



WESTERN AUSTRALIA  
FISHERIES ACT, 1905

Fee: \$120.00  
Licence No: 1921

FISHERIES DEPARTMENT  
121 Adelaide Terrace, Perth,  
Western Australia 6000  
Phone (09) 325 5988

LICENCE TO ENGAGE IN A  
LIMITED ENTRY FISHERY

Name and Address of Licensee

MARK ASHLEY PAXTON  
56 ABELIA WAY  
GERALDTON 6530

001921 30.11.86 86-16122 0/0 120.00

Subject to a notice issued under Section 32 of the Fisheries Act 1905 as amended the boat described hereunder is authorised to be used in the taking of FISH

in the ABROHLOS ISLANDS OTTER TRAWL FISHERY  
by means of 1 NET (SINGLE RIG).

1. Name of Boat: APOLLO XI  
Registration No: LFB G298

Length: 10.3 m

CONDITIONS--

This licence is issued subject to boats and persons engaged thereon being licensed under the Fisheries Act Regulations.

1) CONDITION NO 19 - Trawl Fishery Notice 222

This licence is issued subject to boats and persons engaged thereon complying with the requirements of Fisheries Notice 222 dated 7th March 1986 as amended.

\*\*\* End of Conditions \*\*\*

Term of Authorisation: 01.07.86 to 30.06.87

File No: 313/70

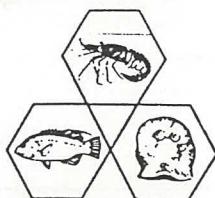
*W.H.*  
( Licensing Officer )

Concession No: 1626

Any variations to the conditions on this licence which varies those conditions which were applicable to the previous licence are subject to confirmation of the Fisheries Department.

WARNING: This licence will have no effect until the imprint of the cash register or other authority is hereon.

REPRINT - LICENCE DETAILS CHANGED



116

## FISHERIES DEPARTMENT

Your Ref:

Our Ref: 537/70

Enquiries: B Stevenson

108 Adelaide Terrace, Perth,  
Western Australia 6000  
Telephone (09) 3255988

Telegraphic Address:  
Fishwa, Perth.

Telex: 93832

Mr M A Paxton  
161 Fitzgerald Street  
GERALDTON WA 6530

Dear Mr Paxton

I refer your application of 14 July 1988 to transfer your wetfish licence LFB G.298 (Tonnarella) to R L and M A Alexander, without the Abrolhos Islands Trawl Fishery Limited Entry Licence attached.

Before I can approve the transfer the following conditions must be met:-

1. November 1987 to June 1988 fishing returns to be submitted.
2. The Tonnarella hull and Abrolhos Islands Trawl Fishery Limited Licence (number 1921) must be transferred to a wet line licence.

For further information on this matter please contact Bruce Stevenson or Mike Grasby of this office.

Yours sincerely

DIRECTOR *[Signature]*

28 July 1988  
BS:CSP

C.C. RL & MA Alexander  
360 Safety Bay Road  
SAFETY BAY WA 6169

OIC Fisheries Department  
GERALDTON

BU. TO SCF AF 28/8/88

W7

(H)

28 July 1988

The Director,  
Fisheries Department,  
108 Adelaide Terrace,  
PERTH WA 6000

ATTENTION: BRUCE STEVENSON

Dear Sir,

I hereby confirm earlier verbal advice that I wish to transfer my Limited Entry A.I.T.F. Licence from LFB G298 onto LFB F780.

Yours faithfully,



Mark Paxton

enc. Scallops Concession

Original on 93/79. Margaret Rath.

## AUSTRALIAN PACIFIC PROCESS

MAILING ADDRESS—3510 GT. EASTERN HWY, MAROON CREEK  
TELEPHONE—GENERAL OFFICE (09) 291-2666 ENGENIERIE 2000Note  
Action  
P.O.N  
Mins

PY

Mark Parton  
151 Fitzgerald St  
Geraldton WA

22 August 1989.

Dear Sir,

Re: Contract of Sale and Debt to this company of \$200,000

As you are aware, the abovementioned debt to this company has now been totally discharged by yourself. We realise that this debt was of a very substantial nature and required considerable fortitude from yourself in order to settle.

I would personally like to take the opportunity of thanking you for honouring your commitment without question and ahead of schedule.

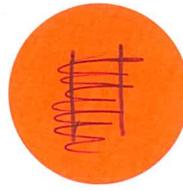
If the opportunity arises that either the company or myself may be of assistance to you in the future, whether of a financial nature or otherwise, there would be no question of that assistance being given.

We regard your conscientious attitude in the settling and discharge of your business commitments in very high esteem.

Yours, Faithfully



Frank McKenna  
Director



FISHERIES LICENSING SYSTEM  
LICENCE COMMENTS

CLLE00  
ENQUIR

COMMENTS FLAG - O OTHER REASONS

PAGE: 1 DATED - 23.08.8

\* AITF (LEF) TRANSFERRED FROM G298 MARK PAXTON REFER 93/79 AS WELL

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

ENTER - CONTINUE  
PF1 - MAIN MENU  
A

PF5 - PREVIOUS PAGE

PF6 - NEXT PAGE  
PF2 - PREVIOUS SCREEN  
01,001

IS THIS INFORMAL REGISTRATION  
OF INTEREST ON F780?

26/9/02 REFERRED TO MARK ROBERT  
RE: FOI / AMENDS TO BE  
EVIDENCE OF INFORMAL REGISTRATION.  
93/79 FILE NUMBER.

23/8/1988 LEF 1921 TRANSFERRED TO  
MANDARIN HOLDINGS

FISHERIES LICENSING SYSTEM		CLLE02E			
FISHING BOAT LICENCE		ENQUIRY			
LICENSEE'S NAME: J F & K A FAY AND BLENKINSOP					
: NOMINEES PTY LTD					
LICENSEE'S ADDRESS: P O BOX 1989					
:					
: GERALDTON 6530					
LICENCE NO: 1050	SPECIES: FISH	TRANSACTION TYPE: MAINTENANCE			
LEVEL NO: 9990		CHANGE DATE: 25.07.89			
RECEIPT NO: 89-1653		CHANGE TIME: 16:14:17.0			
LICENCE FEE: 36.00		OPER ID: MJC			
RECEIPT DATE: 07.01.89		CONDITION TYPE: NON-STANDARD			
FILE NUMBER: 406/67		COMMENTS ON FILE: YES			
LICENSING PERIOD: 01.01.89 TO 31.12.89		MAXIMUM DRAUGHT: 1.82			
BOAT REGISTRATION: G249		RENEWAL DATE: 24.11.89			
BOAT NAME: VICTORIOUS		M & H CERT NO: 3323			
LENGTH (M): 15.0		STATE PREVIOUS REG: Y			
INTERNAL REF NO: 983		ENDORSEMENTS REQUIRED: NO			
CWTH LICENCE NO:					
ENTR= CONTINUE					
PF1= MAINMENU	2= PREVMENU	3= RETURNS	4= COMMENTS	5= PREV VER	6= NEXT VER
PF7= CONDS	8= SEC. INT.	9= CONVICT	10= ASS.LIC.	11= FAS	12= PRINT
A					
01,001					

FISHERIES LICENSING SYSTEM		CLLE00N
LICENCE COMMENTS		ENQUIRY
COMMENTS FLAG - T NOT TO BE TRANSFERRED		PAGE: 1 DATED - 25.07.89
<ul style="list-style-type: none"> <li>* REFER LETTER FROM GLYNN &amp; GRAY FOR J F &amp; K A FAY 17/7/89</li> <li>* NOT TO BE TRANSFERRED AT WITHOUT THEIR ADVICE</li> <li>* DISPUTE BETWEEN THE PARTIES</li> <li>*</li> <li>*</li> <li>*</li> <li>*</li> <li>*</li> <li>*</li> <li>*</li> <li>*</li> </ul>		
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PF1 - MAIN MENU		PF6 - NEXT PAGE
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## OFFER AND ACCEPTANCE

OFFERAttachment  
66

I

MARK ASHLEY PAXTON, FISHERMAN, OF  
161 FITZGERALD STREET, GERALDTON.

("THE PURCHASER") hereby offer to purchase the "LICENCES" described herein at the price and on the terms set out hereunder and subject to the terms and conditions hereafter contained.

DESCRIPTION OF LICENCES THE SUBJECT OF THIS AGREEMENT

REFERRED TO HEREAFTER AS "LICENCES"

1. Fishing Boat Licence No. 1050 (LFBG249)
2. Process Licence No. 1052
3. Abrolhos Island Otter Trawl Licence 1890 Concession No. 1602 1 UNIT
4. Commonwealth of Australia Licence No. 61626
5. Onslow Prawn Trawler Licence No. 1050 for Areas 2 and 3.

PURCHASE PRICE

- A) One hundred and ten thousand dollars (\$110,000).
- B) Until settlement date and commencing from the date of fisheries transfer of fishing vessel Panama on to "Licences", being the subject of this agreement, a lease payment of seven hundred and fifty dollars per month. (\$750 per month).

MANNER OF PAYMENT

- A) One hundred and ten thousand dollars (\$110,000) in one lump sum on the 30th of November, 1990 free of interest. To be paid to present licence holders J. F. and K. A. Fay and Blenkinsop Nominees Pty Ltd. To fulfill contractual obligations of Peter Maindok, to J. F. and K. A. Fay and Blenkinsop Nominees, presently contracted to purchase "Licences".

B) Calender monthly payments of seven hundred and fifty dollars (\$750.00) per month commencing from date of fisheries transfer of fishing vessel "Panama" on to "Licences" being the subject of this agreement.

Payment by Bank order to :

C.B.A. Geraldton Branch  
A/C No. 121-209

SETTLEMENT DATE

30th of November, 1990.

CONDITIONS

- 1) This contract is conditional upon Fisheries Transfer of fishing vessel Panama on to licences, being the subject of this agreement.
- 2) This contract is also conditional upon the Fisheries approval of transfer of all "Licences" to the purchaser at settlement date.

SPECIAL CONDITION

Acceptance of this agreement by Vendor represents the transfer of responsibility for payment of "Licences" to present owners J. F. and K. A. Fay and Blenkinsop Nominees, to be that of the purchaser.

Contrary to, but in no way voiding existing contract. Signed and dated 29 April, 1989, between Peter Maindok and Paul Franz Maindok (Purchases) and J. F. and K. A. Fay and Blenkinsop Nominees Pty Ltd, (Vendors) but fulfilling financial obligations of said contract, in consideration of purchase price of licences, and enabling ownership of licences to be transferred to Mark Ashley Paxton.

All parties of this Agreement, agree that this contract is for the purpose of fulfilling contractual obligations between Peter Maindok and Paul Franz Maindok and K. A. Fay and Blenkinsop Nominees Pty Ltd in consideration of payment for licences, enabling transfer of fishing vessel Victorious to Peter Maindok and Paul Franz Maindok and transfer of licences to Mark Ashley Paxton.

**PURCHASER:**

Mark Clark

WITNESS:

186

DATE:

189

VENDOR:

WITNESS: B.J. Ahern

DATE: 17/11/89

J. J. Blaikie on behalf of  
Blaikie & Son have read this  
document and are in agreement with its  
contents.

J. Blaauw

# Glynn & Gray

BARRISTERS & SOLICITORS

R. M. McM. GLYNN  
G. F. GRAY  
ASSOCIATE K. N. ROBERTSON

10 FORREST STREET  
GERALDTON, W.A. 6530

TEL (099) 21 2344  
FAX (099) 21 2243  
DX 60611 GERALDTON

OUR REF: RG;9136;JB

YOUR REF: IB;SB;390/89

19th January 1990

Messrs Altorfer & Stow  
Barristers & Solicitors  
DX 60602 GERALDTON

ATTENTION: MR I BLATCHFORD

Dear Sirs,

RE: FAY - BLENKINSOP

We refer to our recent discussion in respect of this matter.

We enclose herewith the Application to Replace a Fishing Boat, that document having been signed by our clients. Would you please prevail upon the Blenkinsops to sign the document and would you then hand it on to Mr Ross so that he may attend to registration on behalf of Paxton.

We confirm that our clients are prepared to allow the licences to be used by Paxton until the 30th November 1990 for a payment of \$750.00 per month. Our clients require that that payment be made to your trust account on account of the partnership between our respective clients and they prohibit disbursement of any part of the amount so paid other than in payment of the trading debts of the partnership, or otherwise as approved in writing from this office.

Would you please let us know in due course whether that arrangement is acceptable to your client.

We enclose a copy of a Warrant served on our client Mr Fay. We are instructed that the Warrant relates to a partnership debt. We authorise payment of the debt from funds received, or to be received on account of the partnership.

It was our understanding that all of the partnership debts had been paid from funds received from Maindok. We request that you let us know what amounts have been paid pursuant to the Maindok contract, and that you provide details of the disbursement of the amount involved.

Yours faithfully,  
GLYNN & GRAY

R M McM GLYNN  
encs

ATT

Tony Today

7

WE J.R. K.H. FAY AGREE  
TO ALLOW AITE NC NO  
OFF F780 TO BE TRANSFERRED  
TO CAR LIC LFBC 249 AS ALREADY  
AGREED TO BY ~~our~~ PARTNER FRED  
BLENKINSOP. WE ALSO AGREE TO  
LET NC OFFER TO BUY BACK.

WE WILL SIGN NECESSARY  
PAPERS FORMS WHEN AVAILABLE

3/4/90

  
K.A. FAY

  
J.F. FAY

We Blenkinsop Nominees P/L. wish to acquire  
Albatross Islands Travel fishing license from licensed  
fishing boat Fremantle 780, to run as a double  
as G249. Also replace 'Victorica' with 'Panara'  
on G249. Mark Paxton agrees to offer wet  
license F780 or other wet license to the buy  
back scheme. We wish permission to fish  
prior to buy back of F780 - if offer is not  
taken up - things return to status quo.

Regards.

J Blenkinsop  
T Blenkinsop



Director of Fisheries

We the undersigned agree to the transfer of the Abrolhos Scallop Licence No 1921, currently in the name of Mandare Holdings P/L and on the LFB F 780, to the LFB C 249 in the name of J. J + K.A. Day and Blenkinsop nominees P/L

We also agree that during 1991 we will offer a "wetfish licence" to the Fisheries Buy Back scheme

If a "wetfish licence" is not offered to the buy back scheme prior to the 1991 Abrolhos Scallop season we agree that we will not fish the CFB C 249 in the 1991 Abrolhos Scallop Fishing

DIRECTOR  
SECRETARY

J. B. Blenkinsop  
J. A. Blenkinsop

3. 4. 1990.



749/86

HON ACTING MINISTER FOR FISHERIES

ABROLHOS ISLANDS TRAWL FISHERY - AMALGAMATION OF LICENCES FV VICTORIOUS

Under Clause 14 of the Abrolhos Islands and Mid West Trawl Limited Entry Fishery (AIT), I have the power to approve the amalgamation of two single rig trawl licences onto one boat and permit that boat to then use a twin rig trawl. This is in the interest of the fishery as a whole because there are too many boats in the fishery. Such amalgamations generally mean that the total effort being expended either remains the same or is slightly decreased.

I currently have before me a proposal involving two licences:

LFB F780 EX "TONNARELLA" Mandare Holdings Pty Ltd with a single rig AIT licence

LFB G249 EX "VICTORIOUS" J F & K A Fay & Blenkinsop Nominees Pty Ltd with a single rig AIT licence

The proposal before me is to remove the AIT single rig licence for the Abrolhos Islands and Mid West Trawl Limited Entry Fisher (AIT) from the F780 and place it upon the G249.

The VICTORIOUS will in turn be replaced by the PANAMA which is slightly larger than both the single rig boats it replaces and is already rigged as a twin trawler.

This I have the delegated power to approve.

The complication arises because under current Ministerial licensing policy guidelines, the Western Australian Fishing Boat Licence for the F780 would have to be cancelled upon the transfer of the AIT licence. This is because the F780 does not hold any other trawl access authorization and there would thus be a "new" wetfish boat entering the industry at a time where the Fisheries Adjustment Scheme is expressly dedicated to buying out such licences.

However, the directors of Mandare Holdings Pty Ltd do not wish, for a number of reasons, to have the licence LFB F780 cancelled. The licencees of the LFB G249 have therefore proposed that they be permitted to submit another boat licence for consideration. They have also requested permission to fish with the twin rig licensed boat in the AIT fishery in 1990 on the clear understanding that they will not be permitted to fish in the AIT fishery in 1991 and beyond without the question of the surrender or buy-back of a Fishing Boat Licence being resolved.

20/2

Hon Gordon Hill earlier this year agreed in a similar case that in the first instance of such a removal of an AIT licence the Fishing Boat Licence could be declared to be available for purchase by the Fisheries Adjustment Scheme. However, if the FAS Committee did not recommend such a purchase the licence would have to be surrendered.

On this precedent I seek your approval to waive the surrender of the F780 Fishing Boat Licence upon transfer of the AIT licence on the condition that the licensees of the G249 submit another licence for sale to the Fisheries Adjustment Scheme for purchase prior to the opening of the 1991 AIT season. In the event that the fishing boat licence is not purchased by the Scheme it shall be cancelled. Until this condition has been met the LFB G249 will not be permitted to fish in the AIT in 1991 and beyond.

**RECOMMENDATION**

That you approve the following:

1. Waive the surrender of the F780 Fishing Boat Licence upon transfer of the AIT licence on the condition that the licensees of the G249 submit another licence for sale to the Fisheries Adjustment Scheme for purchase prior to the opening of the 1991 AIT season.
2. In the event that the fishing boat licence offered to the Fisheries Adjustment Scheme is not purchased by it, that fishing boat licence shall be cancelled.
3. Until this condition has been met the LFB G249 will not be permitted to fish in the AIT in 1991 and beyond.

Upon your approval I will arrange the appropriate licensing details and inform all parties concerned of your decision.

**EXECUTIVE DIRECTOR**  
4 April 1990

# Glynn & Gray

BARRISTERS & SOLICITORS

R. M. McM. GLYNN  
G. F. GRAY

10 FORREST STREET  
GERALDTON, W.A. 6530

TEL (099) 21 2344  
FAX (099) 21 2243  
DX 60611 GERALDTON

OUR REF: RG:9136:TV  
YOUR REF: IB:SB:390/89

9th May 1990

Messrs Altorfer & Stow  
Barristers & Solicitors  
DX 60602  
GERALDTON

Dear Sirs

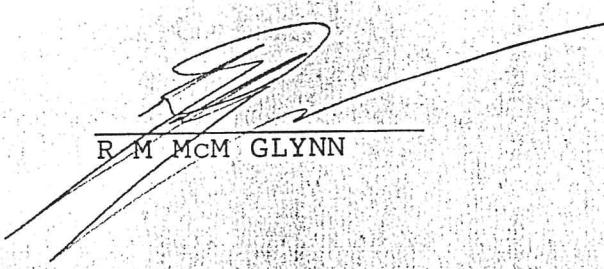
RE: FAY & BLENKINSOP

We refer to your letter of 27th March 1990.

We have made enquiries as to the whereabouts of Paxton with a view to having him execute a formal agreement. He is presently fishing somewhere between Exmouth and Onslow and it is unlikely that he will be in Geraldton prior to October. Our enquiries indicate that it is highly unlikely that we can have an effective communication with him.

In view of that, and in view of the fact that the terms of the agreement whereby he fishes, the licence was settled in the presence of Mike Ross, we see no need for formalise the arrangement. It is our understanding, confirmed by Mr Ross that Paxton is to pay for the licence on or before the 31st October 1990.

Yours faithfully  
GLYNN & GRAY

  
R. M. McM. GLYNN

As M. Ross's  
Note is not  
seen we  
G. Gray

FISHERIES LICENSING SYSTEM		CLLE02E			
FISHING BOAT LICENCE		ENQUIRY			
LICENSEE'S NAME: J F & K A FAY AND BLENKINSOP					
: NOMINEES PTY LTD					
LICENSEE'S ADDRESS: P O BOX 50					
:					
: GINGIN 6503					
LICENCE NO: 1050	SPECIES: FISH	TRANSACTION TYPE: MAINTENANCE			
LEVEL NO: 9986		CHANGE DATE: 20.07.90			
RECEIPT NO: 90-26988		CHANGE TIME: 12:46:53.0			
LICENCE FEE: 68.00		OPER ID: MJC			
RECEIPT DATE: 14.05.90		CONDITION TYPE: NON-STANDARD			
FILE NUMBER:		COMMENTS ON FILE: YES			
LICENSING PERIOD: 01.01.90 TO 31.12.90		MAXIMUM DRAUGHT: 1.95			
BOAT REGISTRATION: G249		RENEWAL DATE:			
BOAT NAME: PANAMA		M & H CERT NO:			
LENGTH (M): 17.7		STATE PREVIOUS REG:			
INTERNAL REF NO: 2543		ENDORSEMENTS REQUIRED: NO			
CWTH LICENCE NO: 61813					
ENTR= CONTINUE					
PF1= MAINMENU	2= PREVMENU	3= RETURNS	4= COMMENTS	5= PREV VER	6= NEXT VER
PF7= CONDS	8= SEC. INT.	9= CONVICT	10= ASS.LIC.	11= FAS	12= PRINT
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FISHERIES LICENSING SYSTEM		CLLE00N
LICENCE COMMENTS		ENQUIRY
COMMENTS FLAG - O OTHER REASONS		
PAGE: 1 DATED - 20.07.90		
<ul style="list-style-type: none"> <li>* REFER 406/67 APPROVAL TO TRANSFER S/R AITF FROM F780 &amp; COMBINE TWO</li> <li>* LEF'S INTO TWIN RIG TO ENABLE PANAMA TO BE LICENCED AS A REPLACEMENT</li> <li>* BOAT.</li> <li>* NOTE - CONDITIONAL ON A W/L LIC BEING OFFERED TO THE BUY BACK SCHEME</li> <li>* OR W/L LIC BEING CANCELLED. IF W/L LIC NOT OFFERED THEN AITF NOT TO</li> <li>* BE OPERATED IN 1991</li> <li>* 20.07.90 MJC:</li> <li>* NOTE - APPROVAL INITIALLY GIVEN FOR PANAMA TO OPERATE ON 4/4/90</li> <li>*</li> <li>*</li> </ul>		
ENTER - CONTINUE		
PF5 - PREVIOUS PAGE		
PF6 - NEXT PAGE		
PF1 - MAIN MENU		
PF2 - PREVIOUS SCREEN		

COMMENT REGARDING PANAMA 4/4/90  
 A RESULT OF VERBAL REQUEST AT  
 MEETING 4/4/90. + VERBAL APPROVAL.  
 - PROVING A COMMENT ~~MADE~~ BY MADE  
 REGARDING VERBAL INSTRUCTION.  
 - WHY WASN'T B/O INTEREST ALSO LISTED  
 IN COMMENTS.



(11)

## FISHERIES DEPARTMENT

Ref. 406/67  
Our Ref. SC Rock Lobster  
Enquiries:

108 Adelaide Terrace, Perth  
Western Australia 6000  
Telephone (09) 325 5988  
Teleggraphic Address  
Fishwa Perth  
Telex 93632  
Fax (09) 325 3134

Messrs J F & K A Fay and  
Blenkinsop Nominees Pty Ltd  
PO Box 50  
GIN GIN WA 6503

Dear Sirs

I refer to the approval to replace LFBG249 "Victorious" with "Panama". This approval was given on the following understanding:-

1. The single rig Abrolhos Islands Trawl Licence be transferred from LFBF780 ex "Tonnarella" to LFBG249 "Victorious". These two licences were amalgamated into a twin rig trawl endorsement to enable the "Panama" to be licensed as the replacement boat. The Limited Entry Fishery Licence No. 1921 (ex LFBF780) was cancelled on this amalgamation and the Limited Entry Licence No. 1890 (LFBG249) is now a twin rig trawl endorsement.
2. Under the current Ministerial licensing guidelines (Section 5.2.2 of the enclosed Management Paper No. 21) the above licensing steps require that the Fishing Boat Licences for LFBF780 ex "Tonnarella" be cancelled. However, this requirement was waived by the Minister on the understanding that a "wetline" licence was to be offered to the Fisheries Adjustment Buy-Back Scheme prior to the 1991 season. The Buy-Back Scheme is currently accepting offers and an application form is enclosed. The round is due to close on 31 August 1990. This condition needs to be met prior to LFBG249 "Panama" being able to operate in the 1991 season.

I look forward to your reply. When replying please quote reference 406/67.

Yours faithfully

EXECUTIVE DIRECTOR

23 July 1990 A.C.

MC:KMG

Our Ref:

Our Ref:

Your Ref:

Our Ref: RG:TJ 56/1072

17 January 1992

Independent Boat Brokers  
PO Box 1283  
GERALDTON WA 6530

(c)Y

**Glynn & Gray**

BARRISTERS & SOLICITORS

10 Forrest Street  
Geraldton W.A. 6530  
Tel: (099) 21 2344  
Fax: (099) 21 2243  
DX 60611 Geraldton  
R.M. McM. Glynn

ATTENTION: MR MACE

Dear Sir

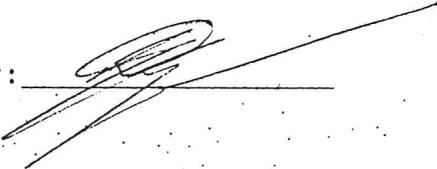
RE: FAY - BLENKINSOP

We refer to various telephone conversations in respect of this matter.

As we understand it arrangements have been made to dispose of all the licences and concessions held by the Fay/Blenkinsop partnership to three different purchases. Despite a number of undertakings given we have received no money in respect of any of the sales. Would you please let us know, in writing, what is the position in respect of each transaction and when we might expect to receive payment to our Trust Account.

We are under some pressure from our clients to bring this matter to an end and we would like to be in a position to give them definite advice.

Yours faithfully,  
GLYNN & GRAY

Per: 



**FISHERIES DEPARTMENT  
OF WESTERN AUSTRALIA**

17

Copy

Your Ref:

Our Ref:

661/71

Enquiries: SLO WETFISH (220 5301)

J F & K A Faye and  
~~Blenkinsop Nominees Pty Ltd~~  
P O Box 50  
GINGIN WA 6503

Dear Sir/Madam

I last wrote to you regarding the requirement for you to hand in a "wetfish" licence, due to the "Panama" replacing the "Victorious" on 9 May 1991. Previous to that I wrote to you on 7 February 1991.

I have not contacted you since then as I understood you were negotiating the purchase of a "wetfish" licence, other than the "Panama" LFB G249.

You were originally granted approval to hand in a "wetfish" licence to the Fisheries Adjustment Scheme provided it was done prior to the start of 1991 Abrolhos Scallop Season. This approval was subsequently extended to 31 July 1991.

As 8 months has elapsed since the original approval was granted you are now required to take the necessary steps to hand in this licence immediately. To this end I have enclosed an application to withdraw a fishing boat. This application should be completed, signed by J F & K A Faye and Blenkinsop Nominees Pty Ltd (including the company seal) and returned to this office for consideration at the next round of applications.

I have enclosed a copy of my letters dated 9 May 1991 and 7 February 1991.

Finally, I have received a letter from Glynn & Gray, Barristers and Solicitors which requests the Department to make out the cheque (in payment of the "wetfish" licence) to Independant Boat Brokers of Geraldton.

If you are in agreement with this arrangement please sign below and return this letter with the application form.

Yours sincerely

EXECUTIVE DIRECTOR

16 March 1992

- (i) J.F. FAYE \_\_\_\_\_ DATE: \_\_\_\_\_
- (ii) K.A. FAYE \_\_\_\_\_ DATE: \_\_\_\_\_
- (iii) BLENKINSOP NOMINEES PTY LTD  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ DATE: \_\_\_\_\_

SEAL

# Independent Boat Brokers

*Copy*  
P.O. BOX 128  
FISHERMAN'S WHARF ROAD  
GERALDTON W.A. 6531  
TEL: (099) 21 472  
FAX: (099) 21 833  
A/H: (099) 21 581

Blenkinsop Nominees Pty Ltd,  
P.O. Box 50,  
Gingin, W.A. 6530.

18

Date: 27th May 1992.

## Statement of Sale of Scallop Endorsements

(1) Sale of Scallop Endorsement to D. McDonald..... Gross. \$25,000.  
Less Deposit paid 28th March 1991 of \$ 4,000.00 Balance..\$19,000.00

(2) Sale of Scallop Endorsement to D. Jackson..... Gross. \$25,000.  
Less Deposits Paid 2nd Aug & 24th Oct 91 = \$6,000.00  
Balance..\$19,000.00

Sale of both Scallop Endorsement as per contracts...Gross..\$50,000.

## DISBURSEMENTS

Brokerage Commissions as agreed at 15% of Gross.....\$ 7,500.00

Balance Net.....\$42,500.00

Re Sale (1). Mr D. McDonald has paid \$6,000.00 direct to Blenkinsop Nominees Pty Ltd, the above balance due is amended to \$15,000.00 plus balance of monies held in trust after deduction of commissions being \$250.00. Total \$15,250.00.

Re Sale (2) Balance \$19,000.00, plus monies held in trust after deductions of commissions being \$2,250.00. Total \$21,250.00.

Both balances due and the balance of monies held in trust, will be transferred to the Trust Account of Glynn & Grey (Solicitors) Geraldton, by mutual agreement, Glynn & Grey will then disburse the monies accordingly between the Directors of Blenlinsop Nominees Pty Ltd.

Yours Faithfully.

G.E. Mace (Jim)  
Managing Director.

To. M. J. Hayton & Co. FAX NO 335 5218

Blenkinsop Nominees P/L agree that any monies  
due from D Jackson for a scallop licence  
ABRONCOS ISLANDS OTTER TRawl FISHERY Concession  
No 1602 on our Scallop net Licence A.I.O.T.F No 1890  
are to be paid to Mark Paxton.

3

1000

<FAX> 5754

03.05.18 13:14

18-6-92 THU 9:35 M.J. HAYTER &amp; CO P.01

Attn Ian Blatchford 099 214386

Would you send this reply to M J Hayter if

it is ok. The agreement with Paxton

reads he is buying 2 licences from us  
but Mr Mace is selling his boat  
for not paying for 1 net. he bought from  
Mace & put on our licences.

15th Day of June, 1992

Mr F. Blenkinsop

Dear Sir

Further to phone conversation of 14th of June, 1992 could you please  
in your own writing state name, occupation and answers to the  
following questions to be submitted to the Supreme Court as an  
Affidavit in injunctive procedures between M. Paxton and Ferrier  
Hodgson Liquidators acting for Australian Pacific Processors.

1. Has J. Mace acted as your boat broker in the sale of your Wet  
Licence G244 and Associated Scallop Licence 1890.

2. In 1991 did J. Mace handle the transfers of Scallop Licence  
1890 then a 2 unit Licence that he offered for sale as 2 single  
unit Licences - 1 unit going to Dave McDonald (Jock) for which  
you have received part payment, the other to D. Thomson which  
you were not paid for or believe you have the signed transfer  
for.

2.

cont..

3. Did J. Mace instruct you that if any money came from the Transfer of 1 unit of Licence 1890 that it was to be forwarded to Mark Paxton.

Could you please fax reply this morning to M.J. Hayter & Co., Fax Number 335 5218, telephone number if required, 430 4386.

Yours faithfully



M.A. PAXTON

TIA Blankinsop

18/6/92

(45)

Take to Paxton - Blankinsop

① Has J. Mace asked as  
Broker w.l. G249  
1890

Ⓐ yes to 1890

10 to WL

② 1991 did D. Mace handle  
1890 then 2 unit  
license

1 to D. MacDonald  
for which you  
have paid her

1 to D. Thomson  
not paid for

Ⓐ correct

Mike Nayfer

sending a letter to us today

no considerations

APP - didn't receive any money

Endorsement - was Paxton

Fred Blankenship - 5754038 Jinger

P. J. ROCK, LL.B., NOTARY PUBLIC.  
D. L. ARMSTRONG, LL.B.  
I. T. BLATCHFORD, BJURIS., LL.B.

MAP17

# ALTORFER & STOW

BARRISTERS & SOLICITORS

PLEASE QUOTE:

OUR REF: IB:TJB:390/89

YOUR REF:

P.O. BOX 20, GERALDTON, 6530

4th FLOOR, TOWN TOWERS  
CATHEDRAL AVENUE,  
GERALDTON,  
WESTERN AUSTRALIA

TELEPHONE (099) 21 3366  
DX 60602 GERALDTON  
FAX (099) 21 4386

Perth Office — LAWEST  
WOOD'S BUILDING,  
544 HAY STREET, PERTH, W.A. 6000  
TELEPHONE (09) 325 2896  
FAX (09) 325 3017

26th June, 1992

Messrs M.J. Hayter & Co.  
Barristers & Solicitors

BY FACSIMILE: (09) 335 5218

Dear Sirs

### BLENKINSOP & PAXTON

We refer to your telephone conversation with the writer this morning.

We have spoken to Mr Blenkinsop who has indicated that he does not acknowledge Mr Paxton's claim to the monies in question.

We have also spoken to Mr Glynn who is acting for Mr & Mrs Fay. Mr Glynn advised that the Fays do not admit your client's claim. The Fays regard themselves as being entitled with the Blenkinsops to the monies in question by reason of their partnership with the Blenkinsops.

It may be beneficial for you to make contact with Mr Glynn for his views on the matter.

Yours faithfully

cc: Messrs Glynn & Gray  
Mr & Mrs Blenkinsop

Partners: **Gary Nixon**, B Juris LLB  
Commissioner for Affidavits

**Paul Anthony**, B Juris LLB

**Glynn & Gray**

BARRISTERS & SOLICITORS

10 Forrest Street  
Geraldton W.A. 6530  
Tel: (099) 21 2344  
Fax: (099) 21 2243  
DX 60611 Geraldton

Your Ref: IB:TJC:390/89  
Our Ref: GN:NR 56/1072

23 October 1992

Messrs Altorfer & Stow  
Barristers & Solicitors  
DX 60602  
GERALDTON

Dear Sirs,

RE: FAY & BLENKINSOP

We refer to previous correspondence ending with our Mr Nixon's telephone conversation with Mr Blatchford on 14 October 1992.

We confirm we have received payment from Mr McDonald of the further \$15,000.00 in relation to purchase of the scallop licence and we now hold a significant sum of money in our trust account. We are unable to place any of that money into an interest bearing account until we receive written confirmation from your client and each of the Fays of to whom any income earned by investing that money will go and the tax file numbers of all those people. We suggest at this stage confirmation simply be provided from all parties that the income is to be distributed to one or more of Mr Blenkinsop and Mr and Mrs Fay in a manner not yet determined. We would be grateful if you could provide to us at your earliest convenience such confirmation from Mr Blenkinsop as well as his tax file number. We are awaiting similar confirmation from our clients.

Our clients wish to resolve the partnership dispute so that the money currently in our trust account and other money to be accounted for may be finally distributed amongst the parties as soon as possible. To this end we request you obtain from your client and provide to us as soon as possible:

1. A full account and records of all debts and expenses Mr Blenkinsop claims should be taken into account in the partnership dissolution.
2. Full account of the sum of approximately \$63,000.00 of which we are instructed Mr Blenkinsop took possession and all records to support any distribution of that money.
3. Details and records of all lease payments made by Mr Paxton to Mr Blenkinsop.
4. Details of all other financial transactions of which Mr Blenkinsop is aware relevant to the partnership and supporting documentation.



Messrs Altorfer & Stow  
Barristers & Solicitors

23 October 1992

Our clients' view is that they previously had no objection to Mr Ross or another accountant preparing final accounts for the partnership but that process was not finalised because your client was not happy with Mr Ross' work or opinions and sought to have accounts prepared by a Perth accountant without providing the relevant documents to that accountant. We have advised our clients of their right to institute court proceedings for an order that partnership accounts be taken and they have expressed their desire to institute such proceedings if the matter is not otherwise swiftly resolved.

Mr Fay envisages difficulty attending any meeting in Geraldton and has therefore requested we obtain the above information from you as well as written details of any proposals Mr Blenkinsop has for full resolution of the partnership matters. As soon as we receive all such details we will provide them to Mr and Mrs Fay and seek their urgent instructions in response. The parties may then consider whether holding a meeting is worthwhile. Even if a meeting were to be held we do believe it would be fruitless without we and our clients having obtained the above details sufficiently in advance to have considered them.

We look forward to your prompt response.

Yours faithfully,  
GLYNN & GRAY

Per: gary Nixon

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IB:DP:390/89

11 November, 1992.

Messrs Glynn & Gray,  
Solicitors,  
DX 60611,  
GERALDTON W.A. 6530.

BY FACSIMILE

ATTENTION MR G NIXON

Dear Sirs,

FAY & BLENKINSOP

We refer to the writer's telephone conversation with Mr Nixon this morning and enclose the following:-

1. Copy offer and acceptance prepared and executed by Mr Paxton.
2. Copy of letter received by Mr F Blenkinsop from Mr Paxton dated 25th August, 1990.

We confirm that our clients are agreeable, in principal, to the "Paxton endorsement" being returned to him with the co-operation of Mr Jackson subject to Mr Paxton effectively paying the partnership the arrears of rent as discussed. The return of the endorsement to Mr Paxton is to be in full satisfaction of any claim he may have against our respective clients, jointly or severally.

As also discussed, we would prefer that the arrears of rent be retained by your firm and the balance of the sale price of the "Paxton endorsement" refunded to Mr Jackson on the understanding that Mr Paxton will make up the difference with Mr Jackson direct. We confirm that Mr Paxton proposed this to the writer yesterday.

It is now a matter of sorting out what is owing by Mr Paxton in rent. We look forward to receiving your comments on this.

Yours faithfully,

Encs.

CC to client

ers: **Gary Nixon, B Juris LLB**  
Commissioner for Affidavits

**Paul Anthony, B Juris LLB**

Our Ref: GN:NR 1072

12 November 1992

Mr M Paxton  
GERALDTON  
For collection by hand

# Glynn & Gray

BARRISTERS & SOLICITORS

10 Forrest Street  
Geraldton W.A. 6530  
Tel: (099) 21 2344  
Fax: (099) 21 2243  
DX 60611 Geraldton

Attachment

Dear Sir,

RE: FAY & BLENKINSOP

We refer to your facsimile letter to us dated 8 July 1992 and your subsequent discussions with our Mr Gary Nixon concerning your claimed entitlement to the scallop endorsement which was one of the two units of endorsement 1890 or the proceeds of sale of that endorsement.

We confirm we represent Mr and Mrs Fay in relation to the various partnership matters they are seeking to resolve with Mr Blenkinsop who is represented by Mr Ian Blatchford of the law firm Altorf & Stow. We have sought confirmation of our clients' attitude to your claim as well as Mr Blenkinsop's attitude. [Mr Fay has as you are aware indicated to us his agreement in broad terms to you receiving the balance of the proceeds which we hold in trust from sale of the scallop endorsement to Mr Jackson after deduction of the lease payments you owe to the former partnership of the Fays and Blenkinsop in relation to the agreement for you to purchase and lease various licences] The proceeds held in our trust account do not however include the commission which was paid to Mr Mace of Independent Boat Brokers for sale of the endorsement. Mr Fay is not aware of the exact arrangements and payments which were made between you and Mr Blenkinsop in relation to the lease and on his behalf we are therefore seeking urgent clarification by Mr Blenkinsop of the period for which you leased the licences and the amount owing by you pursuant to the lease as well as Mr Blenkinsop's attitude to your overall claim.

We confirm as we hold the money in our trust account as stakeholder between the Fays and Blenkinsop we are not entitled to distribute any of it without all of their authorisation and to make any such distribution without Mr Blenkinsop's authorisation would leave us open to prospective action by him.

We confirm the alternative proposal you and Mr Jackson have made is that the balance of the proceeds of sale of the endorsement held by us after deduction of the lease payments unpaid by you and the \$150.00 you owe us in relation to an unpaid account on another matter be paid to Mr Jackson as part

(21)

-2-

Mr M Paxton

12 November 1992

of an arrangement between you and he for him to sell the endorsement to you. Transfer of the endorsement between you and Mr Jackson and payment by you of the balance of any money sought by him in payment would be matters to be resolved between you and he and would not involve us or our clients or Mr Blenkinsop.

We confirm during your discussions with Mr Nixon at our office around 12.30 pm on 12 November 1992 you indicated you wished to recover from the Fays and Blenkinsop either:

1. \$22,000.00 (being the \$25,000.00 Mr Jackson paid for the endorsement including Mr Mace's commission less the \$3,000.00 you state is the amount unpaid by you and owing pursuant to the abovementioned lease) without you entering any deed or disclaimer confirming that such payment would be in full and final settlement of any claims by you against any or all of the Fays and Blenkinsop, or.
2. A total payment of \$30,000.00 and the parties enter a deed of compromise confirming that the payment is made in full and final settlement of all claims and prospective actions between the parties now or in future.

We have put these two options to Mr Blenkinsop's Solicitor and are awaiting his response. We are writing to each of our clients seeking their response on an urgent basis. Since that discussion with you Mr Nixon has been informed by Mr Blenkinsop's Solicitors that he is seeking to clarify some aspects of your claimed entitlement and neither we nor those Solicitors are therefore currently in a position to provide confirmation of Mr Blenkinsop's attitude. We and those Solicitors anticipate that Mr Blenkinsop's final instructions should be provided to his Solicitors promptly. We hope the final position of all of the Fays and Blenkinsop in response to your proposals will be known by the time you return from your week away from Geraldton.

Yours faithfully,  
GLYNN & GRAY

Per: Mr Paxton

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IB:TJB:390/89  
GN:NR 56/1072

13th November, 1992

Messrs Glynn & Gray  
Barristers & Solicitors  
DX 60611  
GERALDTON WA 6530

Dear Sirs

FAY & BLENKINSOP

We refer to our recent discussion subsequent to our letter to you of 11th November 1992.

There is now considerable doubt as to whether Paxton's claim regarding ownership is, in fact, correct.

We are waiting for our clients to forward us certain correspondence they have received from the Fisheries Department. Upon receipt of this we are instructed to take the matter up with the Department with a view to establishing the position once and for all.

In view of the above and in view of our understanding that Paxton is now talking about receiving more than \$25,000.00 and is also apparently reserving his right to take proceedings in the future should he so wish, our clients' position has now changed from that set out in our abovementioned letter.

Mr & Mrs Blenkinsops' final position will be determined by the advice we receive from the Department.

We will correspond with you again as soon as possible.

