp157.pdf).

## Part 1 — Preliminary

### Clause 1      **Short title**

Provides that the title of this Act is the *Aquatic Resources Management Act 2013*.

### Clause 2      **Commencement**

Sets out the commencement provisions and provides that different sections of the Act can be commenced on different days.

### Clause 3      **Terms Used**

Defines terms used in the Bill.

### Clause 4      **Meaning of aquatic resource**

Clause 4 defines ***aquatic resource*** and should be read with the definition of ***aquatic organism*** as provided in clause 3.

The definition of ***aquatic organism*** is similar to the definition of “fish” in the FRMA. As such, ***aquatic organism*** is defined to be an organism of any species that lives in or adjacent to water and includes the eggs, spat, spawn, seeds, etc. of an aquatic organism, a dead aquatic organism, part of an aquatic organism and live rock and live sand, but does not include aquatic mammals, reptiles, birds or amphibians.

Live rock and live sand are included in the definition because the Department of Fisheries regulates the taking of live rock and live sand by licensees in the Marine Aquarium Managed fishery.

The reference to aquatic organisms living in or adjacent to waters recognises that some aquatic organisms live adjacent to water – hermit crabs are a good example - the collection of which is also regulated by the FRMA.

The definition is intended to provide the flexibility necessary for the development of Aquatic Resource Management Strategies (‘ARMS’) and Aquatic Resource Use Plans (‘ARUPs’) which, together, may provide for ecosystem based management for a single species in a bioregion such as Western Rock Lobster, or a suite of species such as demersal scalefish within one or more bioregions.

- (1) Provides that an ***aquatic resource*** means one or more identifiable groups of aquatic organisms, or one or more identifiable groups of aquatic organisms in a bioregion, area, habitat or ecosystem.
- (2) Provides that an aquatic resource can be further defined by reference to a species or type of aquatic organism and sex, weight, size, reproductive cycle or any other characteristic.

## **Clause 5      Meaning of “WA waters”**

Defines **WA waters** for the purposes of this Bill;

Paragraph (a) includes in the definition all waters in the State including rivers, dams, streams, etc. and all offshore waters to a limit of three nautical miles from the low water mark.

Paragraph (b) includes as WA waters all those offshore waters beyond the three nautical mile state limit that are on the landward side of coastal waters baselines used to determine the limit of the 200 nautical mile Australian fishing zone – except for purposes relating to a fishery that is managed according to the law of the Commonwealth under a Commonwealth– State arrangement made under Part 15 of the Act referred to in clause 5(2) below.

The coastal waters baselines smooth out the irregularities of coastal features such as islands, bays, gulfs and sounds. For example, fisheries undertaken in the waters inside Shark Bay, Exmouth Gulf and King Sound are managed by the Fisheries Department, and these waters although they comprise waters that are situated more than 3 nautical miles from the coast, are WA waters.

Paragraph (c)(i) extends the jurisdiction of the Western Australian Fisheries Department to Commonwealth waters where there is an arrangement between the State and Commonwealth made under Part 3 of the Act for the management of that fishery in accordance with State law. For example the rock lobster fishery is undertaken in both State and Commonwealth waters but is managed by Western Australia to the edge of the Australian Fishing Zone. By agreement with the Commonwealth most Western Australian fisheries are subject to similar arrangements.

Paragraph (c)(ii) enables Western Australia to manage recreational fishing to the limit of the Australian Fishing Zone, except where the recreational fishing is undertaken from a foreign boat, or in accordance with a management plan of the Commonwealth.

Clause 5(2) provides that for the purposes related to fishing activities undertaken in State waters and managed in accordance with a law of the Commonwealth, waters on the landward side of the marine baseline are not included within the definition of WA waters.

## **Clause 6      Aboriginal persons not required to hold authorisation in certain circumstances**

Provides that Aboriginal persons are not required to hold an authorisation to take aquatic organisms if the organisms are taken for the purposes of the person or the person's family, and not for a commercial purpose. The clause is identical in effect to that of section 6 of the FRMA.

The clause applies to all Aboriginal persons whether they are native title holders or not. With the exception of the requirement to hold a licence when undertaking certain fishing activities, the rules of general application throughout the community such as bag limits, size limits and closed

seasons apply to non-native title holders.

**Clause 7      Exemptions from Act**

- (1) Provides that the Minister may exempt specified persons or a class of persons from all or any provisions of the Act. Exemptions must be in writing.
- (2) Specifies the purposes for which an exemption from the provisions of the Act may be granted. These are for research, environmental protection, public safety, public health, commercial purposes education purposes and enforcement purposes.
- (3) Specifies that an application for an exemption must be made to the Minister.
- (4) States that an application must be made in an approved form and must be accompanied by the prescribed fee, if any.
- (5) Provides that an exemption may be granted subject to conditions.
- (6) Provides that the Minister may cancel or amend an exemption and delete, amend or add to any conditions contained in the exemption.
- (7) Provides that an exemption is of no effect at any time when a condition of the exemption is being contravened.
- (8) Provides for a penalty for contravening a condition of an exemption.

This clause is similar in effect to that of section 7 of the FRMA.

**Clause 8      Crown bound**

- (1) Provides that the Act binds the Crown.
- (2) Provides that the State or the Crown cannot be prosecuted for an offence under the Act.

## **Part 2 — Objects**

### **Clause 9      Objects of Act**

Clause 9 specifies that the objects are to ensure the ecological sustainability of the State's aquatic resources and aquatic ecosystems for the benefit of present and future generations and to ensure the State's aquatic resources are managed, developed and used having regard to the economic social and other benefits they may provide.

The objects establish the principles of ecologically sustainable development as the underpinning philosophy of the legislation, and set the context for decision making under the Bill. This is consistent with the COAG agreement on a national strategy for ecologically sustainable development.

Paragraphs (a) and (b) of the Objects are read in conjunction, and do not imply specific precedence.

### **Clause 10      Means of achieving objects of Act**

Sets out the means of achieving the Objects. These are:

- (a) protecting aquatic resources and aquatic ecosystems and, where necessary, restoring aquatic ecosystems.
- (b) Using relevant scientific data and principles in managing aquatic resources.
- (c) Encouraging the sustainable development of fishing, aquaculture and other activities using aquatic resources.
- (d) Encouraging members of the public to participate in decisions about the management and use of aquatic resource.
- (e) Ensuring that the interests of all users of aquatic resources or aquatic ecosystems are taken into account in the decision making process.
- (f) Efficient, practical and cost effective management of aquatic resources and aquatic ecosystems.

### **Clause 11      Regard to be had to objects of Act**

Requires those performing or exercising a power or function under the Act to take into account the Objects of the Act and the means of achieving them as set out in clause 10.

## **Part 3 — Managed aquatic resources**

This Part outlines the planning provisions of the Act and establishes the framework within which aquatic resources will be managed. In particular, it provides for a high level strategic planning process for each resource that is publicly accountable. It will identify how the resource will be managed, the level of exploitation to be allowed, the level of the resource that must be maintained for sustainability purposes, the setting of total allowable catches and the access rights framework.

### **Division 1 - Preliminary**

#### **Clause 12    Terms used**

Clarifies the meaning of specific terminology in this Part of the Bill.

### **Division 2 - Strategy and planning**

#### **Subdivision 1 — Declaration of managed aquatic resources**

#### **Clause 13    Monitoring aquatic resources**

Introduces the concept of risk assessment into the Bill, in order to make explicit the need for an “evidence-based” approach to management, and to guide the development of “minimum effective regulation” based on risk profiles.

Clause 13(a) imposes a duty on the Minister to ensure the condition of aquatic resources is kept under constant consideration, and to conduct a risk assessments into the sustainability of an aquatic resource if the Minister believes this is necessary (clause 13(b)).

#### **Clause 14    Declaration of managed aquatic resources**

- (1) Provides for the Minister to declare an aquatic resource to be a “managed aquatic resource”. This in turn will trigger the planning processes in sub-divisions 2 and 3, i.e. for ARMS and ARUPs respectively.
- (2) Provides that the Minister may declare an aquatic resource to be a managed aquatic resource whether or not a risk assessment has been undertaken in respect to the aquatic resource.
- (3) Provides the Minister **must** declare an aquatic resource to be a managed aquatic resource where a risk assessment concludes that the aquatic resource is at risk of over exploitation or where the aquatic resource is in such a poor state that it is at risk of becoming unsustainable.
- (4) Provides that a declaration that an aquatic resource is a managed aquatic resource is subsidiary legislation for the purposes of the Interpretation Act 1984, and is capable of disallowance.

In a case where it is deemed that there is “low risk” to sustainability and a resource is not declared under this clause, the resource can be managed through regulations under Part 8 Division 3 of the Bill.

## **Subdivision 2 — Aquatic resource management strategies**

### **Clause 15 Requirement for ARMS**

Establishes the requirement to develop an Aquatic Resource Management Strategy (ARMS) as soon as is practicable following a declaration that a resource is a managed aquatic resource under clause 14.

### **Clause 16 Content of ARMS**

- (1) Sets out the things to be addressed by an ARMS including:
  - (a) A definition of the resource (and any subsets by area, species or population).
  - (b) Objectives for management.
  - (c) The minimum amount of the aquatic resource needed for sustainability purposes.
  - (d) The activities to be regulated.
  - (e) The period allowed for fishing.
  - (f) What proportion of the harvest is to be set aside for customary fishing, scientific or other public benefit purposes.
  - (g) How the total allowable harvest (TAC) is to be calculated.
  - (h) The proportion of the TAC available for recreational fishing.
  - (i) The proportion of the TAC available for commercial purposes including the proportion of that TAC for which shares will be allocated to the commercial sector and the proportion of TAC that may be taken incidentally in the course of fishing for other aquatic resources, for example demersal scalefish taken in rock lobster pots of finfish taken whilst trawling for prawns.
  - (j) The number of shares that are available to the commercial sector.
  - (k) How the effectiveness of management is to be assessed.
  - (l) The consultation to be carried out in relation to the making, amendment or revocation of an ARUP that implements an ARMS.
- (2) Provides that activities that should be regulated under an ARMS may include the taking of other aquatic resources while in the course of commercial fishing for another aquatic resource, for example demersal scalefish taken in rock lobster pots of finfish taken whilst trawling for prawns.

### **Clause 17 Draft ARMS**

- (1) Requires the CEO to prepare a draft ARMS for a managed aquatic resource and to give public notice of the proposal for an ARMS as soon as is practicable after the Minister has declared an aquatic resource to be a managed aquatic resource.
- (2) Specifies the content of a notice for a proposal to make an ARMS, including where copies of the ARMS may be obtained and how submissions can be made in respect to the ARMS.
- (3) Provides that the public notice is to be published in the *Gazette* and in any other manner the CEO considers appropriate including a newspaper circulating generally within the State or on the Department's website.
- (4) Provides that the CEO is not prevented from using any other means of publicising a proposal to make an ARMS.



**Clause 18      CEO to consult on proposal for ARMS**

Sets out the minimum public consultation requirements for a draft ARMS.

- (1) Provides that the CEO must consult with any public authority, person or body that may be affected if the ARMS were to come into effect.
- (2) Provides that consultation may be undertaken in any manner that the CEO considers appropriate.
- (3) Provides that where a draft ARMS does not describe the resource to be managed by reference of a particular area of the State, then the consultation must be carried out State-wide.

**Clause 19      Revision of draft strategy following consultation**

Establishes timelines for the submission of a draft ARMS to the Minister and provides transparency in relation to changes made to the draft flowing from the public consultation process.

- (1) Provides for submissions to be made to the CEO in the manner and within the timeframe specified in the public notice.
- (2) Requires the CEO to consider any submissions made and any views expressed by a public authority, person or body and to revise the draft strategy to any extent the CEO considers appropriate having regard to those submissions and views expressed.
- (3) Requires the CEO to submit the draft strategy to the Minister including any revisions made following public consultation and a report on the development of the strategy, not later than 2 months after the end of the consultation period for the strategy.
- (4) Provides that the CEO's report must include reasons for any changes to the draft strategy.

**Clause 20      Approval of ARMS**

This clause provides the mechanism for a draft ARMS to be approved and gazetted.

- (1) Provides that the Minister may approve or refuse to approve a draft ARMS as the ARMS for a managed aquatic resource.
- (2) Provides that the Minister may only approve a draft ARMS as the ARMS for the managed aquatic resource if the Minister is satisfied that the draft ARMS is consistent with the object of the Act.
- (3) Provides that if the Minister refuses to approve a draft ARMS the Minister may request the CEO to revise the draft ARMS taking into account matters included in the Minister's request.
- (4) Provides that the CEO has 2 months or such longer period as the Minister allows, to revise the draft ARMS to give effect to the Minister's request and to report on the revisions made.
- (5) Provides that where the Minister approves an ARMS, notice of the approval is to be published in the *Gazette*.
- (6) Provides that an ARMS comes into effect on the day after a relevant notice is published in the *Gazette*, or on such later date as specified in the notice.

**Clause 21      Amendment and revocation of ARMS**

- (1) Provides that the Minister may in writing approve an amendment to an ARMS for a managed aquatic resource.

- (2) Requires the CEO and the Minister to undertake the same consultative and approval processes for drafting and approving an ARMS, when amending an ARMS.
- (3) Provides for an ARMS to be revoked if the declaration specifying that an aquatic resource is a managed aquatic resource is revoked.

**Clause 22      Regulations for ARMS**

Provides for regulations to be made to give effect to a specific ARMS or ARMS generally.

**Subdivision 3 — Aquatic resource use plans**

This sub-division provides the head powers to establish Aquatic Resource User Plans (ARUPs) for each user group with access to a managed resource.

Each ARUP must be consistent with the ARMS for that resource, specify the proportion of the total allowable catch assigned to the relevant user group, the objectives to be achieved by the ARUP and the fishing rules that will apply to the user group.

An ARMS for a complex resource may have several ARUPs that give it effect. e.g. A West Coast demersal finfish resource may cover 20 species of fishes and sharks, two commercial “fisheries” with different gear types (line and demersal gillnet), a recreational line fishery and a fishing charter sector. The ARUPs establish the ability to regulate the fishing activities of each user group, within the context of resource sustainability.

ARUPs are subsidiary legislation and may be subject to disallowance.

**Clause 23      Terms used**

Defines the terms used in this sub-division of the Bill.

**Clause 24      Minister to make ARUP for managed aquatic resource**

Provides for the creation of ARUPs to give effect to the ARMS for the resource.

- (1) Provides that the Minister must make an ARUP, or more than one ARUP, to implement an ARMS for a managed aquatic resource. The number of ARUPs made will depend on the number of user groups identified in the ARMS as requiring access to the resource.
- (2) Provides that the Minister must not make an ARUP for a managed aquatic resource unless he has undertaken consultation consistent with the consultation requirements of an ARMS and in the Minister’s opinion the ARUP is consistent with the ARMS for the resource, as well as all other ARUPs that apply to the resource and any regulations made under section 22 in relation to the ARMS for the resource.
- (3) Provides that an ARUP is subsidiary legislation for the purposes of the *Interpretation Act 1984* and is capable of disallowance.

## Clause 25

### Content of ARUPs

Establishes the scope of an ARUP and its content.

- (1) (a) and (b) link the ARUP to an ARMS.
- (c) (d) and (e) provide for the plan to be tailored to different user groups as required. For example a commercial user group may be more interested in maximising the value of the catch, rather than maximising the volume. The ARUP might include provisions which allow the sector to reduce its operating costs or tailor its catching periods to suit market conditions.
- (f) Specifies if an authorisation may be required for access, and if so, the nature and form this will take. The authorisations themselves will be established in regulation. In the case of commercial fishing the Bill envisages a “commercial fishing operator’s licence” for individuals in charge of a fishing operation coupled with registered catch entitlement for that resource as the minimum requirement for access.  
In the case of a recreational ARUP, the plan may provide for (but does not necessarily require) a fishing licence to access a “common pool” of catch entitlement under the terms of the plan. The ARUP may also provide for fishing rules specific to the recreational sector which suit the amenity values associated with recreational fishing.
- (g) Specifies the form and the minimum and maximum amounts of surety that may be required before a person can undertake fishing activities under an ARUP. Clause 39 of the Bill provides that the CEO may only require an authorisation holder to provide surety for accessing the resource if the person is charged with or convicted of an offence against this Act, any other written law relating to fishing, aquaculture or the charter industry, or a law of the Commonwealth or any other Australian jurisdiction relating to fishing. Clause 27 provides that the form of surety may be money, resource shares or any other form of surety as prescribed in the regulations. The intent of surety is to provide a “downward pressure” to encourage responsible fishing behaviour. This provision provides a similar disincentive in the new framework to the “three black marks” provisions in section 224 of the FRMA. Clauses 39-41 provide more detail about how sureties will work.
- (h) Specifies the number of resource shares, if any, available under the plan. An ARUP for a commercial user group will always specify the number of resource shares available to individuals under the ARUP, but an ARUP for the recreational sector will only provide for a collective (as opposed to individual) recreational allocation.
- (i) Sets out the method for allocating resource shares to the commercial sector.
- (j) Sets out the restrictions, if any, in relation to persons holding resource shares under the ARUP. Examples include whether a person is a fit and proper person or whether the person satisfies any guidelines relating to foreign interests holding resource shares.
- (k) Sets out the procedures to be used in monitoring the quantity of the resource taken in a fishing period.
- (l) Allows the plan to establish conditions that control the manner in which the transfer of catch entitlement may occur.

- (m) Provides that a plan may set out the circumstance in which the CEO may modify provisions of the plan in order to ensure that its objectives are being achieved. Any modifications would need to be consistent with the high-level policy settings approved by the Minister in the ARMS. Examples might include administrative controls such as the opening and closing of fishing areas, fishing times, the designation of port landing zones or other controls that need to be adjusted in response to “real-time” variations in the resource or the need for operational adjustments. The circumstances under which the CEO will be able to modify an ARUP will be specified in the ARUP and be subject to public consultation requirements relating to the making of an ARUP.
- (2) Provides that an ARUP may include any provision that in the Minister’s opinion is necessary for the protection or management of the resource or the protection of the aquatic environment, other aquatic resources, aquatic mammals, reptiles, birds, etc., from fishing activities related to the resource.
- (3) Provides that the objectives to be achieved by an ARUP are to be consistent with the main objective of the relevant ARMS. The ARMS and ARUPs structure will provide the legislative basis to give effect to the objectives of eco-system based fisheries management.

**Clause 26      Method for allocating shares under ARUP**

- (1) Provides for the preservation of existing commercial fishing and pearling access rights when transitioned into the new framework (clause 26(1)(a) and (b)).
  - (c) Enables an option a person may have for a share in a managed aquatic resource to be taken into consideration when allocating new shares in an aquatic resource. Options are granted under clause 42(2) when an ARUP is revoked. The effect of this clause is that if a person held shares under a revoked ARUP the person would be granted options to receive new shares under any new ARUP created for the resource.
- (2) Provides for a range of options for allocating shares under an ARUP, including converting previous entitlement, for example entitlement under an FRMA management plan, converting options to share entitlements, the granting by the CEO on application or sale by public tender or auction.
- (3) Provides that if an ARUP sets out a method for allocating resource shares other than by public tender or auction, the ARUP must provide that a decision not to allocate a resource share to a person is reviewable by the State Administrative Tribunal.

**Clause 27      Form of surety**

Provides that the form of surety may be money, resource shares or any other form of surety as prescribed in the regulations.

**Clause 28      Effect of ARUP on management plans and regulations**

Establishes the precedence of ARUPs over management plans and regulations.

- (1) Provides that the Minister when making an ARUP for the resource may amend or revoke any previously existing management plan that relates to the taking of the aquatic resource.

- (2) Provides that if a management plan is inconsistent with an ARUP then the ARUP prevails to the extent of the inconsistency.
- (3) Provides that if a regulation is inconsistent with an ARUP then the ARUP prevails to the extent of the inconsistency.

**Clause 29      Effect of revocation of ARMS**

Self-explanatory.

**Clause 30      Regulations for ARUPs**

Provides for regulations that may apply to ARUPs. Examples might include licensing and catch entitlement transfer requirements.

**Clause 31      Contravening ARUP or regulations relating to ARUPs**

Provides penalties for contravening an ARUP.

- (1) Defines **commercial ARUP** to mean an ARUP where resource shares are available under the ARUP and defines **prohibited conduct** to mean contravening offence provisions of an ARUP or contravening offence provisions of a regulation made in respect of an ARUP.
- (2) Provides an offence for engaging in prohibited conduct if a person intended to contravene a provision of an ARUP or the regulations relating to an ARUP or if the person was reckless with regard to contravening a provision of an ARUP or related regulations. Different scales of penalties are provided for commercial and recreational offences. The levels of penalty are consistent with the levels of penalty in the FRMA.
- (3) Provides that a person who engages in prohibited conduct (that is not intentional or reckless) commits an offence with a lower level of penalties. It is intended that offences against clause 31(3) would be dealt with by way of infringement notices in the first instance.
- (4) Provides that if a person is charged with intentionally or recklessly contravening an ARUP or regulations, then the person may be convicted of the lesser offence of engaging in prohibited conduct if the evidence does not support the intentional and reckless elements of the charge.

### **Division 3 — Administrative matters for managed aquatic resources**

This Division establishes the fishing access rights framework for managed resources and its operating parameters.

#### **Subdivision 1 — Preliminary**

**Clause 32      Terms used**

Defines terms used in this Division.

### **Clause 33      CEO to notify TAC and catch**

Establishes the power and process for the CEO to set a total allowable catch (consistent with the Minister's decisions in the ARMS), assign sector-specific catch limits and set the commercial "share value" in catch or effort units for the fishing period.

*Note:* The "share value" may be set lower than the TACC in cases where the fishing industry wishes to underfish its allocation to take advantage of market conditions or other factors affecting business viability not related to ecological sustainability.

- (1) Provides that at least 30 days before the commencement of a fishing period for a managed aquatic resource the CEO must publish in the Gazette a notice setting out the total allowable catch ('TAC') for the resource; the quantity of the TAC for which resource shares are to be available (that is, the quantity of the TAC available for the commercial sector); the quantity of the TAC available to the recreational sector; and the catch to be allocated for every (commercial) resource share.
- (2) Provides that for the purposes of subclause (1) the TAC, the quantity of the TAC for which (commercial) resource shares are to be available and the quantity of the TAC for the recreational sector are to be calculated in accordance with the procedure specified in the ARMS for the resource.
- (3) Provides that for the purposes of clause 33(1)(d) (that is the allocation of catch for a commercial share) the allocation is to be worked out by dividing the quantity of the commercial TAC by the number of shares in the resource.

## **Subdivision 2 — Commercial fishing**

This subdivision sets out the requirements for the creation, allocation and transfer of commercial shares and catch entitlement. It provides an approach to the use and trading of these personal entitlements with minimal regulatory and administrative intervention capable of being used across all Western Australian fisheries and the pearling industry.

### **Clause 34      Allocation of resource shares**

Sets out the conditions for the initial assignment of (commercial) resource shares by the Minister.

- (1) Provides that when an ARUP comes into operation, the relevant (commercial) resource shares are vested with the Minister.
- (2) Provides that the Minister must allocate the resource shares in accordance with the method specified in the ARUP as soon as practicable after an ARUP comes into operation. Clause 26 specifies the matters relating the allocation of resource shares that must be considered when making an ARUP, these include; a person's history of fishing in the resource, immediate previous entitlement to take the resource and options granted in respect to revoked ARUPs for the resource, etc. and review by the State Administrative Tribunal in circumstances where the resource shares are not allocated by public tender or auction.

- (3) Provides for persons to be registered as the holder of the resource share on the Department's register (established under Part 10 of the Act).
- (4) Provides that a request for registration must be made in the approved form and accompanied by the relevant fee (if any).
- (5) Provides that on receipt of a request in the approved form and accompanied by the relevant fee (if any) the CEO must register the person as the holder of the resource share.

#### **Clause 35      Nature of resource shares**

- (1) Provides that if a person is the holder of a resource share at the beginning of the fishing period, the person is also entitled to be registered as the holder of the allocated catch for the share for that fishing period, subject to the matters laid out in clause 37. These are: making applications in the approved form, paying the required fee and taking into account any reductions in the entitlement as a result of the forfeiture of resource shares provided as surety (clauses 41(7)(a) and 210(2)(b)).
- (2) Provides that a resources share is transferable under the Act and is capable of being passed on as part of a deceased estate or by the operation of law.
- (3) Provides that resource shares are not to be considered as personal property for the purposes of the Commonwealth's *Personal Property Securities Act 2009* (in the same way that managed fishery licences and other licences issued under the *Fish Resources Management Act 1994* are not considered personal property under the Commonwealth Act). Both the Department and the WA Fishing Industry Council are confident that the Register provisions contained in Part 10 of this Bill (and Part 12 of the FRMA) provide adequate security protection to financial institutions and other lenders to the fishing industry.

