

FISHERIES.

No. 60 of 1979.

AN ACT to amend the Fisheries Act, 1905-1975.

[Assented to 12th November, 1979.]

BE 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 Act Amendment Act, 1979*.

Short title  
and citation.

(2) In this Act the Fisheries Act, 1905-1975, is referred to as the principal Act.

Reprinted as  
approved for  
reprint 15th  
March, 1976.

(3) The principal Act as amended by this Act may be cited as the Fisheries Act, 1905-1979.

Commence-  
ment.

2. (1) Subject to subsection (2) of this section, the provisions of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

(2) Sections 4, 5, 9 and 13 of this Act shall come into operation on the expiry of a period of six months from the date of coming into operation of the Local Government Act Amendment Act, 1979.

Section 3  
amended.

3. Section 3 of the principal Act is amended in subsection (1) by deleting the definition of "Close waters".

Section 6  
amended.

4. Section 6 of the principal Act is amended by repealing subsection (3).

Section 9  
amended.

5. Section 9 of the principal Act is amended by repealing subsection (2).

Section 13  
added.

6. The principal Act is amended by inserting, after section 12D, the following section—

Restrictions  
on purchase  
of fish by  
certain  
persons.

13. (1) A person who carries on business as a fish shop, hotel, restaurant, fish auction, fish market or other commercial enterprise in the course of which fish, whether processed or unprocessed, is sold to other persons—

- (a) shall not purchase any fish or any fish of a particular species from another person who is prohibited by or under this Act or by the conditions subject to which a license is issued under this Act from selling fish or fish of that species, as the case may be; and

- (b) shall, when purchasing any fish from any person or immediately thereafter, make a legible record of—
- (i) the quantity and species or variety of the fish purchased;
  - (ii) the date of that purchase; and
  - (iii) the name and address of the person from whom he purchased the fish.

(2) A person who makes a record referred to in paragraph (b) of subsection (1) of this section, which record he knows to be false in a material particular, commits an offence.

(3) In subsection (1) of this section—

“processed” means broken up, canned, cooked, cut up, filleted, frozen, packed, prepared, preserved or otherwise treated in any manner whatever and “unprocessed” shall be construed accordingly;

“sold to other persons” includes sold to other persons as the whole or part of meals provided by a hotel or restaurant.

7. The principal Act is amended by inserting, after section 18, the following section—

Section 19  
added.

19. (1) A person who discloses or makes use of any information—

Secrecy of  
information.

- (a) contained in a return furnished under subsection (1) of section eighteen of this Act; or
- (b) furnished to him or obtained by him under this Act or in connexion with the execution of this Act,

commits an offence unless that information is disclosed or used—

- (i) with the prior consent in writing of the person to whose activities that information relates;
- (ii) for the purpose of giving effect to the objects of, and in the performance of a duty under, this Act; or
- (iii) in circumstances in which that disclosure or use is permitted by this Act.

(2) A person having the custody of information referred to in subsection (1) of this section shall, notwithstanding anything contained in any other law, not be required by subpoena or otherwise to produce that information to any court.

Section 20  
repealed and  
substituted.

8. Section 20 of the principal Act is repealed and the following section is substituted—

Exemption of  
implements  
used for  
catching  
scientific  
specimens.

20. Nothing in the provisions of—

- (a) any notice published in the *Government Gazette* under section nine or ten; or
- (b) any notice referred to in subsection (3) of section ten,

of this Act shall apply to the nets or dredges or other implements used for the purpose of catching specimens for scientific purposes by the holders of permits issued by the Minister.

Section 28  
amended.

9. Section 28 of the principal Act is amended by repealing subsection (2).

Section 35CA  
amended.

10. Section 35CA of the principal Act is amended in subsection (3) by deleting paragraph (a) and substituting the following paragraph—

- (a) the holder of that license shall not purchase fish for processing from any person who is not the holder of—

- (i) a professional fisherman's license or processor's license granted pursuant to the provisions; or
- (ii) a license granted under Part V, of this Act; .

11. Section 35K of the principal Act is repealed and the following section is substituted—

Section 35K  
repealed and  
substituted.

35K. (1) Subject to subsection (5) of this section, a person aggrieved by a decision or order of the Director under this Part may, within fourteen days after publication of notice of that decision or order in the *Government Gazette*, appeal against that decision or order by serving on the Minister a statement in writing of the grounds of his appeal.

Appeals.

(2) On receiving a statement served on him under subsection (1) of this section, the Minister may modify or set aside or refuse to modify or set aside the decision or order against which an appeal has been made.

