FISHING LEGISLATION AMENDMENT BILL 1983

Date Introduced: 7 December 1983
House: House of Representatives
Presented by: Hon. J. Kerin, Minister for Primary Industry

Short Digest of Bill

Purpose

The Bill introduces a number of administrative amendments to the Fisheries Act 1952, the Fishing Industry Research Act 1969, and the Continental Shelf (Living Natural Resources) Act 1968 in order to improve the efficiency of administration of Australian fisheries management arrangements.

Background

The Commonwealth enacted the Fisheries Act in 1952 to introduce some management of Australian fisheries resources. This Act, which is still the main Commonwealth legislation for regulating fisheries, "provided for the licensing of fishing vessels and fishermen in proclaimed waters and the issuing of regulations including entry limitations, boat and gear restrictions, fish size regulations, and seasonal and area closures"[1].

One reason for the introduction of this Act was that the States believed that they lacked the power to regulate fisheries beyond territorial limits. Historically, the Commonwealth had constitutional responsibility with respect to "fisheries in Australian waters beyond territorial limits"[2] while the States and Northern Territory were responsible for fisheries within their respective territorial limits. Until the December 1975 High Court decision in the challenge to the Seas and Submerged Lands Act 1973, the jurisdictional line between State and Commonwealth responsibilities was taken to be a distance of three nautical miles seaward of the low water mark, with the States having responsibility inside this boundary and the Commonwealth having responsibility beyond.

One objective of the Act "was to clarify the jurisdictional division between the States and the Commonwealth in the regulation of fisheries in Australian..."
waters beyond territorial limits and reconcile various functions and administrative arrangements between Commonwealth and State administrations".[3]

The Senate Standing Committee on Trade and Commerce recently conducted a detailed inquiry into the Australian fishing industry and produced a comprehensive report, Development of the Australian Fishing Industry. Some of the Committee's recommendations have been incorporated into this Bill including:

- removing the requirement that individual crew members of a boat be licensed-only master fishermen will be required to hold a licence;

- the requirement that fisheries notices be tabled in the Parliament and subject to disallowance.

A number of amendments have been made to the Fisheries Act in recent years. These relate mainly to measures to conserve fisheries resources and to extend Australian fisheries jurisdiction to provide for a 200 nautical mile Australian Fishing Zone. These amendments are:

- the Fisheries Act 1967 which established a 12 mile Declared Fishing Zone. "It controlled all fishing, including foreign fishing within the Declared Fishing Zone but beyond the Zone controlled only the operations of Australian boats in proclaimed waters."[4]

- the Fisheries Act 1975 made amendments which provided for "the rational utilisation of existing fisheries and the development of new ones as well as the conservation of fisheries resources".[5]

- the Fisheries Amendment Act 1978, which came into force completely on 1 November 1979, provided for the introduction of a 200 nautical mile Australian Fishing Zone. It inserted new provisions into the Principal Act specifying the objectives in the administration of the AFZ. These are, briefly, to prevent over-exploitation, and achieve optimum utilisation, of living resources in the AFZ.

- the Fisheries Amendment Act 1980, which was the outcome of a major review of Commonwealth
fisheries legislation, was intended to give effect to the fisheries aspect of the offshore constitutional settlement by giving the States and the Northern Territory joint control with the Commonwealth over fisheries from the low water mark to three nautical miles seaward.

However, it was agreed at the June 1980 Premiers' Conference that before this legislation commenced certain legislative action would be taken by all States and the Northern Territory. This included the States and Northern Territory enacting complementary fisheries legislation and co-ordinating the arrangements for the simultaneous commencement of this legislation. Sections 12 and 13 of this Act relating to Commonwealth-State co-operative arrangements came into force on 14 February 1983. This Act also provided "for the establishment of fisheries Joint Authorities to manage certain fisheries in waters adjacent to one or a group of States"[6].

Main Provisions

The Bill amends the Continental Shelf (Living Natural Resources) Act 1968, (Part II of the Bill), the Fisheries Act 1952, (Part III of the Bill), and the Fishing Industry Research Act 1969, (Part IV of the Bill).

Clause 3 of the Bill amends the Continental Shelf (Living Natural Resources) Act 1968 by extending the application of the Act to include the seabed and subsoil beneath the territorial sea of the Coral Sea Islands Territory.

The Bill amends the Fisheries Act 1952 with respect to various matters.

Research

- Clause 9 inserts a new section 6B in the Principal Act giving the Minister for Primary Industry or the Secretary to the Department of Primary Industry power to grant permits for persons to engage in scientific activities and to protect those persons against actions which would normally be prohibited.

Application of Australian fisheries laws beyond Australian waters

- Clauses 5 and 7 will allow the application of fisheries controls to Australian fishermen operating beyond Australian waters, if this becomes necessary under future international fisheries management arrangements. Clause
7 also clarifies that the Act does not apply to foreign fishing vessels operating in proclaimed waters outside the Australian Fishing Zone.

Regulation of fishing activities

- Clause 10 relates to various aspects of the regulation of fishing activities, including empowering the Minister to make notices prohibiting the master of a boat of a specified kind from having a number of persons on a boat for the purposes of engaging in fishing exceeding the number specified in the notice.

Licensing

- Clause 12 makes amendments relating to licensing including:
  - replacing the provision that each person on a fishing boat be licensed with a provision that only masters of fishing boats be licensed;
  - providing that boat licenses may be endorsed to provide exemption from prohibition notices.

Parliamentary scrutiny

- Clause 11 states that notices made by the Minister must be tabled in Parliament and may be disallowed by either House.

Administrative review

- Clause 19 allows for the decisions of delegates of Joint Authorities with respect to licensing and related matters to be reconsidered by Joint Authorities and then revised by the Administrative Appeals Tribunal.

- Clause 27 provides that decisions of delegates of the Minister or the Secretary to his Department relating to licensing and related matters will be subject to reconsideration by the Secretary or the Minister and then review by the Administrative Appeals Tribunal. However, decisions relating to foreign boats or persons who are not citizens or residents of Australia will not be reviewable by the Administrative Appeals Tribunal.

Entry of unlicensed foreign fishing boats

- Clause 24 empowers the Minister or Secretary to authorise, by notice in writing, entry of unlicensed
foreign fishing boats to specified ports in Australia or its external territories.

Powers of officers

. Clause 14 gives a fisheries officer power to require the production of a master fisherman's licence.

The Bill also amends the Fishing Industry Research Act 1969. Clause 30 deems the Northern Territory to be a State for the purposes of this Act. This will permit the Minister to approve the Northern Territory Research and Development Trust Fund as a fund for determining fishery research funding levels in the Trust Fund established under the Act.

Economics and Commerce Group
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References

2. Constitution, Section 51(x).