

FISHERIES.

No. 30 of 1975.

AN ACT to amend the Fisheries Act, 1905-1974.

[Assented to 16th May, 1975.]

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

1. (1) This Act may be cited as the *Fisheries Act Amendment Act, 1975*.

Short title
and
citation.

(2) In this Act the Fisheries Act, 1905-1974, is referred to as the principal Act.

Reprinted
as approved
for reprint
15th May,
1972 and
amended by
Act No. 19
of 1973 and
Act No. 72 of
1974.

(3) The principal Act as amended by this Act may be cited as the Fisheries Act, 1905-1975.

Section 4A
amended.

2. Section 4A of the principal Act is amended—

(a) as to subsection (1), by deleting the words “and Fauna”, in line three; and

(b) by adding a new subsection as follows—

(3) On and after the coming into operation of this subsection the body corporate formerly constituted under this Act by the name of the “Minister for Fisheries and Fauna” is preserved and continues in existence as a body corporate under and subject to the provisions of this Act by the name of the “Minister for Fisheries”, but so that the corporate identity of the body corporate and its rights, powers, functions, duties and liabilities are not affected, and any reference to that former name shall, unless the context is such that it would be incorrect or inappropriate so to do, be read and construed as a reference to the “Minister for Fisheries”. .

Section 6
amended.

3. Section 6 of the principal Act is amended, as to subsection (2),—

(a) by deleting the words “two hundred”, in line two of that subsection, and substituting the words “one thousand”; and

(b) by deleting the word “four”, in line four of that subsection, and substituting the word “twenty”.

Section 9
amended.

4. Section 9 of the principal Act is amended, as to subsection (1), by inserting after the word “persons”, in line two, the words “or any class of person specified in that notice”.

5. Section 10 of the principal Act is amended by adding a new subsection, to stand as subsection (3), as follows—

Section 10
amended.

(3) Any notice of the Minister published in the *Government Gazette* pursuant to the provisions of section ten, section nineteen or section nineteen A of this Act as those provisions existed immediately prior to the coming into operation of the Fisheries Act Amendment Act, 1974, shall be deemed to have been continued in operation and to subsist until cancelled or varied by the Minister by a notice published in the *Government Gazette* pursuant to section nine or section ten of this Act. .

6. Section 12 of the principal Act is amended, as to subsection (1), by inserting a new paragraph, to stand as paragraph (aa), as follows—

Section 12
amended.

(aa) contravenes by act or omission any notice published in the *Government Gazette* by the Minister under the provisions of section ten, section nineteen or section nineteen A of this Act, as those provisions existed immediately prior to the coming into operation of the Fisheries Act Amendment Act, 1974; .

7. Section 23 of the principal Act is amended by deleting the words "offending against this section shall be liable to a penalty not exceeding four dollars" and substituting the words "contravening this section is guilty of an offence".

Section 23
amended.

8. The principal Act is amended by inserting a new section, to stand as section 29A, as follows—

Section 29A
added.

29A. (1) In this section "foreign boat" means a boat that is for the purposes of the Fisheries Act 1952 of the Commonwealth a boat other than an Australian boat.

Foreign
boats.

(2) A person who, in Western Australian waters,—

- (a) uses a foreign boat for taking, catching or capturing fish;
- (b) uses a foreign boat for processing, preserving, storing or carrying fish that have been taken, caught or captured with the use of that boat or another boat; or
- (c) has in his possession or in his charge a foreign boat equipped with nets, traps or other equipment for taking, catching or capturing fish,

commits an offence.

(3) It is a defence to a prosecution for an offence against subsection (2) of this section if the person charged satisfies the court—

- (a) that there was in force, at the time of the alleged offence, a license under this Act authorising the use of the boat for that purpose and in that area at that time; or
- (b) that all nets, traps or other equipment for taking, catching or capturing fish were stowed and secured and the boat was travelling by the shortest practicable route to or from a port in Western Australia.

(4) Where a person is convicted of an offence against subsection (2) of this section—

- (a) the person convicted is liable to a fine of not more than two thousand dollars; and

(b) the court, notwithstanding the imposition of a fine on the person convicted, may order that—

- (i) the boat in relation to which the offence is committed;
- (ii) any nets, traps or other equipment for taking, catching or capturing fish used by or found on that boat at the time of the offence; and
- (iii) the fish on board that boat at the time of the offence or the proceeds of the sale of any such fish,

shall be forfeited to Her Majesty.

(5) Where any boat or other thing is liable under this section to be ordered to be forfeited to Her Majesty the court may recommend to the Attorney General that the whole, or a specified portion, of the proceeds of any sale of such a boat or other thing forfeited should be paid to a person specified by the court, but any boat or other thing ordered to be so forfeited shall be dealt with and disposed of in accordance with the directions of the Attorney General and pending his direction may be detained in such custody as the court directs. .

9. Section 40 of the principal Act is amended— Section 40
amended.

(a) by deleting the word “offends”, in line two, and substituting the words “the inspector has reason to believe has committed an offence”; and

(b) by deleting the passage “regulations. Any”, in lines three and four, and substituting the passage “regulations, and any”.

10. Section 41 of the principal Act is repealed. Section 41
repealed.

Section 48
amended.

11. Section 48 of the principal Act is amended by adding a new subsection, to stand as subsection (3), as follows—

(3) A boat may be seized or detained by any person authorised under this Act so to do, but no boat shall be forfeited under this Act otherwise than—

- (a) pursuant to an order of the court consequential to the conviction of a person for an offence against this Act; or
- (b) in the circumstances referred to in section forty-nine of this Act. .

Section 49B
amended.

12. Section 49B of the principal Act is amended by adding two new subsections, to stand as subsection (3) and subsection (4), as follows—

(3) For the purposes of this Act, and in addition to the particular powers more specifically referred to in this Act and the regulations, every inspector appointed under this Act, including any police officer exercising the powers of an inspector pursuant to subsection (3) of section five of this Act, has and may exercise the power—

- (a) to enter and search any premises or place at any time without warrant;
- (b) to stop, detain, inspect and search any vehicle, boat or aircraft;
- (c) to inspect any fish, or any net, rock lobster pot, appliance or equipment capable of being used for fishing; and
- (d) to seize, take, secure or cause to be removed any fish which he has reason to believe has been taken, or any boat or other thing which he has reason to believe has been, is, or is intended to be or about to be used, in breach of this Act or the regulations.

(4) Where any boat, plant, fish, equipment or other thing is seized under the provisions of this Act it shall be taken before a Justice where that is practicable, but where a Justice determines that it is not practicable he may certify that the requirements of this Act have been sufficiently complied with if he is satisfied that although the boat, plant, fish, equipment or thing seized has not been taken before him, he has nevertheless obtained sufficient information concerning the same for the purposes of this Act. .
