



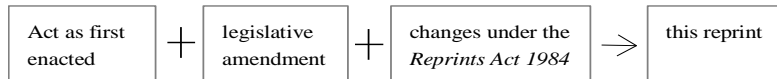
Western Australia

Fisheries Adjustment Schemes Act 1987

Reprinted as at 3 May 2002

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Western Australia

Fisheries Adjustment Schemes Act 1987

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Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 3 May 2002

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*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Interpretation

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

“member” —

- (a) in relation to a committee, means a member of the committee; and
- (b) in relation to the Tribunal, means a member of the Tribunal;

“Recreational Fishing Fund” means the Recreational Fishing Fund referred to in the *Fish Resources Management Act 1994*;

“Tribunal” means the Fisheries Adjustment Compensation Tribunal established under section 14O;

“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;

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

[Section 3 amended by No. 54 of 1994 s. 6; No. 39 of 1997 s. 14.]

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. *Repealed 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) There shall be established and kept at the Treasury as part of the Trust Fund an account to be known as the “Fisheries Adjustment Schemes Trust Account”.
- (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 Fund or the Recreational Fishing Fund;
 - (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.]

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 every holder of an authorisation that authorises fishing in a fishery to which the scheme applies.
- (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 each authorisation or may be an amount that is to be calculated by reference to the boat or boats, nets or pots being used, or the activities being carried out, under an authorisation.
- (3a) If the holder of an authorisation has not paid any fee referred to in subsection (1) when it becomes due, the Executive Director 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.

s. 9

- (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.]

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 Fund;
- (aa) in returning that proportion of the balance attributable to moneys credited to the Account from the Fisheries Research and Development Fund or the Recreational Fishing Fund, to the credit of the fund from which the moneys came;
- (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
- (c) in the case of any other moneys, to the credit of the Fisheries Research and Development Fund or the Recreational Fishing Fund, 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.]

10. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* 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 that Act be regarded as a service of the Fisheries Department².

Part 3 — Voluntary fisheries adjustment schemes

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

10A. Interpretation

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;
 - (b) identify the fishery or fisheries to which the scheme applies;
 - (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.]

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

s. 11

- (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).]

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 fisheries adjustment scheme is under consideration;
 - [(c) repealed]*
 - (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.]

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 Management³.

[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. Interpretation

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;
 - (b) identify the fishery or fisheries to which the scheme applies;
 - (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;

- (d) identify the authorisations that are to be cancelled, or the parts of entitlements that are to be reduced, under the scheme;
 - (e) 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.]

14C. Procedure before establishing scheme

Before establishing a scheme the Minister must —

- (a) consult with the Executive Director 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.]

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
 - (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.

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Part 4 Compulsory fisheries adjustment schemes

Division 1 Schemes

s. 14D

- (2) The notice referred to in subsection (1) must —
- (a) specify the objectives of the proposed scheme;
 - (b) identify the fishery or fisheries to which the proposed scheme will apply;
 - (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;
 - (d) if 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;
 - (e) if 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.]

14E. Selection of authorisations or entitlements

- (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.
- (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.]

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).

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Division 1 Schemes

s. 14G

- (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 Tribunal if no agreement

- (1) An affected person or the Minister may apply to the 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 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.]

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 Tribunal to review Minister's determination

- (1) An affected person may apply to the Tribunal to review 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.

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Part 4 Compulsory fisheries adjustment schemes

Division 1 Schemes

s. 14M

- (2) An application to the Tribunal under subsection (1) must be made within 28 days after notice is given under section 14K(2).

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

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 proceedings have been instituted before the Tribunal.

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

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 Tribunal to review that amount in accordance with section 14L; or
 - (c) the 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.]

Division 2 — Fisheries Adjustment Compensation Tribunal

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

14O. Establishment of Tribunal

- (1) A tribunal called the Fisheries Adjustment Compensation Tribunal is established.
- (2) The Tribunal is to consist of 3 persons appointed by the Minister of whom —
 - (a) one is to be a practitioner as defined in the *Legal Practitioners Act 1893* of not less than 8 years standing and experience;
 - (b) one is to be a member of either the Institute of Chartered Accountants of Australia or the Australian Society of Accountants who has had not less than 5 years experience of accounting relating to the fishing or aquaculture industry; and
 - (c) one is to be a broker who has had not less than 5 years experience broking in the fishing or aquaculture industry.
- (3) The person referred to in subsection (2)(a) is to be the chairperson of the Tribunal.

