

Western Australia

## **Fisheries Adjustment Schemes Act 1987**

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## Fisheries Adjustment Schemes Act 1987

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Western Australia

## **Fisheries Adjustment Schemes Act 1987**

**An Act to enable the establishment, financing and administration of fisheries adjustment schemes for the surrender or cancellation of certain authorisations, or the reduction of certain entitlements, under the *Fish Resources Management Act 1994* with the payment of compensation, and for related purposes.**

*[Long title amended by No. 54 of 1994 s. 4.]*

## **Part 1 — Preliminary**

*[Heading inserted by No. 54 of 1994 s. 5.]*

### **1. Short title**

This Act may be cited as the *Fisheries Adjustment Schemes Act 1987*<sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### **3. Terms used in this Act**

(1) In this Act, unless the contrary intention appears —

**Account** means the Fisheries Adjustment Schemes Trust Account kept at the Treasury under section 5;

**affected person**, in relation to a compulsory fisheries adjustment scheme, means a person who holds —

(a) an authorisation that is to be cancelled; or

(b) an entitlement that is to be reduced,

under that scheme;

**chairman** means the chairman of a committee;

**committee** means a committee of management established under section 11;

**Compensation Act** means the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*;

**compulsory fisheries adjustment scheme** means a scheme established under section 14B;

**eligible person**, in relation to a voluntary fisheries adjustment scheme, means a person who is entitled to offer the surrender of —

(a) an authorisation; or



(b) part of an entitlement,  
under that scheme;

**fisheries adjustment scheme** means —

- (a) a compulsory fisheries adjustment scheme; or
- (b) a voluntary fisheries adjustment scheme;

**Fisheries Research and Development Account** means the Fisheries Research and Development Account referred to in the *Fish Resources Management Act 1994*;

**member**, in relation to a committee, means a member of the committee;

**Recreational Fishing Account** means the Recreational Fishing Account referred to in the *Fish Resources Management Act 1994*;

**voluntary fisheries adjustment scheme** means a scheme established under section 10B.

- (2) Unless the contrary intention appears, an expression used in this Act has the same meaning as in the *Fish Resources Management Act 1994*.
- (3) In this Act, a reference to reducing the size of any fishery or fisheries includes a reference to —
  - (a) reducing the number of persons fishing in the fishery or fisheries;
  - (b) reducing the number of boats used for fishing in the fishery or fisheries;
  - (c) reducing the amount of fishing gear used for fishing in the fishery or fisheries;
  - (d) reducing the quantity of fish taken from the fishery or fisheries;
  - (e) reducing the period of time during which fishing is engaged in within the fishery or fisheries; or

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(f) reducing the area in which fishing is engaged in within the fishery or fisheries.

(4) In subsection (3) —

**reducing**, in relation to a number, amount or quantity, includes reducing the number, amount or quantity to zero.

*[Section 3 amended by No. 54 of 1994 s. 6; No. 39 of 1997 s. 14; No. 55 of 2004 s. 395; No. 77 of 2006 s. 17; No. 38 of 2009 s. 4.]*

**3A. Application of Act to *Fish Resources Management Act 1994***

(1) Nothing in this Act limits or affects the operation of the *Fish Resources Management Act 1994*.

(2) Without limiting subsection (1), nothing in this Act —

- (a) requires a fisheries adjustment scheme to be established under this Act before anything can be done under that Act;
- (b) requires compensation to be paid in respect of anything done or omitted to be done under that Act; or
- (c) otherwise prevents or limits the doing of anything under that Act.

