**FISHERIES ACT AMENDMENT BILL (No. 2) 1984**

**Legislative Assembly, 28 March 1984, pages 2919-20**

Second reading

**The Hon. FRANK BLEVINS (Minister of Agriculture)** obtained leave and introduced a Bill for an Act to amend the Fisheries Act, 1982. Read a first time.

The Hon. FRANK BLEVINS: I move: That this Bill be now read a second time.

Given the lateness of the hour, I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

The Bill seeks to incorporate three measures into the Fisheries Act, 1982, which is expected to come into operation on 1 July 1984. An amendment is proposed to section 38 to enable a transferable fishery licence, upon the death of a licence holder, to vest in the personal representative of the deceased as part of the estate, and to be transferred in accordance with the laws of succession but subject to the consent of the Director of Fisheries.

To enable a fishing operation to continue (and this is generally for the benefit of the family of the deceased), provision is made in the Bill for the Director to consent to another person acting as registered master of a boat where the licence holder had been the registered master. To cover the gap until an executor of the will or administrator of the estate is appointed, the definition of ‘personal representative’ means, in relation to any period for which there is not an executor or administrator, the Public Trustee.

Because some deceased estates in practice take years to wind up, and such delays, for one reason or another, can be contrived, the Bill proposes that a licence, not transferred within 12 months after the death of a licence holder or such further period as may be approved by the Director, may be suspended pending transfer of the licence. This has particular relevance in those fisheries where an ‘owner-operator’ policy applies, since the licence holder is required by regulation to be the registered master and thus to be the person on board the registered boat during all fishing operations, subject to approved short-term exceptions.

The Bill also seeks to provide that the Minister may, by notice in the Gazette, implement fisheries management measures relating to prawns and abalone during a specified period. These are areas in which there is a particular need to respond quickly to circumstances. Speed and flexibility are vital elements in, for example, the situation where seasonal conditions cause a delay in the growth of prawns and an extra two weeks closed season is required at short notice to improve the yield. Past experience has established that the period from recommended management decision to proclamation is unacceptably long.

Accordingly, the Bill proposes an amendment to section 43 to provide that the Minister may by notice in the Gazette, rather than, as is presently the case in the Fisheries Act, 1982, the Governor by proclamation, declare temporary prohibitions relating to prawns or abalone. The amended provision would correspond to that contained in the Fisheries Act, 1971, following the coming into operation of the Fisheries Act Amendment Act, 1983, on 3 November 1983, but be restricted to prawns and abalone. A further measure proposed would enable the Minister to delegate his powers conferred by section 28 with respect to the seizure and forfeiture of fish or other things, for example, devices. An amendment to section 23 is thus proposed.

In view of the perishable nature of fish, problems have been envisaged with the present section 28 provisions concerning disposal of fish taken in contravention of the Act which are seized by a local fisheries officer, at times when it may be inconvenient to contact the Minister for instructions, for example, at weekends, on public holidays or at night.

A delegation for this purpose from the Minister to fisheries officers as a class of persons, together with the Director and certain other officers, would enable those officers to, for example, seize a truckload of prawns and deliver them to a fish processor for credit of the Fisheries Research and Development Fund, before deterioration and a consequent loss in value of the fish; donate a small quantity of seized fish to a charitable organisation; store and retain such fish as evidence; or dispose of such fish by destruction. The latter situation could arise in remote areas, for example, Cooper Creek. If a case were subsequently not proved or proceeded with, the fisherman would have the right to compensation equal to market value at time of seizure, as provided in section 28 (9) (c). A delegation from the Minister is also desired to empower fisheries officers to release seized items, for example, devices, if they are no longer required as evidence, and to destroy seized items, for example, devices of illegal specifications or devices found unattended and unmarked in closed waters. Both the Australian Fishing Industry Council (AFIC) representing professional fishermen and fish processors, and the South Australian Recreational Fishing Advisory Council (SARFAC), representing recreational fishing interests, have been consulted. They support the measures in this Bill.

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause 3 amends section 23 of the principal Act which provides, in subsection (1), for delegation by the Minister of any of his powers under the principal Act. Subsection (2) provides that the Minister’s powers under section 28 (which relates to the seizure and forfeiture of fish, boats and other things in relation to which offences are committed) and section 57 (which relates to the suspension and cancellation of licences) may not be the subject of a delegation. The clause amends subsection (2) by removing the reference to section 28, thereby enabling the Minister’s powers under that section to be the subject of a delegation.

Clause 4 amends section 38 of the principal Act which provides that fishery licences are not to be transferable unless the scheme of management for the fishery so provides, in which case they are to be transferable subject to the consent of the Director. The clause amends this section by inserting provisions catering for the transfer of a fishery licence where the holder of the licence dies. Under the clause, a fishery licence that is transferable shall, upon the death of the licence holder, pass to and become vested in the personal representative of the deceased but may not be transferred by the personal representative in the course of the administration of the deceased’s estate except with the consent of the Director.

The clause provides that, where the deceased licence holder was the registered master of a boat, the boat may continue to be used for fishing during the administration of the deceased’s estate with the consent of the Director and in accordance with any conditions of such consent. Proposed new subsection (7) provides that, if a licence is not transferred by the personal representative (with the consent of the Director) within 12 months or such further period as may be allowed by the Director after the death of the licence holder, the licence shall be suspended pending such transfer. ‘Personal representative’ is defined by proposed new sub­ section (8) to mean the executor of the will or administrator of the estate of the deceased or, for any period for which there is not an executor or administrator, the Public Trustee.

Clause 5 amends section 43 of the principal Act which empowers the Governor, by proclamation, to prohibit fishing activities of a specified class during a specified period. The clause amends this section so as to enable such a prohibition, where it relates to prawns or abalone, to be imposed by the Minister by notice published in the Gazette.

The Hon. M.B. CAMERON secured the adjournment of the debate.