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

14P. Term of office of members

- (1) A member of the Tribunal is to hold office for such term not being more than 3 years as is specified in the member's instrument of appointment and may from time to time be reappointed.
- (2) A member may resign from office by notice in writing delivered to the Minister.

Fisheries Adjustment Schemes Act 1987

Part 4 Compulsory fisheries adjustment schemes

Division 2 Fisheries Adjustment Compensation Tribunal

s. 14Q

- (3) The Minister may remove a member from office on the grounds of —
- (a) mental or physical incapacity to carry out satisfactorily the duties of a member;
 - (b) neglect of duty;
 - (c) misconduct; or
 - (d) the member ceasing to hold any qualification by virtue of which he or she was appointed.

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

14Q. Acting members

- (1) If a member of the Tribunal —
- (a) is ill or absent; or
 - (b) disqualifies himself or herself in respect of a particular matter, whether by reason of a possibility of a conflict of interest or otherwise,

the Minister may appoint another eligible person to Act as a member in his or her place during the illness or absence or in the particular matter.

- (2) A person appointed under subsection (1) has, while acting as a member, all the powers, duties and entitlements of, and the protection given to, the member in whose place the person is appointed to act.

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

14R. Remuneration of members

- (1) A member of a Tribunal is, subject to subsection (2), entitled to such remuneration and allowances in respect of the performance of his or her functions as the Minister from time to time determines on the recommendation of the Minister for Public Sector Management.

- (2) Subsection (1) does not apply to a person employed in the Public Service.

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

14S. Jurisdiction of Tribunal

The Tribunal is to hear and determine applications made to it under section 14J and section 14L or under section 8 or 10 of the Compensation Act.

[Section 14S inserted by No. 54 of 1994 s. 16; amended by No. 39 of 1997 s. 14.]

14T. Proceedings of Tribunal

- (1) The chairperson of the Tribunal is to appoint the time and place for sittings of the Tribunal and may adjourn its sittings from time to time.
- (2) At a sitting of the Tribunal —
- (a) all 3 members are required to be present to constitute a quorum; and
 - (b) the chairperson of the Tribunal is to preside and is to determine any question of law or procedure.
- (3) Except as provided in subsection (2)(b), a question arising before the Tribunal is to be decided by a majority of the members of the Tribunal.
- (4) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (5) To the extent that it is not prescribed by the regulations the Tribunal is to determine its own procedure.
- (6) The Tribunal is to cause an accurate record to be kept of its proceedings.

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

14U. Parties to proceedings

- (1) The parties to proceedings instituted before the Tribunal shall be the person who applied to the Tribunal and —
 - (a) if the person who applied was the Minister, the affected person; or
 - (b) if the person who applied was the affected person, the Minister.
- (2) The Tribunal is to —
 - (a) give to a person who is a party to proceedings reasonable notice of the time and place at which it intends to conduct those proceedings; and
 - (b) afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.
- (3) If a person to whom notice has been given under subsection (2) does not attend at the time and place fixed by the notice, the Tribunal may conduct the proceedings in the person's absence.
- (4) A party to proceedings before the Tribunal may appear personally or be represented in those proceedings by counsel or, with the leave of the Tribunal, by any other person.
- (5) A person who, not being a certificated practitioner within the meaning of the *Legal Practitioners Act 1893*, demands or receives any fee or reward for representing a person in proceedings before the Tribunal commits an offence and is liable to a fine not exceeding \$1 000.

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

14V. Case stated

- (1) If a question of law arises in proceedings before the Tribunal, the Tribunal may, in accordance with the rules of court, state a case for the opinion of the Supreme Court upon the question.

- (2) The Supreme Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to the case and to the costs of and incidental to the consideration and determination of the case.

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

14W. Costs

The Tribunal may make such orders for costs as it thinks fit.

