

## FISHERIES (No. 2).

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No. 67 of 1965.

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AN ACT to amend the Fisheries Act, 1905-1964.

[Assented to 25th November, 1965.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and citation.

1. This Act may be cited as the *Fisheries Act Amendment Act (No. 2), 1965*.

Reprinted as approved for reprint, 16th March, 1962, and amended by Acts Nos. 63 of 1962 and 63 of 1964.

(2) In this Act the Fisheries Act, 1905-1964, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Fisheries Act, 1905-1965.

S. 4A added.

2. The principal Act is amended by adding in Part II immediately before section five, the following section—

Minister a body corporate.

4A. (1) The Minister shall for the purposes of this Act be a body corporate under the name of the "Minister for Fisheries and Fauna" with

perpetual succession and a common seal; and by that name shall be capable of suing and being sued and of acquiring, holding, exchanging, leasing and disposing of real and personal property, and of doing and suffering all that bodies corporate may do and suffer.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Minister affixed to a document and shall presume that it was duly affixed. .

3. Section six of the principal Act is amended— S. 6  
amended.

(a) by inserting after the passage, “issued,” in the penultimate line of paragraph (h) of subsection (1), the words, “the forms of application for an indorsement of licenses”; and

(b) by adding after paragraph (mj) of subsection (1), the following paragraph—

(mk) requiring the production by persons who operate or cause to be operated processing establishments of any books, documents and other papers for the purposes of Part IIIB of this Act, and determining the times when, the place where, the persons to whom, and the manner in which any such production shall be made; .

4. Section seventeen of the principal Act is amended by deleting the word, “and” in the last line of paragraph (da). S. 17  
amended.

5. The principal Act is amended by adding after section nineteen the following section— S. 19A  
added.

19A. (1) The Minister may, by notice published in the *Government Gazette*, from time to time restrict or prohibit the use for the Restriction  
on use of  
synthetic  
fibres.

purpose of catching fish of any nets, lines, threads or other gear used or intended to be used for fishing that are composed wholly or partly of synthetic fibres or of such other fibres as the Minister may specify in the notice and such notice shall take effect according to its tenor on the day specified in the notice as that on which it takes effect or on the day of publication if a day is not so specified.

(2) A notice published under this section may be cancelled or varied at any time by the Minister by a subsequent notice so published. .

Part IIB  
added.

6. The principal Act is amended by adding immediately before the heading, "PART IV.—MISCELLANEOUS.", the following Part—

PART IIB.—PROCESSING ESTABLISHMENTS.

Interpre-  
tation.

35A. In this Part—

"licensee" means any person holding or entitled to exercise a processor's license within the meaning of this Part;

"processing", in relation to fish, includes cutting up, breaking up, filleting, preparing, packing, freezing, canning, preserving or otherwise treating in any manner whatever;

"processing establishment" includes any land, jetty, premises, vehicle, boat, or other place whatever on or in which the processing of fish is carried out for the purposes of sale; but does not include premises, or the part of premises, in which fish are sold by retail to the public or in which meals are served to the public.

Processing  
estab-  
lish-  
ments to be  
licensed.

35B. On and after the first day of January, nineteen hundred and sixty-six a person shall not operate, or cause or permit to be operated on his behalf, any processing establishment

unless he is the holder of a processor's license granted and in force under this Act in respect of that processing establishment.

Penalty: A fine of not less than one thousand pounds and not more than two thousand pounds, and in addition a fine of not less than fifty pounds and not more than one hundred pounds for each day during which the offence continues.

35C. (1) Every application for a processor's license to be granted or renewed in respect of a processing establishment shall be made in the prescribed form to the Director and the applicant shall furnish and deliver with his application a return in writing signed by the applicant, or by a person authorised by him in that behalf, setting forth—

Application  
for  
processor's  
license.

- (a) the quantities of the various species of fish caught by or for the applicant, or purchased by him, for processing on or in the processing establishment;
- (b) the value of each of the various species of fish so caught for processing and the gross value of the total quantity of fish so caught;
- (c) the amounts paid or payable for each of the various species of fish so purchased and the gross amount paid or payable for the total quantity of fish so purchased; and
- (d) the names and addresses of the persons who sold the various species of fish so purchased,

during the period of twelve months ending the thirtieth day of June next preceding the commencement of the year in respect of which or part of which the applicant requires a processor's license to be granted or renewed, the first of which periods of twelve months shall be the period ended on the thirtieth day of June, nineteen hundred and sixty-five in

respect of the licensing year commencing on the first day of January, nineteen hundred and sixty-six.

