

FISHERIES AND OYSTER FARMS (COMMONWEALTH-STATE ARRANGEMENTS) AMENDMENT BILL, 1981

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

In the *Seas and Submerged Lands* case (New South Wales v. Commonwealth 1975-76 135 C.L.R. 337) the High Court by majority held, in effect, that sovereignty and legislative power over the territorial sea of Australia was vested in the Commonwealth and not in the bordering States, thus limiting State powers with respect to fisheries.

At the Premiers' conference in June, 1978, it was agreed that the several States and the Commonwealth would pass complementary legislation, the effect of which would be—

- (a) to provide for the establishment, by arrangement between the Commonwealth and a State or States, of Joint Authorities, each consisting of the Commonwealth Minister administering fisheries matters and the corresponding Minister of the participating State or States;
- (b) to vest the management of a particular fishery (which could be described by various means, e.g., by reference to a species of fish, or to particular waters, or to both) in a Joint Authority;
- (c) to provide that the law to be applied by a Joint Authority would be—
 - (i) Commonwealth law where more than one State is a member of the Joint Authority; or
 - (ii) where only one State is a member of the Joint Authority—either Commonwealth law or State law, the choice being made by arrangement between the Commonwealth and the State concerned;
- (d) to provide for an arrangement between the Commonwealth and a State for the management of a particular fishery in accordance with either the law of the Commonwealth or the law of that State, without the intervention of a Joint Authority;
- (e) to provide that, in cases where there is no arrangement for a fishery to be managed by a Joint Authority or as referred to in paragraph (d) above, the law of the State is to apply to the fishery—
 - (i) within 1 nautical league on the seaward side of the coast; and

(ii) to the extent to which the State has power to legislate extra-territorially with respect to the fishery.

The arrangements referred to above would relate to commercial fishing only, jurisdiction over recreational fishing being retained by the States.

The object of this Bill is to amend the Fisheries and Oyster Farms Act, 1935, to give effect to the agreement made at the Premiers' conference.

**FISHERIES AND OYSTER FARMS
(COMMONWEALTH-STATE ARRANGEMENTS)
AMENDMENT BILL, 1981**

No. , 1981.

A BILL FOR

An Act to amend the Fisheries and Oyster Farms Act, 1935, to enable arrangements with respect to the management of certain fisheries to be entered into between, and given effect to by, the Commonwealth and the State.

[MR WALKER—26 November, 1980.]

*Fisheries and Oyster Farms (Commonwealth–State Arrangements)
Amendment.*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 Short title.

1. This Act may be cited as the “Fisheries and Oyster Farms (Commonwealth–State Arrangements) Amendment Act, 1981”.

Commencement.

2. (1) This section and section 1 shall commence on the date 10 of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on the date on which Part IVA of the Fisheries Act 1952 of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament, comes into operation.

15 Principal Act.

3. The Fisheries and Oyster Farms Act, 1935, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules :—

20 SCHEDULE 1.—INSERTION OF PART IA INTO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO CERTAIN WATERS.

Fisheries and Oyster Farms (Commonwealth-State Arrangements) Amendment.

Amendment of Act No. 58, 1935.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

SCHEDULE 1.

(Sec. 5.)

INSERTION OF PART IA INTO THE PRINCIPAL ACT.

(1) Section 3—

After the matter relating to Part I, insert :—

PART IA.—COMMONWEALTH—STATE MANAGEMENT OF FISHERIES—ss. 4A—4N.

DIVISION 1.—Preliminary—s. 4A.

DIVISION 2.—Joint Authorities—ss. 4B—4G.

DIVISION 3.—Arrangements with respect to the management of particular fisheries—ss. 4H—4N.

(2) Part IA—

After Part I, insert :—

PART IA.

COMMONWEALTH—STATE MANAGEMENT OF FISHERIES.

DIVISION 1.—Preliminary.

Interpretation. Part IA.