(3) The Minister may, before exercising the powers conferred on him by subsection (2) of this section, require the person referred to in subsection (1) of this section to furnish him with such information in addition to that contained in the statement served on him by that person as the Minister thinks desirable to enable him to consider the appeal.

(4) A decision of the Minister made under subsection (2) of this section shall be conclusive and binding on all parties to the appeal concerned.

(5) In subsection (1) of this section—

“person aggrieved”, in relation to a decision of the Director to grant a permit under subsection (3) of section thirty-five C of this Act, includes a licensee and a person to whom any other permit has been granted under that subsection. .

Section 47  
amended.

12. Section 47 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

(1) Every person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

(1a) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a penalty not exceeding seven hundred and fifty dollars.

Section 49  
amended.

13. Section 49 of the principal Act is amended in subsection (2) by deleting the passage commencing with the words “or by-laws” in line seven and ending with the words “members of that council” in the last line and substituting the words “is in force”.

Section 55A  
repealed and  
substituted.

14. Section 55A of the principal Act is repealed and the following section is substituted—

55A. (1) If on three or more occasions in any period of ten years a boat in respect of which a license has been issued under section seventeen of this Act has been used for or in connexion with the commission of offences against this Act in respect of which offences convictions have been obtained, the license so issued in respect of that boat and in force at the time of the third or subsequent such conviction is by virtue of this subsection and without any further authority cancelled, whether that license is held by any of the persons convicted or by some other person.

(2) If a boat in respect of which a license has been issued under section seventeen of this Act and which has been used for or in connexion with the commission of an offence against this Act, in respect of which offence a conviction has been obtained, is replaced by another boat, that other boat shall be deemed for the purposes of subsection (1) of this section to be the boat which has been so used and the boat which is so replaced shall be deemed not to have been so used.

Automatic  
cancellation  
of licenses  
relating to  
certain boats.

15. Section 56 of the principal Act is repealed and the following section is substituted—

Section 56  
repealed and  
substituted.

56. (1) Subject to the provisions of this section and to the restrictions imposed by or under sections nine, ten, twenty-three, twenty-three A, twenty-four and twenty-six of this Act but notwithstanding anything contained in any other provisions of this Act, a person of Aboriginal descent may take in any waters and by any means sufficient fish for food for himself and his family, but not for sale.

Extent of  
application  
of Act to  
Aborigines.

(2) The Governor may, if he is satisfied that—

- (a) the power to take fish conferred by subsection (1) of this section is being abused; or
- (b) the population of any species of fish which is being taken under the power to take fish conferred by subsection (1) of this section is becoming or is likely to become excessively depleted,

by regulation suspend or restrict the operation of that subsection in such manner and for such period and in such part or parts of the State as he thinks fit.

(3) In subsection (1) of this section—

“person of Aboriginal descent” means any person living in Western Australia who—

- (a) is wholly or partly descended from the original inhabitants of Australia; and
- (b) claims to be an Aboriginal and is accepted as such in the community in which he lives;

“sale”, without derogating from the normal meaning of the expression, includes sale by retail or wholesale, barter, exchange, supply for profit, offer or

expose for sale, send forward or deliver for sale or cause or suffer or permit to be sold. .

Amendment  
of penalty  
provisions.

16. The provisions of the principal Act specified in the first column of the Schedule to this Act are amended to the extent specified opposite thereto in the second column of that Schedule.

#### SCHEDULE (Section 16).

##### AMENDMENT OF PENALTY PROVISIONS

<i>Provision amended</i>	<i>Extent of amendment</i>
Section 8(2)	By deleting the penalty provision in lines five and six.
Section 12(2)	In paragraph (a) by deleting— <ul style="list-style-type: none"> <li>(a) in line three of subparagraph (i) the words “four hundred” and substituting the words “seven hundred and fifty”;</li> <li>(b) in subparagraph (ii)—               <ul style="list-style-type: none"> <li>(i) the words “four hundred” in line two and substituting the words “seven hundred and fifty”;</li> <li>(ii) the words “one thousand” in line three and substituting the words “one thousand five hundred”.</li> </ul> </li> </ul> In paragraph (b) by deleting— <ul style="list-style-type: none"> <li>(a) in subparagraph (i)—               <ul style="list-style-type: none"> <li>(i) the word “twenty” in line two and substituting the word “fifty”;</li> <li>(ii) the words “one hundred” in line three and substituting the words “two hundred and fifty”;</li> </ul> </li> <li>(b) in subparagraph (ii)—               <ul style="list-style-type: none"> <li>(i) the word “fifty” in line two and substituting the words “two hundred and fifty”;</li> </ul> </li> </ul>



- (ii) the words "two hundred" in line three and substituting the words "seven hundred and fifty".

