



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON RURAL AND REGIONAL AFFAIRS
AND TRANSPORT

**Reference: Fisheries Legislation Amendment Bill 2007; Fisheries Levy Amendment
Bill 2007**

FRIDAY, 15 JUNE 2007

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

**SENATE STANDING COMMITTEE ON
RURAL AND REGIONAL AFFAIRS AND TRANSPORT
Friday, 15 June 2007**

Members: Senator Heffernan (*Chair*), Senator Siewert (*Deputy Chair*), Senators Adams, McEwen, McGauran, Nash, O'Brien, and Sterle

Participating members: Senators Adams, Allison, Barnett, Bartlett, Bernardi, Boswell, Bob Brown, Carol Brown, George Campbell, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Hogg, Hutchins, Joyce, Kemp, Lightfoot, Ludwig, Lundy, Ian Macdonald, Sandy Macdonald, McGauran, McEwen, McLucas, Milne, Nash, Nettle, Payne, Parry, Polley, Robert Ray, Stephens, Sterle, Trood, Watson and Webber

Senators in attendance: Senators Heffernan, Ian Macdonald, McEwen, O'Brien, and Sterle

Terms of reference for the inquiry:

Fisheries Legislation Amendment Bill 2007; Fisheries Levy Amendment Bill 2007:

WITNESSES

**KALISH, Dr John Michael, General Manager, Fisheries and Agriculture Branch,
Department of Agriculture, Fisheries and Forestry 2**

**MURPHY, Mr Robert, General Manager, Fisheries and Marine Environment
Branch, Department of Agriculture, Fisheries and Forestry..... 2**

**SOUTHWELL, Mr Malcolm, Senior Manager, Licensing and Compliance, Australian
Fisheries Management Authority 2**

**STARK, Mr Stuart, Acting Director, Torres Strait Fisheries Section, Department of
Agriculture, Fisheries and Forestry 2**

**WILSON, Mr Rohan, Acting General Manager, Operations, Australian Fisheries
Management Authority 2**

Committee met at 10.00 am

CHAIR (Senator Heffernan)—This is the hearing for the Senate Standing Committee on Rural, Regional Affairs and Transport inquiry into the **Fisheries Legislation Amendment Bill 2007** and the **Fisheries Levy Amendment Bill 2007**. The inquiry was referred to the committee by the Senate on 13 June 2007, for report by 18 June 2007. The primary focus of the legislation is to amend the Torres Strait Fisheries Act 1984 with a view to modernising fisheries management practices and making them consistent with those already in place under the Fisheries Management Act 1991 and Queensland's Fisheries Act 1994. The Fisheries Levy Amendment Bill 2007 contains amendments which are consequential to the Fisheries Legislation Amendment Bill 2007.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public, but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[10.02 am]

SOUTHWELL, Mr Malcolm, Senior Manager, Licensing and Compliance, Australian Fisheries Management Authority

WILSON, Mr Rohan, Acting General Manager, Operations, Australian Fisheries Management Authority

KALISH, Dr John Michael, General Manager, Fisheries and Agriculture Branch, Department of Agriculture, Fisheries and Forestry

MURPHY, Mr Robert, General Manager, Fisheries and Marine Environment Branch, Department of Agriculture, Fisheries and Forestry

STARK, Mr Stuart, Acting Director, Torres Strait Fisheries Section, Department of Agriculture, Fisheries and Forestry

CHAIR—I welcome officers from the Department of Agriculture, Fisheries and Forestry and the Australian Fisheries Management Authority. I also issue a reminder that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I now invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mr Murphy—I will make a couple of initial comments. The amendments under the Fisheries Legislation Amendment Bill 2007 cover the Fisheries Administration Act, the Fisheries Management Act, the Torres Strait Fisheries Act—

CHAIR—The committee has to suspend proceedings to attend the chamber for a quorum.

Proceedings suspended from 10.03 am to 10.07 am

CHAIR—Away you go.