Yours faithfully

cc: Mr & Mrs F. Blenkinsop

P. J. ROCK, LL.B., NOTARY PUBLIC.  
D. ARMSTRONG, LL.B.  
I. BLATCHFORD, B.JURIS., LL.B.

# ALTORFER & STOW

BARRISTERS & SOLICITORS

PLEASE QUOTE:

OUR REF: IB:TJB:390/89

YOUR REF:

P.O. BOX 20, GERALDTON, 6530

4th FLOOR, TOWN TOWERS  
CATHEDRAL AVENUE,  
GERALDTON,  
WESTERN AUSTRALIA

TELEPHONE (099) 21 3366  
DX 60602 GERALDTON  
FAX (099) 21 4386

Perth Office - LAWEST  
WOOD'S BUILDING,  
544 HAY STREET, PERTH, W.A. 6000  
TELEPHONE (09) 325 2896  
FAX (09) 325 3017

23rd November, 1992

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The Executive Director  
Fisheries Department  
108 Adelaide Terrace  
PERTH WA 6000

BY FACSIMILE: (09) 325 3134  
ATTENTION: MR MILLINGTON

Dear Sir

## BLENKINSOP NOMINEES PTY LTD & OTHERS

We act for Blenkinsop Nominees Pty Ltd.

We are seeking to clarify the position insofar as the ownership of a single rig Abrolhos Islands trawl licence is concerned.

The licence was transferred from LFBF780 (ex "Tounarella") to LFBG249 ("the Victorious"). In this regard we enclose a copy of a letter received by our client and its partners Mr & Mrs Fay in July 1990.

As set out in the abovementioned copy letter, the two licences were amalgamated to a twin rig trawl endorsement.

We understand that Mr Millington has had some contact with both Mr Fred Blenkinsop (of our client) and Mark Paxton. Mr Blenkinsop, on behalf of Blenkinsop Nominees Pty Ltd, and Mr Paxton both claim ownership of the twin rig trawl endorsement referred to above.

We note that it is Blenkinsop Nominees Pty Ltd which has been paying all the associated fees in respect of the endorsement. We also note that the amalgamation was allowed only on the basis that our client's wetline licence was offered to the buy-back scheme.

We also enclose a copy of an offer and acceptance drawn by Mr Paxton by which he agrees to purchase licence number 1890

being the twin rig trawl endorsement, an indication, perhaps, that as at the date he made that offer he was of the view that the endorsement was properly owned by Blenkinsop Nominees Pty Ltd and Fay.

Your thoughts on the question of ownership of the twin endorsement would be of assistance to us.

Yours faithfully





HON GORDON HILL, JP, MLA  
MINISTER FOR SMALL BUSINESS: MINES:  
FISHERIES; ASSISTING THE PREMIER ON  
EMPLOYMENT, TRADE AND INVESTMENT

11th Floor, 214 St. George's Terrace, Perth, Western Australia 6000  
TELEPHONE: Metropolitan (09) 481 3244, Country 008 199 135  
FACSIMILE: (09) 481 4613

OUR REFERENCE

18310

23 NOV 1992

The Manager  
Blenkinsop Nominees  
PO Box 50  
GinGin WA 6503

Dear Sir/Madam

I refer to your application of 11 November 1992 offering to surrender your State Fishing Boat Licence No. 1050 for the boat Registration No. G249.

In terms of Section 4(5) of the Fisheries Adjustment Schemes Act 1987 and of Section 17A of the Fisheries Act 1905 I offer the sum of \$22,500 for the surrender of the licence, subject to the following conditions:

- (a) the sum offered is to be reduced by an amount equal to the sum total of any State Fishing Boat Licence fees and Fisheries Adjustment Scheme fees, outstanding for 1992 and previous years.
- (b) if renewed for 1992 the State Fishing Boat Licence is to be returned to the Fisheries Department for cancellation;
- (c) the boat registration number is to be removed from the boat; and
- (d) the boat is to be removed from the fishing industry.

Accordingly, if you wish to accept the offer please sign the attached Acceptance of Offer and return it together with the copy of this letter to the Fisheries Department, 108 Adelaide Terrace, East Perth 6004, by 31st December 1992.

Yours sincerely

Gordon Hill, JP MLA  
MINISTER FOR FISHERIES

IB:TJB:

24th November, 1992

Mr M. Paxton  
BY HAND

Dear Sir

MR & MRS F. BLENKINSOP

We refer to your recent attendances with the writer and his secretary and confirm that you have been handed a copy of the Offer and Acceptance.

We also confirm our advice that we have written to the Fisheries Department seeking clarification of various aspects of the matter. As also advised, we are not instructed to take the matter further until we receive a reply from the Department.

We expect to be able to make further progress within the reasonably near future. In the meantime, there is little else we can do.

If you care to provide us with an address or telephone number we will make contact with you again as soon as possible.

Yours faithfully

cc: Mr & Mrs F. Blenkinsop

## ACCEPTANCE OF OFFER

NOTE: PARTNERSHIPS

All partners to sign this Acceptance of Offer.

CORPORATE BODIES

This Acceptance of Offer to be signed and sealed in accordance with the Company sealing clause.

I/We accept the offer made by the Hon Minister for Fisheries in a letter dated 23.11.92, and enclose a copy of that letter together with all current relevant licences.

J Blenkinsop  
Signature

26.11.92  
Date

Signature

Date

J Blenkinsop  
Signature

26.11.92  
Date

Signature

Date

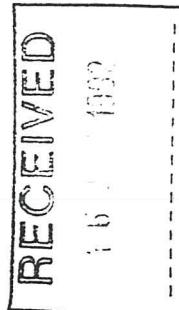




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Your Ref: IB:TJB:390/89  
Our Ref: 661/71  
Enquiries: FPO West (220 5315)

Altorfer & Stow  
Barristers and Solicitors  
PO Box 20  
GERALDTON WA 6520



WHERE IS  
THIS LETTER?

Dear Sirs

I refer to your letter of 23 November 1992 and 1 December 1992 regarding Blenkinsop Nominees P/L and Abrolhos Islands Scallop Licence No. 1890.

A single rig scallop licence (No. 1921) was initially issued to M A Paxton on 19 November 1986. This was transferred to the "Panama" LFB G249 on 15 May 1990. As the "Panama" had an existing single rig scallop licence (No. 1890) it became a twin rig licence. Licence No. 1921 was cancelled. The licensees of the "Panama" were J F & K A Faye and Blenkinsop Nominees P/L.

DOES THIS MEAN THEY OWNED MY BOAT AS WELL?

During 1991 there was a rationalisation of the Abrolhos Scallop Fishery whereby the gear units being operated by the fleet were halved. To accomplish this, trading of gear units was permitted to enable boats to operate the same amount of gear as they had in previous seasons. Therefore a number of boats left the fishery during 1991.

On 3 May 1991 the "Panama" traded its gear units on Licence No. 1890 to two other boats. Licence No. 1890 was subsequently cancelled.

I hope this information is of assistance to you and if you have any further enquiries regarding this matter please contact this office.

Yours sincerely

*P. P. Rogers*  
EXECUTIVE DIRECTOR A.C.

16 December 1992

ac:bb

clet/stow

## The Western Australian Public Sector Code of Ethics

### The Minimum Standards of Conduct and Integrity for the Western Australian Public Sector

#### Justice

#### Respect for Persons

#### Responsible Care

**Justice** means being impartial and using power fairly for the common good. It means not abusing, discriminating against or exploiting people.

##### The Code

To meet the minimum standards of conduct and integrity, all public sector bodies and employees must:

##### Act impartially and in the public interest

Treat all people equally and fairly, recognising that fairness can involve treating people differently, according to circumstances.

Act without fear or favour and be open and accountable.

Protect people's right to equal opportunity.

Protect people's right to due process.

Report fraud, corruption and maladministration.

Act openly and promptly to help resolve complaints.

Refrain from using any circumstance or information connected to official duties for personal profit or gain.

Declare any interest that may conflict with the performance of public duty.

Comply with any applicable code of conduct

**Respect for persons** means being honest and treating people courteously, so that they maintain their dignity and their rights are upheld. It means not harassing, intimidating or abusing people.

##### The Code

To meet the minimum standards of conduct and integrity, all public sector bodies and employees must:

##### Respect people's dignity and well-being.

Treat others with courtesy, consideration and sensitivity.

Respect diversity.

Be honest.

Respect people's right to seek advice and support.

Inform others about decisions and actions that affect them.

Share information wherever permissible.

Protect privacy and confidentiality.

Respond promptly to enquiries.

**Responsible care** means protecting and managing with care the human, natural and financial resources of the State. It means decisions and actions do not harm the short and long-term well-being of people and resources.

##### The Code

To meet the minimum standards of conduct and integrity, all public sector bodies and employees must:

##### Assume responsibility for the best deployment and use of human, natural and financial resources.

Seek the efficient and effective use of public assets and avoid waste.

Minimise risk and harm.

Be conscientious and scrupulous in the performance of public duty.

Co-operate to achieve what is best for the community.

Be open and accountable for decisions and actions, and consult those affected, where possible.

Maintain records sufficient to enable review by others.

Develop skills and competencies in accordance with responsibilities

and help others to do so.

24



# Western Australian Consolidated Acts

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## CRIMINAL CODE - SECT 409

### Fraud

#### 409 . Fraud

(1) Any person who, with intent to defraud, by deceit or any fraudulent means —

(a) obtains property from any person;

(b) induces any person to deliver property to another person;

✓ (c) gains a benefit, pecuniary or otherwise, for any person;

✓ (d) causes a detriment, pecuniary or otherwise, to any person;

(e) induces any person to do any act that the person is lawfully entitled to abstain from doing; or

✓ (f) induces any person to abstain from doing any act that the person is lawfully entitled to do,



is guilty of a crime and is liable —

(g) if the person deceived is of or over the age of 60 years, to imprisonment for 10 years; or

(h) in any other case, to imprisonment for 7 years.

Summary conviction penalty (subject to subsection (2)):

(a) in a case to which paragraph (g) applies: imprisonment for 3 years or a fine of \$12 000; or

(b) in a case to which paragraph (h) applies: imprisonment for 2 years or a fine of \$8 000.

(2) If the value of —

(a) property obtained or delivered; or

(b) a benefit gained or a detriment caused;

is more than \$10 000 the charge is not to be dealt with summarily.

(3) It is immaterial that the accused person intended to give value for the property obtained or delivered,

or the benefit gained, or the detriment caused.

*[Section 409 inserted by No. 101 of 1990 s.24; amended by No. 36 of 1996 s.23; No. 23 of 2001 s.11.]*

*[410, 411, 412, 413. Repealed by No. 101 of 1990 s.24.]*

## **Chapter XLI — Receiving property stolen or fraudulently obtained and like offences**

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## **PUBLIC SECTOR MANAGEMENT ACT 1994 - SECT 9**

### **General principles of official conduct**

#### **9 . General principles of official conduct**

The principles of conduct that are to be observed by all public sector bodies and employees are that they —

- (a) are to comply with the provisions of —
  - (i) this Act and any other Act governing their conduct;
  - (ii) public sector standards and codes of ethics; and
  - (iii) any code of conduct applicable to the public sector body or employee concerned;
- (b) are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and
- (c) are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.

### **Division 2 — Functions, etc. of Minister**

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Your Ref:

Our Ref: 661/71

Enquiries: SLO West (220 5309)

Frank Unmack and Cullen  
Barristers and Solicitors  
11 Cantonment Street  
FREMANTLE WA 6160

Dear Mr Cullen

On the 17 February 1993 I interviewed one of your clients, Mr Mark Paxton, regarding a number of licensing issues and in particular ownership of licences.

I offer the following information which may be of assistance to you.

Every commercial fishing boat in Western Australia holds a "Fishing Boat Licence". A number of details appear on the Fishing Boat Licence including the name of the licensee/s. The licensee/s can be a single person, a partnership or a company. Any associated licences to the Fishing Boat Licence have the same licensee/s details on them.

If an application is received to transfer ownership of a Fishing Boat Licence all the signatures of the licensee/s are required.

Although the Department will only transfer Fishing Boat Licences with the authority of the licensees I am aware however that some fishermen enter into subsidiary agreements which can effect the ownership of the licence. The Department is not always aware of these agreements.

FAILURE  
IN DUTY  
OF CARE

If you need any further details or clarification on this matter please contact the Licensing Section at this Office.

Yours sincerely

  
EXECUTIVE DIRECTOR

18 February 1993

ac:bb

slct/cullen

108 Adelaide Terrace, East Perth, Western Australia 6004

Telephone: (09) 220 5333, Fax (general enquiries): (09) 325 2068, Fax (Executive Director's office): (09) 325 3134

cc Client

18/3/93

COPY



**FISHERIES DEPARTMENT  
OF WESTERN AUSTRALIA**

Your Ref:

Our Ref: 334/92

Enquiries: Director Corporate Services (220 5327)

Messrs J F & K A Fay and  
Blenkinson Nominees Pty Ltd  
C/- Glynn & Gray Trust Account  
10 Forrest Street  
GERALDTON WA 6530

Dear Sirs

**FISHERIES ADJUSTMENT SCHEME**

Please find enclosed cheque number 7940871 for \$22,500 being payment for the removal of boat LFBG249 from the fishing industry, which is subject to a dispute between Messrs Fay and Blenkinsop and this money is being paid by agreement between the two parties into your trust account.

I have arranged cancellation of Fishing Boat Licence No. 1050.

It is now necessary for Messrs Fay and Blenkinsop to remove the LFB number from the boat in question. This should be attended to promptly as I will be arranging for an officer to call and confirm that the number has been removed. Would you, acting as their agent, take appropriate action to make sure this occurs.

Yours sincerely

*P.P. Roger*

EXECUTIVE DIRECTOR

9 March 1993

wb:kom

enc

cc SENIOR DISTRICT FISHERIES OFFICER

For your information and attention re removal of boat registration number.

k:\let\fas1992

Mark Paxton  
C/o Fremantle Post Office  
Fremantle WA 6160

8 December 1993

To: Minister of Fisheries, Monty House

Re: 4 Fathom Scallop Endorsement

Formerly	1921 -	LFBG298
	1890 -	LFBG249
Presently situated on		LFBG373(?)
Owned by David Jackson of Northampton		

Further to my conversation today with Tony Goadly I am writing to make you aware of a fraudulent transfer of the above mentioned scallop endorsement and request the cancellation of that transfer and subsequent return to myself.

I have made the fisheries aware of this situation since last year, in May, with the only response being a letter from Peter Rodgers, (July 1993) at my request, to the effect that Wet Licence ownership gives the right to transfer of any associated licences/endorsements, but doesn't denote ownership as the fisheries are aware that agreements can exist between fishermen as regards actual ownership.

This has left me in the position that having proven ownership in the Supreme Court I can sue for compensation and loss of earnings. This I have been told my solicitor would cost me in the vicinity of \$15,000 and maybe not result in the return of my endorsement, and would probably not happen before next season.

It seems to me that the only way I can get my endorsement back is for you, as Minister for Fisheries, to cancel this transfer on the grounds that it has been categorically proven to you that the Wet Licence holder did not have the right or permission to transfer this endorsement.

I am appealing to you in your capacity as the head of the Fisheries Department with your responsibility to protect and manage our fishery and fishermen to rectify the situation where people can take advantage of your licensing system to commit fraud.

FACTS: 1986 Single Rig endorsement issued to me on my Wet Licence LFBG298 (end 1921)

- : 1988 I sold LFBG298 and leased Wet Licence off Mandare Holdings and transferred end 1921 to Mandare Holding - verbal agreement between myself and Bert Buschetti (Mandare) to the effect that I owned the endorsement.
- : November 1989 negotiated lease of LFBG249 from Blenkinsop, Fay and nominees (then holders of 1 single scallop endorsement) - 1890 SEE LEASE.
- : Approximately early 1990 meeting with Peter Millington which Peter informed me that to conform with then current Fisheries policy, to enable the transfer of my endorsement from Mandare to Blenkinsop, which created a "Bare" Wet Licence, I must hand in to the Fisheries a "Bare" Wet Licence. As the licence I was using was leased, Peter compromised by giving me twelve months to hand in a Wet licence or to quite Peter - "things would return to the status quo".

6/2/93

I did not hand in a wet licence and on this fact along the end should be returned to the "status quo" at that time.

- : April 1990 end transferred from Mandare to Blenkinsop at my request.
- : 1990 season - I fished my vessel "Panama" on LFBG249 fishing 2 units, one mine, one as was previously on LFBG249.
- : 1991 Blenkinsop sells Wet Licence and 2 units (1890) 1890 being previously 1 unit then becoming 2 when mine was transferred from Mandare. 1 unit went to Dave Macdonald, the first sale and the only sale Blenkinsop was legally allowed. Second sale of 1 unit to Dave Thompson. Later transferred by Blenkinsop and resold to Dave Jackson.

**PROOF:** Statutory Declarations from Jim and Kerry Fay Blenkinsop's partners to the effect that:

- they only ever owned 1 unit
- they were unaware that when end 1890 (previously their single end) was sold it included my endorsement. Blenkinsop handled the sale of licences.
- they never negotiated or bought my end. Blenkinsop <sup>had</sup> was not proof of ownership of my end that - no cheque butts no contract.

1.2.

Yours sincerely

**Mark Paxton**

# STATUTORY DECLARATION

22

I, MS KERRY FAY

of 187 SHENTON STREET  
GERALTON

declare as follows:-

do solemnly and sincerely

- I WAS A PARTNER IN BLENKINSOP FAY AND NOMINEES.
- THE OTHER PARTNERS WERE FRED BLENKINSOP AND JIM FAY.
- LFBG-249 IS OWNED BY BLENKINSOP FAY AND NOMINEES HAD ONE SINGLE ENDORSEMENT (END.) N<sup>o</sup> 1890
- MARK PAXTON LETTED LFBG249 WITH ITS SINGLE END 1890 FOR THE YEAR 1990.
- AT MARK PAXTON'S REQUEST HIS SINGLE END (1921) WAS TRANSFERRED TO LFBG249, TO ENABLE HIM TO FISH 2 UNITS, IN APRIL 1990.
- THIS RESULTED IN END 1890 BECOMING A DOUBLE END (2 UNITS)
- BLENKINSOP FAY AND NOMINEES NEVER NEGOTIATED TO BUY/LEASE OR USE MARK PAXTON'S ENDORSEMENT. A VERBAL AGREEMENT EXISTED BETWEEN ALL PARTIES TO THE AFFECT THAT 1 UNIT WAS MARK PAXTON'S.
- WHEN LFBG249 AND ENDORSEMENT 1890 WERE SOLD I WAS UNAWARE THAT IT INCLUDED MARK PAXTON'S UNIT. THIS SALE WAS NEGOTIATED BY FRED BLENKINSOP.
- I WISH TO DECLARE THAT AT ALL TIMES I UNIT ON LFBG249, AFTER APRIL 1990, REMAINED THE PROPERTY OF MARK PAXTON AND I HAD NO INTENTION OR KNOWLEDGE THAT IT WAS TO BE SOLD.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of Section 106 of the "The Evidence Act 1906".

DECLARED AT Geralton

in the State of Western Australia

this 29<sup>th</sup> day of

December 1993

Before me

CLASSIFIED OFFICER  
STATE PUBLIC SERVICE

\* Justice of the Peace

\* Commissioner for Declarations

(\* Strike out whichever inapplicable)

11 JAN 1994



MINISTER FOR FISHERIES  
WESTERN AUSTRALIA

FORREST CENTRE  
221 ST GEORGE'S TCE  
PERTH 6000  
TELEPHONE (09) 381 2044  
FACSIMILE (09) 381 2174

Ref. 10844

Mr Mark Paxton  
C/o Fremantle Post Office  
FREMANTLE WA 6160

Dear Mr Paxton,

In response to your letter of 8 December 1993, regarding disputed ownership of a net endorsement in the Abrolhos Islands Trawl Fishery, I have had the Fisheries Department check all of the licence and gear unit transfers involved.

As all of the transfer applications have been signed by the correct people, i.e. the holders of the fishing boat licences, including the original one by yourself, I cannot direct the Department to reverse any of the transfers. Nor can I issue you an Abrolhos Islands Trawl Limited Entry Fishery licence.

As you have not held an official licence in this fishery since you transferred yours to Mandare Holdings, a dispute over any unofficial form of ownership is a civil matter. Should you choose to seek legal redress, the Executive Director of Fisheries will abide by the court's direction.

Yours sincerely

Monty House MLA  
MINISTER FOR FISHERIES

*Attachment*

17

**QUERIES FROM MARK PAXTON RE ABROLHOS ISLANDS AND  
MIDWEST TRAWL FISHERY LIMITED ENTRY LICENCE 1921.**

1. Did you have a meeting with Mark Paxton in early 1990 concerning Limited Entry Licence 1921 recognizing this endorsement as Mark Paxton's even though it was on LFB F780 licensed in the name of Bert Boschetti.
2. Did this discussion include consideration of the transfer of the LEF Licence 1921 to LFB G429 with you still regarding it as Mark Paxton's.
3. Did Blenkinsop Nominees or J or K Fay ever inform you that Mark Paxton had sold or given them the right to sell LEF Licence 1921.
4. Did you inform Mark Paxton that contrary to the Fisheries Department policy, Mark Paxton had 12 months to offer a non-specific fishing boat licence to the buy-back system.
5. If 4 was not met in 12 months did you inform Mark Paxton that LEF licence 1921 would revert to F780 and the status quo would be restored.
6. Does the Fisheries Department in any way accept or record beneficial ownership of a limited entry licence or unit contrary to the fishing boat licence ownership on which it is held.
7. What correspondence has transpired between the Department and other parties concerning Limited Entry Licence 1890, on LFB G249, being one half thereof formerly recognized as LEF Licence 1921, as to its ownership or availability for sale or transfer.
8. Accepting that fishing boat licence ownership does not necessarily mean beneficial ownership what would the Fisheries Department require to establish beneficial ownership.

From Mark Paxton 9 March 1994.

pax.wps



**FISHERIES DEPARTMENT  
OF WESTERN AUSTRALIA**

12

Your Ref:

Our Ref:

661/71

Enquiries:

□

Mr Mark Paxton  
C/- Fremantle Post Office  
FREMANTLE WA 6160

□

Dear Mr Paxton

Further to our conversation of 9 March 1994 and the list of questions you asked (copy attached) I can answer as follows:

1. I did have a meeting in April 1990 about a proposal by yourself concerning the transfer of Abrolhos Islands and Mid West Trawl Limited Entry Fishery Licence 1921 to a Western Australian Fishing Boat Licence G249 in the name of Blenkinsop Nominees and J & K Fay. It was my understanding at that meeting you were the beneficial owner at that time of the Limited Entry Fishery Licence.
2. Yes - see 1. above.
3. From my perusal of the files, I did not receive written advice from Blenkinsop Nominees or J or K Fay to the effect that you had sold, or given them the right to sell, LEF Licence 1921. However, you should note that as the licence was registered under these parties' names, and no interest had been registered by you in that licence, such information would not have been sought by this Department.
4. I may have informed you verbally that 12 months grace had been given for the surrender of a Fishing Boat Licence and file notes seem to infer this; however I can find no written advice to you to this effect. There is written advice on file, duly acknowledged from Blenkinsop Nominees and J & K Fay, to this effect.
5. There is no record I can discover on file to indicate that the status quo would be restored if a Fishing Boat Licence was not surrendered.

~~REDACTED~~  
~~REDACTED~~  
~~REDACTED~~  
~~REDACTED~~  
~~REDACTED~~  
~~REDACTED~~

6. Yes, by way of voluntarily registering an interest in a licence and undertaking to inform that party of any attempts by the licensee to change the status of the licence.

7. This must be regarded as commercial-in-confidence information and cannot be provided to you.

8. See 6.

I also enclose as requested a copy of a letter sent to your solicitors concerning a number of licensing issues.

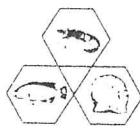
Yours sincerely



PETER MILLINGTON  
DIRECTOR FISHERIES MANAGEMENT POLICY

10 March 1993

pax2.wps



412244

GM

24

**FISHERIES DEPARTMENT  
OF WESTERN AUSTRALIA**

Your Ref: 26967:RE:IW:TG  
Our Ref: 661/71  
Enquiries: P Millington



Mr R Eadie  
Parliamentary Commissioner for  
Administrative Investigations  
GPO Box X2204  
PERTH WA 6001

ATTENTION: Mr A G Errington  
Deputy Parliamentary Commissioner

Dear Mr Eadie

MR M PAXTON

*MR M PAXTON*  
Mr Paxton has appealed to you following a failed appeal to the Minister for Fisheries to reverse the transfer of the Abrolhos Islands Trawl Limited Entry Fishery (AITF LEF) licence which was granted to him in 1986 for his vessel LFB G298.

He applied in 1988 for that licence to be transferred to LFB F780 which belonged to Mandare Holdings. In 1990 Mandare Holdings transferred the licence to LFB G249 belonging to JF & KA Fay and Blenkinsop Nominees P/L. At this stage the licence lost its individual identity by being amalgamated with the licence already attached to LFB G249.

Under the transfer rules for the fishery, when such an amalgamation occurs, the licences cannot be split again to give two separate trawlers. LFB G249 became a trawler endorsed to use two gear units (nets). The only way to separate the two gear units is to transfer one to a boat with an existing Limited Entry Licence for the AIT fishery.

In fact both gear units were transferred by Blenkinsop etc to two separate boats licensed for the fishery. It is this transfer that Mr Paxton claims occurred without his permission.

*SEE READER'S  
LETTER  
OUTRAGES  
ISN'T PERTINENT  
OR BENEFICIAL  
OWNERSHIP*  
While the Fisheries Department recognises the licensee of a fishing boat, all limited entry fishery licences and gear unit entitlements attached to the fishing boat licence are also considered to be owned by that licensee. What has apparently been happening is that Mr Paxton has, by verbal agreements with the licensee, maintained some form of ownership, outside of the fisheries regulations, of a gear unit attached sequentially to various boats of which he was not the licensee.

*MEETING  
WITH  
P.M.  
A.G.*  
All the transfers of the licences and gear units concerned have been done according to regulations and signed by the right people, ie the holders of the fishing boat licences. As far as the Fisheries Department records show, Mr Paxton ceased to own the AITLEF licence when he first transferred it to Mandare Holdings (see attached correspondence).

If Mr Paxton takes his case to court as a civil matter, and can prove that Blenkinsop had no right to sell the disputed gear unit entitlement, the Department could still not return it to him by reversing transfers, because after the gear units were sold by Blenkinsop, they have been sold on again to various trawler owners in good faith.

Millington  
Millington  
5/2/94  
5/2/94

McCorquodale

Because the original LEF licence lost its individual identity when it was amalgamated with another, it is not possible to know which of the two gear units attached to the amalgamated licence was originally Mr Paxton's.

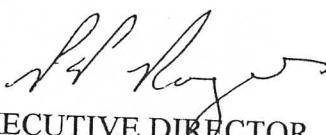
*LETAL  
RIGHT  
+ RECENTLY  
RIGHT TO  
ONE  
ONE*  
RIGHT AND  
ONE  
ONE

If a court judges that Mr Paxton was wronged, no mechanism appears to exist by which either myself or the Minister for Fisheries could redress the wrong in terms of "restoring" the LEF licence. Conceivably, if not required to pay a monetary compensation, Blenkinsop could be directed to purchase a gear unit entitlement to be transferred to a licensed trawler of Mr Paxton's choosing. Mr Paxton would still not be recognised as the official owner of the gear unit unless he also held the fishing boat licence to which the AITLEF and its gear unit entitlement were attached.

I would be happy to send your office the relevant files for perusal if the enclosed extracts are not sufficient for your consideration.

The contact officer for this matter is the Director of Fisheries Management Policy, Mr Peter Millington, who can be contacted on 220 5322.

Yours sincerely

  
Peter Millington

EXECUTIVE DIRECTOR

14 February 1994

Att.

\* LETTER PR -> M.P. MAY 1992  
REGARDS OWNERSHIP OF END.  
\* MEETING WITH PETER MILLINGTON REGARDING  
RETURNING OF END TO F780 IF NOT HANDED IN,  
IN ONE YEAR.

SENT CERTIFIED MAIL

2351

18 March 1994

Mr Mark Paxton  
c/o Doug Swadling  
Lot 28 Gnangara Road  
GNANGARA WA 6065

Dear Sir

**BLENKINSOP NOMINEES PTY LTD**

I act for Mr and Mrs F and J Blenkinsop and Blenkinsop Nominees Pty Ltd.

They have instructed me that you are claiming that they wrongfully sold an Abrolhos Island Otter trawl licence which has attached to it one net. I am instructed that you have complained to the Fraud Squad about this sale. I am also instructed that you are spreading rumours within the fishing industry that my clients unlawfully sold this licence.

The facts concerning this matter are quite clear. The property in the licence in question was vested in my clients and they had every right to sell the licence. Your suggestion that you owned the licence is absolutely false. The contract by which you had the right to buy that licence together with other licences expired long ago as you were unable to pay any part of the consideration pursuant to that contract. Your breaches of that contract were so fundamental that it brought the contract to an end. There is no doubt that my clients have suffered loss and damage as a result of your breaches of that contract and such action is still available to them.

My clients are heartily fed up with your false allegations and they have come to the conclusion that if they hear that you are continuing to spread these malicious and unfounded allegations about them, they will commence legal action against you for defamation and for damages as a result of your breaches of the contract.

Yours sincerely

25

James Francis FAY, 44 years of Perth

STATES:

During 1987 I formed a company with Fred BLENKINSOP and my ex wife Kerry Faye. It was called J.F. & K.A. FAYE and BLENKINSOP NOMINEES Pty., Ltd. We formed the company solely for fishing for scallops and prawns.

We were using the Victorious at that time. During early 1990 I was approached by Mark PAXTON who wanted to lease the licenses with a view to buying them at a later date.

PAXTON had his own single rig for scallop fishing. He wanted to put his single rig on our license because you need a wet license before any of the other licenses are valid.

I agreed to do this. PAXTON transferred his single rig license onto our LEF License No. 1890. This made our license a twin rig and his license number was cancelled. At all times I knew that one of the single rigs on our licensed belonged to PAXTON. At no stage did he tell

J. F. Fay  
22/3/94

J. F. Fay  
22/3/94

me he wanted to give up his rig or surrender it if he fell behind with the repayments.

At the stage he leased our licenses he was operating off the Panama registered number LFB G249.

Between May 1990 and May 1991 PAXTON did not keep up his lease payments for our licenses. I think the repayment were about \$750.00 per month. I believe he did make a couple of payments. Fred collected all the money.

About 1 year ago Fred BLENKINSOP told me that PAXTON had surrendered his single rig for scallops to us because he had been in default of payments. Fred said he had him all signed up in regards to default of payments of the boat and the lease of licenses. I did not see any paperwork in regards to this. PAXTON had contacted me a couple of months ago and told me something. I told him to pay what was owed and he could pick the balance up. This was when I found out that Fred had sold all the

J. F. Fay.  
22/8/94.

J. F. Fay  
22/3/94  
Sen. Sq. 45m

licenses including PAXTON'S single rig which was endorsed on our license.

I never gave Fred permission to sell PAXTON'S single rig which was endorsed on our license. I in fact told Fred that he could not sell it. However he insisted he could because PAXTON had defaulted in payment.

At no stage did PAXTON tell me that he had given his license up altogether so that Fred could surrender a wet license to the Fisheries nor did Fred.

I am not aware of any agreement or sale of PAXTON'S single rig scallop trawl net which transferred ownership to J.F. & K.A. FAYE and BLENKINSOP NOMINEES PTY., LTD.

I declare that this statement is true to the best of my knowledge and belief and that I have made this statement knowing that if it is tendered in evidence I will be guilty of a crime if I have wilfully included in this statement anything which I know to be false or that I do not believe is true.

J. F. Fay  
22/3/94

James Francis Fay 45-2  
22/3/94

# LEGAL AID

2/16/94/0009 PAR:JM

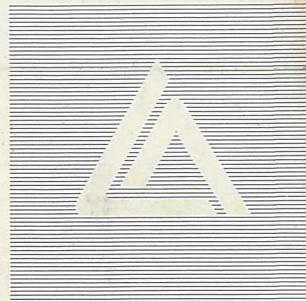
YOUR REF:

OUR REF:

PLEASE REPLY TO: **FREMANTLE** OFFICE AND REFER TO: **PAUL ROTH**

24 March 1994

Mr David Jackson  
Horrocks Caravan Park  
HORROCKS BEACH 6535 WA



Dear Sir

## **MARK PAXTON - SINGLE UNIT SCALLOP ENDORSEMENT TRANSFERRED FROM LEF 1890**

Mr Paxton has approached me in relation to difficulties he is experiencing with Blenkinsop, Fay and Nominees concerning the transfer of the above unit which was, in fact, the property of Mr Paxton.

I am informed by Mr Paxton that he has approached you in relation to this matter and that the two of you reached an agreement that in the event that Mr Paxton could establish ownership of the unit referred to above you would be prepared to make a \$15,000.00 advance payment to Mr Paxton against a 10% interest in the gross catch.

I am informed by Mr Paxton that the season will open on 23 March 1994 and as, it seems unlikely the matter of ownership will be resolved prior to that date, it does not appear that the \$15,000.00 advance payment is likely to be called.

Accordingly, I understand the agreement is that Mr Paxton will agree to accept 10% of the gross catch of the season once his ownership in the unit is established.

The current situation is that I have a signed Statutory Declaration from one of the principals of Blenkinsop, Fay and Nominees which confirms a verbal agreement between all parties that the unit transferred by Mr Paxton on to LEF 1890 remained the property of

LEGAL AID

WESTERN AUSTRALIA

PERTH

105 St George's Terrace, Perth, W.A.  
G.P.O. Box L916, Perth, W.A. 6001.  
Telephone: 261 6222  
DX 123 PERTH  
Fax: (09) 321 8785

FREMANTLE

P.O. Box 837, Fremantle, W.A. 6160.  
Telephone: 335 7108  
Fax: (09) 335 1338

MIDLAND

P.O. Box 289, Midland, W.A. 6056.  
Telephone: 274 3327  
Fax: (09) 274 3595

BROOME

P.O. Box 910, Broome, W.A. 6725.  
Telephone: (091) 921 888  
Fax: (091) 92 1520

BUNBURY

P.O. Box 1102, Bunbury,  
W.A. 6230.  
Telephone: (097) 212 277  
Fax: (097) 212 060

SOUTH HEDLAND

P.O. Box 2254,  
South Hedland, W.A. 6722  
Telephone: (091) 723 733  
Fax: (091) 72 2061

Mr Paxton. A Statutory Declaration of the second principal of that firm will be available in the very near future.

I am currently negotiating with Mr Fred Blenkinsop to obtain documentary evidence from him that the legal ownership in the unit transferred from LEF 1890 remained in Mr Paxton.

Should Mr Blenkinsop prove unco-operative in providing the necessary proof, it may become necessary to institute proceedings in the Supreme Court to seek a declaration of ownership.

Unfortunately, as the unit is currently registered in your name it will be necessary to make you a party to those proceedings. However, you should note that your inclusion as a Defendant will be a mere formality as the true question will be whether or not Blenkinsop ever had ownership of the unit. Obviously if Blenkinsop did not own the unit he would not have had any entitlement to sell it to you.

Mr Paxton has further requested that I inform you that when the declaration of ownership is made, then it will not necessarily affect the current disposition of the unit. The declaration will simply be a recognition of Mr Paxton's ownership. Mr Paxton has informed me that he is not interested in transferring the licence from your Wet Fishing Licence this season and will be more than happy to enter into negotiations for the use of the licence in seasons to come.

I am further informed by Mr Paxton that he will no longer be seeking to make an application for an interim injunction preventing you from using the licence.

Mr Paxton has, however, confirmed that he will be seeking payment for its use.

That payment will be in accordance with the agreement previously reached between the two of you that being for payment of 10% of the gross catch of the season.

Mr Paxton has asked me to write this letter to confirm with you the terms of the agreement so that once the declaration of ownership is made, a commercial arrangement between yourselves can come into effect as smoothly as possible.

If the terms of the agreement described above are in accord with your understanding of the agreement between yourself and Mr

24 March 1994

---

Paxton, I would be obliged if you could acknowledge that by signing the duplicate copy of this letter and returning it in the enclosed stamped and addressed envelope.

Should you have any queries, please do not hesitate to contact Mr Roth at the Fremantle Office of Legal Aid Western Australia.

Yours faithfully

PAUL ROTH  
for DIRECTOR OF LEGAL AID

your ref: 2/16/94/0009PAR:MM  
our ref: 2351

20 July 1994

Legal Aid  
PO Box 837  
FREMANTLE 6160

ATTENTION: Mr Paul Roth

Dear Sir

WITHOUT PREJUDICE

**YOUR CLIENT - MARK PAXTON  
MY CLIENT - BLENKINSOP NOMINEES PTY LTD**

I refer to your letter of 1 July 1994.

The arrangement referred to in the last paragraph of page one of your letter does not detail the entire agreement. On or about 17 November 1989 your client entered into an Agreement with Peter and Paul Maindock for your client to assume the benefits and obligations of a Contract between J F and K A Fay and my client's of the one part and Peter and Paul Maindock of the other part for the purchase of inter alia the Abrolhos Island Otter Trawl Licence No. 1890.

(SINGLE END)

At about this time the Department of Fisheries were restructuring the Abrolhos scallop industry. As a result, your client proposed to my client, in order to maximise your client's fishing capacity:

THIS IS PRIOR  
TO NET MAINTAIN  
BARE W/L POLICY  
2/90 - PETER 2/91

- (a) that my client allow the boat the "Panama" which your client was operating, to use my client's Wet Licence No. 1050 LFB249;
- (b) that my client agree with the Fisheries Department to give up a Wet Licence.
- (c) In consideration for my client agreeing to give up a Wet Licence my clients would be granted another 4 meter Scallop

TOTAL MARKET  
VALUE \$23,000

CHECK FISHING  
CORRESPONDENCE  
CHECK BOAT  
REPLACEMENT  
VAL ALL  
BARRY CARTE  
10/91

\* THIS IS PRIOR  
TO NET MAINTAIN.

"WET LICENCE WAS NOT  
"GIVING UP" IT WAS  
COMPENSATED FOR AT

Licence which was to become part of my client's Licence No. 1890.

This had the effect of ensuring that so long as your client honoured his commitments under the Agreement between Fay and Blenkinsop and the Main docks your client would have ended up with a Twin Rig Trawl endorsement on Licence No. 1890 as opposed to a single endorsement. If however he failed to honour his commitments (which was the case) my client would retain ownership of Licence No. 1890 which should have then been a Twin Rig but my client would have the obligation to give up a Wet Licence. Your client in attempting to persuade my client to agree to his proposition said words to the effect of,

*"If I don't perform under this Agreement you'll be better off because you will have two scallop nets instead of one."*

My client agreed to your client's proposal.

You should also be aware that your client's Licence No. 1921 was in fact cancelled by the Fisheries Department. *TRANSFER AT MY REQUEST!*

In the result your client only made one payment of seven hundred and fifty dollars (\$750.00) and despite numerous demands failed to pay any more money in relation to any of the licences. Your client's breaches were so fundamental that it brought the contract to an end.

For your information, my instructions are that Mr and Mrs Fay did not take part in negotiations with Mr Paxton so any information they pass on must be based on hearsay or must be motivated by some other reason. In any event they have both received their share of the proceeds of sale of the Licences in question.

It seems plain to me that your client has absolutely no claim whatsoever. Any action that your client may wish to institute will be vigorously defended.

Yours sincerely



NO  
KNOWLEDGE  
OF  
THIS BY  
OTHER TWO  
PARTNERS

CONDITION (ii)  
OF CONTRACT  
NOT MET

BULLSHIT

STANDARD WE  
END GOES TO  
ANOTHER LEF.

CONTRACT VOID  
CONDITION (ii)

CONTRARY  
TO LETTER  
BY FAYS  
TO FISHERIES

# LEGAL AID

2/16/94/0009PAR:MM

YOUR REF:

OUR REF:

PLEASE REPLY TO:

**FREMANTLE**

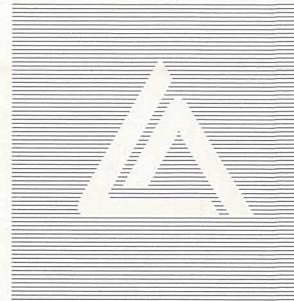
OFFICE AND REFER TO:

**Mr Paul Roth**  
335 7108

27 July 1994

Mr M Paxton  
C/O Post Office  
FREMANTLE WA 6160

TO BE PICKED UP FROM THE OFFICE



Dear Sir

I thank you for your undated letter received this office 25 July 1994.

In respect to your request for information concerning the current status of this matter, the situation is that full instructions have now been obtained from you and I have written to Mr Blenkinsop's lawyers informing them of the claim against Mr Blenkinsop and requesting an immediate transfer of the licence back to yourself.

I enclose herewith copy of the response from Blenkinsop Nominees Pty Ltd in which, as you will note, Mr Blenkinsop is essentially saying that he became the owner of your scallop licence as a result of your breach of an agreement between Blenkinsop, Fay and Fay to take over the benefits and obligations of the contract between that partnership and Peter and Paul Maindock for the purchase of Trawl Licence No 1890.

*NOT INVOLVED IN CONTRACT*

Although Mr Blenkinsop's story is not entirely understandable or cohesive, it at least to some degree defines the parameters of the argument.

It would accordingly seem that Mr Blenkinsop will now argue that there was some sort of agreement for you to take over the contract between Fay, Fay and Blenkinsop on the one part and Maindock on the other part to purchase at least Otter Trawl Licence No 1890. Mr Blenkinsop will argue that you failed to comply with the terms of that agreement.

Mr Blenkinsop will obviously argue that part of the consideration for Blenkinsop, Fay and Fay entering into the agreement to sell you

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SOUTH HEDLAND

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South Hedland, W.A. 6722  
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their entitlements under the contract with Maindock and thereby give up a wet licence, would be that the partnership would be granted a 4 metre scallop licence which was then to become part of LEF 1890.

Obviously, Mr Blenkinsop's attempt to shift the basis of this matter from one relating to a trust to a contractual matter changes the complexion of the argument.

It is, however, noted that there is no allegation that any of these agreements were in writing and it would be necessary for Mr Blenkinsop to prove the terms of the contract which he says gives rise to a change in the legal ownership of your scallop endorsement.

On the basis of the information that I have available, that would seem to be extraordinarily difficult.

It may be that Mr Blenkinsop will be able to refer to ordinary practices in the industry to support a contention that this sort of contract is an industry standard agreement, however, it seems unlikely.

In order to give you a firmer opinion on the question of the merits of this matter, it will be necessary to take some further detailed instructions from you as to the exact terms of the agreement between yourself and the partnership with Fay, Fay and Blenkinsop. It will also be necessary to obtain your instructions in relation to the agreement with the Maindocks and precisely what obligations or agreements were entered into.

