



SEA FISHERIES LICENCE ACT 1989

No. 57 of 1989

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SCHEDULE 1

PROVISIONS WITH RESPECT TO MEMBERSHIP OF THE APPEAL BOARD



SEA FISHERIES LICENCE ACT 1989

No. 57 of 1989

AN ACT to regulate the issue of fishing-boat licences

[Royal Assent 11 January 1990]

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:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Sea Fisheries Licence Act 1989*.

Commencement

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

Interpretation

3—(1) In this Act, unless the contrary intention appears—

“**abalone licensee**” means the holder of both an abalone licence issued under the Regulations and an active licence;

“**active licence**” means—

(a) a fishing-boat licence for a fishing-boat in respect of which there is no other licence; or

(b) a licence issued under the Regulations to a person whose address on the licence application is outside this State;

“**appeal**” means an appeal made under section 20;

“**Appeal Board**” means the Sea Fisheries Licence Appeal Board established under section 18;

“**appellant**” means a person who makes an appeal under section 20;

“**beach price**” means the price payable or paid in respect of landed fish;

“**Director**” means the Director of Sea Fisheries;

“**current licensee**” means the holder of an active licence;

“**fishing-boat licence**” means a fishing-boat licence issued under the Regulations;

“**former licensee**” means a person who was the holder of an active licence or inactive licence at any time during the prescribed period;

“**inactive licence**” means a fishing-boat licence in respect of a fishing-boat which, at any time during the currency of the fishing-boat licence—

(a) ceases to exist; or

(b) is sold but the fishing-boat licence attached to that fishing-boat is not transferred to the new owner;

“**prescribed period**” means the period commencing on 1st January 1986 and ending on 31st December 1988;

“**prescribed year**” means—

(a) the year prescribed by the Regulations for the purposes of this Act; or

(b) where no year is so prescribed, the year commencing on 1st January 1990 and ending on 31st December 1990;

“**records**” includes accounts, books, deeds, documents, minutes, receipts, registers, taxation returns or writings and any other sources of information compiled, recorded or stored by electronic process or by any other means;

“Regulations” means the *Sea Fisheries Regulations 1962*;

“restricted purpose licence” means a fishing-boat licence which is subject to conditions imposed under Regulation 5 (6) (b) and (c) or Regulation 19AB of the Regulations;

“State fishing waters” has the meaning assigned to that expression under section 3A of the *Fisheries Act 1959*.

(2) A reference in this Act to the issue of an active licence, inactive licence or restricted purpose licence is a reference to the issue of that licence as a fishing-boat licence for the prescribed year.

PART 2

ISSUE OF FISHING-BOAT LICENCES

Division 1—Current and former licensees

Requirement to show cause why licence be issued

4—(1) As soon as practicable after the commencement of this Act, the Director shall serve a written notice requiring a person who is a current licensee or a former licensee of a fishing-boat licence issued before 11th November 1987 to show cause within 30 days of the date of the notice, why that licence should be issued.

(2) If a person fails, without reasonable excuse, to comply with a requirement in a notice under subsection (1) within the period specified in that subsection, the fishing-boat licence held by that person shall not be issued.

Procedure in relation to issue of active licences

5—In order to show cause why an active licence should be issued, a current licensee shall satisfy the Director that in any 12 month period during the prescribed period the fishing-boat to which the active licence relates has—

- (a) landed a total of 5 000 kilogrammes of fish in the State; or
- (b) landed fish worth an amount of at least \$12 000 beach price in the State; or
- (c) been used for the purpose of commercial fishing in State fishing waters for a period of at least 4 consecutive months and the current licensee has lodged returns in respect of that 4 month period in accordance with the Regulations.

Procedure in relation to issue of inactive licences

6—(1) In order to show cause why an inactive licence should be issued a current licensee or former licensee shall satisfy the Director that in any 12 month period during the prescribed period—

- (a) the inactive licence had been an active licence; and
- (b) that the fishing-boat to which the active licence relates has—
 - (i) landed a total of 5 000 kilogrammes of fish in the State; or
 - (ii) landed fish worth an amount of at least \$12 000 beach price in the State; or
 - (iii) been used for the purpose of commercial fishing in State fishing waters for a period of at least 4 consecutive months and the current licensee or former licensee lodged returns in respect of that 4 month period in accordance with the Regulations.