Mr Murphy—To continue, I was going to talk about some of the consultation that had occurred leading up to today. The bill has been developed in consultation with the Torres Strait Regional Authority and the Queensland Department of Primary Industries and Fisheries because a lot of the legislation applies to the Torres Strait. The Torres Strait fishery is a joint fishery that is managed by the Commonwealth and the state under the Torres Strait Protected Zone Joint Authority. So, as I said, there has been quite comprehensive consultation between us, the Torres Strait Regional Authority and Queensland. That includes a number of meetings, provisions of drafting principles and a whole range of consultations over a period of time. The minister has been in the Torres Strait in the last few months, again talking to stakeholders about a number of initiatives that are included in the bill. Rather than going through a whole lot of details and other comments, we could perhaps go through and answer any questions that the committee might have.

Senator O'BRIEN—The explanatory memorandum says that the amendments are expected to involve additional administrative cost to the Australian government, that those costs related to the Torres Strait fisheries are subject to cost-sharing arrangements with the Queensland government, and that no additional cost will be imposed on the Torres Strait fishers as a result of the amendments. What type and amount of additional administrative costs will the Commonwealth bear?

Mr Murphy—We think the Commonwealth will bear very minimal additional costs. The arrangements, as I said, are jointly administered by the Commonwealth, the state and the Torres Strait Regional Authority. We think the impact on the Commonwealth will be minimal. I do not know whether my colleagues from AFMA want to add any comments.

Mr Wilson—No, I do not.

Senator O'BRIEN—What about the Queensland government?

Mr Murphy—Again, I am not able to comment on their behalf, but I would have thought there would be minimal impact on them.

Senator O'BRIEN—Yes, but when you say 'minimal', what sort of dollars are you talking about?

Mr Murphy—I do not have a black-and-white answer or a dollar number that I can offer today. The advice I have—

Senator O'BRIEN—What types of costs are there? What are they going to pay for?

Mr Murphy—What is in fact cost recovered is the cost of managing a fishery. There are some fees and levies that are applied that recover the costs of managing the fishery. There is also, in regard to the Torres Strait, about half a million dollars over this current financial year and next year to help cover some of those costs.

Senator O'BRIEN—There is half a million dollars in the budget currently?

Mr Murphy—That is right—over the two financial years.

Senator O'BRIEN—In the department's budget or AFMA's budget?

Mr Murphy—In the department's budget.

Senator O'BRIEN—Okay. And are you saying you do not expect that you will need any more than that?

Mr Murphy—The advice I have is that the funds we have should be sufficient to manage the fishery.

Senator O'BRIEN—The additional costs to Torres Strait fisheries are simply about the management of those fisheries, you have told us. The measures include the provision for the introduction of new licences such as quotas and a fish receivers licence, and a licence for fishing without a boat. These relate to Torres Strait community fishers. Are these costs to be met by those Torres Strait communities?

Mr Stark—There is an administrative fee that is charged to all applicants for licences. That fee is in the vicinity of \$100. It is an administrative fee that the Queensland Department of Primary Industries and Fisheries charge on behalf of the PZJA.

Senator O'BRIEN—So everyone who applies for a licence will be required to pay \$100—every person and entity?

Mr Stark—Under current arrangements, there is a fee for all licences. There is no change as a result of this bill.

Senator O'BRIEN—But there are new licences being introduced. Presumably there are existing licence arrangements and there are new licence arrangements; is that correct?

Mr Stark—That is correct. There is a 12-month transitional arrangement on those new licence types. That is so that the PZJA can establish the administrative systems and consult with industry on the shape and form of those licences. I do not believe that a decision has been made about a fee on those licences. But, as I say, under current arrangements there is a fee for all licences.

Senator O'BRIEN—So it is possible that there will be a different fee in relation to these licences; it just has not been struck yet?

Mr Stark—It has not been considered at this stage.

Senator O'BRIEN—And who will set that?

Mr Stark—The Protected Zone Joint Authority—the PZJA.

Senator O'BRIEN—Of the amendments to the Fisheries Administration Act, item 3, will expand AFMA's functions to include collection and dissemination of information relating to the control and protection of Australian borders. Item 21 in schedule 2 allows for regulations to be made under the FMA to authorise the collection and disclosure of such information for purposes other than those related to fisheries. I would like some clarification on the new powers for collection and dissemination of information. Does that relate to activities by lawfully licensed Australian fishing vessels?