As to the likely time frames involved, now that Mr Blenkinsop has significantly amended his previous claims, it becomes difficult to assess a likely time frame for a resolution of this matter.

Should the matter have to proceed all the way to a hearing on the existence of and terms of a contract which resulted in a transfer of the endorsement, a trial on that matter is not likely to occur prior to the next fishing season commencing.

It is certainly not impossible that with the pressure being applied both in the civil sense by yourself, and in the criminal sense by the fraud squad, that Mr Blenkinsop may become more and more enthusiastic about negotiating a resolution of this matter.

I believe you have previously been advised that Mr Roth has now been transferred out of the Fremantle Regional Office and will commence employment in the Perth head office as of 1 August 1994.

Accordingly, Mr Greg Boland, Solicitor in Charge of Fremantle Regional Office has now assumed the conduct of this matter and all future correspondence should be directed to Mr Boland.

Mr Boland is a senior solicitor in this organisation with extensive experience in civil law matters and has been fully briefed in the background of the file.

Enclosed herewith a copy of the letter from Mr Alan Mizen, Mr Blenkinsop's solicitors, dated 20 July 1994. I would be obliged if you could make arrangements for an appointment with Mr Boland to provide instructions in relation to the contents of that letter.

Yours faithfully



Mr Paul Roth  
Solicitor in Charge  
for DIRECTOR OF LEGAL AID  
Enc



26

*Our ref:* 661/71 Vol 1 and 2, 334/92

Detective Sergeant D Newton  
Fraud Squad  
Curtin House  
60 Beaufort Street  
PERTH WA 6000

Dear Detective Sergeant Newton

M Paxton V/S JF & KA Fay and Blenkinsop Nominees Pty Ltd

I refer to the meeting we had recently and offer the following information regarding the above matter.

My personal and employment details are as follows:

Alexander Robert Cechner  
51 Willcock Street  
FERNDALE WA 6148  
Home Phone No. 458 3017  
Work Phone No. 220 5388  
Age 40 years

I have been employed by the Fisheries Department in Perth for 22 years and have worked in the Licensing Branch for about 15 years. I am familiar with the licensing system and have access to the licensing records.

The history of Mr Paxton's Licence to Engage in a Limited Entry Fishery for the Abrolhos Islands and Mid West Trawl Fishery is as follows;

1. 19/11/86 M Paxton issued with single rig licence No. 1921 for "Apollo XI" LFB G298.
2. 31/12/87 "Apollo XI" replaced by "Tonnarella".
3. 23/8/88 Licence No 1921 transferred by way of access transfer to "Margaret Ruth" LFB F780, licensee Mandare Holdings Pty Ltd (Boschetti), and replaced by "Tonnarella".

4. 15/05/90 Licence No. 1921 transferred by way of access transfer to "Panama" LFB G249, licensees JF & KA Fay and Blenkinsop Nominees Pty Ltd.
5. 20/07/90 Licence No. 1921 cancelled. When the single rig unit that was associated with licence no 1921 was added to the single rig unit associated with licence No. 1890 on the "Panama", licence No. 1890 became double rig, ie licence 1921 lost its individual identity. Either licence No. could have been cancelled, however No. 1921 was chosen at the time.

A condition of steps 4 and 5 above was that a Western Australian Fishing boat Licence would have to be sold to the Fisheries Adjustment Scheme by the following year. This was a form of penalty imposed as the licensing rearrangement between "Tonnarella" and "Panama" was not in strict accordance with management arrangements for transfer of trawl access authorisations.

6. 03/05/91 The two gear units associated with the twin rig licence No. 1921 were split in two. One gear unit was transferred by way of access transfer from "Panama" to "Sherry Ellen" LFB G408, licensee D G Thompson and one gear unit was transferred to "Highlander" LFB G364, licensee Commonwealth Bank (McDonald). 1890
7. 12/03/92 Licence No. 1890 cancelled due to transfer in 6 above.
8. 12/03/92 Licence No. 2253 issued for three gear units for "Highlander" LFB G364 under new management regime.
9. 13/03/92 Licence No. 2256 issued for three gear units for "Sherry Ellen" LFB G408 under new management regime.

(In 8 and 9 above licences issued for three gear units as both boats already had two gear units before the "Panama" licence was split in two).

Also, during this point in time, the number of nets which were permitted to be used in the fishery were halved. i.e. if during 1991 a particular boat operated with an eight fathom net it could operate only with a four fathom net during 1992 and beyond; unless of course the licensee purchased additional gear units. This management measure was introduced to halve the effort being expended in the fishery - no compensation was paid to fishermen for the halving of the gear units.

The Western Australian Fishing boat Licence for the "Panama" LFB G249 was eventually sold to the Fisheries Adjustment Scheme and a cheque for \$22,500 was paid to

Messrs JF & KA Fay and Blenkinsop Nominees Pty Ltd  
 C/- Glynn and Gray Trust Account  
 10 Forrest Street  
 GERALDTON WA 6530

The cheque was sent on 9 March 1993.

While the Fisheries Department recognises the licensee of a fishing boat, all Limited Entry Fishery Licences and gear unit entitlements attached to the Fishing Boat Licence are also considered to be owned by that licensee. What has apparently been happening is that Mr Paxton has, by verbal agreements with the licensee, maintained some form of ownership, outside the Fisheries Regulations, of a gear unit attached sequentially to various boats of which he was not the licensee. (It is not uncommon for fishermen to enter into subsidiary agreements which can effect the ownership of the licence).

I trust the above information clarifies this matter; however if you require further assistance please contact me at this office.

Yours sincerely

*Alex Cechner*  
Alex Cechner  
Senior Licensing Officer

9 August 1994

MARLENE

55 ST GEORGES

LEGAL AID

KENRY - FREMANTLE

27

YOUR REF:

OUR REF

2/16/94/0009 PAR:DM

PLEASE REPLY TO: PERTH  
FAX NO 325 5451

OFFICE AND REFER TO: Mr Paul Roth  
261 6210

19 August 1994

Mr Peter Millington  
Officer in Charge Licensing  
Fisheries Department  
108 Adelaide Terrace  
EAST PERTH WA 6004

Dear Sir

**MARK PAXTON - REINSTATEMENT SCALLOP ENDORSEMENT  
CONCESSION NO.1626**

As you may be aware, Mr Paxton has approached me and requested my assistance in attempting to establish his ownership in an Abrolhos Island Otter Trawl Fishery Endorsement previously endorsed on limited Entry Fisheries Licence No.1890 on LFB G249.

I understand that Mr Paxton has previously discussed this matter with you and that you are aware that Mr Paxton, who owns Abrolhos Island Otter Trawl Fisheries Endorsement Concession No.1626, reached an agreement with Mr and Mrs Fay and Blenkinsop Nominees Pty Ltd whereby his Endorsement was transferred onto their Wet Licence G249 LEF 1890 and Mr Paxton's boat the "Panama", was substituted onto that licence.

I believe that you are also aware that in 1991 Fred Blenkinsop of Blenkinsop Nominees Pty Ltd negotiated the sale to Scallop Endorsements (Concession 1602 and Concession No. 1626).

Wet Licence G249 continued to have a Prawn Trawling Endorsement attached to it.

Despite significant negotiations, Blenkinsop denies Mr Paxton's ownership of the Endorsement and has consistently refused to take any action to either return the Endorsement to him or compensate him for its loss.

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Mr Paxton is now in a position where the only way out for him would be to institute proceedings in the Supreme Court confirming the ownership of the Endorsement Concession No.1626.

I understand from Mr Paxton that he has made arrangements to discuss this matter with officers from your Department on Friday, 19 August 1994, and has been requested to provide a letter setting out details of the information requested to pursue this matter.

Accordingly, so that I may properly advise my client and prepare this case, I would be obliged if you could provide the following information:

1. Copy of the regulations which reduced the size of each unit from an 8 fathom to a 4 fathom unit and a copy of the regulations which control the transfer and buy back of Endorsements, LEF's and Wet Licences.
2. The date upon which those regulations came into operation.
3. The conditions for the issuing of a fresh LEF and/or Endorsement.
4. The procedure of the Fisheries Department for recording transfers, LEF's and Endorsements.
5. Whether there is any record, register or log of ownership of LEF's, Endorsements or Wet Licences. *THEM AWARE OF AND COPY OF NOTICE TO FISHERMEN MAKING ANY SUCH RECORD.*
6. Copy of the regulations which made Onslow Prawn Endorsements non transferable and the date upon which those regulations came into effect.
7. The correspondence which is entered into between the Fisheries Department and the owner of a Wet Licence or Endorsement when that owner is obliged to surrender the Wet Licence or LEF on the buy back scheme.
8. Correspondence entered into when the owner of a Wet Licence or Endorsement agrees to surrender a Wet Licence or LEF voluntarily on the buy back scheme.

*SECOND CLAUSE OF OFFER + ACCEPTANCE*

— "RETURN TO  
"STATUS QUO"

9. Circumstances where a Wet Licence, previously used for the purpose of trawling, becomes "bare", the time limitations for the surrender of the Wet Licence.
10. When the Wet Licence G249 was sold to the buy back scheme.
11. The record of boat replacements, transfers of Endorsements and concessions on and off Wet Licence G249.
12. A record of ownership of Wet Licence G249.
13. Whether Wet Licence G249 was sold back to the Department as a result of a departmental requirement or whether it was voluntarily surrendered.
14. If the Court orders that the Endorsement be transferred from the current registered owner to Paxton, will the Fisheries agree to the Endorsement being transferred onto a Wet Licence or agreeable to establishing an LEF on an otherwise "bare" Wet Licence.
15. Has there been any change to the regulations relating to the buy back scheme, transfer ability or conditions for issuing of a fresh LEF, Wet Licence or Endorsement since January 1989.

BLEWINSOP  
NEGOTIATED TO SELL  
G249 TO B. CARTER  
IN 1991 (SEE FISHERIES  
BOAT TRANSFER  
TO G249)

If you are unable to provide information in relation to requests for copies of regulations, transfers, etc please advise whether there is a delegated Freedom of Information Officer in your Department and, if so, the name of that officer.

On behalf of both myself and my client, I wish to express my appreciation for your cooperation and assistance in this matter.

Yours faithfully



Mr Paul Roth  
for DIRECTOR OF LEGAL AID



16/12/94

MARK ASHLEY PAXTON

O P I N I O N

1. Mr Mark Ashley Paxton ("Mr Paxton") is a professional fisherman. On 20 November 1986 he was issued with a Limited Entry Fishing Licence No. 1921 ("the LEF"). A wet fishing licence permits a person to fish on a professional basis, i.e., to offer his catch for sale, but it only authorises the catching of fish in general fishing areas. For specific fish, such as scallops and prawns, the fisherman must obtain a Limited Entry Fishing Licence which authorises the taking of fish in restricted fisheries. The LEF authorised fishing in the Abrolhos Islands Otter Trawl Fishery by means of 1 net. The LEF bore a endorsement which I am instructed authorised the fishing for scallops ("the scallop endorsement"). Such an endorsement is necessary for a licensee to fish for a specific type of fish, such as scallops or prawns. It is common practice in the fishing industry for the owner of an LEF and endorsement to transfer that LEF and endorsement onto different wet fishing licences.
  
2. In about 1988 Mr Paxton sold his wet fishing licence and transferred the LEF and the scallop endorsement onto a wet fishing licence owned by Mandare Holdings and leased that wet fishing licence from Mandare Holdings. Although Mr Paxton transferred the LEF and the scallop endorsement onto the wet fishing licence owned by Mandare Holdings, it

was not his intention to transfer the beneficial ownership of the LEF and the scallop endorsement to Mandare Holdings. I gather the transfer was made simply to enable Mr Paxton to use the LEF and the scallop endorsement in conjunction with the wet fishing licence owned by Mandare Holdings.

3. In about November 1989 Mr Paxton negotiated the lease of a separate wet fishing licence from a partnership, the partners of which were a company named Blenkinsop Nominees Pty Ltd and two natural persons named Jim Fay and Kerry Fay ("the partnership"). The scallop endorsement which Mr Paxton previously held on the wet fishing licence of Mandare Holdings was transferred to the wet fishing licence of the partnership. Mr Paxton maintains that it was the intention of the parties in relation to the transfer of the scallop endorsement that he would remain the beneficial owner of it. During the 1990 fishing season Mr Paxton used his vessel, the "Panama", fishing two units, namely the unit arising from the scallop endorsement and a unit owned by Blenkinsop Nominees Pty Ltd. During 1991 and without reference to Mr Paxton, the partnership sold the two units to different persons. The scallop endorsement, the beneficial ownership of which Mr Paxton maintains remained with him, was sold to Dave Thompson. Dave Thompson was unable to raise the finance for the purchase and thereafter it was sold by the partnership to David Jackson. The sale of the scallop endorsement was negotiated by Mr F. Blenkinsop who is the principal of Blenkinsop Nominees Pty Ltd. According to Mr and Mrs Fay he sold it

without their knowledge. It was sold to Mr Jackson for \$25,000. I am instructed that when Mr Jackson purchased the scallop endorsement he did not know of the interest which Mr Paxton claimed in that endorsement.

4. Mr Paxton wishes to achieve reinstatement of the scallop endorsement.

Accordingly, my opinion has been sought in relation to the following matters

-

- (a) Whether Mr Paxton has a cause of action and, if so, what the proper cause of action is.
- (b) Whether there is a cause of action open to Mr Paxton which will eventually result in him having the scallop endorsement reinstated and the likelihood of success of such an action.
- (c) The identity of the proper defendants to the action.
- (d) Whether Mr Paxton would have a cause of action for loss of income from the date of transfer of the scallop endorsement by the partnership.
- (e) If Mr Paxton has a cause of action for lost earnings, the likelihood of him succeeding in such an action.

-

5. A resulting trust arises where title to property is transferred and the person transferring or causing the transfer does not intend to dispose of the beneficial interest (see Ford & Lee "Principles of the Law of Trusts", 2nd Edition, at para 2101; Jacobs' Law of Trusts in Australia, 5th Edition, at

para 1201). A constructive trust does not have to be evidenced in writing (see section 34(2) of the Property Law Act). A fishing licence can be the subject matter of a trust (see Pennington v McGovern (1987) 45 SASR 27). On the assumption that Mr Paxton is able to establish that it was never his intention to dispose of his beneficial or residuary interest in the scallop endorsement to the partnership, I consider the partners became the trustees of Mr Paxton's beneficial interest in the scallop endorsement. Accordingly, it was the duty of the partners, as trustees of that beneficial interest, to preserve the beneficial interest of Mr Paxton in the scallop endorsement.

6. A trustee commits a breach of trust if he violates any duty which he owes as trustee to any beneficiary of the trust. When Mr Blenkinsop on behalf of the partnership sold the scallop endorsement to Mr Jackson, it is apparent that he did so without reserving the rights of Mr Paxton. He did not inform Mr Jackson of Mr Paxton's interest in the scallop endorsement. There is no suggestion that Mr Jackson knew of Mr Paxton's interest in the scallop endorsement when he purchased it. The sale of the scallop endorsement to Mr Jackson, therefore, had the effect of transferring the legal and beneficial ownership of the scallop endorsement to Mr Jackson (see paragraphs 8 and 9, infra). The sale of the scallop endorsement by the partnership to Mr Jackson was in breach of the duty owed to Mr Paxton. Accordingly, it is my opinion that the sale of the scallop endorsement by the partnership to Mr Jackson

FISHING  
TRUSTS FOR  
BENEFICIAL OWNERSHIP  
CHANGES OWNERSHIP  
& LEAVE PETER ROUGERS

was in breach of trust and, therefore, a cause of action is available to Mr Paxton for breach of trust.

7. Restitution is the underlying principle of all the remedies which are available for breach of trust. The restitutionary principle imbues those remedies with a character which distinguishes them from the common law of concepts of damages, foreseeability and remoteness (see Ford & Lee, *supra*, at para 1710; Meagher et al "Equity Doctrines & Remedies, 3rd Edition, at para 2301-4, and Hill v Rose (1990) VR 129). A breach of trust may bring loss to the trust estate or it may make a profit for it. The trustees must pay compensation for any loss caused by their breach. They must account for any profit made in dealing with the trust property. Whether a loss is caused or a profit made depends on the outcome of the trustees activities. The beneficiary may frame his claim so as to reap the greatest advantage for himself. Where trust property or its product has come into the hands of persons not entitled to it the restitutionary principle also allows the beneficiary to recover that property or its product (see paragraph 8, *infra*). Alternatively, it allows him a charge upon property which represents trust property or its product in support of a personal judgment.
  
8. In some instances where trust property has been improperly disposed of and it still exists in the hands of a stranger, the beneficiary may be entitled in equity to claim it. However, the beneficiary will not be entitled to claim

restitution where the stranger holding the property was a purchaser of the legal estate in that property for value and without notice that the property was trust property (see Pilcher v Rawlins [1871] L.R. 7 Ch 259). Such a purchaser will have a good defence to a claim by the beneficiaries because there is no reason in conscience for equity to disturb his enjoyment of rights acquired under common law. He will have a good title to enable him to pass on a title to another purchaser, including one who has notice of the interest of the beneficiaries. The burden of showing that a stranger received the legal estate as a bona fide purchaser for value without notice rests on the stranger (see Eromanga Hydrocarbons NL v Australis Mining NL (1988) 13 ACLR 804).

9. On the information presently available it would appear that when Mr Jackson acquired the scallop endorsement from the partnership he did so as a bona fide purchaser for value without notice of the interest of Mr Paxton. That being the case, any action against Mr Jackson for restitution of the scallop endorsement to Mr Paxton is unlikely to succeed. Accordingly, unless it can be shown that when Mr Jackson purchased the scallop endorsement he knew of Mr Paxton's interest in it, I see no prospect of Mr Paxton obtaining reinstatement of the scallop endorsement.
10. Every partner is jointly and severally liable with his co-partner for any wrong committed by his co-partner acting in the ordinary course of the

business of the partnership (see sections 17 to 19 of the Partnership Act 1895). The liability of co-trustees is also joint and several (see Ford & Lee, supra, at para 956). Prima facie, therefore, all the partners of the partnership are jointly and severally liable for the breach of trust committed when the partnership sold the scallop endorsement to Mr Jackson. To the extent that the proceeds of sale of the scallop endorsement can still be identified in the hands of Blenkinsop Nominees Pty Ltd and Mr and Mrs Fay, a charge exists over those proceeds which would support a personal judgment against any of them. A stranger can also be liable for knowingly assisting a trustee to commit a breach of trust. An agent with subjective knowledge of the terms of a trust who deals with the trust property in a way not authorised by those terms may be held personally liable (see generally Ford & Lee, supra, at paras 2222-3). Although it would appear that Mr Blenkinsop was not himself a member of the partnership, as a director of Blenkinsop Nominees Pty Ltd and the person who negotiated the sale of the scallop endorsement to Mr Jackson, it is apparent that he must have knowingly assisted in the breach of trust by the partnership. Accordingly, the potential defendants for an action by Mr Paxton for breach of trust will be the members of the partnership and Mr Blenkinsop.

11. Section 20 of the Partnership Act provides -

*"If a partner, being a trustee, improperly employs trust property in the business, or on account of the partnership, no other partner shall be liable for the trust property to the persons*

*beneficially interested therein, unless he knew of the breach of trust. Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control."*

Section 75 of the Trustees Act is also relevant in relation to the liability of a trustee for a breach of trust. That section provides -

*"If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is, or may be, personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed the breach, then the Court may relieve him either wholly or partly from personal liability for that breach."*

12. The provisions of section 20 of the Partnership Act apply to a partner who improperly employs trust property *in the business or on account of the partnership.* I doubt whether the sale of the scallop endorsement by Blenkinsop Nominees Pty Ltd to Mr Jackson constitutes employment of the scallop endorsement *in the business or on account of the partnership.* Accordingly, I doubt whether Mr and Mrs Fay could escape liability for the sale of the scallop endorsement by virtue of the provisions of section 20 of the Partnership Act. On the other hand, it would appear that they probably acted honestly and reasonably and ought fairly to be excused for the breach of trust bearing in mind their lack of involvement or knowledge of the sale of the scallop endorsement to Mr Jackson. That being the case, it would appear that they could invoke the provisions of section 75 of the Trustees

Act to seek relief from personal liability for the breach of trust. The burden of establishing facts to found any such claim for relief would rest upon Mr and Mrs Fay. There are, however, more important tactical considerations why it would probably be undesirable to pursue a claim against Mr or Mrs Fay for breach of trust. As at present advised, they would be prepared to testify on behalf of Mr Paxton to confirm that the scallop endorsement was beneficially owned by him. In these circumstances there appears to be good reason why any claim for breach of trust should not be directed against Mr or Mrs Fay. As already indicated, any claim against Mr Jackson would be defeated by virtue of the fact that he purchased the scallop endorsement bona fide for value and without notice of Mr Paxton's interest. Whilst the potential defendants to the action for breach of trust are the members of the partnership and Mr Blenkinsop, it would probably be more appropriate to confine the action to one against Blenkinsop Nominees Pty Ltd and Mr Blenkinsop.

13. As indicated in paragraph 7 hereof, restitution is the underlying principle of all the remedies which are available for breach of trust. A claim for reinstatement of the scallop endorsement would be defeated by Mr Jackson. Whilst the partnership sold the scallop endorsement, there does not appear to be any basis for contending that the partnership derived profits from that sale other than the purchase price. It seems to me, therefore, that the appropriate remedy which should be pursued by Mr Paxton is to seek compensation for

the loss of the scallop endorsement. In this regard the decision in Re Dawson (1966) 2 NSW 211 is important. In that decision it was held that the obligation to restore to the trust estate the assets of which it had been deprived connoted that where a monetary compensation is to be paid in lieu of restoring the assets, that compensation is to be assessed by reference to the value of the assets at the date of restoration and not at the date of deprivation. Accordingly, the compensation which Mr Paxton would be entitled to recover for the breach of trust would be the value of the scallop endorsement at the time of judgment or restoration rather than the value when it was sold to Mr Jackson. The decision is Re Dawson has been applied in several subsequent Australian decisions, including a recent decision of the Supreme Court of Western Australia, namely Biala Pty Ltd v Mallina Holdings Ltd (1993) 11 ACSR 785, at 850-2.

14. There is also a dictum in Re Dawson, *supra*, to the effect that where trustees had sold trust assets in breach of trust the obligation of the trustees to replace the proper investment included requiring them to make good intermediate income which would have been derived from retention of the assets in the property investment. Thus, with reference to an earlier decision (In Re Massingberd's Settlement, (1890) 59 L.J. Ch. 107), it was indicated that trustees who had sold consols in breach of trust were required to replace the consols together with dividends to which the beneficiaries were entitled. In Biala Pty Ltd v. Mallina Holdings Ltd, *supra*, it was held that in

assessing the equitable compensation that should be paid the rules of equity required that questions of causation, foreseeability and remoteness be left aside and the full benefit of hindsight be applied. It was stated that equitable compensation could be based upon the detriment suffered by the plaintiff. In that case, the company to which a fiduciary duty had been owed had been deprived by a breach of fiduciary duty of the chance or opportunity of earning profits as a consequence of the breach. That chance was assessed at 60% of the profit. In the circumstances it seems to me that an arguable case could be advanced on behalf of Mr Paxton that by reason of the sale of the scallop endorsement he lost the chance or opportunity of using the scallop endorsement himself after its sale to Mr Jackson. It seems to me that a value could be placed upon that chance by reference to the opportunities which would have been available to Mr Paxton if he had been able to use the scallop endorsement himself. From a practical point of view the value of that chance would probably equate with the net loss of income which Mr Paxton would have been able to earn or that which Mr Jackson was able to earn between the date of the sale of the scallop endorsement to Mr Jackson and the date of judgment. Such an approach to the compensation recoverable by Mr Paxton is consistent with the restitutive principle referred to in paragraph 7 hereof. The contrary argument is that equity does not assume jurisdiction to punish a fiduciary for misconduct by making him account for more than he actually received as a result of the breach of fiduciary duty (see

Hospital Products Ltd v United States Surgical Corporation, (1984) 156

CLR 41, at 109 (per Mason J). Since the partners did not receive any income from the sale of the scallop endorsement to Mr Jackson they should not be required to account for income they did not receive. Arguments relating to mitigation of damages and the possibility of double compensation (which does not appear to arise in Mr Paxton's case) militate to some extent against the recovery by Mr Paxton of loss of income. In my opinion a reasonably sound argument can be advanced in support of a contention that the compensation payable to Mr Paxton should not be confined to the present day value of the scallop endorsement, but could include a claim for loss of income. On this latter aspect of the claim, namely the claim for loss of income, however, I would place the prospects of success no higher than 50-50.

w.j. millar

W.J. Millar  
Counsel

# Dwyer Durack

BARRISTERS AND SOLICITORS  
INCORPORATING  
CLAUDIO SHAW

Our ref: Melanie Watson:PAXT9503723

Your ref:

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DX 131 PERTH

International Prefix (619)

5 January 1996

Mr Mark Paxton  
C/o Fremantle Post Office  
13 Market Street  
FREMANTLE WA 6160

Dear Mr Paxton,

## Transfer of Limited Entry Fishing Licence & Scallop Endorsement

We enclose for your information a copy of the writ of summons in respect of the above matter which was filed in the Supreme Court on 2 January 1996.

We also enclose a document entitled "Notice of Acting in Person" which we require you to sign and return to this office as soon as possible.

We are presently in the process of applying to the Litigation Assistance Fund for funding in respect of the above matter. Until such time as funding is approved the Notice of Acting in Person will be applicable.

We refer to our letter dated 2 November 1995 and confirm that you now have a period of twelve months from 2 January 1996 in order to serve the writ of summons on each and every defendant. At this time the address of Mr Jim Fay is unknown and you will need to locate him. The writ must be served personally on each defendant and cannot be sent to them by way of post. We recommend that a process server be instructed by you in respect of service of the writ of summons.

We confirm our previous agreement that you will be responsible for serving the writ of summons on each party unless you are able to produce payment to us in advance for the cost of service. In the event that you do wish us to serve the writ of summons we request that you contact Ms Watson of this office so that this may be arranged.

In the event that you encounter difficulties in locating Mr Jim Fay we request that you contact this office so that further attempts may be made by us in order to locate him for you.

**PARTNERS**  
Timothy McComish  
Brian Pass  
Simon French  
Nicholas Pope  
Richard Cullen  
Carolyn Tan  
Allan Drake-Brockman  
Guy Stubbs  
Joseph Claudio  
Guy French  
Kathryn Hogan  
Graham Doppert  
Leigh Strauss  
Michael Fagan  
Jane Crisford  
Penelope Giles  
Donna Percy  
Marcus Solomon  
Francine Walter  
Timothy Burrows  
Paul Lyons  
Maxine Blount  
Trevor Darge

**SENIOR ASSOCIATES**  
Robert Castiglione  
Ross Harrison  
Susan Le Souef  
Ann Mikkelsen  
Mark Fitzgerald  
Karen Lang  
David Albrecht

We look forward to hearing from you in the near future and to receiving the signed Notice of Acting in Person.

Yours faithfully,

*Dwyer Drach*

Enc

STATEMENT OF  
FREDERICK WILLIAM BLENKINSOP  
of  
TWIN RIVERS, GINGIN

1 On or about 29 April 1989 Peter Maindok and his brother Paul Franz Maindok entered into a written agreement with the partnership known as Victory Fish. The partners of that partnership were Blenkinsop Nominees Pty Ltd, James F Fay and Kerry A Fay.

2 I have been shown a document headed "Offer" which I believe formed the basis of the agreement between Victory Fish and the Maindoks. I do not appear to have a signed copy of that document.

Exhibited hereto and marked with the letter "A" is a copy of that offer.

2 It can be seen from this offer that of the purchase price of \$184,250, the sum of \$124,250 was allocated to the licences. The licences were to be paid off at the rate of nineteen payments of \$750 per month and one lump sum of \$110,000 on 30 November 1990. Clause 12 of the offer specifically states that the transfers of the licences to the purchaser shall not be effected until payment of the purchase price in full on 30 November 1990.

3 Of the purchase price the Maindoks paid the sum of \$64,500 but failed to pay the balance.

4 On or about 17 November 1989 Mark Ashley Paxton offered to purchase from Peter Maindok the licences the subject of the offer, being the document marked "A" in this statement.

5 I agreed to Maindok assigning his rights under the original offer to Paxton, hence my signature on page 3.

Exhibited hereto and marked with the letter "B" is a copy of Paxton's offer to Maindok, dated 17 November 1989.

6 At about that time Paxton wanted all the licences the subject of the offer transferred to a vessel called Panama. This required the partnership, Victory Fish, to become the registered owner of the Panama in order for the licences to be transferred to that vessel. They were transferred to that vessel because Paxton did not want the vessel Victorious II LFBG247 which was then not being fished by Maindok. It was discovered later by me that this vessel had been damaged and was unseaworthy.

7 The agreement with Paxton so far as I am concerned was that he took over the contract of Maindok and was leasing the licences for \$750 per month and if he made each of those lease payments and then paid \$110,000 on the settlement date, that is, 30 November 1990, the licences were to be transferred to him. If he failed to do that then the licences remained those of Victory Fish.

\* 8

At the time Paxton took over Maindok's contract, Paxton persuaded me, in order to maximise fishing capacity, that:

- (a) the Panama was to use the Victory Fish's wet licence No 1050 LBFG249;
- (b) I would undertake with the Fisheries Department to give up a wet licence. This meant that I had to either give up wet licence No 1050 or acquire a new wet licence and give that up;
- (c) in consideration for me agreeing to give up a wet licence, Fisheries would grant me another 4 metre scallop licence which was to become part of my licence No 1890.

The result of this was that because of my undertaking to the Fisheries Department, Victory Fish was granted another 4 metre scallop licence to become part of licence No 1890. This had the effect of ensuring that so long as Paxton honoured his agreement with Maindok, that is, to acquire the licences by paying for them in the manner set out in the agreement, Paxton would have ended up with all the licences but licence No 1890 would have a twin-rig trawl endorsement on it as opposed to a single endorsement. However, if Paxton failed to honour his commitments I would retain ownership of all the licences including licence No 1890 but I

NOT BALKED UP  
BY F/D

P/D LETTER 23/JULY/1990  
RE: BUY BACK.

LICENCE MAINDOK 1050  
NO MENTION OF "4 MT" PROB.

would still be obliged to give up a wet licence.

At the time Paxton said to me words to the effect of:

BULLSHIT!

"If I don't perform under this agreement you'll be better off because you will have two scallop nets instead of one".

- 9 From recollection Paxton paid one or two rental payments but did not make any others.
- 10 Some time in early 1990 we wrote to Mark Paxton demanding payment of his overdue lease payments.
- 11 On 25 August 1990 Paxton wrote to me apologising for not communicating with me.
- 12 Notwithstanding his letter, we never got any further payment from Paxton.
- 13 Because Paxton had not paid any monies by April 1990, which was the time that I had to give up a wet licence in accordance with my undertaking to the Department, I wrote to the Fisheries Department asking for an extension. I later sought one or two further extensions because of Paxton's default.
- 14 Some time in April 1991, a Mr Carter visited my wife and I at Gingin. He said that he had been told by Mark Paxton who was employed

by him that we may have fishing licences to sell.

Exhibited hereto and marked "D" is a copy of an Offer and Acceptance by Carter's company, Baseking Pty Ltd, to purchase Victory Fish's fishing licences.

15 Mr Carter paid \$1,000 but never paid anything else and therefore received no right, title or interest in the licences.

16 Some time after Carter's failure to honour his contract, I instructed Jim Mace of Independent Boat Brokers to sell the licences on behalf of Victory Fish. [ I had to give up the wet licence in order to keep the second endorsement on the trawl licence 1890. ] If I did not give up that wet licence, the second endorsement on the trawl licence would have been taken away by the Fisheries Department. ]

*RIDICULOUS*  
*NO CONFORMATION*  
*BY F/D*  
*SEE (8)(C)*

17 Mr Mace found a purchaser for the licences but unfortunately that purchase fell through.

18 Mr Mace found another buyer for the licences. This buyer proceeded to settle. I am not sure whether before or after the settlement Paxton reappeared and claimed that he was the owner of the licences. I hired Ian Blatchford of Altofer and Stowe, Solicitors in Geraldton, to check Paxton's claims because I was and am of the view that the licences always belonged to Victory Fish.

19 In any event, Ian Blatchford told me that so far as he was concerned the licences were Victory Fish's to sell. We proceeded to settle

the sale of those licences and the proceeds of the sale were paid into a trust account of Messrs Glynn and Glynn for the purposes of that firm holding the proceeds while several disputes between the partners in Victory Fish were settled. Once the settlement took place, which took about one and a half years, the proceeds were then divided.

\* 20 So far as I am concerned, at the time I instructed Jim Mace to sell the licences, I was of the view that they were the property of Victory Fish and that I had every right to sell them.

\* 21 So far as I am concerned, Paxton had no interest in them whatsoever, he having failed to honour his contractual obligation to pay for them. The price Victory Fish ultimately received for the licences was well below that which Paxton had agreed to pay for them and as a result Victory Fish has a potential damages claim against Paxton for a considerable amount of money. However, because of the cost in pursuing such claims and because of my assessment that Paxton would have no assets to back up any successful claim, I have not pursued that course of action.

SIGNED by F W BLENKINSOP



Dated the 27 day of March 1996.

Kerry Ann FAY

States:-

I am 38 years of age and reside in Geraldton.

In May, 1990, I was in partnership with my ex-husband, Jim FAY, and Fred BLENKINSOP, trading as J.F. & K.A. FAY and BLENKINSOP NOMINEES PTY LTD.

At the time we had a wet licence (LEF 1890), which also had a prawn endorsement and a scallop endorsement on it.

Also in May, 1990, a Mark PAXTON leased our licence LEF 1890 with the intention of purchasing it. PAXTON also had his scallop endorsement number 1921 included on our licence.

This made LEF 1890 a twin rig and, although one endorsement was PAXTON's, his number 1921 was deleted and both units came under LEF 1890.

Mark PAXTON leased licence LEF 1890 for some time and, as far as I was aware, he got behind in his repayments.

I never had much to do with the business in the latter part because Fred BLENKINSOP had taken most of the business operation upon himself to do.

I was always aware that Mark PAXTON had his own scallop endorsement on our wet licence, even though it was only recorded as one half of a twin rig under our number 1890.

I am aware now that Fred BLENKINSOP sold both scallop endorsements - one of which was Mark PAXTON's.

At no time was I ever consulted regarding the sale of the scallop licences. This was arranged by Fred BLENKINSOP.



Kerry Ann FAY States: (Cont'd.)

I have never been aware of any agreement or sale of PAXTON's scallop endorsement that transferred ownership to Fay Blenkinsop Nominees Pty Ltd.

I declare that this statement is true to the best of my knowledge and belief and that I have made the statement knowing that if it is tendered in evidence I will be guilty of a crime if I have wilfully included in this statement anything which I know to be false or that I do not believe is true.

Kerry Ann FAY

A handwritten signature in black ink, appearing to read "Kerry Ann FAY". The signature is fluid and cursive, with a large, stylized "K" and "A".



# Western Australian Consolidated Acts

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## CRIMINAL CODE - SECT 409

### Fraud

#### 409 . Fraud

(1) Any person who, with intent to defraud, by deceit or any fraudulent means —

(a) obtains property from any person;

(b) induces any person to deliver property to another person;

✓ (c) gains a benefit, pecuniary or otherwise, for any person;

✓ (d) causes a detriment, pecuniary or otherwise, to any person;

(e) induces any person to do any act that the person is lawfully entitled to abstain from doing; or

✓ (f) induces any person to abstain from doing any act that the person is lawfully entitled to do,

is guilty of a crime and is liable —

(g) if the person deceived is of or over the age of 60 years, to imprisonment for 10 years; or

(h) in any other case, to imprisonment for 7 years.

Summary conviction penalty (subject to subsection (2)):

(a) in a case to which paragraph (g) applies: imprisonment for 3 years or a fine of \$12 000; or

(b) in a case to which paragraph (h) applies: imprisonment for 2 years or a fine of \$8 000.

(2) If the value of —

(a) property obtained or delivered; or

(b) a benefit gained or a detriment caused;

is more than \$10 000 the charge is not to be dealt with summarily.

(3) It is immaterial that the accused person intended to give value for the property obtained or delivered,

or the benefit gained, or the detriment caused.

*[Section 409 inserted by No. 101 of 1990 s.24; amended by No. 36 of 1996 s.23; No. 23 of 2001 s.11.]*

*[410, 411, 412, 413. Repealed by No. 101 of 1990 s.24.]*

## **Chapter XLI — Receiving property stolen or fraudulently obtained and like offences**

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The Law Society  
of Western Australia

Litigation Assistance  
Fund

Law Society House  
33 Barrack Street  
Perth WA 6000  
Telephone (09) 221 1744  
Dx 173 Perth  
Fax (09) 221 2430

OUR REF:  
YOUR REF:

Your ref: MJW:9503723  
Our ref: A331

13 May 1996

Dwyer Durack  
10th Floor  
40 St George's Tce  
PERTH WA 6000

Dear Sirs

**Application for Litigation Assistance - M A Paxton**

I apologise for the delay in advising you of the progress of your client's application. I have been awaiting a resolution by LAF's trustee. Due to lack of funds, it has been resolved that LAF's operations be suspended and not be resumed, at least in the short term, unless there is a successful outcome to recent applications by LAF for funding or LAF shall have substantial recoveries of costs and fund fees. LAF's financial position will be reviewed by its Trustee in 3 months time.

In the circumstances, the application fee of \$50 will soon be refunded. If LAF is able to resume operations and its service is still required by your client, a further application fee can be paid and the application assessed.

Apology is extended to you and your client for inconvenience caused.

Yours sincerely

Andrea Lace  
Manager

# Dwyer Durack

BARRISTERS AND SOLICITORS  
INCORPORATING  
CLAUDIO SHAW

Our ref: MJW:9503723

10th Floor  
Dwyer Durack House  
40 St George's Terrace  
PERTH WESTERN AUSTRALIA

Your ref:

Tel: (09) 325 9277  
Fax: (09) 221 1773

Please Enquire:

Postal Address:  
GPO Box M 931 PERTH  
WESTERN AUSTRALIA 6001

22 May 1996

DX 131 PERTH

Mr Mark Paxton  
C/- Fremantle Post Office  
13 Market Street  
FREMANTLE WA 6160

International Prefix (619)

Dear Mr Paxton,

## Paxton -v- Blenkinsop Nominees Pty Ltd & Others - CIV 1001 of 1996

We enclose for your information a copy of a letter dated 13 May 1996 from the Litigation Assistance Fund.

You will note that the letter advises that due to lack of funds the LAF's operations have been suspended and are not to be resumed. Therefore, your application for litigation assistance has been unsuccessful.

We confirm that your application fee of \$50.00 has been refunded to this office and is currently being held in trust. Further, we have received a sum of \$180.00 from you for the purpose of serving the Writ of Summons on the defendants in this action. In light of the above, we have not yet served the Writ.

Unfortunately, we will not be in a position to accept further instructions from you in respect of this matter unless you are in a position to pay our legal fees and forward a sum of \$5,000.00 to this office to be placed in trust as security for those fees.

We request that you contact Ms Watson at this office to advise us of your intentions. We also request that you advise us whether or not to proceed with service of the Writ. We advise that Ms Watson at this office will be on annual leave from 18 June 1996 to 29 July 1996. We therefore request that you contact Ms Watson as soon as possible, but no later than 17 June 1996.

Yours faithfully,



Encl.

**PARTNERS**  
Timothy McComish  
Brian Pass  
Simon French  
Nicholas Pope  
Richard Cullen  
Carolyn Tan  
Allan Drake-Brockman  
Guy Stubbs  
Joseph Claudio  
Guy French  
Kathryn Hogan  
Graham Doppert  
Leigh Strauss  
Jane Crisford  
Penelope Giles  
Donna Percy  
Marcus Solomon  
Francine Walter  
Paul Lyons  
Maxine Blount  
Trevor Darge

**SENIOR ASSOCIATES**  
Robert Castiglione  
Ross Harrison  
Susan Le Souef  
Mark Fitzgerald  
Karen Lang  
David Albrecht

# Dwyer Durack

BARRISTERS AND SOLICITORS

Our ref: MJW:9503723

Your ref:

Please Enquire:

10th Floor  
Dwyer Durack House  
40 St Georges Terrace  
PERTH WESTERN AUSTRALIA

Tel: (09) 325 9277  
Fax: (09) 221 1773

Postal Address:  
GPO Box M 931 PERTH  
WESTERN AUSTRALIA 6001

6 August 1996

DX 131 PERTH

International Prefix (619)

Mr Mark Paxton  
C/- Fremantle Post Office  
13 Market Street  
FREMANTLE WA 6160

Dear Mr Paxton,

## Paxton -v- Blenkinsop Nominees Pty Ltd & Others - CIV 1001 of 1996

We refer to our letters dated 22 May 1996 and 13 June 1996 in respect of the above matter. We enclose a copy of our letter dated 22 May for your reference.

We note that you have not contacted Ms Watson at this office in order to advise us of your intentions in respect of this matter. We stress that it is extremely important that you contact Ms Watson as soon as possible.

As you are aware, the Writ of Summons in the above matter must be served prior to 25 December 1996. The Writ has yet to be served as we are still awaiting your instructions in this regard.

As we have had no response from you to our previous letters, we advise that we will be filing the notice of acting in person signed by you earlier this year and removing ourselves from the record unless we receive instructions from you within fourteen days of the date hereof.

We look forward to hearing from you.

Yours faithfully,

*Dwyer Durack*

Encl.

**PARTNERS**  
Timothy McComish  
Brian Pass  
Simon French  
Nicholas Pope  
Richard Cullen  
Carolyn Tan  
Allan Drake-Brockman  
Guy Stubbs  
Joseph Claudio  
Guy French  
Kathryn Hogan  
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Maxine Blount  
Trevor Darge  
Robert Castiglione  
Ross Harrison  
Susan Le Souef

**SENIOR ASSOCIATES**  
Mark Fitzgerald  
Karen Lang  
David Albrecht

# Dwyer Durack

BARRISTERS AND SOLICITORS

Our ref: MJW:9503723

Your ref:

Please Enquire:

10th Floor  
Dwyer Durack House  
40 St Georges Terrace  
PERTH WESTERN AUSTRALIA

Tel: (09) 325 9277  
Fax: (09) 221 1773

Postal Address:  
GPO Box M 931 PERTH  
WESTERN AUSTRALIA 6001

23 October 1996

DX 131 PERTH

Mr Mark Paxton  
C/- Fremantle Post Office  
13 Market Street  
FREMANTLE WA 6160

International Prefix (619)

Dear Sir,

## **Paxton v Blenkinsop Nominees Pty Ltd & Others - CIV 1001 of 1996**

We refer to the above matter and advise you that the Writ was served on 16 October 1996 on William Fred Blenkinsop and Blenkinsop Nominees Pty Ltd.

