**FISHERIES ACT AMENDMENT BILL 1986**

**House of Assembly, 26 November 1986, pages 2358-2369**

Second reading

**The Hon. M.K. MAYES (Minister of Fisheries)** obtained leave and introduced a Bill for an Act to amend the Fisheries Act 1982. Read a first time.

The Hon. M.K. MAYES: I move: That this Bill be now read a second time.

I seek leave to have the detailed explanation of the Bill inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

It provides for a number of amendments to the Fisheries Act 1982 to enable both the Government and the Department of Fisheries to more effectively meet the objectives of the Act as set out under section 20. Specifically, the amendments recognise the dynamic nature of fisheries management and the need to provide measures for the proper management and conservation of the State’s aquatic resources. At present, persons charged with offences under the Fisheries Act 1982 are liable to forfeiture of any fish/ devices (which were seized at the time of detection) following conviction by a court. However, there are two apparent deficiencies in section 28 of the Act, which deals with forfeiture provisions.

First, a court is not empowered to order forfeiture unless the person charged is convicted of the offence. However, there is provision under the Offenders Probation Act for a person who is found guilty of an offence to be released without conviction as a result of his good character, antecedents, age, health, mental condition, or the extenuating circumstances of the offence. If fish are taken illegally, the offender should not be entitled to return of the fish or compensation simply because he is granted the benefit of the Offenders Probation Act.

Secondly, during court action, the onus is put upon the complainant to obtain an order confirming forfeiture. Such matters are often prosecuted in country courts where police prosecutors are instructed to appear on behalf of the complainant. The danger of the prosecutor inadvertently failing to ask for such an order is apparent. If this occurred, the defendant would automatically have the right to claim compensation. Therefore, an order as to forfeiture made by the Minister of Fisheries or his delegate ought to remain in force unless revoked by the court.

The Bill proposes an amendment to section 28 to empower the court to order forfeiture of items if a person is found guilty of an offence but released without conviction; and to provide for a forfeiture order to remain in force unless revoked by the court.

Speed and flexibility are vital elements in situations where urgent fishing prohibitions must be implemented immediately as a result of chemical spills into the State’s waterways. This necessity was highlighted during two recent occasions—the Gillman chemical spill in September 1985 and the Rai Rai Creek (Riverland) chemical spill in January 1986. It is essential for public safety that a prohibition on fishing be implemented immediately if there is any threat of toxic discharge/spillage being absorbed by fish, thus endangering human health. Accordingly, the Bill proposes an amendment to section 43 of the Act, whereby the Minister of Fisheries, by notice published in the Government Gazette, may declare that it shall be unlawful for a person to engage in a fishing activity of a specified class during a specified period. This will speed up response time by not having to obtain a proclamation through Executive Council as is presently the case.

Under section 48 of the Fisheries Act 1982 the Department of Fisheries has a responsibility to protect the aquatic habitat—which includes the bed of any waters and aquatic or benthic (bottom dwelling) flora or fauna. In general terms, section 48 states that persons cannot remove or interfere with aquatic or benthic flora or fauna—except take fish (where the term ‘fish’ is implied to mean fin fish, sharks, crustaceans, molluscs and annelids).

However, the Fisheries Act defines fish as ‘an aquatic organism of any species . . . ’—which encompasses sea grasses, algae, sponges, corals and the like. This broader definition of fish severely restricts the application of section 48 and is somewhat contradictory, in that persons could remove/interfere with species of sea grasses, algae, sponges corals, etc., causing eventual damage to the local ecosystem. Therefore the meaning of ‘fish’ in this section should be limited to fin fish, sharks, crustaceans, molluscs and annelids, which are the species commonly taken in recreational and commercial fishing operations.

