



Fisheries Amendment Act 1981

No. 181 of 1981

An Act to amend the *Fisheries Act 1952* to facilitate the collection of levy imposed by the *Foreign Fishing Boats Levy Act 1981* and of amounts payable under certain agreements, and for certain other purposes

[Assented to 8 December 1981]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Fisheries Amendment Act 1981*.
- (2) The *Fisheries Act 1952*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Section 1 and this section shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act (other than section 8) shall come into operation on the day on which the *Foreign Fishing Boats Levy Act 1981* comes into operation.

- (3) Section 8 shall come into operation—
- (a) if the *Whale Protection Act 1980* comes into operation before the day on which the *Foreign Fishing Boats Levy Act 1981* comes into operation—on the day on which that last-mentioned Act comes into operation; or
 - (b) in any other case—on the day after the day on which the *Whale Protection Act 1980* comes into operation.

Delegation

3. Section 6A of the Principal Act is amended by omitting from sub-section (1) “under sub-section (8B) of section 9 or under section 9A” and substituting “under sub-section 9 (8B) or under section 9A, 9B, 9C or 9D”.

4. After section 9A of the Principal Act the following sections are inserted:

Agreements to grant licences

“9B. (1) In this section and in sections 9C and 9D, ‘foreign fishing boat’ means—

- (a) a foreign boat; or
- (b) a boat in respect of which an instrument is in force under sub-section 4 (2).

“(2) The Minister may, on behalf of the Commonwealth, enter into an agreement with a person that contains a provision under which the Minister agrees to grant a licence or 2 or more licences under sub-section 9 (2) or (3) (whether to that person or to any other person or persons) in respect of a foreign fishing boat or 2 or more foreign fishing boats.

“(3) Where the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (2) with a person, the Minister may enter into a further agreement with the person varying the terms of the provision or varying the terms of the provision as varied pursuant to this sub-section.

“(4) Where the Minister enters into an agreement that contains a provision of a kind referred to in sub-section (2) or, pursuant to sub-section (3), enters into a further agreement, the Minister shall cause a copy of the agreement or of the further agreement, as the case may be, to be laid before each House of the Parliament within 15 sitting days of that House after the agreement or the further agreement, as the case may be, is entered into.

“(5) Where—

- (a) the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (2) of this section; or
- (b) there is in force an agreement between Australia and the government of another country that contains a provision under which licences under sub-section 9 (2) or (3) are agreed to be granted in respect of foreign fishing boats (whether or not the provision also provides for the payment of an amount or amounts to Australia),

Fisheries Amendment No. 181, 1981

the Minister or the Secretary shall, in determining whether or not to grant the licence or any of the licences to which the agreement relates, have regard only to the terms of the agreement.

“(6) Sub-section (5) has effect only so far as that sub-section is not a law imposing taxation within the meaning of section 55 of the Constitution.

Payment of levy

“9C. (1) In this section, ‘levy’ means the levy imposed by the *Foreign Fishing Boats Levy Act 1981* on the grant of a licence in respect of a foreign fishing boat.

“(2) The Minister or the Secretary may make arrangements with a person by whom an amount of levy is or will become payable in relation to the time for payment of, or the manner of payment of, the amount of levy or any part of that amount.

“(3) The Minister may, on behalf of the Commonwealth, enter into an agreement with a body corporate that is incorporated under a law in force in a State or Territory and has applied, or intends to apply, for the grant of a licence or 2 or more licences under sub-section 9 (2) or (3) in respect of a foreign fishing boat or 2 or more foreign fishing boats, being an agreement that contains a provision under which the Minister agrees, in consideration of the body corporate agreeing to provide a benefit or benefits for Australia within a period or periods specified in the agreement, to exempt the body corporate from the liability to pay the whole or any part of the amount of levy that would, but for this sub-section, be payable in respect of the grant of that licence or those licences and, subject to sub-section (6), where the Minister enters into such an agreement, the body corporate is not liable to pay that amount of levy or that part of that amount, as the case may be.

“(4) Where the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (3) with a body corporate, the Minister may enter into a further agreement with the body corporate varying the terms of the provision or varying the terms of the provision as varied pursuant to this sub-section.

“(5) Where the Minister enters into an agreement that contains a provision of a kind referred to in sub-section (3) or, pursuant to sub-section (4), enters into a further agreement, the Minister shall cause a copy of the agreement or a copy of the further agreement, as the case may be, to be laid before each House of the Parliament within 15 sitting days of that House after the agreement or the further agreement, as the case may be, is entered into.