We enclose for your information copy of Invoice Statement from Debtors Ledger Services which has been paid from monies held on trust.

Please contact us with your further instructions regarding the other 2 parties to be served.

The Writ is available at our office for collection. The details of service are contained on the back of the Writ.

Yours faithfully,

*Dwyer Durack*

Enc

**PARTNERS**  
Timothy McComish  
Brian Pass  
Simon French  
Nicholas Pope  
Richard Cullen  
Carolyn Tan  
Allan Drake-Brockman  
Guy Stubbs  
Joseph Claudio  
Guy French  
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Francine Walter  
Paul Lyons  
Maxine Blount  
Trevor Darge  
Robert Castiglione  
Ross Harrison  
Susan Le Souef

**SENIOR ASSOCIATES**  
Mark Fitzgerald  
Karen Lang  
David Albrecht  
Helen Prince



29

WESTERN AUSTRALIA POLICE SERVICE

## STATE CRIME SQUADS

Mr Mark Paxton  
C/- Fremantle Post Office  
142 High Street  
Fremantle WA 6160

CURTIN HOUSE  
60 BEAUFORT STREET PERTH  
WA 6000  
TELEPHONE: 223 3333  
FACSIMILE: 223 3664

YOUR REF:

WA POLICE REF:

ENQUIRIES:

Dear Mr Paxton

**Re: Fred BLENKINSOP**

I refer to your meeting with our Legal Officer, Samantha Tough and Detective Sergeant Stuart Mirfin in our office on Monday 28 April 1997.

I apologise for the delay in writing to you however, I have taken time to carefully consider your complaint and examine the relevant law to determine whether there is anything that the police can do to assist you.

As you are aware, your complaint has already been given close examination and you were advised by the police in July 1996 that they regarded this matter as a civil dispute between the parties. You were unhappy with this finding and wished to discuss the matter further. As a result, the meeting on 28 April 1997 was arranged.

Having listened to you carefully and examined the available materials, I am in two minds as to whether any criminal offence can be preferred against Fred Blenkinsop in the circumstances.

The facts surrounding your complaint clearly support an action that would normally be better addressed in the civil courts. As explained to you, the Criminal Code imposes certain constraints that render a criminal prosecution difficult. Particularly, there are some evidentiary difficulties with respect to the question of ownership of your scallop licence and the establishment of criminal intent against Fred Blenkinsop.

I am not yet prepared to advise the police that this matter should be re-opened for investigation as I remain undecided on the question of whether any criminal prosecution could be successful in the circumstances.

I have therefore determined that I will refer this matter to the Director of Public Prosecutions for his assessment and determination. If the DPP advises that there is a *prima facie* case against Fred Blenkinsop and there is a successful chance of prosecuting him on a charge of stealing, we will re-open the matter and allocate it for investigation.

The advice of the DPP will be adopted by the Fraud Squad and will be considered final.

A letter to the DPP was sent simultaneously with this letter to yourself. As soon as I have a response I will contact you immediately.

Yours faithfully

*Tough*  
**SAMANTHA TOUGH**  
**LEGAL OFFICER**  
**FRAUD SQUAD**

May 7, 1997



WESTERN AUSTRALIA POLICE SERVICE

**STATE CRIME SQUADS**

Mr Mark Paxon  
C/- Fremantle Post Office  
142 High Street  
FREMANTLE WA 6160

CURTIN HOUSE  
60 BEAUFORT STREET PERTH  
WA 6000  
TELEPHONE: 223 3333  
FACSIMILE: 223 3664

YOUR REF:

WA POLICE REF:

ENQUIRIES:

Dear Mr Paxton

**Re: Fred BLENKINSOP**

Please find enclosed a copy of a letter for your records which I have sent to Mr Yovich of the DPP.

Yours faithfully

*Tough*  
**SAMANTHA TOUGH**  
**LEGAL OFFICER**  
**FRAUD SQUAD**

May 8, 1997



30

WESTERN AUSTRALIA POLICE SERVICE  
STATE CRIME SQUADS

Mr Paul Yovich  
DPP  
17th Floor "Westralia Square"  
141 St George's Terrace  
PERTH WA 6000

CURTIN HOUSE  
60 BEAUFORT STREET PERTH  
WA 6000  
TELEPHONE: 223 3333  
FACSIMILE: 223 3664

YOUR REF:  
WA POLICE REF:  
ENQUIRIES:

Dear Mr Yovich

**Re: Complainant: Mark PAXTON  
Suspect: Fred BLENKINSOP**

I refer to our telephone conversation on Wednesday 7 May 1997 and thankyou for your time in assisting me with this matter.

As advised, I have a complaint before me which I am required to evaluate and determine whether an investigation can be justified. I am in two minds as to whether, over and above the civil remedies that are clearly open to the complainant, there is in fact a *prima facie* case of stealing with good prospects of being successfully prosecuted.

I have therefore determined to seek the assistance of the DPP. If in your opinion it is both a viable prosecution and in the public interest to pursue the matter, the Fraud Squad will conduct the investigation. I have forwarded this request to yourself given you have already got a brief understanding of the facts and you have kindly agreed to discuss this matter with John McKechnie.

**HISTORY OF COMPLAINT**

The complaint of Mark Paxton is that Fred Blenkinsop stole his scallop licence by selling it without his authority in March 1991.

A complaint was lodged by Paxton at the Fraud Squad in January 1994 after several attempts by Paxton to address his complaint through the Fisheries Department had failed.

An investigation was conducted which drew to a standstill in 1995 for reasons unknown to me at the time of writing this letter. The investigation resumed in 1996, culminating in a statement being provided by the suspect, Fred Blenkinsop, through his solicitor. In July 1996 I was asked to consider the matter and on the basis of the statements I determined that it was a civil dispute.

The complainant, Mark Paxton, was unhappy with the outcome and I agreed to meet with him to discuss the matter further. That meeting took place on 28 April 1997. Before then Paxton had been unavailable due to fishing commitments.

As a result of listening to Paxton and having now a better understanding of the facts than I initially gleaned from the file itself, I am undecided as to whether this is purely a civil matter as per my original advice.

I have set out this background to explain the delay in proceeding. I will now address the facts. I have not enclosed copies of any statements or documents to facilitate a simplification of the facts.

### THE FACTS

Since 1986 Paxton owned a wet licence and a scallop licence that was attached to it.

At that time, the Fisheries Department did not allow you to trawl for scallops without a wet licence.

In July 1988 Paxton sold his ~~wet~~ licence and transferred it to another wet licence he has leasing at the time. *Kept his scallop licence.*

The scallop licence is registered with the Fisheries Department in the name of the holder of the wet licence. Its regulations did not allow at that time for individual ownership of scallop licences nor for recording of equitable ownership by way of caveat or registration of interest. The Department does however recognise that people such as Paxton do own scallop licences even though they may remain in the name of the wet licence holder. So, Paxton had a scallop licence, although not in his name.

As to Blenkinsop's position at this time, Blenkinsop was involved in a partnership known as Victory Fish. That partnership was made up of Blenkinsop Nominees Pty Ltd (of whom Fred Blenkinsop was principal) and James Fay and Kerry Fay. It was an equal partnership between the three parties.

In April 1989, Victory Fish sold to the Maindok brothers a boat and various fishing licences. The boat was fully paid for but the Maindok brothers defaulted under the sale agreement as to the fishing licences. The sale agreement as to the fishing licences was that a lease payment would be made monthly with the balance of the purchase price due on settlement. The agreement stated that no title would pass to the purchaser until settlement day when the full purchase price was paid.

On default, the Maindoks rights under this sale agreement were assigned, with the full consent of Victory Fish, to Paxton. This occurred in November 1989.

In addition to the original terms of the sale agreement which was in writing, there were oral terms between Victory Fish and Paxton. These oral terms were made between Blenkinsop and Paxton. The remaining two partners of Victory Fish, the Fays, were not present when these oral terms were fixed.

Paxton states the additional terms were essentially as follows:

- 1) ~~One of the~~ wet licence\$ the subject of the sale agreement which had a scallop licence attached was to be transferred to Paxton's boat, the Panama, so that Paxton could fish his boat and therefore meet the lease payments under the agreement.
- 2) The Panama was a twin rig boat and as such required two scallop licences on the wet licence to fish. (One licence per rig). Paxton, with the consent of Victory Fish, transferred his scallop licence to the wet licence. That meant that the wet licence now had a double scallop licence attached to it, all in the name of Victory Fish. Despite the transfer, the scallop licence was to remain the property of Paxton although Fisheries Department records will of course reflect it in the name of Victory Fish.
- 3) Due to the regulations of the Fisheries Department, the transfer of Paxton's scallop licence required that a wet licence be handed in. Victory Fish agreed to give up a wet licence to effect the transfer. Note, that "give up the wet licence" is a misnomer, as the Fisheries Department actually buys back the licence at market value under their buy back scheme.

Blenkinsop essentially agrees that these were the terms but with some slight, but subtle, variations:

- 1) On the transfer of Paxton's scallop licence to the wet licence of Victory Fish, it became the property of Victory Fish and subject to the sale agreement.
- 2) The consideration for the above was the loss of a wet licence to the Fisheries Department.

It should be noted at this time that when Paxton's scallop licence was transferred to the wet licence of Victory Fish it lost its individual identity number and assumed the number of the wet licence. As far as the records of the Fisheries Department are concerned, there is no way of telling that Paxton owned that scallop licence.

CONTRACT  
FRUSTRATED  
CONDITION  
II

In any event, Paxton defaulted under the sale agreement due to a bad fishing season. He was therefore not able to meet his commitments for settlement. In 1991, Blenkinsop took measures to sell the scallop licences the subject of the sale agreement. He instructed George Mace to sell the two scallop endorsements on the wet licence. Interestingly, the other licences were not the subject of this authority to sell. One scallop licence was sold in March 1991 and the other in August 1991. There is no suggestion that the two purchasers were other than purchasers in good faith for value without notice.

Paxton returned from a fishing expedition in 1992 and discovered that Blenkinsop had sold his scallop licence. Paxton never gave his permission for his licence to be sold.

Blenkinsop relies on the fact that the scallop licence in his view became the property of Victory Fish on transfer.

Paxton of course denies this is the case and indeed Paxton is supported by Kerry and James Fay, the remaining partners of Victory Fish, who both agree that as far as they were concerned the scallop licence remained the property of Paxton even after transfer. In fact, James Fay states he told Blenkinsop that he could not sell Paxton's scallop licence but Blenkinsop said he could under the sale agreement.

It is accepted that if Blenkinsop's view that he could sell Paxton's scallop licence as it was now the property of Victory Fish has merit, no criminal intent can be established.

Paxton's allegation is that Blenkinsop stole his scallop licence and he would rely on the following as evidencing the necessary criminal intent:

- 1) Blenkinsop's view on the oral arrangement between Victory Fish and Paxton is not supported by the remaining partners, James and Kerry Fay.
- 2) There was no consideration in real terms to support Blenkinsop's suggestion that Paxton would allow his scallop licence to become the property of Victory Fish and subject to the default terms of the written agreement relating to the licences Paxton was purchasing.
- 3) Blenkinsop only instructed Mace to sell the 100 scallop endorsements and not the other licences.
- 4) James and Kerry Fay were never consulted about the sale. Note - It appears they signed the transfers of the scallop licences to the new owners. They may not have realised what they were transferring as those licences bore the same identification numbers as their wet licence. Their present statements are deficient on this point.
- 5) Victory Fish did have to forfeit a wet licence to the Fisheries Department but were paid market value for it by the Department.

Even if there is considered sufficient evidence to establish the necessary intent, is Paxton's property rights in the scallop licence something capable of being stolen for the purposes of the Criminal Code? As far as the Fisheries Department is concerned, all transfers and sales of licences were carried out in the correct names and with the correct authorisations. As stated at the outset, the Department has no means of recording what is in effect beneficial ownership.

The scallop licences were sold for \$25,000.00.

#### **PAXTON'S ATTEMPTS AT RECOVERY**

To date, Paxton has commenced civil action using the now defunct Litigation Fund. Unfortunately when that Fund bankrupted, so did Paxton's civil action. As a result of losing this licence he cannot fish and has also suffered considerable loss of earnings.

It is true that in many respects Paxton's last hope is criminal action although he appreciates he may not recover any compensation. However, he is firmly of the view that his licence was stolen from him and he has been frustrated by an inability to achieve any sort of justice for his loss either civilly or criminally. He is, I add, a likeable and well spoken individual.

During his recovery attempts, Paxton did obtain a legal opinion from W J Millar on his prospects of success in a civil action. I attach that to assist in analysis of legal issues. There is one correction on page 4 to note. Apparently the transfer of licences within the Fisheries Department only effects legal ownership and not beneficial ownership.

### CONCLUSION

My assessment of this matter is that there is probably a *prima facie* case of stealing. Whether it is in the public interest to pursue it is another matter. A trial will raise some interesting questions of law as to ownership and property capable of being stolen. In assessing the public interest factor, I would ask that you ignore the lapse of time as it is not really Paxton's fault. The witnesses are all still available as I understand it. Certainly Paxton's loss is considerable.

In any event, please let me know the DPP's view on this matter. I am grateful to you for your time and efforts.

Yours faithfully

  
**SAMANTHA TOUGH**  
**LEGAL OFFICER**  
**FRAUD SQUAD**

May 8, 1997



31

## DIRECTOR OF PUBLIC PROSECUTIONS

Enquiries: Mr P Yovich  
Telephone: 964 1762

Westralia Square  
141 St George's Terrace  
Perth Western Australia 6000

DX 108 Perth  
Telephone 264 1750  
Fax 264 1777

Fraud Squad  
Criminal Investigation Branch  
Curtin House  
60 Beaufort Street  
PERTH WA 6000

By facsimile: 9220 0760

Attention: Ms Samantha Tough, Legal Officer

Dear Ms Tough

### MARK PAXTON, FRED BLENKINSOP AND VICTORY FISH

Thank you for your letter of 8 May 1997 concerning the dealings in the scallop licences by the above parties.

I have discussed the matter with Mr John McKechnie QC as you asked, and also with another senior prosecutor, Mr Ken Bates, who settled an indictment involving alleged dishonest dealings in rock lobster entitlements. As a result of our discussions, Mr McKechnie determined that there did not seem to be any prospects for a successful criminal prosecution based on the facts you have provided to me. I will take a little time to explain why.

In order for a charge of stealing to be appropriate, the scallop licence in question has to be "a thing capable of being stolen" as defined in the *Criminal Code*. Whilst the licence confers a bundle of rights upon its holder, and those rights are very valuable in monetary terms, the licence is not like other forms of non-tangible property, in that it is conferred by the State upon a particular individual, its number is restricted and dealings in it are (at least in theory) regulated by the granting agency. Although I understand that leasing of licensing is a practice which is common in the industry, and is unofficially sanctioned by the Fisheries Department, your advice to me was that no means for registration of such lease interests existed at the relevant time, and it is questionable whether such an arrangement would be recognised as such by the courts. The licence did not seem to come within the category of non-tangible things recognised by the criminal law as things capable of being stolen, and accordingly Mr McKechnie's view was that a stealing charge would not be appropriate.

In the case involving rock lobster entitlements to which I referred, charges of fraud were preferred against 4 individuals, who sold rock lobster pot entitlements to third parties which they had only leased from the true owners. The evidence in that case strongly established that a lease was in existence, also that the innocent purchasers would not have purchased the entitlements had they known of the lease interest. The use of fraudulent means to obtain a dishonest benefit is therefore readily able to be established.

In this case, it is not clear that Blenkinsop used deceit or fraudulent means in order to obtain the financial benefit he got. Any deceit or fraudulent means arose at the time he dealt with Mr Paxton by agreeing to the transfer of Mr Paxton's licence on the apparent understanding that it was still Mr Paxton's property. In subsequently selling the property after Mr Paxton defaulted on his lease arrangement in relation to the other licences, Mr Blenkinsop gave good title to the scallop licence to the innocent purchaser, and it is hard to argue that he represented anything different in doing so. Therefore, if he used deceit or fraudulent means, that use was associated with his dealings with Mr Paxton rather than the third party.

Furthermore, Mr McKechnie expressed his doubts as to whether Blenkinsop's actions amounted to "deceit or fraudulent means" as required by s409 of the Code. If anything, Mr McKechnie regarded the matter as a contractual misrepresentation, the remedy for which is in the civil jurisdiction. In passing, Mr McKechnie notes that any rights Mr Paxton may have retained in the scallop licence after he transferred it to Victory Fish were probably in the nature of contractual rights rather than proprietary ones in any case. I note your counsel's opinion on the subject is to the contrary.

REBLINKINSOP  
SIGNING  
OFFER +  
ACCEPTANCE  
15. SALE

NO  
HE SOLD  
AS PROPOSED  
TO TRANSFER

NOT  
CONTRACTUAL  
RIGHTS  
BENEFICIAL  
OWNERSHIP!

In addition, the factual situation that you have outlined is far more complex. Even if the facts could be established to the degree of precision with which you described them those issues are likely to be so complex that a jury would have difficulty grasping them. If a reasonable doubt remained that Blenkinsop's version of events was the correct one a jury would inevitably have to acquit him. The additional complicating factors that the licences were in the name of a partnership consisting of a company run by Mr Blenkinsop and two natural persons make the situation even more difficult. Thus, even if charges may technically be open, it is highly unlikely that there are reasonable prospects of convicting Blenkinsop of an offence in relation to the scallop licence.

Like you, my sympathies are with Mr Paxton, who appears from the facts as you have outlined them to have been most unfortunate in his dealings in this area. However, the advice I have received is that his case is not an appropriate one to

be dealt with by the criminal law. Hopefully, the civil courts can provide an appropriate remedy, although I note that the present prospects of that are bleak.

Yours sincerely

Paul 21  
CROWN PROSECUTOR

3 June 1997



32

WESTERN AUSTRALIA POLICE SERVICE

**STATE CRIME SQUADS**

Mr Mark Paxton  
C/- Fremantle Post Office  
142 High Street  
FREMANTLE WA 6160

CURTIN HOUSE  
60 BEAUFORT STREET PERTH  
WA 6000  
TELEPHONE: 223 3333  
FACSIMILE: 223 3664

YOUR REF:

WA POLICE REF:

ENQUIRIES:

Dear Mr Paxton

**RE: FRED BLENKINSOP**

Attached is a copy of the response I have received from the Director of Public Prosecutions dated 3 June 1997.

The DPP has resolved that your complaint against Fred Blenkinsop should not be the subject of a criminal prosecution. As advised to you in my earlier letter of 7 May 1997, the Major Fraud Squad has adopted this advice and will not be re-opening your complaint for inquiry.

It is unfortunate that the Criminal Code cannot help you in this matter and I am certainly sympathetic to your position. [If you are able to resurrect your civil action against Mr Blenkinsop, the materials obtained during the police inquiry will of course be available to you upon the issue of a subpoena.]

If you wish to discuss this matter further do not hesitate to contact me at the above office on 9220 0700.

Yours faithfully

**SAMANTHA TOUGH  
LEGAL OFFICER  
MAJOR FRAUD SQUAD**

June 4, 1997

661/71V3  
Alex Cechner 08 94827310

Mr Mark Paxton  
PO Box 332  
SOUTH FREMANTLE WA 6162

Dear Mr Paxton

I refer to our meeting together with Tony O'Connor and Alex Cechner of the Agency on Friday 15 May regarding your request for an 'Inquiry' to be held under s249 of the *Fish Resources Management Act 1994* (the Act) with a view to determining the ownership of the net entitlement which was transferred in 1991.

In my view, the issue of beneficial "ownership" of that net entitlement is a matter between you and JF & KA Fay and Blenkinsop Nominees Pty Ltd. The entitlement was transferred to them on your application and that point, I understand, is not disputed. What happened following that transfer, I believe, is the subject of a police inquiry.

If fraud had been proved in a Court and clearly if a Court so ordered, I am in a position to determine a re-arrangement of licences and entitlements. I believe this matter properly should be addressed through the judicial process.

Section 247(1) of the Act which deals with policy guidelines for foreign interests states that the Minister may issue guidelines relating to foreign persons holding, controlling or having an interest in authorizations. (See, for example, Ministerial Policy Guideline No 2 (July 1996). *Foreign interests in rock lobster processing authorizations.*)

Section 249(2) of the Act which deals with inquiries relating to authorizations states that the Executive Director may appoint a person or persons to conduct an inquiry to determine who holds, controls or has an interest in an authorization and to report to the Executive Director the findings of the inquiry.

It is my understanding that s249 of the Act was drafted to be used primarily for such matters as determining foreign interests in authorizations. This view is supported by the appearance of similar wording in both sections; "...*holds, controls or has an interest in an authorization...*". I would need to be persuaded to hold an inquiry that did not relate to the question of the level of foreign interests in an authorization and, as presently advised, such an inquiry would only be held in exceptional circumstances. To this point, I remain unconvinced that, due mainly to a lack of documentary evidence, such circumstances exist.

Therefore, subject to me receiving contrary formal advice, I do not believe it is appropriate for me to conduct s249 inquiry. As previously stated, the matter appears to me to be one for the judicial process.

Yours faithfully  
PP Rogers  
EXECUTIVE DIRECTOR  
25 May 1998

14



## OMBUDSMAN

Western Australia

Our ref: S030098:MA:CR:JA  
Enquiries: Mr Read (9220 7566)

29 May 1998

Mr M Paxton  
c/- PO Box 332  
SOUTH FREMANTLE WA 6162

Dear Mr Paxton

Thank you for your letter of 31 March.

*NOTICE  
JUST  
ERASED  
HEIR WIL  
O I COULD  
ISN'T MY  
CLOTHES END.* As I understand the background to this matter, you made an oral agreement with other parties to pool resources so as to conduct a joint fishing operation. In the process, you transferred your AITLEF licence to LFB G249, which belonged to the other parties. Since that time, you have had no direct control over the licence, which was sold and then onsold without your consent and you have received no proceeds from the sale. You allege that you retained the beneficial ownership of the licence and that you have, consequently, been the victim of fraud.

*JO IT  
OULD NOT  
INFLUENCE  
ISIERES  
TRANSFER* → How? Although arrangements such as the one which led to this outcome may have been fairly common, it remains that the outcome could have been quite different had the agreement been documented. In retrospect, you probably recognise that you erred in failing to take this prudent precaution and any assessment of responsibility for the outcome would, in my view, be seriously flawed if it did not recognise the significant onus upon the owner of such an asset to exercise commensurate prudence when transferring it to other parties.

*NOTIFIED P.M.*

*TRANSFER  
IS NOT  
A SALE  
SEE P.R.  
LEFFER DOESN'T  
CHANGE CHANCE  
X B.C.* My Office has made informal enquiries and I understand that an informal system was in place at the time (1988) whereby registrations of interest in licences were recorded by the Fisheries Department, which could alert the beneficial owner in the event that an attempt was made to sell their license. It was then necessary for the beneficial owner to seek an injunction to prevent the transfer from being effected. However, there is no record of your having officially notified the Department in writing of your claim to an interest in the AITLEF licence. Having said that, I take due note of Mr Millington's letter of 10 March 1993 to you and I have been advised that [Mr Millington has confirmed that he was aware at the time that you had claimed to be the beneficial owner.] I further understand that you advised Mr Read that you believed that you have a case to argue that the Department had been negligent and had breached a duty of care in allowing the licence to be transferred.

*MEETING  
WITH  
P.M.*

FISHERIES ISSUED LIC  
 " CREATE LIC POLICY  
 " HAD COMPLETE CONTROL OF MY MARKET

NOT INDIVIDUAL ONES

SUPREME COURT  
 It seems to me that you did not entrust the Department with any responsibility to safeguard your licence, nor did the Department accept any such responsibility. [Furthermore, I understand that there was no reason to believe that Mr Millington would necessarily have personally handled or been aware of any application to transfer your licence to a third party. Consequently, it would have been unreasonable for you to have relied upon his ability to protect your interest in the licence.] At this stage he has no recollection of whether he was or was not involved in approving the transfer and I do not consider that it is relevant to seek to determine that question.

TEAM LICENCING OFFICER.  
 In summary, [I do not consider that the fact that an officer of the Department was informally aware of your claim to beneficial ownership creates a moral duty of care for that officer or for the Department in respect of the licence.] In any case, it is open to you to pursue any such claim in the courts and, consequently, in accordance with section 14 (4) of the *Parliamentary Commissioner Act 1971*, I do not intend to consider that aspect of the matter.

SEE  
14(5)

The essence of your complaint is that Mr Blenkinsop allegedly stole your AITLEF licence. In that case, it is open to you to take action against Mr Blenkinsop for restitution. I note that you would like the Department to conduct an enquiry under section 249 of the *Fish Resources Management Act 1994* to determine whether or not you have a beneficial interest in the licence but I tend to agree with the Executive Director that no useful purpose would likely be served by such an exercise. It would not be reasonable to simply transfer the ~~hurt~~ <sup>IT WAS TRANSFERRED</sup> from you to the current holder of the licence, who bought it from the legal (if not the beneficial) owner. I further understand that it cannot be determined which licence was yours, since Mr Blenkinsop apparently sold two indistinguishable licences to different parties. Accordingly, I do not consider it unreasonable for the Executive Director to decline to intervene in what is essentially a civil matter between you and Mr Blenkinsop.

IE WAS  
ONLY  
ALLOWED TO  
SELL ONE

Since there does not appear to be any further action I could take which would likely be of assistance, I have discontinued my enquiries.

Yours sincerely

  
 Murray Allen  
 OMBUDSMAN

36

Mark Paxton  
c/- PO Box 332  
South Fremantle, WA, 6162

29th May, 1998

To: Chairman of the Public Administration Committee  
Legislative Council, Parliament House

Dear Sir,

I am writing to inform you of a breakdown in the Public Administration Process, that is the Fisheries Department's failure to hold an inquiry to establish an interest in an authorization as per Section 249 of the Fish Resources Management Act, 1994 after my request, accompanied by proof of beneficial ownership.

I have explained to the Executive Director of Fisheries that civil action would cost \$40,000 (Solicitors fees) and surety of at least that against defendants court costs which is completely out of my reach. An inquiry would establish my ownership which would re-start criminal action (against Blenkisop) and put me in a position to negotiate civil proceedings.

Faced with no action, civil or criminal, or an inquiry to establish facts to instigate civil and criminal action to resolve this situation, the Executive Director has decided to ignore his Fisheries Act mandate and my position.

As already discussed, I believe the Fisheries were negligent (see following points of negligence) in creating a system that did not safeguard my asset. I concede that this can only be established by a Supreme Court Justice as it relates to claims in Tort, i.e. negligence.

Having this inquiry would give myself and the Fisheries access to a Supreme Court decision (through writs of Mandamus and Certiorari) as well as giving us access to Fraud Squad statements by Subpoena.

I believe the Fisheries not having an inquiry, blocks an avenue available to us whereby a court could instruct them to rectify this situation upon proof of my beneficial ownership in accordance with the Executive Director's statement in paragraph 3. Why does he say "If a court so ordered I am in a position to determine a re-arrangement of licence and entitlements" then block the process, that is section 249, and Supreme Court access, that the Fisheries Act has made available to him?

Attached is a copy of the letter from the Executive Director regarding this inquiry and my comments on it.

Yours faithfully,



6

## COMMENTS ON EXECUTIVE DIRECTOR'S LETTER, Dated 25th May, 1998

1. The Executive Director believes that the issue of beneficial ownership is the subject of a Police Inquiry. I have informed the Executive Director of the Fraud Squad case that is on hold awaiting clarification of beneficial ownership. A Fisheries Inquiry would establish beneficial ownership to enable continuation of the Fraud Squads case. (Contact - Stuart Mirfin, Fraud Squad)

Why a  
prerequisite?

2. Section 249 DOESN'T refer to foreign interests in authorizations. "Conduct an inquiry to determine WHO holds, controls or has an interest in an authorization." Even if it did state foreign interest, I believe as an Australian fisherman, and a beneficial owner of an authorization, I have the right to expect the same treatment and privilege in establishing my beneficial ownership.

3. The Executive Director, in paragraph 2, states - "The entitlement was transferred to them on your application" thus at last recognising my beneficial ownership at the time. Contrary to his statement to R. Eadie which was contrary to Fisheries knowledge at that time as stated by Peter Millington. (See Letter - Peter Millington to Mark Paxton.)

4. Paragraph 3 - The Executive Director at last recognises that a "Re-arrangement of licences and entitlements" is possible contrary to his letter to R. Eadie.

5. Paragraph 6 - The Executive Director continues his argument that an inquiry as per Section 249 is only relevant to foreign interests, (Note - without mention of the words 'Foreign Interest' in Section 249) and that an inquiry would only be held in exceptional circumstances. My argument is that my position is an exceptional circumstance. And I have shown the Fisheries documentary evidence of such circumstance.

- i. Stat. Dec. from Blenkinsop partner K. Fay.
- ii. Letter from J. Fay's Solicitor.
- iii. Conflicting letters from Blenkinsop's Solicitor as to his reasons for assuming beneficial ownership.
- iv. Most importantly, I have informed the Executive Director that an inquiry was held by the Fraud Squad. The Fraud Squad, by Subpoena, would make available statements by all parties that would clarify beneficial ownership.

6. Paragraph 7 - "The matter appears to me to be one for the judicial process".

The Fraud Squad have informed me that, subject to the outcome of an inquiry, they will re-activate the case. The Executive Director is frustrating the judicial process by not holding an inquiry that could ultimately result in criminal and civil proceedings.

7. The Executive Director has continually frustrated any steps I have taken in trying to clarify the situation. By refusing to hold an enquiry and misleading the Ombudsman to my beneficial ownership (See paragraph 6 - letter to R. Eadie "Mr. Paxton ceased to own an AITLEF Licence when he first transferred it to Mandare Holdings." Contrary to Peter Millington admitting I was beneficial owner in April 1990. Also contrary to statement of February 18th, 1993 "Fishermen enter into subsidiary agreements which can affect ownership of the licence. The Department is not always aware of these agreements."

7.6-2007  
6169  
27/5/93

Mark Paxton  
c/- PO Box 332  
South Fremantle, WA, 6162

29th May, 1998

To: The Ombudsman

Dear Sir:

Further to our several discussions on my problem I am writing as regards the Fisheries Department's continual attitude to frustrate any action to solve this problem. They have decided not to have an inquiry to establish my beneficial ownership. I would appreciate your opinion on the Fisheries decision and any help you can give as to getting this inquiry established.

I have explained to the Executive Director of Fisheries that civil action would cost \$40,000 (Solicitors fees) and surety of at least that against defendants court costs which is completely out of my reach. An inquiry would establish my ownership which would re-start criminal action (against Blenkitisop) and put me in a position to negotiate civil proceedings.

Faced with no action, civil or criminal, or an inquiry to establish facts to instigate civil and criminal action to resolve this situation, the Executive Director has decided to ignore his Fisheries Act mandate and my position.

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Det-Dact  
W.D. of  
27/5/93

# LEGISLATIVE COUNCIL



35

## STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Our Ref: PBCR3501

29 October 1998

Mr Mark Paxton  
c/- PO Box 332  
SOUTH FREMANTLE WA 6162

Dear Mr Paxton Mark

Thank you for your letter of 14 October 1998. The Committee has considered your request for an inquiry into the breakdown in the process in respect of the Fisheries Department's handling of the licensing of your scallop endorsement.

On close consideration, it is the Committee's recommendation that if it is your belief that the Ombudsman does not have the necessary information for him to determine his ability to assist you, then you should provide that information to him, in order for him to review the situation.

In respect of the adequacy of the current registration procedures, we have referred your letters to the Office of the Auditor General which is currently inquiring into fisheries management generally.

Yours faithfully

Hon Kim Chance, MLC  
Chairman

G:\PB\PBCR\98102902.PBD

DISTRICT COURT - CRIMINAL JUDGEMENT 11/11/99. GER 10 1996

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 13 OCTOBER 1999**

**SESSION 2 OF 2**

**Members**

**Hon Kim Chance (Chairman)  
Hon Cheryl Davenport  
Hon Dexter Davies  
Hon Helen Hodgson  
Hon Barry House  
Hon B.M. Scott**

— ATT 14 P.R. 14/2/04  
RE: FRAUD IN COURT  
— NO STAT/LIMITS ON FRAUD.  
— PRECEDENT 1999 DISTRICT COURT.

ROGERS, MR PETER PHILLIP  
Executive Director, Fisheries WA,  
168-170 St Georges Terrace,  
Perth, examined:

O'CONNOR, MR ANTHONY JOHN  
Registrar, Fisheries WA,  
168-170 St Georges Terrace,  
Perth, examined:

The CHAIRMAN: You will have both signed a document entitled "Information for Witnesses". Have you both read and understood the document?

Mr ROGERS: Yes.

Mr O'CONNOR: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided. It will become a matter for the public record. If for some reason you wish to make a confidential statement, you should request that the evidence be taken in closed session. However, even if your evidence is given in closed session, the committee can still report it to the Legislative Council if it considers it necessary to do so, in which case your closed evidence would become public.

The committee is not involved in an inquiry in this matter; it is simply seeking your advice in preliminary investigations relating to a matter that has been brought to the attention of the committee. A couple of questions arise from the matter that are probably easily resolved in a chat of this nature. A chat on the record is sometimes more to the point than a chat in other circumstances.

I think you have had some briefing about the issue, which centres on the Mark Paxton case. The committee is not directly concerned with Paxton's case, except as a case study that leads it to a couple of points. Members need to clear the air on a couple of issues. The committee understands that the events that took place in respect of Paxton's endorsement occurred while the old Fisheries Act 1905 was in operation, not after the assent of the Fish Resources Management Act, and that becomes an important issue.

I refer to the attention given by Fisheries WA, as the licensing authority, to the licences in its care. One could argue whether they are ever in the department's care, and that is fine. I hope you do not mind my using those words. The changes in the new Act are principally within part 12. How is part 12 of the Act practically implemented by the department? That is, what is the procedure for someone having his or her beneficial interest noted on the register?

Mr ROGERS: It may be useful to provide some background about what has happened in the past

and where we are today. When I first joined the Fisheries Department on 8 January 1973 as a junior officer, there was not much market value tied to authorisations to fish in limited entry fisheries in Western Australia. My recollection is that at the time, licence values were \$200 per pot. Today they are valued at about \$25 000 dollars a pot for rock lobsters.

From 1973 to the early 1980s, the balance between the value of licences and the value of capitalisation tied to boats changed. Instead of the boat being the most important capital component in the fisherman's business, licences increasingly became the most important component. As a result, the department was approached by lending institutions such as the Commonwealth Bank and Westpac through their solicitors, which is normal practice. They told us that they had a problem. They wanted the department to record their lending interest on the licences. There was never any legal obligation for the department to do so. Over a period of time, when people sent letters to us we noted the detail. When an application for transfer of a licence arrived, as good practice we informed people that we had an application. The arrangements were made between the banks or the financial institutions and the fishermen concerned. That is the history of what happened in an evolving informal process. Gradually it has become more formal and the register has become a bigger issue.

In late 1989 or thereabouts, it became an issue such that I chaired an inquiry comprising the Western Australian Fishing Industry Council, the Australian Bankers Association and the finance conference at the time. That resulted in formal consideration of the matter, which produced a report entitled "Establishment of a registry to record charges against fishing licences when used as security for loans", which was published in May 1991. That report set down some processes for the recording of interests in licences. It related primarily to debt interest, but one does not need much imagination and a good lawyer to realise that if a dollar debt is recorded against someone under a lease arrangement, one could probably legitimately enter an interest in a licence. That was not put in place until the new legislation was gazetted.

This set of recommendations for the drafting of the legislation led to the inclusion of part 12 of the Fishery Resources Management Act, which provides for the recording of security interests in a licence. In a practical sense, it applies a formal obligation to the department that was previously an informal obligation, but a service the department provided. Now it is a very formal process. For a fee, which makes it more formal, people can record a security interest in a licence. The legislation provides for a departmental process to advise the person with the recorded interest that a transfer is afoot. A time limit is normally applied to the execution of the transfer.

*NOTES:  
RE DEBT "INTEREST"  
NOT BOUND BY LAW*

The notation is a form entitled "Application for notation of a security interest on the register". I am happy to table both the document and the form. That formalises an informal practice which was in place for some years but which had no legal basis; it was a service rather than an obligation.

The CHAIRMAN: I am pleased to have those documents tabled. How long has that form been available?

Mr ROGERS: It was instituted as part of the implementation arrangements associated with the new Act.

The CHAIRMAN: It would have started with the assent.

Mr ROGERS: It was started in October 1995.

The CHAIRMAN: We have noted an evolving change in the department's involvement in the registration of interest on licences.

Mr ROGERS: Yes.

The CHAIRMAN: The process that began some time in the early 1980s worked its way up to the high point of the assent of the Act, and from then it has plateaued. Does the department accept that, even though it was performing that function until 1995 as a service to the industry and to its financiers, it had a responsibility for the probity of the licensing procedure that was in its control as the licensing authority?

Mr ROGERS: It depends on what is meant by "probity". In fairness, the department always dealt with the licensee, which does not necessarily mean the owner. One must draw that distinction.

The CHAIRMAN: I understand that.

Mr ROGERS: The department endeavours at all times to deal with the licensee in accordance with the words of the modern Act - the authorisation that is in existence at a point in time. That was always the reference point. The only probity issues in mind in those days related to fraud; that is, someone forging a signature. That did not happen very often. During the period of providing a service without any legislative basis, no major issues came to the surface that were not sorted out by the major parties, perhaps with the exception of the Paxton case. We have worked very much on the principle of caveat emptor in rights between parties in the transfer of licences. That is because we cannot act as mother to all people on questions around commercial transactions. We are simply a register for people transacting their business as they go through the process with their boat brokers, through individual arrangements and so on. In the initial days boat broking was not much of a business, but today with all the money involved and the financial risks around, boat broking is a much more significant business. The professionalism of the advice sat with the industry itself. It would seek advice from lawyers, accountants and boat brokers who are now very much a significant part of the transaction arrangements for licences within Western Australia.

S/C  
NOT TRUE  
NOT COMM  
TRANSACT  
DUTY  
OF  
CARE

The CHAIRMAN: I indicated that I am not keen to get involved directly in the Paxton case in this context. However, it is difficult to deal with the issues that we want to look at without coming back to Paxton, because he is the case study. We would not have been interested in the general issue were it not for him.

Mr ROGERS: That is understandable.

The CHAIRMAN: As I understand it, in the late 1980s Paxton came to Fisheries WA and discussed the matter with the deputy executive director. He felt that he had notified his interest in that endorsement and had received an assurance from the deputy executive director that he was the beneficial owner of the authority. That may be in dispute, and I do not want to get into that.

1995 - OFFENCE  
1996 TRIAL (M/C) 1999 (D/C)

GER210 1996

4 yrs ANDREW  
4 yrs MACE.

If, at that stage, Paxton ought to have registered his interest in order to protect his interest, did he receive advice that that facility was available to him and was he or was he not correct in thinking that his conversation with the deputy executive director had the effect of registering his interest?

↗ HOW?  
↗ NO LEGISLATED  
SYSTEM

Mr ROGERS: Not being witness to any of the discussion, I do not know.

The CHAIRMAN: Nor do we.

Mr ROGERS: In all fairness, the case has been reviewed a number of times. It has been examined by the Director of Public Prosecutions in light of criminal issues around the licence, and he decided not to proceed on the evidence he had. It has gone to the Ombudsman, who examined the case in considerable detail and came to the same sort of conclusions. It is not as if it is a case which has been left under the table as it were. It has been reviewed on a couple of occasions without going anywhere. To a large extent he discharged his rights in the transfer of licences and so on through due process. There lies part of the dilemma.

NO  
B/O  
RECOA  
NISED  
BY P.M.

The CHAIRMAN: Let me assure you that I do not believe it is the place of this committee to set itself up in the role of the courts or of the fraud squad. However, since you have mentioned the police, I understand that the fraud squad has suspended its investigations until such time as the issue of beneficial ownership can be resolved. Once resolved, my understanding is that its interest would be revived. The problem for Mr Paxton is that he is unable to determine the question of beneficial ownership until such time as an inquiry under section 249 has been conducted. That is where we have a problem.

NOT  
TPWÉ

Mr ROGERS: That is a curious statement.

F/SQUAD  
?

The CHAIRMAN: That is not my statement. It is my understanding of what the fraud squad has said.

Mr ROGERS: Perhaps I need to refresh my memory. I do not have a copy of the fraud squad statement, but I dare say I have some correspondence here from the DPP. Most of the matters relate to the issue of whether the thing is capable of being stolen in the first place. That is something that only a lawyer could interpret. It comes down to the question of what is defined as a thing capable of being stolen under the Criminal Code. On the matter of the licence, which confers a bundle of rights upon its holders, those rights are valuable in monetary terms. The conclusion they come to is whether the rights are capable of being stolen in the first place, and although the leasing of a licence is a practice which is common within the industry and was unofficially sanctioned by Fisheries WA at the time, there was no means of registration for such lease interests to exist at the relevant time. That is an issue. It is questionable whether such an arrangement could be recognised by the courts. That was the nature of advice that came to me on this issue.

WRONG ADVICE SOUGHT

MISLEADING.

M.P.  
DID NOT  
LEASE  
LIC TO  
B.F.N.

The CHAIRMAN: It is interesting that the Ombudsman said there was no means of registration of interest at the time.

Mr ROGERS: Certainly not in terms of leasing. — IRRELEVANT — MISLEADING.

DO ROGERS & CHAIRMAN THINK I LEASED MY LIC  
TO B.F.N.?

# ~~ROGERS MISLEADS SCPA~~

*ALL MISLEADING AS TO ACTUAL SITUATION*  
The CHAIRMAN: That is even though we have talked about the informal process?

Mr ROGERS: There is an informal process, but in terms of leasing there is not and never has been. Even to this day, technically, there is no recognition of leasing in the register. The only way that perhaps lawfully it can be done, and the way I would do it, would be to enter into a \$1 loan agreement to give effect to it, in addition to a leasing arrangement, so it could be called a security arrangement.

The CHAIRMAN: That is what the Paxton case is all about. He alleges that a person leased his property and then took it and sold it. It is a straight case of theft.

Mr ROGERS: That is the argument he has put forward. *NOT TRUE.*

*NOT TRUE  
NOT POSSIBLE*

*NEED CLARIFICATION OF THINGS BETWEENABLE TO BE STOLEN*  
Hon HELEN HODGSON: The legal argument is whether one can steal intangible property.

The CHAIRMAN: It is not intangible.

Hon HELEN HODGSON: It is. It is a bundle of rights.

