

FISHERIES ADJUSTMENT SCHEMES AMENDMENT BILL 2009

EXPLANATORY MEMORANDUM

Overview of the Bill

The purpose of this Bill is to amend the *Fisheries Adjustment Schemes Act 1987* (**‘the FAS Act’**).

The FAS Act provides for commercial fishing authorisations and entitlements to be withdrawn from a fishery with appropriate compensation for affected licensed fishers.

The FAS Act has been a critical and highly successful tool in restructuring the fishing industry to be more economically viable, and for reallocating resource use in order to improve sustainability and reduce conflict between competing users of aquatic resources.

Competing uses that affect commercial fishing rights may include reallocation for recreational fishing use, the establishment of “no fishing” areas, and the allocation of areas of fishing ground for other purposes including oil and gas production and harbour development.

The FAS Act allows both voluntary and compulsory schemes to be established.

Voluntary fisheries adjustment schemes are established by the Minister following a recommendation of a committee of management appointed to consider whether or not an adjustment scheme is required for a particular fishery.

The FAS Act provides that the Minister must not establish a compulsory fisheries adjustment scheme unless, in the Minister’s opinion, it is either not possible, or not appropriate, to achieve the necessary reduction in the size of the fishery or fisheries by a voluntary fisheries adjustment scheme.

The funding for fisheries adjustment schemes may be derived solely from industry, provided jointly by industry and Government, or funded, wholly or in part, by Government. It is possible for fisheries adjustment schemes to be funded by (say) by the mining sector, port or harbour developers or the recreational fishing sector, depending on the nature and objectives of the scheme, but no such schemes have been established to date.

Purpose of the amendments

The amendments contained in this Bill will improve the scope and administration of the FAS Act by:

- providing for other entitlements under an authorisation - in addition to boats, nets and pots - to be reduced by a fisheries adjustment scheme;
- enabling the Department of Fisheries (DoF) to set fees that properly take into account the cost to the Government of establishing and administering industry funded fisheries adjustment schemes;
- providing for a fisheries adjustment scheme to buy out all of the entitlements in a fishery, if that is the objective of the scheme;
- enabling a voluntary fisheries adjustment scheme to be established, where only some authorisation holders in the fishery may wish to participate in the scheme and pay the associated fee. Such a scheme would only be established on the recommendation of a committee of management and with the agreement of affected licensees;
- providing for different fees to be payable by different authorisation holders in relation to voluntary fisheries adjustment schemes; and
- providing for a fisheries adjustment scheme committee of management to use modern forms of communication such as emails and faxes and other similar means when dealing with resolutions out-of-session.

Outlined below is an examination of the contents of the Bill on a clause-by-clause basis.

Clause 1 Short title

Clause 1 provides that the title of this Act is the *Fisheries Adjustment Schemes Amendment Act 2009*

Clause 2 Commencement

This clause sets out the commencement provisions.

Subclause (a) provides that sections 1 and 2 of the Act will come into force on the day on which the Act receives the Royal Assent.

Subclause (b) provides that the rest of the Act will come into force on the day after the Act receives the Royal Assent.

Clause 3 Act amended

This clause provides that the Act amends the *Fisheries Adjustment Schemes Act 1987*.

Clause 4 Section 3 amended

Clause 4 amends section 3 – **Terms used in this Act** - by inserting after section 3(3), a new subsection (4) to define “reducing” for the purposes of the FAS Act.

The new subsection makes it clear that a reference to reducing the size of a fishery or fisheries may include reducing the number of persons and boats operating in the fishery to zero, or reducing the amount of fishing gear to be used in the fishery to zero, or reducing the quantity of fish to be taken from the fishery or fisheries to zero, if that is the objective of a particular fisheries adjustment scheme.

Without these amendments, if all the authorisation holders in a fishery wished to surrender their authorisations under a fisheries adjustment scheme, at least one would be required to remain in the fishery, because “reducing ” in its common meaning implies that there will be a remainder after a “reduction”. See also Clause 7.