(2) The Director shall consider the application for the grant or renewal of a processor's license and upon being satisfied that the processing establishment the subject of the application is constructed, equipped and operated in an efficient and hygienic manner and in conformity with the provisions of this Act and the regulations he may, subject to such conditions and restrictions as he thinks fit, grant the application, or he may refuse to grant the application.

(3) A processor's license granted under this section shall, unless sooner cancelled, expire on the thirty-first day of December next following the date of its commencement, but may on application to the Director in writing signed by the licensee, or by a person authorised by him in that behalf, be renewed from time to time until the next following thirty-first day of December.

(4) Every processor's license granted under this section shall be and be deemed to be subject to a condition that the holder of that license shall not purchase fish for processing in the processing establishment the subject of that license from any person other than the holder of a processor's license under this Part or the holder of a professional fisherman's license under the regulations.

Transfer of  
processor's  
license.

35D. (1) The Director may on application in writing signed by the licensee and by a proposed transferee of the processor's license, and on payment of the prescribed fee, transfer at any time that license to such transferee by indorsement upon the license in the form prescribed.

(2) Subject to this Act, every transferee shall until the end of the year for which the processor's license was granted, or as the case may be, renewed, have all the rights of the licensee and shall be liable to the same duties, obligations and penalties as if that license had been originally granted to him.

35E. (1) Where the licensee of a processor's license desires to remove that license from the processing establishment the subject of that license to any other processing establishment, the licensee shall make application in writing to the Director for an order for such removal and serve upon or send by registered letter to the owner of the processing establishment the subject of the license notice of his application.

Removal of  
processor's  
license.

(2) The Director shall not make an order for removal unless he is satisfied that no valid objection to the removal applied for is made by the owner of the processing establishment the subject of the license but, subject thereto, may in his discretion grant or refuse the application.

(3) If the Director grants the application an indorsement may be made upon the processor's license in the form prescribed on payment of the prescribed fee, and the license so indorsed shall have the same effect as if it had been originally granted in respect of the processing establishment specified in the indorsement, but as to the original processing establishment the license shall be deemed to be cancelled.

35F. Where the Director is satisfied that any breach of the conditions or restrictions to which the processor's license was granted or renewed has been committed, or the license fee or any part thereof payable in respect of that license has not been paid within fourteen days after becoming due and payable, the Director shall report the same to the Minister who may thereupon suspend the license for such period as he thinks fit, or may cancel the license.

Suspension  
or cancel-  
lation of  
processor's  
license.

License fees for processor's licenses.

35G. (1) The fees payable in respect of processor's licenses granted or renewed under this Part shall be assessed at a percentage of—

(a) the value of fish caught; and

(b) the moneys paid or payable for fish purchased,

by or for the person operating, or causing or permitting to be operated on his behalf, a processing establishment, for processing on or in that establishment for purposes of sale.

(2) Every person to whom a processor's license is granted, and every licensee of a processor's license that is renewed, shall pay to the Director as an annual fee for that license in respect of each year commencing on the first day of January a sum calculated on the gross amount of the value of fish caught, and the moneys paid or payable for fish purchased, for processing in the processing establishment during the period ending the thirtieth day of June next preceding the commencement of that year equal to such percentage, not exceeding one per centum, of that gross amount as the Governor by Order in Council determines and is authorised so to determine from time to time, and that person or licensee shall pay that sum within thirty days after the license is granted or, as the case may be, renewed.

License fee, where processor's license in force for less than a year.

35H. (1) If a processor's license is granted or renewed to have effect only during a specified portion of a year, such part only of the annual fee that would be payable in respect of that license if it were granted or renewed for a year shall be payable as is proportionate to the period for which that license is to have effect.

(2) Where a processor's license is suspended, surrendered or cancelled under this Act, the Director may, with the approval of the Treasurer of the State, refund to the licensee such part of the annual fee paid by him as is proportionate to the period for which that

license has been suspended or by reason of its surrender or cancellation has ceased to be in force.

35I. (1) If any licensee fails or neglects to furnish and deliver any return under this Part, the Director shall on such information as he thinks fit assess the amount that would have been payable by the licensee by or on whose behalf the return should have been furnished and delivered, and the amount so assessed shall on demand be paid by that licensee to the Director, and in addition that licensee is liable to a penalty not exceeding one hundred pounds.