#### **Clause 36      Transfer of resource shares**

Sets out the rights of transfer for resource shares and the administrative caveats that may apply in specified circumstances.

- (1) Provides that the holder of a resource share may request the CEO to transfer the resource share to another person.
- (2) Provides that on receipt of a request to transfer the resource share, the CEO is to transfer the resource share by registering the transferee or recipient as the holder of the resource share, unless the matters contained in subclause 3 apply.
- (3) The CEO must not transfer the resource share if; a fee or fine payable by the holder is outstanding, the share has been nominated as surety for an authorisation, the recipient is not eligible under the ARUP to hold a share, or until 21 days has expired from the time the CEO notified a registered security holder of the request to transfer the share in the absence of written consent of the security holder to transfer the share. Examples of where a recipient is not eligible under an ARUP to hold a resource share include whether the person is not a fit and proper person or does not satisfy any guidelines relating to foreign interests in resource shares.

## **Clause 37**

### **Registration of catch entitlement**

- (1) Provides for the holder of a resource share to be registered as the holder of a catch entitlement relating to the resource share.
- (2) Provides that a request for registration must be made in the approved form and accompanied by the relevant fee (if any).
- (3) Provides that the CEO must register the applicant as the holder of catch entitlement in accordance with the request subject to subclauses (4) and (5).
- (4) Provides that before registering a catch entitlement the CEO must reduce the amount of allocated catch where a resource share has been used as surety in accordance with clauses 41(7)(a) (i.e. where a surety for a terminated authorisation has one or two convictions recorded against it and as a result the catch entitlement for the following fishing period must be reduced) and 210(2)(b) (i.e. where there are 3 or more convictions in respect of a surety in a 10 year period and the catch entitlement for the next fishing period must be reduced to zero).
- (5) Provides that the CEO must not register the catch entitlement if a fee or fine payable by the holder of the resource share is outstanding or if the resource share has been provided as surety but the resource share will not generate a catch entitlement for the fishing period because three black marks have been recorded in respect of the surety in accordance with clause 209.
- (6) Provides that if the holder of a resource share does not make a request to register the catch entitlement in relation to the resource share within 90 days after the commencement of the fishing period the CEO may require the resource share holder to pay the fee applicable to the registration of catch entitlement anyway. The purpose of this provision is to ensure that the holder of a resource share contributes to the sustainable management of the resource whether the person wishes to fish a catch entitlement or not.
- (7) Provides that a catch entitlement is not to be considered as personal property for the purposes of the Commonwealth's *Personal Property Securities Act 2009* (in the same way that managed fishery licences and other licences issued under the *Fish Resources Management Act 1994* are not considered personal property under the Commonwealth Act. Both the Department and the WA Fishing Industry Council are confident that the Register provisions contained in Part 10 of this Bill (and Part 12 of the FRMA) provide adequate security protection to financial institutions and other lenders to the fishing industry).

## **Clause 38**

### **Transfer of catch entitlement**

Sets out the rights of transfer for catch entitlement and the administrative caveats that may apply in specified circumstances.

- (1) Provides for the registered holder of a catch entitlement to request the CEO to transfer all or part of that entitlement to another person (the recipient).
- (2) Provides that the request must be made in an approved manner and form.
- (3) Provides that the CEO must register the recipient as the holder of the catch entitlement up to the amount specified in the request and in accordance with any regulations and subject to any conditions set out in the relevant ARUP.



- (4) Provides that a person who makes a request to transfer a catch entitlement to another person may withdraw the request to the extent of any catch entitlement unused by the recipient, in accordance with relevant regulations and subject to any conditions relating to the withdrawal of the request, as set out in the relevant ARUP.

#### **Clause 39      Provision of surety for authorisation**

This clause provides for operators charged with an offence against this Act or operators with a poor history of compliance with fisheries legislation to provide various forms and levels of surety as a prerequisite to being able to continue to undertake activities regulated under an ARUP.

- (1) Defines **notice** for the purposes of the clause.
- (2) Provides that if a person is charged with an offence under this Act or has been convicted of an offence against other laws of the State or the Commonwealth related to the fishing industry the CEO, may by notice in writing, require the person to provide a surety before further undertaking activities regulated by an ARUP.
- (3) Provides that the CEO's notice must specify the form and the amount of the surety and the time by which the surety must be provided.
- (4) Provides that the surety must be in a form specified in the relevant ARUP and that the amount of the surety must not be less than the minimum amount, or greater than the maximum amount, specified in the ARUP.
- (5) Provides that the CEO by notice in writing may amend or revoke a notice requiring surety from an authorisation holder.
- (6) Provides that if a surety is not provided within the time specified in the notice the relevant authorisation is suspended until the surety is provided or the notice is revoked.

#### **Clause 40      Registration of surety**

Sets out the requirements for registration of sureties.

- (1) Provides that on the receipt of surety the CEO must record the surety against the relevant authorisation on the Register kept by the CEO under Part 10 of this Act; and if the surety is provided by way of one or more resource shares, the CEO must record on the Register that the nominated shares are security for the relevant authorisation.
- (2) Provides that the CEO must not record the surety against the relevant authorisation on the Register, if a security interest is already recorded on the Register against those shares until 21 days has expired from the time the CEO notified a registered security holder of the nomination of the resource shares as security, in the absence of any prior written consent of the security holder.

#### **Clause 41      Return or substitution of surety for authorisation**

Sets out the requirements for the return of sureties, or portions of the surety.

- (1) Defines terms for the purposes of this clause.
- (2) Provides that a person who has provided surety may request the CEO to return the balance of the security or return the balance of the surety on the provision of a substitute surety.

- (3) Provides that upon receiving a request to return the balance of security the CEO may do so in accordance with the regulations.
- (4) Provides that the CEO may agree to a substitute surety if it is in a form specified in the relevant ARUP and is of equivalent value of the original surety.
- (5) Provides that the CEO may refuse to return the balance of surety for an authorisation if the holder of the authorisation is liable to prosecution that would result in a third conviction with a 10 year period under clause 209 or until a conviction required to be recorded in respect of the surety has been recorded under clause 210(1).
- (6) Provides that if an authorisation for which surety has been provided terminates, the CEO must return the balance of the surety to the authorisation holder in accordance with the regulations subject to the person not being liable to prosecution or convicted of an offence (subclause 5), or in accordance with subclause 7.
- (7) Provides that in circumstances where the terminated authorisation has 2 or more convictions recorded against it within a 10 year period, before the CEO can return the balance of a surety that is in the form of resource shares, the allocated catch for each resource share in the next fishing period is to be reduced by two thirds. In all other circumstances the surety to be returned is one third of the balance of the surety as determined in accordance with the regulations.

#### **Clause 42      Grant of share options**

This clause provides for recognition and consideration of previously assigned resource shares as “options” in the event that an ARUP is revoked and replaced by a new ARUP.

- (1) Provides that if an ARUP is revoked, whether or not the relevant ARMS is revoked, the resource shares under the ARUP become void and the registration of any related catch entitlement is cancelled.
- (2) Provides that the CEO must grant a share option to the person who was the holder of a resource share immediately before the ARUP was revoked.
- (3) Provides that subclause (2) does not apply where a new ARUP replaces a revoked ARUP and makes provision for the issuing of new shares to persons who held shares under the revoked plan

#### **Clause 43      Notice of entitlement to convert share options**

Outlines the process by which “options” may be taken up as resource shares under a new ARUP.

- (1) Provides that where an ARUP makes provision for the allocation of resource shares to those holding relevant share options, the CEO must provide written advice that outlines the basis upon which the person is entitled to be allocated resource shares to each holder of a share option, the procedures to be followed by the person in taking up all or part of the entitlement and the date by which the person must notify the CEO of an intention to take up the entitlement.
- (2) Provides that a share option lapses if a notified person informs the CEO that the person does not wish to take up the entitlement or does not advise the CEO of an intention to take up the entitlement within the time specified in the notice.

### Subdivision 3 — Recreational fishing

This subdivision describes the operation of recreational Total Allowable Catch.

**Clause 44      Term used: recreational TAC**

Defines the terms used in this subdivision.

**Clause 45      Monitoring usage of recreational TAC**

Requires the CEO to monitor the recreational catch, consistent with the requirements of the ARUP.

**Clause 46      CEO to notify overuse of TAC for recreational fishing**

- (1) Requires the CEO notify the Minister if the recreational sector is likely to exceed its TAC during a fishing period.
- (2) Requires that the CEO's notification is to include advice as to what actions should be taken to reduce the recreational catch throughout the remainder of the fishing period with the intention of bringing the recreational catch in line with the recreational TAC.

**Clause 47      Minister may arrange allocation of excess recreational TAC**

This clause allows for the reallocation of excess recreational TAC to the commercial sector in certain circumstances.

- (1) Defines **recreational fishing body** for the purposes of this section, as the body that represents the interests of the recreational sector in accordance with an agreement made under subclause 222(1). Subclause 222(1) enables the Minister to enter into a written agreement with a body to carry out a function for the purposes of this Bill. Recfishwest is the body that the Minister is likely to enter into an agreement with for the purposes of this subdivision.
- (2) Provides that the Minister may by notice published in the *Gazette* determine that a specified quantity of recreational TAC is to be made available to the commercial sector and the manner in which the quantity of the recreational TAC is to be allocated to the commercial sector and registered as catch entitlement.
- (3) Provides that the Minister must not make such a determination unless he is satisfied that the quantity of the TAC to be made available to the commercial sector is excess to the requirements of the recreational sector, and the recreational fishing body (Recfishwest) has requested the Minister to make the excess recreational catch available to the commercial sector.
- (4) Provides that if the Minister does make such a determination, the CEO must provide for the reallocation of the catch entitlement to the commercial sector in the manner specified in the notice, and register relevant persons in the commercial sector as the holders of the catch entitlement.
- (5) Provides that the proceeds of the reallocation of recreational catch to the commercial sector are to be paid into the Recreational Fishing Account.

**Clause 48      Increase of TAC for recreational fishing**

Provides for the recreational sector to acquire additional allowable catch if the Minister purchases catch entitlement from the commercial sector in any fishing period with the use of funds from the Recreational Fishing Account. The Recreational Fishing Account can only be expended by the Minister.

**Division 4 — Offences relating to managed aquatic resources**

This Division sets out penalty provisions in relation to conditions that may have been imposed on authorisations to fish under an ARUP.

**Clause 49      Contravening condition of authorisation relating to managed aquatic resources**

This clause creates offences for contravening a condition of an authorisation relating to an ARUP and specifies the penalties.

- (1) Defines terms used in the clause.
- (2) Provides an offence for engaging in prohibited conduct if a person intended to contravene a condition of a relevant authorisation or if the person was reckless with regard to contravening a condition of a relevant authorisation. Different scales of penalties are provided for commercial and recreational offences. The levels of penalty are consistent with the levels of penalty in the FRMA.
- (3) Provides that a person who engages in prohibited conduct (that is not intentional or reckless) commits an offence with a lower level of penalties. It is intended that offences against clause 49(3) would be dealt with by way of infringement notices in the first instance.
- (4) Provides that if a person is charged with intentionally or recklessly contravening a condition of a relevant authorisation, then the person may be convicted of the lesser offence of engaging in prohibited conduct, if the evidence does not support the intentional and reckless elements of the charge.

**Clause 50      Court to order forfeiture of surety for authorisation**

This clause enables a court to order the forfeiture of surety related to an authorisation on conviction of a person for contravening an ARUP or regulations relating to an ARUP or a condition of an authorisation relating to an ARUP.

- (1) Defines terms used in this clause.
- (2) Provides that if a court convicts a person of an offence against clause 31(2) or (3) (contravening an ARUP or regulations relating to an ARUP) or clause 49(2) or (3) (a condition of an authorisation relating to an ARUP) the court must order the surety for the relevant authorisation to be forfeited to the State. The court can only do this if it is satisfied that the person was the holder of the relevant authorisation when the offence was committed and the offence related to taking aquatic resources for which a person did not hold catch entitlement at the time, and that the quantity of the resource for which the person did not hold catch entitlement was capable of being ascertained by the court.
- (3) Provides that if the court makes such an order the court may make any other order necessary or expedient to give effect to the order.

- (4) Provides that if the surety that is forfeited is in the form of nominated resource shares the CEO may allocate the forfeited resource shares as provided for in the relevant ARUP.
- (5) Provides for the 'cleansing' of reallocated resource shares by requiring the CEO to remove any notation of a security interest that was in the Register in respect of those shares, cancel the nomination of the resource shares as surety in respect to the authorisation it was originally nominated for, and remove the details of any conviction recorded in respect of the share for the purposes of clause 210 (related to the recording of black marks).

## **Part 4 — Management of fisheries**

Part 4 provides for the continued management of managed fisheries created under Part 6 of the FRMA. On the commencement of this Act everything that was capable of being done in respect of a managed fishery under the FRMA will be capable of being done under this Act with the exception that no new management plans will be capable of being made. However previously existing management plans will be capable of being amended or revoked in the same manner as was provided in the FRMA and managed fishery licences will be treated under this Act in the same manner as they were under the FRMA.

### **Division 1 — Preliminary**

**Clause 51      Terms used**  
Defines terminology in this Part.

### **Division 2 — Administrative matters relating to the management of fisheries**

Carries forward application and grant processes for authorisations previously dealt with under Parts 6 and 13 of the FRMA.

**Clause 52      Application for grant, renewal, variation or transfer of managed fishery licence or entitlement**

- (1) Provides that a person may apply to the CEO for a managed fishery licence, or the renewal, variation or transfer of a managed fishery licence, or the permanent transfer of part of an entitlement under a managed fishery licence, or the temporary transfer of all or part of an entitlement under a managed fishery licence.
- (2) Provides that applications must be made in the approved form and accompanied by the relevant fee and any information the CEO reasonably requires for dealing with the application.

This clause is similar in effect to the relevant provisions contained in sections 66, 140, 141 and 142 of the FRMA.

**Clause 53      Further information**

- (1) Provides that the CEO may request an applicant to provide further information in respect to an application and require that the further information be verified by a statutory declaration.
- (2) Provides that the CEO may specify a reasonable timeframe for the provision of the further information.
- (3) Provides that the CEO may refuse to consider an application if an applicant does not respond within the timeframe specified or within a reasonable time, where no timeframe is specified in the request.

This clause is similar in effect to that of section 135 of the FRMA.

**Clause 54      Grant of managed fishery licence**

- (1) Provides that the CEO may grant a managed fishery licence if the CEO is satisfied the applicant meets any criteria for the grant of a licence, as specified in the management plan and the applicant is selected in accordance with the procedure in the management plan for determining which persons are to be granted licences.
- (2) Provides that a managed fishery licence is not to be considered as personal property for the purposes of the Commonwealth's *Personal Property Securities Act 2009* (in the same way that managed fishery licences and other licences issued under the *Fish Resources Management Act 1994* are not considered personal property under the Commonwealth Act. Both the Department and the WA Fishing Industry Council are confident that the Register provisions contained in Part 10 of this Bill (and Part 12 of the FRMA) provide adequate security protection to financial institutions and other lenders to the fishing industry.

This clause is similar in effect to that of section 66 of the FRMA.

**Clause 55      Form of managed fishery licence**

Provides for the issuing of managed fishery licence in an approved form.

This clause is similar in effect to that of section 138 of the FRMA.

**Clause 56      Effect of managed fishery licence**

- (1) Provides that subject to this Act (that is provisions of this Act and any subsidiary legislation – regulations, management plans, orders, notices, etc.) the holder of a managed fishery licence, or a person acting for or on behalf of the holder, may operate in the managed fishery.
- (2) Provides that the entitlement that a person has under a managed fishery licence may be limited by reference to any or all of the following:
  - (a) a quantity of aquatic organisms that may be taken;
  - (b) a quantity of fishing gear that may be used or carried;
  - (c) the type, size or number of boats or other vehicles that may be used;
  - (d) the number of persons that may operate in the fishery;
  - (e) an area of land or waters;
  - (f) a period of time; and
  - (g) any other factor.
- (3) Provides that an entitlement under a managed fishery licence may be expressed as units of entitlement as defined in the relevant management plan.
- (4) Provides that the authority conferred by the managed fishery licence is of no effect at any time when a condition of the managed fishery licence is being contravened or when the managed fishery licence is suspended.

This clause is similar in effect to that of section 137 of the FRMA.

**Clause 57      Duration of managed fishery licence**

- (1) Provides that a managed fishery licence has effect from the day that it was granted or renewed.
- (2) Provides that a managed fishery licence remains in force for the period specified in the licence or where no period is specified in the licence, for the period that is specified in the relevant management plan and in all other cases for 12 months, unless the licence is cancelled sooner.
- (3) Provides that if a management plan for a fishery is revoked all relevant managed fishery licences are cancelled.

This clause is similar in effect to that of section 67 of the FRMA.

**Clause 58      Renewal of managed fishery licence**

- (1) Defines **expiry day** for the purposes of this clause to mean the day on which a managed fishery licence expires.
- (2) Provides that subject to this clause and provided that the licence has not been suspended, is not to be renewed, or has been cancelled under clause 134, the CEO **must** renew a managed fishery licence upon application. This provision provides a stronger property right for the holder of a managed fishery licence by removing the CEO's discretion as to whether to renew a managed fishery licence or not, as is currently provided for in the FRMA.
- (3) Provides that an application for renewal must be made to the CEO before the expiry day.
- (4) Provides that the CEO may, by written notice, accept an application for renewal within 180 days of the expiry of a managed fishery licence if the application is accompanied by the prescribed fee for a late renewal application and any additional fee by way of penalty for the late renewal of the licence as prescribed for in the regulations, but only if the CEO is satisfied that special circumstances warrant the acceptance of the application.
- (5) Provides that for the purposes of subclause (4), the fact that an application is made on or before 30 June and within 60 days after the expiry day, may be considered as special circumstances that warrant the consideration of the application. The effect of this clause is that although an application may be received up to 180 days after the expiry day, the CEO is precluded from renewing the licence unless the application is made within 60 days of the licence expiry up until 30 June 2017. In all other cases, applications received within 180 days must be refused by the CEO following which the applicant will be able to apply to the State Administrative Tribunal for a review of the CEO's decision.
- (6) Provides that if a managed fishery licence is renewed late the managed fishery licence is taken to have been renewed from the date of renewal and to have been of no effect from the expiry day until the day of renewal and can only be renewed until the date it will have been renewed for, had the renewal application been made before the expiry day. That is for the balance of a licensing period applying to all other authorisations under the relevant management plan.



- (7) Provides that the regulations or a management plan may provide for an additional fee by way of penalty to be payable when making an application for renewal after the expiry day but made within 180 days of expiry.

This clause is similar in effect to that of section 139 of the FRMA, except with the modification that provides that the CEO may deal with applications for renewal for up to 180 days after the expiry of the licence. Previously applications for renewal could only be made within 60 days after the expiry of a licence.

**Clause 59      Conditions on managed fishery licence**

- (1) Provides that a managed fishery licence is subject to any conditions as provided in the management plan or any conditions imposed by the CEO.
- (2) Provides that the CEO may impose conditions when granting, renewing, varying or transferring the licence or during the currency of a licence.
- (3) Provides that the CEO may vary or revoke a condition of a managed fishery licence.
- (4) Provides that the imposition, variation or revocation of a licence condition during the currency of a licence, does not take effect until the licensee has been notified of the changes, including being given notice of any right of review of the CEO's decision by the State Administrative Tribunal. A decision of the CEO to impose or vary a condition of a licence is reviewable by the State Administrative Tribunal. (However a decision to revoke a condition of a licence is not reviewable).

This clause is similar in effect to that of section 69 of the FRMA.

**Clause 60      Transfer of managed fishery licence and entitlement**

Consolidates and carries forward provisions for the transfer of licences and entitlements as contained in sections 140 and 141 of the FRMA.

- (1) Provides that on application to transfer a managed fishery licence to another person (clause 52(1)(d)) the CEO must transfer the licence unless the proposed recipient; is not a fit and proper person or does not satisfy any guidelines related to foreign interests or the applicant, or a person acting for or on behalf of the applicant may be liable to prosecution for an offence that is prescribed for the purposes of clause 209 (that is an offence that may result in the automatic suspension of the licence due to the possibility of a third black mark being recorded against the licence within a 10 year period) or the managed fishery licence is suspended or the transfer is prohibited on grounds specified in the regulations or the relevant management plan.

- (2) Provides that on application to transfer part of an entitlement under a managed fishery licence to the holder of another managed fishery licence (clause 52(1)(e)) the CEO must transfer part of the entitlement unless the applicant, or a person acting for or on behalf of the applicant, may be liable to prosecution for an offence that is prescribed for the purposes of clause 209 (that is an offence that may result in the automatic suspension of the licence due to the possibility of a third black mark being recorded against the licence within a 10 year period) or the entitlement to be transferred is under a managed fishery licence that is suspended or the entitlement relates to a licence for which a black mark has been recorded under section 209 or the transfer is prohibited on grounds specified in the regulations or the relevant management plan.
- (3) Provides that an application for the temporary transfer of all or part of an entitlement to another managed fishery licence (clause 52(1)(f)) may be approved by the CEO if the transfer is authorised under the relevant management plan or regulations.
- (4) Provides that the permanent transfer of a managed fishery licence or part of an entitlement under the managed fishery licence cannot occur within 21 days of the relevant registered security holder being advised by the CEO of the transfer application (under clause 156), unless the CEO has received prior written consent of the security holder.

This clause is similar in effect to that of sections 140 and 141 of the FRMA.

**Clause 61      Other licences do not authorise fishing in fishery**

Provides that a commercial fishing licence or any other licence provided for under the regulations do not authorise a person to undertake fishing activity or use a boat for fishing in a managed fishery. A managed fishery licence is the only licence that can authorise fishing in a managed fishery.

This clause is similar in effect to that of section 73 of the FRMA.

**Clause 62      Grant or renewal of managed fishery licence in certain marine reserves**

This clause provides that the CEO must not grant or renew a managed fishery licence in relation to an area of a marine nature reserve or an area of a marine park from which commercial fishing is excluded under section 13B of the *Conservation and Land Management Act 1984*.

This clause is similar in effect to that of section 136A(1) of the FRMA.

**Clause 63      Managed fishery licence is subject to restrictions in relation to certain marine reserves**

- (1) Provides that a managed fishery licence is subject to provisions of the *Conservation and Land Management Act 1984* ('CALM Act') that prohibits fishing in marine nature reserves (CALM Act section 13A) or fishing in a sanctuary zone area or other area of a marine park in which commercial fishing is prohibited (CALM Act 13B).

- (2) Provides that subclause (1) does not apply to a licence that was granted or renewed prior to the reservation of a marine reserve under section 13 of the CALM Act or the making of a classified waters notice under section 62 of the CALM Act. The effect of this provision is that licences issued prior to the making of a reserve or the classification of waters are capable of being used in those areas for the duration of the licensing period which is usually 12 months.

This clause is similar in effect to that of section 73A of the FRMA.

## Division 3 — Offences

### Clause 64      **Contravening management plan**

Provides penalties for contravening a management plan.

- (1) Defines ***prohibited conduct*** for the purposes of the clause.  
Provides an offence for engaging in prohibited conduct if a person intended to contravene a condition of a management plan or if the person was reckless with regard to contravening a condition of a management plan. The levels of penalty are consistent with the levels of penalty in the FRMA
- (2) Provides that a person who engages in prohibited conduct (that is not intentional or reckless) commits an offence with a lower level of penalties. It is intended that offences against clause 64(3) would be dealt with by way of infringement notices in the first instance.
- (3) Provides that if a person is charged with intentionally or recklessly contravening a management plan, then the person may be convicted of the lesser offence of engaging in prohibited conduct if the evidence does not support the intentional and reckless elements of the charge.

This clause is similar in effect to that of section 74 of the FRMA.

### Clause 65      **Contravening condition of managed fishery licence**

Provides penalties for contravening a condition of a managed fishery licence.

- (1) Defines ***prohibited conduct*** for the purposes of the clause.
- (2) Provides an offence for engaging in prohibited conduct if a person intended to contravene a condition of a managed fishery licence or if the person was reckless with regard to contravening a condition of a managed fishery licence. The levels of penalty are consistent with the levels of penalty in the FRMA.
- (3) Provides that a person who engages in prohibited conduct (that is not intentional or reckless) commits an offence with a lower level of penalties. It is intended that offences against clause 65(3) would be dealt with by way of infringement notices in the first instance;

- (4) Provides that if a person is charged with intentionally or recklessly contravening a condition of a managed fishery licence, then the person may be convicted of the lesser offence of engaging in prohibited conduct if the evidence does not support the intentional and reckless elements of the charge.