The CHAIRMAN: If Hon Helen Hodgson wants to determine whether a right of entry to a limited entry market is property or not she would need to go back to DL v the Minister for the Army 1948, and we could work our way through the case law from there.

Hon HELEN HODGSON: There is no doubt it is property, but it is the form of property and whether one can steal intangible property.

*UNKNOWN CASE*  
The CHAIRMAN: Clearly you can. I do not see why that would be a legal issue. It should be easily resolved.

Mr ROGERS: The DPP did not form that view. Who am I to judge. It should be properly dealt with in the courts.

The CHAIRMAN: Exactly, and who am I to judge. Section 249 has been identified by Paxton and others as being the only way a determination can be made on these matters that we have talked about but have no capacity to resolve. Paxton and others claim that an inquiry, which we acknowledge is a matter entirely for your discretion as the executive director, is a means of resolving this through the proper administrative practices. I understand that your argument has been that the inquiry facility under section 249 of the Fish Resources Management Act is not intended to be used for that purpose and that it relates either wholly or principally to the matter of foreign interests. Why do you argue that section 249, which does not mention foreign interests anywhere in the text, is a provision which is wholly or principally inserted in the Act to resolve those issues?

Mr ROGERS: It comes back to the history of the legislation and why the legislation was framed. Much of those inquiry provisions related to concerns about foreign interests getting into licensed fisheries.

*INCLUDE IN LETTER TO POLICE COMM & MINISTER*

*Dot to Dot Committee*  
The CHAIRMAN: They did indeed. Planet Fisheries rings a bell.

Mr ROGERS: Yes. In this case, I still have the discretion to invoke an inquiry.

The CHAIRMAN: You have, indisputably.

Mr ROGERS: However, in my final judgment I did not see the merits of proceeding because, by and large, I was not convinced by the case. I believe that Fisheries WA had operated properly. The gentleman concerned had discharged his interest in the licences by appropriately transferring his licence at the respective time. The risks were with him in terms of any, let us say, contractual obligations he might have had on the side for the potential return of a licence somewhere down the track. That is a fairly common industry practice. I took the view that there was no obligation on the department in this matter. I saw no need to proceed with an inquiry of this nature.  
*WHY HAVE INQUIRY IN 2004?*

The CHAIRMAN: You are going to the matter of your discretionary power, which is undisputed, and you are not really relying on the matter of foreign interest.

Mr ROGERS: No, not entirely.

The CHAIRMAN: I did some research on this issue. The minister's second reading speech on the Fish Resources Management Bill in *Hansard* of 29 September 1994 referred to the granting of exclusive licences. The minister stated -

This power is necessary to enable the department to enforce government policy, particularly on foreign ownership and control of the rock lobster processing industry.

He was not referring exclusively to the rock lobster industry.

Mr ROGERS: That is my interpretation as well. Although my letter may have raised this issue of foreign interests, I set that aside, and the issue comes down to discretion.

The CHAIRMAN: I am happy we agree on that.

Mr ROGERS: In re-evaluating the case, the Ombudsman reached the same conclusion that I did. There was no case to pursue.

The CHAIRMAN: We come to the question of discretion. That is not a matter which can be questioned by anybody, as I understand. It certainly cannot be questioned in the courts. Would you agree that in exercising your discretion you must generally act in good faith, that you need to have regard to relevant considerations and not take into account irrelevant considerations, and that you must not act capriciously or arbitrarily? This is all fairly straightforward stuff. In consideration of those basic rules of natural justice which you are required to exercise, do you feel that in denying Paxton access to an inquiry, as would be established by your decision under section 249, you have left him with any alternative other than recourse to the courts?

Mr ROGERS: I have always believed, whatever the arrangements were between the parties which led to his current dilemma, that these are matters between the parties and do not involve

me and that the proper recourse is to the courts. That is the view I have always held in regard to this matter. For whatever reasons, he has not pursued that course - or as far as he wished to. I draw to the committee's attention that that was also the view of the DPP. Similarly in the Ombudsman's examination of the matters he believed that I acted properly. While the Ombudsman does not necessarily say this - I will have to read the letter again - he certainly supported my view of not proceeding necessarily with an inquiry into this matter under the provisions that you drew upon.

The CHAIRMAN: That latter part is a value judgment on his part.

Mr ROGERS: Yes. In the same way that I make a discretionary value judgment about the circumstances based on the evidence in front of me.

The CHAIRMAN: Are you satisfied that you have exercised those principles of natural justice properly?

Mr ROGERS: I believe I have.

The CHAIRMAN: Also that you have provided Paxton with whatever option you were able to provide?

Mr ROGERS: I think so.

The CHAIRMAN: At least we have solved the question of foreign interests.

Hon HELEN HODGSON: You said that you had looked at the circumstances. Had you considered the merits of the case to see whether there was a *prima facie* case?

Mr ROGERS: You are testing my memory, because we are going back a considerable time. I have met this gentleman on two occasions and discussed the matters with him. I have obviously discussed the matters at previous times with the licensing staff and sought counsel from my registrar and so on. I have not dealt with it in any way capriciously. I have given careful thought to it. The mere fact, if you like, that other people such as the DPP and the Ombudsman have come to similar conclusions would suggest that I have done this with due prudence.

Hon HELEN HODGSON: What I am coming to is that although you have not instituted a section 249 inquiry, which involves an external person, you have at least had a look at the facts and the issues in question and it has not been simply a case of saying that there is no case there. You have had a look at the issue to determine that.

Mr ROGERS: Yes, I have taken the time to talk to the gentleman on, I think, two occasions, and I have talked to staff on previous occasions. The decision has not been taken capriciously, but has been given some consideration.

Hon HELEN HODGSON: I gather that a section 249 inquiry has never been instituted. Under what circumstance do you think that it is appropriate? You also said that you saw this as a third party dispute and that Fisheries WA was not a party to the dispute. Given the wording of section

249 that it is an inquiry to determine who holds control of or has an interest in the authorisation, in what circumstances do you think you might be asked to do that where you would be a party to it?

Mr ROGERS: I do not know. That would be hypothetical. Hypothetically, to a large extent we have removed a lot of the risk around licence transactions by the institution of these arrangements in terms of third party interests. Some of the smarter lawyers around the town use this security interest in terms of a lending interest, if you like, by an arrangement which allows them to control their security around lease arrangements which formally we do not recognise but informally this device provides a way through.

Hon HELEN HODGSON: Essentially, if something does not involve Fisheries WA directly but somebody still needs ownership of their licence determined, you would say that because Fisheries is not a party to whatever the issue is there would be no reason for a section 249 inquiry?

Mr ROGERS: Not necessarily, because I would have to look at the case on its merits and the evidence to hand, and whether sufficient evidence had been provided to cause me to intervene. That is the only way I can answer it. I am a great believer in never troubling myself too much with precedents in terms of legal questions; it comes back to good reasons to intervene and institute an inquiry.

Hon HELEN HODGSON: Have many people approached you for an inquiry, or is this the only instance?

Mr ROGERS: It is the only instance I can recall. I emphasise the fact that the administration around our registry is fairly tight. It is getting better each year. That is what we have to do. Every time we deal with a licence transaction these days it is worth \$1m or \$1.5m. Our registrar is now a lawyer by training. We did not have that before. We have tightened up our legislation and our processes. The fact that we have not had the requirement for an inquiry points to the fact that it has been reasonably well managed. We are not getting any serious complaints from the financial institutions. I do not recall getting a complaint from a financial institution about the way that we go about our business. We do get involved in litigation from time to time between parties. That is often as a third party on the basis of providing documentation from our register to settle the matters of disputes between parties in court proceedings.

Hon HELEN HODGSON: There may be an extension from that in which the documentation is not sufficient, and then a determination of whether an interest exists might become necessary.

Mr ROGERS: It could be. However, in almost any court action involving a dispute between two parties over the licensee ownership of those licences, the normal processes of discovery through court proceedings occurs. They have access to all our documentation under those discovery requirements, and more often than not someone from the department is subpoenaed to attend the court proceedings and give evidence in relation to the documentation and the processes. It seems to work.

Hon HELEN HODGSON: My final point harks back to our exchange earlier about the DPP's advice and whether it is possible to steal licence rights. I note that under the wording of section

249 it is probably not an issue, because it refers to an interest. Holding and controlling is one form of ownership but it also applies to an interest, so the new legislation has dealt with that issue.

The CHAIRMAN: Is it fair to summarise the evolution of the procedures regarding registration of interest as reaching a point now where the Paxton case is probably unlikely to have occurred?

Mr ROGERS: I would hope so. This is the other issue that sits there. It still comes back to the practice of leasing licences within Fisheries. Technically, one could argue whether it exists or not in terms of this legislation. Mr O'Connor probably has one view on it. We recognise the licensee on all occasions. It becomes particularly difficult when we deal with a rock lobster boat where the licensee of the boat is person X and the licensee of the managed fishery licence is person X but behind the ownership of pots is a transaction that has occurred through a lease arrangements with another person who has transferred pots from another boat onto that licence. At face value, as far as we are concerned, the ownership and therefore the holding of those pot entitlements are with the licensee, not with some other party. Obviously there is some commercial risk when people start subleasing or leasing pot entitlements.

NO!

MAKE  
CASE

The CHAIRMAN: Is that because in the exercise of your legal functions you are only concerned with the licensee?

Mr ROGERS: Yes. We are not an ownership register. That is the distinct difference between this and the Torrens register over land.

OUT  
OK  
ONE?

The CHAIRMAN: I do perceive that difference. Thank you very much gentleman. You have been very helpful.

[The witnesses retired]

THE COMMITTEE ADJOURNED

# *CORRUPTION CRIME AND MISCONDUCT ACT 2003*

(e) is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given;

**Schedule 1 offence** means an offence described in Schedule 1;

**section 5 offence** has the meaning given by section 5;

**serious misconduct** means —

(a) misconduct of a kind described in section 4(a), (b) or (c) by a public officer; or

(b) police misconduct;

**Standing Committee** means the committee referred to in section 216A;

**State Records Commission** means the Commission established under section 57 of the *State Records Act 2000*;

**subcontractor** has the meaning given by the *Court Security and Custodial Services Act 1999*, the *Declared Places (Mentally Impaired Accused) Act 2015* or the *Prisons Act 1981*, as is relevant to the case;

**witness** means a person who appears at an examination or an inquiry to give evidence, whether the person has been summoned or appears without being summoned.

(2) Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable by a House of Parliament.

[Section 3 amended by No. 78 of 2003 s. 5 and 35(13); No. 77 of 2006 Sch. 1 cl. 35(1) and (2); No. 8 of 2008 s. 11(2) and 23(1); No. 21 of 2008 s. 654(2); No. 39 of 2010 s. 74(2); No. 35 of 2014 s. 6; No. 4 of 2015 s. 84(2); No. 26 of 2016 s. 48.]

## **4. Term used: misconduct**

Misconduct occurs if —

- ✓ (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or
- ✓ (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or
- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or
- (d) a public officer engages in conduct that —
  - ✓ (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer SAT whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
  - ✓ (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
  - ✓ (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
  - ✓ (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

*[(v) deleted]*

(vi)a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

[*Section 4 inserted by No. 78 of 2003 s. 6; amended by No. 35 of 2014 s. 7.*]

## **5.Terms used: section 5 offence**

A section 5 offence is a Schedule 1 offence committed in the course of organised crime.

[*Section 5 inserted by No. 78 of 2003 s. 6.*]

## **6.Application**

- (1)The Commission may receive information and otherwise perform its functions in relation to acts, omissions or conduct occurring before or after the coming into operation of this Act.
- (2)The Commission may receive information and otherwise perform its functions in relation to acts, omissions or conduct alleged to have been done, omitted or engaged in by a person who was a public officer at the time of the alleged acts, omissions or conduct even if the person has ceased to be a public officer.

[*Section 6, formerly section 4, renumbered as section 6 by No. 78 of 2003 s. 35(1).*]

## **7.Act to bind Crown**

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in its other capacities.

[*Section 7, formerly section 5, renumbered as section 7 by No. 78 of 2003 s. 35(1).*]

## **Division 2 — Purpose**

[*Heading inserted by No. 78 of 2003 s. 7(2).*]

### **7A.Act's purposes**

The main purposes of this Act are —

- (a)to combat and reduce the incidence of organised crime; and
- (b)to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.

[*Section 7A inserted by No. 78 of 2003 s. 7(2).*]

### **7B.How Act's purposes to be achieved**

- (1)The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Corruption and Crime Commission.
- (2)The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.
- (3)The Act's purpose in relation to misconduct is to be achieved by conferring functions on the Commission and on the Public Sector Commissioner.
- (4)The Commission is to be able to investigate cases of serious misconduct.
- (5)The Public Sector Commissioner is to be able to investigate cases of minor misconduct.

# Memorandum

64 ATFIELD ST

10am ~

To Mark Cliff - Technical Officer, Catch and Effort Statistics

From Anne Field - Senior Licensing Officer

Subject **LICENCES HELD BY MARK ASHLEY PAXTON**

9336 2405 ]

Date 13 August 2002

Mark Ashley Paxton

CARD INDEX - G298 - Licence issued to Mark Ashley Paxton 20/09/1983 – at a guess then on the boat “Earth” (I will fax the photocopy of the card for you to check);

Boat replaced on 16/03/1985 – at a guess with the “Apollo XI” (also from the card file);

Boat replaced on 31/12/1987 with the “Tonnarella” [on the electronic system].

Fishing Boat Licence (No 1123) transferred on 23/08/1988 to Alexander [on the electronic system];  
Abrolhos Island Managed Fishery Licence (No 1921) held from 19/11/1986 to 23/08/1988 when transferred to Mandare Holdings [on the electronic system].

Regards

Anne

→ April 89  
→ F780.  
G298 Sept 83 → Aug 88.  
June 88

G249 May 89

From:  
Mark A. Paxton 64 Attfield St. Fremantle.  
24/10/02

To: SAMANTHA BRYCE ATTORNEY GENERALS OFFICE

Further to our phone conversation 18/10/02 here is a summary of the situation

The Licensing system of the W.A. Fisheries consists of a "Fishing Boat License" and "Limited Entry Licenses", for specific fisheries, being attached to the F.B.L.

Prior to 1994 FRMA, the Fisheries "considered" the F.B.L. owners to be owners of any attached L.E.F.'s even if contrary to actual ownership. See Attached.

In 1983 I was issued F.B.L. G298. In 1986 I was issued an L.E.F. 1921 Scallop license. I sold my FBLG298 in 1988. then I leased F780. This created a situation where the L.E.F. scallop license, issued to me, was considered owned by the owners of F.B.L.F780. In late 1989 I leased FBL G249, Which had 1 Scallop unit on their L.E.F. to enable the fishing on my LEF 1921, Abrolhos Island Scallop License, (Being 1 scallop unit) and their unit on my boat (also considered owned by F.B.L. owners) in effect allowing me to fish 2 units, that is 2 nets. There was complete agreement between all parties that I was owner of my License being 1 unit. My actual ownership was recognised after transfer from my FBL G298 by a comment on "Comments" page of FBL F780. "Mark Paxton refer 93/79 as well "See attached.

I had a meeting with Peter Millington on 22/90 regarding transfer from F780 to G249 – NB I could not sign transfer as I was not "considered" owner although recognised as owner. See attached.

4/90

At this meeting, Fisheries informed me of an "informal system" of registrar.(N.B. this was not gazetted / legislated .No notification of its existence or guidelines for use existed.) ,whereby registrations of interest in licenses were recorded by the Fisheries, which could alert the beneficial owner in the event that an attempt was made to sell their license. That is,an attempt to use their licensing system to commit fraud. It was then necessary for the beneficial owner to seek an injunction to prevent the transfer being effected. This system of not having the actual owner of an asset, registered as the owner, then putting the onus on the actual owner to take steps to protect his ownership is an incredible breach of duty of care- See High Court Sutherland Shire Vs Heyman, and the creation of the Specific and General Reliance Test to define duty of care of Public Administrators

. I believed that being recognised in this meeting as actual owner,would ensure an applicable comment would be registered, that would safeguard my right to fish through their informal system, apparently by making a comment on the "comments" page as was done in 1998 without my knowledge.

N.B.After the legislating of the 1994 F.R.M.A. all actual owners of L.E.F.licences have been registered as actual owners.

In 1991 the F.B.L. holders, being considered owners of my L.E.F. transferred and sold for value, without my knowledge or consent,my scallop license.

Since then, I have made numerous efforts to have the Fisheries address this problem. With Peter Rogers the then and present Executive Director of Fisheries, taking deliberate action and inaction to frustrate any due process, including :-

- informing F.B.L. holders they were the "licensees" of the Panama ,being my vessel,when their lawyer made an enquiry to clarify ownership of my license.N.B.Fisheries

were aware of my actual/beneficial ownership see attached (Statement by Peter Millington recognising my beneficial ownership of the scallop unit whilst attached to F.B.L.F780 and in consideration of the transfer to G249 still regarding it as Mark Paxtons.)N.B. Prior to this request to Peter Rogers both parties being the F.B.L. holders were agreeable to a resolution. See letters from lawyers Nov. 1992 , and request for clarification of ownership 23/11/92. It was Peter Rogers response to this request that led Fred Blenkinsop to believe he could commit FRAUD without any response from Fisheries.

- Not informing F.B.L. holders that if not actual owners they would be committing FRAUD if transferring a license actually owned by somebody else without their permission .
- Refusing to have an inquiry twice (See section 249 F.R.M.A. )when informed evidence from which would establish facts to assist a fraud squad inquiry.(N.B. Detective Sergeant Mirfin case on file.)

Giving unsatisfactory reasons for not holding an enquiry, being- That Section 249 only applies to foreign interests, The words foreign interest do not appear in Section 249

-Insufficient evidence exists.In fact Fraud Squad statements from two of the three people being the F.B.L. holders state categorically that the third partner in the F.B.L. had no right to sell my license, agreeing completely with my claims.

Misinforming the Ombudsman – Refuting Peter Millingtons signed recognition of my ownership.

-Stating that I ceased to own the license in 1988.

-Stating that I pooled resources so as to conduct a joint venture.

-Stating that no mechanism exists to restore the L.E.F. See Sections 7(1),(2), 142 (1),143 c,246 (1),(2), 249,F.R.M.A.And of course through an Adjustment Act to rectify a situation where their licensing system has failed.

A licensing system that considers someone owning something they don't is a ridiculous disregard for Common Law. Accepting no responsibility for fraudulent use of this system is a failure of duty of care and Peter Rogers handling of this has breached the public sector code of ethics on all three standards – justice, respect for persons and responsible care.Ignoring this situation is to give "considered" ownership the validity to commit FRAUD.

I am writing now requesting you to review all facts, so as to make a recommendation to the Supreme Court that in the interest of Justice being served, that it allows an action against the Fisheries to proceed.

As per section 47a W.A. limitations act I believe there is an ongoing neglect/default being the Fisheries not recognising and safeguarding my right to fish, and I intend to commence proceedings.

There is presently a Supreme Court Action CIV 1001/96 against the F.B.L. holders Blenkinsop Fay and Nominees , with as mentioned two of the three parties, the Fays, agreeing completely with me.(Fraud Squad interviews are catagoric)The outcome of this which will undoutable be in my favour , will not result in me being able to fish in the Abrolhos fishery, as no single unit licenses exist any more ,and in fact the likelyhood of any license coming on the market in the future is very remote.

The Fisheries are responsible for this situation, and are my only possibility of fishing a license issued to me,but never alienated by me, again.Although the one year period

to take action has passed I am now seeking to take action as catagoric evidence relating to the Fisheries has only come to my attention recently through discovery –Comments on L.E.F.s and F.B.L.s. Letters from F.B.L.holders lawyers and subsequent change of attitude due to Peter Rogers response. Which I believe are evidence of failure of duty of care ,and amount to the perpetuating and concealment of a FRAUD

And a belief that the Neglect /Default is ongoing,giving the right to bring this action.

Bearing in mind that the altimate aim of the Supreme Court is attainment of justice,a recommendation by your Office to have this action proceed, may make possible that objective.

Yours Sincerely  
Mark Paxton



**WITNESS STATEMENT OF**  
**FREDERICK WILLIAM BLENKINSOP**  
**OF WANNAMAL ROAD, GINGIN**  
**WESTERN AUSTRALIA**

- 1 I was born on 22 May 1928.
- 2 I am a farmer.
- 3 Over the years my wife and I through various entities, have owned various businesses.
- 4 In early 1988, a company called Blenkinsop Nominees Pty Ltd entered into a partnership with James Francis Fay and his wife Kerry Ann Fay for the purpose of carrying on the business of fishing. Blenkinsop Nominees Pty Ltd was entitled to one half of the partnership and each of Mr and Mrs Fay were entitled to one quarter. The partnership was known as Victory Fish.
- 5 Blenkinsop Nominees was at the time and still is the Trustee of our Family Trust.
- 6 Some time in April/May 1989, Peter Maindok and his brother Paul Franz Maindok entered into a written agreement with our partnership to purchase the partnership's fishing trawler and various licences. Annexed here to and marked "**FWB1**" is a copy of a document which I believe formed the basis of the agreement between the Victory Fish

partnership and the Maindoks. I do not have a signed copy of that document in my possession. Further to that contract, there was an arrangement between us concerning the Onslow Prawn Licence. This licence was non-transferable. Despite this, the Maindoks and Victory Fish agreed that the Maindoks would be able to lease the licence for \$1 per year until the licence became transferable.

7 Some time in late 1989, Tracey, our daughter who lived in Geraldton, told either myself or my wife Judy, words to the effect of:

"A fellow named Mark Paxton wants to see you to take over the contract with Maindok."

8 By that stage, Maindok had defaulted in his monthly payments under his contract with us.

9 Around about this time, my wife and I were living in Irwin on a farm 100 kilometres south of Geraldton. I had been unwell and my daughter Tracey was share-farming our farm.

10 As a result of Tracey's message concerning Mr Paxton, a meeting was arranged with him, through Tracey. The meeting was scheduled for 8.00pm one evening at Tracey's home in Geraldton.

11 We travelled from our farm to Tracey's home for that meeting. Mr Paxton was around three (3) hours late for the meeting. Prior to him

actually arriving, we had thought he would not turn up.

12 Those present at the meeting were my wife Judy, my daughter Tracey, on occasions, my son-in-law Ray and myself.

13 I said to Mr Paxton when he arrived words to the effect of:

"You are three hours late for our meeting. I should have been in bed by now. If you want to be in business the first thing you must learn is to be on time."

14 At the meeting, Mr Paxton said words to the effect of:

"Peter Maindok does not wish to fish any more. He has explained to me his contract with you including his arrangement concerning the Onslow prawn licence.

I have a boat called the "Panama" and I need a wetline licence and another Scallop Licence. However I don't need your vessel. Panama has the capacity to fish with twin scallop nets. The licence I have is for a single rig. I propose that both rigs be amalgamated to create a twin rig. All the licences have to be transferred to the Panama."

15 At some point during this meeting I said to Mr Paxton words to the effect of:

"How do I know that you aren't going to fall over like Maindok? Maindok has been a total disaster. How do I know that you are any different?"

16 Mr Paxton responded with words to the effect of:

"If I don't perform under this agreement, you'll be better off because you'll have everything."

17 In response, I said words to the effect of:

"I will agree to this so long as you catch up with Maindok's arrears and you continue to pay \$750.00 per month and the final price at settlement."

18 To the best of my recollection, Mr Paxton produced a document headed "Offer and Acceptance" between himself and the Maindok brothers which Mr Paxton wanted me to sign.

19 To the best of my recollection, I said to Mr Paxton words to the effect of:

"I will need my solicitor to check this before I sign it. Can you please give it to him to look at."

20 Annexed hereto and marked "**FWB2**" is a copy of a letter from Mr Paxton to an unnamed person together with the Offer and Acceptance. The letter must have been written to my solicitor Mr Ian Blatchford from

Altorfer & Stow in Geraldton. I cannot recall receiving advice from Mr Blatchford, but I know I signed my consent to the Offer and Acceptance and I believe I signed it after Mr Maindok had signed as vendor. Annexed hereto and marked "FWB3" is a copy of the Offer and Acceptance that I signed. I can't now recall when I signed that document.

21 I refer to paragraph 40 of the Witness Statement of Mr Paxton dated 23 January 2003 and say that I cannot recall speaking to Mr Paxton on the telephone about the purchase of the licences prior to meeting him at my daughter's home. To the best of my recollection I did not speak with him.

22 I refer to paragraph 41 of Mr Paxton's Witness Statement and state that I cannot recall Mr Paxton leaving a copy of the Offer and Acceptance with me.

23 My solicitor Alan Mizen, has informed me that of the documents forwarded to the Supreme Court of Western Australia by the Proper Officer of the Department of Fisheries Western Australia in answer to a subpoena issued by the Plaintiff, there is a document numbered (c)(ix) being an application to the Department of Fisheries for the replacement of the boat "Victorious" with the "Panama" signed by me apparently on 9 February 1990. I have not yet seen that document but Mr

Mizen states that the application was received by the Department of Fisheries on 13 February 1990.

24 I cannot recall signing that document and cannot recall when I signed it or the circumstances surrounding my signature of it. My memory may be refreshed when I see it.

25 I refer to paragraph 58 of Mr Paxton's Witness Statement and say that although I cannot recall my discussions with Mr Paxton concerning the Victory Fish partnership's obligation to agree to relinquish its Wetline Licence 1050, I can say that at some time in early 1990 I became aware that unless our partnership agreed to give up its wetline licence to the Fisheries' Buy Back Scheme, Mr Paxton was either unable to or would not proceed with the deal he had with us. Consequently I agreed with that relinquishment. A consequence of agreeing to give up our wetline licence to the Fisheries Buy Back Scheme, given that Mr Paxton was not acquiring the Victory Fish's fishing vessel "Victorious", was that unless our partnership went into the market to acquire another wetline licence, the sale price of each of the wetline licence through the Buy Back Scheme and the boat independently would be less than we could expect to receive for the sale of both the licence and the boat together.

26 I doubt whether Blenkinsop Nominees would have sent the document marked "MAP8" to the Fisheries Department but rather, I would have thought that Mr Paxton would have taken it with him. Annexed hereto and marked "**FWB4**" is a copy of a document that Alan Mizen has had copied from records that were forwarded to the Supreme Court under subpoena by the Department of Fisheries. I cannot recall signing that document but the handwriting on it is that of our daughter Tracey. To the best of my recollection, this would have been prepared at the same time as the application referred to above to replace the "Victorious" with the "Panama", ie in February 1990.

NO MENTION  
OF BEING  
"GRANTED" 14 Fm  
UNIT

27 Annexed hereto and marked "**FWB5**" is a copy of a letter our partnership received from the Fisheries Department dated 23 July 1990 advising us that it had approved the replacement of the "Victorious" with the "Panama".

28 I refer to paragraph 61 of Mr Paxton's Witness Statement and say that to the best of my recollection, Mr Paxton made only one or two rental payments but did not make any others.

29 I refer to paragraph 69 of Mr Paxton's Witness Statement and say that the letter dated 25 August 1990 was written as a result of a letter

of demand my wife had written to Mr Paxton. We do not have a copy of that letter of demand. Notwithstanding Mr Paxton's letter, we did not ever get any further payment from him. I heard nothing more from Mr Paxton until sometime in 1992 when he telephoned me and claimed that I had wrongly sold his scallop licences.

30 I refer to paragraph 67 of Mr Paxton's Witness Statement and deny that Mr Paxton discussed with me the results of the meeting referred to in paragraphs 63-66 of Mr Paxton's Witness Statement. By letter 14 March 1991 from the Fisheries Department, the Victory Fish partnership did receive notification of that meeting. Annexed hereto and marked "**FWB6**" is a copy of that letter.

31 I refer to paragraph 63 of Mr Paxton's Witness Statement and state that he had no authority to attend that meeting on behalf of the Victory Fish partnership.

32 I refer to paragraph 67 of Mr Paxton's Witness Statement and deny that he had any discussion with me to the effect that his "deal" wasn't going to happen because of the Onslow prawn licence issue or indeed, any other issue. I also deny that Mr Paxton ever told me that he would try and find another buyer for the licences.

33 In March/April 1991, Barry Carter visited my wife and I at our farm in Gingin. He said words to the effect of:

"I have been sent here by Mark Paxton. He is working for me. I have got this \$350,000 boat and I haven't got enough licences. Paxton tells me that you have licences to sell. Will you sell them to me."

34 We agreed in principle to sell the licences to him but I now cannot recall whether we agreed on a purchase price on that day or not. I think he paid us \$1,000 deposit for the licences on that day.

35 Some short time thereafter, Judy and I met Barry Carter at the Fisheries Department to discuss the sale of the licences to Mr Carter through his company Baseking Pty Ltd. My recollection is that the officers at the Fisheries Department told Mr Carter what was required to get the licence transferred to his boat. I cannot remember the specific details of that meeting. I do recall discussing our Wetline Licence 1050 that we had agreed to give up to the Buy Back Scheme.

36 Some time after the meeting at the Fisheries Department, Mr Carter returned to our farm and required Judy and myself to sign some papers to do with the transfer of the licences

or the replacement of the vessel on which they were registered.

37 Annexed hereto and marked “FWB7” is a copy of the agreement with Mr Carter’s company Baseking Pty Ltd.

38 Pursuant to that contract with Baseking, all licences were transferred to Baseking’s fishing vessel the “Valali”. To the best of my recollection, at about this time, Victory Fish sold each of its Abrolhos Scallop Trawl Net Endorsements which was the subject of Licence No. 1890 to two other boats. One to Mr McDonald and the other to Mr Thompson. Each was sold for \$25,000. Mr Thompson then sold the endorsement that he acquired to a Mr Jackson for the same price. Each of those contracts took about one and a half years to settle because each of those parties took that long to pay for the endorsements they had acquired.

39 Some time in 1992, Mr Paxton made contact with me over the telephone alleging that I had sold his scallop licence. I engaged Ian Blatchford of Altorfer & Stow, Solicitors in Geraldton to check Paxton’s claim.

40 On 23 November 1992, Mr Blatchford wrote to the Executive Director of Fisheries. Annexed here to and marked “FWB8” is a copy of that letter.

41 By letter dated 16 December 1992, Fisheries Department responded and annexed hereto and marked "FWB9" is a copy of that letter.

42 The Victory Fish Wetline Licence No. 1050 was ultimately surrendered to the Fisheries Department buy-back scheme and in consideration for that surrender and pursuant to the scheme, the Fisheries Department paid Victory Fish the sum of \$22,500. This occurred in late 1992/early 1993. I cannot recall the precise details surrounding this surrender but Alan Mizen has informed me that the documents forwarded to the Supreme Court in answer to the subpoena to the Fisheries Department shows when that surrender occurred.

43 I refer to paragraph 73 of Mr Paxton's Witness Statement and deny that I said to him:

"I would teach Mr Paxton a thing or two about business."

DATED *4* February 2003

*F. Blenkinsop*  
FREDERICK WILLIAM BLENKINSOP

Mr M Paxton  
13 Barnett Street  
Fremantle WA 6160

Our Ref: P075\DL:gw  
Your Ref:

13 June 2003

Dear Sir

**SUPREME COURT ACTION CIV 1001/96**

Tony O'Connor, Fisheries Department's Legal Counsel, telephoned to discuss a list of issues for discussion at the meeting on 18 June 2003.

We indicated that we had not had a chance to discuss with you a detailed list of the issues that you wish to raise but that, in general terms, they concern:

- (a) the fact that the transfer of your licence from Blenkinsop, without your knowledge, was able to occur as a result of shortcomings in the licensing system;
- (b) failure to resolve the dispute at an early stage arose as a result of the misleading advice given by Fisheries Department to ~~Glynn & Gray~~; *ALTORFOW + STAN*
- (c) even if you were entirely successful in the Supreme Court proceedings, the Court is not in a position to order the return of your scallop unit;
- (d) the assistance you required from Fisheries was to arrange for the issuing of a scallop unit and an LEF.

Mr O'Connor asked whether there had been any developments that had altered the picture since your previous meeting with the Department. We said that there was nothing that fundamentally changed your position and we appreciated that it may require some legislative action in order to have Fisheries Department grant a unit and/or a LEF.

Although he did not say so, Mr O'Connor intimated that, in preparing his brief for the Minister, he would want to put in something additional to the issues that have already been discussed. He indicated that he believed the meeting would be far more useful if the Fisheries Manager, Dr Lindsey Joel, were present. If there is to be serious consideration given to attempting to persuade the Minister to grant a licence, it would obviously have more weight if approved or recommended by the Fisheries Manager.

Unfortunately, Dr Joel is not able to be present at the meeting next week. It appears to the writer, and to Mr O'Connor, that the meeting should be postponed until Mr Joel is available as the Minister may not agree to a further meeting if nothing is achieved in this round of discussions.

Please therefore confirm whether or not you are agreeable to the meeting being postponed.

Yours faithfully

*herbl*

**LEASK & CO**



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MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
THE MIDWEST, WHEATBELT AND GREAT SOUTHERN

---

LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL

11th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia 6005  
Telephone (08) 9213 6700 Facsimile: (08) 9213 6701  
Internet: <http://www.wa.gov.au/cabinet/chance>  
ABN 61 313 082 730

Ref: 8-7108

Mr M Paxton  
13 Barnett St  
FREMANTLE WA 6160

Dear Mr Paxton

I refer to our meeting of 29 May last where you asked -

*'if [you] could prove your beneficial right to fish in the Abrolhos Islands scallop fishery, would the Department of Fisheries register that beneficial right?'*

I am advised that there is no 'informal' process by which such a registration can be effected.

Changes to registered details of licences and entitlements - as you are aware - may only be effected by application to the Executive Director. Such applications must be made by the party holding the licence on which the relevant entitlement currently appears. If necessary, the Court - if it should be of a mind to do so - may make Orders requiring the relevant party to make the appropriate application. You may wish to consider what Orders - in the event -- you might wish the Court to make. Once a competent application is made to the Executive Director, it will be processed in the normal way in accordance with the terms of the Management Plan for the fishery. In that regard I understand you do not hold a licence in the fishery and the entitlement must be transferred from one licence to another.

You may wish to ensure a copy of the Court Orders accompany the relevant application in due course.

I look forward to the outcome of your Court proceedings.

Yours sincerely

Kim Chance MLC

MINISTER FOR AGRICULTURE; FORESTRY AND FISHERIES

28 JUN 2002



MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
 THE MIDWEST, WHEATBELT AND GREAT SOUTHERN  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL



Our Ref: 8-15112  
 Your Ref: P075/DL:gw

Mr David Leask  
 Leask & Co. Barrister & Solicitors  
 PO Box 1161  
 FREMANTLE WA 6959

Dear Mr Leask

PAXTON v BLENKINSOP NOMINEES PTY LTD & ORS

Thank you for your facsimile letter of 23 July regarding outcomes of the meeting of the same day on matters related to your client Mr Mark Paxton.

One outcome of that meeting was that I indicated I would consider amending the Management Plan for the Abrolhos Islands and Mid West Trawl Fishery to make provision for the issue of additional Managed Fishery Licences (MFLs) in order to provide a "platform" for any unit of entitlement over which your client – for instance – may acquire control. However, I am bound under that Plan to not amend it without first consulting with the licence holders in the fishery.

Before I will consider proceeding with any amendment which would provide for the issue of additional MFLs, I must therefore consult with the other licence holders. Once I have consulted with that group I will consider the matter again and provide you with advice on my proposed course of action.

Yours sincerely

Kim Chance MLC  
 MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES

13 AUG 2003

FACSIMILE FROM:

**LEASK & CO.**  
BARRISTERS & SOLICITORS

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160  
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959  
TELEPHONE (08) 9430 6688  
FACSIMILE (08) 9430 4044  
E-MAIL: leaskco@aol.com.au

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FROM : David Leask  
OUR REF : P075/DL;gw  
No.OF PAGES : 1  
DATE : 23 July 2003

TO : **DEPARTMENT OF FISHERIES**  
Attention: **Kevin Donoghue**  
YOUR REF :

FACSIMILE NO : 9213 6701

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Dear Sirs

**PAXTON v BLENKINSOP NOMINEES PTY LTD & ORS**

We write further to the meeting between yourself, Minister Chance, Mark Paxton and the writer, Leask, on 23 July 2003.

We would be grateful if you would kindly proceed with the issue of an LEF for the Abrolhos Island Trawl Fishery to our client.

We otherwise await hearing from you in relation to the matters discussed at the meeting.

Yours faithfully

**LEASK & CO**

**WEST COAST TRAWL ASSOCIATION**  
31 *Emplacement Crescent*  
*Hamilton Hill W.A. 6163*  
*Ph: (08) 9336 6866*  
*Fax: (08) 9336 6877*  
*President: K.J. Brown*  
*Secretary: H. Ch'ng*

9<sup>th</sup> September 2003

Dear Member,

## **NOTICE of MEETING**

I wish to advise that the West Coast Trawl Association will convene a Meeting to discuss the proposal to establish a Yellow Fin Tuna farm north of the Pelsaert Group at the Abrolhos Islands. A formal application has now been lodged with the Department of Fisheries by the proponents of the Tuna farm and submissions responding to the application close on the 14<sup>th</sup> of October. If you wish to receive a copy of the submission, please contact Barbara Sheridan (9482 7399) at the Department of Fisheries. Given the potential impact of this project on our Fishery I urge your attendance at the Meeting.

I have also attached a copy of an invoice to recover the costs (surveys, airfares, attempted modifications to vessel electronics, etc) incurred by various Association members in the successful effort to open the grounds beyond the eastern boundary of the Fishery. It would be greatly appreciated if you could settle this account as quickly as possible.

**Date of Meeting: Tuesday, 30<sup>th</sup> September 2003**

**Venue for Meeting: Department of Fisheries Fleet Maintenance Depot, Fremantle.**

**Time of Meeting: 9:30 AM to 12:30 PM.**

### **Proposed Agenda**

1. Yellow Fin Tuna Farm.
2. Rock Lobster / Scallop Working Group to Reduce the Impact of Scallop / Rock Lobster interactions.
3. Review of the 2003 Season
  - Health and Safety Issues
4. Mark Paxton and Potential for the Department of Fisheries to issue a new Scallop Endorsement.
5. Other Business.

Yours Faithfully,

Hamish Ch'ng  
(Secretary)

## Facsimile Message



*MWP*  
Department of Fisheries  
Government of Western Australia

To **Mark Paxton** Fax **9430 4044** 3RD FLOOR, SG10 ATRIUM  
 From **Hilary Woodley** Fax **9482 7224** 168 ST GEORGES TERRACE  
 Subject **ABROLHOS ISLANDS & MID WEST TRAWL LIMITED** PERTH WESTERN AUSTRALIA 6000  
**ENTRY FISHERY** TELEPHONE (08) 9482 7333  
 Page 1 Date **25 September 2003** Website <http://www.wa.gov.au/westfish>  
 of 29 File Ref



*Fish for the future*

Mark

Please find attached the Abrolhos Islands and Mid West Trawl Limited Entry Fishery Notice as per our conversation.

If you would like me to forward you a hard copy in the post, please let me know your address.

Regards

Hilary Woodley  
 Admin Support  
 Commercial Fisheries  
 Tel: (08) 9482 7373

The information contained in this facsimile message may be privileged and is confidential information intended only for the use of the recipient named above. If you are the receiver of this message and not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this message in error, please immediately notify the Department of Fisheries by return facsimile or telephone.

1.19

*GG Published  
25/5/93**Fisheries Act 1905***ABROLHOS ISLANDS AND MID WEST TRAWL LIMITED ENTRY  
FISHERY NOTICE 1993****Arrangement****Clause**

1. Citation
2. Interpretation
3. Declaration of limited entry fishery
4. Prohibition on fishing for prawns or scallops
5. Prohibition on selling or dealing
6. Criteria to determine the boats which may operate in the Fishery
7. Application for a licence
8. Details on a licence
9. Publication of details
10. Authorised means of operating in the Fishery
11. Crew limits
12. Closure of the fishery
- 12A. Stowage of otter boards and otter trawl nets
- 12B. Requirement for the installation of an Automatic Location Communicator
- 12C. Presence in the Fishery
13. Transfer of licence and gear units
14. Boat replacement
15. Boat modification
16. Engine seals
17. Inspection of fishing gear, engines and seals
18. Restrictions on unloading whole scallops
19. Applications and fees
20. Procedure before this Plan may be amended or revoked
- 20A. Offences and major provisions
21. Revocation
- Schedule 1
- Schedule 2

6; 7; 8

**Notice No. 604**

FD 749/86

Made by the Minister under Section 32.

**Citation**

1. This notice may be cited as the *Abrolhos Island and Mid West Trawl Limited Entry Fishery Notice 1993*.

**UNCONSOLIDATED COMPILATION**  
 (May not contain all amendments)

1.19  
(Cont...)

**Interpretation**

2. In this notice unless the contrary intention appears —

“ALC” means an Automatic Location Communicator as defined in regulation 55A of the regulations that is capable of transmitting to the Executive Director at any time accurate information as to the geographical position, course and speed of the authorised boat;

“approved directions for use” means the directions for use of an ALC given by the Executive Director in a notice in writing to the master of an authorised boat or a licence holder;

“approved form” means in a form approved by the Director;

“authorised boat” means —

(a) a licensed fishing boat the name, licensed fishing boat number and length of which are specified in a licence; or

(b) a boat specified in a written authority under regulation 132 where that boat is to be used in place of a boat described in (a);

“calendar year” means the period of twelve months commencing on each first day of January and ending on the last day of the next December;

“chafer” means a piece of net attached to the exterior surface of the cod end to protect it from wear;

“closed waters” means any waters of the Fishery in which fishing is prohibited;

“cod end” means that part of a trawl net furthest to the rear when the net is being towed which forms a pocket and acts as a receptacle for prawns or scallops taken by the net;

“Code” means the Uniform Shipping Laws Code adopted by the Marine and Ports Council of Australia and published in the *Commonwealth of Australia Gazette* on 11 May 1981;

“Fishery” means the Abrolhos Islands and Mid West Trawl Limited Entry Fishery declared under Clause 3;

“gear unit” means 7.31 meters of net measured at the headrope;

“headrope” means the rope onto which is attached the upper half of the mouth of the trawl net;

“headrope length” means the distance measured along the headrope from where the net attaches to one end of the headrope to where it attaches to the other end of the headrope;

“licence” means a managed fishery licence which authorises a person to fish for prawns or scallops in the Fishery;

“liner” means a piece of net attached to the interior surface of the cod end to protect it from wear;

“otter board” means one of the boards used on a trawl net to keep the mouth of the net open while under tow;

“otter trawl net” means a fishing net designed or intended to be towed having its mouth or opening controlled by otter boards;

“Port Area” means the area within 2 nautical miles of the locations specified in Schedule 2;

“prawns” means all species of *decapod crustacea* of the Family *Penaeidae*;

**UNCONSOLIDATED COMPILATION**  
(May not contain all amendments)

1.19  
(Cont...)