Section 12D By deleting—

- (a) in the penultimate line the word "twenty" and substituting the word "fifty";
- (b) in the last line the words "two hundred" and substituting the words "seven hundred and fifty".

Section 17(5) By deleting the passage in lines thirteen to twenty, both inclusive, and substituting the following passage—

Penalty: For a first offence, a fine of not less than five hundred dollars or more than one thousand dollars; for a second or subsequent offence, a fine of not less than one thousand dollars or more than two thousand five hundred dollars; and, if the offence is a continuing offence, an additional fine of not more than fifty dollars for each day during which the offence continues. .

Section 18(4) By deleting—

- (a) in line five the word "forty" and substituting the words "one hundred";
- (b) in line six the words "one hundred" and substituting the words "seven hundred and fifty".

Section 21(1) By deleting the passage in lines seven to eleven, both inclusive, and substituting the following passage—

Penalty: For a first offence, a fine of not less than fifty dollars or more than two hundred and fifty dollars; for a second or subsequent offence, a fine of not less than two hundred and fifty dollars or more than seven hundred and fifty dollars. .

Section 23A(2) By deleting paragraphs (a) and (b) of the penalty provision and substituting the following paragraphs—

- (a) for a first offence, a fine of not less than twenty-five dollars or more than fifty dollars; and

- (b) for a second or subsequent offence, a fine of not less than fifty dollars or more than one hundred dollars. .

## Section 24

In line three of paragraph (a) of subsection (1) by inserting, before the passage “, any fish”, the words “or in any receptacle for fish”.

By repealing subsection (1a) and substituting the following subsection—

(1a) A person who is convicted of an offence under subsection (1) of this section is liable—

- (a) subject to the provisions of paragraphs (b) and (c) of this subsection, for a first offence to a fine of not less than fifty dollars or more than one hundred dollars and for a second or subsequent offence to a fine of not less than one hundred dollars or more than seven hundred and fifty dollars; or

- (b) if any of the fish the subject of that offence are rock lobsters and those rock lobsters do not exceed in number one twentieth of the total number of rock lobsters which at the time of that offence the person convicted had in his possession or under his control or on his premises or in any boat, vehicle or aircraft or in any receptacle for fish, or sold or caused to be sold, offered or exposed for sale, gave or consigned, or brought into Western Australian waters or into the State—

- (i) for a first offence, to a fine of not less than fifty dollars or more than two hundred and fifty dollars;

- (ii) for a second offence, to a fine of not less than

two hundred and fifty dollars or more than five hundred dollars;

- (iii) for a third or subsequent offence, to a fine of not less than five hundred dollars or more than one thousand five hundred dollars; or

- (c) if any of the fish the subject of that offence are rock lobsters and those rock lobsters exceed in number one twentieth of the total number of rock lobsters referred to in paragraph (b) of this subsection—

- (i) for a first offence, to a fine of not less than one hundred dollars or more than five hundred dollars;
- (ii) for a second offence, to a fine of not less than five hundred dollars or more than one thousand dollars;
- (iii) for a third or subsequent offence, to a fine of not less than one thousand dollars or more than two thousand five hundred dollars. .

In subsection (3) by deleting in the penalty provision—

- (a) in line two the word “four” and substituting the word “five”;
- (b) in line four the word “four” and substituting the word “five”.

In subsection (3b) by deleting—

- (a) in line five the word “two” and substituting the word “five”;
- (b) in line six the word “ten” and substituting the word “twenty-five”;

- (c) in line eight the word "ten" and substituting the word "twenty-five";
- (d) in line four of paragraph (a) the words "fifteenth day of August" and substituting the words "first day of June".

## Section 24A

By deleting subparagraphs (i), (ii) and (iii) of paragraph (a) of subsection (1a) and substituting the following subparagraphs—

- (i) for a first offence, a fine of not less than fifty dollars or more than two hundred and fifty dollars;
- (ii) for a second offence, a fine of not less than two hundred and fifty dollars or more than five hundred dollars;
- (iii) for a third or subsequent offence, a fine of not less than five hundred dollars or more than one thousand five hundred dollars; and .

