



ANNO QUARTO

EDWARDI VII REGIS.

A.D. 1904.

No. 864.

An Act to consolidate and amend the Fisheries Acts, and for other purposes.

[Assented to, November 24th, 1904.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as "The Fisheries Act, 1904," and is divided into Parts, as follows:—

Short title and division.

N.S.W. Act, No. 119/1902, sec. 1.

PART I.—Preliminary:

PART II.—Administration:

DIVISION I.—Powers of the Governor:

Amended.

DIVISION II.—Powers of the Minister:

DIVISION III.—Inspectors and their Duties.

PART III.—Licences:

PART IV.—Payment for Cormorants, Turtles, and Tortoises:

PART V.—Miscellaneous:

PART VI.—Offences and Penalties:

PART VII.—Procedure:

PART VIII.—Regulations.

The Fisheries Act.—1904.

PART I.

Repeal.
First Schedule.
N.S.W. Act, sec. 2.
Amended.

2. The Acts mentioned in the First Schedule hereto are hereby repealed, but such repeal shall not operate to rescind, cancel, or repeal any Proclamation, notification, or regulation heretofore made under the authority of any Act hereby repealed.

Interpretation of
terms.
Ibid, sec. 3.

3. In the construction of this Act and of all regulations made thereunder, the following expressions within inverted commas shall, unless inconsistent with the context, bear the meanings assigned to them, namely:—

Amended

- “ Authorised purpose ”—Any purpose indicated by the provisions of this Act :
- “ Boat ” includes every vessel, barge, or punt :
- “ Close season ”—The period of time during which water is closed against the use of any device or the taking of fish :
- “ Crown lands ”—Crown lands as defined in any Crown Lands Acts in force in the State :
- “ Device ”—All fixed implements, gear, contrivances, or engines used to take fish :
- “ Fish ”—All varieties of fish and crustacea and their roe and spawn :
- “ Fisherman ”—Any person licensed under this Act :
- “ Gazette ”—*The South Australian Government Gazette* :
- “ Hand-line ”—Any line intended or used for catching fish, to which not more than three fishing-hooks are attached :
- “ Hatchery ”—Any water used for the spawning, propagation, or culture of fish :
- “ Hauling ” includes casting, shooting, fixing, setting, placing, or staking :
- “ Inspector ” includes Chief Inspector of Fisheries, inspectors of fisheries, and inspectors of fisheries *ex officio* :
- “ Minister ”—The Minister administering this Act :
- “ Notice ”—Notice in the *Gazette* :
- “ Prescribed ”—Prescribed by this Act :
- “ Proclamation ”—Proclamation in the *Gazette* :
- “ Rod and line ”—A single rod and line :
- “ Take ” includes catch, kill, hunt, dredge for, or raise, or attempt to take, kill, catch, raise, or dredge for :
- “ This Act ” includes any Proclamations and Regulations made under the provisions hereof :
- “ Treasurer ”—The Treasurer of the State :

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“ Use ” includes attempt to use or assist in the use of :

PART I.

“ Water ” includes the sea, and all bays, gulfs, inlets, and other waters which ebb and flow over lands in the possession or under the control of the Crown, and every lake and lagoon, river, creek, inlet, and pond, the soil or bed whereof is the property of the Crown ; any water in or over private property, where any hatchery is established with the consent of the owner or lessee thereof :

N.S.W., Act 119,
1902, sec. 3 amended.

“ Weight ” includes length and size.

PART II.

PART II.

ADMINISTRATION.

DIVISION I.—POWERS OF THE GOVERNOR.

DIVISION 1.

4. The Governor may, subject to the provisions and for the purposes of this Act—

Governor's powers.
Act 102 of 1878,
sec. 11.

(a) Appoint a Chief Inspector and such other Inspectors and Officers as may be necessary :

Appoint Inspectors.
N.S.W. Act, sec. 8.