Mr Murphy—What is envisaged is to put in place an efficient regime whereby, if AFMA have information, they can share it with other government authorities. The obvious example would be the Department of the Environment and Water Resources and the establishment of new marine protected areas. AFMA have in place vessel-monitoring systems which tell you where vessels are at any particular point in time. At the moment, if DEW want access to that information, they have to serve a warrant on AFMA. These new arrangements will see AFMA able to share that information with organisations like DEW, Customs and AFP. As you said, the detail will be in the regulation, but the intent is to put in place a simple, efficient means whereby if AFMA holds information they can share that with appropriate departments rather than them creating another system.

Senator STERLE—Can or will?

Mr Murphy—Will.

Senator O'BRIEN—So AFMA will be authorised to disclose information regarding the activities of lawfully licensed Australian fishing vessels?

Mr Wilson—That is certainly possible under those arrangements: an Australian licensed vessel's information may be passed on to another agency. Essentially, the reasons for that might be to avoid duplication of effort where the department of the environment has a

requirement to monitor a marine park area, for example, or a closed area, and the most efficient means of monitoring that activity would be through AFMA's vessel-monitoring system. Currently it is not possible for us to provide another agency with that information for monitoring, essentially, the same patch of water. That is one purpose for the amendment.

Senator O'BRIEN—What have industries said about this provision, in the department's consultation?

Mr Wilson—Industry are in the middle of consultations led by the department of the environment, and we have been involved in those consultations. At this stage it is too early to comment on the outcome of those negotiations, but so far I think there has been a fairly positive response from industry. They recognise that there are potential efficiencies in cost to them as well as to the government in avoiding the duplication of effort.

Senator O'BRIEN—Who is paying for the collection of this information provided for purposes other than fisheries management? Is the Commonwealth paying for this funded by the collections from the fishers?

Mr Murphy—The arrangement will be that AFMA collects the information. If there is additional effort required by AFMA in consolidating and passing information on to DEW, the proposal is that that money will be recovered from DEW.

Senator O'BRIEN—Whereas, if DEW had to collect the information, they would have to pay for it not funded by levies but funded by consolidated revenue.

Mr Murphy—You would assume that the money they will pay AFMA for the information would need to come from some internal source as well. But the notion is to create an efficient system where, if one agency has information, it is sent to all those who have an interest in that information and can share it sensibly.

Senator O'BRIEN—But you can see where I am headed: if the Department of the Environment and Water Resources collect the information, but the information is collected and paid for by the fishers, it would not be necessarily equitable to the fishers if DEW did not pay a significant contribution towards the cost of collecting that information.

Mr Murphy—What is proposed at the moment is that the additional effort that is required to consolidate and pass on that information to DEW would be recovered from DEW.

Senator O'BRIEN—I understand what you say, but they are not the same things, are they? If the information is collected for dual purposes then why should the fishers pay for all of the cost of collection? In other words, why shouldn't DEW make a contribution towards that cost rather than it being distributed to the industry?

Mr Wilson—Those sorts of matters—the cost arrangements—have been a topic of discussion between industry and DEW. It would be premature to go any further and speculate on what the outcome of those discussions would be, but I just note that it has been an issue raised in those consultations.

Senator O'BRIEN—In terms of the new structure of AFMA, item 7 allows the minister to appoint directors of AFMA for up to nine months without having to follow the statutory process. An explanation is given for that. Do I correctly understand that there is a limit on the duration of the appointment of board members and/or the reappointment of existing directors?

In other words, can you confirm that it is not possible that existing board members could be reappointed for lengthy terms?

Mr Murphy—The proposal is that if the minister wishes to reappoint existing members for up to nine months, and then potentially again, there is a sunset clause for that provision in July 2010, so those will only be short-term appointments.

Senator O'BRIEN—So can the minister continually appoint for nine months and re-appoint for nine months up to July 2010?

Mr Murphy—That can only happen twice.

