

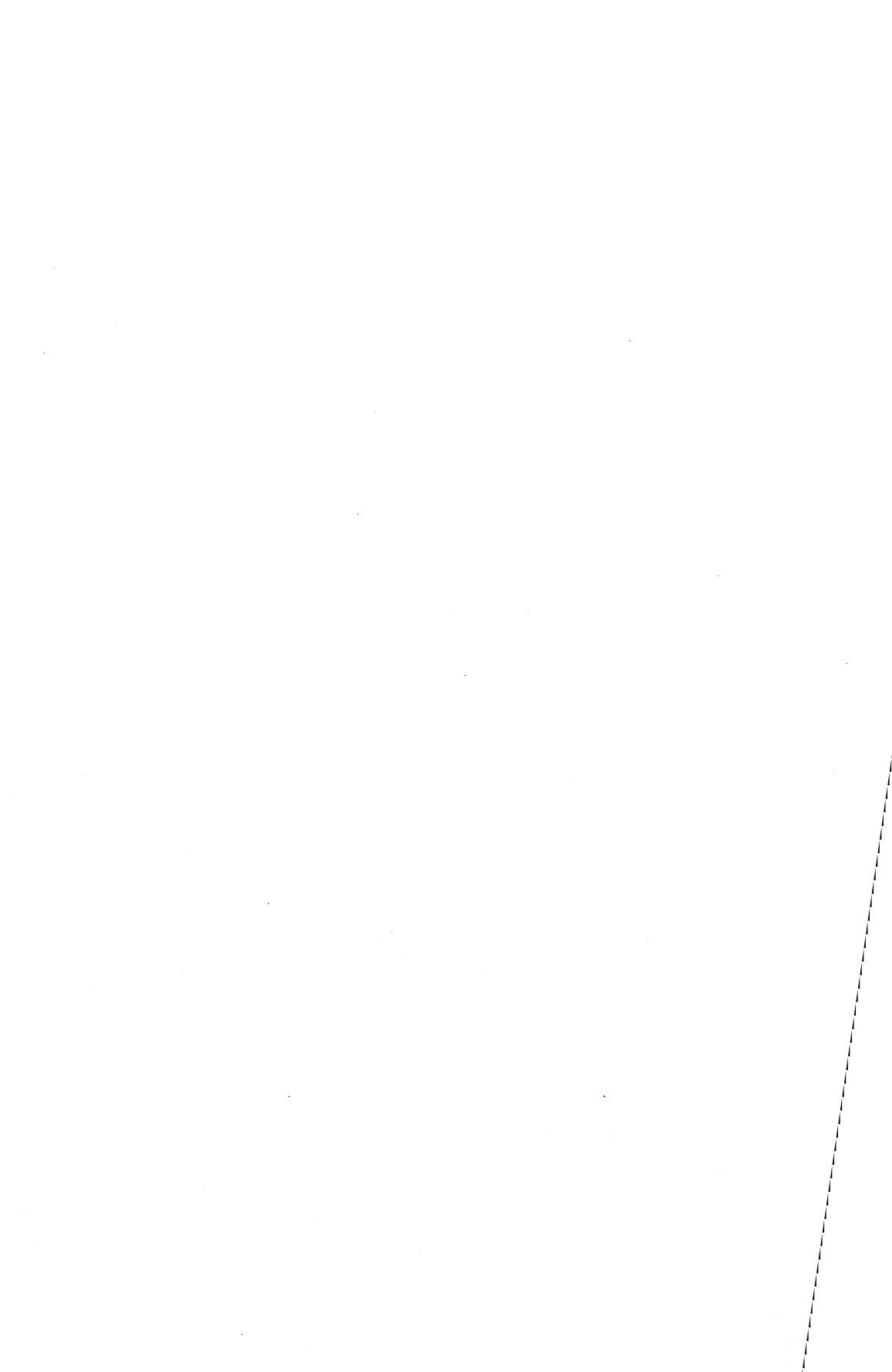


FISHERIES AMENDMENT (PENALTIES) ACT 1993

No. 62 of 1993

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FISHERIES AMENDMENT (PENALTIES) ACT 1993

No. 62 of 1993

AN ACT to amend the *Fisheries Act 1959*

[Royal Assent 27 October 1993]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Fisheries Amendment (Penalties) Act 1993*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Fisheries Act 1959** is referred to as the Principal Act.