(2) In addition to the matters referred to in subsection (1), a current licensee or former licensee—

- (a) shall inform the Director as to the circumstances in which the fishing-boat licence became inactive; and
- (b) where the fishing-boat licence is inactive by reason of loss, sale or disposal shall satisfy the Director that—
 - (i) progress is being made to replace the fishing-boat; or
 - (ii) if replacement of the fishing-boat is not required, there is sufficient reason for the current licensee or former licensee to retain the inactive licence.

Reasons for issue of licence

7—Where, in relation to an active licence or inactive licence, the Director is satisfied as to the matters referred to in section 5 or 6, the Director shall—

- (a) issue the active licence or inactive licence; and
- (b) serve a written notice informing the current licensee or former licensee of the issue and the reasons for that issue.

Refusal to issue licence

8—(1) Where, in relation to an active licence or inactive licence, the Director is not satisfied as to the matters referred to in section 5 or 6, the Director shall—

- (a) refuse to issue the active licence or inactive licence; and

(b) serve a written notice informing the current licensee or former licensee of the refusal and the reasons for that refusal.

(2) Where the Director refuses to issue an active licence or inactive licence under subsection (1) (a), the current licensee or former licensee may apply to the Minister to review the refusal.

(3) On receipt of an application by a person under subsection (2), the Minister—

(a) on being satisfied that extenuating circumstances exist, may order the Director to issue to that person a licence referred to in subsection (1); or

(b) if not so satisfied, shall confirm the refusal of the Director to issue the licence.

(4) The Minister shall serve a written notice informing the current licensee or former licensee—

(a) of the order to the Director to issue a licence and the reasons for that issue; or

(b) of the confirmation of the refusal of the Director to issue a licence and the reasons for that confirmation.

Issue of certain restricted purpose licences in certain cases

9—(1) Where a current licensee or former licensee of a restricted purpose licence issued on or after 11th November 1987 fails to satisfy the Director as to any of the matters referred to in section 5 or 6, the Director may issue that licence if the Director is satisfied that the licensee has a proven dependence on fishing for the purposes of sale or business.

(2) Where the Director issues a restricted purpose licence under subsection (1)—

(a) the licence shall be subject to the same conditions that were previously attached to that licence; and

(b) the Director shall serve a written notice informing the current licensee or former licensee of the issue and the reasons for that issue.

(3) Where in relation to a restricted purpose licence, the Director is not satisfied as is provided for in subsection (1), the Director—

(a) shall refuse to issue that licence; and

(b) shall serve a written notice informing the current licensee or former licensee of the refusal and the reasons for that refusal.

Election to show cause in relation to issue of certain licences

10—(1) The current licensee or former licensee of an active licence or inactive licence issued on or after 11th November 1987 may elect to show cause, in accordance with section 5 or 6, why the active licence or inactive licence should be issued.

(2) Where a current licensee or former licensee makes an election under subsection (1), the Director may determine—

- (a) that the totals, amounts and periods referred to in section 5 (a), (b) and (c) and section 6 (1) (b) be adjusted; and
- (b) the proportions of any such adjustments.

(3) In making a determination under subsection (2) (b), the Director shall have regard to the length of period during which the active licence or inactive licence has been in force.

(4) Where, in relation to a licence referred to in subsection (1), a current licensee or former licensee makes an election under that subsection, the Director—

- (a) if satisfied as to the matters referred to in section 5 or 6, may issue the licence; or
- (b) if not so satisfied, shall refuse to issue the licence.

(5) Where the Director issues a licence or refuses to issue a licence under subsection (4), the Director shall serve a written notice informing the current licensee or former licensee—

- (a) of the issue and the reasons for that issue; or
- (b) of the refusal and the reasons for that refusal.

