



ANNO TRICESIMO SEPTIMO

# ELIZABETHAE II REGINAE

A.D. 1988

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No. 92 of 1988

An Act to amend the Fisheries Act, 1982.

[Assented to 15 December 1988]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Fisheries Act Amendment Act, 1988*.
- (2) The *Fisheries Act, 1982*, is in this Act referred to as "the principal Act".

## Commencement

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

## Repeal of s. 3

3. Section 3 of the principal Act is repealed.

## Interpretation

4. Section 5 of the principal Act is amended—

(a) by inserting after the definition of "exotic fish" in subsection (1) the following definition:

"expiable offence" means an offence of a kind declared by regulation to be an expiable offence for the purposes of this Act;

(b) by inserting in the definition of "farm fish" in subsection (1) "the control or eradication of the aquatic or benthic flora or fauna or consumption as food" after "or business";

(c) by inserting in the definition of "fish farming" in subsection (1) "the control or eradication of the aquatic or benthic flora or fauna or consumption as food" after "or business";

(d) by striking out from subsection (1) the definition of "fish processor" and substituting the following definition:

"fish processor" means a person who for the purpose of trade or business processes or purchases or obtains fish;

and

(e) by striking out from subsection (1) the definition of “processing” and substituting the following definition:

“processing” in relation to fish, means scaling, gilling, gutting, filleting, freezing, chilling, packing or any other activity involved in preparing fish for sale.

#### **Powers of fisheries officers**

5. Section 28 of the principal Act is amended—

(a) by inserting after paragraph (c) of subsection (9) the following paragraph:

(ca) notwithstanding paragraph (c), where any fish or other perishable thing is seized in relation to an expiable offence and the offence is expiated pursuant to this Act—

(i) the fish or other perishable thing is, if it has not already been forfeited to the Crown by order of the Minister, forfeited to the Crown by force of this paragraph;

and

(ii) whether it has been forfeited by order of the Minister or under this paragraph, no compensation may be recovered in respect of the fish or other perishable thing by any person;

and

(b) by striking out from paragraph (d) of subsection (9) “by order of the Minister or a court” and substituting “under this section”.

#### **Persons and boats engaged or used in fisheries to be licensed**

6. Section 34 of the principal Act is amended—

(a) by striking out from subsection (2) “No person” and substituting “Subject to the regulations, no person”;

and

(b) by striking out subsection (3).

#### **Substitution of s. 44**

7. Section 44 of the principal Act is repealed and the following section is substituted:

##### **Offences with respect to sale, purchase or possession of fish**

44. (1) Subject to this section, if a person sells or purchases fish taken in waters to which this Act applies but not pursuant to a licence, the person is guilty of an offence.

Penalty: Division 5 fine.

(2) Subject to this section, if a person sells or purchases, or has possession or control of—

(a) fish taken in contravention of this Act;

or

(b) fish of a prescribed class,

the person is guilty of an offence.

Penalty: Division 5 fine.

(3) In proceedings for an offence against subsection (1) or (2), it is a defence if the defendant proves—

- (a) that the fish to which the proceedings relate were purchased from a person whose ordinary business was the selling of such fish;
- (b) that the fish were purchased in the ordinary course of that business;
- and
- (c) that the defendant did not know, and had no reason to believe, that the fish were, as the case may be—
- (i) fish taken in waters to which this Act applies but not pursuant to a licence;
  - (ii) fish taken in contravention of this Act;
- or
- (iii) fish of a prescribed class.

(4) In proceedings for an offence against subsection (2) (a) relating to fish of a class prescribed for the purposes of this subsection, if it is proved—

- (a) that the defendant was not—
- (i) the holder of a licence authorizing the taking of fish of that class;
- or
- (ii) a registered fish processor;

and

- (b) that the defendant sold or purchased or had possession or control of more than the prescribed quantity of fish of that class,

the offence is proved unless the defendant proves that the fish were not taken in contravention of this Act or establishes the defence under subsection (3).

#### **Protection of aquatic habitat**

8. Section 48 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) Except as provided by the regulations, or pursuant to a permit under this section, a person must not—

- (a) enter or remain in an aquatic reserve;

or

- (b) engage in any fishing activity in an aquatic reserve.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.;

and

- (b) by inserting in subsection (6) “, echinoderms, coelenterata” after “molluscs”.

#### **Fish processors required to be registered**

9. Section 54 of the principal Act is amended—

- (a) by striking out from subsection (1) “No person” and substituting “Subject to the regulations, no person”;
- (b) by striking out from subsection (2) “unprocessed”;

- (c) by striking out from subsection (3) “unprocessed”;
- (d) by striking out from subsection (5) “unprocessed”;
- and
- (e) by striking out from subsection (6) “unprocessed”.

#### **Regulations relating to fish processing**

10. Section 55 of the principal Act is amended—

- (a) by striking out from paragraph (b) “processed or unprocessed”;
- (b) by striking out from paragraph (c) “unprocessed”;
- and
- (c) by striking out from paragraph (d) “unprocessed”.

#### **Suspension or cancellation of authorities by courts**

11. Section 56 of the principal Act is amended by striking out from paragraph (a) of subsection (10) “44 (2)” and substituting “44”.

#### **Insertion of new Division**

12. The following Division is inserted after section 58:

#### DIVISION VIII—EXPIATION OF OFFENCES

##### **Preliminary**

58a. In this Division, unless the contrary intention appears—

“child”, in relation to an offence, means a person who was under the age of 16 years at the time the offence is alleged to have been committed:

“expiation fee” in relation to an expiable offence, means the expiation fee prescribed for that offence:

“expiation notice” means a notice under this Act for the expiation of an expiable offence.