4A. (1) In this Part, except to the extent that the context or subject-matter otherwise indicates or requires—

“arrangement” means an arrangement made by the State with the Commonwealth under Division 3, whether or not it is also made with another State or other States;

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Amendment.*

SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

“coastal waters” in relation to the State has the same meaning as it has in the Commonwealth Act;

5 “Commonwealth Minister” means the Minister for the time being administering the Commonwealth Act and any other Minister performing and exercising functions and powers pursuant to section 12C of the Commonwealth Act;

10 “Commonwealth proclaimed waters” means waters that, by virtue of a proclamation in force under the Commonwealth Act, are proclaimed waters within the meaning of that Act;

15 “fishery” means a class of activities by way of taking fish, being a class of such activities that is identified in an arrangement under this Part as a fishery to which the arrangement applies;

“Joint Authority” means—

20 (a) the South Eastern Fisheries Joint Authority established under section 12D (1) of the Commonwealth Act; and

(b) any other Joint Authority established under section 12D (6) of that Act of which the Minister is a member;

25 “Joint Authority fishery” means a fishery in respect of which there is in force an arrangement under Division 3 under which the fishery is to be under the management of a Joint Authority.

30 (2) Without limiting the matters by reference to which a fishery may be identified in an arrangement under Division 3, those matters include all or any of the following :—

(a) a species of fish;

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Amendment.*

SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

- (b) a description of fish by reference to sex or any other characteristic;
- 5 (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a kind or class of vessels;
- (f) a class of persons;
- (g) a purpose of activities.

10

DIVISION 2.—*Joint Authorities.*

Powers and functions of Minister.

15 4B. (1) The Minister may exercise and perform any power or function conferred on the Minister by Part IVA of the Commonwealth Act, including any power or function of the Minister as a member of a Joint Authority.

20 (2) Where, in the exercise of the power conferred on him by Part IVA of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise and perform the powers and functions conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.

Judicial notice.

25 4c. All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 1—*continued.*INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.***Functions of Joint Authority.**

5 4D. A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division 3 as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

Delegation.

10 4E. (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Act other than this power of delegation.

15 (2) Where a power delegated under subsection (1) is exercised by the delegate, the power shall, for the purposes of this Act, be deemed to have been exercised by the Joint Authority.

20 (3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office, including an office—

- (a) in the service of;
- (b) in the service of an authority of; or
- (c) under the law of,

25 the Commonwealth, another State or a Territory of the Commonwealth.

(4) A delegate of a Joint Authority is, in the exercise of his delegated powers, subject to the directions of the Joint Authority.

30 (5) A delegation of a power under this section—

- (a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

- 5 (b) does not prevent the exercise of the power by the
Joint Authority; and
(c) continues in force notwithstanding any change in
the membership of the Joint Authority.

(6) Section 40 of the Interpretation Act, 1897,
applies in relation to a delegation under this section as if
the Joint Authority were a person.

10 (7) A certificate signed by a member of a Joint
Authority stating any matter with respect to a delegation
under this section by the Joint Authority is evidence of
that matter.

15 (8) A document purporting to be a certificate
referred to in subsection (7) shall, unless the contrary is
established, be deemed to be such a certificate and to have
been duly given.

20 (9) Nothing in this Part is intended to prevent the
delegation by a Joint Authority, in accordance with the
law of the Commonwealth, of powers conferred on the
Joint Authority by the law of the Commonwealth.

Procedure of Joint Authorities.

25 4F. (1) The provisions of section 12F (1)–(8) of the
Commonwealth Act apply to and in relation to the per-
formance by a Joint Authority of its functions under this
Act.

30 (2) A written record of a decision of a Joint
Authority, if signed by the Commonwealth Minister, or his
deputy, who took part in or made the decision is evidence
that the decision, as recorded, was duly made.

(3) In proceedings in any court, an instrument or
other document signed, on behalf of a Joint Authority, by
a member of the Joint Authority shall be deemed to have

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Amendment.*

SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

5 been duly executed by the Joint Authority and, unless the
contrary is proved, shall be deemed to be in accordance
with a decision of the Joint Authority.

Report of Joint Authority.

10 4G. The Minister shall cause a copy of a report of a
Joint Authority prepared under section 12G of the
Commonwealth Act to be laid before each House of
Parliament as soon as practicable after preparation of the
report.

DIVISION 3.—*Arrangements with respect to the
management of particular fisheries.*

Arrangement for management of certain fisheries.

