**FISHERIES ACT AMENDMENT BILL 1982**

**Legislative Council, 25 August 1982, pages 693-5**

Second reading

Received from the House of Assembly and read a first time.

**The Hon. C. M. HILL (Minister of Local Government):** I move: That this Bill be now read a second time. I t gives effect to the fisheries part of the off-shore constitutional settlement agreement. The appropriate Commonwealth provisions have already been passed, and the States are introducing complementary provisions based on a model prepared by New South Wales. Until the 1950s, fisheries in Australia were mainly inshore, and were managed by the States. The Constitution had always empowered the Commonwealth Parliament to make laws with respect to fisheries beyond territorial limits. In 1952 the Commonwealth passed a Fisheries Act to manage offshore commercial fisheries. Although this provided much needed management in some fisheries, in others it created two different management authorities over fisheries which were divided by the 3 mile territorial limit. I would point out that that is the correct term. The 3 mile limit is of ancient origin and is widely recognised in international convention. There is no metric equivalent.

As fisheries developed and extended beyond 3 miles, and across several States, the split jurisdiction caused needless complication in management. Several cases came to the High Court, but the judgments did not define the limits to jurisdiction in a way that could be applied in practice. By 1976, State and Commonwealth Ministers responsible for fisheries resolved that a new basis for managing fisheries should be developed. By 1979, Premiers were able to agree to a plan whereby any commercial sea fishery could be managed as an entity. Depending on particular characteristics, a fishery could be managed under State law wherever the fishery occurred; or under Commonwealth law, wherever the fishery occurred. A scheme of management would be developed for the fishery by the State, or the Commonwealth or by a new body to be called the Joint Authority. A Joint Authority would consist of the Ministers responsible for fisheries in the areas of jurisdiction in which the fishery occurred, but they would function as a single body.

Fisheries would be described by reference to such things as the species of fish, a method of fishing, an area of waters and so on. Thus, a person who held a licence for that fishery would have his rights set out clearly. He could work in that fishery without the inappropriate and artificial constraint of a line on the water, 3 miles from shore, which might pass through the middle of the best fishing grounds. To allow such arrangements, it would be necessary for the Commonwealth, or the States, to show that they did not apply their legislation to the fishery where it had been agreed that the fishery be managed, in accordance with an agreed scheme of management, under the law of the Commonwealth only, or a State, only.

lf the fishing activities were not for a commercial purpose, they would remain under State control wherever they were carried out. That is, the States would manage recreational fisheries. States would also retain control of their internal waters as defined. For South Australia this means that the waters in the gulfs and historic bays will not be subject to Commonwealth involvement in management of fisheries. Beyond the limits of internal waters the following management regimes will be possible:

1. Management of specified fisheries by joint authorities either under— (a) Commonwealth law applying from the lowwater mark where two or more States are involved; or (b) Commonwealth or State law applying from the low-water mark where only one State is involved;

2. Arrangements whereby either the Commonwealth or a State may manage a fishery under either Commonwealth or State law, that law applying from the low-water mark; and;

 3. Continuation of the status quo, that is, State law applying within the 3 nautical miles and Commonwealth law beyond that distance where no arrangement has been entered into in relation to management of a particular fishery, it is envisaged that this provision would rarely be used especially in the longer term.

At the last meeting of the Standing Committee of Attorneys General it was agreed that 1 September 1982 was a desirable date upon which national implementation of the basic elements of the offshore constitutional settlement should take place. The Commonwealth was of the view that all prerequisites to proclamation had now been satisfied.

The offshore constitutional settlement so far as fisheries is concerned involves the bringing into operation of the Fisheries Amendment Act 1980 (Commonwealth) and complementary State and Territory legislation to authorise the making of arrangements between the Commonwealth on the one hand and a State or States and the Northern Territory on the other hand for the management of specific fisheries.

Provisions with respect to Commonwealth-State arrangements were included as Part II of the Fisheries Act, 1982. This Act received Royal Assent on 1 July 1982, but it cannot be brought wholly into operation for several months until the task of preparing subordinate legislation under it is completed.

The Crown Solicitor has considered whether it might be possible to bring the Fisheries Act, 1982, into operation on 1 September 1982, but for the operation of section 4 (repeals) and Parts III-V (Administration, Regulation of Fishing, and Miscellaneous) to be suspended pursuant to section 2 (2) of the Act, until the task of preparing the regulations is completed. The Crown Solicitor has formed the opinion that this may not be done. The expression ‘this Act’ appears throughout Part II of the Fisheries Act, 1982, necessarily referring to the Fisheries Act, 1982, and not to the Fisheries Act, 1971-1980. Part II of the Fisheries Act, 1982, cannot therefore be brought into operation and treated as though it were part of the Fisheries Act, 1971-1980.