"regulations" means the *Fish Resources Management Regulations 1995*;  
 "scallop" means any species of fish in the superfamily *Pectinacea* of the  
*phylum Mollusca*; and  
 "sweeps" means the cables connecting the net to the back straps of the  
 otter boards;  
 "transferred" means the passing of ownership or effective control of a  
 licence from one person to another person.  
 "try nets" means an otter trawl net with a headrope length not exceeding 5  
 metres;

6; 7; 8

**Declaration of limited entry fishery**

3. It is hereby declared that the use of trawl nets to take prawns or scallops in the waters described in Item 1 of the Schedule shall constitute a limited entry fishery to be called the Abrolhos Islands and Mid West Trawl Limited Entry Fishery.

**Prohibition on taking prawns or scallops**

4. (1) Subject to subclause (2), a person shall not fish for prawns or scallops in the Fishery other than —  
 (a) in accordance with this Plan; and  
 (b) under the authority of a licence.  
 (2) A person fishing in accordance with the Act for a non commercial purpose may fish for prawns or scallops in the waters described in item 1 of the Schedule.

**Prohibition on selling or dealing**

5. (1) A person shall not sell or deal, or attempt to sell or deal in any way with prawns or scallops taken from the Fishery in contravention of this notice.  
 (2) A person shall not sell or deal, or attempt to sell or deal with prawns or scallops taken from the Fishery unless those prawns or scallops were taken by the holder of a professional fisherman's licence when operating from an authorised boat.

7

**Criteria to determine the boats which may operate in the Fishery**

6. The criteria that shall be applied to determine the boats which may operate in the Fishery are —  
 (a) that immediately before the coming into operation of this notice the boat was authorised to take prawns and scallops in the Abrolhos Islands and Mid West Trawl Limited Entry Fishery; or  
 (b) the boat replaces a boat to which paragraph (a) applied.

**Application for a licence**

7. The owner of a boat which fulfils the criteria specified in Clause 6 may apply in accordance with Clause 19 for a licence authorising the boat to operate in the Fishery.

UNCONSOLIDATED COMPILATION  
(May not contain all amendments)

1.19  
(Cont...)

**Details on a licence**

8. A licence shall contain the following details —

- (a) the name and licensed fishing boat number of the boat in respect of which it is issued;
- (b) the name and address of the licensee of that boat;
- (c) the licence number;
- (d) the date of issue;
- (e) the period for which the licence is valid;
- (f) the number of gear units authorised to be used;
- (g) the total number of gear units owned; and
- (h) any conditions imposed upon the licence.

**Publication of details**

9. The Director may from time to time give notice of —

- (a) the names of licensees;
- (b) the names of boats and registration numbers of those boats; and
- (c) the number of gear units those boats may use,

by publishing that information in such a manner as deemed appropriate.

**Authorised means of operating in the Fishery**

10. (1) A person shall not use nets to fish in the Fishery other than nets that have —

- (a) the ground rope equal to or longer than the head rope;
- (b) the head rope sweeps less than or equal to the ground rope sweeps;
- (c) the head rope and ground rope sweeps equal to or longer than two metres; and
- (d) drop chains that are equal to or further apart than one metre.

(2) Unless otherwise authorised by the Director, a person shall not fish for prawns or scallops in the waters described in Item 2 or Item 4 of the Schedule other than by using a maximum of one try net and —

- (a) not more than two otter trawl nets at any one time; and
- (b) an otter trawl net or nets with a total headrope length not exceeding 29.24 metres.

(3) A person shall not fish for prawns or scallops in the waters described in Item 3 of the Schedule other than by using a maximum of one try net and —

- (a) two otter trawl nets with each trawl net having a headrope length not exceeding 14.62 metres; or
- (b) one otter trawl net with a headrope length not exceeding 18.3 metres.

(4) A net referred to subclause (2) —

- (a) when used in the waters described in Item 2 or Item 4 of the Schedule shall —

- (i) have meshes throughout of not less than 100 millimetres; and

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(May not contain all amendments)*

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(Cont...)

- (ii) not have chafers or liners covering more than the bottom half of the cod end;
- (b) when used in the waters described in Item 3 of the Schedule shall have meshes of not less than 45 millimetres in the cod end and 51 millimetres in the remainder; and
- (c) may have attached to each end of the headrope a single otter board the measurements of which do not exceed 2.29 metres in length and 0.91 metres in breadth..
- (5) An authorised boat shall not be more than 375 boats units calculated in accordance with subclause (4) of clause 14.
- (6) A boat, when being operated in the waters described in Item 2 or Item 4 of the Schedule, shall not be used to take, or attempt to take, prawns or scallops with more net measured at the headrope than the amount specified in gear units on the licence for that boat and one try net.
- (7) Any otter trawl net, when being used in the Fishery, shall have only one ground chain attached to each net and that ground chain shall have links not exceeding 10 millimetres in diameter.

1; 2;3; 4; 6

#### Crew limits

11. Unless otherwise authorised in writing by the Minister a boat authorised to operate in the Fishery shall not have more than 13 persons on board the boat at any one time.

#### Closure of the Fishery

12. (1) A person acting under the authority of a licence must not fish for prawns or scallops at any time in any part of the Fishery other than in the parts, and at the permitted dates and times, specified in a notice in writing by the Executive Director made in accordance with subclause (2).

(2) Where the Executive Director is of the opinion that it is in the better interests of the Fishery to do so, the Executive Director may by notice in writing to all licence holders, -

- (a) prohibit fishing for prawns or scallops in the Fishery or in any part of the Fishery; or
- (b) permit fishing for prawns or scallops in the Fishery or in any part of the Fishery.

(3) The provisions of a notice made in accordance with subclause (2) may be made to apply at all times or at any specified time.

2; 4; 7

#### Stowage of otter boards and otter trawl nets

12A.(1) Otter boards, warp wires and otter trawl nets carried on or attached to any boat shall be secured to that boat and kept out of the water at any time the boat is in a part of the Fishery closed to the taking of prawns or scallops.

(2) An authorised boat, when in the waters described in Item 2 and Item 4 of the Schedule, shall not, at any time, be used to carry any net which has -

- (a) meshes less than 100 millimetres; or
- (b) chafers or liners covering more than half of the cod end.

2; 4; 7

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(Cont...)

**Requirement for the installation of an Automatic Location Communicator**

12B. (1) For the purpose of this clause "approved" and "approved person" have the same meaning as provided for in regulation 55A of the regulations.

(2) A licence holder must not allow the authorised boat specified on that licence to be used in the Fishery unless—

- (a) an ALC has been installed in that boat in accordance with the approved directions for use and by an approved person;
- (b) the ALC installed on that boat has been serviced in accordance with the approved directions for use, by an approved person and at intervals specified by the Executive Director in the approved directions for use; and
- (c) the licence holder has given a legible copy of the approved directions for use to the master of that authorised boat; and
- (d) the ALC installed on the boat is being used in the manner specified in the approved directions for use.

(3) It is a condition of the licence that an authorised boat referred to in subclause (2) must not be used in the Fishery unless an ALC is fitted to the boat and serviced in accordance with subclause (2) and the approved directions for use are being complied with.

(4) It is a condition of a licence that regulation 55C of the regulations is complied with at all times.

8

**Presence in the Fishery**

12C. (1) The master of an authorised boat must, when intending to fish within the Fishery, not allow that boat to—

- (a) enter the waters of the Fishery; or
- (b) be outside a Port Area within the waters of the Fishery;

at any time when any part of the Fishery is open to fishing unless—

- (c) the Department has received from a master of that boat a nomination of intention to enter the Fishery and comply with the requirements of the Management Plan; and
- (d) that nomination is current.

(2) If the Department receives a nomination pursuant to subclause 1(c) in any calendar year, that nomination is current for the remainder of that year unless—

- (a) the Department receives a nomination from a master of that boat cancelling it; or
- (b) the boat leaves the waters of the Fishery.

(3) A licence holder must not allow the master of an authorised boat specified on that licence to fish in the waters of the Fishery unless—

- (a) the Department has received a nomination pursuant to subclause 1(c); and
- (b) that nomination is current.

(4) The master of an authorised boat must not allow that boat to enter or be under way in closed waters when any other part of the Fishery is open to fishing unless the Department—

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1.19

(Cont...)

- (a) has received a nomination to enter or remain in closed waters (as the case may be); and
- (b) received the nomination no more than one hour before the boat entered or was under way in those waters.
- (5) Any nomination to the Department made in accordance with this clause must be made using an ALC in accordance with the approved directions for use.
- (6) In any proceedings for an offence against the Act, unless proven to the contrary, a reading of the position of an authorised boat received by the Department from an ALC installed on that boat is to be taken to be conclusive proof of the actual position of that boat at that time.
- (7) For the purposes of section 62(l) of the Act the areas specified are the areas detailed in Items 1 to 4 in Schedule 1.

8

#### Transfer of licence and gear units

13. (1) With the prior written approval of the Director —
  - (a) a licence granted under this notice may be transferred and the licence endorsed accordingly; and
  - (b) the holder of a licence may transfer all or part of the gear units allocated to that licence to one or more licences provided that any transfer involves a minimum of one half of one gear unit and that any transfer of more than one half of one gear unit shall be in multiples of one half of one gear unit.
- (2) A licensee may accumulate gear units.
- (3) The number of gear units accumulated on a licence shall be endorsed on the licence as gear units owned.
- (4) Where all the transferable gear unit entitlement of a licence has been transferred to another licence, the licence from which the entitlement was transferred shall be cancelled.
- (5) Notwithstanding the provisions of subclause (2) the maximum headrope length that may be used by any authorised boat at any one time is the length specified in Clause 10.

1; 2; 5

#### Boat replacement

14. (1) The licensee of an authorised boat may apply to the Director to replace the boat to which the licence applies ("the licensed boat") with another boat ("a replacement boat").
- (2) Subject to subclause (3) and if the Director considers it appropriate to do so, the Director may approve the replacement of the licensed boat.
- (3) A replacement boat shall not exceed 375 boat units calculated in accordance with subclause (4).
- (4) For the purpose of this Clause —
  - (a) "B" means "breadth" as defined in the Code;
  - "D" means "depth" as defined in the Code;
  - "ML" means "measured length" as defined in the Code measured in accordance with Appendix A to Section 1 of the Code; and
  - "IEP" is installed engine power in kilowatts of the boat's engine as certified by the supplier;

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(Cont...)

(b) "boat units" means units calculated in accordance with the following formula —

$$\frac{ML \times B \times D \times 0.6}{2.83} + IEP$$

1; 5

**Boat modification**

15. The licensee of an authorised boat shall not, without the prior approval of the Director —

- (a) replace the main engine of the boat with an engine having a greater power rating than the engine being replaced;
- (b) modify the main engine of the boat such that the power rating of the engine is increased; or
- (c) change or modify the configuration of the gearbox, propeller shaft or other driveline component.

1

**Engine seals**

16. (1) The owner of a boat licensed to operate in the Fishery shall —

- (a) on the written instruction of the Director cause the suppliers of an engine for the boat to install a lead seal on the fuel pump of the engine; and
- (b) authorise the Director to install or permit the installation of any further lead seals as the Director may require.

(2) The owner of a boat which has had a lead seal installed on the engine in accordance with subclause (1)(a) or (b) shall —

- (a) not permit the removal or allow any interference to the seal without the prior written approval of the Director; and
- (b) immediately report to the Director any interference to the seal caused by accident or mechanical requirements and as soon as practical thereafter arrange for re-certification of the installed engine power by the supplier and the installation of a new seal.

**Inspection of fishing gear, engines and seals**

17. The owner of a boat licensed to operate in the Fishery shall permit the inspection of the engine configuration and any seal by an officer of the Fisheries Department and shall permit on board any person the officer may require for such inspection.

**Restrictions on unloading whole scallops**

18. (1) A person shall not bring an authorised boat into any port or mainland anchorage unless all whole scallops on that boat are bagged.

(2) A person shall not unload, or permit or allow another person to unload —

- (a) whole scallops, unless those scallops are unloaded from an authorised boat;
- (b) whole scallops, from an authorised boat unless those scallops are bagged; or
- (c) more than the permitted number of bags of scallops from an authorised boat.

(3) A person shall not use an authorised boat to carry more than the permitted number of bags of scallops.

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(Cont...)

- (4) All whole scallops which are not unloaded and remain on an authorised boat shall be bagged.
- (5) When whole scallops have been unloaded from an authorised boat the total number of bags of whole scallops unloaded from, and held on, that boat shall not exceed the permitted number of bags of scallops.
- (6) The total weight of a bag of whole scallops shall not exceed 15 kilograms.
- (7) For the purpose of this clause —
  - “bagged” means the scallops are contained within a standard bag;
  - “permitted number of bags of scallops” means 100 bags of whole scallops multiplied by the number of gear units specified on the licence;
  - “standard bag” means a bag, which when laid flat has dimensions which do not exceed 55cm in width and 85cm in length.

**Applications and fees**

6; 7

19. Applications under clauses 7, 13, 14, 15 and 18 shall be —

- (a) in the approved form;
- (b) lodged in accordance with the instructions if any; and
- (c) accompanied by the fee prescribed by regulation.

**Procedure before this Plan may be amended or revoked**

20. (1) For the purposes of section 65(1) of the Act the licensees are the persons to be consulted before this Plan is amended or revoked.

**Offences and major provisions**

20A. A person who contravenes a provision of

- (a) clauses 4, 5, 10, 11, 12, 12A, 12B(2)(a), 12C(4), 15, 16, 17 or 18; or
- (b) clauses 12 B(2)(c), 12 C(1), 12 C(3), or 12C(5)

commits an offence and for the purpose of section 75 of the Act the offences specified in subclause (a) are major provisions.

**Revocation**

6

21. The following notices are cancelled —

Notice Number	Date published in the <i>Gazette</i>
440	30 March 1990
485	22 March 1991
499	31 May 1991
557	22 December 1992

**Schedule 1**

**Item 1—Description of the Fishery**

All waters of the Indian Ocean between 27°51' south latitude and 29°03' south latitude on the landward side of a line commencing at the intersection of 27°51' south latitude and 113°08.25' east longitude; thence south south east along the geodesic to the intersection of 27°55' south latitude and 113°40' east longitude; thence continuing south south east along the geodesic to the intersection of 28°35' south latitude and 113°29' east longitude; thence south

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(Cont...)

east by south along the geodesic to the intersection of 29° south latitude and 113°46' east longitude; thence continuing south east by south along the geodesic to the intersection of 29°03' south latitude and 113°48.15' east longitude, being the end point of the line.

**Item 2—Abrolhos Island Area**

All waters of the Fishery bounded by a line commencing at the intersection of 27°51' south latitude and 113°46' east longitude; thence southeasterly along the geodesic to the intersection of 29°03' south latitude and 114°18' east longitude; thence extending west along the parallel to the intersection of 29°03' south latitude and 113°48.15' east longitude; thence extending north west by north along the geodesic to the intersection of 29° south latitude and 113°46' east longitude; thence continuing north west by north along the geodesic to the intersection of 28°35' south latitude and 113°29' east longitude; thence north west along the geodesic to the intersection of 27°55' south latitude and 113°10' east longitude; thence continuing north north west along the geodesic to the intersection of 27°51' south latitude and 113°08.25' east longitude; thence extending east along the parallel to the commencement point.

**Item 3—Port Gregory Area**

All waters of the Fishery bounded by a line commencing at the intersection of 27°51' south latitude and 114°03' east longitude; thence south along the meridian to the intersection of 28°13' south latitude; thence west along the parallel to the intersection of 113°58' east longitude; thence south along the meridian to the intersection of 28°17' south latitude; thence east along the parallel to the intersection of 114°10' east longitude; thence northerly along the geodesic to the intersection of 28°06.83' south latitude and 114°10.58' east longitude (Shoal Point); thence northerly along the high water mark to the intersection of 27°51' south latitude and 114°06.2' east longitude; thence west along the parallel to the commencement point.

**Item 4**

All waters of the Fishery bounded by a line commencing at the intersection of 28°31' south latitude and 114°11' east longitude; thence east along the parallel to the intersection of 114°17' east longitude; thence south along the meridian to the intersection of 28°36' south latitude; thence west along the parallel to the intersection of 114°11' east longitude; thence north along the meridian to the commencement point."

2; 7; 8

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**1.19  
(Cont...)****Schedule 2****Port Areas**

1. Geraldton Port—The area within 2 nautical miles of the intersection of 28°46.54 south latitude and 114°35.21 east longitude.
2. Port Gregory—The area within 2 nautical miles of the intersection of 28°11.526' south latitude and 114°14.86' east longitude.”

8

Dated this 18th day of May 1993.

MONTY HOUSE, Minister for Fisheries

UNCONSOLIDATED COMPILED  
(May not contain all amendments)

# LEASK & CO.

BARRISTERS & SOLICITORS  
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160  
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959  
TELEPHONE (08) 9430 6688  
FACSIMILE (08) 9430 4044  
EMAIL leaskco@aol.com

Mr M Paxton  
2 Mardie Street  
Beaconsfield WA 6162

Our Ref: P075\DL:gw

Your Ref:

16 October 2003

Dear Sir

## SUPREME COURT ACTION CIV 1001/96

Tony O'Connor, legal counsel for the Fisheries Department, has requested that we provide an agenda for the meeting on 20 October 2003.

The writer, David Leask, discussed the matter with him in broad terms and has indicated that we assume the meeting will proceed on the same basis as the previous one, namely that there is no need to either set out the factual background to the problem, nor convince the Minister as to the merits of your position, but, rather, the meeting should be devoted to exploring methods of resolution.

Please let us know whether you wish any items to be added to the enclosed proposed agenda, or whether you feel it would be useful to break the items into sub-headings.

We have explained to Tony O'Connor that we believe it is possible to achieve an outcome whereby all parties benefit. O'Connor was not aware of the proposal to alter the fishing grounds but thought the proposal was very interesting.

Yours faithfully

*David*  
LEASK & CO

Encl

MARK PAXTON

MEETING 20<sup>th</sup> October 2003

AGENDA

*EXEMPTION*

1. Progress of Supreme Court litigation
2. Options for negotiated resolution
3. Alternatives to negotiated resolution

M.P. OPTIONS

QUESTION TIME PARLIAMENT  
CALL FOR INQUIRIES IN PARL.  
APPLICATION FOR ~~AN~~

S/C WRIT.

SUBPOENAS - P.R. P.M.  
QUESTIONS TO ASKED  
IN S/C.

COMPENSATION

TO INDUSTRY  
EXTRA FISHING GROUND  
MIDDLE GROUND

- UNITS ISSUE

1/EACH LEF. (INCLUDING  
~~1~~ M.P. LEF. + UNIT.

2 Mardie Street  
Beaconsfield  
WA 6162

Department of Fisheries WA  
168-170 St George's Terrace  
Perth  
WA 6000

28 November 2003

Dear Sirs

**APPLICATION FOR EXEMPTION TO ABROLHOS ISLANDS & MID-WEST TRAWL LIMITED ENTRY MANAGED FISHERY**

I refer to my application for an exemption in relation to the above-mentioned Managed Fishery.

My exemption is in relation to clause 6 of the Fishery Notice 1993, as amended, which provides that:

*“The criteria that shall be applied to determine the boats which may operate in the Fishery are –*

- (a) that immediately before the coming into operation of this Notice the boat was authorised to take prawns and scallops in the Abrolhos Islands and Mid-West Trawl Limited Entry Fisher; or*
- (b) the boat replaces a boat to which para (a) applied.”*

and,

clause 13(4), which provides that:

*“Where all the transferable gear unit entitlement of a licence has been transferred to another licence, the licence from which the entitlement was transferred shall be cancelled.”*

The circumstances of my application are that I was, until 1992, the beneficial owner of LEF 1921 (“the LEF”). I was originally granted 1921 because I fulfilled the criteria for the first issue of scallop units in the AITF in 1986. The LEF and a scallop unit had been transferred to the wet line licence of Victory Fish Pty Ltd at my request.

The Victory Fish wet licence had an authorisation at the time of the transfer of the LEF. The effect of the transfer of the LEF was to convert what was then a single unit into a twin unit, and the LEF ceased to have a distinctive identity and was cancelled by the Fisheries Department.

In 1991, without my knowledge or consent, Blenkinsop Nominees Pty Ltd transferred the scallop unit to either David McDonald or David Jackson – since both these individuals already had an LEF, LEF1890 was cancelled.

LEF 1921 as a distinctive entity was cancelled as a result of the transfer of the scallop unit to the Victory Fish wet line licence, my unit then being registered as one of two on LEF 1890, however, the LEF 1890 would have remained active had I been able to re-transfer the scallop unit to a wet line licence of my choice which, as beneficial owner, I was entitled to do.

The transfer of the scallop unit occurred without my knowledge or consent, notwithstanding the fact that the Fisheries Department knew that I was the beneficial owner of the unit and had made an endorsement on their records to that effect. Had I received notification of a proposed transfer of the unit, I would have taken immediate action to have prevented such a transfer taking place. The fact that the transfer took place, and that, as a consequence, I lost both the unit and the LEF, was due to the unlawful acts of the transferor and the failure of the informal registration system of the Fisheries Department.

My application for exemption is therefore made on the grounds that:

- (a) I was originally entitled to operate in the Fishery and was granted LEF 1921 when limited entry fishing rights were first issued;
- (b) I have never knowingly disposed of or alienated my right to fish in the limited entry fishery as authorised by LEF 1921;
- (c) I lost control over LEF 1890 (being the LEF my unit was on in 1991) as a result of the unauthorised actions of third parties, together with the failure of the Fisheries Department's licensing system;
- (d) The issue of an LEF to me would not increase the number of boats in the fleet – I was originally licensed to fish in the fleet when the managed fishery was first opened and the effect of the unlawful alienation of my scallop unit has been that there has, since that time, been one less boat fishing the fleet than the number properly authorised.

I believe that WAFIC supports my application. I am happy to expand on any of the above, if required.

Yours sincerely



**Mark Paxton**

Subj: **Fwd: Mark Paxton**  
Date: 15-Dec-2003 3:58:54 PM W. Australia Standard Time  
From: Leask Co  
To: mmcullivan@dpc.wa.gov.au

-----  
Forwarded Message:

Subj: **Mark Paxton**  
Date: 15-Dec-2003 3:53:18 PM W. Australia Standard Time  
From: Leask Co  
To: mmcullanan@dpc.wa.gov.au

Attention: Mike McMullan  
Kevin O'Donoghue  
Kim Chance

Further to my exemption application 5/11/03, I am now requesting an answer as soon as possible.

The factual background to my application has been discussed at meetings on 23/7/03 and 20/10/03, on the basis of which I was led to believe that you were working out a satisfactory resolution.

I note that:

- (a) WAFIC and Industry have been consulted with neither raising objections to my application;
- (b) the major message from the recent Rock Lobster Congress 3 and Seafood Direction 2003 conference being "continued access and enduring rights"; and
- (c) WAFIC CEO, Graham Short, referred, in the editorial of Pro-West (Sept/Oct issue), to the need to "address the inadequacies of the current licensing system to provide greater certainty and security of entitlements".

Can I please now hear from you.

Yours sincerely  
Mark Paxton



MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
THE MIDWEST, WHEATBELT AND GREAT SOUTHERN  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL



22 DEC 2003

Ref: 811/03

**FAXED**  
23-12-03

Mr M Paxton  
2 Mardie St  
BEACONSFIELD WA 6162

23

Dear Mr Paxton

I have considered the matter of your application for an exemption dated 5 November 2003. Whilst I understand your on-going anguish over the matter of the cancellation of what you regard as "your" licence in the Abrolhos Islands and Mid-West Trawl Fishery, I do not consider that an exemption is the appropriate legislative instrument to use for the purposes of granting a licence.

I am continuing to consider the matters raised regarding the cancelled licence and, if appropriate, I will amend the *Abrolhos Islands and Mid-West Trawl Fishery Management Plan 1993* to provide you with the opportunity to apply for the grant of a new licence. However, my decision as to whether or not to take this course of action is awaiting further input from current licence holders in the fishery.

Nevertheless, given the circumstances which surround your claim, I have determined that I will grant you an Exemption which will permit you to legally operate in the Abrolhos Islands and Mid-West Trawl Fishery in the 2004 season without being the holder of a Managed Fishery Licence (MFL). However, for the Exemption to be functional, it will be necessary for one or more MFL holders to request suspension of one or more gear units and for the functionality of these gear units to "transferred" to your Exemption.

To give effect to this functionality it will be necessary for the Executive Director of Fisheries to provide you with a written authority as to the amount of headrope which may be exercised under the authority of the Exemption. Furthermore, should there be any change in status of any gear units which are suspended by an MFL holder, the Executive Director will provide further written advice regarding the amount of headrope which may be exercised. Note also, that all normal operational requirements for the fishery which apply to a licence holder, master or an authorised boat will also apply to the fishing activities which you conduct under the authority of the Exemption.

Yours sincerely

Kim Chance MLC  
MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES

Enc: Exemption instrument (Administrative No. 545)



Hon Kim Chance MLC  
 Minister for Agriculture, Forestry and Fisheries;  
 the Midwest, Wheatbelt and Great Southern  
 Leader of the Government in the Legislative Council



**Fax**

11<sup>th</sup> Floor, 2 Havelock Street, West Perth Western Australia 6005

Tel: (08) 9213 6700 Fax: (08) 9213 6701

Email:

@dpc.wa.gov.au www.ministers.wa.gov.au/chance

TO: Mark Parton  
 FROM: Marie McMullan

FAX No: 9430 4044

DATE: 23.12.03

FAX: (08) 9213 6701

PAGES (Including this): 4

NOTE: This facsimile message contains information that is confidential and which may be legally privileged. If you are not the intended recipient, you must not read, use, distribute or copy this facsimile. If you are not the intended recipient, please notify us immediately by phone and destroy the original. Thank you.

MESSAGE:

Marie - As discussed the exemption  
 Any questions regarding the details  
 contact Lindsay Soll at Fisheries  
 0821367000 9482 7333

MERRY  
 CHRISTMAS!!!!  
 (from all at us)

*Fish Resources Management Act 1994*

**Section 7(2)**

**EXEMPTION**

I, Kim Chance, Minister for Agriculture, Forestry and Fisheries, in accordance with Section 7(2) of the *Fish Resources Management Act 1994*, hereby exempt Mark Ashley Paxton from those requirements of the *Abrolhos Islands and Mid-West Trawl Management Plan 1993* (the Plan), and in particular clauses 4, 5 and 6 of the Plan, to the extent that would allow him to lawfully conduct the activities provided for in Schedule 1, for the time period provided in Schedule 2 and subject to the conditions in Schedule 3.

**Schedule 1**

**Activities**

To use a Licensed Fishing Boat to fish for prawns and scallops in any waters of the Abrolhos Islands and Mid West Trawl Fishery (the Fishery) where this is permitted by a notice issued under cl.12 of the Plan and to sell the catch taken under the authority of this exemption.

**Schedule 2**

**Time Period**

From the date of execution of this Exemption until 31 December 2004

**Schedule 3**

**Conditions**

1. The headrope length of any nets used to fish for prawns or scallops must not exceed the amount specified in writing from time to time by the Executive Director of Fisheries and must not exceed the value of the product of any gear units suspended by another licence holder in the Fishery and the gear unit value in the Plan.
2. The Licensed Fishing Boat operated in the Fishery (in accordance with 4 [below]) must be fitted with an Automatic Location Communicator in accordance with cl.12B and the master must follow the provisions set out in cl.12C of the Plan.
3. The following provisions of the Plan also apply to the Exemption holder and the operations of the vessel (as relevant) as if the Exemption holder was a licensee in the fishery or operating under the authority of a licence or the owner of a boat licensed to operate in the Fishery and the boat was an authorised boat:
 

Clause 10 (*subject to the headrope length of nets not exceeding that provided for under 1 [above]*)

Clause 11

Clause 12

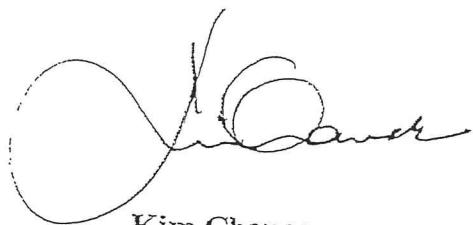
Clause 12A

Clauses 12B and 12C (as noted under 2 [above] if the Exemption holder is the master of the Licensed Fishing Boat)

Clause 17

Clause 18

4. The Exemption holder must advise the Commercial Fisheries Program Manager at least 24 hours prior to operating in the fishery under the authority of this Exemption of the name and Licensed Fishing Boat Number of any vessel proposed to be used to fish in the Fishery and must not fish in the Fishery under the authority of this Exemption until written approval has been provided by the Commercial Fisheries Program Manager to use the vessel.
5. The master of any boat operating under the authority of this Exemption must at all times carry a legible copy of the Exemption on the boat and produce it on demand from a Fisheries Officer.



Kim Chance  
Minister for Agriculture, Forestry and Fisheries

DATED THIS Twentysecond DAY OF December 2003

File No. 811/03

Exemption Administrative Number: 545

Subj: **Paxton**  
Date: 09-Feb-2004 1:31:49 PM W. Australia Standard Time  
From: Leask Co  
To: [kdonohue@dpc.wa.gov.au](mailto:kdonohue@dpc.wa.gov.au)

22

Further to my request of 29 January 2004 for a meeting (arranged for 11.00am, 18 February 2004) regarding two proposals:

Proposal 1 :

- (a) an exemption to AIMWTF Plan 1993 (relevant clauses) to fish one 4-fathom unit;
- (b) compensation paid to Industry - 1/16th per MFL to the amount of my GVP net (50% of gross is running costs, figure accepted by Industry);
- (c) Management Plan amendment - Fisheries buy back one unit at market value;
- (d) unit returned to Mark Paxton, at this point compensation to Industry ceases.

Regards  
Mark Paxton

2 Mardie Street  
Beaconsfield  
WA 6162

The Executive Director of Fisheries  
Department of Fisheries WA  
168-170 St George's Terrace  
Perth  
WA 6000

18 February 2004

Dear Sirs

**MARK PAXTON - SCALLOP ENDORSEMENT ISSUED 1986**

The purpose of this letter is to identify the evidence upon which I claim the right to one managed fishery licence (MFL) and one unit, and to request you recognise that right and take action to restore these rights.

Should you refuse this request, I contend that such refusal will constitute preventing, without reasonable excuse, a person from lawfully fishing.

**Facts to be established**

1. Blenkinsop Fay & Nominees (BFN) were not authorised and therefore had no right to sell my endorsement.
2. The failure of the Executive Director to create and maintain a licensing system which adequately safeguarded and maintained beneficial interests.
3. Your informal system of register (prior to FRMA 1994) was inadequate and applied incompetently.
4. Your actions resulted in BFN's decision to not return my endorsement.
5. Your failure of duty of care.
6. Your criminal intent to deprive me of my fishing right, and conceal a fraud.

Your handling of this situation has shown an incredible incompetence, a total disregard for the ethics and standards necessary for your position as Executive Director and a complete disregard for my lawful right to fish.

Should you not recognise the above statements and take action to restore my fishing rights by giving a guarantee that proposal 1 (see **attachment 22**) be approved and an MFL and one unit be issued to me within 3 months and compensation to myself be agreed upon, this will amount to a breach of s171(a), FRMA, 1994, and I will make a

request to the Minister for you to be charged and suspended until the outcome of said action. (See FRMA 244, s2 "good faith"; s204(1)(b) "due diligence".

Should the Minister decline this request, I will issue a Supreme Court writ of mandamus for him to explain why, having been shown categoric evidence, you should not be charged and subsequently dismissed as Executive Director.

**NB:** In recognition of the injustice whereby I lost the right to fish, an exemption to fish (attachment 23) has been issued to me for the forthcoming Abrolhos season, and an undertaking given by the Minister that the situation be resolved to the satisfaction of myself and Industry – Proposal 1 meets that criteria.

The Minister has been aware of the factual background to this matter since 1998, when in opposition, he told me that "*If what you say is true, I will call for Rodgers' dismissal in Parliament*".

Kim Chance has been the only person in the Fisheries Department and previous ministries who has shown any integrity regarding this issue, and, as evidenced above, wants this situation resolved.

Also, a Supreme Court writ will be issued with the Fisheries as First Defendant and you as Second Defendant.

**NB:** Limitations Act, 1949, Part 47A(1)(b) and (3)(b) – (**attachment 9**)  
Crown Suits Act, 1947, s6(1), (2) and (3) – (**attachment 10**)

*"An action may thereafter be brought while the act, neglect or default continues."* S47A(1)(b)

Fish Resources Management Act, s67 – "*an authorisation remains in force for 12 months – from the day on which it is granted or renewed*" – you have been in the position every year to renew my fishing right, failure to do so has constituted the continued act of neglect and default.

I will subpoena you, Peter Millington, Tony O'Connor and Alex Cechner in Supreme Court action CIV 1001 of 1996. All five points under the heading "Facts to be established" will be addressed.

Also, SCPA and PSSC enquiries will be requested for the purpose of ascertaining whether the actions of yourself, Peter Millington and Tony O'Connor constitute:

- (a) a failure of duty of care with criminal intent;
- (b) lack of competency and honesty required to hold present positions with the Fisheries Department; and/or
- (c) possible criminal charges (see FRMA 204 Part (1)).

Attachments:

1. Letter, Glynn & Gray to M Paxton, 12/11/1992

2. Letter, Altorfer & Stow to Glyn & Gray, 11/11/1992
3. Statement of Judy Blenkinsop, faxed to MJ Hayter on 18/05/1992
4. Letter, Altorfer & Stow to Glynn & Gray, 13/11/1992
5. Letter, Altorfer & Stow to Executive Director of Fisheries, 23/11/1992
6. Letter, Fisheries to Altorfer & Stow, 23/12/1992

**Attachments 1, 2 and 3** all evidence the fact that BFN and their lawyers were ready to resolve the situation in my favour.

**Attachment 4** leaves no doubt that your advice would determine their final decision, and it did. Instead of rectifying the situation, they realised they could commit fraud with no reaction from you, the Executive Director of Fisheries.

**Attachment 5** – this letter is confusing and contradictory, referring to a disputed ownership of, first, a single rig endorsement and then a twin rig endorsement. It also refers to right of ownership by way of a contract that doesn't include the single rig endorsement, the subject of this issue.

Faced with a confused claim to, first, a single rig endorsement and then a twin rig endorsement, and evidence that I was not contracted to buy my own single rig endorsement, you wrote back **attachment 6**:

1. Not seeking to clarify the obviously confused request.
2. Not refuting the alleged proof of ownership of my unit by BFN, that is, an offer by me to purchase a number of licences which, initially, did not include the endorsement in question. (**Attachment 25**)
3. Not informing BFN (whether in November 1992 or at all) of your licensing system – encompassing registered ownership and beneficial ownership, the differences between both and the existence of both, that is, if registered owner but not beneficial owner, a licensee may transfer an endorsement but not confer beneficial ownership, as this would be fraud.

NB: Why did you, when approached by a lawyer at my request, (**attachment 7**) and in a letter to the Ombudsman (**attachment 8**) on the very same issue, that is, disputed ownership, give information on ownership that, if given to BFN and/or their lawyers, would have made BFN and their lawyers aware of the existence of beneficial ownership contrary to registered ownership? The answer is, on reading attachment 5, which is categoric evidence that BFN were not the beneficial owners of my unit, you must have realised a fraud had been committed but you made no attempt to answer the question put to you by BFN's lawyers where, had you done so, the unlawful actions of BFN would have been identified. All the misleading and deceptive comments, actions and statements by you that have followed have allowed the fraud to be perpetrated.

4. Not requesting submissions in relation to beneficial ownership from me or BFN to satisfy yourself that your licensing system had not been used to commit fraud, but instead giving a licensing history in response to an enquiry as to ownership.

Under present WA Public Sector Code of Ethics, you failed to:

- (a) report fraud;
- (b) act openly and promptly to help resolve complaints;
- (c) inform others about decisions and actions that affect them;
- (d) minimise risk and harm; and
- (e) be conscientious and scrupulous in the performance of public duty.

**Misleading and deceptive statements which have effectively concealed fraud and deprived me of my lawful right to fish**

**Attachment 7** – *“I am aware, however, that some fishermen enter into subsidiary agreements which can affect the ownership of the licence. The Department is not always aware of these agreements”* – ownership evidenced by Peter Millington’s letter (**attachment 12**) and my name “refer as well” on comments page of **attachment 11**.

**Attachment 8** – *“Apparently... Mr Paxton... maintains some form of ownership outside Fisheries regulations.”*

Next paragraph: *“Mr Paxton ceased to own the AITLEF licence when he first transferred it to Mandare Holdings.”*

Statements made again to mislead the Ombudsman that:

1. The Fisheries wasn’t aware of my beneficial ownership (**see attachment 12**).
2. I didn’t own my own licence (**see attachment 12**).

How could I own but not own my own licence with and without Fisheries’ knowledge?

**Attachment 8**, para 9 – *“No mechanism appears to exist by which either myself or the Minister of Fisheries could redress the wrong in terms of restoring the LEF licence.”*

This statement shows a total disregard for the Fish Resources Management Act, 1994; Management Plans and amendments to it; Ministerial Exemptions; legislation; and the following FRMA sections: 65, 142(1)A, 143(1)C, 72 Part 2, 7 Part 2, 54 Part 2, 58E, 60E, 135(1) Schedule 3, Part 19A.

Contrary to statement, *“I am in a position to determine a rearrangement of licences and entitlements.”* (para 3, **attachment 14**). How, if no mechanism exists???????

**NB:** The Minister has granted me an exemption to fish until Management Plan changes are made to “*restore*” the LEF licence.

**Meeting held 05/05/1998**

Statements made by you:

1. *“I have to protect the Fisheries or you.”*

Finally spelling out your conscious effort to save the Fisheries embarrassment at my expense. Fully consistent with that position are your actions, lack of action, comments and statements constituting a deliberate decision to conceal, abet and perpetrate a fraud, and breach FRMA 171A.

2. *“Fisheries have no duty of care.”*

In answer to my question of how you define duty of care, after showing you and your legal officer, Tony O’Connor, the 1985 High Court ruling by J Mason to the effect that, *“If a person has a specific or general reliance on a public administration, that public administration has a duty of care to that person.”*

**Attachment 16** – The Ombudsman on information received from you, was led to the following understanding – that I made an oral agreement to pool resources to conduct a joint fishing operation. This is untrue and meant to mislead the Ombudsman that it was a business deal gone wrong. I, in fact, had a written agreement to lease and buy their licence operating my own boat without BNP involved in any way with the fishing operation.

*“The licence was sold and then on-sold.”* Not true – Fisheries records will prove the licence was not on-sold for many years.

*“I have been advised that Mr Millington has confirmed that he was aware at the time that you claimed to be the beneficial owner.”* Not true. Millington had confirmed that he accepted that I was, not claimed to be, the beneficial owner. This is proved by **attachment 12**, para 2: *“It was my understanding at that meeting that you were the beneficial owner at that time of the LEF licence.”*;

and also: question 2 – *“Did this discussion include consideration of the transfer of the LEF licence 1921 to LFB G429 with you still regarding it as Mark Paxton’s?”*,

to which the answer was given: *“Yes – see I above”*.

This misleading statement was made to the Ombudsman to show I was not recognised by the then Director of Licensing as a beneficial owner of a right to fish. If, as you claim in **attachment 8**, *“Mark Paxton ceased to own the AITLEF licence when first transferred to Mandare Holdings.”* (23/08/1988), why was the Director of Licensing having a meeting with me in 1990 recognising me as beneficial owner and discussing the transfer of my endorsement, 18 months after you claimed I ceased to own it?

#### **Informal system of register**

**Attachment 11** – informal register of my beneficial interest on LFB F780 dated 23/08/1988.

**Attachment 13** – proof of comment made at verbal request.

**NB:** The informal system was never gazetted or legislated therefore no parameters existed for fishermen or Fisheries officers to rely on.

**NB:** My beneficial ownership should have been recognised and recorded following the meeting between myself, Peter Millington, 04/04/1990 – see **attachments 12 and 17**.

### **Fred Blenkinsop's guilt**

1. Claim to ownership, **attachment 5**, based on contract not including endorsement, the subject of this issue.
2. Defence of the first and fourth defendants, CIV 1001 of 1996, p3, para 5(a)(iv) – *“the partnership Victory Fish would relinquish the Wetline Licence in consideration for the conversion by the Department of Fisheries of the Trawl Licence into a twin rig trawl endorsement;”*

Fisheries licensing records refute this.

P4, para 5(f) – *“the Plaintiff's endorsement was cancelled by the Department of Fisheries and was never held or to be held in trust by the partnership Victory Fish;”*

3. **Attachment 19** – statutory declaration Kerry Fay
4. **Attachment 20** – Fraud Squad statement, Kerry Fay
5. **Attachment 21** – Fraud Square statement, Jim Fay

### **Questions**

1. Why did you fail to address or answer BFN's request for a clarification of ownership in December 1992?
2. Why did you misinform the ombudsman as to my ownership of endorsement after 23/08/1988?
3. Why did you fail to inform BFN of your system of licensing equitable interests?
4. Why did you frustrate all due process available to me?
5. Why did you tell me you had no duty of care?
6. Why did you not investigate a valid claim to ownership of a fishing right?
7. Why did you misinform the ombudsman of my beneficial ownership which you had recognised?
8. Why did you misinform the ombudsman of the numerous “mechanisms” to restore an LEF?
9. Why did you not question or deny a claim of ownership by BFN in December 1992 based on a contract not including the endorsement in question?

10. Why did you not inform the Fraud Squad of a possible fraudulent use of your licensing system?
11. Why did you misinform the ombudsman in 1998 to make him think it was a business deal gone bad?
12. Why did you make a decision to “protect the Fisheries”, instead of me, knowing it would deprive me of my livelihood and deny my legal right to fish?
13. Why did you tell me you wouldn’t have an enquiry as s249 relates to foreign interests when the act provides no such limitation?
14. Why did you fail to have an enquiry as requested, when shown categoric proof of my claim, and no evidence to the contrary, claiming insufficient evidence?