15 4H. (1) The State may, in accordance with section 12J
of the Commonwealth Act, make an arrangement referred
to in section 12H of that Act for the management of a
particular fishery.

20 (2) An arrangement may be terminated as
provided by the Commonwealth Act.

25 (3) After an arrangement has been made, but
before the arrangement takes effect, licenses, endorse-
ments and other instruments may be granted, issued,
renewed, made or executed, and regulations may be made,
for the purposes of the operation of this Act as affected by
the arrangement, as if the arrangement had taken effect, but
such a license, endorsement, instrument or regulation does
not have effect before the arrangement takes effect.

30 (4) Upon the termination of an arrangement,
licenses, endorsements and other instruments granted,
issued, renewed, made or executed, and regulations made,
for the purposes of the operation of this Act as affected by
the arrangement cease to have effect.

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 1—*continued.*INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

5 (5) After action for the purpose of the termination
of an arrangement has been taken, but before the termina-
tion takes effect, licenses, endorsements and other instru-
ments may be granted, issued, renewed, made or executed,
and regulations may be made, for the purposes of the opera-
10 tion of this Act as affected by the termination of the
arrangement, as if the arrangement had been terminated,
but such a license, endorsement, instrument or regulation
does not have effect before the termination of the arrange-
ment takes effect.

**Application of this Act to fisheries in accordance with
arrangements.**

15 4I. Subject to this section, where there is in force
an arrangement that provides that a particular fishery is
to be managed in accordance with the law of the State,
the provisions of this Act apply to and in relation to the
fishery except that those provisions do not apply to or in
20 relation to that fishery in respect of foreign boats in Com-
monwealth proclaimed waters or operations on or from
foreign boats, or persons on foreign boats, in Common-
wealth proclaimed waters or in relation to matters that
occurred in or in relation to Commonwealth proclaimed
25 waters before the arrangement took effect.

Functions of Joint Authority.

30 4J. Where, in respect of a fishery, there is in force an
arrangement under which a Joint Authority has the
management of the fishery and the fishery is to be managed
in accordance with the law of the State, the Joint Authority
has the functions of keeping constantly under consideration
the condition of the fishery, formulating policies and plans
for the good management of the fishery and, for the pur-
poses of the management of the fishery, exercising the
35 powers conferred on it by this Act and co-operating and
consulting with other authorities (including other Joint
Authorities within the meaning of the Commonwealth Act)
in matters of common concern.

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

**Joint Authority to exercise certain powers instead of
Minister.**

5 4k. (1) Subject to this section, a license or endorse-
ment granted, issued, renewed or made under this Act
otherwise than by virtue of this section does not authorise
the doing of any act or thing in or in relation to a Joint
Authority fishery.

10 (2) In respect of a Joint Authority fishery that is
to be managed in accordance with the law of the State, the
powers conferred before or after the commencement of this
Part on the Minister, his delegate or a prescribed officer
15 referred to in section 25 (2) by or under this Act (this
Part excepted) or the regulations (including powers with
respect to the issue, renewal, cancellation and suspension
of licenses) are exercisable by the Joint Authority to the
exclusion of the Minister, his delegate and that prescribed
officer.

20 (3) A license granted under this Act by a Joint
Authority shall contain such conditions and limitations that
it does not apply in relation to a Joint Authority fishery, or
Joint Authority fisheries, not managed by that Joint
Authority.

25 (4) A Joint Authority may endorse a license
referred to in section 23, 24 or 25 (including such a license
granted by that Joint Authority or another Joint
Authority) so as to extend the operation of the license to
30 matters to which the licensing powers of the Joint
Authority under this Act are applicable and, where such
an endorsement is made—

(a) the endorsement ceases to have effect if the
license ceases to have effect; and

35 (b) the Joint Authority may suspend or cancel the
endorsement as if it were a license granted by
the Joint Authority.

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

5 (5) Subject to section 4N (1) (b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, notification or order under this Act would, but for this subsection, apply to the fishery, the regulation, notification or order, as the case may be, ceases so to apply.

10 (6) This section does not empower a Joint Authority to grant, or to take other action in respect of, a license in respect of a foreign boat or to endorse such a license.

Application of certain provisions relating to offences.