*[Section 3A inserted by No. 54 of 1994 s. 7.]*

*[4. Deleted by No. 54 of 1994 s. 8.]*

## **Part 2 — Financial provisions**

*[Heading inserted by No. 54 of 1994 s. 9.]*

### **5. Establishment of Fisheries Adjustment Schemes Trust Account**

- (1) An agency special purpose account called the Fisheries Adjustment Schemes Trust Account is established under section 16 of the *Financial Management Act 2006*.
- (2) The Account shall consist of —
  - (a) the fees paid under this Act;
  - (b) moneys borrowed by the Minister for the purposes of this Act;
  - (ba) moneys credited to the Account from the Fisheries Research and Development Account or the Recreational Fishing Account;
  - (bb) moneys credited to the Account under section 15A(4);
  - (bc) moneys provided for the purposes of the Account by any government or statutory authority or otherwise by way of donations or bequests;
  - (c) amounts derived from the investment of moneys credited to the Account;
  - (d) such amounts as may be appropriated by Parliament for the purposes of this Act; and
  - (e) any other moneys lawfully payable to the credit of the Account.
- (3) The Minister shall cause to be maintained as part of the Account a separate account in respect of each fisheries adjustment scheme established under this Act.

*[Section 5 amended by No. 41 of 1990 s. 5; No. 54 of 1994 s. 10; No. 28 of 2006 s. 226; No. 77 of 2006 s. 17.]*

**6. Application of Fisheries Adjustment Schemes Trust Account**

- (1) The Account shall be applied —
- (a) in payment of compensation agreed under a voluntary fisheries adjustment scheme to be paid to an eligible person;
  - (aa) in payment of compensation required to be paid to a person in respect of a compulsory fisheries adjustment scheme;
  - (ab) to the purchase of any fishing boat or fishing gear from a person under section 15A;
  - (b) in payment of the costs of administering this Act, but not including the remuneration paid to public officers;
  - (c) in repayment of moneys borrowed for the purposes of this Act, including payment of interest and other outgoings associated with the borrowing; and
  - (d) in repayment of surplus amounts in accordance with section 9.
- (2) In the case of a scheme established because of a relevant event as defined in the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*, a payment or purchase under subsection (1)(a), (aa) or (b) is to be made from moneys appropriated for the purposes of this subsection.

*[Section 6 amended by No. 54 of 1994 s. 11; No. 39 of 1997 s. 14.]*

**7. Borrowing for purposes of the Act**

- (1) The Minister may borrow from the Treasurer for the purposes of this Act such amounts as the Treasurer approves on such conditions as to repayment and payment of interest as the Treasurer imposes.
- (2) The Minister may borrow money for the purposes of this Act from persons other than the Treasurer, but only with the

prior approval of the Treasurer as to the amount and the terms and conditions of the loan.

- (3) Moneys borrowed under this Act must be credited to the Account and liabilities incurred in respect of the borrowing will be charged to the Account.

*[Section 7 amended by No. 49 of 1996 s. 64.]*

**8. Power to prescribe fee**

- (1) Where a fisheries adjustment scheme is established the Governor may, for the purposes of that scheme, by regulation impose a fee payable by the holder of an authorisation that authorises fishing in a fishery to which the scheme applies.
- (2A) Without limiting the *Interpretation Act 1984* section 45, regulations made for the purposes of subsection (1) in relation to a voluntary fisheries adjustment scheme may provide —
- (a) that different fees are payable by different holders of authorisations;
  - (b) that specified holders of authorisations are not liable to pay fees.
- (2) A regulation imposing a fee under this section shall fix the amount of the fee and prescribe the date or dates by which payments must be made.
- (3) The amount of the fee fixed under this section may be a specified amount of money payable in respect of an authorisation or may be an amount that is to be calculated by reference to the entitlement under an authorisation, including the boat or boats, nets or pots being used, or the activities being carried out, under an authorisation.
- (3AA) Without limiting subsection (3), fees may be fixed under this section for the purposes of a fisheries adjustment scheme that will allow recovery of expenditure that has been or is to be incurred in —

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- (a) the payment of interest and other outgoings associated with amounts borrowed under section 7 for the purposes of the scheme; and
  - (b) the administration of the scheme.
- (3a) If the holder of an authorisation is liable to pay any fee referred to in subsection (1) and has not paid the fee when it becomes due, the CEO may, by notice in writing given to the holder —
- (a) cancel the authorisation; or
  - (b) suspend the authorisation for a specified period.
- (4) A fee that is due and payable constitutes a debt due to the Minister payable in the manner and at the place prescribed and unpaid fees may be sued for and recovered in any court of competent jurisdiction.
- (5) A fee imposed under this section may be varied by further regulation made by the Governor.