Section 9 amended (Regulations)

4—Section 9 (1) of the Principal Act is amended as follows:—

(a) by omitting paragraph (l) and substituting the following paragraph:—

(l) prescribing the minimum size or minimum weight of fish of a particular kind or species that may be taken, sold or offered or exposed for sale or kept in the possession or control of any person (whether the fish are taken in this State or elsewhere);

(b) by omitting from paragraph (y) (i) (B) “20” and “1 penalty unit” and substituting “5 000” and “100 penalty units”, respectively;

(c) by omitting subparagraph (ii) from paragraph (y) and substituting the following subparagraph:—

(ii) subject to subparagraph (i), prescribing a minimum penalty for any such offence and different minimum and maximum penalties for successive offences;

(d) by omitting from paragraph (y) (iii) “fish,” and substituting “fish or the weight of fish,”;

(e) by omitting from paragraph (y) (iv) “offence.” and substituting “offence; and”;

(f) by inserting after paragraph (y) the following paragraph:—

(z) providing that a prosecution for an offence specified in the regulations may be brought within a period not exceeding 2 years that is so specified after the commission of the offence.

Part III: Division 4A repealed

5—Division 4A of Part III is repealed.

* No. 16 of 1959. For this Act, as amended to 1 February 1987, see the continuing Reprint of Statutes. Subsequently amended by Nos. 10, 19 and 58 of 1988, Nos. 38 and 52 of 1989, No. 5 of 1990, Nos. 7 and 46 of 1991, No. 34 of 1992 and Nos. 12 and 24 of 1993.

Section 66 repealed

6—Section 66 of the Principal Act is repealed.

Part IV: Division 3A inserted

7—After section 68A of the Principal Act, the following Division is inserted:—

Division 3A—Fisheries infringement notices

Interpretation: Division 3A

68B—In this Division, unless the contrary intention appears—

“**fisheries infringement notice**” means a notice served on a person under section 68C;

“**withdrawal notice**” means a notice served on a person under section 68D.

Service and acceptance of fisheries infringement notice

68C—(1) Where an officer or a police officer is satisfied that a person has committed a prescribed offence or offences, he or she may serve on that person a fisheries infringement notice in respect of that offence or those offences.

(2) A fisheries infringement notice is to specify—

(a) the offence or offences in respect of which it is served; and

(b) the penalty or penalties for the offence or offences—

and is to be in such form, or contain such information, or other matter, as may be prescribed.

(3) A fisheries infringement notice served on a person is to indicate clearly to that person that he or she may disregard the notice, but that on doing so he or she may be prosecuted before a court for the offence to which it relates.

(4) Unless it has been withdrawn, a fisheries infringement notice served on a person in respect of any offence may, subject to subsection (5), be accepted by that person either—

- (a) by the payment, within 21 days of the service of the notice, of the penalty specified in the notice to the clerk of petty sessions at the place specified in the notice; or
- (b) by lodging with the clerk of petty sessions, within 21 days of the service of the notice, a written undertaking by that person to pay that penalty by such instalments or within such time as the clerk may direct.

(5) Where a fisheries infringement notice served on a person has not been accepted by that person in either of the ways prescribed in subsection (4) at the expiry of the appropriate period prescribed in that subsection, the clerk of petty sessions at the place specified in the notice may, by written notification to that person, allow that person an additional period of 14 days commencing on the expiry of the first-mentioned period in which to accept the fisheries infringement notice.

(6) Where a fisheries infringement notice in respect of a prescribed offence has been served on a person, no proceedings are to be brought against that person for that offence if the notice has been accepted and (whether or not the notice is accepted) no such proceedings are to be brought within—

- (a) a period of 28 days following the service of the notice, if the person has not been allowed an additional period pursuant to subsection (5); or
- (b) a period of 42 days following the service of the notice, if the person has been allowed such an additional period—

unless the notice has been withdrawn.

(7) Where a fisheries infringement notice in respect of an offence has been accepted by a person and has not been withdrawn, that acceptance is, in relation to proceedings for any other offence, to be treated as a conviction for the offence in respect of which the notice was served unless the court before which those proceedings are taken is satisfied that it is unjust that it should be so treated.

(8) Acceptance of a fisheries infringement notice is not to be taken as an admission of liability for the purpose of, or in any way to affect or prejudice, any civil claim, action or proceeding.

Withdrawal of fisheries infringement notice

68D—(1) A fisheries infringement notice that has been served on a person may, whether or not it has been accepted, be withdrawn as provided in subsection (2) at any time within—

- (a) a period of 28 days following the service of the notice, if the person has not been allowed an additional period pursuant to section 68C (5); or
- (b) a period of 42 days following the service of the notice, if the person has been allowed such an additional period.

(2) For the purposes of subsection (1), a fisheries infringement notice served on a person may be withdrawn by the service on that person of a withdrawal notice stating that the infringement notice has been withdrawn.

(3) A withdrawal notice is to be in the prescribed form and is to be signed by—

- (a) if the offence relates to sea fisheries, the Director; or
- (b) if the offence relates to inland fisheries, the Commissioner—

or in either case by an officer authorized by the Director or Commissioner for the purpose.

(4) Where a fisheries infringement notice has been withdrawn under this section and a sum has been paid to a clerk of petty sessions by way of penalty pursuant to that notice, that clerk must repay the sum so paid to the person on whom the notice was served.

(5) Where a fisheries infringement notice has been served in respect of an offence and has been withdrawn, no evidence of the service, acceptance or withdrawal of the notice is admissible in any proceedings for that offence.

(6) References in this Act to the withdrawal of a fisheries infringement notice are taken to be references to the withdrawal of that notice under this section.

Effect of undertaking to pay a prescribed penalty

68E—(1) Where an undertaking referred to in section 68C (4) (b) is lodged with a clerk of petty sessions, the clerk must give directions to the person by whom the undertaking is given requiring that person to pay the penalty to which the undertaking relates in such instalments or within such time as may be specified in the directions.

(2) Directions may not be given under subsection (1) if they would have the effect of allowing any part of the penalty to which they relate to be paid after the expiration of 63 days from the date on which the infringement notice was served.

(3) Before giving directions under subsection (1) with respect to a person, a clerk of petty sessions shall consider any representations made to him or her by or on behalf of that person, whether at the time the undertaking is lodged or otherwise, with respect to the financial circumstances of the person, and shall give such directions as, having regard to those representations and all the circumstances of the case, he or she considers just and reasonable.

(4) Where a person fails to comply with any directions given under subsection (1), the same proceedings may be had in respect of so much of the penalty to which the directions relate as remains unpaid as if the penalty were a penalty imposed on him or her on summary conviction.

Service of notices

68F—(1) A fisheries infringement notice is to be served on a person by an officer or a police officer delivering it to him or her in person at or as near as practicable to the place of the commission of the offence.

(2) A withdrawal notice is to be served on a person by delivering it to him or her in person.

(3) A notification under section 68C (5) by a clerk of petty sessions is to be served on a person by sending it by post addressed to that person at the place shown as the address of that person in the relevant infringement notice.

Prescribed offences and penalties for Division 3A

68G—(1) The Governor may make regulations prescribing offences for the purposes of this Division and the penalty applicable to each such offence.

(2) Offences may be prescribed under subsection (1) that are offences under regulations made under this Act and in force for the time being.

Section 69 amended (Application of penalties)

8—Section 69 (2) of the Principal Act is amended by inserting “and of all penalties in respect of offences relating to inland fisheries recovered under Division 3A of Part IV” after “III”.

Saving for regulations

9—Any regulations made under Division 4A of Part III of the Principal Act and in force immediately before the commencement of this Act continue to have effect notwithstanding the amendments made by this Act and may be amended or rescinded by regulations made under Division 3A of Part IV of the Principal Act, as inserted by this Act.

*[Second reading presentation speech made in:—
House of Assembly on 5 May 1993
Legislative Council on 22 July 1993]*