(b) By Proclamation declare—

i. Any water to be reserved for a hatchery :

Hatchery.

ii. The limits of any water within which devices are not to be used, or within which it shall be unlawful to take fish :

Limits of water.

iii. Any water to be a reserve within which only aboriginal natives shall be allowed to fish :

Reserves.
Act 574, 1893, sec. 8.

iv. Close seasons for the protection of fish or any species of fish :

Close season.
Act 102 of 1878,
sec. 6.

v. Any device to be illegal and liable to forfeiture :

Devices.

vi. What shall be the lawful length and depth of any device and the size of mesh which may be lawfully used for the whole or any part of any device, and also the lengths of hauling lines which may be attached thereto, and the number of devices that may be attached to each other :

What devices shall be lawful.
N.S.W., Act 119,
1902, secs. 18, 19.

(c) Prescribe other weights for the weights of fish mentioned in the Second Schedule hereto, and from time to time vary any such weights :

May prescribe weights of fish.
Act 102, 1878,
sec. 13.

(d) Add to the Second Schedule the name of any species of fish, and prescribe a minimum weight for taking same :

Add to Schedule.
Vic. Act, sec. 38.

(e) Exempt any jetty, pier, or wharf from the provisions of section 24 of this Act.

Exempt jetties, &c.

DIVISION

*The Fisheries Act.—1904.*PART II.
DIVISION II.Special powers of the
Minister.N.S.W., Act 119,
1902, sec. 15.Act 460, 1889,
amended.

Ibid.

Disposal of forfeited
device.Act 102, 1878,
sec. 10.Enter and seize
forfeited device or
fish.N.S.W., Act
119, 1902, sec. 62.

Permits.

N.S.W. Act, sec. 19.

Minister to institute
experiments, &c.N.S.W., Act 119,
1902, sec. 63.

Establish hatcheries.

N.S.W., Act 119,
1902, sec. 63.Minister's rights with
hatcheries.

Stock hatchery.

Sell fish.

N.S.W., Act
119, 1902, sec. 63.

DIVISION III.

Ex officio Inspectors.

Inspectors' duties.

Destroy cormorants,
turtles, and tortoises.
Act 460, 1889.Apprehended persons.
Vic., Act 1890, sec. 4.
Act 102, 1878,
sec. 15.Enter market, &c.,
and examine fish.
N.S.W. Act, sec. 51,
amended.

DIVISION II.—POWERS OF THE MINISTER.

5. The Minister may—

- (a) Appoint persons to issue licences to fishermen:
- (b) Authorise persons to receive the heads of cormorants, turtles, and tortoises:
- (c) Determine the rate of payment to be made for the destruction of cormorants, turtles, and tortoises:
- (d) Direct the manner of disposal of any forfeited device or fish:
- (e) Empower any Inspector to enter any place at all times to search for and take any forfeited device or fish, and to search for and seize any device which, in his opinion, is used, or intended to be used, contrary to the provisions of this Act:
- (f) Issue permits for taking fish from closed water for scientific purposes or for stocking other water:
- (g) Direct the carrying out of experiments in methods of culture, propagation, and catching of fish, and take steps for the discovery of spawning places and trawling grounds:
- (h) Establish any hatchery in or over any water, or in or over any private property, with the consent of the owner or lessee, on such terms and conditions as may be agreed:
- (i) The establishment of a hatchery by the Minister shall have the effect of vesting in the Minister the exclusive right during the continuance thereof to stock such hatchery with fish, and to take therefrom any fish, and to sell or otherwise dispose of fish from such hatchery.

DIVISION III.—INSPECTORS AND THEIR DUTIES.

6. All police officers and constables shall be *ex officio* Inspectors.

7. Each Inspector, subject to the approval of the Minister, and in addition to and without prejudice to any other power vested in him, shall—

- (a) When authorised, receive and destroy the heads of cormorants, turtles, and tortoises, and issue certificates of destruction of the same in the form in the Fourth Schedule:
- (b) Apprehend any person offending against any of the provisions of this Act who refuses to give his name and address, or who, in his opinion, gives a false name and address:
- (c) Enter any place where fish are sold, or on sale, and examine such fish.