On 3 December 1981 the present measure was introduced into this House to amend the Fisheries Act, 1971-1980, by the insertion into it of a new part to deal with Commonwealth-State arrangements as envisaged by the offshore constitutional settlement. The measure was not proceeded with, since identical provisions were included in the Fisheries Act, 1982.

No Joint Authority arrangements involving South Australia are expected to be agreed to for quite some time, but to accord with the agreement at Standing Committee of Attorneys-General to enable early national implementation of the basic elements of the offshore constitutional settlement the Bill to amend the Fisheries Act, 1971-1980, is therefore reintroduced. The provisions in this measure, as I have said, are identical to those in the Fisheries Act, 1982. I seek leave to have the explanation of the clauses inserted in Hansard without my reading it. Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on the day on which Part IVA of the Commonwealth Fisheries Act comes into operation. Clause 3 amends section 3 of the principal Act which sets out the arrangement of the Act. The clause inserts the heading for a proposed new Part IA dealing with Commonwealth-State management of fisheries.

Clause 4 amends section 5 which provides definitions of terms used in the Act. The clause inserts definitions o f ‘the Commonwealth Act’ and ‘Commonwealth proclaimed waters’, Commonwealth proclaimed waters being waters that are seaward of the coastal waters of the State which, in turn, are the waters up to three miles from the low-water mark on the coast of the State or from a proclaimed baseline. The clause also inserts a definition of ‘foreign boat’ which has the meaning that it has under the Commonwealth Act. Finally, the clause inserts a new definition of the waters to which the Act applies, these being: (a) the waters within the limits of the State; (b) except for purposes relating to a fishery to be managed under Commonwealth law, waters that are landward of the Commonwealth proclaimed waters adjacent to the State; (c) for purposes relating to a fishery to be managed under State law, any waters to which the legislative powers of the State extend with respect to that fishery; and (d) for purposes relating to recreational fishing not involving foreign boats, waters to which the legislative powers of the State extend with respect to those activities.

Clause 5 inserts a new Part IA (comprising new sections 6a to 6n) dealing with Commonwealth-State management of fisheries. New section 6a sets out definitions of terms used in the new Part. Attention is drawn to the definition of ‘fishery’, which is defined in terms of a class of fishing activities identified in an arrangement made under Division III by the State with the Commonwealth or with the Commonwealth and one or more other States. Attention is also drawn to the definition o f ‘Joint Authority’, which is defined to mean the South Eastern Joint Authority (comprising the Commonwealth, New South Wales, Victorian, South Australian and Tasmanian Ministers responsible for fisheries) established under the Commonwealth Act and any other Joint Authority subsequently established under that Act of which the Minister is a member.

New section 6b provides that the Minister may exercise a power conferred on the Minister by Part IVA of the Commonwealth Act. New section 6c requires judicial notice to be taken of the signatures of members of a Joint Authority or their deputies and of their offices as such. New section 6d provides that a Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division III as are conferred on it by the law (that is, either Commonwealth law or, as the case may be, South Australian law) in accordance with which pursuant to the arrangement, the fishery is to be managed. New section 6e provides for the delegation by a Joint Authority of any of its powers.

New section 6f provides for the procedure of a Joint Authority. New section 6g requires the Minister to table in Parliament a copy of the annual report of a Joint Authority. New section 6h provides that the State may enter into an arrangement for the management of a fishery. The new section also provides for the termination of an arrangement and the preliminary action required to bring into effect or terminate an arrangement. New section 6i provides for the application of South Australian law in relation to fisheries which are under an arrangement to be regulated by South Australian law. New section 6j sets out the functions of a Joint Authority (that is, one that is to manage a fishery in accordance with South Australian law) of managing the fishery, consulting with other authorities and exercising its statutory powers.

New section 6k provides for the application of the principal Act in relation to a fishery that is to be managed by a Joint Authority in accordance with the Act. New section 61 applies references made to a licence or other authority in an offence under the principal Act to any such licence or other authority issued or renewed by a relevant Joint Authority. New section 6m is an evidentiary provision facilitating proof of the waters to which an arrangement applies. New section 6n provides for the making of regulations in relation to a fishery to be managed by a Joint Authority in accordance with the law of the State. Clause 6 redesignates existing section 6a as section 6o.

The Hon. FRANK BLEVINS secured the adjournment of the debate.