By deleting subparagraphs (i), (ii) and (iii) of paragraph (b) of subsection (1a) and substituting the following subparagraphs—

- (i) for a first offence, a fine of not less than one hundred dollars or more than five hundred dollars;
- (ii) for a second offence, a fine of not less than five hundred dollars or more than one thousand dollars;
- (iii) for a third or subsequent offence, a fine of not less than one thousand dollars or more than two thousand five hundred dollars. .

By repealing subsection (3) and substituting the following subsection—

(3) A court convicting a person of an offence under subsection (1) of this section shall, in addition to imposing a penalty under subsection (1a) of this section—

- (a) impose on the person an additional penalty of not less than ten dollars or more than twenty-five dollars in respect of each rock lobster tail of a

weight less than the prescribed weight seized pursuant to subsection (2) of this section; and

(b) if that offence is—

(i) a second offence, suspend from such date and for such period, not being a date which, or a period the whole or any part of which, falls within the period between the first day of June and the next following fifteenth day of November in any year, as that court thinks fit; or

(ii) a third or subsequent offence, cancel,

all licenses held by the person under this Act. .

Section 24B(3) By deleting in line five the words “two hundred” and substituting the words “seven hundred and fifty”.

Section 24C(1) By deleting in line nine the word “two” and substituting the word “three”.

Section 24E(4) By deleting—

(a) in paragraph (a)—

(i) in line two of subparagraph (i) the words “five hundred” and substituting the words “seven hundred and fifty”;

(ii) in line two of subparagraph (ii) the words “one thousand” and substituting the words “one thousand five hundred”;

(b) in paragraph (b)—

(i) in line two of subparagraph (i) the word “one” and substituting the word “two”;

(ii) in line three of subparagraph (i) the word “two” and substituting the word “three”;

(iii) in line two of subparagraph (ii) the word “ten” and substituting the word “fifteen”;

- (iv) in line four of subparagraph (ii) the words "five hundred" and substituting the words "seven hundred and fifty".

- Section 26(1) By deleting—
- (a) in line eleven the words "one hundred" and substituting the words "seven hundred and fifty";
  - (b) in line twelve the word "twenty" and substituting the word "fifty".
- Section 26A By inserting at the foot of subsection (5) the following passage—
- Penalty: A fine of two thousand five hundred dollars. .
- Section 27(1) By deleting—
- (a) in lines eight and nine the words "shall be liable to a penalty not exceeding twenty" and substituting the words "shall be guilty of an offence and be liable to a fine not exceeding seven hundred and fifty";
  - (b) in line eleven the words "adjudicating justices" and substituting the words "court convicting such person of the offence".
- Section 28(1) By deleting—
- (a) in line nine the word "fifty" and substituting the words "one hundred";
  - (b) in line ten the words "two hundred" and substituting the words "seven hundred and fifty".
- Section 29(1) By deleting—
- (a) in line two of subparagraph (i) the word "ten" and substituting the words "twenty-five";
  - (b) in line two of subparagraph (ii) the word "fifty" and substituting the words "one hundred".
- Section 29A(4) By inserting, after the word "thousand" in line two of paragraph (a), the words "five hundred".

- Section 32(7) By deleting—
- (a) in line two of paragraph (a) the words “one thousand” and substituting the words “one thousand five hundred”;
  - (b) in line two of paragraph (b) the word “ten” and substituting the word “fifteen”.
- Section 35B By deleting the passage in lines eight to twelve, both inclusive, and substituting the following passage—
- Penalty: A fine of not less than two thousand dollars or more than ten thousand dollars and, in addition, a fine of not less than two hundred and fifty dollars or more than five hundred dollars for each day during which the offence continues. .
- Section 36A(3) By deleting in the penalty provision—
- (a) in line two the words “one thousand” and substituting the words “one thousand five hundred”;
  - (b) in line three the word “ten” and substituting the word “fifteen”.
- Section 39C(1) By deleting in the penalty provision—
- (a) in line two the words “one thousand” and substituting the words “one thousand five hundred”;
  - (b) in line three the word “ten” and substituting the word “fifteen”.
- Section 44 By deleting in line eight the words “four hundred” and substituting the words “one thousand”.
- Section 45 By deleting—
- (a) in line seven the word “ten” and substituting the word “fifty”;
  - (b) in lines seven and eight the words “four hundred” and substituting the words “seven hundred and fifty”.
- Section 46(1) By deleting in the penalty provision—
- (a) in lines two and three the words “two hundred” and substituting

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the words "seven hundred and fifty";

- (b) in lines four and five the words "two thousand" and substituting the words "two thousand five hundred".

Section 49B(1) By inserting, after the word "thousand" in the last line, the words "five hundred".

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