##### **Expiation notice may be issued**

58b. (1) Subject to this Act, if a person is alleged to have committed an expiable offence, or a number of expiable offences arising out of the same incident, then, before a prosecution is commenced, an expiation notice may be given to the alleged offender stating that the offence or offences may be expiated by payment of the expiation fee or fees to the Director before the expiration of 60 days from the date of the notice.

(2) For the purpose of subsection (1), two or more offences arise out of the same incident if they are committed contemporaneously, or in succession, one following immediately upon another.

(3) An expiation notice—

- (a) must be in a form approved by the Minister;
- (b) may relate to no more than three offences;
- (c) may not be given to a child;
- (d) may be issued only by a fisheries officer;
- and
- (e) may be given—

- (i) personally;
- or
- (ii) by post addressed to the alleged offender's last known place of business or residence.

#### **Effect of expiation**

58c. (1) Subject to this Act, where the offence or offences to which an expiation notice relates are expiated in accordance with the notice, the alleged offender is not liable to prosecution for that offence or those offences.

(2) Where—

(a) an expiation notice relates to more than one offence;

and

(b) the alleged offender expiates one or more of those offences but not all of them,

the alleged offender is liable to prosecution for any offence that is not expiated.

(3) The payment of an expiation fee does not constitute an admission of guilt or of any civil liability and will not be regarded as evidence tending to establish guilt or any civil liability.

#### **Expiation notice may be withdrawn**

58d. (1) The Minister may withdraw an expiation notice if—

(a) the Minister is of the opinion that the notice should not have been given;

or

(b) the Minister decides that the alleged offender should be prosecuted for an offence to which the notice relates.

(2) An expiation notice may be withdrawn under subsection (1) notwithstanding payment of an expiation fee but in that event the expiation fee must be refunded.

(3) An expiation notice cannot be withdrawn under subsection (1) (b) after the expiration of 60 days from the date of the notice.

(4) The withdrawal of an expiation notice under subsection (1) is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.

(5) Where an expiation notice is withdrawn, a prosecution for an offence to which the notice related may be commenced, but the fact that the defendant paid an expiation fee is not admissible in those proceedings as evidence against the defendant.

#### **Regulations**

13. Section 72 of the principal Act is amended by inserting after paragraph (a) of subregulation (2) the following paragraph:

- (ab) declare specified kinds of offences against this Act or the regulations under this Act to be expiable offences and prescribe expiation fees which may be of different amounts according to the persons alleged to have committed the offences, or the times or places at which the offences are alleged to have been committed, or the circumstances of such offences;

## SCHEDULE

The principal Act is further amended as follows:

Provision Amended	How Amended
Section 27 (1)	By striking out "One thousand dollars" and substituting "Division 7 fine".
Section 27 (3)	By striking out "One thousand dollars" and substituting "Division 7 fine".
Section 28 (4)	By striking out "Two thousand five hundred dollars" and substituting "Division 6 fine".
Section 28 (5)	By striking out "Four thousand dollars, or imprisonment for two years, or both" and substituting "Division 5 fine or division 5 imprisonment, or both".
Section 28 (8)	By striking out "four thousand dollars, or imprisonment for two years, or both" and substituting "a division 5 fine or division 5 imprisonment, or both".
Section 29	By striking out "Two thousand five hundred dollars" and substituting "Division 6 fine".
Section 34 (1)	By striking out "Five thousand dollars" and substituting "Division 5 fine".
Section 34 (2)	By striking out "Five thousand dollars" and substituting "Division 5 fine".
Section 37 (4)	By striking out "For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars" and substituting "For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine".
Section 40 (1)	By striking out "Five hundred dollars" and substituting "Division 8 fine".
Section 40 (2)	By striking out "Five hundred dollars" and substituting "Division 8 fine".
Section 41	By striking out "For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars" and substituting "For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine".
Section 42	By striking out "For a first offence—two thousand dollars; for a subsequent offence—five thousand dollars" and substituting "For a first offence—division 6 fine; for a subsequent offence—division 5 fine".
Section 43 (3)	By striking out "For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars" and substituting "For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine".
Section 45 (1)	By striking out "One thousand dollars" and substituting "Division 7 fine".
Section 45 (2)	By striking out "One thousand dollars" and substituting "Division 7 fine".
Section 46 (m)	By striking out "two thousand dollars" and substituting "a division 6 fine".
Section 48 (2)	By striking out "For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars" and substituting "For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine".
Section 48 (5)	By striking out "For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars" and substituting "For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine".
Section 49 (1)	By striking out "\$2 000" and substituting "Division 6 fine".
Section 49 (6)	By striking out "Two thousand dollars" and substituting "Division 6 fine".
Section 50 (1)	By striking out "Two thousand dollars" and substituting "Division 6 fine".

Provision Amended	How Amended
Section 50 (4)	By striking out "Two thousand dollars" and substituting "Division 6 fine".
Section 51 (h)	By striking out "two thousand dollars" and substituting "a division 6 fine".
Section 54 (1)	By striking out "Two thousand dollars" and substituting "Division 6 fine".
Section 54 (2)	By striking out "Two thousand dollars" and substituting "Division 6 fine".
Section 54 (6)	By striking out "Two hundred dollars" and substituting "Division 9 fine".
Section 55 (i)	By striking out "two thousand dollars" and substituting "a division 6 fine".
Section 59 (4)	By striking out "Two thousand dollars" and substituting "Division 6 fine".
Section 60 (2)	By striking out "Five hundred dollars" and substituting "Division 8 fine".
Section 63	By striking out "One thousand dollars" and substituting "Division 7 fine".
Section 66 (b)	By striking out "ten thousand dollars" and substituting "\$30 000".
Section 68	By striking out "One thousand dollars" and substituting "Division 7 fine".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor