

WESTERN AUSTRALIA

FISHERIES AMENDMENT ACT (No. 2)

No. 25 of 1989

AN ACT to amend the *Fisheries Act 1905*.

[Assented to 8 December 1989]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Fisheries Amendment Act (No. 2) 1989*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act the *Fisheries Act 1905** is referred to as the principal Act.

[* Reprinted as at 15 July 1986 and amended by Acts Nos. 77 and 104 of 1986, 57 and 104 of 1987 and Gazettes of 20 May 1988 and 5 August 1988.]

Section 35AA inserted

4. After section 35A of the principal Act, the following section is inserted—

Minister may issue policy guidelines

“ 35AA. (1) The Minister may issue from time to time for the assistance of the Director and the information of the fishing industry a policy statement consisting of guidelines as to matters considered by the Minister to be of significance in relation to the licensing provisions of this Part.

(2) A policy statement issued under this section may be amended or revoked by the Minister at any time.

(3) In the exercise of the licensing functions conferred on the Director by this Part, the Director shall have regard to any policy statement issued by the Minister under this section, but the issue of such a statement does not in any way derogate from the Director's duty to exercise his discretion in a particular case nor does it preclude him from taking into account matters other than those referred to in the statement.

(4) Nothing in this section shall be construed as authorizing the Minister to give directions or make a statement that concerns a particular application or matter or is inconsistent with any provision of this Part. ”.

Section 35B amended

5. Section 35B of the principal Act is amended—

(a) by deleting “On and after 1 January 1966 a” and substituting the following—

“ A ”; and

- (b) by deleting “\$2 000 or more than \$10 000 and, in addition, a fine of not less than \$250 or more than \$500” and substituting the following—

“ \$3 000 or more than \$15 000 and, in addition, a fine of not less than \$400 or more than \$750 ”.

Section 35C amended

6. Section 35C of the principal Act is amended—

- (a) in subsection (1), by inserting at the end the following—

“ Penalty: \$7 500. ”;

- (b) in subsection (3), by deleting “, and shall cause notice of the grant of the permit to be advertised in the prescribed manner”;

- (c) in subsection (5), by deleting “deemed to be”; and

- (d) by inserting after subsection (5) the following subsection—

“ (6) The Director shall cause to be published in the *Gazette* a notice of any decision made under this section granting an application for a permit, whether unconditionally or subject to conditions or restrictions. ”.

Section 35CA amended

7. Section 35CA of the principal Act is amended—

- (a) in subsection (1), by deleting “shall” and substituting the following—

“ may ”;

- (b) by inserting after subsection (1) the following subsection—

“ (1a) The grant of a processor’s licence shall not be as of right and if the Director thinks it would be in the better interests of the fishing industry to do so, the Director may refuse to grant a licence. ”; and

(c) by inserting after subsection (3) the following subsection—

“ (4) The Director shall cause to be published in the *Gazette* a notice of any decision made under this section granting an application for a processor’s licence, whether unconditionally or subject to conditions or restrictions. ”.

Section 35CB amended

8. Section 35CB of the principal Act is amended—

(a) by repealing subsections (1) and (2);

(b) in subsection (3), by deleting “, with the approval of the Minister,”;

(c) by repealing subsection (4) and substituting the following subsection—

“ (4) An application for the renewal or extension of a processor’s licence shall be made to the Director in the prescribed manner, and if the Director is not satisfied—

(a) as to the construction, equipment, operation or hygiene of the establishment;

(b) as to the manner in which the provisions of this Act have been complied with in relation to the licence; or

(c) having regard to such considerations as he thinks relevant, that it would be in the better interests of the fishing industry to renew or extend the licence,

the Director may refuse the application. ”;

(d) by inserting the following subsection after subsection (4)—

“ (4a) The renewal or extension of a processor’s licence shall not be as of right. ”; and

(e) by repealing subsection (7).

