

FISH RESOURCES MANAGEMENT AMENDMENT BILL (NO. 2) 1999

EXPLANATORY MEMORANDUM

A BILL FOR AN ACT TO AMEND THE *FISH RESOURCES MANAGEMENT ACT 1994*.

THE PURPOSE OF THE BILL IS TO PROVIDE REGULATION - MAKING POWERS TO IMPLEMENT ESSENTIAL ELEMENTS OF THE RECOMMENDATIONS OF THE TOUR OPERATORS FISHING WORKING GROUP'S FINAL REPORT "*FUTURE MANAGEMENT OF THE AQUATIC CHARTER INDUSTRY IN WESTERN AUSTRALIA*" (SEPTEMBER 1998) (THE REPORT).

1. THE AQUATIC CHARTER INDUSTRY IS DEVELOPING RAPIDLY. IN 1990 THERE WERE AN ESTIMATED 40 OPERATORS; IN 1997 THERE WERE 135 CONFIRMED OPERATORS WITHIN WESTERN AUSTRALIA'S TOUR AND CHARTER INDUSTRY.

EFFECTIVE MANAGEMENT OF THIS INDUSTRY IS ESSENTIAL TO ENSURE THE RECREATIONAL EXPLOITATION OF THE FISH RESOURCES TARGETED IS CARRIED OUT IN A SUSTAINABLE MANNER AND THAT INDUSTRIES RELIANT ON THESE RESOURCES ARE MANAGED IN A FASHION WHICH WILL OPTIMISE LONG TERM BENEFITS TO THE COMMUNITY. THE PREFERRED MANAGEMENT METHOD IS TO LICENSE THE VARIOUS OPERATORS.

2. THE NEED FOR THIS AMENDMENT WAS IDENTIFIED FOLLOWING A CLOSE ANALYSIS OF THE LICENSING POWERS UNDER THE ACT AS A RESULT OF THE REPORT. THE REPORT DEMONSTRATED THAT WITHIN THE FOUR YEARS SINCE THE ENACTMENT OF THE GOVERNING LEGISLATION, THE COMMERCIAL TOUR SERVICES BEING DEMANDED OF THE SECTOR BY RECREATIONAL FISHERMEN HAD OUTGROWN THE RANGE OF LICENSES PROVIDED BY THE FISH RESOURCES MANAGEMENT ACT.
3. THIS AMENDMENT WILL RECOGNISE COMMERCIAL "FISHING TOUR" OPERATIONS AND PROVIDE FOR LICENSING POWERS BY REGULATIONS PERMITTING INTEGRATION OF THE LICENSING AND MANAGEMENT OF FISHING TOUR OPERATORS WITH CHARTER BOAT AND AQUATIC ECO-TOURISM OPERATORS.

OUTLINED BELOW IS AN EXAMINATION OF THE CONTENTS OF THE BILL ON A CLAUSE BY CLAUSE BASIS.

CLAUSE NOTES

CLAUSE 1: SHORT TITLE

THIS CLAUSE CITES THE SHORT TITLE OF THE ACT AS THE **FISH RESOURCES MANAGEMENT AMENDMENT ACT (NO.2) 1999.**

CLAUSE 2: COMMENCEMENT

THIS CLAUSE STATES THAT THE ACT IS TO COMMENCE ON A DATE TO BE FIXED BY PROCLAMATION.

CLAUSE 3: THE ACT AMENDED

THIS CLAUSE STATES THAT THE AMENDMENT IS TO THE FISH RESOURCES MANAGEMENT ACT 1994.

CLAUSE 4: SECTION 3 [OBJECTS] AMENDED

THIS CLAUSE EXPANDS THE LIST OF PARTICULAR 'OBJECTS' OF THE ACT TO SPECIFICALLY INCLUDE THE MANAGEMENT OF 'FISHING BASED TOURISM'.

CLAUSE 5: SECTION 4 [INTERPRETATION] AMENDED

THIS CLAUSE ADDS A DEFINITION OF 'FISHING TOUR'.

THE DEFINITION DESCRIBES THE ACTIVITIES RELATED TO FISHING TOUR OPERATIONS AND DISTINGUISHES THOSE DEFINED AS 'AQUATIC ECO-TOURISM' AND 'CHARTER BOAT' OPERATIONS. THE CONCEPT OF GUIDANCE WITHIN THE DEFINITION IS IMPORTANT BECAUSE IT ENABLES DISTINCTION BETWEEN SAY A HIRE BOAT OPERATOR WHO PROVIDES TRANSPORT WHICH MAY BE USED FOR RECREATIONAL FISHING PURPOSES BUT WHO DOES NOT ACTIVELY GUIDE THE HIRER, OR PROVIDE EXPERTISE AND KNOWLEDGE, DIRECTED TOWARDS PROVIDING AN OPPORTUNITY FOR RECREATIONAL FISHING. HIRE BOAT OPERATORS ARE BY THEIR DEFINITION EXPRESSLY EXCLUDED FROM THE ACT.

CLAUSE 6: SECTION 33 RECREATIONAL FISHING ADVISORY COMMITTEE AMENDED

THIS CLAUSE INCREASES THE NUMBER OF PERSONS WHOM THE COMMITTEE CONSISTS FROM 14 TO 15 TO INCLUDE A PERSON WHO IN THE MINISTER'S OPINION REPRESENTS THE COMMERCIAL FISHING TOUR/CHARTER BOAT/AQUATIC ECO-TOURISM SECTOR.