Senator O'BRIEN—Under schedule 2 amendments to the Fisheries Management Act, items 4 to 7 are aimed at making it easier to prosecute foreign fishing boats operating illegally in Australian waters. The explanatory memorandum comments that the Commonwealth Director of Public Prosecutions has not been able to prosecute these people for offences because there have been difficulties collecting sufficient evidence to prove that people intended to be in the territorial sea, and that the amendment is required to ensure that Australia can prosecute and imprison persons guilty of committing a foreign fishing offence in the Australian territorial sea. Could you elaborate on the burden of proof around the intention to be in the Australian fishing zone? In other words, I would like some clarity on where we stand in relation to the 'reckless' versus the 'intention' provisions.

Dr Kalish—I can handle that. The DPP indicated that there were some potential evidentiary problems with prosecutions due to the fact that some of these vessels did not carry charts that included a delineation of the territorial sea—the 12 nautical mile boundary from the territorial sea baseline—so it would be difficult to prove that they were reckless to the fact that they were within that zone. Nevertheless, we recognise that many of these fishers that are apprehended within the coastal zone do seek to approach close to the coast, specifically to target species that they feel are more available in those waters due to the relative difficulty associated with accessing them. Their intention—their recklessness—towards that particular territorial boundary is difficult to prove because of the lack of charts. We are in the process of educating fishers and communities in Indonesia regarding the nature of our territorial sea boundaries and other boundaries so that they are fully aware of these issues. At the present time we have a system whereby the intention to fish in the territorial sea, with recklessness to that fact, is to be identified as a strict liability offence, whereas fishing within the AFZ and the intention of fishing there, and moving into the territorial sea, is identified as a fault based offence—and that has the potential to attract a custodial sentence.

Senator O'BRIEN—Whereas recklessness will not—is that what you are saying?

Dr Kalish—They are reckless to the fact that they are moving through the AFZ and into the territorial sea, but they are not reckless to the fact that they are across the territorial sea boundary. That is difficult to prove until they have charts on their vessels that show the territorial sea.

Senator O'BRIEN—I am just trying to be clear myself. The amendments do not alter the other elements of the offence. In other words, the offence remains one in which fault must be proven. I am still not clear. I think you are saying that if the fisher proceeds without the charts

there is a possibility that they would be prosecuted for recklessly being in the Australian territorial zone.

Dr Kalish—They are reckless by the fact that they are in the Australian fishing zone and they are moving closer to shore. After they cross that boundary into the territorial sea it becomes a strict liability offence. At the present time it is difficult to prove a fault-based offence and recklessness due to the lack of that navigational—

Senator O'BRIEN—So if they are there and fishing, they are reckless. Is that how I should understand it?

Mr Wilson—The reckless element would be removed under these amendments so that it would be a strict liability that they are basically there.

Senator O'BRIEN—In relation to schedule 3 can someone explain why the government did not enshrine the 10 nautical mile gentlemen's agreement into the amendments to the Torres Strait Fisheries Amendment Act?

Mr Stark—A range of processes that the Protected Zone Joint Authority is working on is underway at the moment. There is capacity within the legislation right now to respond to that particular policy decision. There is no real requirement to amend the legislation to resolve that matter.

Senator O'BRIEN—Could you explain how that works?

Mr Stark—One way of responding to that particular policy decision would be to take care of it in a plan of management for the finfish fishery.

Senator O'BRIEN—So write it into a plan of management rather than in the legislation.

Mr Stark—It could be done in that way. It could be done through the allocation of quotas or it could be done contractually between fishers and islander interests.

Senator O'BRIEN—I know this is an issue that agitates the Torres Strait community, so is there a plan to provide some formal recognition of the gentlemen's agreement somewhere or is this just a possibility?

Mr Murphy—As you are probably aware, on the waterfront we are in the process of buying back some of those current fishing concessions and giving them to the Indigenous communities in the Torres Strait—that is for both the rock lobster and finfish. To a large extent that is addressing a lot of those concerns communities have had. The intention is, ultimately, that the communities will own and manage those resources. We are looking to address that tension between the commercial fishers and the community through the exchange of ownership of the resource. That is an important piece of work the Torres Strait Protected Zone Joint Authority has been working on, and we are in the process, as I said, of going over and buying those resources. That is largely addressing those more fundamental points you are questioning.

Senator O'BRIEN—So the process of enshrining that 10 nautical mile is by a process of working with the Torres Strait joint authority to buy the rights to fish in those zones.

