



# Fishing Legislation Amendment Act (No. 2) 1984

No. 152 of 1984

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# **Fishing Legislation Amendment Act (No. 2) 1984**

**No. 152 of 1984**

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## **An Act to amend the *Fisheries Act 1952* and the *Torres Strait Fisheries Act 1984***

*[Assented to 25 October 1984]*

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

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Fishing Legislation Amendment Act (No. 2) 1984*.

#### **Commencement**

2. (1) Parts I and II shall come into operation on the commencement of the *Fisheries Licences Levy Act 1984*.

(2) Part III shall come into operation on the commencement of the *Fisheries Licences Levy Act 1984* or the commencement of the *Torres Strait Fisheries Act 1984*, whichever last occurs.

## **PART II—AMENDMENTS OF THE FISHERIES ACT 1952**

### **Principal Act**

3. The *Fisheries Act 1952*<sup>1</sup> is in this Part referred to as the Principal Act.

### **Licences**

4. Section 9 of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (2) and (3) “The Minister” and substituting “Subject to sub-section (8AA), the Minister”;
- (b) by omitting from sub-sections (3A) and (4) “The Minister” and substituting “Subject to sub-section (8AB), the Minister”;
- (c) by omitting from sub-section (7) “The Minister” and substituting “Subject to sub-section (8AC), the Minister”; and
- (d) by inserting after sub-section (8A) the following sub-sections:

“(8AA) Where levy is payable under the *Fisheries Licences Levy Act 1984*, or a fee is payable under this Act, on or in respect of the grant to a person of a licence under this section, the Minister or the Secretary, as the case requires, shall not grant the licence unless the person tenders the amount of the levy or fee, as the case may be.

“(8AB) Where levy is payable under the *Fisheries Licences Levy Act 1984*, or a fee is payable under this Act, on or in respect of the endorsement under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not endorse the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.

“(8AC) Where a fee is payable under this Act in respect of the transfer under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not transfer the licence unless the holder of the licence, or the proposed transferee, tenders the amount of the fee.”.

### **Powers of officers**

5. Section 10 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (ca) “may become payable,” before “is payable”;
- (b) by omitting from paragraph (1) (ca) “take measurements of the boat” and substituting “inspect the boat or any part of the boat”;
- (c) by inserting after paragraph (1) (ca) the following paragraph:
  - “(cb) board or enter upon a boat that the officer has reason to believe is a boat in relation to which levy under the *Fisheries Licences Levy Act 1984* may become payable or has been paid and inspect the boat or any part of the boat;” and
- (d) by inserting in sub-section (5) “or (cb)” after “paragraph (1) (ca)”.

**Powers of Joint Authority with respect to licences**

6. Section 12P of the Principal Act is amended—

- (a) by omitting from sub-section (4) “A Joint Authority” and substituting “Subject to sub-section (5A), a Joint Authority”; and
- (b) by inserting after sub-section (5) the following sub-section:

“(5A) Where levy is payable under the *Fisheries Licences Levy Act 1984*, or a fee is payable under this Act, on or in respect of the endorsement under sub-section (4) of a licence granted under this Act, a Joint Authority shall not endorse the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.”.

**Offences**

7. Section 13 of the Principal Act is amended—

- (a) by inserting in sub-section (2) “in circumstances in which the person is not guilty of an offence against sub-section (2A) or (3)” after “sub-section (1)”;
- (b) by inserting after sub-section (2A) the following sub-sections:

“(3) Where—

- (a) a person contravenes paragraph (1) (b), (c), (e) or (i) in an area of proclaimed waters by—
  - (i) using a boat for a particular purpose; or
  - (ii) having in the person’s possession or in the person’s charge a boat for a particular purpose; and
- (b) either of the following sub-paragraphs apply:
  - (i) a licence under this Act is not in force in respect of the boat;
  - (ii) a licence under this Act is in force in respect of the boat, but the licence does not authorize the use of the boat in that area for that purpose,

then—

- (c) in a case to which sub-paragraph (b) (i) applies—if a licence under this Act had been in force authorizing the use of the boat in that area for that purpose, the licence would have been a leviable licence; or
  - (d) in a case to which sub-paragraph (b) (ii) applies—if the licence under this Act in force in respect of the boat had not been in force but another licence under this Act had been in force authorizing the use of the boat in that area for that purpose, that other licence would have been a leviable licence,
- the person is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$5,000.

“(3A) Where a person is convicted before a court of an offence against sub-section (3), the court may, in addition to imposing a

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penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in paragraph (3) (c) or the other licence referred to in paragraph (3) (d), as the case requires.”; and

(c) by adding at the end thereof the following sub-section:

“(7) Where levy is payable under the *Fisheries Licences Levy Act 1984* on the grant, or endorsement, of a licence under this Act—

- (a) the licence shall be taken, for the purposes of this section, to be a leviable licence; and
- (b) the amount of the levy or the sum of the amounts of the levy, as the case requires, shall be taken, for the purposes of this section, to be the relevant levy amount in relation to the licence.”.

**Having foreign boat equipped with nets, &c.**

8. Section 13AB of the Principal Act is amended by omitting from sub-section (3) “sub-section (1)” and substituting “sub-section (1A)”.

**Court may make certain orders**

9. Section 13E of the Principal Act is amended by omitting from sub-section (1) “against” and substituting “arising out of a contravention of”.

**Obstruction of officers, &c.**

10. Section 14 of the Principal Act is amended—

- (a) by omitting from paragraph (ca) “take measurements of a boat” and substituting “inspect a boat or any part of a boat”; and
- (b) by inserting in paragraph (ca) “or (cb)” after “paragraph 10 (1) (ca)”.

11. Section 15 of the Principal Act is repealed and the following sections are substituted:

**Certain offences to be indictable offences**

“15. (1) An offence against sub-section 13 (2A), 13AB (1A), 13B (5), 13BA (1) or 13BB (1) is an indictable offence.

“(2) Notwithstanding that an offence referred to in sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(3) An offence against this Act other than an offence referred to in sub-section (1) is punishable on summary conviction.

**Enforcement of orders for payment**

“15A. (1) Where—

- (a) upon the conviction of a person for an offence against sub-section 13 (3), the court before which the person is convicted, in addition to

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imposing a penalty on the person, orders the person to pay an amount to the Commonwealth; and

(b) the court has civil jurisdiction to the extent of the amount, the order is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

“(2) Where—

(a) upon the conviction of a person for an offence against sub-section 13 (3), the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commonwealth; and

(b) the court—

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount,

the proper officer of the court shall issue to the Secretary a certificate in the prescribed form containing the prescribed particulars.

“(3) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be paid to the Commonwealth.

“(4) Upon registration under sub-section (3), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

“(5) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.”.

### **Regulations**

12. Section 17 of the Principal Act is amended by inserting after paragraph (1) (a) the following paragraph:

“(aa) providing for the remission or refund of levy under the *Foreign Fishing Boats Levy Act 1981* or the *Fisheries Licences Levy Act 1984*, or fees under this Act, in specified circumstances;”.

## **PART III—AMENDMENTS OF THE TORRES STRAIT FISHERIES ACT 1984**

### **Principal Act**

13. The *Torres Strait Fisheries Act 1984*<sup>2</sup> is in this Part referred to as the Principal Act.

### **Commercial fishing licences**

14. Section 19 of the Principal Act is amended—

(a) by omitting from sub-section (1) “The Minister” and substituting “Subject to sub-section (5), the Minister”;

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- (b) by omitting from sub-sections (2) and (3) “sub-section (4)” and substituting “sub-sections (4) and (5)”; and
- (c) by adding at the end thereof the following sub-section:
  - “(5) Where—
  - (a) a fee is payable under this Act in respect of the grant to a person of a licence under sub-section (1), (2) or (3); or
  - (b) levy is payable under the *Fisheries Licences Levy Act 1984* on the grant to a person of a licence under sub-section (2) or (3),the Minister shall not grant the licence unless the person tenders the amount of the fee or levy, as the case may be.”.

**Entries in licences and endorsements**

**15.** Section 21 of the Principal Act is amended—

- (a) by omitting from sub-sections (1) and (2) “The Minister” and substituting “Subject to sub-section (3A), the Minister”; and
- (b) by inserting after sub-section (3) the following sub-section:
  - “(3A) Where—
  - (a) a fee is payable under this Act in respect of the making under sub-section (1) or (2) of an entry in a licence granted under sub-section 19 (2) or (3); or
  - (b) levy is payable under the *Fisheries Licences Levy Act 1984* on the making under sub-section (1) of this section of an entry in a licence granted under sub-section 19 (2) or (3),the Minister shall not make the entry unless the holder of the licence tenders the amount of the fee or levy, as the case may be.”.

**Renewal of licences**

**16.** Section 24 of the Principal Act is amended—

- (a) by omitting “The Minister” and substituting “Subject to sub-section (2), the Minister”; and
- (b) by adding at the end thereof the following sub-section:
  - “(2) Where—
  - (a) a fee is payable under this Act in respect of the renewal under sub-section (1) of a licence granted under section 19; or
  - (b) levy is payable under the *Fisheries Licences Levy Act 1984* on the renewal under sub-section (1) of this section of a licence granted under sub-section 19 (2) or (3),the Minister shall not renew the licence unless the holder of the licence tenders the amount of the fee or levy, as the case may be.”.

**Transfer of licences**

**17.** Section 25 of the Principal Act is amended—

- (a) by inserting “sub-section (2) and to” after “Subject to”; and
- (b) by adding at the end thereof the following sub-section:

“(2) Where a fee is payable under this Act in respect of the transfer under sub-section (1) of a licence granted under section 19, the Minister shall not transfer the licence unless the holder of the licence tenders the amount of the fee.”.

**Powers of Protected Zone Joint Authority with respect to licences, &c.**

**18.** Section 36 of the Principal Act is amended—

- (a) by omitting from sub-section (4) “The Protected Zone Joint Authority” and substituting “Subject to sub-section (5A), the Protected Zone Joint Authority”; and
- (b) by inserting after sub-section (5) the following sub-section:

“(5A) Where—

- (a) a fee is payable under this Act in respect of the making under sub-section (4) of an entry in a licence granted under this Act; or
- (b) levy is payable under the *Fisheries Licences Levy Act 1984* on the making under sub-section (4) of an entry in a licence granted under sub-section 19 (2) or (3),

the Protected Zone Joint Authority shall not make the entry unless the holder of the licence tenders the amount of the fee or levy, as the case may be.”.

**Powers of officers**

**19.** Section 42 of the Principal Act is amended—

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

“(ha) board or enter a boat that the officer has reasonable grounds to believe is a boat in relation to which levy under the *Fisheries Licences Levy Act 1984* may become payable or has been paid and inspect the boat or any part of the boat;”;

and

- (b) by omitting sub-section (6) and substituting the following sub-section:

“(6) An officer may, for the purpose of exercising his powers under paragraph (1) (ha), 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.**

- 20.** Section 43 of the Principal Act is amended by inserting after paragraph (1) (c) the following paragraph:

“(ca) shall not refuse to allow a person to inspect a boat, or any part of a boat, pursuant to paragraph 42 (1) (ha);”.

**Contravention of notices under section 16**

**21. Section 44 of the Principal Act is amended—**

- (a) by inserting in sub-section (2) “, (3A) or (3B)” after “sub-section (3)”; and
- (b) by inserting after sub-section (3) the following sub-sections:

“(3A) Where—

- (a) a person contravenes paragraph (1) (a) in an area of Australian jurisdiction by using a boat (other than a Papua New Guinea boat) for a particular purpose; and
- (b) either of the following sub-paragraphs apply:
  - (i) a licence under this Act is not in force in respect of the boat;
  - (ii) a licence under this Act is in force in respect of the boat, but the licence does not authorize the use of the boat in that area for that purpose,

then—

- (c) in a case to which sub-paragraph (b) (i) applies—if a licence under this Act had been in force authorizing the use of the boat in that area for that purpose, the licence would have been a leviable licence; or
  - (d) in a case to which sub-paragraph (b) (ii) applies—if the licence under this Act in force in respect of the boat had not been in force but another licence under this Act had been in force authorizing the use of the boat in that area for that purpose, that other licence would have been a leviable licence,
- the person is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

“(3B) Where—

- (a) a person contravenes paragraph (1) (c) in an area of Australian jurisdiction by using a boat (other than a Papua New Guinea boat) to search for fish; and
- (b) either of the following sub-paragraphs apply:
  - (i) a licence under this Act is not in force in respect of the boat;
  - (ii) a licence under this Act is in force in respect of the boat, but the licence does not authorize the use of the boat for taking fish of that kind in that area in the course of commercial fishing,

then—

- (c) in a case to which sub-paragraph (b) (i) applies—if a licence under this Act had been in force authorizing the use of the boat for taking fish of that kind in that area in the course of

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commercial fishing, the licence would have been a leviable licence; or

- (d) in a case to which sub-paragraph (b) (ii) applies—if the licence under this Act in force in respect of the boat had not been in force but another licence under this Act had been in force authorizing the use of the boat for taking fish of that kind in that area in the course of commercial fishing, that other licence would have been a leviable licence,

the person is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

“(3C) Where a person is convicted before a court of an offence against sub-section (3A) or (3B), the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in paragraph (3A) (c) or (3B) (c) or the other licence referred to in paragraph (3A) (d) or (3B) (d), as the case requires.”;

- (c) by omitting from sub-section (5) “against” and substituting “arising out of a contravention of”; and
- (d) by adding at the end thereof the following sub-section:

“(6) Where levy is payable under the *Fisheries Licences Levy Act 1984* on the grant of, the renewal of or the making under this Act of an entry in a licence under this Act—

- (a) the licence shall be taken, for the purposes of this section, to be a leviable licence; and
- (b) the amount of the levy or the sum of the amounts of the levy, as the case requires, shall be taken, for the purposes of this section, to be the relevant levy amount in relation to the licence.”.

**Offences relating to commercial fishing**

**22. Section 45 of the Principal Act is amended—**

- (a) by inserting after sub-section (3) the following sub-sections:

“(3A) Where—

- (a) a person contravenes paragraph (1) (a), (b) or (k) in an area of Australian jurisdiction by using a boat (other than Papua New Guinea boat) for a particular purpose; and
- (b) either of the following sub-paragraphs apply:
  - (i) a licence under this Act is not in force in respect of the boat;
  - (ii) a licence under this Act is in force in respect of the boat, but the licence does not authorize the use of the boat in that area for that purpose,

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then—

- (c) in a case to which sub-paragraph (b) (i) applies—if a licence under this Act had been in force authorizing the use of the boat in that area for that purpose, the licence would have been a leviable licence; or
- (d) in a case to which sub-paragraph (b) (ii) applies—if the licence under this Act in force in respect of the boat had not been in force but another licence had been in force authorizing the use of the boat in that area for that purpose, that other licence would have been a leviable licence,

the person is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

“(3B) Where a person is convicted before a court of an offence against sub-section (3A), the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in paragraph (3A) (c) or the other licence referred to in paragraph (3A) (d), as the case requires.”;

- (b) by omitting from sub-section (4) “or (3)” and substituting “, (3) or (3A)”;
- (c) by adding at the end thereof the following sub-section:

“(5) Where levy is payable under the *Fisheries Licences Levy Act 1984* on the grant of, the renewal of or the making under this Act of an entry in a licence under this Act—

- (a) the licence shall be taken, for the purposes of this section, to be a leviable licence; and
- (b) the amount of the levy or the sum of the amounts of the levy, as the case requires, shall be taken, for the purposes of this section, to be the relevant levy amount in relation to the licence.”.

**Court may make certain orders**

**23.** Section 46 of the Principal Act is amended by omitting from sub-section (1) “against” (wherever occurring) and substituting “arising out of a contravention of”.

**Having boat equipped with nets, &c.**

**24.** Section 51 of the Principal Act is amended by omitting from sub-section (4) “sub-section (1)” and substituting “sub-section (2) or (3)”.

**25.** After section 55 of the Principal Act the following section is inserted:

**Enforcement of orders for payment**

“55A. (1) Where—

- (a) upon the conviction of a person for an offence against sub-section 44 (3A) or (3B) or 45 (3A), the court before which the person is

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convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commonwealth; and

(b) the court has civil jurisdiction to the extent of the amount, the order is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

“(2) Where—

(a) upon conviction of a person for an offence against sub-section 44 (3A) or (3B) or 45 (3A), the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commonwealth; and

(b) the court—

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount,

the proper officer of the court shall issue to the Secretary a certificate in the prescribed form containing the prescribed particulars.

“(3) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be paid to the Commonwealth.

“(4) Upon registration under sub-section (3), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

“(5) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.”

### **Regulations**

**26.** Section 60 of the Principal Act is amended by inserting after paragraph (1) (c) the following paragraph:

“(ca) providing for the remission or refund of levy under the *Fisheries Licences Levy Act 1984*, or fees under this Act, in specified circumstances;”.

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### **NOTES**

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; Nos. 70, 86 and 93, 1980; No. 181, 1981; No. 80, 1982; and Nos. 22 and 30, 1984.
2. No. 23, 1984.