

## FISHERIES.

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No. 70 of 1982.

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### AN ACT to amend the Fisheries Act 1905-1979.

[Assented to 19 October 1982.]

**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:—

1. (1) This Act may be cited as the *Fisheries Amendment Act 1982*. Short title and citation.

(2) In this Act the Fisheries Act 1905-1979 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Fisheries Act 1905-1982.

Reprinted as approved 15 March 1976 and amended by Act No. 60 of 1979 and G.G. 27/1/78, 19/1/79 and 21/11/80.

Commence-  
ment.

2. (1) Subject to subsections (2) and (3) of this section this Act shall come into operation on the day on which it is assented to by the Governor.

(2) The provisions of sections 3 (b), 4, 5, 6, 9 and 16 of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

(3) If the Fisheries Amendment Act 1981 has not come into operation on or before the day on which this Act is assented to by the Governor section 13 (a) of this Act shall come into operation on the day on which that Act comes into operation.

Section 3  
amended.

3. Section 3 of the principal Act is amended—

(a) in the definition of “fish” by inserting after “fishes” the following—

“ , molluscs ” ; and

(b) in the definition of “fisherman” by inserting after “fish” the following—

“ or acting under the control or direction of a person so licensed ” .

Section 5  
amended.

4. Section 5 of the principal Act is amended by repealing subsection (1b).

Section 5A  
inserted.

5. After section 5 of the principal Act the following section is inserted—

Delegation  
by Director  
generally.

“ 5A. (1) The Director, with the prior approval of the Minister, may, by writing signed by the Director, delegate to a person any of the powers, functions or duties of the Director under this Act, other than this power of delegation.

(2) For the purposes of this Act, the exercise of a power or the performance of a function or duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the function or duty by the Director.

(3) Where, under this Act, the exercise of a power or the performance of a function or duty by the Director is dependent upon the opinion, belief or state of mind of the Director in relation to a matter and that power, function or duty has been delegated under this section, that power, function or duty may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

(4) A delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) A delegation under this section may—

- (a) be made so as to apply generally or as otherwise provided by the instrument of delegation;
- (b) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
- (c) be revoked or varied by instrument in writing signed by the Director.

(6) The Director may exercise a power or perform a function or duty notwithstanding that he has delegated its exercise or performance under this section. " .

6. Section 5B of the principal Act is amended in subsection (1)— Section 5B amended.

- (a) by deleting "seven" and substituting the following—

" 8 " ;

(b) by deleting “eight” in both places where it occurs and, in each case, substituting the following—

“ 9 ” ; and

(c) in paragraph (c) by deleting “three” and substituting the following—

“ 4 ” .

Section 5D  
amended.

7. (1) Section 5D of the principal Act is amended in subsection (1b) by deleting “five years” and substituting the following—

“ such period not exceeding 3 years as is specified in the instrument of his appointment ” .

(2) Section 5D (1b) of the principal Act as enacted before the coming into operation of this section shall continue to apply to the terms of office being served immediately before the coming into operation of this section by members of the Rock Lobster Industry Advisory Committee and General Fisheries Advisory Committee constituted under sections 5B and 5C, respectively, of the principal Act.

Section 6  
amended.

8. Section 6 of the principal Act is amended in subsection (1)—

(a) in paragraph (g) by inserting before “crustacea” the following—

“ molluscs and ” ; and

(b) by inserting after paragraph (ga) the following paragraph—

“ (gaa) prescribing the duties and obligations of holders of licences, or licences of a particular kind, under this Act; ” .

9. Section 12C of the principal Act is amended by inserting after subsection (4) the following subsection—

Section 12C  
amended.

“ (5) Subsection (1) of this section does not limit the generality of section 5A of this Act but the approval of the Minister is not required in respect of a delegation made pursuant to this section. ” .

10. Section 12D of the principal Act is amended in paragraph (a) by deleting “not being a licensed professional fisherman”.

Section 12D  
amended.

11. After section 26A of the principal Act the following section is inserted—

Section 26B  
inserted.

“ 26B. A person shall not, without lawful excuse—

Interference with  
fishing.

(a) prevent a person from lawfully fishing; or

(b) interfere with, hinder or harass a person in the conduct of lawful fishing. ” .

12. Section 27 of the principal Act is amended by inserting after subsection (2) the following subsections—

Section 27  
amended.

“ (3) Any person who in any waters negligently, wilfully or maliciously propels, steers, drives or uses any boat so as to damage any net, pot, trap, line or other implement, appliance or article that is being lawfully used for fishing shall be guilty of an offence against this Act and be liable to a fine not exceeding \$750, and in addition shall pay such compensation to the owner of the net, pot, trap, line or other implement, appliance or article as may be awarded by the court convicting such person of the offence.

(4) The provisions of this section do not affect the generality of section 26B of this Act. ” .

Section 29A  
amended.

13. Section 29A of the principal Act is amended—

- (a) by repealing subsection (1); and
- (b) by inserting after subsection (5) the following subsection—

“ (6) In any proceedings for an offence against this section an averment in the complaint that a boat was, at a material time, a foreign boat shall be deemed to be proved in the absence of proof to the contrary. ” .

Section 49C  
inserted.

14. After section 49B of the principal Act the following section is inserted—

Detained  
equipment  
not to be  
removed.

“ 49C. A person shall not, without lawful excuse, remove or interfere with—

- (a) any boat, plant, fish, equipment or other thing that is being detained by an inspector or the Director after having been seized by an inspector under this Act; or
- (b) any boat that is under the control of an inspector pursuant to section 49B (2) (c) of this Act. ” .

Section 52A  
inserted.

15. Before section 53 of the principal Act the following section is inserted—

Time for  
commencing  
proceedings.

“ 52A. A complaint for an offence against this Act may be made at any time within 2 years from the time when the matter of complaint arose. ” .

16. After section 55A of the principal Act the following section is inserted—

Section 55B  
inserted.

“ 55B. (1) In this section “fishing boat” means a boat in respect of which a boat licence is in force under this Act.

Power to  
prohibit  
offenders  
from being  
on boats.

(2) Where a person is convicted of an offence against this Act the Minister may, by notice in writing served on the person, prohibit the person from being on any fishing boat, or on a fishing boat specified in the notice, or on a fishing boat of a class specified in the notice.

(3) A notice served on a person under this section—

- (a) shall have effect generally or at such times or in such circumstances as are specified in the notice;
- (b) subject to paragraph (c) of this subsection, shall remain in force for such period as is specified in the notice;
- (c) may be revoked or varied at any time by the Minister by notice in writing served on the person.

(4) A person who is on a fishing boat in contravention of a notice served on him under this section commits an offence against this Act.

(5) The service of a notice on a person under this section shall be in addition to any other punishment to which he is liable and the provisions of this section do not affect the operation of sections 55 and 55A of this Act. ” .