This clause is similar in effect to that of section 74 of the FRMA.

**Clause 66      Court to order reduction of entitlement in certain circumstances**

- (1) Provides that this clause applies to an entitlement that is limited by reference to a quantity of aquatic organisms that may be taken in a fishery (i.e. entitlement in a quota or output controlled managed fishery) or a quantity of fishing gear that may be used or carried (i.e. entitlement in an input controlled managed fishery) or by a period of time that a person may undertake fishing (i.e. entitlement in an input controlled fishery).
- (2) Provides that the court must order an entitlement under a managed fishery licence be reduced by an amount by which the entitlement has been exceeded if a court convicts a person of contravening a management plan (clause 64) or a condition of a managed fishery licence (clause 65) **and** the court is satisfied the person has exceeded the entitlement **and** the amount of the entitlement that was exceeded can be ascertained by the court.
- (3) Provides that for the purposes of reducing an entitlement under subclause (2) the court must round up the amount of entitlement to be reduced to the nearest unit if the entitlement was defined by reference to units and the amount by which the entitlement was exceeded is not an exact unit.
- (4) Provides that if the court orders the reduction of an entitlement under sub-section (2) the CEO must reduce the entitlement accordingly and may sell an amount of entitlement equal to the reduced entitlement to any person that satisfies the criteria specified in the management plan and in the manner specified in the plan.

This clause is similar in effect to that of section 76 of the FRMA.

## Part 5 — Aquaculture

This Part is consistent with Part 8 of the FRMA – Aquaculture. On repeal of the *Pearling Act 1990*, pearl culture activities will be regulated under this Part of the Act. Wildstock pearl fishing will be managed under an Aquatic Resource Management Strategy (ARMS).

### Division 1 — Preliminary

#### Clause 67      **Terms used**

- (1) Defines terms used in Part 5 – Aquaculture
- (2) Provides that MEMP is an abbreviation for management and environmental monitoring plan.

#### Clause 68      **Relationship between aquaculture licence and aquaculture lease**

- (1) Provides that an aquaculture lease does not authorise the use of the leased area without an aquaculture licence. This clause is similar in effect to that of section 99(1) of the FRMA.
- (2) Provides that subject to the provisions of the Act an aquaculture licence in respect to a leased area entitles the licence holder to the exclusive right to conduct activities authorised under the lease and vests in the licence holder the ownership of all aquatic organisms or pearls that are “farmed” under the licence. This clause is similar in effect to section 97(3) of the FRMA.
- (3) Provides that if an aquaculture licence is cancelled or not renewed the lease is, by virtue of this subclause, terminated. The effect of this clause is similar to that of section 99(2) of the FRMA.
- (4)(a) Provides that if an aquaculture lease terminates or expires, the aquaculture licence related to the leased area is cancelled by virtue of this subclause. The effect of this subclause is the same as that of section 99(3) of the FRMA.
- (4)(b) Provides that if an aquaculture lease terminates or expires and an aquaculture licence covers that lease area, and one or more other leased areas, then the licence is varied so that it no longer authorises activities in the lease area that was terminated or expired, by virtue of this subclause. This is a new provision that recognises that pearling licences authorise activities to be undertaken in more than one lease area.

### Division 2 — Managing aquaculture

#### Clause 69      **Undertaking aquaculture without authorisation**

- (1) Provides that in this clause **aquaculture** does not include the keeping, breeding, hatching, etc., or sale of aquatic organisms of a prescribed class for a prescribed purpose or in a prescribed area. The effect of prescribing things for the purpose of this clause is that if he person is keeping, breeding, hatching, etc, that subject of these regulations is that they are not required to hold an aquaculture licence to conduct the activities. Examples include growing yabbies in farm dams and keeping aquarium fish for hobby purposes or in a pet shop. This clause is similar in effect to that of the relevant provisions of section 91 of the FRMA.

- (2) Creates an offence for undertaking aquaculture without an aquaculture licence or temporary aquaculture permit. This clause is similar in effect to section 90 of the FRMA and the penalties are set at the same level as in section of the FRMA.

**Clause 70      Regulations about aquaculture**

Provides a general regulation making power relating to aquaculture including for the sale or purchase of aquatic organisms taken in or from waters on private land and regulations about aquaculture leases including the subdivision, subletting, amalgamation and transfer of leases by the Minister.

**Clause 71      CEO's powers to reduce risk of accidental introduction of declared organisms into WA waters**

- (1) Defines **intervene** for the purposes of this clause and provides that intervene in relation to aquatic organisms includes to inspect, seize and destroy aquatic organisms.
- (2) Provides that the CEO may direct a compliance officer to inspect, seize and destroy (intervene) an aquatic organism being kept for which an aquaculture licence is not required and in the circumstances the intervention will or could minimise the risk of the accidental introduction of declared organisms in WA waters. Relevantly, clause 99 of this bill provides that a declared organism is an organism that has been declared by the Minister because there are reasonable grounds for believing that the organism has or may have an adverse impact on the aquatic environment or part of the aquatic environment in an area.

This clause is similar in effect to that of section 103A of the FRMA.

**Division 3 — Developing aquaculture**

**Clause 72      Minister may declare zones for aquaculture**

Enables the Minister to set aside suitable areas of marine waters for specified types of aquaculture in order to provide better security for the development of the industry, and reduce the lead time involved in the assessment of multiple separate applications for leases.

- (1) Enables the Minister to declare the zones for aquaculture in WA waters, other than inland waters.
- (2) Provides that the Minister must not make a declaration within the limits of the State or coastal waters (i.e. the 3 nautical miles State limit) unless the “Minister for Lands” has agreed to the declaration and the Minister for Fisheries has consulted with the CALM Minister.
- (3) Provides that a type of aquaculture may be specified by reference to the species to be farmed or the activities that may be carried out.
- (4) Provides that a notice declaring a zone for aquaculture is subsidiary legislation for the purposes of the *Interpretation Act 1984* and is capable of disallowance.

**Clause 73      Minister may offer area in aquaculture zone for lease**

Provides that the Minister may offer leases within an aquaculture zone by

means of public auction or tender, ballot or private treaty.

**Clause 74      Minister's powers as to aquaculture facilities**

- (1) Provides that the Minister may establish or manage aquaculture facilities for community or commercial purposes, or arrange for such facilities to be managed or used for community or commercial purposes, or arrange for other persons to establish and manage facilities on land owned by the Minister or under any reserve for which the Minister is responsible through a land management order made under section 46 of the *Land Administration Act 1997*.
- (2) Enables the Minister to do all things convenient or necessary in relation to the establishment and management of aquaculture facilities including acquiring land or leases and issuing licences, constructing or erecting buildings or undertaking works associated with the facility, making land available for others undertaking farming and related activities, providing advisory or administrative services in relation to the aquaculture industry and receiving payment in respect to the provision of services or work undertaken by or on behalf of the Minister.
- (3) Provides that subclause (2) does not operate to give the Minister any power in relation to property that is inconsistent with the terms of any reserve or management order made under the *Land Administration Act 1997* or any lease or other instrument by which the Minister holds that property.

This clause is similar in effect to the relevant parts of section 101A of the FRMA, which enable the Minister to establish and manage aquaculture facilities.

**Division 4 — Aquaculture licences**

This division revises and consolidates provisions for the issue of aquaculture licences previously established under Parts 8 and 13 of the FRMA and Parts 2 and 3 of the Pearling Act.

**Clause 75      Application for grant or renewal of aquaculture licence**

- (1) Provides that a person may apply to the CEO for the grant, renewal, variation or transfer of an aquaculture licence.
- (2) An application must be made in the approved form, be accompanied by the prescribed fee for grant or renewal, be accompanied by a management and environmental management plan (MEMP) that will identify how the applicant will manage risks to the environment and public safety relating to the aquaculture activity and be accompanied by any other information the CEO reasonably requires to consider the application.
- (3) Specifies matters that may be contained in a MEMP including the species to be farmed, the quantity to be farmed, the area to be farmed, stocking densities, water quality including discharge water quality, disease testing and relevant response protocols, environmental monitoring and relevant response protocols and audit mechanisms for the MEMP.

- (4) Provides that the CEO may exempt an applicant from the requirement to prepare a MEMP if the application relates to the farming of prescribed aquatic organisms on private land.

This clause is similar in effect to that of section 92A of the FRMA.

**Clause 76      Further information**

- (1) Provides that the CEO may request an applicant to provide further information in respect to an application and require that the further information be verified by a statutory declaration.
- (2) Provides that the CEO may specify a reasonable timeframe for the provision of the further information.
- (3) Provides that the CEO may refuse to consider an application if an applicant does not respond within the timeframe specified or within a reasonable time where no timeframe is specified.

This clause is similar in effect to that of section 135 of the FRMA.

**Clause 77      Grant of aquaculture licence**

- (1) Provides that subject to clause 85 (which provides restrictions in relation to the grant and renewal of aquaculture licences in certain marine reserves) the CEO may grant an aquaculture licence if the CEO is satisfied that the applicant is a fit and proper person and has or will have appropriate tenure over the land where the aquaculture activities are to be conducted, the applicant satisfies any guidelines relating to foreign persons in respect to aquaculture, the activities are unlikely to adversely affect other aquatic organisms or the aquatic environment, that the approval of all other relevant authorities has been obtained and that it is in the better interests of the State and the community to grant the licence.
- (2) Provides that the CEO may seek the advice as to whether other relevant authorities referred to in subclause (1)(e) have approved the activities.
- (3) Provides that an aquaculture licence is not personal property for the purposes of the *Personal Property Securities Act 2009* (Cth).

This clause is similar in effect to that of section 92 of the FRMA.

**Clause 78      Form of aquaculture licence**

Provides that an aquaculture licence is to be issued in an approved form.

**Clause 79      CEO to publish notice of certain decisions relating to aquaculture licences**

This clause is similar in effect to section 148 of the FRMA insofar as it relates to an application to grant, vary or transfer an aquaculture licence and section 23(8) of the Pearling Act, insofar as it relates to the granting of a pearling licence or a hatchery licence, whereby the CEO's decisions are publicly advertised and affected persons are afforded an opportunity to apply to the State Administrative Tribunal for a review of the CEO's decision.

- (1) Provides that before giving effect to a decision to grant, vary or transfer an aquaculture licence, the CEO must cause notice of the decision to be published in a newspaper or fishing magazine circulating generally in the



State and allow sufficient time for any affected person to make an application under Part 9 for a review of the decision by the State Administrative Tribunal.

- (2) Provides that the notice of the decision must contain details of the decision and advise an affected person may apply under clause 147 to apply to the State Administrative Tribunal for a review of the decision.

**Clause 80      Effect of aquaculture licence**

- (1) Provides that subject to this Act, the holder of an aquaculture licence or a person acting on behalf of the holder, may carry out specified aquaculture activities in a specified area. The effect of this subclause is similar to that of section 92(2) of the FRMA.
- (2) Provides that the aquaculture activities authorised by the licence may be limited by reference to matters including the species of aquatic organisms to be farmed, the quantity or type of gear to be used, an area of land or waters.
- (3) Provides that an aquaculture licence is of no effect when a condition of the licence is being contravened or when the licence is suspended. This subclause is similar in effect to that of section 137 of the FRMA.

**Clause 81      Duration of aquaculture licence**

- (1) Provides that an aquaculture licence has effect from the day that it was granted or renewed.
- (2) Provides that an aquaculture licence remains in force for the period of 12 months or such other period as is specified in the licence, unless cancelled sooner.

This clause is similar in effect to section 93 of the FRMA.

**Clause 82      Renewal of aquaculture licence**

Provides that subject to clauses 85 (relating to the grant or renewal of aquaculture licences in certain marine reserves) and clause 134 (relating to the suspension, non-renewal and cancellation of authorisations) the CEO must renew an aquaculture licence if the application is received more than 30 days prior to the day on which the licence expires. The clause further provides the CEO with discretion as to whether to renew an aquaculture licence if the application is made within 30 days of a licence expiring. The intention of this clause is to encourage licensees to make application for the renewal of their licences in sufficient time to enable the renewals to be processed and a new licence to be issued prior to the expiry of the existing licence, so that at all times the aquaculture farming operation will be the subject of a current licence.

**Clause 83      Conditions on aquaculture licences**

- (1) Provides that an aquaculture licence may be subject to conditions including a condition that the licence holder has appropriate tenure over the land or waters to which the licence applies (similar to section 92(1)(ba) of the FRMA), any prescribed conditions, any requirements set out in the MEMP or any conditions prescribed by the CEO.
- (2) Provides that the CEO may impose conditions when granting, renewing, varying or transferring the licence or during the currency of a licence.
- (3) Provides that the CEO may vary or revoke a condition of an aquaculture licence.

- (4) Provides that the imposition, variation or revocation of a licence condition during the currency of a licence, does not take effect until the licensee has been notified of the changes, including being given notice of any right of review of the CEO's decision by the State Administrative Tribunal. A decision of the CEO to impose or vary a condition of a licence is reviewable by the State Administrative Tribunal. (However a decision to revoke a condition of a licence is not reviewable).

**Clause 84      Transfer of aquaculture licence**

- (1) Provides that on application the CEO must transfer an aquaculture licence to another person unless the CEO is satisfied the person is not a fit and proper person, does not have or will not have appropriate tenure over the land or waters to which the licence relates, does not satisfy guidelines related to foreign interests or the transfer is prohibited on prescribed grounds.
- (2) Provides that the transfer of an aquaculture licence cannot occur within 21 days of the relevant registered security holder being advised by the CEO of the transfer application (under clause 156), unless the CEO has received prior written consent of the security holder.

**Clause 85      Grant or renewal of licence in certain marine reserves**

This provision provides restrictions on the grant or renewal of aquaculture licences in marine reserves established under the *Conservation and Land Management Act 1984*.

This clause is similar in effect to section 94 of the FRMA.

**Clause 86      Contravening licence**

This clause creates an offence for contravening a condition of an aquaculture licence with a similar level of penalty as currently provided in the FRMA.

**Clause 87      Temporary aquaculture permits**

Provides for the grant of temporary aquaculture permits. Generally this would apply where an emergency has made the original site untenable for a period of time. Temporary aquaculture permits cannot be granted for more than 12 months. If circumstances are such that it is not possible to return to the vacated site, there is nothing that would prevent an application to be made for an aquaculture licence for the site that is covered by the temporary aquaculture permit.

This clause is similar in effect to section 97B of the FRMA.

## **Division 5 — Aquaculture leases**

This Division consolidates lease provisions for the aquaculture and pearling industries currently provided in the FRMA and the Pearling Act.

### **Clause 88 Grant or renewal of aquaculture lease**

- (1) Provides that subject to clause 93 (relating to the grant or renewal of leases in certain marine reserves) the Minister may grant or renew an aquaculture lease if the Minister is satisfied that the applicant is a fit and proper person, will make or has made effective use of the lease area for aquaculture purposes, that the activities in the lease area are unlikely to adversely affect other aquatic organisms or the marine environment, that it is in the best interests of the State or community and the Minister is satisfied about other matters prescribed for the purposes of this subclause.
- (2) Provides that the Minister must not grant a lease over an area of land or a lease over an area of land and waters adjacent to that land unless the area is vested in the Minister for the purposes of aquaculture.
- (3) Provides that the Minister must publish a notice in the Gazette when a lease is granted under this clause.

This clause is similar in effect to section 97 of the FRMA.

### **Clause 89 Effect of aquaculture lease**

Provides that an aquaculture lease authorises the leaseholder or persons acting on the leaseholders behalf to occupy and use the lease area for aquaculture purposes.

### **Clause 90 Duration of aquaculture lease**

- (1) Provides that an aquaculture lease may be granted for an initial term up to 21 years.
- (2) Provides that the lease may be renewed by the Minister for further periods of up to 21 years, subject to clause 93 (restrictions regarding the renewal of leases in certain marine reserves established under the *Conservation and Land Management Act 1984*).

This clause is similar in effect to section 97(4) of the FRMA.

### **Clause 91 Conditions of aquaculture lease**

- (1) Provides that an aquaculture lease is subject to conditions including a condition that the provisions on the lease are complied with, any prescribed conditions and any conditions imposed by the Minister under this clause.
- (2) Provides that the Minister may impose conditions when granting, renewing or varying a lease or during the currency of the lease.
- (3) Provides that the CEO may vary or revoke such conditions or provides that conditions that may be imposed, may include but are not limited to, a requirement to pay money to the Minister, a requirement for security to be given for observance of any terms, covenants or restrictions or a requirement for the leaseholder to pay money as security in respect to the clean up or rehabilitation of a leased area under clause 96(2)(b).

- (4) Provides that the imposition, variation or revocation of a lease condition during the currency of a lease, does not take effect until the lessee has been notified of the changes, including being given notice of any right of review of the Minister's decision by the State Administrative Tribunal. A decision of the Minister to impose or vary a condition of a lease may be made to be reviewable by regulation (cl 145) by the SAT. (However a decision to revoke a condition of a lease is not reviewable).

**Clause 92      Variation of aquaculture lease**

Provides that the lease may be varied in the manner provided in the lease or by the Minister in the manner prescribed under clause 70(c) relating to aquaculture leases including the sub-division, sub-letting, amalgamation and transfer of leases by the Minister.

This clause is similar in effect to section 97(7) of the FRMA.

**Clause 93      Grant or renewal of lease in certain marine reserves**

This provision provides restrictions on the grant or renewal of aquaculture leases in marine reserves established under the *Conservation and Land Management Act 1984*.

This clause is similar in effect to the combined effect of sections 98 and 98A of the FRMA.

**Clause 94      Contravening conditions of aquaculture lease**

- (1) Defines the terms used in this clause.
- (2) Provides that an aquaculture lessee who engages in prohibited conduct (i.e. contravenes a condition of an aquatic farm lease) commits an offence.
- (3) Provides that the holder of an aquaculture licence related to the lease area commits an offence if a condition of an aquaculture lease is contravened, in the way that the contravention would have resulted in the lessee committing an offence had the lessee contravened the condition.
- (4) Provides that where an aquaculture licence is jointly owned and one of the owners commits an offence against subclause (3) each of the other owners is taken to have also committed the offence.
- (5) Provides that if a licence holder commits an offence by engaging in prohibited conduct, the holder of the lease to which the licence relates is also taken to have committed the offence.
- (6) Provides that where offences have been committed in relation to a jointly owned farm lease, each of the holders of the lease is taken to have committed the same offence.
- (7) Provides penalties for offences against this clause at a similar level to those existing in the FRMA.
- (8) Provides that it is a defence for a charge arising out of subclauses (4), (5) or (6) above for the person charged to prove that the prohibited conduct was engaged in without the consent or connivance of the person charged and that the person took all reasonable measures to prevent the prohibited conduct being engaged in.
- (9) Provides that a person may be charged and convicted of an offence under subclause (4), (5) or (6) whether or not another person has been charged or convicted of the same offence.

This clause is similar in effect to that of section 100A of the FRMA.

**Clause 95      Termination of aquaculture lease**

- (1) Provides that the Minister may, by providing written notice to the lessee, terminate an aquaculture lease if, in the Minister's opinion, the lease is no longer being used for the purposes for which it was granted or the lease is being used for purposes other than the purposes for which it was granted.
- (2) Provides that an aquaculture lease may also be terminated on any other grounds, and in the manner, provided for in the lease.

This clause is similar in effect to sections 100(1) and (2) of the FRMA.

**Clause 96      Clean-up and rehabilitation of former leased area**

- (1) Provides that if an aquaculture lease terminates or expires, the CEO may direct the leaseholder to clean up and rehabilitate the former leased area.
- (2) Provides that if the former leaseholder does not comply with the CEO's direction, the CEO may clean up and rehabilitate the area and recover the costs from the former lessee.

Subclauses (1) and (2) are similar in effect to that of section 101 of the FRMA.

- (3) Provides that any structure, equipment or aquatic organisms that have not been removed from the former lease area within 3 months of the lease ceasing to exist are, by virtue of this clause, forfeited to the State.

This subclause is similar in effect to that of section 100(3) of the FRMA.

## Part 6 — Aquatic biosecurity

This Part deals with aquatic biosecurity and enables measures taken to protect the state's fishing, aquaculture or related commercial activities, the aquatic environment and economy and people's health from the risks posed by harmful aquatic organisms.

It will enable the State Government to meet its legislative obligations under the National Environmental Biosecurity Response Agreement (NEBRA), the first deliverable of the Intergovernmental Agreement on Biosecurity (IGAB).

It has been shown that the most cost-effective and efficient means of managing biosecurity is to focus on the prevention. This Part provides the necessary powers to prevent serious aquatic pests and diseases from entering the state and becoming established, and to minimise the spread and impact of any that are already present within the state.

The central mechanism under the Bill is the declaration of an organism as a declared organism according to whether or not it poses a threat to the state's fishing, aquaculture or related commercial activities, the aquatic environment and economy and people's health.

The penalties in this part of the Bill are generally consistent with those in the *Biosecurity and Agriculture Management Act 2007*.

### Division 1 — Preliminary

#### **Clause 97      Application of Part**

Provides that this part applies despite the provisions of the *Biosecurity and Agriculture Management Act 2007*.

#### **Clause 98      Terms used**

Defines the terms used in this Part.

### Division 2 — Regulations relating to biosecurity

This Division establishes the ability to “declare” organisms and create regulations in relation to the import and export, keeping, breeding or culturing of organisms, the movement and use of boats and equipment considered a biosecurity risk, and the movement of organisms or potential “carriers” into or within the State.

#### **Clause 99      Declared organisms**

(1) Provides that the Minister may declare an organism to be a declared organism for an area if there are reasonable grounds for believing that the organism has or may have an adverse impact on another aquatic organism in the area, a human being in the aquatic environment in the area, the aquatic environment in the area or part of it, fishing, aquaculture or other commercial activities being carried out in the aquatic environment of the area or may have an adverse effect on any of those things listed above if the organism were present in the area in greater numbers or to a greater extent.

- (2) Provides that the declaration may assign the declared organism to a category provided for in the regulations.
- (3) Provides that the declaration may state that the declared organism is a reportable declared organism for the purposes of clause 105, whereby persons who find or suspect the presence of a reportable declared organism, commit an offence if they do not report the presence or suspected presence to the CEO.
- (4) Provides that an organism may be declared for the whole or part of the State or WA waters.

**Clause 100      High impact organisms**

Provides that the regulations may prescribe a declared organism to be a high impact organism, if the Minister is satisfied that the organism has the potential to severely damage the aquatic environment and the organism is not, to the knowledge of the Minister, present in the State or WA waters, or has been previously eradicated from the State or WA waters.

**Clause 101      Regulations about biosecurity**

- (1) Provides the head powers to make regulations about the following matters; the import, export or control of organisms or potential carriers that pose a biosecurity risk to the aquatic environment or part thereof, the keeping, breeding, cultivation, movement and supply of declared organisms, the entry into, movement or use within or removal from the aquatic environment of boats or equipment on or attached to boats that may pose a biosecurity risk, the movement of aquatic organisms or potential carriers into WA or WA waters or between areas of WA or WA waters and for measure to be taken to control aquatic organisms that may pose a biosecurity risk or to prevent them from entering the State or WA waters.
- (2) Provides that despite clause 263(4) (relating to penalties for offences against the regulations) regulations made for biosecurity purposes may provide for a penalty for an offence against the regulations of a fine not exceeding \$50,000 and a daily penalty of up to \$500.

**Division 3 — Aquatic biosecurity management plans**

This Division provides for the development of biosecurity management plans for areas of the State or WA waters. Plans may allow for specific practices, obligations and offences.

**Clause 102      Aquatic biosecurity management plans**

- (1) Provides that the Minister may make an aquatic biosecurity management plan for an area of the State or WA waters.
- (2) Provides that a plan may apply to the whole or part of the State and WA waters.
- (3) Provides that a plan must identify the area or areas to which it relates, set out the objectives to be achieved by the plan, set out the practices to be followed under the plan and specify the obligations that are imposed on persons or classes of persons, identified in the plan.

- (4) Provides that if a provision of an aquatic biosecurity management plan is inconsistent with a regulation the regulation prevails to the extent of the inconsistency.
- (5) Provides that an aquatic biosecurity management plan is subsidiary legislation for the purposes of the *Interpretation Act 1984* and is capable of disallowance.

**Clause 103      Consultation with affected persons**

- (1) Provides that the Minister must consult with public authorities and other persons likely to be implementing the plan, or put to expense in complying with the plan or affected by its operation.
- (2) Provides that the consultation is to be undertaken in the way the Minister considers most appropriate.