Penalty for failure to furnish returns.

(2) The fee payable by the licensee of a processor's license under this Part is a debt due to Her Majesty and may be sued for and recovered, and the obligation to make the returns under this Part may be enforced, in any court of competent jurisdiction, by the Minister suing in his corporate name.

(3) A processor's license shall not be transferred or renewed unless the fees due under this Part at the date of the application for that transfer or renewal are paid.

35J. (1) Where under the provisions of this Part fees payable in respect of any processor's license are required to be assessed, and—

Director to fix percentage fees.

- (a) no information is produced to the Director, or the information produced is insufficient to enable him to determine the gross value of fish caught, or the gross amount paid or payable for the quantity of fish purchased for processing on or in the processing establishment; or
- (b) there is no previous period of twelve months, or information in respect of a period of twelve months cannot be produced,



the Minister shall fix the amount of any such fee as he thinks reasonable and the amount so fixed shall be final and conclusive.

(2) Every applicant for the grant of a new processor's license shall at the time of application furnish to the Director all particulars available to enable the Minister to estimate the probable extent of the annual catches and purchases of fish for processing on or in the processing establishment for which a processor's license is sought.

Appeals.

35K (1) Any person aggrieved by an order or decision of the Minister or the Director under this Part, except section thirty-five J thereof, may within fourteen days after notice of that order or decision appeal against the same by lodging with the clerk of the Court of Petty Sessions held nearest to the place of business of that person a notice of appeal containing in writing a statement of the grounds of his appeal.

(2) The appellant shall serve or cause to be served a copy of the notice of the appeal on the Minister, or as the case may be, the Director, within seven days after lodging the notice with the clerk under subsection (1) of this section, and on proof by affidavit of such service, the magistrate shall appoint a date, time and place for hearing the appeal and cause written notice thereof to be sent to the parties not less than fourteen clear days before that date.

(3) On the hearing of the appeal the magistrate may make such order, including an order as to costs, in the matter as he may think just, and the order so made shall be conclusive and binding on all parties.

Establishment of  
"Fisheries  
Research and  
Development  
Fund".

35L. (1) For the purposes of this Part there shall be established and kept at the Treasury an account to be called the "Fisheries Research and Development Fund", which shall be administered by the Minister.

(2) There shall be paid to the credit of the Fund—

- (a) all fees received by the Director for processor's license fees under this Part;
- (b) all penalties recovered under this Part for offences against this Part;
- (c) the income derived from the investment of any money forming part of that Fund; and
- (d) any money that is paid or payable to the Director or to the Fund by way of gift, bequest or otherwise.

(3) The moneys from time to time in the Fund may be used and applied by the Minister only for all or any of the purposes of scientific, technological or economic research in relation to fisheries, or in the investigation, exploration and development, and the provision of extension services, relating to fisheries.

(4) Any moneys at any time standing to the credit of the Fund and not immediately required by the Minister for the purposes of subsection (3) of this section may be temporarily invested by the Minister as the Treasurer of the State may direct.

35M. (1) The Minister shall—

Accounts.

- (a) cause to be kept true and regular accounts of moneys paid into and belonging to the Fisheries Research and Development Fund and moneys paid out of that Fund, and the persons to whom and the purposes for which those moneys were paid; and
- (b) cause the accounts to be balanced at the thirty-first day of December in each year.

(2) The Auditor General appointed under the Audit Act, 1904, has in respect of those accounts the powers conferred on him by that Act, and shall—

- (a) arrange for the audit of those accounts; and
- (b) as soon as practicable after the completion of the audit in each year, prepare and deliver to the Minister a report on the audit of those accounts.

(3) As soon as is practicable after receiving the report of the Auditor General under subsection (2) of this section, the Minister shall present a true copy of the report to both Houses of Parliament and a written report on the activities under this Part during the period to which the report of the Auditor General relates.

Access to  
books, etc.

35N. In addition to all other powers conferred on him by this Act the Minister, or any officer authorised by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Part, and for that purpose may take extracts from or make copies of any such books, documents or papers.

Minister  
may waive  
payment of  
license fees.

35O. Notwithstanding the provisions of this Part, the Minister, in any case where special circumstances exist which in his opinion warrant his so doing, may waive payment by a licensee of the whole or any part of the license fee payable by him in any year in respect of the grant or renewal of a processor's license, but the waiver of such payment shall not operate to exempt or discharge the licensee from his obligation to comply with any of the conditions or restrictions to which the processor's license is subject. .