*[Section 8 amended by No. 41 of 1990 s. 6; No. 54 of 1994 s. 12; No. 28 of 2006 s. 228; No. 38 of 2009 s. 5.]*

**9. Return of surplus amounts**

If upon the conclusion of the period of operation of a fisheries adjustment scheme the Minister is satisfied that there is available in the account maintained for that scheme a credit balance in excess of the amount reasonably required for the purpose of satisfying all the outstanding liabilities of that scheme, the Minister shall cause the amount of that credit balance to be applied —

- (a) in returning that proportion of the balance attributable to parliamentary appropriation, to the credit of the Consolidated Account; and
- (aa) in returning that proportion of the balance attributable to moneys credited to the Account from the Fisheries Research and Development Account or the Recreational

Fishing Account, to the credit of the Account from which the moneys came; and

- (b) in returning that proportion of the balance attributable to fees, to those persons pro rata who, upon the conclusion of the period of operation of the scheme, are holders of authorisations that authorise fishing in a fishery to which the scheme applies and have paid fees under section 8 in respect of those authorisations; and
- (c) in the case of any other moneys, to the credit of the Fisheries Research and Development Account or the Recreational Fishing Account, as the Minister thinks fit.

*[Section 9 amended by No. 41 of 1990 s. 7; No. 6 of 1993 s. 11; No. 54 of 1994 s. 13; No. 77 of 2006 s. 4 and 17; No. 38 of 2009 s. 6.]*

**10. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in respect of the Account and the administration of the Account shall for the purposes of section 52 of the *Financial Management Act 2006* be regarded as a service of the Department.

*[Section 10 amended by No. 28 of 2006 s. 227; No. 77 of 2006 s. 17.]*

### **Part 3 — Voluntary fisheries adjustment schemes**

*[Heading inserted by No. 54 of 1994 s. 14.]*

#### **10A. Term used in this Part**

In this Part —

**scheme** means a voluntary fisheries adjustment scheme.

*[Section 10A inserted by No. 54 of 1994 s. 14.]*

#### **10B. Establishment of scheme**

- (1) The Minister may, by notice published in the *Gazette*, establish a scheme to reduce the size of any fishery or fisheries, by enabling the surrender of authorisations, or parts of entitlements, relating to the fishery or fisheries on the payment of agreed compensation.
- (2) A notice under subsection (1) must —
  - (a) set out the objectives of the scheme, including, if applicable, the objective of enabling the surrender of all the authorisations relating to the fishery or fisheries; and
  - (b) identify the fishery or fisheries to which the scheme applies; and
  - (c) determine who is a person entitled to offer the surrender of an authorisation, or part of an entitlement, under the scheme; and
  - (d) contain information as to the manner of operation of the scheme and the period during which it is to operate.
- (3) The Minister may by further notice published in the *Gazette* vary or revoke a notice.

*[Section 10B inserted by No. 54 of 1994 s. 14; amended by No. 38 of 2009 s. 7.]*



**10C. Administration of scheme**

- (1) The Minister is to administer a scheme in accordance with the terms of the notice for that scheme.
- (2) The Minister is to be assisted in the administration of the scheme by a committee of management constituted under section 11 for that scheme.
- (3) When a scheme is established the Minister is to cause an invitation in the terms set out in subsection (4) to be published in a newspaper circulating generally in the State.
- (4) An invitation shall invite eligible persons —
  - (a) to offer the surrender of their authorisation or part of their entitlement (as the case may be) under the scheme; and
  - (b) for that purpose, to submit to the committee for the scheme, within a specified period, an offer in the form approved by the committee stating the amount of compensation for which the person will surrender their authorisation or part of their entitlement.
- (5) The Minister is to respond in writing to every offer made under this section by an eligible person and is to either accept or decline the offer or make a counter offer.
- (6) An eligible person may, by notice in writing given to the Minister, surrender an authorisation in accordance with an agreement to do so under a scheme and the authorisation ceases to have effect when the notice is given.
- (7) An eligible person may, by notice in writing given to the Minister, surrender part of their entitlement in accordance with an agreement to do so under a scheme and the CEO may reduce the entitlement accordingly.
- (8) If in accordance with an agreement under a scheme an authorisation is surrendered or part of an entitlement is reduced,

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the Minister is to pay the agreed amount of compensation to the eligible person.