15 4L. For the purposes of the prosecution of a person for an offence under section 23, 24 or 25 in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery—

20 (a) a reference in section 23 or 24 to a license shall be read as a reference to a license, or an endorsement of a license, granted, issued, renewed or made by the relevant Joint Authority, in relation to the boat alleged to have been used in the commission of the offence;

25 (b) a reference in section 25 to a license shall be read as a reference to a license, or an endorsement of a license, granted, issued, renewed or made by the relevant Joint Authority; and

30 (c) a reference in section 23, 24 or 25 to taking fish from prescribed waters or any other waters shall be read as a reference to taking fish to which the Joint Authority fishery relates.

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 1—*continued.*INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.***Presumption relating to certain statements.**

5 4M. A statement in an arrangement to the effect that specified waters—

(a) in the case of an arrangement to which the Commonwealth and the State are the only parties—are waters adjacent to the State; and

10 (b) in the case of any other arrangement—are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States,

shall, for the purposes of this Act, be conclusively presumed to be correct.

Regulations.

15 4N. (1) Where a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority—

20 (a) make regulations for the management of the fishery;

(b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section; or

25 (c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.

30 (2) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation under subsection (1) (a) or (b) or the amendment of a regulation in the manner referred to in subsection (1) (c).

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

5 (3) Where a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made pursuant to this section, it shall be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

(3) Section 8A (1)—

After “this Act”, insert “(Part IA excepted)”.

10

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO
CERTAIN WATERS.

(1) (a) Section 4 (1), definition of “Commonwealth Act”—

15

After the definition of “Boat”, insert :—

20

“Commonwealth Act” means the Fisheries Act 1952 of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament, whether enacted before or after the commencement of the Fisheries and Oyster Farms (Commonwealth-State Arrangements) Amendment Act, 1981.

(b) Section 4 (1), definition of “Foreign boat”—

25

After the definition of “Fishing gear”, insert :—

“Foreign boat” has the same meaning as it has in the Commonwealth Act.

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Amendment.*

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO
CERTAIN WATERS—*continued.*

(c) Section 4 (3)—

5 Omit the subsection, insert instead :—

(3) Where, in a provision of this Act, there is a reference to prescribed waters or to waters generally, the reference—

- 10 (a) is a reference to all waters that are within the limits of the State;
- 15 (b) except for purposes in relation to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Division 3 of Part IA and except for purposes prescribed by paragraph (d)—is a reference to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that, within the meaning of that Part, are Commonwealth proclaimed waters;
- 20 (c) for purposes in relation to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Division 3 of Part IA—is a reference to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the Coastal Waters (State Powers) Act 1980 of the Parliament of the Commonwealth or otherwise; and
- 25 (d) for purposes in relation to activities to which this Act applies, being activities that are, within the meaning of the Commonwealth Act, carried on for private purposes
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- 35

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO
CERTAIN WATERS—*continued.*

- 5 otherwise than by the use of a foreign boat
—is a reference to any waters to which the
legislative powers of the State extend with
respect to those activities.
- (2) (a) Section 20 (1)—
Omit “territorial”, insert instead “prescribed”.
- 10 (b) Section 20 (2) (b)—
Omit “territorial”, insert instead “prescribed”.
- (3) Section 22A (1)—
After “waters”, insert “within prescribed waters”.
- (4) Section 23 (1), (8)—
15 Omit “territorial” wherever occurring, insert instead
“prescribed”.
- (5) (a) Section 24 (1)—
Omit “waters referred to in section 23”, insert instead
“prescribed waters”.
- 20 (b) Section 24 (3)—
Omit “territorial waters”, insert instead “prescribed
waters”.
- (6) (a) Section 25 (1) (a)—
Omit “territorial”, insert instead “prescribed”.

*Fisheries and Oyster Farms (Commonwealth-State Arrangements)
Amendment.*

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO
CERTAIN WATERS—*continued.*

- (b) Section 25 (14) (a)—
5 Omit “territorial”, insert instead “prescribed”.
- (7) Section 25D (3)—
Omit “territorial”, insert instead “prescribed”.
- (8) Section 33 (5) (c) (ii)—
Omit “tidal and inland”.
- 10 (9) Section 120 (2) (ff)—
Omit “territorial”, insert instead “prescribed”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981
(35c)