Mr Murphy—It is addressing a fundamental point about the tension between the community and the commercial fishers. The communities will own a higher proportion of

those resources and, as the owner, if they lease those resources back to the commercial industry they will be able to dictate under what terms and conditions fishing will occur if they themselves do not fish.

Senator O'BRIEN—You talk about a higher proportion. What proportion?

Mr Murphy—There is a commitment at the moment to at least buy back 50 per cent of those resources. As I said, the process for tropical rock lobster is now underway and within the next few months the process to buy back the finfish concessions will start to gain momentum as well.

Senator O'BRIEN—What funds are required for that and where are they coming from?

Mr Murphy—Money is being provided by the government for that. It is not a number we want to make public because, to some extent, it puts into the public arena how much money might be available. It is a tender process, so we are being very cautious about saying publicly how much is available. I think you would appreciate the point.

Senator O'BRIEN—Yes. But I think we are entitled to know.

Mr Murphy—We can probably provide that to you out of session.

Senator IAN MACDONALD—You would want to get some advice on that.

Mr Murphy—Yes.

Senator IAN MACDONALD—It can interfere with the public tendering process. It will all become obvious in due course.

Mr Murphy—It will become public, ultimately.

Senator IAN MACDONALD—Yes. The accountability can be pursued then.

Senator O'BRIEN—I have not pressed for a public answer on that, but I believe we are entitled to know how that is financially structured. I am happy to accept an offer of a private briefing if that it is the best way of dealing with it.

Mr Murphy—Can I get some advice on that? I understand the point.

Senator O'BRIEN—Yes. Item 5 broadens the definition of 'fishing' in the existing subsection 3(1) to make it consistent with the FMA. Can you explain the effect of broadening the definition of 'fishing'?

Mr Stark—The current definition is quite narrow and responds to the taking, processing and carrying of fish. It does not respond to, for example, if someone were caught illegally setting equipment to catch fish. Until the fish are actually on board a vessel, there is a loophole that defendants could exploit. The bill will amend the definition of fishing to include a range of activities in support of fishing. It does have the effect of expanding some of the offence provisions in the legislation. That is the fundamental effect of expanding the definition.

Senator O'BRIEN—The effect would be some sort of preparation for the taking of fish; it would be some sort of implementation of a system designed to take fish. Is that how I should understand it?

Mr Stark—It is basically intended to cover searching and aggregating devices.

Mr Murphy—The intention is to be consistent with the provisions of the Fisheries Management Act.

Senator O'BRIEN—Is there any possibility of this impacting on the operations of Torres Strait fishers in a way that is—I will withdraw that.

Mr Murphy—As I said earlier, there has been extensive consultation not only with the Torres Strait Islander communities but also with the Torres Strait Island commercial fishers on these amendments.

Senator O'BRIEN—Are there any implications on the interpretation of traditional or community fishing?

Mr Stark—Well, community fishing insofar as community fishing is commercial fishing. I do not believe that there would be implications on the capacity for Torres Strait Islanders to enjoy their traditional fishing activities.

Senator O'BRIEN—For their own purposes but not for sale.

Mr Stark—Yes, that is correct.

Senator O'BRIEN—Item 19 amends section 8 by inserting additional objectives that must be taken into account in the administration of the TSFA. Item 19 proposes to expand this to include environmental protection and management of commercial fisheries for optimum utilisation and promoting economic development and employment opportunities for traditional inhabitants. Is the effect of this to introduce contemporary commercial fishing policy within the Torres Strait fisheries?

Mr Stark—The reason we are amending the objectives of the act is that there have been a range of views put to the PZJA about the objectives of the act and the capacity of management agencies and what they should consider in making management decisions. Because there have been a range of views and some of them are slightly different from each other, we sought to clarify a set of management principles to be taken into account and we have used the Torres Strait Treaty as the source of those management principles.

Mr Murphy—But the intention is to strike a balance between those fishing activities and the protection of the environment for the benefit of the local community. It is also a basis for communities to establish more commercial fishing activities and to be able to work with those existing and future commercial fishers in the area. So we are trying to strike a balance between those two broad objectives.

Senator O'BRIEN—Okay. In that context what is the role of the Torres Strait Regional Authority in terms of approval of developmental fisheries?