- (9) Compensation is to be paid from the Account.

*[Section 10C inserted by No. 54 of 1994 s. 14; amended by No. 10 of 1998 s. 36(1); No. 28 of 2006 s. 228.]*

**11. Committees of management**

- (1) Where the Minister considers that it is desirable for consideration to be given to the establishment under this Act of a voluntary fisheries adjustment scheme in respect of one or more fisheries, the Minister shall establish by written instrument a committee of management to perform in respect of that scheme the functions stated in subsection (2) and any other functions that are provided for in the instrument.
- (2) The functions of a committee are —
- (a) to consider the desirability of the establishment of a voluntary fisheries adjustment scheme for the fishery or fisheries described in the instrument by which the committee is established and to make recommendations to the Minister for or against the implementation of such a scheme; and
  - (b) where a voluntary fisheries adjustment scheme is established under this Act —
    - (i) to consider offers made by eligible persons and to advise the Minister whether to accept or reject those offers or to make counter offers;
    - (ii) to assist the Minister in the administration of the scheme in accordance with the directions of the Minister; and
    - (iii) to advise the Minister with respect to the scheme on such matters as the Minister may request advice.

- (3) The instrument establishing a committee shall —
- (a) give a name to the committee;
  - (b) describe the fishery or fisheries for which a voluntary fisheries adjustment scheme is under consideration;
  - [(c) deleted]*
  - (d) provide for the composition of the committee and the appointment of the members for a term not exceeding 2 years; and
  - (e) provide for a chairman of the committee.
- (4) The Minister may in writing vary or cancel the instrument establishing a committee.

*[Section 11 amended by No. 41 of 1990 s. 8; No. 54 of 1994 s. 15; No. 8 of 2009 s. 61.]*

**12. Constitution and proceedings of committee of management**

The provisions of Schedule 1 have effect with respect to the constitution and proceedings of a committee.

**13. Remuneration and allowances**

A member of a committee and a person who is an acting member or a person co-opted as an adviser to a committee may be paid such remuneration and allowances as the Minister from time to time determines on the recommendation of the Minister for Public Sector Management<sup>2</sup>.

*[Section 13 amended by No. 41 of 1990 s. 9.]*

**14. Protection of members**

A person who is a member, an acting member or is co-opted as an adviser to a committee is not personally liable for any act done or omitted to be done in good faith in or in connection with the exercise or purported exercise of a function under this Act by the committee or by that person.

## **Part 4 — Compulsory fisheries adjustment schemes**

*[Heading inserted by No. 54 of 1994 s. 16.]*

### **Division 1 — Schemes**

*[Heading inserted by No. 54 of 1994 s. 16.]*

#### **14A. Term used in this Part**

In this Part —

**scheme** means a compulsory fisheries adjustment scheme.

*[Section 14A inserted by No. 54 of 1994 s. 16.]*

#### **14B. Establishment of scheme**

- (1) The Minister may, by notice published in the *Gazette*, establish a scheme to reduce the size of any fishery or fisheries by enabling the cancellation of authorisations, or the reduction of entitlements, relating to the fishery or fisheries on the payment of compensation.
- (2) The Minister must not establish a scheme under this section unless in the Minister's opinion it is either not possible, or not appropriate, to achieve the necessary reduction in the size of the fishery or fisheries by a voluntary fisheries adjustment scheme.
- (3) A notice under subsection (1) must —
  - (a) specify the objectives of the scheme, including, if applicable, the objective of cancelling all the authorisations relating to the fishery or fisheries; and
  - (b) identify the fishery or fisheries to which the scheme applies; and
  - (c) specify —
    - (i) why the reduction in the size of the fishery or fisheries is required; and

- (ii) why such a scheme is necessary to achieve that reduction;
- and
- (d) identify the authorisations that are to be cancelled, or the parts of entitlements that are to be reduced, under the scheme; and
  - (e) if not all the authorisations relating to the fishery or fisheries are to be cancelled, specify how the authorisations or parts of entitlements referred to in paragraph (d) have been selected; and
  - (f) specify the manner and form in which, and the period within which, affected persons may apply to the Minister for compensation.
- (4) The Minister may by further notice published in the *Gazette* vary or revoke a notice under this section.

*[Section 14B inserted by No. 54 of 1994 s. 16; amended by No. 38 of 2009 s. 8.]*

**14C. Procedure before establishing scheme**

Before establishing a scheme the Minister must —

- (a) consult with the CEO and any relevant advisory committee established under the *Fish Resources Management Act 1994*; and
- (b) consider any representations made under section 14D(3) concerning the scheme.

*[Section 14C inserted by No. 54 of 1994 s. 16; amended by No. 28 of 2006 s. 228.]*

**14D. Objections to proposed scheme**

- (1) Not less than 3 months before establishing a scheme, the Minister must cause —
  - (a) a notice to be published in a newspaper circulating generally in the State; and

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- (b) a copy of the notice to be sent by certified post to —
  - (i) each person who holds an authorisation relating to the fishery or fisheries to which the proposed scheme will apply; and
  - (ii) any body that, in the Minister's opinion, represents such persons.
- (2) The notice referred to in subsection (1) must —
  - (a) specify the objectives of the proposed scheme, including, if applicable, the objective of cancelling all the authorisations relating to the fishery or fisheries; and
  - (b) identify the fishery or fisheries to which the proposed scheme will apply; and
  - (c) specify —
    - (i) why the reduction in the size of the fishery or fisheries is required; and
    - (ii) why the proposed scheme is necessary to achieve that reduction;and
  - (d) if not all the authorisations relating to the fishery or fisheries are to be cancelled and the authorisations that are to be cancelled, or the parts of entitlements that are to be reduced, under the proposed scheme have already been selected —
    - (i) identify those authorisations or entitlements; and
    - (ii) specify how they were selected;and
  - (e) if not all the authorisations relating to the fishery or fisheries are to be cancelled and the authorisations that are to be cancelled, or the parts of entitlements that are to be reduced, under the proposed scheme have yet to be selected, specify how they are to be selected; and

- (f) invite persons who wish to comment on the proposed scheme to make representations to the Minister.
- (3) A person may within 60 days after notice is published under subsection (1)(a) make representations in writing to the Minister concerning the proposed scheme.
- (4) If —
- (a) a notice is published in accordance with subsection (1)(a); and
  - (b) the notice identifies the authorisations that are to be cancelled, or the entitlements that are to be reduced, under the proposed scheme,
- the Minister must not proceed to establish the scheme with a modification that amends the authorisations or entitlements to which the scheme applies, unless the Minister complies again with this section.
- (5) Subsection (4) does not apply to a modification that reduces the class of authorisations or entitlements to which the scheme applies.

*[Section 14D inserted by No. 54 of 1994 s. 16; amended by No. 38 of 2009 s. 9.]*

**14E. Selection of authorisations or entitlements**

- (1A) This section does not apply to a scheme under which all the authorisations relating to the fishery or fisheries are to be cancelled.
- (1) The authorisations that are to be cancelled or the entitlements that are to be reduced under a scheme may be selected in such manner as the Minister thinks fit.
  - (2) Without limiting subsection (1), the authorisations or entitlements may be selected by ballot or lottery.

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- (3) If the authorisations or entitlements are to be selected by ballot or lottery —
- (a) the ballot or lottery must not be held before the Minister has complied with section 14C; and
  - (b) the notice referred to in section 14D(1) must specify the time and the place at which it is proposed to hold the ballot or lottery.