It is important to remember that **voluntary** fisheries adjustment schemes are only established by the Minister following a recommendation of a committee of management appointed to consider whether or not an adjustment scheme is required for a particular fishery; and that the Minister must not establish a **compulsory** fisheries adjustment scheme unless, in the Minister’s opinion, it is either not possible, or not appropriate, to achieve the necessary reduction in the size of the fishery or fisheries by a voluntary fisheries adjustment scheme.

Clause 5 Section 8 amended

This clause amends section 8 – **Power to prescribe fee**.

Section 8 of the FAS Act enables the Governor to prescribe fees payable by commercial authorisation holders in respect to some fisheries adjustment schemes only, such as those that may be requested by industry to assist in structural adjustment within a commercial fishery. Such schemes have been established in past. For instance, from the late 1980s to 1999, a General Fisheries Adjustment Scheme operated in Western Australia to reduce the number of wetline authorisations in Western Australia, at the request of the fishing industry. The scheme was funded through a levy on all Fishing Boat Licence fees, and matched by Government contributions. The scheme resulted in the buy-back of 187 authorisations from the wetline fishery and a 10% reduction in the number of licensed commercial fishing boats in the fleet.

Similarly, an industry-funded scheme established in the Shark Bay Prawn Fishery in the 1980s reduced the number of fishing authorisations and improved the commercial viability of the remaining operators in the fishery.

A common feature of these schemes was that every licence holder was required to pay the prescribed fee.

During the tenure of the previous Government, however, there was agreement from all licensees within the Shark Bay Prawn Fishery to establish a new fisheries adjustment scheme in that fishery – but one in which only some of the authorisation holders would participate. Following a recommendation of the committee of management set up to advise the then Minister on the desirability of establishing the scheme, the then Minister found that the FAS Act did not contemplate a scheme that did not apply equally to all authorisation holders in the fishery.

The amendments to section 8 will make such schemes possible in the future and enable voluntary fisheries adjustment schemes to be established where different fees are payable by different authorisation holders. For example, a voluntary fisheries adjustment scheme may be established in the Shark Bay Scallop Fishery in the future, where there are currently different classes of authorisation that attract different annual access fees. It is likely, that if an adjustment scheme for this fishery was established, different fees would apply to different classes of authorisation.

In practice, schemes that provide for different fees among authorisation holders in a fishery, or apply fees to only some authorisation holders, would be voluntary only and would only be established on the recommendation of a committee of management and with the consent of affected licence holders. It would not be possible to establish such a scheme compulsorily.

In light of the above, clause 5(1) amends section 8(1) of the FAS Act by deleting the words “every holder” and replacing them with the words “the holder”, recognising that in future the prescribed fee will not necessarily be payable by all holders of an authorisation in a fishery to which the scheme applies.

Clause 5(2) inserts a new section 8 (2A) that enables regulations to be made in respect a voluntary fisheries adjustment scheme that provides that different fees may be payable by different authorisation holders in a fishery, and that specified authorisation holders in a fishery may not be required to pay the fee.

Section 8(3) specifies how a fee is to be calculated. Clause 5(3)(a) amends section 8(3) to achieve consistency with clause 5(2) in recognising that, in the future, schemes may be established that do not require the participation of all authorisation holders in the fishery, by deleting the words “each authorisation” and replacing them with “an authorisation”.

Clause 5(3)(b) amends section 8(3) to make it clear that the fee may be calculated by reference to other entitlements under an authorisation in addition to boats, nets, pots or activities being carried out under an authorisation. For instance, entitlements under an authorisation in some fisheries may be described by periods of time using certain types of gear, or time/gear units as they are known in the industry. These types of fisheries management approaches were not provided for when the FAS Act first commenced.