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

14X. Powers of Tribunal

The Tribunal may —

- (a) by summons require any person —
 - (i) to attend before the Tribunal;
 - (ii) to produce any document before the Tribunal;
- (b) inspect any document produced before it, and retain it for such reasonable period as is required, and make copies of the document or any of its contents;
- (c) require any person to swear to answer truly any relevant question put to that person by the Tribunal or any person appearing before the Tribunal (and for that purpose may administer any oath or affirmation);
- (d) require any person attending before the Tribunal (whether that person has been summoned to appear or not) to answer any relevant question put to that person by the Tribunal or any person appearing before the Tribunal;
- (e) inspect anything for the purpose of assessing the amount of compensation payable in respect of the thing.

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

14Y. Offences

- (1) A person who —
- (a) having been served with a summons to attend before the Tribunal, fails without reasonable excuse (proof of which lies upon that person) to attend in obedience to the summons;
 - (b) having been served with a summons to produce before the Tribunal any document, fails without reasonable excuse (proof of which lies upon that person) to comply with the summons;
 - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member thereof, or interrupts the proceedings of the Tribunal;
 - (d) refuses or fails without reasonable excuse (proof of which lies upon that person) to swear, or to answer any question, when required to do so by the Tribunal; or
 - (e) makes, before the Tribunal, a statement that —
 - (i) the person knows to be false or misleading in a material particular; or
 - (ii) omits anything without which the statement is, to the person's knowledge, misleading in a material particular,

commits an offence and is liable to a fine not exceeding \$2 000.

- (2) For the purposes of subsection (1)(d), it is not a reasonable excuse for a person to refuse or fail to answer any question, on the ground that the answer to the question might incriminate the person or render the person liable to a penalty.
- (3) Despite subsection (2), an answer given by a person pursuant to a requirement under section 14X is not admissible in evidence against the person in any criminal proceedings other than proceedings for perjury or for an offence against this section.

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

14Z. Decision of Tribunal final

A decision of the Tribunal under this Division is final.

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

14ZA. Protection of members

A member of the Tribunal is not personally liable for anything done or omitted to be done in good faith by that person in the performance or purported performance of any function under this Act or the Compensation Act.

[Section 14ZA inserted by No. 54 of 1994 s. 16; amended by No. 39 of 1997 s. 14.]

14ZB. Staff of Tribunal

There are to be appointed under Part 3 of the *Public Sector Management Act 1994* such officers as are necessary to assist the Tribunal to perform its functions under this Act and the Compensation Act.

[Section 14ZB inserted by No. 54 of 1994 s. 16; amended by No. 39 of 1997 s. 14.]

14ZC. Regulations relating to Tribunal

- (1) The regulations may provide for any matter necessary or convenient to enable the Tribunal to perform its functions.
- (2) Without limiting subsection (1), the regulations may —
 - (a) prescribe matters relating to the practice and procedure of the Tribunal;
 - (b) provide for the enforcement of orders of the Tribunal;
 - (c) prescribe fees payable in respect of anything done in relation to the Tribunal.

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

Part 5 — Miscellaneous

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

15. Power to obtain information

- (1) The Minister, the Executive Director 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 Executive Director 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.]

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), 14M, 14O(2), 14P or 14Q.

- (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).]

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

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. Repealed 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;
- (b) he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (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.

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.

Schedule 1

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 or telex by each member shall be as valid and effectual as if it had been passed at a meeting of the committee.

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.

[Schedule 1 amended by No. 39 of 1997 s. 14.]

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Notes

- ¹ This reprint is a compilation as at 3 May 2002 of the *Fisheries Adjustment Schemes Act 1987* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<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)

- ² Under the *Alteration of Statutory Designations Order (No. 3) 2001* the former Fisheries Department is now called the Department of Fisheries.

³ 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).

Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
Account	3(1)
affected person	3(1)
chairman.....	3(1)
committee.....	3(1)
Compensation Act.....	3(1)
compulsory fisheries adjustment scheme	3(1)
eligible person	3(1)
fisheries adjustment scheme.....	3(1)
Fisheries Research and Development Fund	3(1)
member	3(1)
officer.....	18(2)
Recreational Fishing Fund	3(1)
scheme	10A, 14A
Tribunal.....	3(1)
voluntary fisheries adjustment scheme	3(1)