**Clause 104      Contravening aquatic biosecurity management plan**

- (1) Defines prohibited conduct for the purpose of the clause.
- (2) Provides that a person who engages in prohibited conduct commits an offence if the conduct is intentional or reckless and provides penalties.
- (3) Provides that a person who engages in prohibited conduct (that is not intentional or reckless) commits an offence with a lesser penalty.
- (4) Provides that if a person is charged with intentionally or recklessly engaging in prohibited conduct the person can be convicted of the lesser offence of engaging in prohibited conduct, if the evidence establishes that the conduct was not intentional or reckless.

**Division 4 — Offences relating to biosecurity**

This Division creates offences in relation to declared organisms. These are included in the Act, rather than in subsidiary legislation, due to the fundamental nature of the offences, and the level of penalties.

**Clause 105      Duty to report declared organism**

- (1) Defines the terms used in this clause.
- (2) Provides that a person who finds or suspects the presence of a reportable declared organism commits an offence if the person does not report the matter to the CEO or a compliance officer. A reportable declared organism is declared in the manner outlined in clause 99. Penalties are provided.
- (3) Provides that a report may be made orally or in writing, must indicate the location of the reportable declared organism or the reasons for suspecting the presence contained other relevant information within the persons knowledge, must be made within the period prescribed in the regulations or if no period is prescribed as soon as practicable after discovering the matter, must be made in accordance with the regulations (if any) and must be made in accordance with any aquatic biosecurity management plan that applies to the area.
- (4) Provides that it is a defence to a charge of not reporting a reportable declared organism for a person to prove that the person did not know or could not have been expected to know that the organism was a reportable declared organism.



**Clause 106      Import restrictions**

- (1) Provides that a person who imports an organism into a part of the State or WA waters, where the organism is a declared organism, without being authorised by the regulations commits an offence and provides for a penalty.
- (2) Provides that a person who imports a prescribed potential carrier into the State or WA waters without being authorised by the regulations to do so, commits an offence.

**Clause 107      Supply of unlawful import**

- (1) Provides that a person who supplies a declared organism or prescribed potential carrier that was imported in contravention of clause 106 commits an offence.
- (2) Provides a defence if the person proves that the person did not know or could not reasonably be expected to know that the declared organism or prescribed potential carrier was illegally imported in contravention of clause 106.

**Clause 108      Master of boat to ensure boat free of declared organisms**

Provides that the master of a boat commits an offence if the master does not take all reasonable measures, to ensure the boat is free of declared organisms when the boat enters an area where an organism is a declared organism.

**Clause 109      Dealing with declared organisms**

- (1) Defines **deal** for the purposes of this clause.
- (2) Provides that a person commits an offence if the person deals with an organism in an area where the organism is a prescribed organism without being authorised to do so by the regulations or a relevant aquatic biosecurity management plan.
- (3) Provides that the regulations of an aquatic biosecurity management plan may provide that a person must not move a declared organism or an animal, plant or other thing that is infested or infected with the declared organism.
- (4) Provides an offence for contravening a provision of a regulation or an aquatic biosecurity management plan relating to the movement of declared organisms and things infested or infected by it.

**Clause 110      Duty to control declared organism**

- (1) Defines **required control measures** for the purposes of this clause.
- (2) Provides that the owner or occupier of waters or lands who does not take the required control measures as specified in the relevant an aquatic biosecurity management plan commits an offence.
- (3) It is a defence for a person charged with not taking the required control measures to prove that the person did not know, or could not reasonably been expected to know, about the presence of the declared organism or of something infested or infected by the declared organism
- (4) Provides that if the regulations for an aquatic biosecurity management plan provide for required control measures to be taken in relation to land or waters, the regulation or management plan may provide for the CEO to carry out the required control measures and recover reasonable costs from the person who was required to take the required control measures.

## **Division 5 — Pollution in aquatic environment**

This Division carries over and expands Section 255 of the FRMA, and establishes the ability to make regulations relating to specific activities that may pollute or damage the aquatic environment.

### **Clause 111 Regulations about pollution in aquatic environment**

Provides that regulations may be made relating to carriage of firearms, explosives or noxious substances on boats, for activities that may result in any refuse or waste in waters or in relation to activities that may pollute waters.

### **Clause 112 Activities that pollute waters**

- (1) Provides the Minister may, by notice in writing served on the person, prohibit the person from undertaking any activity that in the Minister's opinion is polluting or is likely to pollute the aquatic environment.
- (2) Provides that the notice may apply generally or at specified times or in specified circumstances, remains in force until such time as is specified in the notice or where no time is specified, until it is revoked, that the notice may be varied or revoked in writing at any time by the Minister and must include notice of a right of review by the State Administrative Tribunal under clause 147 of the Bill.
- (3) Provides that a person who contravenes a notice commits an offence.
- (4) Provides that if a court convicts a person of contravening a notice, the court may order compensation to be paid for damage or loss caused as a result of the effects to an affected person. This is in addition to the penalty for contravening a notice.

## **Division 6 — Emergency powers to deal with biological threats**

This Division carries forward Part 16A of the FRMA in relation to emergency powers for the CEO to deal with biological threats and includes an offence for failing to comply with the CEO's direction.

### **Clause 113 Term used: biological threat**

Defines ***biological threat*** for the purposes of this division to mean a serious threat posed to the aquatic environment by an organism.

### **Clause 114 CEO's powers to deal with biological threats**

- (1) Provides that this clause applies where the CEO considers that it is necessary to exercise powers contained in the clause to deal with a biological threat posed by an organism.
- (2) Provides that the CEO may take or direct a person who the CEO considers responsible for the biological threat to take the steps the CEO considers appropriate to prevent an organism entering or spreading into the aquatic environment or part of the aquatic environment or to eradicate or remove the organism from an aquatic environment.
- (3) Provides that the direction may be given orally or in writing.
- (4) Provides that a person who, without reasonable excuse commits an offence, if the person fails to comply with the CEO's direction.

- (5) Provides that if a person contravenes a direction from the CEO, the CEO may take the steps specified in the direction and recover reasonable costs from the person.
- (6) Provides that the CEO must give the Minister a copy of the direction.

**Clause 115      CEO may give directions for urgent measures to control declared organisms**

- (1) Provides that where in the opinion of the CEO urgent action is necessary to control an organism, the CEO may direct a compliance officer to take the action.
- (2) Provides that the direction must specify the measure or action to be taken.
- (3) Provides that despite any other provision of this Act or another written law, a compliance officer is authorised to carry out the action in accordance with the CEO's direction.
- (4) Provides that the CEO must give the Minister a copy of the direction and a written report on the measure or action carried out.

## Part 7 — Aquatic habitat protection areas and Abrolhos Islands reserve

This part carries forward the provisions under FRMA Part 11, for the management of the Abrolhos Islands and the establishment of fish habitat protection areas.

### Division 1 — Aquatic habitat protection areas

#### Clause 116      **Application of Division to other Acts**

Provides that this division does not affect the operation of the *Mining Act 1978*, *Offshore Minerals Act 2003*, *Petroleum and Geothermal Energy Resources Act 1967*, and *Petroleum (Submerged Lands) Act 1982* and any other Act relating to minerals or petroleum, or any Government agreement as defined in the *Governments Agreements Act 1979* section 2.

This clause is similar in effect to that of section 114 of the FRMA.

#### Clause 117      **Creating aquatic habitat protection areas**

- (1) Provides that the Minister may publish a notice in the Gazette declaring a part of WA waters as an aquatic habitat protection area.
- (2) Provides that the area may be set aside for the purposes of conserving and protecting aquatic organisms, aquatic organism breeding areas, fossils of aquatic organisms or the aquatic ecosystem, the culture and propagation of aquatic organisms and management of aquatic organisms and activities related to the appreciation or observation of aquatic organisms.
- (3) Provides that an order must identify the waters that constitute the aquatic habitat protection area and specify the purpose or purposes for which the area is set aside.

This clause is similar in effect to that of section 115 of the FRMA.

#### Clause 118      **Aquatic habitat protection area not permitted in certain marine reserves**

- (1) Provides that marine reserves established under the *Conservation and Land Management Act 1984* (marine nature reserves, marine parks and marine management areas) cannot be set aside as an aquatic habitat protection area.
- (2) Provides that an aquatic habitat protection area ceases to exist if a marine reserve is created in respect of the area when the management plan for the marine reserve comes into operation.

This clause is similar in effect to that of section 116 of the FRMA.

#### Clause 119      **Determination of plan for aquatic habitat protection area**

Provides that the Minister must approve a management plan for an aquatic management protection area before an area is set aside.

This clause is similar in effect to that of section 117 of the FRMA.

**Clause 120      Notice of proposal to create aquatic habitat protection area**

- (1) Provides that not less than two months before setting aside an area as an aquatic habitat protection area, the Minister must give public notice about the proposal. The notice must contain information about the area and the purposes for which it is proposed to be set aside, advise that a draft plan for the management of the area has been prepared and where free copies can be obtained, invite persons to admit submissions on the proposal and provide at least 30 days for making submissions and specify how those submissions are to be made.
- (2) Provides that the notice of the proposal to set aside an area as an aquatic habitat protection area must be published in the Gazette and may also be published in any other manner that the Minister thinks appropriate include publishing in a newspaper circulating State wide or in a local area newspaper or by posting a notice on the Department's website.
- (3) Provides that the Minister may also adopt any other means of publicising the proposal.
- (4) Provides that a person may make submissions in respect of the proposal within the period specified in the notice.
- (5) Provides that the Minister must consider any submissions received and may revise the proposed order to the extent that the Minister considers appropriate.

This clause is similar in effect to that of section 118 of the FRMA.

**Clause 121      Control and management of aquatic habitat protection areas**

- (1) Provides the Minister may by notice published in the Gazette, vest the control and management of the aquatic management protection area, or part of it, in a body corporate recognised for that purpose under clause 221 (enables the Minister to recognise a body corporate as suitable to carry out the control and management of an aquatic habitat protection area or part of an aquatic habitat protection area).
- (2) Provides that the notice must specify the area to which the notice relates, specify the body corporate vested with the control and management of the area, specify the date on which the vesting takes effect and the period for which it will be in effect, specify the purpose for which the control and management is vested and include the notice of the agreement referred to in subclause 3 below.
- (3) Provides that if the Minister vests the control and management of an aquatic habitat protection area in a body corporate referred to above, the Minister must enter into an agreement with the body corporate under clause 222 (which provides for the Minister to enter into an agreement).

This clause is similar in effect to that of section 119 of the FRMA.

**Clause 122      Regulations about aquatic habitat protection areas**

Provides that regulations may be made in relation to any matter necessary for the protection of management of an aquatic habitat protection area including regulating entry by persons, vehicles or other things, regulating activities within the area, regulating moorings, jetties, rafts and other construction in the area, the use of land or facilities in the area and fees and charges relating to the area.

This clause is similar in effect to that of section 120 of the FRMA.

## **Division 2 — Abrolhos Islands reserve**

This Division enables the management of the Abrolhos Islands reserve (reserve no. 20253 being a Class A reserve for the purposes of the *Land Administration Act 1997*).

### **Clause 123      Application of Parks and Reserves Act 1895 to reserve**

Enables various sections of the *Parks and Reserves Act 1895* to be applied to the management of to the Abrolhos Islands reserve.

This clause is similar in effect to that of section 123 of the FRMA.

### **Clause 124      Regulations about reserve**

Provides head powers for the making of regulations related to the Abrolhos Islands reserve.

This clause is a consolidated redraft of section 121 of the FRMA and has the same effect as that section.

## **Part 8 — Regulation of various activities**

### **Division 1 — General regulation of activities**

Enables the making of orders and regulations about aquatic organisms and activities related to aquatic organisms including fishing activities. Division 1 is a redraft and consolidation of Divisions 1 and 2 of Part 5 of the FRMA and has a similar effect.

#### **Clause 125 Minister may prohibit activities**

- (1) Defines terms used in this clause.
- (2) Provides that the Minister may, by order published in the Gazette, prohibit persons or a specified class of persons from undertaking a specified activity in a specified aquatic environment or in relation to an aquatic organism that is prescribed for the purposes of this clause to be a protected aquatic organism.
- (3) Provides that the order may prohibit the activity at all times or during any specified period.
- (4) Provides that a person commits an offence if they contravene an order.
- (5) Provides that a person in possession of any aquatic organism taken in contravention of an order, commits an offence.
- (6) Provides a defence for a person to prove that the person did not know or could not reasonably be expected to know that the aquatic organism had been taken in contravention of an order.
- (7) Provides a person in possession of fishing gear or any other thing intended to be used to undertake an activity that is prohibited by an order commits an offence.
- (8) Provides that an order made under this clause is subsidiary legislation for the purposes of the *Interpretation Act 1984* and is capable of disallowance.

#### **Clause 126 Regulations restricting take or possession of aquatic organisms**

Provides a general regulation making power in relation to the quantity of an aquatic organism that a person may take or have in the person's possession.

### **Division 2 — Trafficking in aquatic organisms**

This division is identical in effect to the FRMA, Part 15A – Fish Trafficking.

**Clause 127      Terms used**

Defines terms for the purposes of this Division.

**Clause 128      Trafficking in aquatic organisms defined**

- (1) Provides that a person traffics in aquatic organisms by dealing with aquatic organisms in any of the following ways; taking, being in possession or control or selling or purchasing aquatic organisms, delivering aquatic organisms to another person or receiving them from another person, processing or transporting aquatic organisms, etc..
- (2) Provides that a person traffics in aquatic organisms if person does anything in relation the dealing in an aquatic organism (as described in subclause (1) above) by controlling, directing or supervising the dealing, providing facilities, financing or any other thing to enable of facilitate the dealing, entering into an agreement relating to the dealing or being knowingly concerned with the dealing.

This clause is similar in effect to that of section 154 of the FRMA.

**Clause 129      Trafficking in commercial quantity of priority aquatic organisms**

Provides an offence for trafficking in a commercial quantity of priority aquatic organisms without being authorised under this Act. Commercial quantity in relation to this clause means a quantity in excess of the quantity or value prescribed in the regulations and a priority aquatic organism is an aquatic organism that is declared in the regulations to be a priority species or aquatic organism belonging to a group of two or more species that is declared by the regulations to be a priority group of species.

This clause is similar in effect to that of section 155 of the FRMA.

**Clause 130      Regulations about trafficking in aquatic organisms**

Provides for regulation making powers about methods for determining commercial quantities of priority aquatic organisms or the exemption of persons from the application of clause 129 above.

This clause is similar in effect to that of section 156 of the FRMA.



### **Division 3 — Licensing of activities and equipment**

This Division provides similar head powers to those contained in the FRMA, section 257 and the relevant sub-sections of section 136A.

#### **Clause 131      Regulations about licensing**

Enables the making of regulations for the licensing of a range of activities for which regulations can currently be made under section 257 of the FRMA.

#### **Clause 132      Licensing of activities in certain marine reserves**

- (1) Defines ***fishing activity*** for the purposes of this clause.
- (2) Provides that regulations may not make provision for licensing that would authorise a person to undertake fishing activity in an area of a marine nature reserve or an area of a marine park from which fishing activity is excluded under section 13B of the *Conservation and Land Management Act 1984*.
- (3) Provides that subclause (2) does not affect the validity of a licence issued or renewed that has effect in an area that subsequently becomes an area of a marine nature reserve or marine park from which fishing is excluded prior to the reservation of that area.
- (4) Provides that subclause (2) does not prevent the making of regulations that would allow the renewal of the licence for the remainder of the area, if part of the area subsequently becomes a marine nature reserve or area of a marine park from which fishing activity is excluded.

This clause is similar in effect to that of section 136A of the FRMA.

### **Division 4 — Variation, suspension, non-renewal, cancellation and surrender of authorisations**

This Division is similar in effect to the relevant provisions of Part 13 of the FRMA relating to the variation, suspension, non-renewal, cancellation and surrender of authorisations.

#### **Clause 133      Varying authorisations**

- (1) Provides that the CEO may vary an authorisation where the holder applies to the CEO for a variation or it is necessary to correct an error in the authorisation or to give effect to the provisions of the Act or a decision of the State Administrative Tribunal.
- (2) Provides that subject to subclause (3) below, a person applying for a variation is not entitled to that variation as of right.
- (3) Provides that the CEO must vary an authorisation if a person applies and the management plan or relevant ARUP specifies criteria for the variation of an authorisation of that type and the CEO is satisfied that the criteria have been met.
- (4) Provides that the variation of an authorisation cannot occur within 21 days of the relevant registered security holder being advised by the CEO of the variation application (under clause 156), unless the CEO has received prior written consent of the security holder.

This clause is similar in effect to that of section 142 of the FRMA.

**Clause 134      Suspension, non-renewal and cancellation of authorisations**

- (1) Provides that the CEO may by written notice given to the holder of an authorisation suspend for any period, refuse to renew or cancel the authorisation if the holder or a person acting for or on the holder's behalf, has been convicted of an offence against this Act, any other written law relating to fishing, aquaculture or fishing tourism or aquatic eco-tourism or a law of any other Australian jurisdiction relating to the management or regulation of aquatic resources or if a condition of the authorisation has been or is being contravened, if the person no longer satisfies fit and proper person requirements, if the authorisation was obtained by fraud or misrepresentation, if the holder has failed to keep or lodge required returns, or made an entry or statement in a record that is false or misleading in a material way, or if the holder does not satisfy guidelines relating to foreign interests or if any fee, charge or levy payable in respect to the authorisation or the Act is outstanding or on any other grounds specified in the relevant management plan or ARUP.
- (2) Provides that the fact that the authorisation has not been cancelled or suspended by a court under clause 208 or suspended by the CEO under clause 209, does not prevent the CEO from cancelling, suspending or refusing to renew the authorisation under this clause.

This clause is similar in effect to that of section 143 of the FRMA.

**Clause 135      Voluntary surrender of authorisation**

- (1) Provides that the holder of an authorisation may, by notice in writing given to the CEO, advise of an intention to surrender the authorisation.
- (2) Provides that the authorisation ceases to have effect 28 days after the notice was given to the CEO.
- (3) Provides that the person may withdraw the notice within 21 days of it being given to the CEO.

This clause is similar in effect to that of section 144 of the FRMA.

**Clause 136      CEO may require return of authorisation**

- (1) Provides that the CEO may require a person to return an authorisation within a specified period if the authorisation has been cancelled, suspended or expires without being renewed or a person has surrendered the authorisation or it is necessary to record or endorse anything on the authorisation or to vary the authorisation.
- (2) Creates an offence for failing to comply with a request to return the authorisation without a reasonable excuse.

This clause is similar in effect to that of section 145 of the FRMA.

## **Division 5 — Miscellaneous offences**

### **Clause 137 Explosives and noxious substances not to be used**

- (1) Creates an offence for a person who without lawful excuse uses or attempts to use explosives or noxious substances in WA waters where their use could reasonably be expected to result in the taking of aquatic organisms.
- (2) Provides that if a court convicts a person of an offence against subclause (1), the court may require the person to pay compensation for any loss or damage caused to any person in addition to the penalty imposed by the court.

This clause is similar in effect to that of section 170 of the FRMA.

### **Clause 138 Impeding lawful fishing activities**

- (1) Creates an offence for impeding lawful fishing activity.
- (2) Provides that a person impedes lawful fishing activity if the person hinders or prevents a person from lawfully undertaking fishing or aquaculture or places or leaves anything that obstructs the use of fishing nets in an area of waters that are regularly or intermittently used for netting.
- (3) Provides that if the court convicts a person of the offence of impeding lawful fishing activities, the court may order the person to pay compensation for any loss or damage caused by the offence in addition to any penalty imposed by the court.

This clause is similar in effect to that of section 171 of the FRMA.

### **Clause 139 Interfering with fishing or aquaculture gear**

- (1) Provides that a person without reasonable excuse, who interferes with fishing or aquaculture gear commits an offence.
- (2) Provides that a person interferes with fishing or aquaculture gear if the person removes aquatic organisms from the gear or otherwise interferes with a fishing operation or fishing or aquaculture gear, removes fishing or aquaculture gear from where it is being used, appropriates fishing or aquaculture gear for personal use or damages or otherwise modifies the gear.

This clause builds on section 172 of the FRMA by creating additional offences for damaging, modifying or appropriating fishing or aquaculture gear for personal use.

### **Clause 140 Purchase or sale of aquatic organisms taken unlawfully**

- (1) Creates an offence for purchasing or selling aquatic organisms taken in contravention of the Act.
- (2) Provides a defence to a charge of purchasing or selling aquatic organisms taken in contravention of the Act, if the person can prove that at the time of the alleged offence the person did not know or could not have been reasonably expected to know, that the aquatic organism was taken in contravention of the Act and if the aquatic organisms were purchased for a commercial purpose that they were purchased from a person who's usual business was the selling of aquatic organisms in the ordinary course of that business.

This clause is similar in effect to that of section 173 of the FRMA.

**Clause 141      Use of foreign boat for certain activities**

- (1) Creates an offence if a person uses a foreign boat for an aquatic resource activity in WA waters.
- (2) Provides that a person uses a foreign boat for an aquatic resource activity if the person uses a foreign boat for fishing or the processing, storing or carrying of aquatic organisms that have been taken by use of that boat or another boat.
- (3) Provides a defence to a charge of using a foreign boat in WA waters for an aquatic resource activity for the person charged to prove that at the time of the alleged offence that the boat was licenced for the relevant purpose in the area where the offence is alleged to have been committed.

This clause is similar in effect to that of section 174 of the FRMA.

**Clause 142      Possession of foreign boat equipped with fishing gear**

- (1) Creates an offence to be in possession of or in charge of a foreign boat equipped with fishing gear in WA waters.
- (2) Provides a defence to the charge of having a foreign boat equipped with fishing gear in WA waters to prove that at the time of the offence, that there was an authorisation in force that authorised the use of the boat for fishing in that area or that the boats fishing gear was stored and secured and the boat was travelling by the shortest practicable route to or from a port in the State or from a point outside WA waters to another point outside those waters.

This clause is similar in effect to that of section 175 of the FRMA.

**Clause 143      Mandatory maximum sentences for individuals convicted of third or subsequent offences under s. 141 or 142**

- (1) Provides that a court sentencing an individual that has been convicted of a third or subsequent offence for using a foreign boat for fishing or possessing a foreign fishing boat equipped with fishing gear must impose both the maximum fine and the maximum term of imprisonment, despite any other written law but subject to section 46(5)(a) of the *Young Offenders Act 1994* which provides that a person under 18 years old (a young offender) cannot be subjected to the maximum penalty.
- (2) Provides that for the purpose of determining whether a person has been convicted of a third or subsequent offence a conviction for using a foreign boat for aquatic resource activity is taken to be a conviction for being in possession of a foreign boat equipped with fishing gear and a conviction of being in possession of a foreign boat equipped with fishing gear is taken to be a conviction of using a foreign boat for an aquatic resource activity.

This clause is similar in effect to that of section 175A of the FRMA.

**Clause 144      Interfering with aquatic organisms to prevent identification**

- (1) Creates an offence for interfering with an aquatic organism to prevent its identification.
- (2) Provides that a person interferes with an aquatic organism to prevent its identification if the person alters, mutilates or disfigures the aquatic organism, with the intention of preventing its identification as a component of a managed aquatic resource, a protected aquatic organism or a declared organism or alters, mutilates or disfigures any device attached to or marking on an aquatic organism with the intention of preventing its identification.

This clause is similar in effect to that of section 49 of the FRMA.

## Part 9 — Review

This Part carries forward, consolidates and revises provisions under FRMA Part 14, for the review of licensing and other decisions, by the State Administrative Tribunal.

### **Clause 145      Reviewable decisions**

Defines **reviewable decision** and **affected person** for the purposes of Part 9, with reference to the Table.

### **Clause 146      CEO to notify persons of reviewable decisions**

- (1) Provides that before giving effect to a range of reviewable decisions relating to the CEO's licensing functions, the CEO must give each affected person notice of the decision and allow sufficient time for the person to make application to the State Administrative Tribunal (SAT) and for the review to be determined. In effect, other than a decision under item 5 (to grant, vary or transfer an aquaculture licence) or item 8 (Ministerial notice prohibiting activities that may pollute waters), the decision cannot be implemented by the CEO until any review application has been determined by the SAT. Persons affected by a decision under Item 5 of item 8 may still apply for a review but the decision can have effect immediately, subject to the outcome of any review.
- (2) Provides that a notice under subclause (1) give details of the decision and the reasons for it and state that an affected person may apply to the SAT for a review of the decision.

This clause is similar in effect to that of section 147 of the FRMA.