Accordingly, the Bill proposes an amendment to section 48 whereby fin fish, sharks, crustaceans, molluscs and annelids are exempt from removal/interference provisions. The Department of Fisheries has a responsibility to protect the State’s aquatic environment against the introduction of feral fish and exotic fish diseases. Certain freshwater aquarium fish have undesirable characteristics which owners of hobby aquariums need to be made aware of. Following discussions with aquarium and hobby traders in this State, agreement has been reached that a two category system for the trade of exotic fish will meet the Department of Fisheries’ environmental responsibilities under the Fisheries Act 1982, whilst allowing a degree of flexibility for aquarium owners and traders.

However, although agreement was reached with the majority of aquarium traders, one particular operator has indicated that he does not intend to comply with the proposal, nor the present legislation. He claims that the importation of exotic fish into South Australia cannot be subject to such a limitation as section 92 of the Australian Constitution provides for free trade between States. The intention of the legislation is to provide a means of meeting the department’s responsibility to protect the South Australian aquatic environment against the introduction of feral fish and exotic fish diseases, not to impose a blanket restriction on the interstate trade of fish.

Accordingly, the Bill proposes an amendment to section 49 to provide for a prohibition on the entry into the State of such exotic fish as is reasonably necessary for conservational purposes; and that all fish in South Australia that are non-indigenous are prohibited, except for: (1) exotic fish listed in a category 1, which may be traded freely with no encumbrances; and (2) exotic fish listed in a category 2, which may be traded, kept or held on receipt of a permit from the Director of Fisheries.

In providing the above explanation of proposed amendments to the Fisheries Act 1982, I would inform the House that both the South Australian Fishing Industry Council, representing commercial fishermen, and the South Australian Recreational Fishing Advisory Council, representing amateur fishermen, have been consulted and support the proposed amendments to the Act.

I commend the measure to the House.

Clause 1 is formal.

Clause 2 provides for the commencement of this Bill.

Clause 3 amends subsection (9) of section 28 of the principal Act which deals with the forfeiture of things seized by fisheries officers and entitlement to recover compensation.

Paragraph (a) provides, first, for an order for forfeiture of a thing seized to be made by a court where proceedings for an offence against the principal Act are instituted within six months of its seizure and the person charged is found guilty of the offence, whether or not a conviction is recorded. (The existing provision requires a conviction.) Secondly, this paragraph removes the onus from the prosecution of confirming an order of the Minister for forfeiture and places a duty on the court to consider the question of forfeiture and to either confirm or quash a ministerial order for forfeiture.

Paragraph (b) provides that a person from whom a thing is seized (or any person who has legal title to it) is entitled to recover, by action in a court of competent jurisdiction, the thing itself or compensation of an amount equal to its market value, where either no proceedings are instituted within six months of its seizure, or proceedings are instituted within six months but the person charged is found not guilty of the offence, or proceedings are instituted within six months and the person charged is found guilty of the offence but either no order for forfeiture is made or an order is made quashing a ministerial order for forfeiture.

Clause 4 provides for all temporary prohibitions placed on a specified class of fishing activity during a specified period to be effected by ministerial notice published in the Gazette. (The existing provision provides for a declaration to be made by the Governor by proclamation, except where the prohibition relates to abalone or western king prawn, in which case the prohibition may be effected by a ministerial notice published in the Gazette.)

Clause 5 amends subsection (6) of section 48 of the principal Act, by limiting the removal of or interference with fish from the waters of the State, to fin fish, sharks, crustaceans, molluscs and annelids. (The scope of the definition of the term ‘fish’ currently permits the removal of or interference with sea grasses, algae, sponges, corals, etc., which may be potentially damaging to the aquatic environment.)

Clause 6 amends section 49 of the principal Act by striking out subsection (1), which prohibits the importation of exotic fish (to which section 49 applies) into the State, and substituting two new subsections. Proposed subsection (1) prohibits the importation of exotic fish (to which section 49 applies) into the State except in accordance with a permit granted by the Director of Fisheries. Proposed subsection (la) provides that the Director must determine an application for a permit for the purposes of section 49 in accordance with the regulations made under the principal Act.

The Hon. P.B. ARNOLD secured the adjournment of the debate.