CLAUSE 7: SECTION 191 [OTHER POWERS OF FISHERIES OFFICERS] AMENDED

THIS CLAUSE ADDS 'FISHING TOURS' TO THE LISTED POWERS OF INSPECTION OF FISHERIES OFFICERS IN RELATION TO GEAR OR EQUIPMENT USED IN CONNECTION WITH A FISHING TOUR [EG. VESSEL MONITORING SYSTEMS ("VMS")].

CLAUSE 8: SECTION 202 [LIABILITY OF PERSONS IN CHARGE OF FISHING TOURS]

THIS CLAUSE EXPANDS THE RESPONSIBILITY OF PERSONS IN CHARGE OF A FISHING TOUR IN RELATION TO OFFENCES COMMITTED BY PERSONS ON THE TOUR. IT MAKES THE PERSON-IN-CHARGE LIABLE FOR THE OFFENCE WITH THE PRINCIPAL OFFENDER.

THE PERON IN CHARGE WILL HAVE THE SAME **DEFENCES** AS THE MASTER OF A BOAT HAS UNDER THE PRESENT ACT, IE THAT -

- (A) THE PERSON IN CHARGE ISSUED PROPER INSTRUCTIONS AND TOOK REASONABLE PRECAUTIONS TO ENSURE COMPLIANCE;
- (B) THE OFFENCE WAS COMMITTED BY THE PRINCIPAL OFFENDER WITHOUT THE KNOWLEDGE OF THE PERSON IN CHARGE; AND
- (C) THE PERSON IN CHARGE COULD NOT, BY THE EXERCISE OF REASONABLE DILIGENCE, HAVE PREVENTED THE COMMISSION OF THE OFFENCE.

UNDER THE PRESENT ACT THE MASTER OF A VESSEL MAY BE PROCEEDED AGAINST AND CONVICTED OF AN OFFENCE WHETHER OR NOT THE PRINCIPAL OFFENDER - WHO HAS COMMITTED AN OFFENCE BY THE USE OF THE VESSEL - HAS BEEN PROCEEDED AGAINST AND CONVICTED. AN EFFECT SIMILAR TO THE EFFECT OF THIS PROVISION HAS BEEN EXTENDED TO PERSONS IN CHARGE OF FISHING TOURS.

CLAUSE 9: SECTION 239 [RECREATIONAL FISHING FUND] AMENDED

THIS CLAUSE PROVIDES FOR LICENCE MONIES PAID IN RELATION TO CHARTER BOATS USED FOR RECREATIONAL FISHING AND PERSONS ENGAGED IN AQUATIC ECO-TOURISM OR FISHING TOURS, TO BE PAID INTO THE RECREATIONAL FISHING FUND.

**CLAUSE 10: SECTION 257 [REGULATIONS - OTHER LICENCES]
AMENDED**

THIS CLAUSE AMENDS SECTION 257 TO INCLUDE THE CONCEPT OF 'FISHING TOURS' AS DEFINED. HIS IS THE KEY AMENDMENT WHICH WILL ALLOW REGULATIONS TO BE MADE CREATING THE NEW LICENCE TYPE AND REGULATION THE ACTIVITY.

**CLAUSE 11: SECTION 258 [REGULATIONS - MISCELLANEOUS]
AMENDED**

THIS CLAUSE ADDS 'FISHING TOURS' TO THE VARIOUS MATTERS ABOUT WHICH REGULATIONS MAY BE MADE IN ORDER TO MANAGE MISCELLANEOUS FISHING ACTIVITIES.

258(C)

TO THE EXISTING POWER TO PROHIBIT OR REGULATE RECREATIONAL FISHING ON OR FROM FISHING BOATS, BOATS USED FOR AQUACULTURE OR CHARTER BOATS USED FOR AQUATIC ECO-TOURISM IS ADDED [BOATS USED FOR] FISHING TOURS

258(N)

TO THE EXISTING POWER TO REQUIRE SPECIFIED GEAR OR EQUIPMENT TO BE INSTALLED IN OR CARRIED ON BOATS USED FOR FISHING, AQUACULTURE OR AQUATIC ECO-TOURISM AND REQUIRE THE GEAR OR EQUIPMENT TO BE USED IN A SPECIFIED WAY IS ADDED [BOATS USED FOR] FISHING TOURS

258(O)

TO THE EXISTING POWER TO PROHIBIT OR REGULATE THE POSSESSION OR CARRIAGE ON ANY BOAT OF ANY SPECIFIED TYPE OF GEAR OR EQUIPMENT USE IN CONNECTION WITH FISHING, AQUACULTURE OR AQUATIC ECO-TOURISM IS ADDED [GEAR OR EQUIPMENT USED IN CONNECTION WITH] FISHING TOURS.

258(P)

TO THE EXISTING POWER TO PROHIBIT OR REGULATE THE POSSESSION BY ANY PERSON IN OR ON ANY WATERS OR LAND ADJACENT TO ANY WATERS OF ANY SPECIFIED TYPE OF GEAR OR EQUIPMENT USED IN CONNECTION WITH FISHING, AQUACULTURE OR AQUATIC ECO-TOURISM IS ADDED [GEAR OR EQUIPMENT USED IN CONNECTION WITH] FISHING TOURS.

258(W)

TO THE EXISTING LIST OF MISCELLANEOUS REGULATION MAKING POWERS IS ADDED THE POWER TO REGULATE FISHING TOURS AND THE PERSONS ENGAGED IN FISHING TOUR OPERATION FOR A COMMERCIAL PURPOSE.