8. Each

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DIVISION III.
Powers of Inspector.**8.** Each Inspector may at all times—

- (a) Destroy any fish unfit for human consumption:
- (b) Enter upon all waters, and pass through or along the banks or borders of the same, and examine all tributaries, sluices, and watercourses communicating therewith: T., Act 1889, sec. 60.
N.S.W., Act 119, 1902, sec. 10.
- (c) Enter any fishing-boat:
- (d) Examine any device:
- (e) Demand the production of any licence:
- (f) And do all other acts and things as he is required to do by this Act. T. Act, 1889.

9. No compensation shall be paid on account of fish destroyed as unfit for human consumption. No compensation for destroyed fish.
New.

10. The Chief Inspector shall, as soon as possible after the thirty-first day of December in every year, make a report to the Minister on the Fisheries of the State, and such report shall be laid before Parliament. Report by Inspector.
N.S.W., Act 119, 1902, sec. 64.

PART III.

PART III.

LICENCES.

11. (1) Licences to take fish for sale or barter shall be issued in the prescribed form, and shall continue in force until the thirty-first day of December in the year during which the same are granted: Provided that every licence issued in December shall be in force until the thirty-first day of December of the next year. Licences.
N.S.W., Act 119, 1902, sec. 15.

(2) The fee for each licence shall be Twenty Shillings, except in the case of licences issued between July and November (both inclusive), when the fee shall be Ten Shillings. Such fees shall be paid to the person appointed to receive the same, and shall be forthwith paid by him into the Treasury. Licence fees.
Ibid.

(3) One licence shall be sufficient to authorise the holder of such licence, and one other member of the family of such holder under the age of twenty-one years, to take fish for sale or barter whilst working for or with the same plant as the holder of such licence.

PART IV.

PART IV.

PAYMENT FOR CORMORANTS, TURTLES, AND
TORTOISES.

12. The Treasurer may pay out of the proceeds of the licence fees a sum, to be fixed by the Minister and notified in the *Gazette*, not exceeding Two Pence, for each cormorant, turtle, and tortoise killed. Head money to be paid.
Act 460, 1889, sec. 6.

13. Any

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PART IV.

Heads to be produced.

Act 460, 1889, sec. 7.

13. Any person applying for payment in respect of cormorants, turtles, or tortoises shall produce and hand to some authorised person the heads of such cormorants, turtles, or tortoises, and shall make a declaration before such authorised person, or before a Justice of the Peace, in the form or to the effect set forth in the Third Schedule hereto.

Certificate of destruction to be forwarded to Minister.

Ibid, sec. 8.

14. Every authorised person shall, on the receipt of the heads of cormorants, turtles, or tortoises, sign a certificate in the form in the Fourth Schedule, and shall forthwith forward such certificate, and the declaration of the person applying for head money, to the Minister.

Limitation of Act.

Ibid, sec. 12.

15. The Minister or Treasurer shall not be liable to pay any further amount for cormorants, turtles, or tortoises, than the amount which shall for the time being be standing to the credit of moneys paid as licence fees.

PART V.

PART V.

MISCELLANEOUS.

Limit of weights.

Act 102, 1878, sec. 8.

16. No person shall keep, consign, sell, or offer for sale any fish of less than the prescribed weight.

Minister may remove natural obstruction.

T., Act 1889, sec. 24.

17. If in any water any natural or artificial obstruction prevents the free passage of any fish, the Minister may remove the obstruction and secure a free passage of the fish.

Fish illegally taken and device forfeited.

Act 102, 1878, sec. 10, amended.

Vic., Act, 1890, sec. 36.

18. All fish taken, bought, sold, or consigned, and all devices used or intended to be used contrary to this Act, shall be forfeited to His Majesty, and shall be disposed of as the Minister may direct. The proceeds of any sale under this section shall be paid to General Revenue.

Fish receptacles may be forfeited.

N.S.W. Act, sec. 31.

Vic., Act, 1890, sec. 34.

Sec. 8, Act 102 of 1878 amended.

Device may be seized.

Act 102, 1878, sec. 11.

19. If more than one-tenth of the fish contained in any receptacle are under weight, the receptacle may be seized and, together with the whole of the fish therein, forfeited.

20. Every Inspector and police constable, without any authority other than this Act, may seize any fish or device which he may have reason to believe is forfeited or liable to forfeiture.

When device illegal.

New.

21. A Proclamation declaring any device to be illegal shall not have any effect until the expiration of six months from the date thereof.

Act not to apply.

22. Nothing in this Act shall apply to any person using a rod and line, or hand-line, or a landing-net to secure fish taken with a rod

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rod and line or hand-line or a hand crab-net, nor to any device used solely for catching eels or congolly, nor to any person using a hand shrimp-net, nor to any aboriginal native taking fish for his own use, nor to any person taking fish solely for bait, nor to any person taking fish in water of which he is the owner, nor to any person authorised by such owner to take fish in such water, nor to any person with the written permission of the Minister catching fish for the *bonâ fide* purpose of removing them to stock other water, or otherwise in the discretion of the Minister, nor to any device or boat used or fish taken by such last-mentioned person for the purpose aforesaid: Provided that fish caught by any method mentioned in this section (crab-nets excepted) shall not be sold or bartered.

23. If any person having unintentionally taken any fish contrary to the provisions of this Act shall immediately return the same to the water with as little injury as possible to the fish, such person shall not be liable to any penalty under this Act.

PART V.

Vic., Act, 1890, sec 41.

Act 102, 1878, sec 14.

Fish taken unintentionally to be returned to water.

PART VI.

OFFENCES AND PENALTIES.

PART VI.

24. Every person shall be guilty of an offence against this Act who—

Penalties.

(a) Takes any fish:

N.S.W. Act, sec. 15.

i. Without a licence:

ii. During any close season without a permit:

iii. With any illegal device:

N.S.W. Act, sec. 19.

iv. Under the prescribed weight without forthwith returning the same to the water:

Act 102 of 1878, sec. 8.

v. Not indigenous to this State, or any fish of the same species as any such non-indigenous fish, within three years after the introduction thereof to this State, or any further period that the Governor may appoint:

Introduced fish.
Act 102 of 1878, sec.

vi. Within one hundred yards of any jetty, pier, or wharf, except with a rod and line, hand-line, or hand crab-net:

Act 155 of 1889, sec. 2.

(b) Uses any device in other than the prescribed manner:

Illegal device.

(c) Refuses to give his name or address, or gives a false name or address:

Refuse name.

(d) Refuses, when required, to produce his licence:

Licence.

(e) Refuses to deliver up to an Inspector any forfeited device or fish:

Forfeited fish.

(f) Resists

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PART VI.

Obstruct water.
Ibid, sec. 25.

- (f) Resists any Inspector in the execution of his duty :
- (g) Stakes, fixes, or otherwise sets any device or material across the mouth of any water or from bank to bank of any channel, creek, stream, or river—
- I. Larger than the prescribed dimensions:
 - II. With smaller mesh than prescribed:
 - III. In such a manner as to delay, injure, or strand any fish, or to impede the free passage of fish on either side of such device:

Roe.
N.S.W., Act 119,
1902, sec. 31.

- (h) Buys, sells, consigns, exposes for sale, or possesssss any roe except in the fish, except roe taken for artificial propagation or other scientific purpose:

Emptying devices.
Ibid, sec. 21, and Act
102, 1878, sec. 4.

- (i) Drags or draws ashore any device in such a way, or to such a distance from the water as to prevent underweight or undersize fish from escaping into the water:

Neglect to release
fish.
Ibid.
Vic. Act, sec. 20.
Uunder weight.
S A., N.S.W., and
Vic. Acts.

- (j) Neglects to return to the water any non-indigenous, underweight, undersize, or protected fish:

- (k) Sells, consigns, exposes, or offers for sale, or has in his possession any fish under prescribed weight or taken from closed water:

Unfit fish.
New.

- (l) Keeps, consigns, or exposes for sale any fish unfit for human consumption:

Crayfish.
N.S.W. Act, sec. 23.