Clause 5(4) inserts a new section 8(3AA) to enable fees to be set at a level that will allow the DoF to recover costs associated with the payment of interest and other outgoings on moneys borrowed for the purposes of the scheme, and to recover administration costs associated with the scheme.

Clause 5(5) amends section 8(3a) of the FAS Act. Section 8(3a) provides that the Chief Executive Officer (CEO) of DoF may cancel or suspend an authorisation if the holder of an authorisation has not paid a relevant fisheries adjustment fee. Clause 5(5) contemplates that only some authorisation holders may be liable to pay a fee in the future, depending on the nature of the scheme, and amends the FAS Act so that the CEO can only cancel or suspend an authorisation for the non payment of a fee if the authorisation holder was liable to pay the fee under a scheme, and has not paid it.

Clause 6 Section 9 amended

This clause amends section 9 – **Return of surplus amounts**.

The amendment to section 9(b) provides that only those persons who have paid fees under a fisheries adjustment scheme are entitled to a *pro rata* share of any surplus funds at the conclusion of the scheme.

The “and” is included between the paragraphs consistent with modern legislative drafting practice.

Clause 7 Section 10B amended

This clause amends section 10B – **Establishment of (voluntary fisheries adjustment) scheme**.

Section 10B(2)(a) is amended to provide that a notice establishing a voluntary fisheries adjustment scheme may include the objective of cancelling all of the authorisations in a fishery.

The “and” is included between the paragraphs consistent with modern legislative drafting practice.

Clause 8 Section 14B amended

Clause 8 amends section 14B - **Establishment of (compulsory fisheries adjustment) scheme**.

Clause 8(a) amends section 14B(3)(a) to provide that a notice establishing a compulsory fisheries adjustment scheme may include the objective of cancelling all of the authorisations in a fishery.

Clause 8(b) amends section 14B(3)(e) to provide that where the objective of the scheme is only to cancel some of the authorisations in a fishery, the notice establishing the scheme must specify how the authorisations or parts of entitlements that will be cancelled have been selected.

The insertion of “and” after paragraphs (b), (c) and (d) is consistent with modern legislative drafting practice.

Clause 9 Section 14D amended

Clause 9 amends section 14D – **Objections to proposed scheme**

Section 14D specifies that the Minister must give not less than 3 months notice prior to the establishment of a compulsory fisheries adjustment scheme and describes the process of how an authorisation holder may object to the State Administrative Tribunal in respect to the establishment of the scheme. The rights of an authorisation holder to object to a compulsory fisheries adjustment scheme are not diminished by this amendment.

Clause 9(a) amends section 14D(2)(a) to provide that a notice establishing a compulsory fisheries adjustment scheme may include amongst its objectives the cancellation of all authorisations in a fishery or fisheries.

Clause 9(b) amends sections 14D(2)(d) and (e) to provide that a notice establishing a compulsory fisheries adjustment scheme must specify how authorisations have been selected for cancellation (in the case of 14D(2)(d)) and, if they haven’t already been selected, how they will be selected (in the case of 14D(2)(e)), if only some of the authorisations are to be cancelled.

The insertion of “and” after paragraphs (b), (c) and (d) is consistent with modern legislative drafting practice.

Clause 10 Section 14E amended

Clause 10 amends section 14E – **Selection of authorisations or entitlements**

Section 14E describes how authorisations that are to be cancelled or entitlements that are to be reduced under a compulsory fisheries adjustment scheme may be selected.

Clause 10 inserts a new section 14E(1A) to make it clear that section 14E does not apply to a compulsory fisheries adjustment scheme where the objective of the scheme is the cancellation of all of the authorisations in a fishery.

Clause 11 Schedule 1 amended

Clause 11 amends Schedule 1 – **Constitution and proceedings of committees of management** – by providing that a fisheries adjustment scheme committee of management may use modern forms of written communication - such as emails, faxes and other similar means - when dealing with resolutions out-of-session, in addition to letters, telegrams and telex communications, as is currently provided for in the FAS Act.