### **Clause 147      Review by SAT of reviewable decisions**

- (1) Provides that an affected person may apply to the SAT for a review of a reviewable decision.
- (2) Provides that an affected person applying for a review of a decision must provide the CEO with a copy of the application for review on the day on which it is lodged with the SAT.

This clause is similar in effect to that of section 149 of the FRMA.

### **Clause 148      CEO to give notice of when reviewable decision has effect**

- (1) Provides that when the CEO gives effect to a reviewable decision, the CEO must give notice in accordance with this section.
- (2) Provides that if a reviewable decision relates to an authorisation other than an aquaculture licence, notice must be given to each person who was given notice under clause 146(1) in writing or in such other manner as is prescribed.
- (3) Provides that if the reviewable decision relates to an aquaculture licence notice must be given in the same manner as the notice of the decision was given under clause 79(1)(a) ( i.e. causing notice of the decision to be published in a newspaper or fishing magazine circulating generally in the State or in the prescribed manner).

This clause is similar in effect to that of section 151 of the FRMA.

**Clause 149      SAT to give notice of decision on review**

- (1) Provides that when the SAT determines a review application the SAT must give notice of its decisions and the reasons for it in accordance with this clause.
- (2) Provides that if the application relates to a reviewable decision in respect of an authorisation other than an aquaculture licence, notice must be given to each person who was advised of their right to make an application to SAT for a review of the decision, in writing or in such other manner as prescribed.
- (3) Provides that if the application relates to the review of a decision in respect to an aquaculture licence, the SAT must give notice of its decision in a newspaper or fishing magazine circulating generally throughout the State or in other such manner as is prescribed.

This clause is similar in effect to that of section 152 of the FRMA

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## Part 10 — Register

This part carries forward and amends FRMA, Part 12, extending provisions for the CEO to register various forms of fishing access right and licence that will be created under the Bill. These registers form the basis for keeping track of transactions and variations associated with resource shares, catch entitlements, and licences, and underpin the management systems for aquatic resources established under the ARMS and ARUP provisions in Part 3.

### Division 1 — General

#### **Clause 150 Register of registrable interests**

- (1) Provides that the CEO must keep a register of registrable interests in such manner and form as the CEO determines.
- (2) Provides that the register must set out the following details in respect of each registrable interest; the nature of the registrable interest, the name and business address of the person who holds the interest, details in relation to surety for an authorisation, details relating to any security interest in the registrable interest, details of any convictions and any other prescribed details.

This clause is similar to that of the combined effect of sections 125(1), 125(2) and 126 of the FRMA.

#### **Clause 151 Inspection of register**

- (1) Provides that the register must be available for public inspection subject to payment of the prescribed fee and during prescribed hours and at a prescribed place. It is a practice of the Department to have the register available for public inspection at the Department's Head Office during normal office hours.

This clause is similar in effect to that of section 125(3) of the FRMA.

- (2) Provides a person may upon application to the CEO, accompanied by the prescribed fee, obtain a copy of an entry in or extract from the register.

This clause is similar in effect to that of section 125(4) of the FRMA.

- (3) Provides access to the register in electronic form subject to the payment of the prescribed fee.

This clause is similar in effect to that of section 125(5) of the FRMA.

- (4) Provides that details of recreational fishing licences must not be made available to the public.

This clause is similar in effect to that of section 125(6) of the FRMA.

#### **Clause 152 Regulations about register**

Provides that regulations may be made to prescribed fees and charges payable for things done under this part and for any other matter related to the register.

This clause is similar in effect to that of section 134 of the FRMA.



## **Division 2 — Security interest in registrable interest**

### **Clause 153      Application to have security interest in certain registrable interests noted**

- (1) Provides that the holder of a registrable interest of a type set out in the Table, may apply to the CEO to note on the register that a specified person has a security interest.
- (2) Provides an application must be made in an approved form and be accompanied by the prescribed fee, if any.

This clause is similar in effect to that of section 127 of the FRMA.

### **Clause 154      Notation of security interest**

- (1) Provides that the CEO must make a notation on the register in accordance with an application received.
- (2) Provides that the security interest notation must set out the following details; a general description of the nature of the security interest, the name and business address of the person who has the security interest and any other prescribed details.

This clause is similar in effect to that of section 128 of the FRMA.

### **Clause 155      Irrelevant matters for purpose of s. 154**

- (1) Provides that the CEO is not to be concerned with the nature of security interest or whether or not a person making an application actually has a security interest.
- (2) Provides that a notation on the register that a person has a security interest, does not give the security interest any force that it would not have if this division had not been enacted.

This clause is similar in effect to that of section 129 of the FRMA.

### **Clause 156      Security holder noted in register to be notified of certain events affecting security**

This clause provides for the CEO to notify security interest holders when an event that may affect that interest occurs. It extends the provisions to cover resource shares.

This clause is similar in effect to that of section 130 of the FRMA.

**Clause 157      Removing or varying notation of security interest**

- (1) Provides that the holder of the registrable interest may apply to the CEO to remove the security interest notation from the register or vary it.
- (2) Provides that the CEO must give notice of such an application to the holder of the security interest.
- (3) Provides that the CEO must on application, remove or vary the notation subject to subclause (4).
- (4) Provides that the CEO must not remove or vary the notation within 21 days of receiving the application unless the CEO receives the prior written consent of the security holder.
- (5) Provides that the CEO is not to be concerned with the reasons for the application.

This clause is similar in effect to that of section 131 of the FRMA.

## Part 11 — Compliance

This part consolidates and updates the powers of compliance officers carried forward from FRMA, Part 16. Where necessary, provisions have been amended to provide effective powers to meet the needs of compliance in the context of the new management framework that will be established by the Bill. This framework will establish a greater focus on outcome-based management, and rely heavily on records of catch and transactions and other evidence which is most likely to be stored electronically and may be accessed via web interfaces or “the cloud” through portable devices, as well as conventional networks and computing hardware.

### Division 1 — Preliminary

#### Clause 158      **Terms used**

Defines terms used in this Part.

### Division 2 — Compliance officers

#### Clause 159      **Compliance officers**

- (1) Provides for the appointment of compliance officers and provides that compliance officers must be officers of the public service and can include officers on contract under section 100 of the *Public Sector Management Act 1994*.
- (2) Provides that the period of designation as a compliance officer may be fixed or indefinite.
- (3) Provides the CEO with power to revoke a designation at any time by written instrument.

#### Clause 160      **Honorary compliance officers**

This Clause specifies powers for the appointment honorary compliance officers and the revocation of appointments.

- (1) Sets out the instrument by which the CEO may appoint an honorary compliance officer, and the ability to specify areas where the appointment applies.
- (2) Provides for the powers of an honorary compliance officer to be specified in the instrument of appointment.
- (3) Provides for an appointment to be for a fixed term or indefinite.
- (4) Provides the CEO with power to revoke an appointment at any time by written instrument.

This clause is similar in effect to that of section 179 of the FRMA.

#### Clause 161      **Identity cards**

- (1) Requires the CEO to provide compliance and honorary compliance officers with an identity card.
- (2) Sets out the information to be contained on an identity card, including a requirement for a photograph of the officer.
- (3) Establishes an offence for failing to return an identity card, should an appointment be cancelled.

- (4) Requires compliance officers to carry their cards when exercising their powers, unless it is impracticable to do so, for instance when a compliance officer is diving on fishing gear.

This clause is similar in effect to the combined effects of the relevant parts of sections 177 and 179 of the FRMA.

**Clause 162      Production or display of identity card**

- (1) Requires compliance officers to produce and display their identity cards before exercising their powers.
- (2) Provides that subsection (1) only applies if the compliance officer is in the physical presence of the person in relation to whom compliance powers are being exercised.
- (3) Provides that officers may produce their cards at the first reasonable opportunity after exercising their powers, where it is impractical to do so beforehand.

**Clause 163      Police officers to have powers of compliance officers**

Provides that a Police Officer has the same powers of, and is taken to be, a Compliance Officer for the purposes of this Act.

This clause is similar in effect to that of section 180 of the FRMA.

**Clause 164      Naval officers to have powers of compliance officers in dealing with foreign boats**

- (1) Provides that an officer in command of an Australian Navy Vessel has the powers of a Compliance Officer and is taken to be a Compliance Officer in respect of foreign boats, operations on or from foreign boats and persons on foreign boats.
- (2) Provides for an officer to delegate these powers to persons under their command.

This clause is similar in effect to that of section 181 of the FRMA.

### **Division 3 — Powers in relation to compliance**

**Clause 165      Entry powers**

- (1) Provides a compliance officer may, for ensuring compliance with this Act, at any reasonable hour may enter or remain in or on the following places; places where an authorisation is in force under the Act, a place selling or storing aquatic organisms for the purpose of sale, a place used for manufacturing, repairing or selling boats or aquaculture gear, a place where records are required to be kept for the purposes of the Act, a vehicle, a tent, camp or unauthorised structure if the compliance officer suspects on reasonable grounds that it contains any aquatic organisms or fishing gear, a place where the compliance officer suspects on reasonable grounds that this Act has been breached or is likely to be breached or where there is something that may afford evidence as a breach of the Act.

- (2) Provides that a compliance officer is not entitled to enter a private residence unless the occupier of the place consents or the compliance officer suspects on reasonable grounds that a person has committed an offence against the Act and the compliance officer has pursued the person without interruption from or near the place where the offence is suspected to have occurred to the private residence ("hot pursuit"), or under the authority of entry warrant.
- (3) Provides that a compliance officer may enter any land for the purpose of passing through the land unless the land is attached to a building or other structure.

These entry powers were previously provided in various sections of the FRMA including sections 182, 183, 184, 185, 186 and 191.

#### **Clause 166 Powers after entry for compliance purposes**

- (1) (a) – (i) These provisions set out the powers of compliance officers to inspect, search, test, photograph, film, operate a computer or other equipment, collect evidence, seize, take samples, secure, copy records and collect evidence.
- (j) Sets out the powers of an officer to direct a person at the place to answer questions, produce records, operate a computer or other equipment, provide codes and passwords and provide other assistance as reasonably required.
- (2) Requires the compliance officer to provide a receipt for anything removed from a place.

These powers were previously provided in various sections of the FRMA including sections 182, 183, 184, 185, 186, 189, 190, 191 and 193.

#### **Clause 167 Obtaining information and documents**

- (1) Provides that a compliance officer may for compliance purposes give a direction to a person to give the compliance officer such information as the officer reasonably requires or to answer questions put to the person, to produce relevant records in the person's custody or control and examine and make a copy of the relevant record.
- (2) Provides that such a direction may be given orally or in writing, must specify the time, the information or an answer must be provided to the compliance officer, may require the information or answer to be given orally or in writing and the form of any written response including verification by a statutory declaration.
- (3) Provides that a direction to a person to produce a relevant record in the persons custody or control must be given in writing and specify the time within which the record is to be produced and may require the record to be produced to the compliance officer at a place specified in the direction and by means specified in the direction.

This clause is similar in effect to the combined effects of the relevant parts of sections 189 and 190 of the FRMA.

**Clause 168 Other powers**

- (1) Provides that a compliance officer may, for compliance purposes, direct a person to stop a vehicle or not move it, pass through or along any waters, produce things for inspection, recover gear, and wait at a place if in possession of gear or aquatic organisms.
  - (f) – (i) Sets out powers to direct the owners, masters of vessels or persons in control of a vessel or vehicle to secure it against interference, bring it to a place, deliver any organisms or gear on or attached to it, and not to proceed to sea.
  - (j) Provides for any inspection, examination or inquiry to ascertain compliance with the Act.
  - (k) enables compliance officers to use any of the powers available to a compliance officer after entering a place under the authority of an entry warrant if the compliance officer suspects on reasonable grounds that an offence has been, is being or is about to be committed in or on the place or if there is anything in or on the place that may provide evidence of an offence against the Act.
- (2) Limits subclause 1 (a) in relation to trains and aircraft to circumstances where the commission of an offence is in process or imminent, or where there is a reasonable suspicion that evidence of an offence may be aboard.
- (3) And (4) Limits the time a vehicle or person may be detained to that deemed reasonably necessary.
- (5) Establishes an offence for failure to comply with a direction or signal from a compliance officer without reasonable excuse.
- (6) Provides that it is a reasonable excuse to fail to comply with a direction from a compliance officer if the person believes that to do so would endanger the person or another person or the vehicle, and that the person complies with the direction as soon as it is practicable to do so.

This clause is similar in effect to that of section 191 of the FRMA.

**Clause 169 Powers to arrest without warrant**

- (1) Provides that a compliance officer may arrest a person without warrant for failing to state identification details, reasonable suspicion that these details may be false, assault, reasonable suspicion that a person may continue to commit an offence, or when any other procedure for dealing with an offence would not be effective.
- (2) Establishes an offence for escape or attempted escape from custody.

This clause is similar in effect to that of section 192 of the FRMA.

**Clause 170 Powers to seize things**

Provides that a compliance officer may seize the things listed in the clause relating to offences or suspected offences against the Act.

This clause is similar in effect to that of section 193 of the FRMA.

**Clause 171 Powers to deal with seized aquatic organisms**

- (1) Provides for the return of seized organisms to their natural environment.
- (2) Provides for the sale, preservation or disposal of seized things that are likely to perish without action.
- (3) Provides for the proceeds of the sale of seized things sold under (2) to

be credited to accounts established under this Act, or to the Consolidated Account.

- (4) Provides for the proceeds from sale of a thing sold under (2) to be returned, less any expenses, to the owner of the thing if no proceedings are commenced or no conviction is recorded.
- (5) Provides that compensation is not payable any person in relation to seized aquatic organisms.

This clause is similar in effect to that of section 194 of the FRMA.

**Clause 172 Powers in respect of certain fishing gear or abandoned aquatic organisms**

- (1) Provides for seizure in waters where that gear is prohibited, does not comply with the Act or appears to have been lost or abandoned.
- (2) Provides for destruction or de-commissioning if it is not practicable to seize the gear.
- (3) Provides for seizure of abandoned organisms in or near any waters.

This clause is similar in effect to that of section 195 of the FRMA.

**Clause 173 Powers under *Animal Welfare Act 2002* to prevent cruelty to aquatic organisms**

Provides that a compliance officer may, for the purpose of enforcing welfare, safety and health regulations relating to aquatic organisms, exercise the powers conferred by the *Animal Welfare Act 2002* on general inspectors as if the compliance officer was an inspector and the aquatic organisms were animals for the purpose of the Act and an offence against those regulations was an offence against the *Animal Welfare Act 2002*.

This clause is similar in effect to that of section 191A of the FRMA.

**Clause 174 Powers under *Biosecurity and Agriculture Management Act 2007* in relation to biosecurity**

Establishes powers of cross authorisation under the *Biosecurity and Agriculture Management Act 2007* in relation to “pests” that are also declared organisms under this Bill.

**Clause 175 Use of assistance and reasonable force**

- (1) Provides for the use of assistance and force that is reasonably necessary when exercising a power under this Act.
- (2) Provides for requests for assistance from a police officer or other person.
- (3) Provides for requests to make boats or other vehicles available.
- (4) Provides for applications for compensation to the CEO for loss of use of a boat or vehicle commandeered under (3).
- (5) Provides for payment of compensation.
- (6) Provides for the conferral of powers, responsibilities and protection from liability for persons assisting a compliance officer.
- (7) Prevents this clause from limiting the scope of the powers of a police officer.

This clause is similar in effect to that of section 197 of the FRMA.

**Clause 176 Duty to try to minimise damage**

Provides that in exercising any power under this Part a compliance officer must try to minimize damage to property.

This clause is similar in effect to that of section 198 of the FRMA.



**Clause 177      Obstructing compliance officers**

- (1) Creates an offence for obstructing a compliance officer.
- (2) Describes obstruction in specific circumstances such as failing to assist a compliance officer boarding a boat; abusing, insulting, threatening, assaulting, hindering, or obstructing an officer; inciting another person to do these things; impersonating an officer; refusing to allow an authorised search.

This clause is similar in effect to that of section 200 of the FRMA.

**Clause 178      Interfering with seized property**

- (1) Defines *interfere* for the purposes of this clause.
- (2) Creates an offence for interfering with anything seized under this Act without being authorised by the CEO or a compliance officer to do so.
- (3) Provides for a Court to order payment of compensation for any damage or loss caused in addition to any other penalty.

This clause is similar in effect to that of section 196 of the FRMA.

**Clause 179      Giving false or misleading information to compliance officer**

- (1) Creates an offence for giving false or misleading information to a compliance officer.
- (2) Provides that a person gives false or misleading information to a compliance officer by making statements the person knows are false or misleading in a material way, makes omissions that are misleading in a material way or gives or produces a document to a compliance officer that contains or omits information that the person knows is misleading in a material way.

This clause is similar in effect to that of section 199 of the FRMA.

**Clause 180      Directions generally**

- (1) Provides for directions to be given orally or in writing.
- (2) Establishes an offence for failing to comply with a direction.

This clause is similar to the combined effects of the relevant parts of sections 189(1), 190 and 191 of the FRMA.

**Division 4 — Entry warrants**

**Clause 181      Warrants to enter place**

- (1) Provides that a compliance officer may apply to a Justice of the Peace for an entry warrant.
- (2) Provides that a compliance officer may apply for an entry warrant even if the compliance officer may enter a place without one.
- (3) Provides that an application must be made in accordance with the requirements for the *Criminal Investigation Act 2006*.
- (4) Describes the content of a warrant application.

This clause is similar in effect to that of section 187 of the FRMA.

**Clause 182      Issue of warrant**

- (1) Provides for a Justice of the Peace to issue a warrant if satisfied that there are reasonable grounds for believing that entry and inspection of the place are necessary for compliance purposes.
- (2) Describes the content of a warrant.

This clause is similar in effect to that of section 187 of the FRMA.

**Clause 183      Effect of warrant**

- (1) Limits the effect of a warrant to its content.
- (2) Provides that a warrant comes into force when it is issued by the Justice of the Peace.
- (3) Limits the warrant to entry and the powers after entry described in clause 166.

**Clause 184      Execution of warrant**

- (1) Provides that a warrant may be executed by the compliance officer to whom it was issued or by another compliance officer.
- (2) Requires a compliance officer to produce the warrant at the reasonable request of a person apparently in charge of the place to which the warrant relates.

## Part 12 — Legal proceedings

This part carries forward and updates provisions previously under Part 17 of the FRMA.

### Division 1 — Proceedings

#### Clause 185 Prosecutions

Offences with a 5 year limitation on proceedings generally relate to breaches of specific management provisions in ARUPS, management plans and biosecurity requirements where the offence is of a more serious nature generally or where detection of the offence may be difficult. All other offences under the Act must be commenced within 2 years, with the exception of offences for trafficking in a prescribed quantity of high value fish which is an indictable offence where no time limit is specified in this Act for the commencement of proceedings.

- (1) Provides that proceedings for an offence against this Act may be instituted by the CEO, a police officer, a compliance officer or any other person authorised in writing by the CEO.
- (2) Provides that proceedings for certain offences, as listed in the Table, must be commenced within 5 years after the offence was allegedly committed. These offences relate to; contravention of ARUPs and regulations relating to ARUPs (clause 31(2) and (3)), contravention of conditions related to ARUPs (clause 49(2) and (3)), contravention of a management plan (clause 64(2) and (3)) and conditions related to management plans (clause 65(2) and (3)), contravention of an aquatic biosecurity management plan (clause 104(2) and (3)), failing to report declared organisms (clause 105(2)), importing declared organisms (clause 106(2) and (3)), supplying imported declared organisms (clause 107(1)), failure to take reasonable measures to ensure a boat is free of declared organisms (clause 108) and dealing with declared organisms (clause 109(2)).
- (3) Provides that offences against provisions listed in the table or against a provision of the regulations prescribe for the purposes of this subclause, must be commenced within 2 years of the offence being allegedly committed; failing to control a declared organism (clause 110(2)), contravening a notice to stop polluting the aquatic environment (clause 112(3)), contravening an order related to prohibited activities (clause 125(4)), using explosives and noxious substances to take aquatic organisms (clause 137(1)), purchase or sale of aquatic organisms taken unlawfully (clause 140(1)), use of a foreign boat for fishing (clause 141(1)), possession of a foreign boat equipped with fishing gear (clause 142(1)), breaching a court order (clause 211(4) and (5)) and providing a false statement on a record or return required under the Act (clause 260(1) and (2)).
- (4) Provides that in any proceedings for an offence against the Act that proof is not required of the authority of the person to commence proceedings or that the signature on a prosecution notice is the signature of a person authorised to commence proceedings, in the absence of any proof to the contrary.

- (5) Provides that an authorised compliance officer may appear on behalf of the CEO or any other officer of the Department, in any proceedings under this Act in a court of summary jurisdiction.

This clause is similar in effect to that of section 201 of the FRMA.

#### **Clause 186   Infringement notices and the *Criminal Procedure Act 2004***

- (1) Provides that if this Act is prescribed for the purposes of Part 2 of the *Criminal Procedures Act 2004*, then this section applies in relation to the service of infringement notices by aquatic compliance officers
- (2) Provides that an infringement notice must be served within 45 days of an alleged offence being committed.
- (3) Provides that the Criminal Procedures Act is modified to the extent necessary to give effect to this section.

## **Division 2 — Responsibility of certain persons**

### **Clause 187 Masters' liability**

- (1) Provides that if a person (referred to as the principle offender) on a boat, the master of the boat is taken to have committed the same offence.
- (2) Provides that it is a defence in proceedings against the master to prove that the offence was engaged in without the consent or connivance of the master and that the master took all reasonable measures to prevent the conduct being engaged in.
- (3) Provides that a master of a vessel may be proceeded against and convicted of an offence whether or not the principle offender has been proceeded against or convicted of the same offence.

This clause is similar in effect to that of section 202 of the FRMA.

### **Clause 188 Liability of person in charge of a fishing tour**

- (1) Defines terms for the purposes of this clause.
- (2) Provides that if a person (referred to as the principle offender) on a boat, the person in charge of the fishing tour of the boat is taken to have committed the same offence.
- (3) Provides that it is a defence in proceedings against the person in charge of the fishing tour to prove that the offence was engaged in without the consent or connivance of the person in charge of the fishing tour and that the person in charge of the fishing tour took all reasonable measures to prevent the conduct being engaged in.
- (4) Provides that the person in charge of the fishing tour may be proceeded against and convicted of an offence whether or not the principle offender has been proceeded against or convicted of the same offence.

This clause is similar in effect to that of section 202A of the FRMA.

### **Clause 189 Liability of co-holders of authorisation**

- (1) Provides that if an authorisation is held by two or more persons and any one of them commits an offence while acting as the holder of the authorisation, each of the holders is taken to have committed the same offence.
- (2) Provides that it is a defence in proceedings against the co-holder of an authorisation to prove that the offence was engaged in without the consent or connivance of the co-holder of an authorisation and that the co-holder of an authorisation took all reasonable measures to prevent the conduct being engaged in.

- (3) Provides that a co-holder of an authorisation may be proceeded against and convicted of an offence whether or not another person has been proceeded against or convicted of the same offence.

This clause is similar in effect to that of section 202B of the FRMA.

**Clause 190      Liability of holders of authorisation for offence by agent**

- (1) Provides that if an agent acting for or on behalf of an authorisation holder commits an offence against the Act, the holder is taken to have committed the same offence.
- (2) Provides that it is a defence in proceedings against the holder of an authorisation to prove that the offence was engaged in without the consent or connivance of the holder of an authorisation and that the holder of an authorisation took all reasonable measures to prevent the conduct being engaged in.
- (3) Provides that a holder of an authorisation may be proceeded against and convicted of an offence whether or not another person has been proceeded against or convicted of the same offence.
- (4) Provides that the CEO must give written notice to the holder of an authorisation if a decision is made to proceed against the holder's agent.

This clause is similar in effect to that of section 203 of the FRMA except that the CEO will now be required to inform authorisation holders when proceedings are instituted against their agent.

**Clause 191      Liability of officers of body corporate for offence by body**

- (1) Defines **officer** for the purposes of this clause.
- (2) Identifies the offence provisions to which this clause applies and enables regulations to be prescribed for the purposes of this clause.
- (3) Provides that if a body corporate is guilty of an offence to which this section applies, then an officer of the body corporate is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence.
- (4) Provides that in determining whether actions by an officer constituted all reasonable steps a court must have regard to; what the person knew or ought reasonably to have known about the commission of the offence, whether or not the officer was able to influence the body corporate in relation to the commission of the offence, or any other relevant matter.