- (m) Sells, or causes to be sold, consigned, or offered, or exposes for sale, or has in his possession or control for purposes of sale, any fish known as "Crayfish" of a size less than prescribed, or any female of such fish of whatsoever size having eggs or spawn attached:

Penalty for damaging
lawful devices by
placing obstacles.
N.S.W., Act 119,
1902, sec. 25.
Amended.

- (n) Wilfully or maliciously drives or places anything whatsoever in any place or position whereby any device may be injured or damaged:

Not to obstruct.
Ibid.

- (o) Places a boat in such a position as to obstruct any fisherman from hauling a lawful device to shore, on any recognised hauling ground, or, when requested, neglects to remove such obstruction:

Disturbing fish.

- (p) Wilfully disturbs or attempts to catch any fish when spawning, or near spawning beds, except for artificial propagation or other scientific purposes:

Explosives not to be
used.
N.S.W., Act 119,
1902, sec. 24.
Vic., Act 1890,
sec. 21.
S.A., Act 102, 1878,
sec. 7.

- (q) By the explosion of any substance, or by means of any poisonous or noxious thing, destroys or takes fish, or explodes any substance in, under, or immediately above any water, or places or causes to flow into any water any poisonous or noxious thing, or assists the person committing any such offence: Provided that the Minister may consent, in writing, to any person exploding torpedoes or dynamite in any water:

(r) Lets

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PART VI.

(r) Lets out, lends, or hires any licence, or uses or has in his control or possession any licence not issued to him, or represents himself to be the person mentioned in any such licence.

Not to lend or improperly use licence.

New.

25. Any person who commits any offence against the provisions of this Act shall be liable to a penalty of not exceeding Ten Pounds.

Breaches of provisions of Act.

Act 102, 1878, sec. 9.

26. Any person who shall wilfully make a false certificate or declaration shall be deemed to have committed perjury, and shall be punishable accordingly. Any declaration to be made under Schedule 3 of this Act may be made before any Inspector or Justice of the Peace, and shall be exempt from stamp duty.

Penalty for false statement.

Act 460, 1889, sec. 9.

PART VII.

PROCEDURE.

PART VII.

27. Informations may be laid for any offence against this Act at the instance of any person, and all complaints and informations shall be heard and determined, and all moneys, costs, and expenses shall be recovered, in a summary way before a Special Magistrate or any two or more Justices.

Who may lay informations, and hearing of same.

Act 102, 1878, sec. 19.

28. If any person is found in possession of, or has in his boat, any explosive substance immediately after an explosion in the vicinity of such boat, it shall be *prima facie* evidence that such person caused such explosion.

Explosives in boat.

N.S.W. Act, sec. 21.

29. The production of the *Gazette* containing any Proclamation, notice, or regulation appearing to have been made or issued under this Act shall be *prima facie* evidence of the issue or making of such Proclamation, notice, or regulation, and that the same is in force.

Gazette prima facie evidence.

30. Any Special Magistrate or Justices of the Peace before whom any proceedings may be taken in respect of any offence against the provisions of this Act for which a pecuniary penalty only is imposed may impose in lieu of any such pecuniary penalty a term of imprisonment not exceeding six months.

Imprisonment may be imposed in lieu of pecuniary penalty.

N.S.W., Act 119, 1902, sec. 55.

31. There shall be an appeal from any decision of any Special Magistrate or Justices to the Local Court of Adelaide of Full Jurisdiction.

Appeal to Local Court.

Act 102, 1878, sec. 20.

32. Such appeal shall be regulated by Ordinance No. 6 of 1850 and "The Justices Procedure Amendment Act, 1883-4"; and such Local Court may make such order as to costs as it shall think fit.

Procedure on appeal.

Act 102, 1878, sec. 20.

33. Such

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PART VII.

State case for opinion
of Supreme Court.

Procedure on special
case.

Limitation of
actions.

Vic. Act, 1890.
Amended.

33. Such Local Court may state a special case for the opinion of Supreme Court.

34. The Supreme Court shall deal with such special case according to the practice of the Supreme Court on special cases, and may make any order as to the costs of the proceedings in that Court and in the Court below.

35. Every action which shall be brought against any Justice, Inspector, constable, or other person for or on account of any matter or thing done or committed by him or in the execution of his duty or office under this Act shall be commenced within one month after the cause of action or complaint shall have arisen, and not afterwards.

PART VIII.

PART VIII.
REGULATIONS.

Regulations.
Act 444 of 1888,
sec. 177.

Regulations to have
force of law, and to be
laid before Parlia-
ment.

Sec. 178, Act 444
of 1888.

Regulation to take
effect from publica-
tion.

Gazette evidence of
regulations.
Ibid, sec. 198.

36. The Governor may make regulations for giving effect to the various objects, purposes, rights, powers, and authorities of this Act, including regulations for payment of fees and for penalties not exceeding Ten Pounds for any one offence, and may from time to time amend or repeal any such regulations.

(1) All regulations shall be published in the *Gazette*, and shall be laid before both Houses of Parliament within fourteen days after the publication thereof, if Parliament be then sitting, and if not, then within fourteen days after the next Session of Parliament shall begin; and if within sixty days of the laying before Parliament of such regulations either House of Parliament passes a resolution objecting to any such regulations, the same shall (so far as so objected to) thenceforth cease to have the force of law, and notice of such resolution shall forthwith be published by the Minister in the *Gazette*.

(2) Subject to the foregoing provisions, all such regulations shall have the full force of law from the first date of publication thereof.

(3) The *Gazette* containing a notice of a resolution being passed by either House of Parliament objecting to any such regulation shall be conclusive evidence of the passing of such resolution.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

GEORGE R. LE HUNTE, Governor.

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SCHEDULES.

FIRST SCHEDULE.

Section 2.

No. of Act.	Title of Act.
102 of 1878.....	“ The Fisheries Act.”
455 of 1889.....	To amend “ The Fisheries Act.”
574 of 1893.....	To amend “ The Fisheries Act.”

SECOND SCHEDULE.

Section 16.

Minimum Weights at which Fish are to be taken.

	Ozs.		Ozs.
Barracoota.....	16	Rock cod.....	6
Murray cod.....	32	Catfish.....	6
Murray perch.....	8	Whiting, Sand.....	3½
Pike.....	12	Whiting.....	3½
Schnapper.....	14	Flathead.....	4
Bream.....	8	Travally.....	4
Bream, Silver.....	8	Silver fish or silver perch.....	4
Perch.....	8	Salmon trout.....	3
Perch, English.....	8	Ruff.....	2
Flounder.....	4	Stranger.....	2
Sole.....	4	Mullet.....	3
Ling.....	4	Garfish.....	4
Butterfish.....	32	Trout, Rainbow and other.....	12
Gurnet or gurnard.....	4	Trumpeter.....	4
Snook.....	10		

Lawful Lengths for Crustacea, measured along the Body from the Eye to the Tip of the Tail.

Crayfish (salt water).....	8 inches
Prawns.....	1 “
Murray River lobster (fresh water).....	6 “

THIRD SCHEDULE.

Section 13.

Declaration of Destruction.

I, [name of declarant] of _____ in the State of South Australia, do hereby declare that the [cormorants, turtles, or tortoises, as the case may be] heads now produced by me to Mr. [name of authorised person to whom declarant delivers heads] are the heads of [cormorants, turtles, or tortoises, as the case may be] which have been killed at _____ in the said State.

Declared at _____ day of _____ in the State of South Australia, the 19____, before me.

C. D.,
An Inspector under the provisions of “The Fisheries Act, 1904” (or a Justice of the Peace for the State of South Australia).

FOURTH

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Section 14.

FOURTH SCHEDULE.

I certify that Mr. _____ has this day produced and delivered to me the heads of [*cormorants, turtles, or tortoises, as the case may be*], and that the said heads were immediately burned (*or destroyed by means of* _____) in my presence.

Dated at _____ the _____ day of _____ 19 .
A. B.,

An Inspector under the provisions of "The Fisheries Act, 1904."