*[Section 14E inserted by No. 54 of 1994 s. 16; amended by No. 38 of 2009 s. 10.]*

**14F. Notification of affected persons**

- (1) The Minister must, as soon as practicable after establishing a scheme, notify each affected person in writing —
- (a) that the scheme has been established;
  - (b) that the person may apply to the Minister for compensation; and
  - (c) of how, when and in what form the person may make an application referred to in paragraph (b).
- (2) When the Minister notifies a person under subsection (1) that a scheme has been established, the Minister must also cause a copy of the notice that establishes the scheme to be sent to the person.

*[Section 14F inserted by No. 54 of 1994 s. 16.]*

**14G. Compensation for loss suffered**

- (1) An affected person is entitled to fair compensation for any loss suffered by the person as a result of the cancellation of an authorisation, or the reduction of an entitlement, under a scheme.
- (2) The value of an authorisation that is to be cancelled, or part of an entitlement that is to be reduced, under a scheme, is to be assessed as the market value of the authorisation or entitlement.



- (3) The market value referred to in subsection (2) is to be assessed as the market value immediately before the day on which a notice was published under section 14D(1)(a).

*[Section 14G inserted by No. 54 of 1994 s. 16.]*

**14H. Affected person may apply for compensation**

- (1) An affected person may apply to the Minister for compensation.
- (2) An application under subsection (1) must be made in the manner and form, and within the period, specified in the notice under section 14B.

*[Section 14H inserted by No. 54 of 1994 s. 16.]*

**14I. Agreement as to amount of compensation**

- (1) If an affected person applies to the Minister in accordance with section 14H, the Minister is to conduct negotiations with the person with a view to settling the amount of compensation payable to the person.
- (2) If the amount of compensation is agreed under subsection (1) the Minister is to enter into an agreement with the person setting out the terms of the agreement.

*[Section 14I inserted by No. 54 of 1994 s. 16.]*

**14J. Application to State Administrative Tribunal if no agreement**

- (1) An affected person or the Minister may apply to the State Administrative Tribunal to determine the amount of compensation payable to the person if an agreement relating to the amount of compensation payable to the person has not been entered into under section 14I within 60 days of the person applying under section 14H.
- (2) An application to the State Administrative Tribunal under subsection (1) may be made at any time after the expiration of the period specified in that subsection.

*[Section 14J inserted by No. 54 of 1994 s. 16; amended by No. 55 of 2004 s. 396.]*

**14K. Minister to determine amount of compensation if person does not apply for compensation**

- (1) If an affected person does not apply to the Minister in accordance with section 14H, the Minister is to determine the amount of compensation payable to the person.
- (2) The Minister must, as soon as practicable after determining the amount of compensation under subsection (1), notify the person in writing of the amount determined.

*[Section 14K inserted by No. 54 of 1994 s. 16.]*

**14L. Application to State Administrative Tribunal to review Minister's determination**

- (1) An affected person may apply to the State Administrative Tribunal for a review of the Minister's determination of the amount of compensation payable to the person if the person is aggrieved by the amount of compensation determined by the Minister under section 14K.

*[(2) deleted]*

*[Section 14L inserted by No. 54 of 1994 s. 16; amended by No. 55 of 2004 s. 397.]*

**14M. Agreement may be entered into despite proceedings**

The Minister may enter into an agreement with an affected person as to the amount of compensation payable to the person notwithstanding that an application has been made under section 14J or 14L to the State Administrative Tribunal.

*[Section 14M inserted by No. 54 of 1994 s. 16; amended by No. 55 of 2004 s. 398.]*

**14N. Minister to give effect to agreement or determination**

(1) If —

- (a) the Minister and an affected person have entered into an agreement as to the amount of compensation payable to the person;
- (b) the amount of compensation payable to an affected person has been determined by the Minister under section 14K and the person has not applied to the State Administrative Tribunal for a review of that amount in accordance with section 14L; or
- (c) the State Administrative Tribunal has determined the amount of compensation payable to an affected person,

the Minister is to pay the amount of compensation to the person and is to reduce the person's entitlement or, by notice in writing given to the affected person, to cancel the person's authorisation (as the case may be) in accordance with the scheme.