“(6) Where the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (3) with a body corporate and the body corporate fails to provide the benefit or any one or more of the benefits that the body corporate had agreed to provide under the provision or, if the provision has been varied pursuant to sub-section (4), under the provision as so varied, within the period in which the body corporate had agreed to provide that benefit or those benefits—

Fisheries Amendment No. 181, 1981

- (a) the amount of levy or the part of the amount of levy from the payment of which the Minister had agreed to exempt the body corporate forthwith becomes due and payable by the body corporate; and
- (b) the Minister may, by notice in writing given to the body corporate, suspend the licence or any one or more of the licences granted to the body corporate under sub-section 9 (2) or (3) pursuant to the agreement.

“(7) Where the Minister has suspended a licence under sub-section (6), the Minister shall, by notice in writing given to the holder of the licence, revoke the suspension if—

- (a) the body corporate pays to the Commonwealth the total amount of levy payable in respect of the grant of the licence and any amount that is payable by way of penalty under sub-section (11) in relation to that amount of levy; or
- (b) the Minister is satisfied that the body corporate has provided the benefit or benefits the failure to provide which resulted in the suspension of the licence.

“(8) Where a person who is liable to pay an amount of levy on the grant of a licence under sub-section 9 (2) or (3) in respect of a foreign fishing boat (not being a licence granted pursuant to an agreement that contains a provision of a kind referred to in sub-section (3)) fails to pay that amount to the Commonwealth at or before the time when that amount became due and payable, the Secretary may, by notice in writing given to the person, suspend the licence.

“(9) Where the Secretary has suspended a licence under sub-section (8), the Secretary shall, by notice in writing given to the holder of the licence, revoke the suspension if the holder of the licence pays to the Commonwealth the unpaid amount of levy on the grant of the licence and any amount that is payable by way of penalty under sub-section (11) in relation to that amount of levy.

“(10) An amount of levy on the grant of a licence (not being an amount of levy that becomes due and payable in accordance with sub-section (6)) becomes due and payable—

- (a) where the Minister or the Secretary has, pursuant to sub-section (2), made arrangements with a person by whom the amount of levy is or will become payable in relation to the time for payment of, or the manner of payment of, the amount of levy or any part of that amount—in accordance with the arrangements; and
- (b) in any other case—upon the expiration of 30 days after the grant of the licence.

“(11) Where a person who is liable to pay an amount of levy on the grant of a licence in respect of a foreign fishing boat fails to pay that amount or any part of that amount to the Commonwealth at or before the time when that

Fisheries Amendment No. 181, 1981

amount became due and payable, the person is liable to pay to the Commonwealth, by way of penalty, in addition to that amount of levy, an amount calculated at the rate of 10% per month upon the amount of levy from time to time remaining unpaid, computed for the period commencing on the day on which that amount of levy became due and payable and ending on the day specified in the licence as being the day until which the licence is to remain in force.

“(12) An amount of levy that is due and payable and any amount that is payable by way of penalty under sub-section (11) may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due to the Commonwealth.

Fisheries agreements

“9D. (1) If Australia enters into an agreement with the government of another country that contains a provision under which licences under sub-section 9 (2) or (3) are agreed to be granted in respect of foreign fishing boats (whether or not the provision also provides for the payment of an amount or amounts to Australia), the Minister shall cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the agreement is entered into.

“(2) Where—

- (a) an agreement that contains a provision of a kind referred to in sub-section (1) is in force;
- (b) the provision provides for the payment of an amount or amounts to Australia;
- (c) a licence or licences to which the provision relates has or have been granted under sub-section 9 (2) or (3) in respect of a foreign fishing boat or foreign fishing boats; and
- (d) the amount or amounts specified in the provision or any part of that amount or of those amounts is not paid to Australia in accordance with the terms of the provision,

the Minister may, by notice in writing given to the holder of a licence of a kind referred to in paragraph (c), suspend the licence.

“(3) Where the Minister has suspended a licence under sub-section (2), the Minister shall, by notice in writing given to the holder of the licence, revoke the suspension if the amount or the amounts the failure to pay which resulted in the suspension of the licence is or are paid to Australia.

“(4) Sub-sections (2) and (3) have effect only so far as those sub-sections are not laws imposing taxation within the meaning of section 55 of the Constitution.”.

Powers of officers

5. Section 10 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (c) the following paragraph:

Fisheries Amendment No. 181, 1981

- “(ca) board or enter upon a boat in respect of which he has reason to believe levy imposed by the *Foreign Fishing Boats Levy Act* 1981 is payable or has been paid and take measurements of the boat;” and
- (b) by adding at the end thereof the following sub-section:
- “(5) An officer may, for the purpose of exercising his powers under paragraph (1) (ca), obtain the assistance of a person (not being an officer) and, where an officer obtains the assistance of such a person, that person shall, for the purpose of the exercise of those powers, be deemed to be an officer.”.