Issue of certain licences where no election to show cause

11—(1) When the current licensee or former licensee of an active licence or inactive licence issued on or after 11th November 1987 does not make an election under section 10, the active licence or inactive licence—

- (a) continues in force until it expires in accordance with the Regulations; and
- (b) in the case of a restricted purpose licence, may be issued by the Director subject to the same conditions, if any, that were previously attached to that licence.

(2) Where the Director issues a restricted purpose licence under subsection (1), the Director shall serve a written notice informing the current licensee or former licensee of the issue and the reasons for that issue.

*Division 2—Abalone licensees***Automatic issue of one licence held by abalone licensee**

12—Where an abalone licensee holds only one active licence, that active licence shall be issued by the Director.

Election by abalone licensee to show cause in relation to issue of 2 or more licences

13—(1) Where an abalone licensee holds 2 or more active licences in respect of 2 or more fishing-boats, that licensee may elect to show cause, in accordance with section 5 and subject to subsection (2), why the active licences should be issued.

(2) For the purpose of showing cause under this section, a reference to “fish” in section 5 excludes abalone.

Issue of 2 or more licences

14—Where, in relation to 2 or more active licences, an abalone licensee elects to show cause in accordance with section 5 and the Director is satisfied as to the matters referred to in that section in respect of all of those active licences, the Director shall—

- (a) issue those licences; and
- (b) serve a written notice informing the abalone licensee of the issue and the reasons for that issue.

Issue or refusal to issue one or more licences

15—Where, in relation to 2 or more active licences, an abalone licensee elects to show cause in accordance with section 5 and the Director is satisfied as to the matters specified in that section in respect of some but not all of those active licences, the Director shall—

- (a) issue any active licence in respect of which he is satisfied; and
- (b) refuse to issue any active licence in respect of which he is not so satisfied; and
- (c) serve a written notice informing the abalone licensee of the issue and the reasons for the issue and of the refusal and the reasons for the refusal.

Issue of only one licence where election to show cause

16—(1) Where, in relation to 2 or more active licences, an abalone licensee elects to show cause in accordance with section 5 and the Director is not satisfied as to the matters specified in that section in respect of any of those active licences, the Director shall—

- (a) issue only one of those active licences; and
- (b) refuse to issue the other active licences; and
- (c) serve a written notice informing the abalone licensee of the issue and the reasons for that issue and of the refusal and the reasons for the refusal.

(2) For the purpose of subsection (1) (a), the Director may determine to issue any active licence that the Director considers appropriate.

Issue of only one licence where no election to show cause

17—(1) Where an abalone licensee who holds 2 or more active licences does not elect to show cause, in accordance with section 5, why the licences should be issued, the Director shall—

- (a) issue only one of those active licences; and
- (b) serve a written notice informing the abalone licensee of the issue and the reasons for that issue and of the refusal and the reasons for the refusal.

(2) For the purpose of subsection (1) (a), the Director may determine to issue any active licence that the Director considers appropriate.

PART 3**APPEALS****Sea Fisheries Licence Appeal Board**

18—(1) There is established by this Act a Sea Fisheries Licence Appeal Board.

(2) The Appeal Board shall consist of 3 members appointed by the Minister of whom—

- (a) one shall be the chairperson; and

(b) one shall be a person nominated by the Tasmanian Fishing Industry Council; and

(c) one shall be a person nominated by the Secretary of the Department of Primary Industry.

(3) The member appointed under subsection (2) (c) shall not be a person who takes part in any matter to which an appeal relates.

(4) Schedule 1 has effect with respect to the membership of the Appeal Board.

Jurisdiction of Appeal Board

19—(1) Subject to subsection (2), the Appeal Board shall hear and determine any appeals.

(2) The Appeal Board shall not hear and determine any appeal where the appellant—

(a) has not produced any records to substantiate the appeal; or

(b) has failed to comply with a requirement in a notice under section 4 (1); or

(c) has failed to comply with a requirement in a notice under section 27 (2).

Rights of appeal

20—(1) A current licensee or former licensee aggrieved by—

(a) the refusal of the Director to issue a licence under section 8 (1) (a), 9 (3) (a), 10 (4) (b), 15 (b) or 16 (1) (b); or

(b) in the case of an application to the Minister under section 8 (2), the confirmation by the Minister of the refusal of the Director to issue a licence under section 5 or 6; or

(c) a determination of the Director made under section 10 (2), 16 (2) or 17 (2)—

may appeal to the Appeal Board.