**Clause 192      Further provisions relating to liability of officers of body corporate**

- (1) Provides that section 191 does not affect the liability of a body corporate for any offence.
- (2) Provides that section 191 does not affect the liability of an officer of a body corporate or any other person under Chapters II (Parties to Offence), LVII (Attempts and preparation to commit offences), LVIII (Conspiracy) and LIX (Accessories after the fact and property laundering) of The Criminal Code.

- (3) Provides that an officer of a body corporate can be charged with, and convicted of, an offence whether or not the body corporate is charged with or convicted of the offence.
- (4) Provides that if an officer of a body corporate who is charged with an offence claims that the body corporate would have a defence if so charged, then the onus of proving the defence is on the officer and that the standard of proof required is the standard that would be required of the body corporate.
- (5) Provides that subsection (4) does not limit any other defence available to the officer.

### Division 3 — Evidentiary provisions

Provides that certain matters are taken to be proved in proceedings for an offence against this Act in the absence of any evidence to the contrary. The matters that are taken to be proved in this Act are the same matters or the same class of matters that were taken to be proved in Part 17 Division 3 of the FRMA, but they have been re-ordered and placed in table form for convenience.

#### Clause 193      **Certain matters taken to be proved if alleged in prosecution notice**

Provides that in proceedings for an offence against the Act an allegation of the kind listed in the table is taken to be proved in the absence of any evidence to the contrary. The table also lists equivalent FRMA sections.

Item	Matter	FRMA Section
1.	That a person, boat, vehicle or other thing referred to in the charge was in a particular area of land or waters	s205(a)
2.	That aquatic organisms were taken from a particular area of land or waters	s205(d)
3.	That an act occurred in a particular area of land or waters	s206
4.	That a boat was, at the time of the alleged offence, a foreign boat	s207
5.	That an act occurred for a particular purpose	s211
6.	That something was done with a particular intent	s211

#### Clause 194      **Certain matters taken to be proved if stated in certificate**

- (1) Defines **authorised person** for the purposes of this clause.
- (2) Provides that the Minister may by notice publish in the Gazette designated person to be an authorised person for the purposes providing evidence of the facts stated in a certificate signed by the CEO.
- (3) Provides that in proceedings for an offence against the Act production of a certificate purporting to be signed by the CEO and stating any of the matters listed in the table below, is evidence of the fact stated in the certificate without proof of the CEO's signature. The matters that are taken to be proved are essentially the same as those taken to be proved under the FRMA, see referencing in the table below.

Item	Matter	FRMA Section
1.	That on any date or during any period a person was or was not authorised to do any thing under an authorisation, temporary aquaculture permit or aquaculture lease	s212(1)(a)
2.	That on any date or during any period a person was or was not exempted from this Act or specified provisions of this Act by an exemption	s205(a)
3.	That on any date or during any period any boat, place or other thing was or was not the subject of an authorisation, temporary aquaculture permit or exemption	s212(1)(b)
4.	That on any date or during any period an authorisation or temporary aquaculture permit was cancelled, suspended or for any other reason of no effect	S212(1)(c)
5.	That on any date or during any period an aquaculture lease was terminated or for any other reason of no effect	s212(1)(c)
6.	That on any date or any period an authorisation, temporary aquaculture permit, aquaculture lease or exemption was subject to any specified condition or conditions	S212(1)(d)
7.	That on any date or during any period surety was required or provided for an authorisation	N/A
8.	That on any date or during any period a person was or was not registered as the holder of a resource share	N/A
9.	That on any date or during any period a person was or was not registered as the holder of catch entitlement of a specified quantity	N/A
10.	That on any date or during any period a person was a compliance officer	s201(3)

- (4) Provides that in proceedings for an offence against this Act, production of a certificate purporting to be signed by an authorised person and stating any of the matters listed in the table below is taken to be proved in the absence of evidence to the contrary.

Item	Matter	FRMA Section
1.	That an aquatic organism was of a particular species or type or had a particular characteristic	s213(3)(a)
2.	That a species or type of aquatic organism is or is not found in a particular area	s213(3)(b)
3.	That any fishing gear is of a particular type or is designed, used or capable of being used for a particular purpose or for taking a particular species of aquatic organism	s213(3)(c)



- (5) Provides that subclauses (3) and (4) provides that the notice in writing has been given to the accused of the prosecutors intention to produce a certificate of the type mentioned in the tables at least 28 days before the hearing and the accused has not, within 14 days of the notice, delivered to the prosecutor a notice requiring that the evidence of the CEO or the authorised person must be given in person.
- (6) Provides that the court may make such order as the court thinks fit as to the expenses and remuneration to be paid for the services of the CEO or the authorised person.

**Clause 195**

**Proof of certain matters as evidence of other matters**

- (1) Defines terms used in this clause.
- (2) Provides that in any proceedings for an offence against the Act, proof of the matter listed in the second column of an item in the table below, is evidence of the matter listed in column three of that item, unless the contrary is proved. The table below has been amended to include a fourth column that shows any relevant provision of the FRMA.

<b>Item</b>	<b>Matter Proved</b>	<b>Evidence of</b>	<b>FRMA</b>
1.	That a container had a label indicating that the container contained an aquatic organism or a particular class of aquatic organism	That the container contained the organism or the class of organism	s208(a)
2.	That a container had a label indicating that the container contained a specified quantity of an aquatic organism	That the container contained that the quantity of the organism	s208(b)
3.	That a container had a label indicating that the container was packed or consigned by or for a particular person	That the container was packed or consigned by or for that person	s208(c)
4.	That aquatic organisms – (a) Were on a fishing boat; and (b) Were taken by, or were in the possession of, a person on that boat	That the organisms were taken by, or in the possession of, the person for the purpose of sale	s210(1)
5.	That aquatic organisms – (a) Were at a place in, or from which, aquatic organisms were ordinarily sold (whether for meals or otherwise); and (b) Were in the possession of a person at the place (other than a customer)	That the aquatic organisms were in the possession of the person for the purpose of sale	s210(2)
6.	That aquatic organisms – (a) Were at a place in which aquatic organisms were ordinarily commercially processed; and (b) Were in the possession of a person at the place	That the aquatic organisms were in the possession of the person for the purpose of sale	s210(3)
7.	That aquatic organisms – (a) Were at a place in which aquatic organisms were ordinarily received for commercial purposes; and (b) Were in the possession of a person at the place	That the aquatic organisms were in the possession of the person for the purpose of sale	s210(2)
8.	That a record or return was recorded, submitted or lodged for the purposes of this Act using a restricted-access electronic reporting system	That the record or return was recorded, submitted or lodged by the person whose personal identification number, password, access code, encryption key or other information or device was used to access the system for the purpose of recording, submitting or lodging the record or return	N/A

**Clause 196 Onus of proving certain matters**

Provides that in any proceedings against this Act the onus of proof lies with the person asserting the matter contained in the table below. The table is referenced with the existing relevant provision of the FRMA.

Item	Matter	FRMA Section
1.	That at the time of the alleged offence a person was not required in accordance with clause 6 to hold an authorisation	s205(a)
2.	That conduct was engaged in with lawful excuse or reasonable excuse	s205(b)
3.	That a person, boat or thing referred to in the charge was not in WA waters	s205(c)
4.	That an aquatic organism was taken from waters other than WA waters	s205(d)
5.	That conduct was engaged in in waters other than WA waters	s205(e)

**Clause 197 Proof as to aquatic organisms taken for sale**

- (1) Provides that in any proceedings for an offence against this Act proof that an aquatic organism taken by a person was subsequently sold is conclusive evidence that the organism was taken for the purpose of sale.
- (2) Provides that in any proceedings for an offence against this Act proof that an aquatic organism in a person's possession was subsequently sold is conclusive evidence that the organism was in the person's possession for the purpose of sale.

This clause is similar in effect to that of section 209 of the FRMA.

**Clause 198 Determining characteristics of aquatic organisms**

Provides that the size, weight or any other characteristic of an aquatic organism is to be determined using the method that is prescribed.

This clause is similar in effect to that of section 214 of the FRMA.

**Clause 199 Accuracy of compliance officers' equipment**

Provides that in any proceedings for an offence against this Act, proof is not required as to the accuracy of any communications, navigational, measuring or recording equipment including electronic equipment used by a compliance officer, unless evidence is given to the contrary.

This clause is similar in effect to that of section 215 of the FRMA.

**Clause 200      Accuracy of approved devices**

- (1) Defines ***approved electronic information device*** for the purposes of this clause.
- (2) Provides that in any proceedings for an offence against this Act, information recorded on or transmitted using an approved electronic information device is taken to be accurate and correct unless the contrary is proved.

**Clause 201      Determining positions on Earth**

- (1) Provides that if it is necessary to determine the position on the surface of the earth of a point, line or area, the reference is to be determined using the prescribed Australian datum. The datum prescribed for the purposes of the FRMA is the Geocentric Datum of Australia.
- (2) Provides that the regulations that prescribe or amend a datum or prescribe another datum to replace that datum, may make any transitional or savings provisions that are necessary to maintain the accuracy of authorisations, temporary farming permits or aquaculture leases or for any other purposes.
- (3) Provides that the regulations referred to above may modify or otherwise affect the operation of this Act.

This clause is similar in effect to that of section 216 of the FRMA.

**Division 4 — Forfeiture**

**Clause 202      Return of seized things**

- (1) Provides that the CEO may authorise the return items seized under the Act.
- (2) Provides that the CEO may impose conditions on return of seized things including the payment of security if the seized thing is subsequently forfeited.
- (3) Provides that if a seized thing is forfeited, any security given to the CEO in place of the seized thing is forfeited.
- (4) Provides that a person contravening a condition relating to a returned seized thing commits an offence.
- (5) Provides that if a court convicts a person of contravening a condition relating to a returned seized thing, the court may order the person to pay compensation for any damage or loss caused to a person as a result of the offence. This is in addition to any penalty imposed by the court.

This clause is similar in effect to that of section 217 of the FRMA.

#### **Clause 203      Court orders for forfeiture of certain things**

- (1) Provides that on conviction of a person for an offence against the Act, a court may, in addition to any other penalty, order the forfeiture of aquatic organisms, fishing gear, aquaculture gear, boats, vehicles, etc. used in the commission of the offence, resource shares or catch entitlement the subject of the offence and money cheques or other things that are the proceeds of sale of any aquatic organism taken in contravention of the Act.
- (2) Provides that a court must not order the forfeiture of the things referred to above unless an application is made to the court by the prosecution.
- (3) Provides that if a court convicts a person for fishing with a foreign boat (cl141(1)) or having fishing gear on a foreign boat (Cl142(1)), the court must, in addition to any other penalty order the forfeiture of the foreign boat and any other thing capable of being forfeited under cl 203(1) above, any aquatic organisms, animals, fishing gear, money, cheque that was on the boat or in possession of any person on the boat at the time of the offence and fishing gear etc on the boat intended to be used in the commission of the offence.

This clause is similar in effect to that of section 218 of the FRMA.

#### **Clause 204      Forfeiture of unclaimed seized things**

- (1) Provides for the CEO to give notice in the prescribed way that a seized thing is being held by the Department and how it may be claimed by the owner.
- (2) Provides that the notice must give details about the seized thing and where it is, and how it can be claimed by its owner.
- (3) Provides that if 3 months has passed since notice was given and the seized thing has not been claimed, then it is forfeited to the State.

This clause is similar in effect to that of section 219 of the FRMA.

#### **Clause 205      Forfeiture of certain seized things**

- (1) Defines **seized thing** for the purposes of this clause.
- (2) Provides that those types of seized things, are upon seizure, forfeited to the State.

This clause is similar in effect to that of section 220 of the FRMA.

#### **Clause 206      Disposal of forfeited things**

- (1) Provides that anything forfeited to the state may be sold or disposed of as prescribed in the regulations.
- (2) Provides that the proceeds of the sale of forfeited things are to be paid into whichever account in Part 14 division 3 is prescribed. This could be either the Aquatic Resources Research and Development Account or the Recreational Fishing Account. Where no account is prescribed the proceeds of sale must be put into the Consolidated Account.

This clause is similar in effect to that of section 221 of the FRMA.

## Division 5 — Additional provisions about penalties

### Clause 207      **Additional penalty based on value of aquatic organisms**

- (1) Provides that this clause applies to an offence against a provision of the Act listed in the Table or a provision that is prescribed in the regulations for the purposes of this clause.
- (2) Provides that upon conviction for an offence listed in the Table, in addition to any penalty imposed by the court, the court must also impose an additional penalty equal to 10 times the value of the aquatic organism the subject of the offence, except where the CEO requests a lesser penalty under subclause (3).
- (3) Provides that the court can only impose the lesser penalty on application by the CEO and if the court is satisfied that the “10 times” penalty would be harsh, oppressive or not otherwise in the interests of justice.
- (4) Provides that a court determine the prescribed value of aquatic organisms the subject of the offence by weight of the organisms or by the number of organisms.
- (5) Provides that a court is to determine the prescribed value of aquatic organisms by weight, by multiplying the weight of the organisms by the value per unit of weight as prescribed in the regulations; and if by number, by multiplying the number by the value prescribed in the regulations for an organism of that class.
- (6) Provides that the additional penalty may not be reduced despite any provision of any other Act.
- (7) Provides that the regulations made for the purposes of subclause (1)(b) (i.e. prescribing offences in the regulations to which the additional penalties in this section apply) may be made by reference to the circumstances in which an offence is committed.

This clause is similar in effect to that of section 222 of the FRMA.

### Clause 208      **Court’s power to cancel or suspend authorisation**

- (1) Provides that in addition to any penalty imposed by a court for an offence against the Act, the court may also suspend or cancel an authorisation
- (2) Provides that the court may only suspend or cancel an authorisation if the prosecution makes application to the court.

This clause is similar in effect to that of section 223 of the FRMA.

### Clause 209      **Automatic suspension of authorisation if 3 offences committed in 10 year period**

- (1) Defines **authorisation** for the purposes of this clause to include a cancelled, expired or surrendered authorisation.
- (2) Provides that the CEO must record convictions for prescribed offences against this Act on the relevant authorisation on the register kept under Part 10 of the Act, if in the CEO’s opinion the offence related conduct engaged in, or purported to be engaged in under the authorisation and the person convicted of the offence was the holder of that authorisation at the time of the offence, or acting for or on behalf of that person.

- (3) Provides that the CEO may transfer a record of conviction from one authorisation (the **original authorisation**) to another authorisation (the **new authorisation**) in circumstances resulting in the original authorisation being revoked and a new authorisation is granted to the person who held the original authorisation.
- (4) Provides that the CEO may transfer a record of conviction from one authorisation (the **original authorisation**) to another authorisation (the **new authorisation**) in circumstances where the original authorisation expired without being renewed or was surrendered by the holder and a new authorisation of the same type is held by the person who was the holder of the original authorisation before it expired or was surrendered.
- (5) Provides that if a record of conviction is transferred to a new authorisation, it is taken to have been recorded on the same date as it was recorded on the original authorisation.
- (6) Provides that if the CEO records 3 convictions (3 black marks) in respect of an authorisation in a 10 year period, the licence is to be suspended for one year commencing on the day the authorisation is next renewed, or such other day as is prescribed in the regulations.
- (7) Provides that a suspended authorisation remains suspended after one year has elapsed until such time as all outstanding fines have been paid for a conviction under this Act.
- (8) Provides that for the purposes of this clause: it is irrelevant that at the time the authorisation is suspended that a different person holds the authorisation; where 2 or more offences arise out of one set of facts, the offences are to be regarded as one offence; and that a conviction may be recorded against more than one authorisation held by the convicted person.

This clause is similar in effect to that of section 224 of the FRMA.

#### **Clause 210      Effect of conviction on surety provided for authorisation**

This clause is a new provision which gives effect to penalties associated with surety arrangements under Part 3. It applies the 3 black marks principles contained in clause 209 relating to authorisations, to sureties posted for authorisations.

- (1) Provides the CEO must record a conviction on the register against the surety noted on the register if surety has been provided in respect to the relevant and a conviction is recorded against that authorisation.
- (2) Provides that if the CEO records 3 convictions (3 black marks) in respect of a surety in a 10 year period: where the surety is provided in the form of a monetary bond, the bond is forfeited to the State; where the surety is provided through the nomination of resource shares, the allocated catch for each resource share is reduced to zero in the fishing period following the third conviction; and if the surety is provided in any other form, the surety is to be dealt with in accordance with the relevant regulations.

- (3) Provides that for the purposes of this clause it is irrelevant: that at the time the surety forfeited or otherwise dealt with in accordance with subclause (2), that the surety was surety for an authorisation which is, or is not, is suspended under clause 209 as a result of accumulating 3 black marks in ten years; that at the time the surety forfeited or otherwise dealt with in accordance with subclause (2), that authorisation for which surety has been provided is held by person other than the person convicted any of the offences; or when the surety was provided.
- (4) Provides where 2 or more offences arise out of one set of facts, the offences are to be regarded as one offence.

## **Clause 211**

### **Court's power to impose prohibitions on offender**

- (1) Provides that in addition to any penalty imposed for a conviction against this Act, the court may also impose a range of prohibitions on the offender including prohibiting the person from being on a boat or specified class of boats, specified places or class of places, undertaking any activity relating to the fishing or aquaculture industries or being on or near specified waters.
- (2) Provides that a court must not make such an order unless the prosecution makes application to the court and the court is satisfied that the relevant offence is of a serious nature and the person is likely to commit similar offences if the order is not made.
- (3) Provides that an order may apply generally or at specific times and in specific circumstances, and that it has effect for the period specified in the order and that it may be varied or rescinded at any time.
- (4) Creates an offence for contravening an order.
- (5) Creates an offence for allowing a person to contravene an order.
- (6) Provides that it is a defence to a charge of allowing a person to contravene an order for the person charged to prove that the person did not know that the conduct engaged in by the other person contravened a court order.

This clause is similar in effect to that of section 225 of the FRMA.

## **Clause 212**

### **Offence taken to be first offence in some circumstances**

Provides that if an offence against this Act occurs more than 10 years after a person's previous conviction, it is taken to be a first offence for the purposes of determining the penalty. This does not apply to section 143 related to convictions for fishing with a foreign vessel or having fishing gear on a foreign vessel.



## **Part 13 — Administration**

This Part of the Bill consolidates, replaces, updates and extends FRMA, Parts 2 and 4 which provide for delegations and the establishment of a Ministerial Body Corporate. A new Division provides for the establishment of co-management arrangements or the devolution of functions under an agreement with non-government bodies.

### **Division 1 — Delegation**

#### **Clause 213      Delegation by Minister**

- (1) Provides that the Minister may delegate any of the Minister's powers other than those contained in the table. These are:
  - Declaration of managed resources (clause 14);
  - Approval of an ARMS (clause 20);
  - Declaration of aquaculture zones (clause 72);
  - Prohibition on polluting activities (clause 112);
  - the establishment of Fish Habitat Protection Areas (clause 117);
  - Give public notice of a proposed FHPA (clause 120);
  - Issue of Administrative guidelines (clause 254);
  - Issue guidelines regarding the control of foreign interests in fishing access rights (clause 255)
  - Amend or revoke a management plan that continues in effect from the repealed FRMA (clause 273).
- (2) Provides that a delegation must be in writing signed by the Minister.
- (3) Provides that a person to whom a power is delegated cannot delegate that power to another person.
- (4) Provides that a person exercising a delegated power is taken to be doing so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Provides that this clause does not limit the ability of the Minister to exercise a power through an officer or agent.

This clause is similar in effect to that of section 12 of the FRMA.

#### **Clause 214      Delegation by CEO**

- (1) Provides that the CEO may delegate any of his powers under the Act to another person.
- (2) Provides that the delegation must be in writing signed by the CEO.
- (3) Provides that a person to whom a power is delegated cannot delegate that power to another person.
- (4) Provides that a person exercising a delegated power is taken to be doing so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Provides that this clause does not limit the ability of the CEO to exercise a power through an officer or agent.

This clause is similar in effect to that of section 13 of the FRMA.

**Clause 215 Minister may carry out research and other activities**

Provides that the Minister may carry out research, exploration, experiments and other activities for the purposes of this Act.

This clause is similar in effect to that of section 14 of the FRMA.

**Division 2 — AR Ministerial body**

This Division establishes the Minister as a body corporate with perpetual succession. It is similar in effect to that of section 9 of the FRMA.

**Clause 216 Term used: AR Ministerial Body**

Defines **AR Ministerial Body** for the purposes of this division.

**Clause 217 AR Ministerial Body**

- (1) Provides for the establishment of the AR Ministerial Body.
- (2) Provides that the AR Ministerial Body is a body corporate with perpetual succession, and hence continuity of authority.
- (3) Provides that proceedings may be taken by or against the AR Ministerial Body in its corporate name.
- (4) Provides that the AR Ministerial Body is to be governed by the Minister.
- (5) Provides that the AR Ministerial Body has the status, immunities and privileges of the Crown.

**Clause 218 Purpose and nature of AR Ministerial Body**

- (1) Provides that the AR Ministerial Body is established to enable the Minister to perform any functions under this Act that are more conveniently performed by a body corporate than an individual.
- (2) Provides that acts or things done through the AR Ministerial Body are services under the control of the Department or operations of the Department for the purposes of the *Financial Management Act 2006*.
- (3) Provides that the AR Ministerial Body and ministerial officers employed under the *Public Sector Management Act 1994* are not an organisation for the purposes of that Act.

**Clause 219 Execution of documents by AR Ministerial Body**

- (1) Provides that the AR Ministerial Body is to have a common seal  
Establishes a common seal for the execution of documents.
- (2) Sets out the requirements for executing a document by the AR Ministerial Body.
- (3) Restricts the authority for use of the common seal except as authorised by the AR Ministerial Body.
- (4) Requires the Minister to witness and attest in writing the use of the common seal.
- (5) Provides for the AR Ministerial Body to authorise the CEO or another person to execute deeds and documents on behalf of the AR Ministerial Body, either generally or subject to restrictions.
- (6) Provides for a presumption of authenticity for documents executed by the AR Ministerial Body in the absence of proof to the contrary.

- (7) Provides that a document executed by the CEO or another person under this clause without the common seal of the AR Ministerial Body is not to be regarded as a deed unless the CEO or other person is authorised by the AR Ministerial Body to execute the document as a deed under subclause (5).
- (8) Provides for a presumption of authenticity for the common seal affixed to documents in the absence of proof to the contrary.
- (9) Provides for the use of electronic signatures and scans of the seal.

### **Division 3 — Use of outside bodies in performance of functions**

This Division establishes powers for the Minister to enter co-management or contractual arrangements with bodies corporate recognised by the Minister as suitable for carrying out specified functions for the purposes of this Act.

**Clause 220      Term used: agreement**

Defines **agreement** for the purposes of this Division.

**Clause 221      Minister may recognise body**

Provides for the formal recognition in writing of bodies corporate as suitable to carry out specified functions under an agreement, and provides for variance or revocation of the written instrument.

**Clause 222      Minister may enter agreement with recognised body**

- (1) Provides for the Minister to enter into a written agreement with a body corporate to carry out a function for the purposes of this Act.
- (2) Provides that the agreement may relate to specified functions including research, management advice, management planning, management operations, restriction of access, trading in resource shares, sector representation, education and training, management of Aquatic Habitat Protection Areas, control of declared organisms or other prescribed functions.
- (3) Provides that the agreement under clause 222 must set out details of the parties involved, functions carried out, financial arrangements regarding payments and fees, conditions for variation or termination and penalties for non-compliance.
- (4) Requires the Minister to publish notice of an agreement in the Gazette and make the agreement available for public inspection as provided for in the notice.

**Clause 223      Effect of agreement**

- (1) Provides that nothing in an agreement can limit the power of the Minister to carry out a function under the Act.
- (2) Provides for fees set in the agreement to prevail if there is any inconsistency with the fees set in regulations.

## **Division 4 — Advisory Committees**

### **Clause 224      Establishment and functions of advisory committees**

- (1) Provides for the Minister to establish advisory committees for specified purposes.
- (2) Provides for the CEO to establish advisory committees.
- (3) Sets out requirements for the content of the establishing instrument.
- (4) Provides for the amendment or revocation of the establishing instrument.

This clause is similar in effect to the combined effects of the relevant parts of sections 41 and 42 of the FRMA.

### **Clause 225      Regulations about operation of committees**

Provides that regulations may provide for any matter relating to the operation of a committee established under this Division.

This clause is similar in effect to that of section 43A of the FRMA.

## Part 14 — Financial provisions

This Part is similar in effect to that of Part 18 of the FRMA.

### Division 1 – Preliminary

**Clause 226      Term used: levy**

Defines *levy* for the purposes of this Part.

### Division 2 — Collection of levy imposed under *Fishing Industry Promotion Training and Management Levy Act 1994*

This Division is similar in effect to that of Part 18 Division 1 of the FRMA.

**Clause 227      When and to whom levy is payable**

- (1) Provides for a levy to be payable at times set out in the regulations.
- (2) Provides that a levy is payable to the Minister.

This clause is similar in effect to that of section 233 of the FRMA.

**Clause 228      Payment by instalments**

- (1) Provides that the regulations may provide for the payment of a levy by instalment.
- (2) Provides that where the levy is payable by instalments and an instalment has not been met, then the whole amount of the unpaid levy becomes due and payable at that time.

This clause is similar in effect to that of section 234 of the FRMA.

**Clause 229      Exemption from levy**

- (1) Provides that the Minister may exempt in writing persons from paying the levy if the Minister is satisfied that the imposition of the levy may cause undue hardship.
- (2) Provides that the Minister may revoke or vary an exemption.

This clause is similar in effect to that of section 235 of the FRMA.

**Clause 230      Penalty for non-payment**

Provides that the Minister may impose a penalty of 20 per cent per annum for non-payment on the amount of a levy due, in addition to the amount of the levy.

This clause is similar in effect to that of section 236 of the FRMA.

**Clause 231      Recovery of levy**

Provides that the Minister may recover the levy and any interest due in a court of competent jurisdiction as debts due to the Minister.

This clause is similar in effect to that of section 237 of the FRMA.

### **Division 3 — Accounts**

This Division is similar in effect to that of Part 18 Division 2 of the FRMA.

#### **Clause 232 Aquatic Resources Research and Development Account**

- (1) Establishes the Aquatic Resources Research and Development account.
- (2) Specifies the account is administered by the Minister.
- (3) Sets out the nature of credits to the account.
- (4) Specifies the purposes for which the account may be applied.

This clause is similar in effect to that of section 238 of the FRMA.

#### **Clause 233 Recreational Fishing Account**

- (1) Establishes the Recreational Fishing Account.
- (2) Specifies the Account is administered by the Minister.
- (3) Sets out the nature of credits to the Account.
- (4) Specifies the purposes for which the Account may be applied.

This clause is similar in effect to that of section 239 of the FRMA.

#### **Clause 234 Fishing Industry Promotion Training and Management Levy Account**

- (1) Establishes the Fishing Industry Promotion and Training Levy Account.
- (2) Specifies the Account is administered by the Minister.
- (3) Sets out the nature of credits to the Account.
- (4) Specifies the purposes for which the Account may be applied.
- (5) Provides for payment to industry bodies for specified programmes.
- (6) Provides conditions for payments under subclause (5).
- (7) Establishes an offence for the breach of conditions under subclause (6).

This clause is similar in effect to that of section 240 of the FRMA.

#### **Clause 235 Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) Provides that the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* apply to and in relation to every account in this Division.
- (2) Provides that the administration of each account referred to in this Division is to be regarded as a service of the Department for the purposes of the *Financial Management Act 2006* section 52.

This clause is similar in effect to that of section 243 of the FRMA.

## Part 15 — Arrangements with other jurisdictions

Part 15 (Commonwealth – State management of fisheries) provides for the making of arrangements for the management of fisheries in Commonwealth waters adjacent to the limit of State waters under the OCS. The OCS arrangements for the management of fisheries enable fisheries undertaken in waters adjacent to Western Australian waters to be managed solely by Western Australia in accordance with Western Australian law, managed solely by the Commonwealth under Commonwealth law, or managed by a Commonwealth / Western Australian joint authority either under Commonwealth law or Western Australian law, or by two or more jurisdictions on a regional basis.

Fisheries wholly managed by Western Australia under these arrangements include:

- West Coast Rock Lobster
- Roe's Abalone
- Octopus
- Abrolhos Islands and Mid-West Trawl
- Cockburn Sound Crab
- Estuarine finfish (West Coast)
- West Coast Beach Bait
- West Coast Purse Seine
- West Coast Demersal Scalefish
- Shark Bay Prawn
- Exmouth Gulf Prawn
- Shark Bay Scallop
- Shark Bay Crab
- Shark Bay Beach Seine and Mesh Net
- Deep Sea Crab
- Gascoyne Demersal Scalefish (Pink Snapper)
- Onslow Prawn
- Nickol Bay Prawn
- Broome Prawn
- Kimberley Prawn
- Kimberley Gillnet and Barramundi
- Northern Demersal Scalefish
- Pilbara Fish Trawl
- Pilbara Demersal Trap and Line
- Northern Shark
- Pearl Oyster
- Beche-de-Mer
- South Coast Crustacean
- Abalone (Greenlip / Brownlip)
- South Coast Estuaries
- WA Salmon
- Australian Herring
- Albany / King George Sound Purse Seine
- Bremer Bay Purse Seine
- Esperance Purse Seine
- Southern and West Coast Demersal Gillnet and Longline
- Lake Argyle Catfish

Fisheries managed jointly by the Western Australian Fisheries Joint Authority (a body comprising the State and the Commonwealth ministers) include:

Joint Authority Southern Demersal Gillnet and Demersal Longline Fishery  
Joint Authority Northern Shark Fishery, east of Koolan Island

Fisheries Managed wholly by the Commonwealth include:

Northern Prawn  
Southern and Western Tuna and Billfish  
Western Deepwater Trawl  
North-West Slope Deepwater Trawl  
Southern Bluefin Tuna Fishery  
Recreational fishing in the waters of any Commonwealth marine park

It should be noted that the provisions of this Part reflect the existing legal framework.

## **Division 1 — Preliminary**

### **Clause 236      Terms used**

Defines the terms used in this Part.

This clause is similar in effect to that of section 15 of the FRMA.

## **Division 2 — Joint Authorities**

This Division sets out provisions for the establishment of State/Commonwealth Joint Authorities for the management of commercial fishing activities based on aquatic resources that straddle State/Commonwealth jurisdiction, or straddle interstate jurisdictional boundaries.

### **Clause 237      Functions of Joint Authority**

This clause states that the functions of any Joint Authority are to be defined in accordance with the arrangement for the management of any particular Joint Authority fishery.

This clause is similar in effect to that of section 18 of the FRMA.

### **Clause 238      Delegation by Joint Authority**

- (1) Enables the Joint Authority to delegate any or all of its powers.
- (2) Provides that any delegation made by the Joint Authority must be made in written form.
- (3) Provides that the delegation of power by a Joint Authority may be made to a specific office and under the relevant laws of the Commonwealth, Western Australia, other States or the Northern Territory. In effect the operation of this subclause means that a Joint Authority may delegate its powers to the Minister for Fisheries or the Executive Director, who may exercise the powers under State law.
- (4) Provides that where the power of the Joint Authority is delegated to a person, that person cannot then delegate those powers.



- (5) Provides that where a person has been delegated powers by the Joint Authority, if that person then uses those powers, that person is taken to have used the powers delegated within the terms of the delegation of powers unless the contrary is proven.
- (6) Provides that this clause does not limit;
  - (a) The Joint Authority to use or appoint an agent to perform any function.
  - (b) Sections 58 and 59 of the *Interpretation Act 1984*.
  - (c) Delegations made by the Joint Authority of powers provided under Commonwealth law.

The effect of subclause 6 is to ensure that notwithstanding the specific powers in clause 238, the provisions of the *Interpretation Act* (which detail the nature of the exercise of powers by a delegate and the construction of a power to delegate) are not limited in any way. In other words the provisions of this Act in relation to delegation are additional to and do not limit the powers given to a delegate by the *Interpretation Act*.

This clause is similar in effect to that of section 19 of the FRMA.

#### **Clause 239      Procedure of Joint Authorities**

This clause is of an administrative and legal nature and specifies the procedures to be followed in the performance of the Joint Authority's functions under State law and the legal status of instruments signed on behalf of the Joint Authority.

Provides that Sections 66, 67 and 68 of the *Fisheries Management Act 1991* of the Commonwealth applies in relation to the performance of a Joint Authority's functions under State law.

Section 66 of the *Fisheries Management Act 1991* (Cth) specifies meeting procedures relating to the presiding member, the calling of meetings, the quorum of a Joint Authority and the process to be observed where members of the Joint Authority are not in agreement as to a decision.

Section 67 of the *Fisheries Management Act 1991* (Cth) enables members of a Joint Authority to submit matters to other members of the authority in writing and seek written approval of matters put. If all members of the Joint Authority provide their written agreement, the Commonwealth Minister must record the matter as a decision of the Joint Authority.

Section 68 of the *Fisheries Management Act 1991* (Cth) states that a Joint Authority may appoint advisory committees to advise it on any matter relating to a fishery.

This clause is similar in effect to that of section 20 of the FRMA.

**Clause 240      Evidentiary matters**

- (1) Provides that all courts, judges and persons acting judicially are to take judicial notice of the fact that a person is or was a member or deputy of a member of a Joint Authority, and the official signature of such a person.
- (2) Provides that a document signed by the Commonwealth Minister or that Minister's deputy, purporting to be a record or copy of a decision of a Joint Authority is, in the absence of evidence to the contrary, proof of the matter stated in the document.
- (3) Provides that in any legal proceedings an instrument or other document signed by a member of a Joint Authority on behalf of a Joint Authority is taken to have been duly executed by the Joint Authority and is taken to be in accordance with a decision of the Joint Authority, unless the contrary is proved.
- (4) Provides that this section is in addition to and does not affect the operation of the *Evidence Act 1996*.

This clause expands upon, but is similar in effect to, that of section 17 of the FRMA.

**Clause 241      Report of Joint Authority**

Provides that the Minister must cause a copy of a report of a Joint Authority prepared under section 70 of the Commonwealth Act, to be laid before each House of the West Australian Parliament as soon as is practicable after the preparation of the report.

This clause is similar in effect to that of section 21 of the FRMA.

**Division 3 — Arrangements for management of particular fishing activities**

This Division carries forward provisions from the FRMA for the management of specified fishing activities through arrangements with the Commonwealth and other States. These arrangements have specific relevance to fisheries such as abalone, where cross-border transport may be used to evade State management controls.

**Clause 242      Arrangement for management under Commonwealth Act**

- (1) Provides that the State may, in accordance with section 74 the Commonwealth Act, make an arrangement referred to in section 71 or 72 of the Commonwealth Act for the management of a particular fishing activity or class of fishing activity. The relevant Commonwealth Act is the *Fisheries Management Act 1991*.

Section 74 of the Commonwealth Act provides that all arrangements are to be approved by the Governor-General and the Governors of all States concerned. The arrangements are to be published in the Commonwealth Gazette and have effect from the day of publication.

Section 74(3) of the *Fisheries Management Act 1991* (Cth) enables management plans, permits and fishing rights to be issued, but states that they have no effect until the Joint Authority arrangement takes effect, that is upon Gazettal.

Section 71 of the Commonwealth Act provides for the management of fisheries by a Joint Authority to be undertaken either in accordance with Commonwealth law or in accordance with the law of the State. If a fishery is to be managed by a Joint Authority involving two or more States, the fishery is to be managed in accordance with Commonwealth law.

Section 72 of the Commonwealth Act provides that the Commonwealth and a State may make arrangements for the management of fisheries undertaken partly or wholly in State waters to be managed either in accordance with the law of the Commonwealth or the law of the State.

- (2) Provides for the termination of a Joint Authority arrangement in accordance with the provisions of the Commonwealth Act. Under section 75 of the Commonwealth Act either the Commonwealth or the State may initiate action to terminate an arrangement for the management of a fishery.
- (3) Provides for the granting and renewal of authorisations and the making and determination of regulations, orders and instruments in respect to the management arrangements for a fishery prior to the arrangement having effect.
- (4) Provides that an authorisation, regulation, order or instrument referred to in subclause 3 does not have effect prior to the arrangement taking effect.
- (5) Provides that an authorisation, regulation, order or instrument referred to in subclause (3) ceases to have effect on the termination of the arrangement.
- (6) Provides for the granting or renewal of new authorisations or the making of other subsidiary legislation for the future management of the fishery once the Joint Authority arrangement is terminated notwithstanding that the management arrangements have not yet been terminated.
- (7) Provides that an authorisation issued or subsidiary legislation made under subclause (6) does not have effect until the termination of the Commonwealth - State arrangement takes effect.

This clause is similar in effect to that of section 22 of the FRMA.

#### **Clause 243 Minister may enter into arrangements with other States**

Provides that the Minister may enter into an arrangement with another Minister in another jurisdiction or an authority in another jurisdiction, for the purpose of co-operation in furthering the objects of this Act, whether in this State or in that other State or Territory. This clause provides the capacity for Western Australia to enter into agreements with other jurisdictions for the management of fisheries on a regional basis, providing greater flexibility in the co-operative management of fisheries subject to OCS arrangements.

This clause is similar in effect to that of section 29A of the FRMA.

- Clause 244      Application of Act to fishing activities under arrangements**  
Provides that the provisions of this Act apply to and in relation to a WA regulated fishing activity. Clause 236 defines **WA regulated fishing activity** to mean a fishing activity in respect of which there is in force an arrangement under which the fishing activity is to be managed in accordance with the law of this jurisdiction, whether or not it is also managed under some other law.
- This clause is similar in effect to that of section 23 of the FRMA.
- Clause 245      Application of Commonwealth law to fishing activities under arrangements**  
Provides that within the limits of the State, the law of the Commonwealth applies as a law of the State in relation to a Commonwealth regulated fishing activity. Clause 236 defines **Commonwealth regulated fishing activity** to mean a fishing activity in respect of which there is in force an arrangement under which the fishing activity is to be managed in accordance with the law of the Commonwealth, whether or not it is also managed under some other law.
- This clause is similar in effect to that of section 24A of the FRMA.
- Clause 246      Application of corresponding laws to fishing activities under arrangements**  
Provides that within the limit of the State a corresponding law applies as a law of the State in relation to a regional fishing activity that is regulated under the corresponding law. Clause 236 defines **corresponding law** to mean a law of the Commonwealth or another State declared by the regulations to be a law corresponding to this Act.
- Clause 247      Minister's powers and functions under Commonwealth Act or corresponding law**  
(1) Provides that the Minister may exercise the powers and functions conferred by the Commonwealth Act (*Fisheries Management Act 1991* (Cth)) including any other power or function conferred on the Minister as a member of a Joint Authority.  
(2) Provides for the same powers to be conferred on any deputy appointed by the Minister.
- This clause is similar in effect to that of section 16 of the FRMA.
- Clause 248      Functions of Joint Authority**  
(1) Provides that if a WA regulated fishing activity is managed by a Joint Authority, the Joint Authority has the functions of keeping the condition of the aquatic resource under constant consideration, formulating policies and plans for its good management and exercising the powers conferred on it by this Act and co-operating and consulting with other authorities for the purpose of managing the fishing activity.

- (2) Provides that in performance of its functions in relation to a WA regulated fishing activity, the Joint Authority must have regard to objects of this Act and the means of carrying them out, as provided in clause 11 of this Act.

Section 24 of the FRMA is equivalent to this clause, however this clause has been re-drafted to include reference to the requirements of this Act (as opposed to the requirements of the FRMA).

#### **Clause 249      Exercise of powers by Joint Authority**

Enables a Joint Authority to grant or renew authorisations, with or without conditions, to undertake a fishing activity that is managed by a Joint Authority.

- (1) Provides that only authorisations issued by a Joint Authority have effect in a Joint Authority fishery.
- (2) Provides that if a WA regulated fishing activity is managed by a Joint Authority, the Joint Authority has the same powers as are conferred upon the Minister by this Act and that references to the Minister are taken to be references to the Joint Authority.
- (3) Provides that an authorisation granted by the Joint Authority must be limited to apply only in relation to a fishing activity or fishing activities managed by the Joint Authority.
- (4) Provides that a Joint Authority may endorse an authorisation including an authorisation granted by the Joint Authority or another Joint Authority to extend the operation of the authorisation to include fishing activities managed by the Joint Authority.
- (5) Provides that an endorsement on an authorisation referred to in subclause (4) ceases to have effect if the authorisation ceases to have effect and that the Joint Authority may suspend or cancel the endorsement as if it were an authorisation granted by the Joint Authority.
- (6) Provides that regulations and other subsidiary legislation that previously applied to a fishing activity, prior to the Joint Authority commencing management of the fishing activity, cease to apply until otherwise provided for in clause 252. Clause 252 provides a process for the application of previously existing regulations and other subsidiary legislation to the fishing activity managed by the Joint Authority.
- (7) Provides that a Joint Authority has no power in relation to the issuing of an authorisation or an endorsement in respect to a foreign boat. The Commonwealth retains sole responsibility for granting authorisations to foreign boats.

This clause is similar in effect to that of section 25 of the FRMA.

#### **Clause 250      Application of offence provision in Act to fishing activity managed by Joint Authority**

This clause provides that the offence enforcement and legal proceedings provisions of this Act apply in respect to fishing activity managed by a Joint Authority.

This clause is similar in effect to that of section 26 of the FRMA.

**Clause 251      Presumptions in relation to certain statements in arrangements**

This clause is a facilitation of proof provision that states that in any OCS arrangement between WA and the Commonwealth or between WA and other States and the Commonwealth, a statement in respect to specified waters adjacent to Western Australia or adjacent to Western Australia and other States respectively, must be presumed to be conclusively correct. This clause is necessary to provide compatibility with the Commonwealth Act and assist in the facilitation of the description of waters subject to an arrangement and in the formulation and amendment of management plans.

This clause is similar in effect to that of section 27 of the FRMA.

**Clause 252      Regulations, orders and instruments in respect of fishing activities under arrangements**

- (1) Enables the Governor to make regulations, apply existing regulations or amend regulations for the management of a fishing activity by the Joint Authority following a decision of the Joint Authority.
- (2) Provides that the power conferred on the Governor to make or amend regulations generally otherwise than under subclause (1), does not extend to the making or amendment of a regulation for the purposes of a fishing activity managed by a Joint Authority unless the regulations give effect to a decision of a Joint Authority.
- (3) Provides for the Minister to make orders, apply existing orders or amend orders relating to fishing activity managed by a Joint Authority to give effect to a decision of a Joint Authority.
- (4) Provides that the power conferred on the Minister to make or amend orders generally otherwise than under subclause (3), does not extend to the making or amendment of orders for the purposes of a fishing activity managed by a Joint Authority unless the orders give effect to a decision of a Joint Authority.
- (5) Enables the Minister to approve an ARUP, apply a management plan or an ARUP, or amend a management plan or ARUP relating to a fishing activity managed by a Joint Authority to give effect to a decision of the Joint Authority.
- (6) Provides that the power conferred on the Minister to approve, apply or amend ARUPs and management plans generally otherwise than under subclause (5), does not extend to the approving, applying or amending ARUPs or management plans for the purposes of a fishing activity managed by a Joint Authority unless the ARUP or management plan gives effect to a decision of a Joint Authority.
- (7) Provides that a regulation, order or instrument made under this clause must be conclusively presumed to be made for the purpose of giving effect to a decision of the Joint Authority. This is a standard presumption of proof provision and is necessary to assist in legal actions that may arise out of fishing activities managed by a Joint Authority.

This clause is similar in effect to that of section 28 of the FRMA.

## Part 16 — Miscellaneous

### **Clause 253      Protection from liability**

- (1) Provides that a person is not liable for anything that the person has done in good faith in the performance of a function under this Act.
- (2) Provides for the same protection even though the thing done may have been capable of being done whether or not this Act had been enacted.
- (3) Provides that the State is not relieved of any liability that it might have for another person who has done anything in good faith in the performance of a function under the Act.
- (4) Provides that in this clause a reference to doing anything includes an omission to do anything.

This clause is similar in effect to that of section 244 of the FRMA.

### **Clause 254      Administrative guidelines**

- (1) Provides that administrative guidelines may be issued to provide practical guidance to persons who have duties or obligations under this Act or any other Act administered by the Minister or for providing information to industry and the public.
- (2) Provides for the Minister to issue, amend or revoke guidelines.
- (3) Requires that guidelines are to be published in the prescribed way.

This clause is similar in effect to that of section 246 of the FRMA.

### **Clause 255      Guidelines about foreign interests**

- (1) Provides that this clause relates to guidelines about foreign interests to persons holding or controlling interests in fishing access rights.
- (2) Provides for the Minister to issue, amend or revoke guidelines.
- (3) Requires that the guidelines are to be published in the prescribed way.

This clause is similar in effect to that of section 247 of the FRMA.

### **Clause 256      Consultation in relation to guidelines**

Provide that the Minister is to consult with industry bodies before issuing or amending guidelines.

This clause is similar in effect to that of section 248 of the FRMA.

### **Clause 257      Guidelines to be taken into account**

- (1) Requires guidelines to be taken into account in the exercise of functions under the Act.
- (2) Limits the extent to which guidelines derogate from other duties under the Act.

This clause is similar in effect to that of sections 246(4) and 246(5) of the FRMA.

#### **Clause 258 Inquiry into holder of resource shares or authorisation**

- (1) Defines ***appointed person*** for the purposes of this clause.
- (2) Provides that the CEO may appoint a person to conduct an inquiry into who controls or has interests in fishing access rights.
- (3) (a) and (b) Provide powers of direction for persons appointed under subclause (1) to require information, answers to questions, and the production of records.
- (3) (c) Provides that an appointed person may examine and make copies of any records produced.
- (4) Sets out how a direction may be given and the response required.
- (5) Provides powers to administer oaths and affirmations and witness statutory declarations for persons under subclause (1).
- (6) Specifies the form, content and conditions for directions for the production of records.
- (7) Establishes an offence for failing to comply with a direction without reasonable excuse.
- (8) Extinguishes the excuse of self-incrimination as reasonable.
- (9) Provides that self-incriminating answers are not admissible in evidence in any criminal proceedings other than under this section.

This clause is similar in effect to that of section 249 of the FRMA.

#### **Clause 259 Confidentiality of information**

- (1) Defines ***confidential information*** as information provided or kept under the Act.
- (2) Establishes an offence for misuse of confidential information.
- (3) Provides exceptions for information provided in specific circumstances, or with proper authorisation such as for administrative or compliance purposes.
- (4) Excepts aggregated and statistical information.
- (5) Protects confidential information from being released by subpoena or in response to directions from a court or tribunal.
- (6) Provides that this clause has effect despite any provision of the *Freedom of Information Act 1992*.

This clause is similar in effect to that of section 250 of the FRMA.

#### **Clause 260 False or misleading information**

- (1) Creates an offence for providing false or misleading information in relation to an application made under this Act.
- (2) Creates an offence for providing false or misleading information in relation to a record or return required to be kept or lodged under the Act.
- (3) Provides that false or misleading information in an application, record or return is making a statement that the person knows is false or misleading in a material way or makes omissions that are misleading in a material way or provides or causes to be provided information the person knows is false or misleading in a material way or omits anything or makes omissions that are misleading in a material way.

This clause is similar in effect to that of section 176 of the FRMA.



**Clause 261 Minister to be notified of waterway works**

- (1) Defines ***fish way*** and ***public authority*** and ***waterway***.
- (2) Requires public authorities to notify the Minister, and alter works if required.

This clause is similar in effect to that of section 254 of the FRMA.

**Clause 262 Death of individual who holds authorisation**

- (1) Provides that this clause applies to aquaculture licences, managed fishery licences and licences of a type prescribed for the purposes of this clause.
- (2) Provides that on the death of an individual who immediately before death held an authorisation exclusively or as a tenant in common, the deceased persons share of the authorisation is taken to be held by the deceased's personal representative.
- (3) Provides that on the death of an individual who immediately before death held an authorisation as a joint tenant, the deceased's person's share of the authorisation is taken to be held by the surviving joint tenants.

This clause is similar in effect to that of section 146A of the FRMA.

**Clause 263 Regulations**

- (1) Provides for the Governor to make regulations for the purposes of the Act.
- (2) Provides for the matters about which regulations may be made including fees and charges under the Act.
- (3) Provides for regulations to apply or adopt codes of practice, standards or other documents related to the purposes of the Act.
- (4) Provides for the creation of offences in the regulations, with maximum penalties of \$10,000 and \$100 per day.
- (5) Provides that a fee proscribed under subclause 263(2)(j) may include:
  - (a) An amount in respect to the extent or value of any authority conferred by an authorisation.
  - (b) An amount in connection with any purpose referred to in subclause 232(4) (for which the Aquatic Resources Research and Development Account may be applied) or referred to in subclause 233(4) (relating to purposes for which the Recreational Fishing Account may be applied), as relevant to the authorisation.
  - (c) If the fee is for the issue of an aquaculture licence, an amount in respect to the area to which the licence relates.
  - (d) An amount in respect of the cost of administering this Act.