Obstruction of officers, &c.

6. Section 14 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

“(ca) refuse to allow a person to take measurements of a boat in pursuance of paragraph 10 (1) (ca);”.

Formal amendments

7. The Principal Act is amended as set out in Schedule 1.

Further Formal amendments

8. The Principal Act is amended as set out in Schedule 2.
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Fisheries Amendment No. 181, 1981

SCHEDULE 1

Section 7

FORMAL AMENDMENTS

Provision	Omit	Substitute
Sub-section 6A(4)	"sub-section 3 of section 9" (wherever occurring)	"sub-section 9(3)"
	"sub-section (3A) of section 9"	"sub-section 9(3A)"
Paragraph 8(1)(d)	"sub-section (4) of section 9"	"sub-section 9(4)"
Sub-section 8(4)	"paragraph (b) of sub-section (1)"	"paragraph (1)(b)"
Sub-section 9(4)	"paragraph (d) of sub-section (1) of section 8"	"paragraph 8(1)(d)"
Sub-section 9(6)	"twelve"	"12"
Paragraph 10(1)(j)	"sub-section (1) of section 9"	"sub-section 9(1)"
Sub-section 10(2)	"paragraph (ab) of sub-section (1)"	"paragraph (1)(ab)"
Paragraph 13(1)(a)	"sub-section (1) of section 9"	"sub-section 9(1)"
Paragraph 13(1)(b)	"sub-section (2) of section 9"	"sub-section 9(2)"
Paragraph 13(1)(c)	"sub-section (3) of section 9"	"sub-section 9(3)"
Paragraph 13(1)(d)	"sub-section (3) of section 9"	"sub-section 9(3)"
Sub-section 13(2A)	"paragraph (d), (e), (f), (g), (h) or (i) of sub-section (1)"	"paragraph (1)(d), (e), (f), (g), (h) or (i)"
Sub-section 13(3)	"paragraph (a), (b) or (c) of sub-section (1)"	"paragraph (1)(a), (b) or (c)"
Sub-section 13(4)	"paragraph (e) of sub-section (1)"	"paragraph (1)(e)"
Sub-section 13(5)	"paragraph (i) of sub-section (1)"	"paragraph (1)(i)"
Sub-section 13AB(2)	"sub-section (2) of section 9"	"sub-section 9(2)"
Sub-section 13B(1)	"sub-section (2) of section 9"	"sub-section 9(2)"
Sub-section 13B(2)	"sub-section (3) of section 9"	"sub-section 9(3)"
Sub-section 13BA(1)	"sub-section (3A) of section 9" "that section"	"sub-section 9(3A)" "section 9"
Paragraph 13BA(3)(d)	"two"	"2"
Sub-section 13BB(1)	"sub-section (3A) of section 9" "that section"	"sub-section 9(3A)" "section 9"
Sub-section 15(1)	"sub-section (2A) of section 13"	"sub-section 13(2A)"
Paragraph 16(2)(c)	"sub-section (1) of section 9"	"sub-section 9(1)"
Paragraph 16(2)(da)	"paragraph (a) of sub-section (3A) of that section"	"paragraph 9(3A)(a)"
Paragraph 16(2)(db)	"paragraph (b) of sub-section (3A) of that section"	"paragraph 9(3A)(b)"
Paragraph 16(2)(e)	"sub-section (4) of that section"	"sub-section 9(4)"
Sub-section 16(3)	"paragraph (d) or (e) of sub-section (2)"	"paragraph (2)(d) or (e)"
Sub-section 17(2)	"paragraph (f) of sub-section (1)"	"paragraph (1)(f)"

SCHEDULE 2

Section 8

FURTHER FORMAL AMENDMENTS

Provision	Omit	Substitute
Paragraph 8(1)(h)	"sub-section (2) or (3) of section 9"	"sub-section 9(2) or (3)"
Sub-section 8(1A)	"two"	"2"
Sub-section 13(6)	"paragraph (i) of sub-section (1)" "paragraph (h) of sub-section (1) of section 8"	"paragraph (1)(i)" "paragraph 8(1)(h)"

Fisheries Amendment No. 181, 1981

NOTE

1. No. 7, 1952, as amended. For previous amendments, see No. 3, 1953; No. 4, 1956; No. 48, 1959; No. 93, 1966; No. 116, 1967; No. 150, 1968; No. 93, 1970; No. 218, 1973; No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 155, 1979; and No. 70, 1980.