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**FISHERIES AMENDMENT ACT (No. 2) 1980**

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**TABLE OF PROVISIONS**

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| <ol style="list-style-type: none"><li>1. Short title.</li><li>2. Commencement.</li><li>3. Principal Act.</li><li>4. Amendment of section 3 of Principal Act (Interpretation).</li><li>5. Repeal of Division I of Part II of Principal Act (Sea Fisheries Advisory Board).</li><li>6. Amendment of section 8 of Principal Act (Powers of Minister).</li></ol> | <ol style="list-style-type: none"><li>7. Insertion in Principal Act of new section 8A.<br/>8A—Power of Minister to delegate certain of his functions and powers to Chairman of Fisheries Development Authority.</li><li>8. Amendment of section 35 of Principal Act (Powers and duties of the Commission).</li><li>9. Validation of appointments of certain employees.</li></ol> |
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**FISHERIES AMENDMENT ACT (No. 2) 1980**

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**No. 86 of 1980**

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**AN ACT to amend the Fisheries Act 1959 with respect to the functions and powers of the Minister under that Act, to empower the Minister to delegate certain of those functions and powers to the Chairman of the Fisheries Development Authority, and to provide for the validation of certain appointments purporting to have been made under section 8 of the Principal Act.**

**[Royal Assent 19 December 1980]**

**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:—

**1**—This Act may be cited as the *Fisheries Amendment Act* Short title. (No. 2) 1980.

**2**—This Act shall commence on the same date as the *Fisheries Development Amendment Act* Commencement. 1980 commences.

Principal Act.

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

Amendment of section 3 of Principal Act (Interpretation).

**4**—Section 3 (1) of the Principal Act is amended by omitting the definition of “ Board ”.

Repeal of Division I of Part II of Principal Act (Sea Fisheries Advisory Board).

**5**—Division I of Part II of the Principal Act is repealed.

Amendment of section 8 of Principal Act (Powers of Minister).

**6**—(1) Section 8 of the Principal Act is amended by omitting subsection (6) and substituting the following subsections:—

(6) The Minister may appoint and employ such officers and employees as he considers necessary for the purposes of this Act in relation to matters under his control.

(6A) Without limiting the generality of subsection (6), the reference in that subsection to officers includes a reference to fisheries inspectors, bailiffs, and ships’ officers.

(6B) Subject to this section, a person appointed and employed under subsection (6) is entitled to—

(a) such salary and allowances as are determined in accordance with an award made under Part V of the *Public Service Act 1973*; and

(b) such other conditions of employment as may be determined from time to time by the Minister.

(6C) The provisions of the *Public Service Act 1973*, other than Parts V and VI, do not apply to a person appointed and employed under subsection (6).

(6D) A person appointed and employed under subsection (6) shall be deemed to be an employee for the purposes of the *Superannuation Act 1938*, the *Retirement Benefits Act 1970*, and the *State Employees (Long-Service Leave) Act 1950*.

\* No. 16 of 1959. For this Act, as amended to 1968, see Appendix C to Part I of the Annual Volume of the Statutes for 1968. Subsequently amended by Nos. 37 and 47 of 1970, No. 102 of 1973, Nos. 77 and 105 of 1974, Nos. 61 and 114 of 1977, and No. 4 of 1980, and affected by S.R. 1973, No. 132.

(2) A person holding an appointment under section 8 (6) of the Principal Act, as in force immediately before the commencement of this section, shall continue to hold appointment under section 8 (6) of that Act, as in force on and after that commencement.

(3) A person referred to in subsection (2) shall be entitled to retain any rights and privileges accruing or accrued to him before the commencement of this section, including any entitlement to sick leave, annual leave, or long-service leave.

(4) A person referred to in subsection (2) shall, for any period of service in respect of which he has made contributions to the Superannuation Fund or the Retirement Benefits Fund, be deemed to have been an employee for the purposes of the *Superannuation Act 1938*, or, as the case may be, the *Retirement Benefits Act 1970*.

**7**—After section 8 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 8A.

8A—(1) The Minister may, by instrument in writing under his hand, delegate to the Chairman of the Fisheries Development Authority such of the Minister's functions and powers as are specified in the instrument, other than—

Power of Minister to delegate certain of his functions and powers to Chairman of Fisheries Development Authority.

(a) this power of delegation; and

(b) the power to determine the seaward limit of a river under section 3A,

and may, at any time, by a similar instrument, revoke any such delegation either wholly or in part.

(2) The fact that a delegation has been made under subsection (1) shall not affect the operation of section 8 (4) or the vesting of property in the Minister under any provision of Part IV.

(3) A function or power, the performance or exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument of delegation.

(5) Notwithstanding any delegation under this section, the Minister may continue to perform or exercise all or any of the functions or powers delegated.

(6) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by or to the Minister and shall be deemed to have been done by or to the Minister.

(7) An instrument purporting to be signed by the Chairman of the Fisheries Development Authority in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Minister under seal and, until the contrary is proved, shall be deemed to be an instrument signed by the Chairman of the Fisheries Development Authority as a delegate of the Minister under this section.

(8) Where the Minister delegates to the Chairman of the Fisheries Development Authority his powers to appoint officers and employees under section 8 (6), the Chairman shall, notwithstanding anything in the *Public Service Act* 1973 to the contrary, be deemed to be the controlling authority in respect of those officers and employees for the purposes of Parts V and VI of that Act.

Amendment of section 35 of Principal Act (Powers and duties of the Commission).

**8**—Section 35 (2) of the Principal Act is amended by omitting “servants”, where twice occurring, and substituting “employees”.

Validation of appointments of certain employees.

**9**—(1) Where, before the commencement of section 6, the Minister purported under subsection (6) of section 8 of the Principal Act (as in force immediately before that commencement) to appoint persons to positions other than those specified in that subsection, those purported appointments shall be, and be deemed always to have been, as valid and effectual as they would have been if section 6 had then commenced.

(2) The references in section 5 of the *Public Service Amendment Act 1979* to persons purporting to be or to have been appointed under section 8 (6) of the Principal Act shall be read as references to persons whose purported appointments are declared valid and effectual by subsection (1).