Section 35D amended

9. Section 35D of the principal Act is amended by inserting after subsection (1) the following subsections—

“ (1a) If, having regard to such considerations as he thinks relevant, the Director is satisfied that it would be in the better interests of the fishing industry not to transfer the processor’s licence to the proposed transferee, the Director may refuse the application.

(1b) The transfer of a processor’s licence shall not be as of right. ”.

Section 35E amended

10. Section 35E of the principal Act is amended—

(a) in subsection (2), by inserting after “thereto” the following—

“ and to subsections (2a) and (2b) ”; and

(b) by inserting after subsection (2), the following subsections—

“ (2a) If, having regard to such considerations as he thinks relevant, the Director is satisfied that it would be in the better interests of the fishing industry not to remove the licence to the proposed processing establishment, the Director may refuse to make an order for removal.

(2b) The removal of a processor’s licence from one processing establishment to another shall not be as of right. ”.

Section 35F amended

11. Section 35F of the principal Act is amended—

(a) by inserting after “granted” the following—

“ , extended ”; and

(b) by deleting “shall report the same to the Minister who”.

Section 35H amended

12. Section 35H of the principal Act is amended in subsection (1) by inserting after “granted” in both places where it occurs the following—

“ , extended ”.

Section 35J amended

13. Section 35J of the principal Act is amended—

- (a) by inserting after the section designation “35J.” the subsection designation “(1)” and the following subsection—

“ A fee shall be payable on the grant, extension or renewal of a processor’s licence and the amount of the fee may be assessed, wholly or in part, by reference to the type, size, nature and locality of the processing establishment. ”; and

- (b) by designating the existing provision as subsection (2).

Section 35K repealed and substituted

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

Appeals

“ 35K. (1) A person aggrieved by a decision of the Director granting a processor’s licence under section 35CA or a permit to construct or establish a processing establishment under section 35C, whether unconditionally or subject to conditions or restrictions, may, within 14 days after publication of notice of that decision in the *Gazette*, appeal against that decision by serving on the Minister a statement in writing of the grounds of the appeal.

(2) A person aggrieved by a decision or order of the Director under this Part, other than a decision to which subsection (1) applies, may, within 14 days after receiving advice of that decision or order, appeal against that decision or order by serving on the Minister a statement in writing of the grounds of the appeal.

(3) On receiving a statement served on him under subsection (2), the Minister—

- (a) shall cause a copy of that statement to be served on the Western Australian Fishing Industry Council (Incorporated) (in this section referred to as “WAFIC”);
- (b) may cause a copy of that statement to be served on any person who, in the opinion of the Minister, may be affected by the outcome of the appeal; and
- (c) shall attach to each copy of a statement served under this subsection a note stating that the Minister will consider any comments that the Minister may receive from WAFIC or interested persons in accordance with this section before determining the appeal.

(4) WAFIC and any interested person may, within 14 days after service of a statement of grounds of appeal under subsection (3), or within such longer period as the Minister allows in a particular case, serve on the Minister comment in writing on the statement.

(5) The Minister shall, as soon as possible after receiving a comment under subsection (4) cause a copy of that comment to be served on the appellant and the appellant may within 14 days of receiving a copy of that comment, or within such longer period as the Minister allows in a particular case, serve on the Minister a supplementary statement in writing dealing with any matter raised in the comment.

(6) After considering a statement of the grounds of appeal and any comments and supplementary statement received in accordance with this section, the Minister may modify or set aside, or refuse to modify or set aside, the decision or order against which the appeal has been made.

(7) The Minister may, before determining an appeal under this section, require the appellant or any person who has served a comment on the Minister to provide such additional information as the Minister thinks desirable to enable the Minister to consider and determine the appeal.

(8) The determination of an appeal by the Minister under this section is final and binding on all parties concerned.

(9) In subsections (1) and (2), “person aggrieved” includes—

- (a) in relation to a decision of the Director to grant a permit under section 35C (3), a licensee and a person to whom any other permit has been granted under that subsection; and
 - (b) in relation to an application for an order of removal under section 35E, the owners of the processing establishments from which and to which the licence is proposed to be removed. ”.
-