Mr Stark—The Torres Strait Regional Authority chair is on the Protected Zone Joint Authority. That position is a full member of the PZJA and the chair of the TRSA would be involved in the decision-making on developmental permits.

Senator O'BRIEN—So one of a number?

Mr Murphy—He is one of three.

Senator O'BRIEN—Is he there as representing the views of TSRA or is he there as an individual?

Mr Murphy—He is there as the chair of the TSRA.

Senator O'BRIEN—So whoever holds the chair holds that position—is that what you are saying?

Mr Murphy—That is right.

Senator IAN MACDONALD—That is what you voted for several years ago.

Senator O'BRIEN—You will excuse me if I do not remember everything that has gone through the Senate that I voted for.

Senator IAN MACDONALD—This one is very important.

Senator O'BRIEN—I just want to be very clear as to the role and the views of the TSRA—I understand what you say about the chair—in relation to issuing developmental fisheries permits and subsequently allowing any new fisheries based on them.

Mr Murphy—As I said, the chair is a member of the PZJA. There is regular formal and informal consultation with the TSRA on fisheries issues on a daily basis and we have a specific unit within my branch network working very closely with them on fisheries issues. It gets an enormous amount of attention by comparison with other fisheries because of the sensitivities and the effort that we are putting into it.

Senator O'BRIEN—You sound a bit resentful about that.

Mr Murphy—Not at all. It works extremely well.

Senator O'BRIEN—Good.

Mr Murphy—I spent time with them yesterday in Cairns. It is a very healthy constructive relationship.

Senator IAN MACDONALD—Neverending.

Senator O'BRIEN—I think that it is fair to say of any community that probably the Indigenous community has the closest connection to sea.

Senator IAN MACDONALD—Yes. They are totally involved and there are countless meetings. It seems to be a continuous process—

Mr Murphy—That is why there is a piece of specific legislation to address the unique nature of the Torres Strait and the treaty.

Senator O'BRIEN—Items 64 to 80 amend various aspects of section 15A, which deals with the fisheries management plans. The legislation further gives the minister power to require that a person in charge of a boat used for taking fish in the course of community fishing must have a master fisherman's licence, if I have understood it correctly, so that output controls can be effectively monitored by recording catch or use against a single licence number. Why is it considered necessary to require a master fisherman's licence in order to have a quota fishery?

Mr Stark—The way the records are kept in the Torres Strait is that we have a voluntary pocketbook system and fish receivers keep certain records. We have been through a fairly significant data overhaul over the last few months in preparation for the tender process that we are currently implementing in the tropical rock lobster and finfish fisheries. As a result of

that process it has been revealed that we might have someone whose name is registered as, for example, Stuart Gregor Stark, but I might be fishing as Stuart Stark, Greg Stark or just S. Stark. So the records are varied and it is difficult to run an effective quota system if we do not know who is delivering fish. So the proposal is that, in the quota fisheries, the minister has the capacity to require, by management notice or by legislative instrument, community fishers to hold a master fisherman's licence. So that is one licence and the catch would be recorded against that one licence.

Senator O'BRIEN—Will that impose new costs on the community fishers?

Mr Stark—It may impose new costs. Again, that would be a matter for the PZJA to consider.

Senator O'BRIEN—Does it require that \$100 application fee?

Mr Stark—It is possible.

Mr Murphy—I think what Mr Stark is saying is that by essentially having a better and more consolidated list of fishers there are some efficiencies that can be gained by trying to sort out the myriad names we have at the moment. If you can consolidate those names into master fishers whom you know you are dealing with, there should be some efficiencies on the end of that, rather than anything else.

Senator O'BRIEN—A lesser number of licences would be required to be issued?

Mr Murphy—Yes. And there would be a better and more reliable database so that you are not incurring the same sorts of overheads as Mr Stark has just explained we have incurred in recent months as we have tried to sort out the data. So I think in fact there are some efficiencies in what is being proposed, rather than anything else.

Senator O'BRIEN—Presumably, it is intended that the master fisherman's licence would sit with an individual?

Mr Murphy—Or a company.

Senator O'BRIEN—It is an entity and/or an individual. Is that what you are saying?

