

WESTERN AUSTRALIA

FISHERIES ADJUSTMENT SCHEMES ACT 1987

(No. 57 of 1987)

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FISHERIES ADJUSTMENT SCHEMES ACT

No. 57 of 1987

AN ACT to enable the establishment, financing and administration of fisheries adjustment schemes for the surrender of certain licences under the *Fisheries Act 1905* on the payment of agreed compensation, to amend that Act consequentially and to provide for connected purposes.

[Assented to 5 November 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Fisheries Adjustment Schemes Act 1987*.

Commencement

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

Interpretation

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

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

“chairman” means the chairman of a committee;

“committee” means a committee of management established under section 11;

“eligible person” in respect of a fisheries adjustment scheme, means a holder of a licence under the *Fisheries Act 1905* who is entitled under that scheme to offer the surrender of that licence to the Minister;

“member” means a member of a committee.

(2) Unless the contrary intention appears, an expression used in this Act has the same meaning as in the *Fisheries Act 1905*.

Fisheries adjustment schemes

4. (1) The Minister may, by notice published in the *Gazette*, establish and administer a fisheries adjustment scheme in respect of a fishery described in the notice for the purpose of facilitating the reduction in an equitable manner of the number of fishing units licensed to operate in that fishery by enabling the surrender of licences relating to that fishery on payment of agreed compensation.

(2) The Minister shall be assisted in the administration of a fisheries adjustment scheme by a committee of management constituted for that scheme under section 11.

(3) A notice establishing a fisheries adjustment scheme shall set out the terms and objectives of the scheme and shall—

(a) contain information as to the manner of operation of the scheme and the period during which it is to operate;

- (b) define for the purposes of the scheme the fishing units to which the scheme applies; and
- (c) determine the eligibility of persons entitled to offer licences to the Minister for surrender under the scheme.

(4) Upon the establishment of a fisheries adjustment scheme, the Minister shall cause to be published in a newspaper circulating throughout the State and in Fishing Industry News Service (FINS) an invitation to eligible persons to offer their licences for surrender under the scheme and for that purpose to submit to the committee of management for the scheme within the time specified in the invitation an offer in the form approved by the committee stating the amount of compensation in return for which the eligible person undertakes to surrender his licence.

(5) The Minister shall respond in writing to every offer to surrender a licence made by an eligible person under this section and shall either accept or decline the offer or make a counter offer to the eligible person.

(6) If agreement is reached and the relevant licence is surrendered under the *Fisheries Act 1905* the Minister shall cause the agreed compensation to be paid to the eligible person from the Fisheries Adjustment Schemes Trust Account.

(7) The Minister may, by notice published in the *Gazette*, vary or cancel a fisheries adjustment scheme.

Establishment of Fisheries Adjustment Schemes Trust Account

5. (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 amount of levies paid under this Act;
- (b) moneys borrowed by the Minister for the purposes of this Act;
- (c) amounts derived from the investment of moneys credited to the Account; and
- (d) such amounts as may be appropriated by Parliament for the purposes of this Act.

(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.

Application of Fisheries Adjustment Schemes Trust Account

6. The Account shall be applied—

- (a) in payment of compensation agreed under a fisheries adjustment scheme to be paid to an eligible person;
- (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.

Borrowing for purposes of the Act

7. (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 paid into the Account and liabilities incurred in respect of the borrowing will be met from the Account.

Power to prescribe levy

8. (1) Where a fisheries adjustment scheme is established the Governor may, for the purposes of that scheme, by regulation impose a levy payable by every holder of a licence in respect of a fishing unit to which the scheme applies.

(2) A regulation imposing a levy under this section shall fix the amount of the levy and prescribe the date or dates by which payments must be made.

(3) The amount of levy fixed under this section may be a specified amount of money payable by every holder of a licence in respect of each fishing unit or may be an amount that is to be calculated by reference to the boat or boats, nets, pots, or otherwise related to the fishing units of licence holders.

(4) An amount of levy that is due and payable constitutes a debt due to the Minister payable in the manner and at the place prescribed and unpaid amounts of levy may be sued for and recovered in any court of competent jurisdiction.

(5) A levy imposed under this section may be varied by further regulation made by the Governor.

Return of surplus amounts

9. 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 Revenue Fund; and
- (b) in returning that proportion of the balance attributable to levies, to those persons *pro rata* who, upon the conclusion of the period of operation of the scheme, are holders of licences in respect of fishing units to which the scheme relates.

Application of *Financial Administration and Audit Act 1985*

10. 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 Department.

Committees of management

11. (1) Where the Minister considers that it is desirable for consideration to be given to the establishment under this Act of a fisheries adjustment scheme in respect of a particular fishery, the Minister may 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 fisheries adjustment scheme for the fishery 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 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 for which a fisheries adjustment scheme is under consideration;

- (c) define a fishing unit for the purposes of the scheme;
- (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.

Constitution and proceedings of committee of management

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

Remuneration and allowances

13. 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 fees and allowances as the Minister from time to time determines on the recommendation of the Public Service Board.

Protection of members

14. 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.

Power to obtain information

15. (1) The 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 Director or a chairman under subsection (1) in response to a requirement under that subsection or furnishes information that the person knows to be false or misleading in a material particular commits an offence.

Penalty: \$1 000.

Evading levy

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

Penalty: \$2 000.

Penalties not to relieve from levy

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

Offences by bodies corporate

18. (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", in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 5 (1) of the *Companies (Western Australia) Code*.

Regulations

19. 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.

Amendment of *Fisheries Act 1905*

20. The *Fisheries Act 1905* is amended by inserting after section 17 the following section—

Surrender of licences

- “ 17A. A person who is the holder of a licence may surrender the licence to the Minister in accordance with an agreement to do so under a fisheries adjustment scheme established under the *Fisheries Adjustment Schemes Act 1987* and when so surrendered a licence shall be extinguished. ”.

SCHEDULE 1

(Section 12)

*Constitution and proceedings of committees of management***Vacating office**

1. 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.

Acting member

2. (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.

Casual vacancy

3. 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.

Meetings

4. (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.

Resolution may be passed without meeting

5. 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.

Leave of absence

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

Committee to determine own procedures

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

Disclosure of pecuniary interests

8. (1) A member who has 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 with respect to that thing,

as the case may require.
