

FISHERIES AND OYSTER FARMS (AMENDMENT) ACT.

Act No. 28, 1942.

George VI.
No. 28, 1942.

An Act to make further provision for and in relation to the marketing of fish; to amend the Fisheries and Oyster Farms Act, 1935-1938, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 18th December, 1942.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short
title.

1. (1) This Act may be cited as the "Fisheries and Oyster Farms (Amendment) Act, 1942."

Citation.

(2) The Fisheries and Oyster Farms Act, 1935, as amended by subsequent Acts and by this Act, may be cited as the Fisheries and Oyster Farms Act, 1935-1942.

2.

2. The Fisheries and Oyster Farms Act, 1935-1938, is amended—

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Amendment
of Act No.
58, 1935.

Sec. 4.
(Defini-
tions.)

- (a) (i) by inserting in subsection one of section four after the definition of "Crown lands" the following new definition:—

"District" means the Metropolitan Fish Supply District and any other fish supply district constituted under and for the purposes of this Act.

- (ii) by omitting from the same subsection the definition of "Market" and by inserting in lieu thereof the following new definition:—

"Market" means the fish market established at the date of commencement of the Fisheries and Oyster Farms (Amendment) Act, 1942, by the Municipal Council of Sydney in the Metropolitan Fish Supply District, in pursuance of the provisions of section one hundred and ninety-five of the Sydney Corporation Act, 1932-1942, and also includes any other fish market that may be established by the Municipal Council of Sydney in pursuance of the provisions of the said section, and any other fish market established in and for a district under this Act and all lands, improvements and works provided or used for or in connection with any such market.

- (iii) by omitting from the same subsection the definition "Sell";

- (iv) by inserting in the same subsection after the definition "Tidal waters" the following new definition:—

"To sell" means to sell by wholesale or by retail or by auction, and includes barter or exchange, supply for profit

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profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale, cause or suffer or allow to be sold, offered or exposed for sale; and words derived therefrom have a corresponding meaning.

Sec. 40.
(Licensing
of fish
agents and
salesmen.)

- (b) (i) by inserting in subsection one of section forty after the words "fish market" the words "established under this Act or";
- (ii) by inserting at the end of the same section the following new subsection:—

(6) (a) The Minister may refuse any application for a license to act as a fish agent or may cancel any license to act as a fish agent if, in his opinion, the circumstances justify such refusal or cancellation.

The powers conferred by this paragraph shall be in addition to any other power of refusal or cancellation conferred by or under this Act.

(b) Where, under the power conferred by this subsection, the Minister refuses any such application by an applicant who was, at the date of the application, or who had been, before that date, the holder of a license to act as a fish agent, or cancels any such license, the provisions of section one hundred and nineteen of this Act shall not apply in respect thereof, but the applicant or the holder of the license, as the case may be, shall be entitled to compensation as provided in this subsection.

(c) The amount of such compensation shall be determined by assessors to be appointed by the Governor.

Of the assessors so appointed—

- (i) one shall be appointed on the nomination of the Minister, and shall be appointed as chairman;
- (ii)

(ii) one shall be an officer of the Treasury and shall be appointed on the nomination of the Colonial Treasurer; No. 28, 1942.

(iii) one shall be a person nominated in the manner prescribed by the holders of licenses to act as fish agents.

(d) For the purpose of any determination under this subsection the applicant or the holder of the license in respect of the cancellation of which the claim is made, as the case may be, shall produce or cause to be produced to the assessors or to any person appointed by them for the purpose, all books, accounts, registers, records, documents and writings relating to the fish agency business of such applicant or holder, and shall furnish or cause to be furnished to the assessors such information in relation to such business as the assessors may require.

(e) The assessors shall determine the amount of compensation at such sum as they deem reasonable: Provided that the sum so determined shall not in any case exceed an amount equal to the average annual net profits of the applicant or the holder of the license in respect of the cancellation of which the claim is made, as the case may be, during the period of five years immediately preceding the refusal or cancellation of the license.

(f) Any compensation payable under this subsection shall be paid out of moneys provided by Parliament.

(c) by inserting next after section forty the following new sections:—

New secs.
40A, 40B.

40A. (1) The Governor may by proclamation published in the Gazette—

Constitution
of fish
supply
districts.

(a) constitute any part of New South Wales to be a fish supply district for the

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the purposes of this Act by such name as is specified in the proclamation;

- (b) join two or more such districts so as to form one such district;
- (c) from time to time alter or vary the boundaries of any such district;
- (d) abolish any such district.

(2) The area within the county of Cumberland described as follows:—

Commencing at high-water mark on the east coastline of the State of New South Wales at Barrenjoey; and bounded thence by a line bearing generally westerly to the northern extremity of Hawkesbury River railway bridge; thence by the Great Northern Railway line south-south-westerly to Pennant Hills railway station; thence by a line south-westerly to Parramatta railway station; thence south-easterly to Loftus Junction railway station; thence easterly to Hacking Point; and thence by the east coastline aforesaid, and lines crossing the entrances of Bate Bay, Botany Bay, and Port Jackson, generally northerly to the point of commencement;

shall be a fish supply district for the purposes of this Act and shall be known as the Metropolitan Fish Supply District.

The Governor may from time to time by proclamation published in the Gazette alter or vary the boundaries of the said district and the boundaries of the Metropolitan Fish Supply District set out in this subsection shall be deemed to be amended in accordance with the boundaries set out in a proclamation in that behalf as from the date of the publication thereof.

40B. (1) Subject to the provisions of this Act no person shall in any district sell any fish for human consumption unless such fish have first been brought to and sold in the market in the district. In

All fish to
be sold at
market.

In this subsection "fish" does not include oysters. No. 28, 1942.

(2) When fish have been brought to the market in any district they shall not be sold for human consumption until they have been inspected and certified as fit for human consumption.

(3) Subsection one of this section shall not apply to and in respect of any sale of fish made by a licensed fisherman who is the holder of a consent given by the Minister under this subsection, which consent the Minister is hereby authorised to give.

Any such consent shall be subject to the terms and conditions specified therein. The terms and conditions specified in any such consent shall include the following:—

- (i) the fish sold shall be fish taken by the licensed fisherman;
- (ii) the sale shall be made direct to consumers;
- (iii) the sale shall be made in the locality from which the licensed fisherman operates;

and may also include such other terms and conditions as may be prescribed or as the Minister may determine.

(4) Any person who contravenes any of the provisions of this section or any term or condition of any consent given under this section shall, upon conviction before a police or stipendiary magistrate or any two justices, be liable to a penalty not exceeding fifty pounds.

3. The Fisheries and Oyster Farms Act, 1935-1938, is further amended—

- (a) by inserting next after section forty-one the following new Division:—

Further amendment of Act No. 58, 1935. New Division 6A.

DIVISION 6A.—Powers of the Minister.

41A. For the purpose of this Division the Minister is hereby constituted a corporation sole under the name of "The Chief Secretary of New South Wales."

Constitution of Minister as corporation sole.

The

No. 28, 1942.

The said corporation sole shall have perpetual succession and an official seal and may in the corporate name sue and be sued and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property and of doing and suffering all such other acts and things as a body corporate may by law do and suffer.

Where any property real or personal or interest therein or charge thereon is vested in or is acquired by the said corporation sole, the same shall, unless otherwise disposed of by the said corporation sole, pass to and devolve on and vest in its successors.

The seal of the corporation sole shall not be affixed to any instrument or writing except in the presence of the Minister, and he shall attest by his signature the fact and date of the seal being so affixed.

41B. (1) Subject to this Act the Minister is hereby empowered and authorised:—

Power to
carry on
business.

- (a) to undertake and carry on in any district the business of the getting, preparation, purchase, sale, supply and distribution of fish and all products and by-products of the same and of the storage of fish and other foodstuffs, products and by-products and for or incidental to that business to establish, maintain, regulate and control markets, and such shops, depots and other establishments as he may deem necessary;
- (b) to arrange for the purchase and disposal of inedible fish, offal and other matter, including the application of any manufacturing process thereto to convert it into a merchantable article;
- (c) to cause arrangements to be made for the receipt at the markets of oysters and prawns, and for the purchase, storing, selling, supplying and distribution of oysters and prawns;

(d)

- (d) to demand, collect, and receive in No. 28, 1942. respect and for the use of any property or any service performed under this Act in connection with the business of fish supply or in connection with the sale of any fish, ice or other product such rents, commissions, tolls, dues, rates, fees and charges as may be prescribed, or where no such rent, commission, toll, due, rate, fee or charge has been prescribed such reasonable rent, commission, toll, due, rate, fee or charge as may be agreed upon;
- (e) to pay sums from the proceeds of the sale of fish supplied by any licensed fisherman in reduction or liquidation of any amount proved to the satisfaction of the Minister to be owing by the fisherman to a person who is or was a licensed fish agent and who holds a lien or other encumbrance as security for payment of such amount over any property used by the fisherman in his operations as such;
- (f) to make advances to licensed fishermen for the purchase of boats, gear or equipment necessary for carrying on the calling of a licensed fisherman on such security and subject to such terms and conditions as to repayment of the advance and interest thereon as may be approved by the Colonial Treasurer either generally or in any particular case:

Provided, however, that notwithstanding any of the provisions of this Act the Municipal Council of Sydney may carry on in respect of any fish market already established by it in the Metropolitan Fish Supply District at the date of commencement of the Fisheries and Oyster Farms (Amendment) Act, 1942, any of the activities previously carried on by it at such market

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market except those relating to the marketing and sale of fish which shall be regulated and controlled by the Minister in accordance with the provisions of this Act:

Provided further that the provisions of Part XX of the Local Government Act, 1919, shall not extend to any market, depot, shop or other establishment established by the Minister in pursuance of the provisions of this section or to any fish therein.

Powers on default.

(2) Where default is made in the payment of any rents, commissions, tolls, dues, rates, fees or charges the Minister (in addition to any other right or remedy which he may have) may cause to be seized and sold any fish or goods the property of the debtor which are in any market or upon any land or premises under the control of the Minister and after being reimbursed the amount of such rents, commissions, tolls, dues, rates, fees or charges and the expense of such seizure and sale shall on demand cause to be rendered the surplus proceeds of sale (if any) and also such of the said fish or goods as remain unsold to the person entitled thereto.

(3) Proceedings may be taken by and in the name of the corporation sole created by section 41A of this Act in any court of competent jurisdiction to recover as a debt the amount of any rents, commissions, tolls, dues, rates, fees, charges and expenses due and payable to the Minister.

Sales made on behalf of the Minister of fish for human consumption to be by public auction.

41c. Where, in the course of the business carried on by the Minister under the powers and authorities conferred by this Division fish are sold for human consumption at the market in any district such sale shall be made by public auction by an officer or officers specially appointed for the purpose.

Notwithstanding anything in this Act the officer or officers so appointed shall not be required to hold a license to act as a fish agent or salesman.

41d.

41D. (1) All fees or sums of money received under the provisions of this Division shall go to form a fund to be established at the Treasury and called the Fish Marketing Fund out of which shall be defrayed—

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Fund to be established.

- (a) the expenses and other charges incurred by the Minister or for which the Minister may become liable in the course of the business carried on by him under the powers and authorities conferred by this Division;
- (b) the salaries, wages and allowances of officers and employees employed in or in connection with such business;
- (c) the expenses of the establishment, construction, extension, alteration and repair of any additional market, buildings, cold stores, shops and wharves, and all other expenses involved in the carrying out of the powers and authorities conferred by this Division;
- (d) the cost involved in payment of compensation under paragraph (f) of subsection three of section 41E of this Act;
- (e) the cost of reimbursing to the Colonial Treasurer moneys applied in payment of compensation under paragraph (f) of subsection six of section forty of this Act.

(2) Any profits made after providing for interest, payments to sinking fund, ordinary depreciation, and other like matters or things, shall be carried to a reserve fund, and such reserve fund shall be applied upon the certificate of the Minister for or towards any of the purposes of the business carried on by him under the authority of this Division or in or towards such objects in furtherance of the fishing or oyster farming industries as the Minister shall determine.

Profits.

Fisheries and Oyster Farms (Amendment) Act.**No. 28, 1942.****Cancellation
of licenses—
compensa-
tion.**

41E. (1) This section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(2) On the commencement of this section all licenses to act as fish agents or salesmen issued under section forty of this Act shall be cancelled, and no further licenses shall be issued under that section after such commencement.

(3) (a) The holder of any license to act as a fish agent which was in force immediately before such commencement shall be entitled to compensation as provided in this subsection.

(b) The amount of such compensation shall be determined by assessors to be appointed by the Governor.

Of the assessors so appointed—

- (i) one shall be appointed on the nomination of the Minister and shall be appointed as chairman;
- (ii) one shall be an officer of the Treasury and shall be appointed on the nomination of the Colonial Treasurer;
- (iii) one shall be a person nominated in the manner prescribed by the persons who, immediately before such commencement, were the holders of such licenses.

(c) For the purpose of any determination under this subsection the holder of the license, in respect of the cancellation of which the claim is made, shall produce or cause to be produced to the assessors or to any person appointed by them for the purpose, all books, accounts, registers, records, documents and writings relating to the fish agency business of such holder, and shall furnish or cause to be furnished to the assessors such information in relation to such business as the assessors may require.

(d) In making any determination under this subsection the assessors shall have regard to any appointment of or offer of an appointment

appointment made to the holder of the license in respect of the cancellation of which the claim is made, or, where such holder is a firm, to any partner in such firm. No. 28, 1942.

(e) The assessors shall determine the amount of compensation at such sum as they deem reasonable: Provided that the sum so determined shall not in any case exceed an amount equal to the average annual net profits of the holder of the license in respect of the cancellation of which the claim is made, during the period of five years immediately preceding the commencement of this section.

(f) Any compensation payable under this subsection shall be paid out of the Fish Marketing Fund established under this Division.

(4) (a) On and after the commencement of this section, the owner of or the person in possession or charge of fish shall not permit or allow the same or any of them to be sold for human consumption at the market in any district otherwise than by public auction by an officer or officers specially appointed for that purpose by the Minister or pursuant to the terms of a consent to conduct the sale thereof otherwise than by public auction. All fish
to be sold
at market
by auction.

(b) The Minister may consent to sales of fish being conducted at the market otherwise than by public auction. Any such consent shall be subject to the terms and conditions specified therein. The terms and conditions specified in any such consent shall include the condition that no such sale shall be conducted until all fish which have been certified as fit for human consumption and are on hand in the market before the close of the auction have first been submitted to auction; and may also include such other terms and conditions as may be prescribed or as the Minister may determine.

(c) Any person who contravenes any of the provisions of this subsection or any term or condition of any consent given under this

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this subsection shall, upon conviction before a police or stipendiary magistrate or any two justices, be liable to a penalty not exceeding fifty pounds.

(5) (a) The provisions of this section shall, as from the commencement of this section, apply to and in respect of the Metropolitan Fish Marketing District and to and in respect of any other fish marketing district in which a market is established before such commencement.

(b) The provisions of this section shall apply to and in respect of any other fish marketing district as on and from the date notified by the Minister in the Gazette as the date of the establishment under this Act of a market in such district.

Sec. 120.
(Regulations.)

(b) by inserting at the end of subsection two of section one hundred and twenty the following new paragraphs:—

(tt) providing for fixing, levying and collecting rents, commissions, tolls, dues, rates, fees and charges;

(uu) regulating markets within a district and the buildings, stalls, pens and standings therein, preventing nuisances or obstructions therein or in the market approaches and appurtenances;

(vv) regulating the maintenance of order, discipline, decency and cleanliness in markets, and preventing trespass and intrusion in markets;

(ww) imposing market dues and charges and providing for the collection and recovery of the same; the prevention of excessive dues or charges; the settlement of disputes as to dues or charges and the publication of dues and charges;

(xx) providing for the inspection of fish; fixing fees for such inspection; preventing the sale or exposure for sale of unsound

unsound or unwholesome fish in the market and also within a district; providing for the disposal of such unsound or unwholesome fish; No. 28, 1942.

- (yy) regulating traffic within the limits of a market and in the market approaches and appurtenances; regulating carriers resorting to the market; fixing the rates for carrying fish carried thereto and therefrom within the district;
- (zz) fixing the days and the hours during each day on which a market shall be held;
- (aaa) regulating the cold storage of fish and fixing charges for the use of same;
- (bbb) regulating the use of the weighing-machines, trucks, boxes, trays, and cleansing troughs in a market;
- (ccc) regulating auction sales in the market;
- (ddd) regulating shops or stalls for the sale of fish by retail in a market and imposing rents and charges for the use of the same.

4. (1) This section shall commence on the day appointed and notified as the day upon which section 41E of the Fisheries and Oyster Farms Act, 1935-1942, commences. Commencement of sec. 4.

(2) The Sydney Corporation Act, 1932-1941, is amended by omitting sections one hundred and ninety-six and one hundred and ninety-eight. Amendment of Act No. 58, 1932.

(3) The Fisheries and Oyster Farms Act, 1935-1938, is further amended by omitting paragraphs (c) and (d) of section forty-one. Further amendment of Act No. 58, 1935, s. 41 (c) (d).

5. The Fisheries and Oyster Farms Act, 1935-1938, is further amended— Further amendment of Act No. 58, 1935.

- (a) by inserting at the end of subparagraph (i) of paragraph (d) of subsection four of section nineteen the words “or of species of mullet included in the family mugilidae”;

(b)

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(b) by inserting after "other than Australian salmon" in the same paragraph the words "or of species of mullet included in the family mugilidae";

**Sec. 25.
(Licenses.)**

(c) by inserting at the end of subsection one of section twenty-five the following words:—

A fisherman's license issued or deemed to be issued on the first day of January, one thousand nine hundred and forty-three, or on any date thereafter shall not entitle the holder thereof to take or attempt to take fish for sale from tidal waters unless such license bears an endorsement in the prescribed form permitting the holder thereof so to do.

A fisherman's license bearing such endorsement shall not be issued save to a person who proves to the satisfaction of the Minister that a substantial portion of his income from personal exertion is derived from the capture and sale of fish.

**Schedules
A and B.**

(d) by omitting from Schedule A and Schedule B the heading "Lake Macquarie" and the description under that heading.