(2) An appeal—

(a) shall be made in writing; and

(b) shall specify the grounds of the appeal; and

(c) shall be lodged within 21 days after the date of a notice under section 8 (1) (b), 8 (4), 9 (3) (b), 10 (5) (b), 15 (c), 16 (1) (c) or 17 (1).

Procedure of Appeal Board

21—(1) The Appeal Board may, for the purposes of hearing and determining an appeal, do any or all of the following:—

- (a) summon any person whose evidence appears to be material to the appeal;
- (b) take evidence on oath or affirmation and for that purpose, administer oaths and affirmations;
- (c) examine any witness on oath or affirmation;
- (d) require any person to produce any records in that person's possession or control that in the opinion of the Appeal Board appear to be material to the appeal;
- (e) proceed to hear and determine the appeal in the absence of any person who has been summoned to appear before it;
- (f) adjourn the hearing from time to time and from place to place.

(2) The Appeal Board may impose a fine not exceeding \$1 000 on any person who neglects or fails, without reasonable cause—

- (a) to comply with a summons under subsection (1) (a); or
- (b) to make an oath or affirmation under subsection (1) (b); or
- (c) to produce any records when required to do so under subsection (1) (d).

Hearing of appeal

22—(1) The Appeal Board, in dealing with an appeal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself on any matter in such a manner as it thinks fit; and
- (c) shall act according to the rules of natural justice; and
- (d) shall conduct the proceedings with as little formality and technicality as are necessary for the proper consideration of the matters before it; and
- (e) shall expedite the hearing of the appeal but not in a manner which is likely to cause a person appearing before it to be unfairly treated.

(2) The Appeal Board may impose a fine not exceeding \$1 000 on any person who—

- (a) obstructs, hinders or interrupts the proceedings of the Appeal Board; or
- (b) threatens or insults a member of the Appeal Board.

Procedure at hearing of appeal

23—At the hearing of any appeal, the appellant—

- (a) subject to section 24, is not entitled to be represented by an agent; and
- (b) subject to section 24, shall conduct his own case; and
- (c) may produce evidence of dependence on fishing for the purpose of sale or business.

Representation by agents

24—(1) The Appeal Board may, subject to subsections (2) and (3), allow an appellant to be represented by an agent if, at a hearing of an appeal it appears to the Appeal Board—

- (a) that the appellant is a body corporate and that the agent representing it is an employee of that body corporate; or
- (b) that, as a matter of necessity, it is just to allow the appellant to be so represented.

(2) A party to an appeal may be represented at a hearing of the appeal by a legal practitioner or a professional advocate.

(3) Before allowing the appellant to be represented at a hearing of an appeal by an agent who is not a legal practitioner, the Appeal Board shall be satisfied that the agent—

- (a) has sufficient knowledge of the subject matter of the appeal; and
- (b) is vested with sufficient authority to bind the appellant.

Decisions of Appeal Board

25—(1) In deciding an appeal, the Appeal Board may—

- (a) dismiss the appeal; or
- (b) order the Director to issue the licence to which the appeal relates subject to the same conditions, if any, that were previously attached to the licence; or
- (c) confirm the refusal of the Director to issue that licence; or
- (d) confirm the determination of the Director made under section 10 (2), 16 (2) or 17 (2); or
- (e) vary that determination.

(2) In deciding an appeal, the Appeal Board may order the Director to issue the licence to which the appeal relates notwithstanding that it is not satisfied as to the matters referred to in section 5 or 6, if it is satisfied that the appellant has a proven dependence on fishing for the purposes of sale or business.

(3) The Appeal Board may make such an order relating to costs as it considers appropriate.

PART 4

MISCELLANEOUS

Service of notices

26—Where under this Act a notice is required to be served on a person, the notice may be served by—

- (a) sending it by registered post to the person's place of residence, business or employment last known to the Director; or
- (b) delivering it to that person personally.