Mr Stark—I would need to check. I think the master fisherman's licences is just to be in charge of a boat. I believe that would be issued against an individual, but I could confirm that with the secretariat this afternoon if you would like.

Senator O'BRIEN—The only thing I am thinking about is the process if there is a death or something like that—if it is a master fisherman and they have to go through the replacement of a licence. How does that affect the ability to continue fishing and the like? How does that work?

Mr Murphy—I am not across that sort of detail today. Those things tend to sort themselves out fairly readily. In fisheries like this, they are the sorts of things that are sorted out pretty quickly, particularly if they are going to have an adverse effect on what is going to happen tomorrow or next week.

Senator O'BRIEN—I am happy to be assured that the flexibility is there for an expeditious reissue of such a licence in such circumstances—because it would be a

catastrophe if focusing on a master fisherman's licence meant that there was a significant interruption to the right to fish of a community or part of a community.

Mr Murphy—Yes.

Senator IAN MACDONALD—Queensland has—

Mr Murphy—Queensland manages this on a day-to-day basis as part of the joint authority, yes.

Senator O'BRIEN—And presumably, alternatives to the master fisherman's licence have been considered and rejected?

Mr Murphy—Potentially, yes.

Senator O'BRIEN—What sort of test or requirement or benchmark will be needed to qualify for a master fisherman's licence as distinct from that of a community fisher?

Mr Stark—A community fisher's licence can only be obtained by a traditional inhabitant under the Torres Strait Treaty and many holders of community fisher's licences already have master fisherman's licences and operate the boats of the non-Indigenous fishers. One is a licence to fish and one is a licence to operate a boat.

Senator O'BRIEN—Presumably, the licence to operate a boat is to do with the commercial side of the operation, whereas the community fisher's licence is a lesser licence?

Mr Stark—Community fishing is a form of commercial fishing. However, there is a cap on the non-Indigenous commercial fishing licences in the Torres Strait fisheries. There is no cap on the number of community fishing licences.

Mr Murphy—Other than the overall quota.

Mr Stark—That is correct, yes.

Senator O'BRIEN—Going further, item 176 says that the PZJA can delegate its powers and functions to an officer of the Commonwealth, the department, AFMA, a Commonwealth officer in TSRA, and certain persons acting in the service of Queensland operating under Queensland law. Apart from the PZJA powers to delegate functions to the Commonwealth or Queensland, is it envisaged that PZJA itself may wish to determine its own fishery management plans?

Mr Stark—All of the Torres Strait fisheries are Protected Zone Joint Authority fisheries so the amendments will provide for the PZJA to determine a management plan for the fisheries it has responsibility for.

Senator O'BRIEN—How is it going to be resourced financially and environmentally to achieve that goal?

Mr Stark—To determine the management plans? There are processes already underway and there are appropriations in the Queensland budget and also in AFMA's budget for management of the Torres Strait fisheries.

Senator O'BRIEN—So they will have access to the resources available in those budgets?

Mr Murphy—As Mr Stark said, those things are already underway.

Senator O'BRIEN—They do now have access to those budgets—is that what you are saying?

Mr Murphy—No, those resources exist now and those management plans have been or are being developed now.

Senator O'BRIEN—By the PZJA?

Mr Murphy—Or its agencies, yes, in cooperation. There is a working arrangement between Queensland, AFMA and the department to resource the development of the management plans.

Mr Stark—And there is a cost-sharing agreement between AFMA and Queensland.

Senator O'BRIEN—How are those costs shared? Is it complex or a straight percentage or—

Mr Stark—As I understand it, at the end of the financial year the Queensland Department of Primary Industries and Fisheries and AFMA tally their costs for the year and reimburse one another on a fifty-fifty basis.

Senator IAN MACDONALD—Has the TSRA been bought into the deal yet or is that a work in progress?

Mr Stark—We are still operating under the cost sharing agreement between AFMA and Queensland.

Senator IAN MACDONALD—One day they will have to become involved.

Mr Murphy—With the transfer of some of the current commercial activity to the Indigenous activity, there will be some resources for the PZJA also, you would imagine, coming out of that process. Certainly in the short to medium term, some of those resources will be leased back to commercial operators and you would imagine that there would be some fees and levies which again will provide some overall resources to help manage the fisheries resources in the Torres Strait and build the capacity of the TSRA as well.