**Clause 264 Service of documents**

- (1) Defines ***business address*** for the purposes of this clause.
- (2) Provides that where the Act requires or permits a document to be served on the holder of a registrable instrument the document may be served by posting it by prepaid post to the holders business address or delivering or leaving the document at the holders business address.
- (3) Provides that section 76 of the *Interpretation Act 1984* which deals with the matter of service of documents generally, continues to apply.

**Clause 265      CEO to make plans and strategies publicly available**

- (1) Defines ***aquatic biosecurity management plan*** for the purposes of this clause.
- (2) Requires the CEO to make available strategies, plans, orders and regulations made under the Act as listed in the Table for public inspection.
- (3) Provides for regulations to set a fee for obtaining copies of documents.

This clause is similar in effect to that of section 262 of the FRMA.

**Clause 266      Annual report of Department**

Provides that the Annual Report prepared for the purposes of the *Financial Management Act 2006* is to include a report on the state of fisheries and aquatic resources managed under this Act.

This clause is similar in effect to that of section 263 of the FRMA.

## Part 17 — Repeals

**Clause 267     *Fish Resources Management Act 1994 repealed***

Provides for the repeal of the FRMA.

**Clause 268     *Pearling Act 1990 repealed***

Provides for the repeal of the Pearling Act. This section will not be proclaimed until an aquatic resource management strategy and other management arrangements for the pearling industry under the framework of this Bill are in place.

## Part 18 — Transitional provisions

### Division 1 — Preliminary

**Clause 269      Interpretation Act not affected**

Provides that the operation of the *Interpretation Act 1984* is not affected by the repeal of the FRMA and the Pearling Act.

**Clause 270      Transitional regulations**

- (1) Defines ***transitional matter*** as a matter that needs to be dealt with to effect transitions from the FRMA or Pearling Act to this Act.
- (2) Provides for the creation of regulations to effect the transition from the FRMA and the Pearling Act, if this Bill does not make sufficient provision for dealing with the transitional matter.
- (3) Provides that the regulations relating to transitional matters may provide that specified provisions of a written law do not apply in relation to a matter or apply with modifications in relation to the matter.
- (4) Provides that if transitional regulations state that a specified state of affairs existed or did not exist on a date earlier than the date of Gazettal of the regulations, but not before this clause comes into operation, then the regulations have effect according to their terms.
- (5) Provides that regulations made under subclause (4) may not operate in a way that is prejudicial to the rights that a person enjoyed, or impose liabilities on persons in respect of this done or not done the day before the regulations were made.
- (6) Provides that regulations relating to transitional matters that provide that a written law does not apply, or applies with modifications, must be made within such period that is reasonably and practicably necessary to deal with the transitional matter.

### Division 2 — Transitional provisions for *Fish Resources Management Act 1994*

**Clause 271      Terms used**

Defines the terms used in this Division.

**Clause 272      Exemptions**

Provides that an exemption that was in force under section 7 of the FRMA immediately before the repeal of the FRMA, is taken to be an exemption for the purposes of this Act with the same conditions as applied previously.

**Clause 273      Management plans**

- (1) Defines ***required consultation*** for the purposes of this clause.
- (2) Carries forward the effect of (commercial fishery) management plans created under Part 6, section 54 of the FRMA. This will allow the 40 managed commercial fisheries to continue to operate under existing management arrangements until such time as they are moved into the resource management framework provided by the Bill.

- (3) Converts “interim” managed fishery plans which generally have a specified end date, into “managed fishery” plans, which have continuity until revoked or amended. This will provide improved security of access for the five fisheries managed under interim plans.
- (4) Provides that the Minister may amend or revoke management plans for a managed fishery as previously provided for under section 54(2) of the FRMA. The Bill does not allow for the creation of new plans of this type. Instead they are replaced with ARMS and ARUPs under Part 3.
- (5) Requires the Minister to consult before amending a management plan as previously provided for in sections 64 and 65 of the FRMA.
- (6) Provides for the Minister to approve minor or urgent amendments to a management plan as previously provided for in section 65(3) of the FRMA.
- (7) Requires the Minister to consult retrospectively if urgent amendments are made to a management plan as previously provided in section 56(4) of the FRMA.
- (8) Provides that only matters that could have been included in an amendment to a management plan prior to the commencement of this Act, can be made after the commencement of this Act.
- (9) Provides that management plans continue to be subsidiary legislation for the purposes of the *Interpretation Act 1984* and therefore subject to disallowance in Parliament.

#### **Clause 274 Authorisations**

- (1) Provides that FRMA authorisations listed in the Table are transitioned as the type of lease or authorisation appearing alongside them in the Table.
- (2) Provides that applications for the grant of licences and leases made under the repealed Act that have not been decided before commencement day, are taken to be applications for the equivalent authorisation or lease under this Act.
- (3) Provides that applications for the renewal or transfer of an authorisation made under the repealed Act that have not been determined to be deemed applications for an equivalent authorisation or lease under this Act.
- (4) Provides that applications for the temporary transfer of the whole or part of an entitlement made under the repealed Act that have not been determined to be deemed applications for an equivalent authorisation or lease under this Act.
- (5) Provides that a review that was commenced under the repealed Act but was not finalised must be dealt with as if the repealed Act had not been repealed but that the outcomes of the review process are taken to be in respect of the relevant authorisation under this Act.

**Clause 275      Matters relating to replacement authorisations**

- (1) Defines **replacement authorisation** for the purposes of this clause to mean an FRMA authorisation (lease, permit or authorisation under the repealed Act) that is transitioned to the type of lease or authorisation referred to in the Table of clause 274(1).
- (2) Provides that a conviction in respect to of the authorisation under the repealed Act is to be recorded on the register in respect of the replacement authorisation.
- (3) Provides for the transition of security interests from old authorisations to the replacement authorisation.
- (4) Provides that an application that was made under the repealed Act, but not decided before commencement date for the renewal or transfer of, or the temporary transfer of, the whole or part of an entitlement is taken to be equivalent applications in respect to the replacement authorisation.
- (5) Provides that an application that was made under the repealed Act, but not decided before commencement date for a security interest notation to be made on the register is taken to be equivalent applications in respect to the replacement authorisation.
- (6) Provides that an application that was made under the repealed Act, but not decided before commencement date for the removal or variation of a security notation on the register is taken to be equivalent applications in respect to the replacement authorisation.
- (7) Provides that a conviction after commencement day which would have required the recording of a black mark under section 224 of the repealed Act, is to be recorded in respect of the replacement authorisation under clause 209.

**Clause 276      Transition from former body corporate to AR Ministerial Body**

- (1) Defines **former body corporate** for the purposes of this clause.
- (2) Provides that the AR Ministerial Body is a continuation of, and the same legal entity as the former body corporate provided for under the FRMA.

**Clause 277      Arrangements with the Commonwealth of other State or territory**

Provides for the transition of arrangements with other jurisdictions made under the repealed FRMA to continue in force under this Act.

**Clause 278      Continuation of accounts**

- (1) Provides that the Aquatic Resources Research and Development Account is a continuation of the Fisheries Research and Development Account established under the FRMA.
- (2) Provides that the Recreational Fishing Account is a continuation of the Recreational Fishing Account established under the FRMA.
- (3) Provides that the Fishing Industry Promotion Training and Management Levy Account is a continuation of the Fishing Industry Promotion Training and Management Levy Account established under the FRMA.
- (4) Provides that references in documents to accounts established under the repealed Act are taken to be references to accounts under this Act.

**Clause 270      Register**

Provides for the transfer of information from the register kept under the repealed FRMA to the register established under this Act.

**Clause 280      Fish habitat protection areas**

- (1) Provides for the continuity for the transition of fish habitat protection areas to be aquatic habitat protection areas on commencement day.
- (2) Provides that if immediately before the commencement day, the management and control of a fish habitat protection area had been vested in a body corporate, that body corporate is vested with the control and management of the aquatic habitat protection area on commencement day.

**Clause 281      Seized and forfeited things**

- (1) Provides that a thing seized under the repealed Act is taken to be a thing seized under this Act.
- (2) Provides that if the CEO authorised the return of thing seized under the repealed Act, the CEO is taken to have authorised the return of the thing seized under this Act subject to any conditions that applied to the return of the thing under the repealed Act.
- (3) Provides that a thing forfeited under the repealed Act is taken to have been forfeited under this Act, and may be disposed of as provided for under this Act.

**Clause 282      Prohibitions on offenders**

Provides continuity for court orders made under the repealed Act to be court orders for the purposes of clause 211 of this Act, with modifications as necessary to describe the prohibitions in terms that are consistent with clause 211.

**Division 3 — Transitional provisions for *Pearling Act 1990***

**Clause 283      Terms used**

Defines terms for the purposes of this Division.

**Clause 284      Arrangements with the Commonwealth of other State or territory**

Provides for the transition of arrangements with other jurisdictions made under the repealed *Pearling Act* to continue in force under this Act.

**Clause 285      Licences, leases and permits**

- (1) Defines ***Pearling Act authorisation*** for the purpose of this clause.
- (2) Provides that *Pearling Act* authorisations listed in the Table are transitioned as the type of lease or authorisation appearing alongside them in the Table.
- (3) Provides that applications for the grant of licences and leases made under the repealed Act that have not been decided before commencement day, are taken to be applications for the equivalent authorisation or lease under this Act.
- (4) Provides that a review that was commenced under the repealed Act but was not finalised must be dealt with as if the repealed Act had not been repealed but that the outcomes of the review process are taken to be in respect of the relevant authorisation under this Act.

**Clause 286      MEMP requirements for transitioned authorisations**

- (1) Defines terms used in this clause.
- (2) Provides for a grace period of 2 years from the requirements to submit a MEMP for pearling licences transitioned into this Act.
- (3) Provides that unless the licence holder is exempt under subclause (4) a person must prepare a MEMP and lodge it with the CEO within 2 years of the commencement of this Act.
- (4) Provides that the CEO may exempt a licence holder from the requirements to prepare a MEMP if the licence relates to the aquaculture of prescribed aquatic organisms on private land. This exemption is similar in effect to the exemption contained in section 92A(4) of the FRMA.

**Clause 287      Recording of previous convictions on authorisation**

Provides that for the purposes of clause 209 (relating to the recording of convictions for prescribed offences under this Act), an offence against section 8 of the repealed Act is taken to be a conviction against this Act, if the conviction for the offence occurred within 10 years prior to the commencement day.

**Clause 288      Seized and forfeited things**

- (1) Provides that a thing seized under the repealed Act is taken to be a thing seized under this Act.
- (2) Provides that a thing forfeited under the repealed Act is taken to have been forfeited under this Act, and may be disposed of as provided for under this Act.



## Part 19 — Consequential amendments to other Acts

### Division 1 — *Biosecurity and Agriculture Management Act 2007* amended

**Clause 289 Act amended**

Provides that this Division amends the *Biosecurity and Agriculture Management Act 2007*.

**Clause 290 Section 3 amended**

Self-explanatory.

**Clause 291 Section 4 amended**

Self-explanatory.

**Clause 292 Section 6 amended**

(1) and (2) Replaces the definitions of *fish*, *fisheries officer*, *Minister for Fisheries* and *pearl oyster* referred to in the *Biosecurity and Agriculture Management Act 2007* with the definitions of *aquatic organism*, *aquatic compliance officer*, *Minister for Aquatic Resources* and *aquaculture*.

(3) Self-explanatory.

(4) Self-explanatory.

(5) Amends the definition of *inspector* in the *Biosecurity and Agriculture Management Act 2007* for consistency with this Act in relation to both compliance officers and aquatic organisms.

(6) Amends the definition of *land* in the *Biosecurity and Agriculture Management Act 2007* by deleting that part of the definition dealing with Commonwealth State management of fisheries and inserting in its place the equivalent terminology used under this Act.

**Clause 293 Section 9 amended**

Self-explanatory.

**Clause 294 Section 12 amended**

Self-explanatory.

**Clause 295 Section 22 amended**

Self-explanatory.

**Clause 296 Section 45 amended**

Self-explanatory.

**Clause 297 Section 184 amended**

Self-explanatory.

## Division 2 — *Conservation and Land Management Act 1984* amended

### Clause 298 **Act amended**

Provides that this Division amends the *Conservation and Land Management Act 1984*.

### Clause 299 **Section 3 amended**

- (1) and (2) Deletes definitions in the CALM Act used in the FRMA and replaces them with the equivalent definitions under this Act.
- (3) Amends the wording of the definition of **forest products** to be consistent with the wording of section 3 of the CALM Act following references within the above amendments.

### Clause 300 **Section 8A amended**

Self-explanatory.

### Clause 301 **Section 13A amended**

Amends this section for consistency with the terminology of this Act.

### Clause 302 **Section 13B amended**

- (1) Amends this section for consistency with the terminology of this Act.
- (2) Deletes 13B(4) which relates to the *Pearling Act*, which is to be repealed under this Act.
- (3) Amends this section for consistency with the terminology of this Act.
- (4) Amends this section for consistency with the terminology of this Act.
- (5) Amends this section for consistency with the terminology of this Act.
- (6) Deletes 13B(8) which relates to the *Pearling Act*, which is to be repealed under this Act.

### Clause 303 **Section 13C amended**

- (1) Amends the definition of **commercial purposes** to delete any reference to pearling activity as these activities are now incorporated within aquaculture and commercial fishing under this Act.
- (2) Amends this section for consistency with the terminology of this Act.
- (3) Amends this section for consistency with the terminology of this Act.
- (4) Deletes 13C(5) and (6) which relates to the *Pearling Act*, which is to be repealed under this Act.

### Clause 304 **Section 13D replaced**

This clause updates the language of section 13D with the language and terminology used under this Act, while maintaining the intent of the current section 13D.

### Clause 305 **Section 14 amended**

Amends this section for consistency with the terminology of this Act.

### Clause 306 **Section 17 amended**

Amends this section for consistency with the terminology of this Act.

### Clause 307 **Section 26H amended**

Amends this section for consistency with the terminology of this Act.

- Clause 308 Section 49 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 309 Section 59 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 310 Section 60 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 311 Section 62 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 312 Section 101B amended**  
(1) Amends this section for consistency with the terminology of this Act.  
(2) Amends this section for consistency with the terminology of this Act and redrafts sub-section 101B(3) to reflect modern drafting practices. The overall effect of the amendment is similar to that of the existing section 101B(3).
- Clause 313 Section 130 amended**  
Amends this section for consistency with the terminology of this Act and redrafts sub-section 130 to reflect modern drafting practices. The overall effect of the amendment is similar to that of the existing section 130.
- Division 3 — *Criminal Investigation (Covert Powers) Act 2012* amended**
- Clause 314 Act amended**  
Provides that this Division amends the *Criminal Investigation (Covert Powers) Act 2012*.
- Clause 315 Section 3 amended**  
(1) and (2) Deletes definitions in the *Criminal Investigation (Covert Powers) Act 2012* used in the FRMA and replaces them with the equivalent definitions under this Act.  
(3) Amends this section for consistency with the terminology of this Act.  
(4) Amends this section for consistency with the terminology of this Act.  
(5) Amends this section for consistency with the terminology of this Act.  
(6) Amends this section for consistency with the terminology of this Act.  
(7) Amends this section for consistency with the terminology of this Act.  
(8) Amends this section for consistency with the terminology of this Act.
- Clause 316 Section 5 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 317 Section 43 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 318 Section 48 amended**  
Amends this section for consistency with the terminology of this Act.

- Clause 319 Section 79 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 320 Section 83 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 321 Section 105 amended**  
Amends this section for consistency with the terminology of this Act.

**Division 4 — *Fisheries Adjustment Schemes Act 1987* amended**

- Clause 322 Act amended**  
Provides that this Division amends the *Fisheries Adjustment Schemes Act 1987*.
- Clause 323 Long title amended**  
Amends the long title for consistency with the terminology of this Act.
- Clause 324 Section 3 amended**  
(1) and (2) Deletes definitions in the *Fisheries Adjustment Schemes Act 1987* used in the FRMA and replaces them with the equivalent definitions under this Act.  
(3) Amends this section for consistency with the terminology of this Act.
- Clause 325 Section 3A amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 326 Section 5 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 327 Section 9 amended**  
Amends this section for consistency with the terminology of this Act.
- Clause 328 Section 14C amended**  
Amends this section for consistency with the terminology of this Act.

**Division 5 — *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* amended**

- Clause 329 Act amended**  
Provides that this Division amends the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*.
- Clause 330 Long title amended**  
Amends the long title for consistency with the terminology of this Act.

**Clause 331 Section 3 amended**

Amends the definitions in the Act for consistency with the terminology of this Act.

**Clause 332 Section 4 amended**

This deletes a provision of the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* that provided for the commencement of the *Acts Amendment (Marine Reserves) Act 1997* to be grounds for compensation. That ground for compensation is now redundant because of the long period of time between the commencement of the *Acts Amendment (Marine Reserves) Act 1997* and the commencement of this Act.

**Clause 333 Section 5 amended**

- (1) Amends this section for consistency with the terminology of this Act, and deletes a reference to interim managed fishery permits which will cease to exist on the commencement of this Act.
- (2) Amends this section for consistency with the terminology of this Act.

**Clause 334 Section 6A inserted**

Provides that holders of resource shares are entitled to compensation under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* for loss as a result of a relevant event relating to the creation of a zoning or management of certain marine reserves under the CALM Act.

**Clause 335 Section 12 amended**

Amends this section for consistency with the terminology of this Act.

**Clause 336 Section 14 deleted**

Deletes section 14, this had previously been deleted under the *Reprints Act 1984*.

**Clause 337 Schedule 1 deleted**

Deletes reference to Schedule 1, this had previously been deleted under the *Reprints Act 1984*.

**Division 6 — *Fishing Industry Promotion Training and Management Levy Act 1994* amended**

**Clause 338 Act amended**

Provides that this Division amends the *Fishing Industry Promotion Training and Management Levy Act 1994*.

**Clause 339 Long title amended**

Amends the long title for consistency with the terminology of this Act, and to include resource shares within the scope of the Act.

**Clause 340 Section 3 amended**

Amends this section for consistency with the terminology of this Act.

**Clause 341 Section 4 amended**

- (1) (a) Changes the reference to the appropriate section of this Act relating to the Fishing Industry Promotion Training and Management Levy Account (section 232).
  - (b) Amends this section for consistency with the terminology of this Act.
  - (c) Deletes references to fish processors licences and interim managed fishery permits and inserts a reference to a licence in relation to the processing of aquatic organisms.
  - (d) and (e) These amendments are necessary to include resource shares within the scope of authorisations that may be levied for the purposes of the *Fishing Industry Promotion Training and Management Levy Act 1994*
- (2) Deletes reference to permits as these are redundant under this Act.

**Clause 342 Section 6 amended**

Section 6 of the *Fishing Industry Promotion Training and Management Levy Act 1994* provides that any levy imposed under that Act is payable by the holder of a licence or permit. This amendment deletes reference to permits as these are redundant under this Act and inserts a reference to resource shares and makes a related amendment to the section heading.

**Division 7 — *Offshore Minerals Act 2003* amended**

**Clause 343 Act amended**

Provides that this Division amends the *Offshore Minerals Act 2003*.

**Clause 344 Section 38A amended**

- (1) Amends this section for consistency with the terminology of this Act.
- (2) Amends this section for consistency with the terminology of this Act.
- (3) Amends this section for consistency with the terminology of this Act.
- (4) Amends this section for consistency with the terminology of this Act.
- (5) Deletes definitions in the *Offshore Minerals Act 2003* used in the FRMA and replaces them with the equivalent definitions under this Act.
- (6) Deletes definitions in the *Offshore Minerals Act 2003* used in the FRMA and replaces them with the equivalent definitions under this Act.

**Clause 345 Section 38B amended**

Amends section 38B

- (a) Amends this section for consistency with the terminology of this Act.
- (b) and (c) Are necessary to accommodate the deletion of paragraph (e) relating to the *Pearling Act 1990* (which will be repealed by this Act).

**Clause 346 Section 44 amended**

- (1) Amends this section for consistency with the terminology of this Act.
- (2) Amends this section for consistency with the terminology of this Act.

## Division 8 — Other Acts amended

### Clause 347 ***Animal Welfare Act 2002*** amended

- (1) Provides that this clause amends the *Animal Welfare Act 2002*.
- (2) Deletes reference to ***Fisheries Western Australia*** (the old name for the Department of Fisheries).
- (3) Inserts a definition of ***Aquatic Resources Department*** (the language used in this Act to refer to the Department of Fisheries).
- (4) Amends this section for consistency with the terminology of this Act.
- (5) Deletes section 5(2) of the *Animal Welfare Act 2002*. This section provided that pearl oysters could not be prescribed as an animal for the purposes of the *Animal Welfare Act 2002*. The definition of aquatic organism in this Bill includes pearl oysters and the amendment contained in subclause 347(4) of this Bill provides that animal excludes aquatic organisms as defined under the *Aquatic Resources Management Act 2015*.
- (6) Makes insertions and deletions for consistency with this Act.
- (7) Makes insertions and deletions for consistency with this Act.
- (8) Self-explanatory.
- (9) Self-explanatory.

### Clause 348 ***Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*** amended

- (1) Provides that this clause amends the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*.
- (2) Deletes this section as it is now redundant as a result of the provisions of this Act relating to biosecurity.

### Clause 349 ***Constitution Acts Amendment Act 1899*** amended

- (1) Provides that this clause amends the *Constitution Acts Amendment Act 1899*.
- (2) Amends Schedule V Part 3 for consistency with the terminology of this Act.

### Clause 350 ***Control of Vehicles (Off-road Areas) Act 1978*** amended

- (1) Provides that this clause amends the *Control of Vehicles (Off-road Areas) Act 1978*.
- (2) Amends this section for consistency with the terminology of this Act.
- (3) Self-explanatory.

### Clause 351 ***Environmental Protection Act 1986*** amended

- (1) Provides that this clause amends the *Environmental Protection Act 1986*.
- (2) Amends Schedule 6 item 14 for consistency with the terminology of this Act.

**Clause 352 *Litter Act 1979* amended**

- (1) Provides that this clause amends the *Litter Act 1979*.
- (2) Amends this section for consistency with the terminology of this Act.
- (3) Amends the Third Schedule for consistency with the terminology of this Act.

**Clause 353 *Marine Navigational Aids Act 1973* amended**

- (1) Provides that this clause amends the *Marine Navigational Aids Act 1973*.
- (2) Amends this section for consistency with the terminology of this Act.

**Clause 354 *Mining Act 1978* amended**

- (1) Provides that this clause amends the *Mining Act 1978*.
- (2) Amends this section for consistency with the terminology of this Act.
- (3) Amends this section for consistency with the terminology of this Act.
- (4) Deletes the definition of ***fisheries Minister***.
- (5) Inserts definition of ***aquatic resources Minister***.
- (6) Amends this section for consistency with the terminology of this Act.

**Clause 355 *Spear-guns Control Act 1955* amended**

- (1) Provides that this clause amends the *Spear-guns Control Act 1955*.
- (2) Amends this section for consistency with the terminology of this Act.

**Clause 356 *State Administrative Tribunal Act 2004* amended**

- (1) Provides that this clause amends the *State Administrative Tribunal Act 2004*.
- (2) Amends Schedule 1 to delete references to the *Fish Resources Management Act 1994* and the *Pearling Act 1990*.
- (3) Inserts *Aquatic Resources Management Act 2015* into Schedule 1.

**Clause 357 *Swan and Canning Rivers Management Act 2006* amended**

- (1) Provides that this clause amends the *Swan and Canning Rivers Management Act 2006*.
- (2) Amends this section for consistency with the terminology of this Act.

**Clause 358 *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* amended**

- (1) Provides that this clause amends the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*.
- (2) Amends this section for consistency with the terminology of this Act.
- (3) Self-explanatory.

**Clause 359 *Waterways Conservation Act 1976* amended**

- (1) Provides that this clause amends the *Waterways Conservation Act 1976*.
- (2) Amends this section for consistency with the terminology of this Act.

**Clause 360 *Western Australian Marine (Sea Dumping) Act 1981* amended**

- (1) Provides that this clause amends the *Western Australian Marine (Sea Dumping) Act 1981*.
- (2) Amends this section for consistency with the terminology of this Act.



**Clause 361    *Western Australian Marine Act 1982* amended**

- (1) Provides that this clause amends the *Western Australian Marine Act 1982*.
- (2) Amends this section for consistency with the terminology of this Act.
- (3) Amends this section for consistency with the terminology of this Act.

**Clause 362    Various references to *Fish Resources Management Act 1994* amended**

- (1) Provides that this clause amends the Acts listed in the Table.
- (2) Provides that for the provisions listed in the Table, a reference to the *Fish Resources Management Act 1994* is to be replaced with a reference to the *Aquatic Resources Management Act 2015*.