(2) Compensation is to be paid out of the Account.

*[Section 14N inserted by No. 54 of 1994 s. 16; amended by No. 55 of 2004 s. 399.]*

*[Division 2 (s. 14O-14ZC) deleted by No. 55 of 2004 s. 400.]*

**Part 5 — Miscellaneous**

*[Heading inserted by No. 54 of 1994 s. 17.]*

**15. Power to obtain information**

- (1) The Minister, the CEO or a chairman may, by notice in writing, require any person within such period as is specified in the notice, to furnish him with such information as he requires for the purpose of inquiring into or ascertaining that person's or any other person's liability or entitlement under any provision of this Act.
- (2) A person who fails to comply with a requirement by the Minister, the CEO or a chairman under subsection (1) or, in response to a requirement under that subsection, furnishes information that the person knows to be false or misleading in a material particular commits an offence.

Penalty: \$5 000 and a daily penalty of \$100.

*[Section 15 amended by No. 41 of 1990 s. 10; No. 54 of 1994 s. 18; No. 28 of 2006 s. 228.]*

**15A. Purchase of fishing boat or fishing gear**

- (1) The Minister may enter into an agreement with —
  - (a) an affected person in the case of a compulsory fisheries adjustment scheme; or
  - (b) an eligible person in the case of a voluntary fisheries adjustment scheme,to purchase the person's fishing boat or fishing gear.
- (2) The purchase price is to be paid out of the Account.
- (3) The Minister may sell or otherwise dispose of any fishing boat or fishing gear purchased under this section.

- (4) Proceeds of the sale by the Minister of any fishing boat or fishing gear under this section are to be paid to the credit of the Fisheries Adjustment Schemes Trust Account.

*[Section 15A inserted by No. 54 of 1994 s. 19.]*

**15B. Delegation by Minister**

- (1) The Minister may, by instrument in writing, delegate to a person, either generally or as otherwise provided in the instrument, any of the functions of the Minister under this Act other than —

- (a) this power of delegation; or
- (b) a function of the Minister under section 10B, 11, 14B, 14C, 14H, 14J, 14K(1), or 14M.

- (2) Anything done by a delegate under this section has the same force and effect as if it had been done by the Minister.

*[Section 15B inserted by No. 10 of 1998 s. 36(2); amended by No. 55 of 2004 s. 401.]*

**16. Evading fee**

A person who by any wilful act, default or neglect evades or attempts to evade a fee chargeable under this Act commits an offence.

Penalty: \$5 000.

*[Section 16 amended by No. 41 of 1990 s. 11; No. 54 of 1994 s. 20.]*

**17. Penalties not to relieve from fee**

Payment of penalties under this Act does not relieve any person from liability for any fee for which he would be otherwise liable.

*[Section 17 amended by No. 41 of 1990 s. 12.]*

**s. 18**

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**18.        Offences by bodies corporate**

- (1) Where a body corporate is guilty of an offence against this Act any officer of the body corporate who was knowingly a party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (2) In this section, *officer* has the same meaning as in the *Corporations Act 2001* of the Commonwealth but does not include an employee of the body corporate unless he or she was concerned in the management of the body corporate.

*[Section 18 amended by No. 54 of 1994 s. 21; No. 10 of 2001 s. 220.]*

**19.        Regulations**

The Governor may make regulations prescribing all matters and things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act.

*[20.        Deleted by No. 54 of 1994 s. 22.]*

## **Schedule 1**

[Section 12]

### **Constitution and proceedings of committees of management**

#### **1. Vacating office**

The office of a member becomes vacant if —

- (a) he resigns his office in writing signed by him and delivered to the Minister; or
- (b) he is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (c) he is removed from the office by written notice signed by the Minister and delivered to the member; or
- (d) he is absent, except on leave granted by the committee, from 3 consecutive meetings of the committee of which he has had notice.