Production of records

27—(1) In order to satisfy the Director as to the matters referred to in section 5 or 6, a current licensee or former licensee may produce such records as may be appropriate.

(2) The Director may serve a written notice requiring a current licensee or former licensee to produce within the period specified in the notice such further records as, in the opinion of the Director, are appropriate to satisfy the Director as to the matters referred to in section 5 or 6.

(3) If a person fails to comply with a requirement in a notice under subsection (2) within the period specified in that notice, the Director may suspend any consideration of the matters relating to the issue of an active licence or inactive licence until the requirement is complied with.

False and misleading statements

28—(1) In connection with any matter relating to the issue of licences under this Act, a person shall not make a statement or representation orally or in writing knowing or believing that the statement or representation is false or misleading.

Penalty: Fine not exceeding 20 penalty units.

(2) It is a defence to a charge under subsection (1) if it is proved that, at the time when the statement or representation was made, the person believed on reasonable grounds that it was neither false nor misleading.

Protection from liability, &c., for members of Appeal Board

29—Where a member of the Appeal Board does or purports to do, or omits to do, any act or thing in good faith in the exercise of a power or the performance of a function under this Act, that member is not personally subject to any liability, action, claim or demand in respect of that act or omission.

Regulations

30—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations made under this section may apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in those regulations.

(3) Regulations made under this section may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a penalty not exceeding 10 penalty units and, in the case of a continuing offence, a further penalty not exceeding 5 penalty units for each day during which the offence continues.

Expiry

31—This Act expires on 30th June 1990.

Continuation of appeals

32—An appeal made under this Act before the date on which this Act expires, may be heard after that date and any decision of the Appeal Board in relation to that appeal has effect as if this Act had not expired.

SCHEDULE 1**Section 18 (4)****PROVISIONS WITH RESPECT TO MEMBERSHIP OF THE APPEAL BOARD****Interpretation**

1—In this Schedule, “member” means a member of the Appeal Board.

Term of office

2—A member shall be appointed for such term, as is specified in the instrument of appointment.

Provisions relating to members

3—(1) Where, by or under any Act, provision is made requiring the holder of a specified office to devote the whole of the time to the duties of the office, that provision shall not operate to disqualify that person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to a member under clause 4.

(2) The office of a member shall not, for the purposes of any Act, be deemed to be an office or place of profit under the Crown.

Remuneration of members

4—Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Appointment of deputy

5—(1) A member may, with the approval of the Minister, appoint another person to be the deputy of that member, and a deputy so appointed holds office for such period as the Minister may determine.

(2) All things done or omitted to be done by a deputy while acting in the office of a member shall be as valid, and shall have the same consequences, as if they had been done or omitted to be done by that member.

SCHEDULE 1—*Continued*

(3) The Minister may remove a member from office—

(a) for misbehaviour or incompetence; or

(b) if he is satisfied, having regard to the information supplied by the person who, or the association, organization or body which, nominated that member, that the member is no longer qualified to be a member of the Appeal Board; or

(c) if that association, organization or body recommends the removal of that member.

(4) The appointment of any deputy of a member shall terminate if that member is removed from office pursuant to subclause (3).

Filling of casual vacancies

6—On the occurrence of a vacancy in the office of a member, the Minister may appoint a person to the vacant office for the balance of the predecessor's term of office.

Validity of proceedings, &c.

7—(1) No act or proceeding of the Appeal Board or of any person acting pursuant to any direction of the Appeal Board is invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

(2) All acts and proceedings of the Appeal Board or of any person acting pursuant to any direction of the Appeal Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member or deputy or that any person was disqualified from acting as, or incapable of being, a member or deputy, as valid as if the member or deputy had been duly appointed and was qualified to act as, or capable of being, a member or deputy, and as if the Appeal Board had been fully constituted.

SCHEDULE 1—*Continued***Presumptions**

8—In any proceedings by or against the Appeal Board, unless evidence is given to the contrary, no proof shall be required of—

- (a) the constitution of the Appeal Board; or
- (b) any resolution of the Appeal Board; or
- (c) the appointment of any member or deputy of a member.