Senator O'BRIEN—What sort of dollars are we potentially talking about? Have you any idea?

Mr Murphy—No, not off the top of my head. But they might well derive \$100,000 a year or a couple of hundred thousand a year from management of the sort of licensing regime that might go with that. I do not really know as yet. That detail is still being worked through.

Senator O'BRIEN—It would be interesting to follow that through and see how the expectation and reality marry up over time. On schedule 4—the amendments to the Surveillance Devices Act—the explanatory memorandum states:

This Act covers the use of surveillance devices for the investigation of Commonwealth offences and State offences with 'a federal aspect'. Subsection 6(1) lists a number of offences under the FMA to which this Act applies. Items 1-6 add additional FMA offences to the subsection 6(1) list, as well as for the first time adding a number of offences under the TSFA. All the offences relate to foreign, rather than Australian, boats.

The amendment provides substantial new powers to AFMA officers to enforce the law, as well as new administrative provisions such as issuing infringement notices. What additional strain will these new measures impose on existing resources?

Mr Wilson—Sorry, I do not understand the question.

Senator O'BRIEN—The amendment provides substantial new powers to AFMA to enforce the law, as well as new administrative provisions such as issuing infringement notices. I want to know if these new powers and administrative provisions will impose any additional strain on AFMA's existing resources or will additional resources be needed as a result of these changes?

Mr Wilson—My understanding was that schedule 4 related to the Surveillance Devices Act picking up current offences within the existing legislation. It does not provide us with any new powers or offences as such.

Dr Kalish—The new offences that are highlighted are the potential custodial sentencing offences that might occur in the territorial sea. Those surveillance activities are already underway by AFMA and other agencies. The idea is that the information from these surveillance devices would become available in prosecutions relating to those potential offences.

Senator O'BRIEN—Are you saying that it is, in effect, making legal provision to encompass the sort of surveillance that is now possible?

Dr Kalish—Yes, that is already underway.

Mr Wilson—For existing offences.

Senator O'BRIEN—It is a facilitation of enforcement using devices. The law encompasses the capacity that you now have.

Mr Wilson—That is correct.

Senator O'BRIEN—Therefore no additional support is required to continue that.

Mr Wilson—No.

Senator O'BRIEN—They are all the questions that I have. I know that it is a very detailed piece of legislation and I am sure that I have missed something. Are there any other questions?

Senator STERLE—I have one. I think one of the key amendments in the legislation provides AFMA with the power to widen its functions to collect information and pass it on to other agencies—which you have said they will do. I know that the government has come a long way in the last couple of years and great encouragement and leadership have been shown, particularly in Western Australia. Will that information that is collected flow to the state agencies as well?

Mr Wilson—At present there is no proposal in front of AFMA to share specific information of that sort with the states. However, the head of power, as proposed in the amendments, would enable us to do that if that was to be the case. It would obviously require negotiations not only between AFMA and the states but also with the industries concerned. But there is no current proposal on the table to do that.

Mr Murphy—The intention is, as I said earlier, to put in place a regime where we are not duplicating effort. If someone holds information—and the detail will be in the regulations—let us try and share it sensibly.

Senator STERLE—From past experience in the northern part of Western Australia, the Western Australian state agencies have been kept in the dark over the years. When they have tried to get assistance or information from Canberra, it has been withheld. It would be a shame to keep the states in the dark, as we should all be working together on this.

Dr Kalish—There has been considerable effort over the past year or so to engage with the northern states in relation to illegal foreign fishing. We have a senior officials' process and a ministerial process, and there is some information sharing going on in relation to that activity, certainly in relation to the number of incursions of illegal foreign fishing vessels, the apprehensions and similar information. So we are moving forward in terms of working together.

Senator STERLE—Hopefully we can get that information shared.

Senator IAN MACDONALD—Just for the record, I could have an argument with Senator Sterle about the Western Australian government and some of their confidentiality arrangements, but that is an issue for another time and another place.

Senator STERLE—I would welcome that, no worries.

CHAIR—Thank you very much, everybody, for your cooperation.

Committee adjourned at 10.57 am