*[Clause 1 amended by No. 18 of 2009 s. 37.]*

#### **2. Acting member**

- (1) Where a member of a committee is unable to act, by reason of sickness or absence, the Minister may appoint another person to be an acting member during the inability of that member and while so acting the person so appointed shall have all the functions of and be deemed to be a member.
- (2) The Minister may terminate the appointment of an acting member at any time.
- (3) No act or omission of a person acting as a member shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

#### **3. Casual vacancy**

On the occurrence of a vacancy in the office of member, the Minister shall appoint a person to be a member who is eligible under the instrument establishing the committee to be appointed to that office.

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**4. Meetings**

- (1) Meetings of a committee shall be held at such times and places as the committee decides or as determined by the chairman.
- (2) The chairman shall preside at all meetings of the committee at which he is present and in his absence the members present shall appoint one of their number to preside.
- (3) A quorum for a meeting of a committee is 3 members.
- (4) A question arising at a meeting of a committee shall be determined by a majority of the votes of the members present and if the members are equally divided on any question, that question shall be deemed to be determined in the negative.
- (5) The committee shall cause accurate minutes to be kept of the proceedings at its meetings.

**5. Resolution may be passed without meeting**

A resolution in writing signed or assented to by letter, telegram, telex, facsimile transmission, email or other similar means by each member shall be as valid and effectual as if it had been passed at a meeting of the committee.

*[Clause 5 amended by No. 38 of 2009 s. 11.]*

**6. Leave of absence**

The committee may grant leave of absence to a member on such terms and conditions as the committee thinks fit.

**7. Committee to determine own procedures**

Subject to this Act, a committee shall determine its own procedures.

**8. Disclosure of pecuniary interests**

- (1) A member who as a direct or indirect pecuniary interest —
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of the committee; or



- (b) in a thing being done or about to be done by the committee, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.
- (2) A disclosure by a member at a meeting of the committee that the member —
- (a) is a member, or is in the employment, of a specified company or other body;
  - (b) is a partner, or is in the employment, of a specified person; or
  - (c) has some other specified interest relating to a specified company or other body or a specified person,
- shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that Company or other body or that person which may arise after the date of the disclosure.
- (3) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines —
- (a) be present during any deliberation of the committee, or take part in any decision of the committee, with respect to that matter; or
  - (b) exercise any functions under this Act or the Compensation Act with respect to that thing,

as the case may require.

*[Clause 8 amended by No. 39 of 1997 s. 14.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Fisheries Adjustment Schemes Act 1987* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Fisheries Adjustment Schemes Act 1987</i>	57 of 1987	5 Nov 1987	1 Jul 1988 (see s. 2 and <i>Gazette</i> 17 Jun 1988 p. 1947)
<i>Fisheries Adjustment Schemes Amendment Act 1990</i>	41 of 1990	21 Nov 1990	1 Feb 1991 (see s. 2 and <i>Gazette</i> 18 Jan 1991 p. 189)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Fisheries Adjustment Schemes Amendment Act 1994</i>	54 of 1994	2 Nov 1994	1 Oct 1995 (see s. 2 and <i>Gazette</i> 29 Sep 1995 p. 4649)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Fishing and Related Industries Compensation (Marine Reserves) Act 1997 s. 14</i>	39 of 1997	2 Dec 1997	2 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 36</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Corporations (Consequential Amendments) Act 2001 s. 220</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint of the <i>Fisheries Adjustment Schemes Act 1987</i> as at 3 May 2002</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 37 and 113</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 52</i> <sup>3</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 8 Div. 1</i> <sup>4</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4 and 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 2: The Fisheries Adjustment Schemes Act 1987 as at 6 April 2007</b> (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 61</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009 s. 37</i>	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Fisheries Adjustment Schemes Amendment Act 2009</i>	38 of 2009	3 Dec 2009	s. 1 and 2: 3 Dec 2009 (see s. 2(a)); Act other than s. 1 and 2: 4 Dec 2009 (see s. 2(b))

<sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

<sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>4</sup> The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 8 Div. 5 is a transitional provision that is of no further effect.