Yours sincerely

**Mark Paxton**

## LIST OF ATTACHMENTS

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1. Letter, Glynn & Gray to M Paxton, 12/11/1992
2. Letter, Altorfer & Stow to Glyn & Gray, 11/11/1992
3. Statement of Judy Blenkinsop, faxed to MJ Hayter on 18/05/1992
4. Letter, Altorfer & Stow to Glynn & Gray, 13/11/1992
5. Letter, Altorfer & Stow to Executive Director of Fisheries, 23/11/1992
6. Letter, Fisheries to Altorfer & Stow, 25/12/1992
7. Letter, Fisheries Dept to Cullen 16
8. Fisheries Dept to Ombudsman, 12/02/1994
9. Limitations Act
10. Crown Suits Act
11. Comments Page F780, 23/08/1988
12. Peter Millington letter
13. Comments page 249
14. Letter, Fisheries Dept to M Paxton, 25/05/1998
15. Comments
16. Letter, Ombudsman to M Paxton, 29/05/..
17. Questions, M Paxton to P Millington; Answers, P Millington to M Paxton
19. Statutory declaration, Kerry Fay
20. Fraud Squad statement, Kerry Fay
21. Fraud Squad statement, Jim Fay
22. Proposal to Minister
23. Exemption
24. WAPSC Ethics
25. Contract



Ref: 949/02

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

Thank you for your letter of 18 February that was hand delivered to this office on the same day.

I note that you have requested a response to your correspondence within 7 days of the Department receiving your letter.

As the matters raised are complex and require further detailed investigation, I will endeavour to provide a response within 14 days from the date of this letter.

Yours sincerely



P P Rogers  
EXECUTIVE DIRECTOR

23 February 2004

Subj: **Mark Paxton**  
Date: 25-Feb-2004 12:35:01 PM W. Australia Standard Tim  
From: Leask Co  
To: toconnor@fish.wa.gov.au

Dear Sir

Further to my letter to Peter Rodgers of 18 February 2004, and the correction of this letter, that is from requesting the Minister to requesting you, Tony O'Connor, to charge Peter Rodgers under s171A, FRMA.

I am now seeking an answer, as requested, within seven (7) days (re phone conversation with you 19 February 2004) to whether you have or have not charged the Executive Director. If not, I hereby inform you that a Supreme Court Writ of Mandamus will be issued to you.

Yours faithfully  
Mark Paxton

Our Ref: 949/02

Mr Mark Paxton  
By Hand  
(To be collected from the Fremantle Office)

Dear Mr Paxton

This is to acknowledge that you spoke with Mr Steven Wall at the Department's Fremantle Office and left with him a copy of a letter dated 18 February together with annexures, addressed to the Executive Director – the original of which you had delivered to the Executive Director by hand on that date.

This material has now been received by Mr Wall's superior officers in the 'Compliance and Prosecutions' area of the Regional Services Directorate. The material will be examined and where necessary referred for advice.

Upon first examination, the notion that the Executive Director has or could have committed a breach of the *Fish Resources Management Act 1994* s.171 (1) (a) – Interference with lawful fishing activities '– preventing a person from lawfully fishing', appears to be misconceived.

A number of assertions which appear to be 'interpretations' of events are also being checked for their factual accuracy.

In the light of your subsequent action and the need to determine facts, it is not now proposed to respond separately to your letter of 18 February. Some of the material annexed to that letter – including correspondence between third parties – appears to be new and will be checked against what has been kept on file or has been previously drawn to attention in the context of your Supreme Court action against Blenkinsop *et al* (Civ. 1001 of 1996). This process may take some time if material has been archived and is to be retrieved.

I will be in touch in due course.

Yours sincerely

P P Rogers  
**EXECUTIVE DIRECTOR**

5 March 2004

Subj: **Mark Paxton**  
Date: 10-Mar-2004 1:45:08 PM W. Australia Standard Time  
From: [agullotti@fish.wa.gov.au](mailto:agullotti@fish.wa.gov.au)  
To: [LeaskCo@aol.com](mailto:LeaskCo@aol.com)  
*Sent from the Internet (Details)*

Our Ref: 949/02

Dear Mark

This is to advise that following your (Mark's) discussion with Fisheries Officer Steven Wall, the question of the application of Fish Resources Management Act 1994 (FRMA) s.171 - Interference with lawful fishing, to your circumstances in relation to the matters you have raised concerning the former 'LEF 1921' and the Executive Director of Fisheries, was referred to the State Solicitor for advice.

The conclusion reached was that the history of s.171 which appeared in Fisheries legislation in 1982 and in approximately its current form, shows clearly that it relates to a prohibition on physical interference with lawful fishing operations or activities.

Accordingly, taking into account the material provided in your letter of 18 February, that section provides no proper basis on which the Executive Director would be charged with a breach.

It follows that on his return from sick leave, Steven Wall will be provided with this advice and will be in touch with you.

Regards

A J O'Connor  
GENERAL COUNSEL

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Subj: **Mark Paxton**  
Date: 11-Mar-2004 9:38:04 AM W. Australia Standard Time  
From: [agullotti@fish.wa.gov.au](mailto:agullotti@fish.wa.gov.au)  
To: [LeaskCo@aol.com](mailto:LeaskCo@aol.com)  
*Sent from the Internet (Details)*

Our Ref 949/02

Dear Mark

Further to our telephone conversation this morning, John Lyon of the SSO has spoken to me.

You will recall that I told you that the State Solicitor would, on his behalf, take delivery of documents issued out of the Supreme Court which were directed to Steven Wall.

John Lyon believes you may wish to direct to Steven Wall documents other than documents issued out of the Supreme Court. In those circumstances those documents should be delivered to Mr Wall. You should arrange with Mr Cappelluti - Mr Wall's supervisor at the Department's Fremantle Office, for an appointment with Mr Wall after he returns from sick leave.

Regards

A J O'Connor  
GENERAL COUNSEL

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Subj: EXEMPTON - PAXTON  
Date: 05-Apr-2004 12:10:38 PM W. Australia Standard Tim  
From: [afield@fish.wa.gov.au](mailto:afield@fish.wa.gov.au)  
To: [LeaskCo@aol.com](mailto:LeaskCo@aol.com)  
*Sent from the internet (Details)*

Mr Paxton

Further to your email of 31 March 2004 to the Executive Director, in regard to the exercising of the right to fish one half of a unit in the Abrolhos Island and Mid-West Trawl Fishery under the authority of the exemption (Admin No 545).

This one half unit has been suspended from Kiwi Electrix Pty Ltd AITF Licence No 2236 for the purposes or your use under that Exemption for the period 5 April 2004 to 7 May 2004 or until a further application is made to the department.

Would you kindly inform the Commercial Fisheries Program Manager at the Department of the following - as required in the conditions of the exemption -

"... the name and Licensed Fishing Boat Number of [the] vessel proposed to be used to fish in the fishery ..."

Regards

Anne Field

Anne J Field  
Senior Licensing Officer  
Department of Fisheries  
Head Office  
168-170 St George's Tce  
Perth WA 6000  
Tel Number (switchboard) 9482 7333  
Direct Line 9482 7311  
Licensing Facsimile 9482 7389

=====

Fax: 9921 3617



Your Ref: 811/03  
Our Ref: 811/03  
Enquiries:

Mr Mark Ashley PAXTON  
13 Barnett St  
FREMANTLE WA 6160

Confirmation  
of Facsimile

**AUTHORITY TO OPERATE IN THE ABROLHOS ISLANDS AND MID-WEST  
TRAWL FISHERY UNDER THE CONDITIONS OF EXEMPTION NUMBER 1408**

**“Atlantic Ocean” LFB F611**

Dear Mr Paxton

Thank you for your preliminary advice of 31 March 2004 regarding your intention operate in the Abrolhos Islands and Mid-West Trawl Fishery under the terms of Exemption No. 1408 [Admin. No. 545] and your further advice of 5 April 2004 about the name and Licensed Fishing Boat Number of the boat which you propose to use.

I hereby provide approval for you to use the “Atlantic Ocean” LFB F611 to operate in the fishery in accordance with the Conditions of Exemption No. 1408 [Admin. No. 545]

Yours faithfully

Lindsay Joll  
**COMMERCIAL PROGRAM MANAGER**

5 April 2004

3RD FLOOR, THE ATRIUM  
168 ST. GEORGES TERRACE  
PERTH WESTERN AUSTRALIA 6000

TELEPHONE (08) 9482 7333

FACSIMILE (08) 9482 7389

WEBSITE <http://www.fish.wa.gov.au>

Email: [headoffice@fish.wa.gov.au](mailto:headoffice@fish.wa.gov.au)

ABN 55 689 794 771



MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
THE MIDWEST, WHEATBELT AND GREAT SOUTHERN  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL



Ref: MT 3182

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

I have considered your recent application for an Exemption to allow the processing of prawns and scallops taken in the Abrolhos Islands and Mid-West Trawl Fishery by LFB F611 "Atlantic Ocean" without holding a Processor's Licence and advise that I have granted such an Exemption (enclosed).

Given the short time frame requested to consider this application I request that you ensure that you thoroughly research the consequences of your planned fishing operations in future and allow sufficient time for consideration.

I must emphasise that this Exemption is only for the period that the 2004 Abrolhos Islands and Mid-West Trawl Fishery is open for fishing and does not cover any activities which you may undertake in the South West Trawl Fishery for which a Processor's Licence is required.

Yours sincerely

Kim Chance MLC  
MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES

Att:

- 7 APR 2004

## **FISH RESOURCES MANAGEMENT ACT 1994**

### **Section 7(2)**

#### **EXEMPTION**

I, Kim Chance, Minister for Agriculture, Forestry and Fisheries, hereby exempt Mark Ashley Paxton (“the Applicant”) from those provisions of the *Fish Resources Management Act 1994* (“FRMA”) and *Regulations*, which would otherwise require the Applicant to hold a Fish Processor’s Licence for the purposes of conducting fish processing activities of the type and at the location in Schedule 1, for the period in Schedule 2, subject to the conditions specified in Schedule 3.

#### **Schedule 1 Activities & Place**

The processing of scallops and prawns on board the Licensed Fishing Boat F 611 “*Atlantic Ocean*”.

#### **Schedule 2**

From the date of this Instrument until the end of the Abrolhos Island and Mid-West Trawl Managed Fishery season.

#### **Schedule 3**

In addition to the conditions in Regulation 66, the Applicant will comply with all other provisions of the *FRMA* and *Regulations* which would apply if the Applicant was the holder of a Fish Processor’s Licence at the fish processing establishment described in “Schedule 1” and:-

1. The place shall be used for the processing of scallops and prawns.
2. The applicant will comply with the requirements of the Health Act 1911 (as amended).
3. The Applicant shall comply with the requirements of any Town Planning Scheme or interim development order gazetted under the provisions of the Town Planning and Development Act 1928 (amended) or the Metropolitan Region Town Planning Scheme Act 1959 (amended).
4. The processing place shall be registered as an export establishment pursuant to the provisions of the Parliament of the Commonwealth Export Control Act 1982, and Orders made thereunder, more specifically the Prescribed Goods (General) Orders and the Fish Orders, should it be used to process fish for export.
5. The licensee shall lodge with the Department of Fisheries Processing Returns Officer, WAMRL PO Box 20 North Beach 6020 no later than the 15th day of each month, a return of all scallops and prawns processed for the preceding month, specifying the species name, condition of the species and live weight.

6. If an objection is lodged to the proposal for the grant of the Fish Processor's Licence, processing can continue until the end of this exemption or until the objection has taken its normal course.



Kim Chance MLC  
MINISTER FOR AGRICULTURE, FORESTRY & FISHERIES

Dated this 7<sup>th</sup> day of April 2004

File No: 178/02      Exemption Admin. Number: 599

## Leask Co

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**From:** Peter Millington [pmillington@fish.wa.gov.au]  
**Sent:** Monday, 10 May 2004 11:38 AM  
**To:** law@leask.com.au  
**Subject:** From Mark Paxton

This document has been received and will be considered as part of the material on the future of the current fishing season

----- Original Text -----

From: "Leask & Co" <law@leask.com.au>, on 10/05/2004 11:23 AM:

Attn: Peter Millington, Acting Executive Director, Fisheries

Further to our phone conversation of Thursday May 6th, at the pre-season fisheries/WCTA meeting in January, Hamish put forward closing date of 30/4/04. I asked one question of Lindsay Joel, "If a boat is commercially fishing taking size scallops, will the season stay open?" In reply to my question (Lindsey said yes) and Hamish's request, Lindsay put the closure at 31/05/04.

I have made business plan including marketing and employment based on this understanding. As discussed, up to 30 restaurants are awaiting orders to be filled for the next few months. NB: My 17/lb half shell is the best scallop product being produced at this moment on the West Coast at \$1.00 per scallop.

I believe that renewed interest of a closure is motivated by J McGowan as he is informing the Geraldton public that he will get the islands shut. I agree the Southern Group must be protected, and last Monday, 03/05/04, informed Errol Sporer that the GSFA requests a closure from the Hummock Closure Box north-east corner to Leo's Island be closed.

As this is one of your options, I hope it will keep all parties (GSFA, WCTA and Fisheries) satisfied.

NB: Interaction with cray fishermen:

2003 May/June - 960 trawl days acceptable, that is 16 trawlers x fishing days;  
2004 May - 22 trawl days / minimal interaction. I am presently fishing on the boundary east of North Island/no cray fishing in area.

NB: Lisa Farrington inspected my hold last Wednesday, 05/05/04, confirming "commercially fishing taking size scallops".

NB: A closure would be a blatant disregard for the NCP principle of anti-competitive action/constitutional rights to my entitlement and right to make a living.

As you know, our Association would fight for these rights vigorously.

I also request that any proposals regarding our management plan or closures be put to our Association 7 days before being implemented for our opinion, agreement, or to allow time for legal action.

Yours sincerely  
Mark Paxton  
President  
Geraldton Scallop Fishermen's Association (mobile phone contact 0427 001 984)

2 Mardie Street  
Beaconsfield  
WA 6162

Mr Steve Wall  
Fisheries Officer  
Department of Fisheries WA  
FREMANTLE  
WA 6160

8 July 2004

Dear Sir

Further to information and evidence given to you in February 2004 at the Fisheries office, Fremantle, I am again requesting you, on the basis of the letter dated 18 February 2004 to Peter Rogers containing said information and evidence, to charge Peter Rogers with a breach of 171, *FRMA*, Interference with Lawful Fishing Activities:

Part (1), A person shall not, without reasonable cause:

(a) prevent a person from lawfully fishing.

This request is made on the basis of Part 12, s201 proceedings and your position as a fisheries officer.

Should you again see fit not to charge the Executive Director, Peter Rogers, I will issue a writ of mandamus in the Supreme Court for you to explain to that Court why you will not.

Yours faithfully

Mark Paxton



Hon. Murray Criddle, M.L.C.

MEMBER FOR AGRICULTURAL REGION

23/08/2004,  
Attention Mr Mark Paxton,  
C/O Fax Nos 94304044.

Dear Mark,

RE Questions without notice / of which some notice has been given  
Thursday 19<sup>th</sup> August 2004 - Legislative Council.

Hon Bruce Donaldson to Minister for Agriculture, Forestry and Fisheries.

Given the circumstances surrounding the cancelled fishing license of Mr Mark Paxton to operate in the Abrolhos Islands and Midwest trawl Fishery for scallops, and with your granting an exemption for Mr mark Paxton to fish until December 2004 in this fishery:

- 1) Will you consider granting a further one year's exemption to December 2005 for Mr Paxton, so this issue can be finally brought to resolution.

I thank the Hon Member for some notice of this question.

1) Yes, on submission of an application for exemption from Mr Paxton.

Signed by Minister for Agriculture, Forestry and Fisheries.

Hon Kim Chance

Trusting that the above information will be useful pursuant that a solution will be achieved in due course.

Yours sincerely

*Patricia Powell*

Patricia Powell  
Electorate Officer to  
Hon Murray Criddle MLC  
Member for Agricultural Region



08 92136701

## LEGISLATIVE COUNCIL

3133

QUESTION WITHOUT NOTICE  
(Of which some notice has been given)

Thursday, 19 August 2004

Hon Bruce Donaldson to the Minister for Agriculture, Forestry and Fisheries.

Given the circumstances surrounding the cancelled fishing license of Mr Mark Paxton to operate in the Abronhos Islands and Mid-West Trawl Fishery for scallops and with your granting an exemption for Mr Paxton to fish until December 2004 in this Fishery:

1. Will you consider granting a further one year's exemption to December 2005 for Mr Paxton, so this issue can be finally brought to resolution?

---

I thank the Hon. Member for some notice of this question.  
I thank the member for some notice of this question.

1. Yes, on submission of an application for exemption from Mr Paxton.



Right Honourable Kim Chance MLC  
Minister for Fisheries  
Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

2 Mardie Street  
Beaconsfield  
WA 6162

23 August 2004

Dear Sir

I refer to your reponse in the House on 19 August 2004 to Bruce Donaldsons' question and now enclose my application for an exemption from the Abrolhos Island and Midwest Trawl Fishery Management Plan 1993 to enable me to fish in the Abrolhos Island and Midwest Trawl Fishery ("the Fishery") with one scallop unit.

A. Would you please confirm your acceptance that:

1. Blenkinsop Faye Nominees was not the beneficial owner of my fishing right (an LEF together with one scallop unit as constituted by Licence No. 1921 with concession no.1626) ("the rights") at any time and specifically between May 1990 and 3 May 1991;
2. the licencing system that was in operation until 1991 was inadequate in that it failed to include any reliable and consistent mechanism for the protection of beneficial interests;
3. Peter Rogers as Executive Director of the Fisheries Department of Western Australia was
  - a. responsible for ascertaining; and
  - b. in a position to ascertain

all relevant facts in relation to the dispute as to the interests of Blenkinsop Faye Nominees on the one hand, and myself on the other, in the rights;

4. Peter Rogers failed to ascertain all relevant facts, or, if he did so, failed to notify the partnership Blenkinsop Faye Nominees or the partners thereof or anyone acting for it or their behalf
  - a. that I was at all relevant times and in particular between May 1990 and 3 May 1991 the beneficial owner of the rights;
  - b. that the licencing system in force at the material time did not distinguish between legal and beneficial ownership;
  - c. that any transfer of the rights required my consent as beneficial owner.

5. The exemption dated 22 December 2003 effectively permitted:
  - a. one additional boat to fish in the Fishery;
  - b. the total headrope length available to the Fishery to be (as it was) increased by 5 metres;
6. Following consultation between yourself and the Fishery no objection or protest to 5(a) and/or (b) has been made by the West Coast Trawl Association whose Secretary has assured me that he will abide by any decision you may make in relation to my claim to have my rights restored to me.

B. Assuming that you accept points A.1 – 6 above please confirm that you will take all steps necessary to:

1. amend the Management Plan to permit me to apply for the grant of a new MFL and one scallop unit; and
2. in the meantime grant an exemption to allow for one MFL and one scallop unit for the Fishery.

C. Should you not accept points

- a. A.1 please inform the Fraud Squad that the transfer of my rights in May 1991 may constitute the use of the licencing system to constitute a fraudulent act;
- b. A.2 I request that you hold a Standing Committee of Public Administration enquiry to establish whether or not the Fisheries Department have breached their duty of care to me as the recognised beneficial owner of the rights;
- c. A.3 and/or A.4 I ask that you request a West Australian Public Sector Code of Ethics enquiry as to whether Peter Rogers and Peter Millington and each of them have breached the minimum standards of conduct and integrity by failing to report fraud and maladministration and making misleading and deceptive statements to amongst others the Ombudsman and myself.

Yours sincerely



Mark Paxton

**BY FACSIMILE : 9482 7224**

(2 pages)

**To: Lindsay Joll**

23 August 2004

---

Further to our telephone conversation today, I am requesting an invitation from the Fisheries to the meeting tomorrow on the basis that I will be fishing in the Abrolhos Islands next year and wish to attend all meetings regarding that Fishery.

Please find enclosed fax received from National Party, Parliament House.



PP Mark Paxton

Return fax no: 9430 4044

## Fisheries Department of WA - Receipt

3RD FLOOR, THE ATRIUM  
168 ST. GEORGES TERRACE  
PERTH WESTERN AUSTRALIA 6000  
TELEPHONE (08) 9482 7333  
FACSIMILE (08) 9482 7389  
WEBSITE <http://www.fish.wa.gov.au>  
Email: [headoffice@fish.wa.gov.au](mailto:headoffice@fish.wa.gov.au)  
ABN 55 689 794 771



PAXTON-BODKIN TRADING PTY LTD  
2 MARDIE STREET  
BEACONSFIELD  
WA 6162

Receipt Number: 2004 - 28107

Received: 02/09/2004

Received: 02/09/2004

From: PAXTON-BODKIN TRADING PTY LTD

Comment: ABROLHOS ISLANDS AND MID WEST TRAWL MANAGED FISHERY - APPLICATION FOR A MANAGED FISHERY LICENCE

For:

ABROLHOS ISLAND & MID WEST TRAWL - APPLICATION FOR GRANT	Amount:	\$210.00
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Total:	\$210.00
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Received with thanks.



MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
THE MIDWEST, WHEATBELT AND GREAT SOUTHERN  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL



Ref 8-22712

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

Thank you for your letter of 23 August and enclosed Application for Exemption.

I note that you did not submit the prescribed application fee with your application form and the Department will be contacting you in regard to that matter. I will consider your application in due course and notify you of my decision.

In regard to your letter, it refers to a number of matters that are already under investigation by the Department. I will respond to you formally regarding the outcomes of the Departmental investigation when it is completed.

Thank you for raising these matters with me.

Yours sincerely

Kim Chance MLC  
MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES

22 SEP 2004



Department of Fisheries  
Government of Western Australia

30



*Fish for the future*

Our Ref: 1224/98 Vo2  
Enquiries: SLO NORTH 9482 7348

Mr M A Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

**APPLICATION FOR A MANAGED FISHERY LICENCE – ABROLHOS ISLANDS  
AND MID WEST TRAWL MANAGED FISHERY**

This letter is to confirm that you lodged an Application at the Department of Fisheries on the 1 September 2004 for the grant of an Abrolhos Island and Mid West Trawl Managed Fishery Licence.

Your application raises some issues that I am investigating and I will respond to you in due course.

If you have any further enquires regarding the above you may contact Michelle Coloper, A/Senior Licensing Officer on 9482 7348.

Yours faithfully

P P Rogers  
**EXECUTIVE DIRECTOR**

1 October 2004

2 Mardie Street  
Beaconsfield  
WA 6162

11 November 2004

Fax: 9322 1213

**Dr Gallop's Office**

Dear Sir

Further to my conversation today and numerous conversations since December 2003 with Michael Bennett, I am requesting a meeting with Dr Gallop to show him evidence of the Fisheries Department's wrong doing, and my requests to two of his ministers, Jim McGinty and Kim Chance to take appropriate action - for the purpose of Dr Gallop instructing his ministers to take actions they are obliged to take as effectual ministers.

Yours faithfully



Mark Paxton

(phone: 9336 1364)

2 Mardie Street  
Beaconsfield  
WA 6162

11 November 2004

---

Fax: 9221 2068

**Attention: Jim McGinty**

Dear Sir

Further to phone conversation today, 11 November 2004 and prior meeting, November 2002, I am requesting another meeting with yourself, for the purpose of you, as per Crown Suits Act 1947, Section 6, consenting in writing to the bringing of an action against the Fisheries Department in the Supreme Court.

Yours faithfully



Mark Paxton



**Hon Kim Chance MLC**  
Minister for Agriculture, Forestry and Fisheries;  
the Midwest, Wheatbelt and Great Southern  
Leader of the Government in the Legislative Council

**Fax**11<sup>th</sup> Floor, 2 Havelock Street, West Perth Western Australia 6005

Tel: (08) 9213 6700 Fax: (08) 9213 6701

Email:

@dpc.wa.gov.au [www.ministers.wa.gov.au/chance](http://www.ministers.wa.gov.au/chance)

TO: Mark. Paxton  
FROM: Kevin Donohue  
FAX: (08) 9213 6701

FAX No: 9430 4044

DATE: 22 Nov 04

PAGES (Including this): 2

MESSAGE:

If there are any queries, or the fax was not received correctly, please call (08) 9213 6700



MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
THE MIDWEST, WHEATBELT AND GREAT SOUTHERN  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL



Ref: 8-23459

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

I write in regard to the matter of access to fish in the Abrolhos Island and Midwest Trawl Managed Fishery (AIMWTFMF) during the 2005 season.

I have become aware that the exemption granted to you to enable you to fish in the AIMWTFMF during the 2004 season is in force (subject to the conditions contained therein) until 31 December 2004. In granting you that exemption, it was my intention that it remain in force while the Department finalised an investigation into the claims you have raised regarding the cancellation of an AIMWTFMF licence.

I am advised that the Departmental investigation will not be finalised until possibly early 2005. Based on that position, I am prepared to vary your existing exemption to remain in force for 2005 to continue the opportunity for you to access the AIMWTFMF, subject to the conditions of the exemption.

In regard to the conditions by which you may access the AIMWTFMF under the authority of the exemption, my position remains such that I am prepared to exempt you from the requirement to hold a managed fishery licence, however, you must acquire the use of the necessary gear entitlement to operate within the fishery.

Notwithstanding my offer to vary your existing exemption, you may still have your recent application for exemption formally considered by forwarding the application fee of \$1900.00 to the Department of Fisheries.

Please advise me (in writing) by 26 November if you are agreeable to me varying your existing exemption as outlined in this letter.

Yours sincerely

Kim Chance MLC  
MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES

22 NOV 2004

## FACSIMILE

---

**Date** : 26 November 2004

**To** : *Kim Chance, MLC*  
**Attention** :

**Fax no** : 9213 6701

---

Dear Sir

Further to your letter of 22 November 2004 regarding my access to the Abrolhos Islands and Mid West Trawl Managed Fishery for 2005, I am agreeable to you varying my existing exemption to remain in force for 2005.

I also wish for my recent application for exemption to be formally considered. Prior to forwarding the \$1,900.00 fee, I would like a guarantee that, if the exemption application is not successful, the \$1,900.00 will be refunded

Yours faithfully



Mark Paxton  
Tel: 9336 1364

*Fish Resources Management Act 1994*

**Section 7(6)**

**VARIATION TO EXEMPTION**

I, Kim Chance, Minister for Agriculture, Forestry and Fisheries, in accordance with Section 7(6) of the *Fish Resources Management Act 1994*, hereby vary the Instrument of Exemption granted to Mark Ashley Paxton on 22 December 2003, copy attached as Appendix 1, in the manner outlined below.

**Schedule 2 (Amended)**

**Time Period**

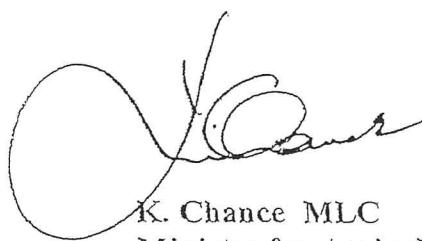
The words "31 December 2004" are deleted and replaced with the words "31 December 2005".

**Schedule 3 (Amended)**

**Conditions**

The following conditions are added:

6. A try net may only be used under the authority of this Exemption provided that the vessel operating under the authority of this Exemption also has the use of a minimum of one gear unit of entitlement as described in the Abrolhos Island and Mid West Trawl Management Plan 1993.
7. The dimensions of otter boards on a try net described in condition 6 must not exceed 1095 millimetres in length and 730 millimetres in height.



K. Chance MLC  
Minister for Agriculture, Forestry and Fisheries

DATED THIS

18<sup>th</sup>

DAY OF December

2004

File No. 811/03

Variation to Exemption Administrative  
Number 545



MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
THE MIDWEST, WHEATBELT AND GREAT SOUTHERN  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL



Ref: 8-23459

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

Thank you for fax of 26 November in regard to access to the Abrolhos Island and Mid West Trawl Managed Fishery (the Fishery).

In line with your response, I have varied your current Exemption to remain in force for 2005. The Variation to Exemption is enclosed with this letter and a copy of the Instrument must be retained on board your vessel at all times while operating under the authority of the Variation. I have also clarified in the Variation to Exemption the use of try-nets within the Fishery. You will need to acquire the use of gear entitlement in order to be able to utilise a try net and, associated try net otter boards must be of a size as specified in the Variation to Exemption.

In regard to your recent Application for Exemption, an application fee is not refundable on the basis that the Exemption is not granted. In addition, I reiterate that my position remains unchanged in that I am not of a mind to exempt you from the requirement to acquire the use of the necessary gear entitlement to operate within the Fishery.

No further action will occur in relation to your recent Application for Exemption until the Department has received the appropriate application fee, if this has not occurred by 15 January, the Department will return the application to you.

Thank you raising these matters with me.

Yours sincerely

Kim Chance MLC  
MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES

Att 22 DEC 2004

**BY FACSIMILE : 9964 2978**

(5 pages)

**Attention: Hon Murray Criddle, MLC**

5 January 2005

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Please find enclosed copy letter and exemption from Kim Chance.

This exemption does not allow me to fish. I believe your question in Parliament (19 August 2004) related to my ability to operate in the Abrolhos Island Trawl Fishery and being able to fish 2005. The previous exemption has been altered with conditions:

- Condition 1 is impossible to meet as no units are available to lease within the industry;
- Condition 2 does not exist in the Abrolhos Island Mid West Trawl Fishery Notice therefore I believe it is unfair that I should have this restriction imposed when no other fisherman has.

Last year's exemption allowed me to fish with only a try net which I am hoping to do this year, but cannot under this exemption.

As this exemption is to compensate for the cancellation of my licence, I do not see why there should be a condition that I should lease a unit.

Kind regards

Mark Paxton



cc: Bruce Donaldson  
9321 1287

Return fax no: 9430 4044

**BY FACSIMILE : 9321 6338**

(1 page)

**Attention: Alex Temby, Leader's Office**

6 January 2005

---

Further to our telephone conversations and my discussion today with Bruce Donaldson, I propose an amendment to the FRMA Act to enable the Minister of Fisheries to deal, through the Act, with matters of extraordinary and exceptional circumstances for the purpose of establishing and recognising fishing rights:

*“A discretionary power exercisable by the Minister to recognise, validate and grant licences in respect of fishing rights whether or not the same may have met management plan criteria where such fishing rights are:*

- (a) not currently capable of being exercised; and*
- (b) in the Minister’s opinion, it is just and equitable that such rights should be exercised.”*

Kind regards



Mark Paxton

(Return fax no: 9430 4044)

**BY FACSIMILE : 9213 6701**

(1 page)

**Attention: Mike McMullan**

6 January 2005

---

**EXEMPTION 545 & VARIATION TO EX 545**

I believe the question raised in Parliament on 19 August 2004 related to my ability to operate in the AIMWTF and to fish 2005.

The answer to the question was yes, upon application for exemption.

The variation to EX 545 does not allow me to operate in accordance with the assurance given in the answer because.

- Condition 1 is, in practice, impossible to meet as no units are available to lease within the industry;
- Condition 2 is a restriction which not exist in AIMWTF Notice and which I therefore believe is unfair and discriminatory in that it imposes a restriction to which no other fisherman is subject.

EX 545 allowed me to fish with a try net (Condition 3, Clause 10(1) and (6))

As this exemption is to compensate for the cancellation of my licence, I do not see why there should be a condition that I should lease a unit.

I request you reconsider my exemption application of 01/09/2004 and the possibility of waiving the \$1,900.00 fee or deferring payment until 1 June 2005.

Kind regards



Mark Paxton

(Return fax no: 9430 4044)



Your Ref: 2655/00-04  
Our Ref: A Fleming 08 9482 7372  
Enquiries: A Fleming 08 9482 7372

Mr Mark Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

**APPLICATION FOR MANAGED FISHERY LICENCE IN THE ABROLHOS  
ISLANDS AND MID WEST TRAWL MANAGED FISHERY**

I refer to our telephone conversation on 14 January when you advised that your application for a managed fishery licence in the *Abrolhos Islands and Mid West Trawl Fishery* (Fishery) was outstanding since 1 September 2004.

As you have been informed previously, I have sought and await advice from State Solicitor's Office on a number of issues that you raised in the letter of 18 February 2004 concerning your longstanding claim for a licence in the fishery and in connection with your present application.

When that advice is available I shall correspond with you again.

Yours faithfully

P P Rogers  
**EXECUTIVE DIRECTOR**

17 January 2005

Document3



## ATTORNEY GENERAL

MINISTER FOR HEALTH: ELECTORAL AFFAIRS

Our Ref: 9-29426

FOR WESTERN AUSTRALIA

Mr Mark Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

### **REQUEST FOR MEETING - CROWN SUITS ACT**

I refer to your letter dated 11 November 2004.

You have asked that we meet again to discuss the possibility of my giving consent to your proposal to bring an action against the Fisheries Department as is required by section 6 of the *Crown Suits Act 1947* (WA).

While the precise nature of your proposed cause of action is not clear from your letter, I understand that the events of which you complain are firstly, the transfer to a third party and ultimate cancellation of your limited entry fishery licence 1921 ("first licence") and secondly the transfer of gear unit entitlements associated with limited entry fishery licence 1890 and the subsequent cancellation of that licence ("second licence"). I understand that the transfer and subsequent cancellation of the first licence took place in 1990 and that of the second licence took place in 1992.

The effect of the *Crown Suits Act* is that no action against the State of Western Australia can be commenced after the expiry of 6 years from the date on which the cause of action accrued. The *Crown Suits Act* only permits me to give consent to the commencement of an action which would be commenced before the expiry of that 6 year term.

I acknowledge section 6(1) of the *Crown Suits Act* provides that where an act, neglect or default on which a proposed cause of action is based is a continuing one, then no cause of action accrues until the act, neglect or default ceases and a cause of action can be commenced while the act, neglect or default continues. It appears, however, that the matters about which you are aggrieved do not amount to a continuing act, neglect or default.

Consequently, it is my view that whatever action you contemplate bringing would be statute barred and hence there is no utility in meeting to discuss the possibility of my consenting to your proposed action.

30th Floor Allendale Square

77 St George's Terrace Perth WA 6000

Tel: +61 8 9220 5000 Fax: +61 8 9221 2068

ABN: 61313082730

If however, your view that the relevant act, neglect or default is a continuing one is correct, then you would not require my consent to commence an action in any event. All that would be required before the commencement of proceedings in that circumstance would be the provision to the State Solicitor of the notice contemplated by section 6(1) of the *Crown Suits Act*. In that regard, I note that any action alleging negligence on the part of the Executive Director or any other officer of the Department of Fisheries would need to be commenced against the State of Western Australia.

As I said at the outset, the nature of your proposed cause of action is unclear. If your proposed cause of action is not as I apprehend it, it would be useful for you to set out precisely what it is you say gives rise to your cause of action, what kind of action you intend to bring and the names of the intended defendants in order that I can give the matter further consideration.

Yours sincerely



JIM McGINTY MLA  
ATTORNEY GENERAL

- 1 FEB 2005



MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES;  
THE MIDWEST, WHEATBELT AND GREAT SOUTHERN  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL



Ref: 8-24636

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

Thank you for your facsimile of 6 January in regard to the conditions under which you may operate within the Abrolhos Island and Mid West Trawl Managed Fishery (the Fishery) during 2005.

I have given further consideration to the matters you have raised and to advice from the Executive Director of Fisheries and I have formed the view that until the Departmental investigation into your claims has been concluded, you should be subject to the same requirements as persons who hold a Managed Fishery Licence (MFL) to operate in the Fishery.

Consequently, I have varied your current Exemption to remove the requirement for another licensee to suspend gear entitlement as well as the requirement for you to hold gear entitlement before using a try net and to conform to specific try net otter board dimensions. The signed Instrument is included with this correspondence and should be carried on your vessel at all times and produced to an Officer of the Department when required.

Subject to final approval by the Executive Director, I am advised that the main 2005 Abrolhos trawl season is scheduled to begin on or about 28 April 2005 and the main fishing area will close when an agreed catch rate threshold has been reached. You will be formally notified by the Department of 2005 fishing arrangements in due course.

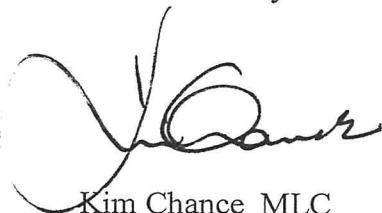
I must also inform you of the agreement, following some initial conflict over trawl-rock lobster fleet interaction, that has been reached between the rock lobster and trawl sectors in regard to traditional trawl areas and sensitive rock lobster fishing areas within the waters of the Fishery. Resolution of these matters has also become a condition of the recent Department of Environment and Heritage (DEH) ESD approval for the Fishery, which is necessary for the ongoing export of Abrolhos scallops.

Trawl licensees have developed a map of traditionally trawled areas within the Fishery and trawling activity will be confined to these areas for 2005. A trawl Code of Practice has also been developed to establish agreed protocols that skippers will follow to reduce interaction with rock lobster gear and focus trawling activity within traditional trawl areas and to areas that have been identified as containing sufficient scallops. In addition, there may also be some rock lobster sensitive areas identified where trawling will not take place.

The Department will provide you with all the information detailing the agreed trawl areas and operating guidelines. It is important that you abide by all the agreed protocols developed between the rock lobster and trawl sectors. Failure to do so will increase conflict with the rock lobster industry, jeopardise ongoing DEH export approval for the Fishery and would leave me no option but to support revoking your authority to operate in the Fishery.

You will be notified of the outcomes of the Departmental investigation into the matters you have raised with me in due course. In respect of your comments regarding your recent Application for Exemption, I understand that the Executive Director is not of a mind to waive all or part of the associated application fee and does not have the power to defer payment of the application fee. In addition, I would not support you operating in the Fishery with gear units additional to that already in existence in the Fishery and I understand that the Department will be returning the application to you in due course.

Yours sincerely



Kim Chance MLC  
MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES

Att

09 MAR 2005

*Fish Resources Management Act 1994*

**Section 7(6)**

**VARIATION TO EXEMPTION**

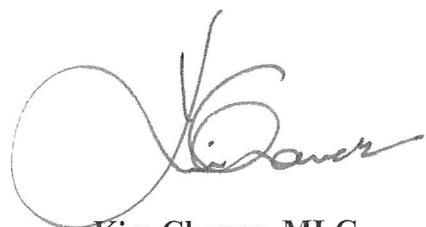
I, Kim Chance, Minister for Agriculture, Forestry and Fisheries, in accordance with Section 7(6) of the *Fish Resources Management Act 1994*, hereby vary the Instrument of Exemption granted to Mark Ashley Paxton in regard to the provisions of the *Abrolhos Island and Mid West Trawl Management Plan 1993*, in the manner outlined below.

**Schedule 3 (Amended)**

**Conditions**

Conditions 1, 6 and 7 are deleted and the following new condition 1 is added:

1. The headrope length of any nets used to fish for prawns or scallops must not exceed a maximum of one try net as defined in the Plan plus the number of gear units suspended on application to the Executive Director by a licence holder in the Fishery on Mr Paxton's request.



**Kim Chance MLC**  
**Minister for Agriculture, Forestry and Fisheries**

DATED THIS



DAY OF



2005

File No. 811/03

**Variation to Exemption Administrative  
Number 545**

**WEST COAST TRAWL ASSOCIATION**

**31 Emplacement Crescent**

**Hamilton Hill W.A. 6163**

**Ph: (08) 9336 6866**

**Fax: (08) 9336 6877**

**President: K.J. Brown**

**Secretary: H. Ch'ng**

Dear Member,

**Notice of WCTA Meeting to be Held on Wednesday, 6<sup>th</sup> April 2005**

With the season in Shark Bay well underway and with the opening of the Abrolhos Islands now less than 4 weeks away, I believe that it is an opportune time for all licensees to meet and discuss a range of issues of importance for both fisheries.

Date of Meeting: Wednesday, 6<sup>th</sup> of April

Time of Meeting: 10:00 am

Venue: Far West Scallops, 31 Emplacement Crescent, Hamilton Hill

**Agenda:**

**Abrolhos Islands**

1. Results of Second Abrolhos Survey carried out February 2005.
2. Code of Conduct
  - a) Licensees to endorse Code and emphasise its importance to skippers.
  - b) Should vessels have VMS contact details listed with Code of Conduct?
3. Fishing Arrangements for 2005 Abrolhos Season
  - a) 'Traditional' Trawl Zones
  - b) High Yield Fishery Principle – Determining catch rate threshold to close Fishery
  - c) Rock Lobster Industry Proposed 'No Go' zones
  - d) Liaison with Rock Lobster Industry Prior to start of 2005 Season.
4. Proposal to fish Eastern Boundary scallop resource.
5. Proposal to harvest Kidney Patch scallop resource.
6. Survey Areas beyond Eastern Boundary to Identify Potential Scallop Grounds.
7. Department of Environment and Heritage Assessment for AIMWTF.
8. Paxton Issue.
9. Other Business.

**Shark Bay**

1. Opening for Denham Sound Southern Patch.
2. Opening for Red Cliff Closure Area.
3. Denham Sound Catch Rate Threshold to Close Area.
4. Denham Sound Scallop Quality Assessment Program.
5. Update on Proposal for 'Northern' Scallop Sanctuaries.
6. Other Business.

## West Coast Trawl Association

# RESPONSIBLE FISHING

### **A Code of Conduct to Reduce the Impact of Trawling on the Rock Lobster Industry for Operators Working in the Abrolhos Islands and Mid-West Trawl Managed Fishery.**

This code of conduct sets out some basic guidelines and principles for the operators of trawlers fishing for scallops in the Abrolhos Islands and Mid-West Trawl Managed Fishery (AIMWTF).

The owners of the 16 trawlers licensed to operate in the AIMWTF endorse this code of conduct and undertake to communicate to trawler operators the importance of abiding by the principles and guidelines set out in the code.

Owners, skippers and crew need to be aware that the Scallop industry shares the waters of the Abrolhos Islands with Rock Lobster fishermen. Rock Lobster fishermen have been operating in the waters of the Abrolhos Islands for over 40 years and they too earn their living from the sea. The Scallop industry needs to be aware that unless an appropriate level of care is taken by trawler operators, there is potential to impact on the operations of Rock Lobster fishermen and to ultimately affect their ability to successfully fish.

This code of conduct specifically seeks to reduce the impact that trawling can potentially have on Rock Lobster fishermen and is a considered attempt to foster better relations between the two industries.

You need to be aware that your actions and willingness to observe the code of conduct can make a difference.

## **1. Protocol for exploring new or unknown ground.**

Operators should take every precaution to know and understand the ground they are working on before they commence fishing. The following protocol should be observed when exploring new or unknown ground:

- a) Call other skippers who may know the ground or area.
- b) Survey the area by running a grid pattern with echo sounder and plotter.
- c) If the surveyed area is sand bottom, then use try gear in the surveyed area to look for scallops.
- d) Use winching time to 'fill in' the grid pattern with echo sounder and plotter.
- e) If scallops are found, use echo sounder and plotter to map the extent of the sand bottom.
- f) If scallops are found and the ground is well plotted, commence fishing in the surveyed area.
- g) If no scallops are found, let others skippers know.
- h) If the ground is not suitable for trawling, let other skippers know.

