Date Introduced: 23 April 1980  
House: House of Representatives  
Presented by: Hon. P.J. Nixon, Minister for Primary Industry

Short Digest of Bill

Purpose
To 'amend the Fisheries Act 1952 to implement the fisheries part of the offshore constitutional settlement reached between the Commonwealth and the States at the Premiers' Conference at Canberra on 24 November 1979.

Background
The Constitution gives to the Commonwealth legislative power with respect to "Fisheries in Australian waters beyond territorial limits". This has been interpreted by the High Court to mean fisheries beyond the three mile limit. Within that limit the States have legislative power over fisheries.

The Commonwealth has now agreed with the States, in the offshore constitutional settlement, that general title to the seabed will be transferred to the States. In addition, fisheries, petroleum mining and minerals mining will be controlled by joint Commonwealth/State authorities. The fisheries part of the agreement, therefore, means that instead of the States legislating for fisheries up to the three mile limit and the Commonwealth legislating for fisheries beyond that, there will be joint Commonwealth/State consultation following which one or other of the Commonwealth or a State or States will apply its laws to implement the agreed measures.

The Bill is intended to provide for the establishment of authorities for this joint consultation. All of the States support the Bill and all States (and the Northern Territory) will pass complementary legislation. In the Bill the Northern Territory is generally equated with the States.

Main Provisions
The proposed Act will commence on Royal Assent, apart from those provisions implementing the
Commonwealth/State settlement, which will commence by proclamation (clause 2). (This date is intended to be the same as that on which the complementary State legislation commences).

The changes in the interpretation (definitions) section 4 of the Act made by clause 3 are not directly connected with the offshore constitutional settlement.

The coastal waters of a State or internal territory are defined as the territorial sea adjacent to it up to three miles from the baseline and any marine or tidal waters within the baseline. The territorial sea adjacent to the Jervis Bay Territory is deemed to be adjacent to New South Wales (clause 4).

The Act extends to all territories and has extraterritorial effect according to its tenor (clause 5).

Control over recreational fishing by Australians beyond the three mile limit is given to the States. Control over recreational fishing by foreign boats in the Australian Fishing Zone is retained by the Commonwealth (clause 6).

Clause 8 repeals section 7 of the Act and replaces it with a fresh section which increases the power of the Governor-General to proclaim waters to which the Act applies so that such power now extends to all waters except coastal waters or the waters within, a State.

Clause 12 is the most important provision of the Bill. It inserts in the Act a complete new Part which implements the offshore constitutional settlement in respect of fisheries.

The proposed new Part is entitled "Part IVA - Cooperation with States and Northern Territory in Management of Fisheries". Proposed section 12A creates a legal concept of "waters adjacent to a State or States" which includes both waters within the three mile limit as well as outside it up to 200 miles. It also lists matters by which a fishery may be described.

Proposed section 12B gives the Part effect in the Northern Territory as if it were a State.

Proposed section 12D establishes four joint fisheries authorities which cover all waters adjacent to Australia. It also provides for the possible later establishment of additional Joint Authorities. Members of the Joint Authorities are the Commonwealth Minister and the appropriate State Ministers.
Proposed section 12E enables the Joint Authorities generally to delegate their powers.

Proposed section 12F deals with procedures at meeting of Joint Authorities. In cases where the members of a Joint Authority cannot agree the Commonwealth Minister may decide a matter alone, but his decision must be made only after consideration of the matter by the Australian Fisheries Council.

Proposed section 12G requires Joint Authorities to prepare annual reports which the Commonwealth Minister shall cause to be laid before both Houses of Parliament.

Proposed section 12H provides that Joint Authorities shall manage particular fisheries following an arrangement on the matter between the Commonwealth and the States represented on the Joint Authorities. State or Commonwealth law may apply under the arrangement to fisheries adjacent to one State but where the fishery is adjacent to two or more States then Commonwealth law shall apply. The Commonwealth and an individual State may make direct arrangements for fisheries which are not managed by a Joint Authority. Where an arrangement relates to a fishery for a sedentary species then the Continental Shelf (Living Natural Resources) Act 1968 ceases to apply to that species in that fishery and the Fisheries Act 1952 applies.

Proposed section 12J deals with the procedure for making and terminating arrangements.

Proposed sections 12K and 12L provide that the Commonwealth Act operates in State coastal waters and that State law applies beyond territorial limits, where there is an arrangement in force to that effect.

Proposed section 12M specifies the functions of Joint Authorities. These are to keep the condition of their fisheries under consideration, formulate policies and plans for the good management of their fisheries, exercise their powers and consult with other authorities.

Proposed section 12N gives Joint Authorities the powers of the Minister with respect to notices under section 8 of the Act. Where a fishery becomes a Joint Authority fishery notices published by the Minister under section 8 cease to apply to that fishery.

Proposed section 12P gives Joint Authorities the powers of the Minister with respect to licences under Part III of the Act.
Proposed section 12Q provides that offences under section 13 may be committed with respect to matters under the control of a Joint Authority.

30 April 1980

Law & Government Group

LEGISLATIVE RESEARCH SERVICE