## **2. Protocol for reducing trawler interaction with cray pots.**

While no one intentionally hooks-up cray pots, it is important to respect that cray pots are the property and the principal means by which Rock Lobster fisherman earn their livelihood. Operators must recognize that trawler interaction with cray pots presents major problems for Rock Lobster fisherman. Operators should consider the following repercussions of hooking up a cray pot:

- a) the Rock Lobster fisherman's effort of setting the pot is wasted,
- b) a hooked-up pot will not provide any catch for the fisherman,
- c) if the pot is lost, they are expensive to replace
- d) the fisherman may lose further catch while waiting for a replacement pot

Operators can minimize the interaction with cray pots, by observing the following procedures:

- a) Where it is possible, avoid steaming through known areas of Rock Lobster habitat.
- b) If you have to steam through known area of Rock Lobster habitat, bring in your stabilizers.
- c) If you do hook-up cray pots, make sure that you observe the following procedures for handling and returning cray pots:
  - Place the cray pot close to other pots
  - Return the cray pots to shore
  - If possible, contact the skipper of the cray boat

### **3. Protocol for anchoring and the disposal of shell.**

Areas of hard bottom are the type of ground principally targeted by Rock Lobster fishermen. Operators should respect the importance of these bottom types to the Rock Lobster Fishery and observe the following procedures:

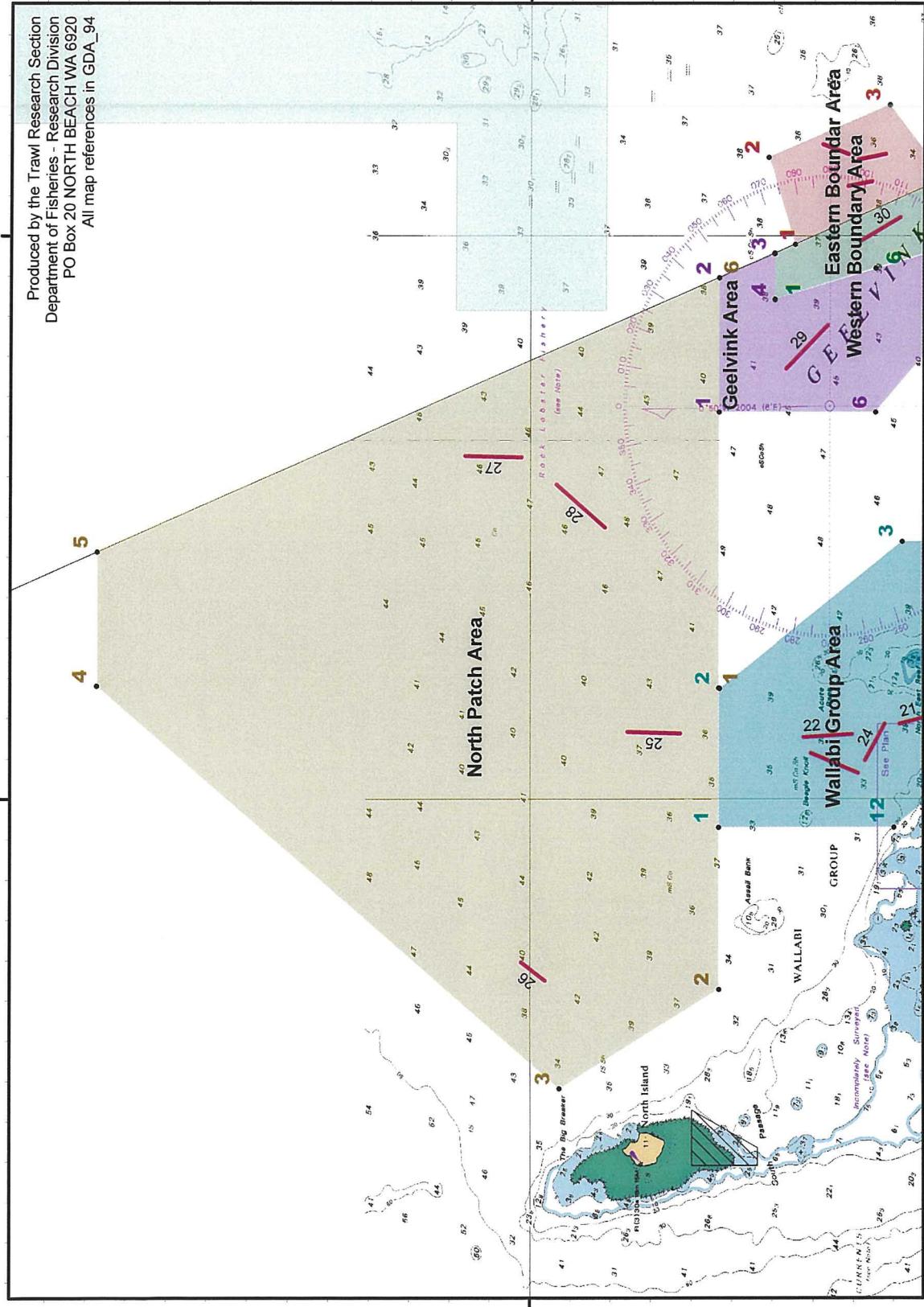
- a) Unless the safety of the vessel is a concern, do not anchor in areas of garden or hard bottom.
- b) Do not anchor and shuck (that is, do not deposit shell) in areas of garden or hard bottom. There is potential for discarded scallop shell to damage coral. Additionally, discarded scallop roe and guts can reduce the effectiveness of baited pots.

### **4. Protocol for the disposal of rubbish and waste.**

It is an offence to dispose of solid wastes and rubbish at sea. Operators should ensure that there is sufficient capacity to store solid wastes and rubbish on the vessel so that it can be disposed of correctly upon the return to port.

## 2005 Abrolhos Islands Provisional Trawl Areas

Produced by the Trawl Research Section  
Department of Fisheries - Research Division  
PO Box 20 NORTH BEACH WA 6920  
All map references in GDA\_94



2 Mardie Street  
Beaconsfield  
WA 6162

The Executive Director of Fisheries  
Fisheries Department  
168-170 St George's Terrace  
Perth  
WA 6000

15 April 2005

Dear Sir

**APPLICATION FOR ABROLHOS ISLANDS MID WEST TRAWL FISHERY  
MANAGED FISHERY LICENCE & ONE UNIT**

I note your continuing failure to provide me with a response to my application for a AIMWTF licence and unit which has now been outstanding for over seven (7) months.

If I have not received a determination on or before **5.00pm, Friday, 22 April 2005**, I will treat such failure as a deemed refusal of my application. I believe this delay is entirely unreasonable and will be making an objection to the Executive Director of the Fisheries Department pursuant to s149(1).

Yours faithfully

**Mark Paxton**

# LEASK & CO.

BARRISTERS & SOLICITORS  
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6100  
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6950

TELEPHONE (08) 9430 6688  
FACSIMILE (08) 9430 4044  
EMAIL law@leask.com.au

Mr M Paxton  
2 Mardie Street  
Beaconsfield WA 6162

Our Ref: 0075\DL:gw

Your Ref:

15 April 2005

Dear Sir

## FISHERIES DEPARTMENT OF WESTERN AUSTRALIA WET LICENCE G298 & SCALLOP ENDORSEMENT No 1921

**DRAFT**

You have asked us to advise as to whether or not you have a cause of action in negligence against the Department of Fisheries in relation to the above-numbered licence and, in particular, to the single rig scallop endorsement to the said licence ("the unit").

### The facts

1. You were issued with licence no 1921 ("the wet licence") by the Fisheries Department in 1986. The unit was endorsed on the licence, your entitlement to the unit having been based on your fishing history in the Abrolhos Islands Otter Trawl Fishery prior to the introduction of the requirement for endorsements to allow the taking of scallops.
2. In 1988, you sold the wet licence but kept the unit which was transferred to wet licence F780 the fishing boat, "Tonnarella", was attached to wet licence F780, which licence you leased from its owner, Mandare Holdings Pty Ltd.
3. The unit was able to be registered on the Mandare wet licence because Mandare recognised your equitable ownership of the unit, notwithstanding that, according to the Fisheries Department's records, the owner of the unit was Mandare Holdings, as it was endorsed on their wet licence.
4. In October 1989, you wished to acquire a second scallop unit and became aware of a fisherman who had contracted to purchase a fishing boat (the "Victorious") and its licences, which included a scallop unit. The purchaser was unable to complete his purchase and you agreed to take over his commitment to make outstanding payments on the basis that you would keep the licences and that he would retain the "Victorious".

5. You therefore agreed with the owner of the "*Victorious*" a partnership involving the Blenkinsops and the FAYES, as a result of which you drew up and all parties executed an agreement.
6. The agreement contained a provision whereby the purchase price of \$110,000.00 was to be paid on 30 November 1990 and that you were entitled to lease the fishing boat, "*Panama*", together with the licences the subject of the agreement, on payment of a monthly lease fee of \$750.00.
7. The agreement was conditional upon Fisheries Department's approval of transfer of all licences to you – one of the licences, the Onslow Prawn Trawler licence no 1050, was not transferable and the agreement lapsed.
8. In its letter of 23 July 1990, the Fisheries Department approved the replacement of the "*Victorious*" with "*Panama*" on to the Victory Fish wet licence and referred to the two scallop units, namely, the unit and the Victory Fish scallop unit, being amalgamated into a twin rig trawl endorsement. This led to the cancellation of distinctive unit no 1921 due to the fact that the Victory Fish unit (1890) was now a twin rig trawl endorsement.
9. In April 1990, you met with Peter Millington and Alex Cechner of the Department. You explained to them that you were already leasing the F780 wet licence and had also contracted to lease G249. You wanted to transfer your scallop unit from F780 (Mandare) to G249 (Victory Fish) and you wished the process to be completed so that you could fish the 1990 season.
10. Millington told you that you would be able to achieve your objective but, as a result, it would be necessary for a wet licence to be handed in because transferring the unit from the Mandare wet licence would leave it "bare" which was not permitted under the Department's regulations. As Mandare was not prepared to surrender its wet licence, the Fisheries Department agreed that Victory Fish would need to surrender a wet licence within twelve (12) months.
11. Critically, in the April 1990 meeting, you asked what would happen if your purchase of the Victory Fish licences did not go through – this was a real possibility given your knowledge that the Onslow prawn licence was, at that time, not transferable. Millington assured you that, if the sale did not go through, matters would revert to the "*status quo*", meaning that your scallop unit would go back to the Mandare wet licence.
12. Following the April 1990 meeting, Victory Fish agreed to the proposal whereby the Fisheries Department would buy the Victory wet licence within twelve (12) months.

13. Following the meeting at Onslow, when it was determined that the prawn licence would not be transferable, you telephoned Blenkinsop and told him that, since the prawn licence was not transferable, the agreement would not go through.
14. You spoke to Peter Millington of the Fisheries Department in March 1990 in response to your request to transfer the unit from the Mandare wet licence to the Victory Fish wet licence. You were told that this would be a problem as it would leave the Mandare wet licence as a "bare" licence which would require it to be surrendered. Mr Millington asked you to come to Perth to discuss the problem with you.
15. In about March or April 1992, you were told by one David Thompson that Blenkinsop had sold your scallop unit. You then telephoned Blenkinsop who admitted that he had sold the unit.
16. In May 1992, you telephoned a Fisheries Department employee and advised that their licensing system had been used to commit what was, in your opinion, a fraud.
17. In June and July, there was communication between solicitors acting for you and various other parties in relation to ownership of the unit. You worked the Carnarvon scallop season and, following a holiday in Bali, contacted Altorfer & Stowe and Glynn & Gray in November 1992.
18. In early 1993, you attended a meeting with Peter Rogers at the Fisheries Department. You advised him that, in your opinion, your unit had been stolen by Blenkinsop. Rogers told you that he would look into the situation and you thereafter wrote to Messrs Frank Unmack & Cullen.
19. In late 1993, you approached Monty House, the then Minister for Fisheries, and entered into correspondence with him. None of these attempts to resolve the problem were successful and, on or about 9 March 1994, you provided the Fisheries Department with a list of eight questions.
20. On 23 November 1992, Altorfer & Stowe wrote to the Executive Director of Fisheries requesting information in relation to the dispute as to ownership of the unit. The Fisheries Department replied by its letter of 23 December 1992. Copies of those letters are attached.
21. In its letter to Frank Unmack & Cullen of 18 February 1993, the Fisheries Department stated *inter alia*:

*"Every commercial fishing boat in Western Australia holds a 'fishing boat licence'. A number of details appear on the fishing boat licence, including the name of the licensee/s. The licensee/s can be a single person, a*

*partnership or a company. Any associated licences to the fishing boat licence have the same licensee/s details on them.*

*If an application is received to transfer ownership of the fishing boat licence, all the signatures of the licensee/s are required.*

*Although the Department will only transfer fishing boat licences with the authority of the licensee/s, I am aware, however, that some fishermen enter into subsidiary agreements which can affect the ownership of the licence. The Department is not always aware of these agreements.”*

22. In your list of questions to the Department dated 9 March 1994, you asked whether or not the Department recognised that you were the owner of the unit when we met with them in early 1990. In his response dated 10 March 1993, Peter Millington confirmed that, at that time, it was his understanding that you were the beneficial owner of the unit. Critically, the Fisheries Department's letter answered in the affirmative to your second question, namely, whether you would still be regarded as being the beneficial owner of the unit after it was transferred to the Victory Fish wet licence.
23. The Fisheries Department also confirmed in answer no 3 that they were not notified by Victory Fish that you had sold the unit to them and given them the right to sell it. They did, however, state:

*“However, you should note that, as the licence was registered under these parties (Victory Fish), names and no interest had been registered by you in that licence, such information would not have been sought by this Department.”*
24. The Department denied that it had indicated that the status quo would be restored if the agreement to purchase the licences did not go through. At question 6, you asked whether the Fisheries Department accepted or recorded beneficial ownership of a limited entry licence or unit where such beneficial ownership was different to legal ownership. In its response, it stated:

*“Yes, by way of voluntarily registering an interest in a licence and undertaking to inform that party of any attempts by the licensee to change the status of the licence.”*
25. You deny, and the Fisheries Department has never contended, that you were advised by the Fisheries Department of a system whereby beneficial ownership of licences could be registered with the Department.

26. You have subsequently discovered that there was, indeed, a system of registration of “unofficial” interest by way of comments on the Department’s computer records for each licence. Copies of those in respect of the unit are enclosed.
27. The Fisheries Department had failed or refused to issue you with a replacement unit, LEF or MFL.

### Negligence

28. The constituent elements of a cause of action in negligence are:
  - (a) a duty owed by one party to another, to prevent reasonably foreseeable acts or omissions which it is reasonably foreseeable would cause loss or damage (“the duty of care”);
  - (b) a breach of the duty of care by an act or omission by which the Department failed to prevent an act or omission which it was foreseeable would cause you loss or damage; and
  - (c) as a result of the breach of the duty of care, your suffering loss and damage.
29. In our opinion, it is beyond question that the Department owed you a duty of care whereby it was obliged to take action to protect your beneficial ownership in the unit. The grounds for this opinion are that:
  - (a) the Department was aware that you were beneficial owner of the unit prior to it being transferred to the Victory wet licence;
  - (b) the Department was aware that you would remain the beneficial owner of the unit after it had been transferred on to the Victory wet licence;
  - (c) the Department was aware that the interests of beneficial owners were not protected by the registration system where the beneficial owner was a different party to the licensee;
  - (d) the Department was aware of a system whereby the interests of beneficial owners who were not licensees of a particular unit could be registered;
  - (e) notwithstanding the Department’s knowledge as set out at paras 29.1-29.4 above, the Department failed to take any action to record your beneficial ownership of the unit at the time that the unit was transferred from the Mandare wet licence to the Victory wet licence, and failed to notify you when an application was received to transfer either of the two scallop units from the Victory wet licence.

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30. We also consider that it is unarguable that the Department breached its duty of care in that:

.....

31. The Department has also breached its duty of care to prevent loss and damage as a result of the misleading and confusing information given to Glynn & Gray by its letter of 23 November 1992. Glynn & Gray in their letter of 13 November 1992 had indicated that they were seeking to clarify ownership of the unit. They referred to the amalgamation of the two units to become a twin rig trawl endorsement and to Blenkinsop, and yourself, both claiming ownership of the twin rig trawl endorsement. Altorfer & Stowe indicated that "*Your thoughts on the question of ownership of the twin endorsement would be of assistance to us.*"

32. In its reply, the Department confirmed that distinctive licence no 1921 was cancelled on the unit being transferred from the Mandare wet licence to the Victory Fish wet licence, confirmed that each of the two units had been transferred to other vessels but, otherwise, made no comment as to ownership of the twin rig unit. Importantly, the Department made no attempt to confirm that it was aware that you were beneficial owner of the unit at the time of its transfer on to the Victory Fish wet licence and that it was unaware of any transfer of that beneficial owner thereafter. Given that the Department was aware that the purpose of Altorfer & Stowe's enquiry was to clarify the position of ownership, the answer was misleading and did mislead Altorfer & Stowe in that it did not differentiate between legal and beneficial ownership when it had full knowledge (particularly given the endorsement on the register) that you had claimed beneficial ownership.

### Conclusion

33. We are therefore of the opinion that the Department was in breach of its duty of care to prevent acts that might lead to your losing beneficial ownership of the unit. Since you have suffered loss as a result of the transfer of the unit from the Victory wet licence, you have a maintainable cause of action against the Department.

Yours faithfully

LEASK & CO

Encl



Ref MWG193/98

Mr M Paxton  
2 Mardie St  
BEACONSFIELD WA 6162

Dear Mr Paxton

**Abrolhos Islands and Mid West Trawl Managed Fishery  
Application for Managed Fishery Licence dated 1 September 2004**

The Department received from you an Application for a Managed Fishery Licence for the Abrolhos Islands and Mid West Trawl Managed Fishery (the Fishery) on 1 September 2004.

I wrote to you by letter dated 1 October 2004 advising that I was investigating some issues relating to your application and that I would respond in due course. Whilst I regret the delay since I last wrote to you, I am now in a position to progress the matter, although I still require some further information as outlined below.

Please note that applications are dealt with pursuant to section 135 of the *Fish Resources Management Act 1994*.

*Fish Resources Management Act 1994*  
*Part 13-General provisions relating to authorisations*

**135. Applications**

(1) An application for the grant, renewal or variation of an authorisation or for the transfer of an authorisation or part of an entitlement under an authorisation (an application) must be

- (a) made to the Executive Director in a form approved for that purpose by the Executive Director;
- (b) accompanied by the fee (if any) prescribed, or specified in the relevant management plan, for such an application; and
- (c) accompanied by any information that the Executive Director reasonably requires for a proper consideration of the application.

(2) An applicant must provide the Executive Director with any further information that the Executive Director by notice in writing requires the applicant to provide in respect of an application.

(3) An applicant must, if required to do so by the Executive Director, verify by statutory declaration any information contained in, or given in connection with, an application.

(4) The Executive Director may refuse to consider an application if the application does not conform to a provision of this section or if the applicant has failed to comply with a provision of this section.

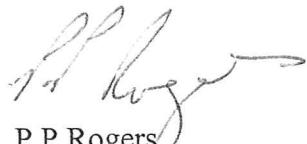
Whilst the form that you lodged with the Department in September 2004 is an obsolete (1998) form, in substance I am prepared to accept the use of the form. At the time the form was received, the fee payable for an application for the grant of a managed fishery licence was \$255.00, the Department has received only \$210 from you. Should you wish me to consider the application, please provide payment of an additional \$45.00.

Finally and perhaps most importantly, I wish you to confirm in writing that the application is being made by yourself (personally). If this is the case, then pursuant to s135(c) and in order to give proper consideration to your application, I require information to accompany your application that substantiates that you are the owner of the vessel Atlantic Ocean. You should also consider this requirement in regard to the applicant details that are entered on the application form.

In forwarding this letter to you please note that I am not to be taken in any way as representing that any application for the grant of a managed fishery licence for the Fishery would necessarily be granted. In an agreed policy framework developed in consultation with industry and in place for the Fishery since 1984, the number of boats and the length of trawl headrope in the Fishery have been continually reduced.

I am looking to hearing from you.

Yours sincerely



P P Rogers  
EXECUTIVE DIRECTOR

8 July 2005

Department of Fisheries  
3<sup>rd</sup> Floor, The Atrium  
168 St Georges Terrace  
PERTH WA 6000

2 Mardie Street  
BEACONSFIELD  
WA 6162

26 July 2005

Attn. Peter Rogers

BY FAXSIMILE 9482 7389

Dear Sir

**Abrolhos Island & Midwest Trawl Managed Fishery**

I refer to your letter dated 8 July 2005.

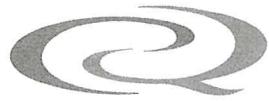
Could you please explain how ownership of the "Atlantic Ocean" is relevant to my application for an AIMWTMF licence?

I will of course strictly comply with the requirements of the relevant management plan, but it has always been my understanding that a boat attaches to a licence and not vice versa, and as you will appreciate, it is by no means certain that I will be fishing with the "Atlantic Ocean" in the future.

Unless I hear from you to the contrary by 5.00 pm Friday 29 July 2005 I will assume that I do not need to submit with my application form G-1 details in respect of the "Atlantic Ocean" or any other boat.

Yours sincerely,

MARK PAXTON



Ref MGW 193/98 & 1224/98

Mr M Paxton  
2 Mardie St  
BEACONSFIELD WA 6162

Dear Mr Paxton

**Abrolhos Islands and Mid West Trawl Managed Fishery  
Application for Managed Fishery Licence dated 1 September 2004**

Thank you for your letter (by facsimile) of 26 July in regard to the above matter.

Any applicant for a Managed Fishery Licence must demonstrate that they meet the entry criteria specified in the relevant management plan. I recommend that in providing the information outlined in my letter of 8 July that you consult the *Abrolhos Islands and Mid West Trawl Managed Fishery Management Plan 1993* and in particular clauses six and seven. The management plan is available online by accessing the Department of Fisheries website at [www.fish.wa.gov.au](http://www.fish.wa.gov.au).

To reiterate the position put to you in my previous letter, I am seeking three things from you in connection with the application form submitted by you in September 2004. These are:

- 1 The payment of an additional \$45 to meet the current prescribed fee payable in relation to an Application for a Managed Fishery Licence.
- 2 Confirmation in writing that the application is being made by you personally and not in the name of another entity (eg company).
- 3 With respect to point 2 and pursuant to s135(1)(c) of the *Fish Resources Management Act 1994* I require information to accompany your application that substantiates that the applicant is the owner of the vessel Atlantic Ocean.

Yours sincerely



P P Rogers  
EXECUTIVE DIRECTOR

28 July 2005



Mr M Paxton  
2 Mardie St  
BEACONSFIELD WA 6162

Dear Mr Paxton

**Abrolhos Islands and Mid West Trawl Managed Fishery  
Application for Managed Fishery Licence dated 1 September 2004**

I write in reference to my letters of 8 and 28 July in relation to the above-mentioned application form. In my previous letters I outlined what is required in order to make your application form competent and for me to give it proper consideration. I am also aware that you have had telephone conversations with an Officer of the Department on 27 July and 22 August regarding these matters. In your telephone conversation of 22 August I understand that you committed to responding to my letters by 2 September.

To date I have received no written response to my letters of 8 and 28 July and if I have not received a written response from you by 3 October then I will consider the matter at an end and return your application form.

To reconfirm the things that I require from you in connection with the application form submitted by you in September 2004. These are:

- 1 The payment of an additional \$45 to meet the current prescribed fee payable in relation to an Application for a Managed Fishery Licence.
- 2 Confirmation in writing that the application should be made by you personally and not in the name of another entity (eg company).
- 3 With respect to point 2 and pursuant to s135(1)(c) of the *Fish Resources Management Act 1994* I require information to accompany your application that substantiates that the applicant is the owner of the vessel Atlantic Ocean.

Yours sincerely

  
P P Rogers  
EXECUTIVE DIRECTOR

19 September 2005



Department of Fisheries  
Government of Western Australia

3RD FLOOR, THE ATRIUM  
168 ST GEORGES TERRACE  
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TELEPHONE +61 8 9482 7333  
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Email: [headoffice@fish.wa.gov.au](mailto:headoffice@fish.wa.gov.au)  
ABN 55 689 794 771



MARK ASHLEY PAXTON  
2 MARINE STREET  
BEACONSFIELD  
WA 6162

Receipt Number: 2005 - 28647

Received: 13/10/2005

Received: 13/10/2005

From: MARK ASHLEY PAXTON

Comment: APPLICATION FOR THE GRANT OF A MANAGED FISHERY LICENCE OR AN INTERIM MANAGED FISHERY PERMIT

For:

ABROLHOS ISLAND & MID WEST TRAWL - APPLICATION FOR GRANT	Amount:	\$45.00
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Total:	\$45.00
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Received with thanks.

## **FACSIMILE**

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**Date** : 18 October 2005

**To** : ***Office of Minister for Fisheries***  
**Attention** : **Nicole**

**Fax no** : 9425 4244

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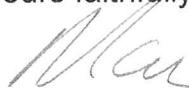
Dear Nicole

Further to our phone conversation today, I am requesting a meeting with Jon Ford regarding the loss of my fishing right and subsequent Supreme Court action against the Fisheries as 1st Defendant, Peter Rodgers as 2nd defendant, and Peter Millington as 3rd defendant, and alleged criminal charges to be laid under s409 of the Criminal Code - Fraud.

Please may I speak to Mr Ford as soon as possible, as I believe he may be able to rectify this situation.

Please request Jon Ford to contact Kim Chance and Bruce Donaldson, for clarification of this matter.

Yours faithfully



Mark Paxton  
Tel: 9336 1364



HON JON FORD JP MLC  
Minister For Fisheries; the Kimberley,  
Pilbara And Gascoyne



59

Ref: MT3913

21 OCT 2005

Mr M Paxton  
2 Mardie St  
BEACONSFIELD WA 6162

Dear Mr Paxton

**ABROLHOS ISLANDS AND MID WEST TRAWL MANAGED FISHERY**

I am writing in regard to the investigation into your claim of a lost right to fish in the Abrolhos Islands and Mid West Trawl Managed Fishery (the Fishery).

The Department has now finalised its investigation following receipt of advice from the Office of the State Solicitor. The outcome of the investigation is that your claim was dismissed. You will receive the Executive Director's detailed response to your letter of February 2004 in regard to this matter in the near future.

In regard to the Ministerial Exemption permitting you to operate in the Abrolhos trawl fishery during 2005, in light of the outcome of the investigation I will not be renewing or extending the Exemption further.

I now view the matter of your claim of a lost right to fish in the Fishery as concluded. I am advised that the matter regarding your application form for a managed fishery licence submitted to the Department in 2004 can now also be finalised and that the Executive Director has written to you regarding your application form.

Thank you for raising these matters with me.

Yours sincerely

Hon Jon Ford JP MLC  
**MINISTER FOR FISHERIES**

Your Ref:  
Our Ref: 2655/00-04  
Enquiries: G Cridland 08 9482 7233

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

**MARK PAXTON - SCALLOP ENDORSEMENT ISSUED 1986**

I refer to your letter dated 18 February 2004 requesting me to recognise your claimed right to one managed fishery licence and one unit. You did not specify the fishery in which you claimed the managed fishery licence and unit. However I have taken the fishery to be the *Abrolhos Islands and Mid West Trawl Fishery* (AIMWTF).

Your letter asserts "Your handling of this situation has shown an incredible incompetence, a total disregard for the ethics and standards necessary for your position as Executive Director and a complete disregard for my lawful right to fish". In view of those assertions you will appreciate why it was necessary for me to investigate your claim as thoroughly as possible, taking into account the information you provided with the letter of 18 February, information on Department of Fisheries files and information from other sources. As you are aware I sought legal advice from State Solicitor's Office on aspects of your claim. All of this process took longer than desirable. However, I am now in a position to inform you of the outcome and to advise you what I will be recommending to the Minister in relation to the present Exemption that permits you to operate in the AIMWTF without a managed fishery licence.

You should not be surprised by the outcome of my investigation into your claim and the legal advice that I have received as I understand that the Attorney General wrote to you in January 2005 foreshadowing what I am about to tell you.

I am advised that any claim you may have had against the Director of Fisheries as he then was under the *Fisheries Act 1905* (1905 Act), officers of the Department of Fisheries or the Minister in connection with the cancellation of Limited Entry Fishery Licence (LEFL) 1921 (LEFL 1921) on 20 July 1990, following transfer of LEFL 1921 from Mandare Holdings Pty Ltd (Mandare) to Messrs Fay and Blenkinsop Nominees Pty Ltd (Fay and Blenkinsop), the transfers of gear units from LEFL 1890 and the subsequent cancellation of LEFL 1890 on 12 March 1992, is statute barred and there are no remedies available to you at law.

**— INVESTIGATE CLAIM — NO OUTCOME RE: FISHING RIGHT  
— LEGAL ADVICE S/S**

Even if your claim was not statute barred, the advice I have received is that at law you held no "interest" in LEFL 1921 once the Director of Fisheries, on your application, transferred LEFL 1921 to Mandare on 28 August 1988. Accordingly no actions of the Director of Fisheries, Department officers or the Minister concerning LEFL 1921 after that transfer could deprive you of any right or interest in that licence and at the present time you have no lawful right to fish in the Fishery apart from the Exemption.

There was no ability under the 1905 Act for a licensee to enter into valid arrangements by which third parties could obtain a valid "interest" in a licence. Put simply, LEFL 1921 and LEFL 1890 were personal to the person(s) recorded as the holder of the licence under the 1905 Act. Therefore neither the Director of Fisheries, officers from the Department of Fisheries nor the Minister were obliged to take your views into account in connection with the subsequent transactions involving LEFL 1921 and LEFL 1890. Nor was there any obligation to notify you or consult with you prior to taking action in connection with LEFL 1921 and LEFL 1890.

I have written to you previously (letter dated 5 March 2004) that the notion of bringing an action against me under section 171 (1)(a) or (b) of the FRMA for my alleged conduct in not restoring your alleged right to fish is misconceived. I restate that view both because I have received advice that section 171 of the FRMA is directed at interference of a physical nature and also because your assertion that you have a lawful right to fish (apart from the Exemption) is misconceived.

NOT  
MENTIONED  
IN 171  
BUT IN  
172

You asked several questions about section 249 of the FRMA. I am advised that it is arguable that the power to hold an inquiry under section 249 can only be exercised in respect of a licence that is current. Even if that view is incorrect, there is no requirement for me to hold an inquiry. The power is discretionary. In light of the advice received to the effect that you had no interest under the 1905 Act after LEFL 1921 was transferred to Mandare, I do not intend to conduct an inquiry under section 249 of the FRMA as to do so would serve no useful purpose.

I have recommended to the Minister that he does not extend or renew the Exemption granted to you to fish in the Fishery during the 2004 & 2005 seasons. Your letter states at page 4 "NB: The Minister has granted me an exemption to fish until the Management Plan changes are made to "restore" the LEF licence." It is my understanding that the Minister granted the Exemption to remain in force while the Department of Fisheries finalised its investigation into the claims you raised concerning LEFL 1921 and LEFL 1890. I refer you to Minister Chance's letter to you dated 22 November 2004, setting out the basis on which the Exemption was granted.

The matter of your application for the grant of a managed fishery licence is quite separate and distinct from the circumstances surrounding cancellation of LEFL 1921 and LEFL 1890. I shall write to you separately concerning the application.

Yours sincerely

  
P P Rogers  
EXECUTIVE DIRECTOR

5  
24 October 2005

\* IGNORES "INFORMAL SYSTEM  
OF BEN. OWN. REG.  
+ ACCOMPANYING DUTY  
OF CARE

1 \* LETTER PR → M.P. 25/5/98  
PARA 2 "TRANSFERRED TO THEM  
(BFN)<sup>2</sup> ON YOUR APPLICATION"



HON JON FORD JP MLC  
Minister For Fisheries; the Kimberley,  
Pilbara And Gascoyne



Ref: MT3913

Mr H Ch'ng  
Secretary  
West Coast Trawl Association  
31 Emplacement Crescent  
HAMILTON HILL WA 6163

Dear Mr Ch'ng

**ABROLHOS ISLANDS AND MID WEST TRAWL MANAGED FISHERY**

I write in regard to your letters of 28 April, 30 May and 18 October and also as a follow up to our meeting of 24 May.

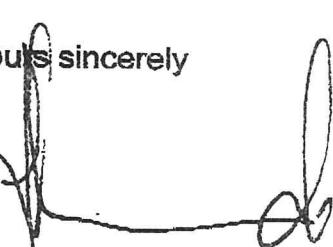
The Executive Director has received advice from the Office of the State Solicitor and finalised his position in regard to Mr Paxton's claim of a lost right to fish in the Abrolhos Islands and Mid West Trawl Managed Fishery. The outcome of the investigation is that Mr Paxton's claim was dismissed.

The Ministerial Exemption permitting Mr Paxton to operate in the Fishery until the investigation was finalised will not be renewed or extended.

I acknowledge the Association's position in regard to this matter, however, there were significant issues raised by Mr Paxton and the view was taken at a Ministerial level that an Exemption was appropriate until formal advice from the State Solicitor was obtained and the investigation concluded.

I thank the Association for it's professional and constructive input into this matter.

Yours sincerely

  
Hon Jon Ford JP MLC  
MINISTER FOR FISHERIES

2 Mardie Street  
Beaconsfield  
WA 6162

Mr S O'Donahue  
Fisheries Department  
St George's Terrace  
PERTH WA 6000

9 November 2005

Dear Sir

1. I refer to our discussions in relation to this matter. In your present capacity of assisting in the processing of my application for an AIMTFL MFL and one (1) unit, I believe you are familiar with the relevant information and evidence, including:
  - (a) the licensing system that was in operation until 1991 was inadequate in that it failed to include any reliable and consistent mechanism for the protection of beneficial interests;
  - (b) Peter Rogers, as Executive Director of the Fisheries Department of Western Australia, was:
    - (i) responsible for ascertaining; and
    - (ii) in a position to ascertain, all relevant facts in relation to the dispute as to the interests of Blenkinsop Faye Nominees on the one hand, and myself on the other, in the rights;
  - (c) Peter Rogers failed to ascertain all relevant facts, or, if he did so, failed to notify the partnership Blenkinsop Faye Nominees or the partners thereof or anyone acting for it or their behalf:
    - (i) that I was at all relevant times and in particular between May 1990 and 3 May 1991 the beneficial owner of the rights;
    - (ii) that the licencing system in force at the material time did not distinguish between legal and beneficial ownership;
    - (iii) that any transfer of the rights required my consent as beneficial owner.
2. I believe Peter Rogers':
  - (a) failure to recognise my fishing right, established by having met the original criteria and alienated by the Fisheries Department's failure of duty of care; and

(b) concealing of his department's failure of duty of care and his misleading and deceiving statements designed to conceal this failure, are ongoing causes of action.

3. As an authorisation is "held" for only twelve months and is reissued on the basis of having met criteria that I have always met, Mr Rogers's refusal each year is a breach of section 171(1)(A).

4. I am therefore requesting you, in your capacity as a Fisheries officer, as per FRMA, 1994, Part 17, section 201(1), to charge Peter Rogers as a result of his having contravened FRMA, 1994, Part 15 – section 171, "Interference with lawful fishing activities

(1) a person must not, without reasonable excuse

A) prevent a person from lawfully fishing."

I hereby inform you that if you do not charge Peter Rogers as I have requested, within ten (10) days of the date of this letter, a Supreme Court Writ of Mandamus will be served on you to explain to the Supreme Court your failure to take such action.

Yours faithfully

Mark Paxton

**2. Management plan amended**

The amendments in this instrument are to the *Abrolhos Islands and Mid West Trawl Management Plan 1993\**.

**3. Clause 2 amended**

- (1) Clause 2 is amended in the definition of "gear unit" by deleting "meters" and inserting instead—"metres".
- (2) Clause 2 is amended by—
  - (a) deleting the full stop at the end of the definition of "transferred" and inserting a semicolon instead; and
  - (b) deleting the semicolon at the end of the definition of "try net" and inserting a full stop instead.

**4. Clause 3 amended**

Clause 3 is amended by deleting "the Schedule" and inserting instead—"Schedule 1".

**5. Clause 4 amended**

Clause 4(2) is amended by deleting "the Schedule" and inserting instead—"Schedule 1".

**6. Clause 6 amended**

- (1) Clause 6 is amended by inserting before "The" the subclause designation "(1)".
- (2) At the end of clause 6 the following subclause is inserted—

"(2) In addition to the criteria provided for in subclause (1), a criterion for the grant of a licence is that the application for the grant of the licence was received by the Executive Director on or before 15 November 2005.".

**7. Clause 8 amended**

Clause 8 is amended by deleting paragraphs (f), (g) and (h) and inserting instead—" (f) the number of gear units conferred by the licence; and (g) any conditions imposed on the licence by the Executive Director.".

**8. Clause 9A inserted**

After clause 9 the following clause is inserted—

**"Capacity of the fishery**

9A. The maximum amount of headrope length of net, excluding the headrope length of the try nets specified in subclause 10(6), that may be used under the authority of all the licences in the waters of the Fishery other than the waters described in Item 3 of Schedule 1 is 336.26 metres.".

**9. Clause 10 amended**

- (1) Clause 10 is amended by deleting "the Schedule" in each place where it occurs and inserting instead—"Schedule 1".
- (2) Clause 10(6) is amended by deleting "described in Item 2 or Item 4" and inserting instead—"of the Fishery other than the waters described in Item 3".
- (3) Clause 10 is amended by inserting after subclause (7) the following—

"(8) A person must not fish in the waters of the Fishery by means of a try net or otter trawl net unless the person is fishing under the authority of a licence that authorises the use of not less than one gear unit.".

**10. Clause 13 amended**

Clause 13 is amended by deleting subclause (3).

*[\*Published in the Gazette of 25 May 1993. For amendments to 21 October 2005 see the Abrolhos Islands and Mid West Trawl Limited Entry Fishery Amendment Notice 1994 published in the Gazette of 22 February 1994, the Abrolhos Islands and Mid West Trawl Limited Entry Fishery Amendment Notice (No. 2) 1994 published in the Gazette of 22 March 1994, the Printers Correction published in the Gazette of 18 March 1994, the Abrolhos Islands and Mid West Trawl Limited Entry Fishery Amendment Notice (No. 3) 1994 published in the Gazette of 25 March 1994, the Abrolhos Islands and Mid West Trawl Limited Entry Fishery Amendment Notice 1995 published in the Gazette of 17 March 1995, the Abrolhos Islands and Mid West Trawl Management Plan Amendment 1996 published in the Gazette of 29 March 1996, the Abrolhos Islands and Mid West Trawl Management Plan Amendment 1997 published in the Gazette of 4 April 1997, the Abrolhos Islands and Mid West Trawl Management Plan Amendment 2001 published in the Gazette of 3 April 2001 and the Abrolhos Islands and Mid West Trawl Fishery Management Plan Amendment 2004 published in the Gazette of 27 July 2004.*

*See regulation 183 of the Fish Resources Management Regulations 1995 concerning the citation of notices in force under the Fisheries Act 1905 immediately before the commencement of those Regulations.]*

Dated this 2nd day of November 2005.

JON FORD, Minister for Fisheries.



Your Ref:

Mark Paxton  
c/- Leask & Co Barristers and Solicitors  
PO Box 1161  
FREMANTLE WA 6959

### NOTICE OF HEARING

**Paxton v Department of Fisheries**  
**MATTER NO: DR 630 of 2005**  
**An application under the Fish Resource Management Act 1994 Section 149(1)**

Dear Sir or Madam

Please be advised the above matter has been listed for Directions as follows:

**Place of Hearing** : Hearing Room 8.09  
State Administrative Tribunal  
**Date of Hearing** : Tuesday, 13 December 2005  
**Time of Hearing** : 10:00AM

If you live outside the metropolitan area, or for some other good reason have difficulty in attending the directions hearing personally, it is possible for you to attend by telephone. The purpose of the directions hearing is to determine the best and most efficient way of progressing the matter to finality. You should be prepared to discuss the matter in some detail if that is necessary to assist the Tribunal to determine the best way forward.

If you need, or have questions relating to, teleconferencing, video conferencing, interpreting, or special accessibility requirements (eg: wheelchair, hearing loop) call and ask for the Tribunal's Listings Officer on 9219 3111(toll free on 1300 306017). If you have any further queries please do not hesitate to contact the Tribunal on 9219-3111.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ross'.

For Executive Officer  
22 November 2005

c.c Department of Fisheries

2 Mardie Street  
Beaconsfield  
WA 6162

Mr M Ball  
Victoria Street  
MOSMAN PARK  
WA 6012

22 November 2005

Dear Sir

Further to our phone conversation of 18 November 2005 regarding my situation with the Fisheries, please find enclosed legal opinion by David Leask, a letter from myself to Peter Rogers dated 18 February 2004 and amendments to Notice 1993, Sections 6(2) and 9(A).

On Wednesday, 16 November 2005, in a meeting with Jon Ford regarding this matter, he told me of the independent review of the FRMA, 1994, being conducted by Matt Benson, John Newby and yourself.

Speaking with John on Friday, 18 November, he told me the problem is not so much with the Act but with its application by Peter Rogers and Peter Millington.

In light of this, I would like to inform you of legislation gazetted on 11 November 2005 to Notice 1993, Amendments, creating Section (6), Part (2), and Section 9A, that I believe has been created for the sole reason of frustrating due process and preventing me from lawfully fishing.

The amendment limits net allotment, which is addressed in Section (6). Net allotment is based on having met the original criteria, ie fishing during or prior to 1984: it cannot be increased and hasn't been since the original issuing of units.

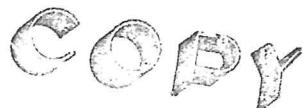
I am of the understanding that any changes to Managed Fishery Notices are to relate to "Biological Sustainability" – where is the scientific study into an industry that is anything but under pressure to survive?

This legislation is unnecessary and its only use is to limit someone with a lawful right to fish from being issued a net allotment – it is no coincidence that, 19 years after issuing units and licences, when I apply for a SAT hearing, Peter Rogers has passed unnecessary legislation to prevent the SAT from compelling him, if I were to win, to issue net allotment and licence.

I believe this to be unconstitutional and a blatant breach of Section 171(1)A, FRMA, by Peter Rogers.

Yours faithfully

  
Mark Paxton



cc:     Bruce Donaldson  
          John Newby  
          Jon Ford

facsimile transmittal

**To:** Bruce Donaldson

**Fax:** 9321 1287

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**From:** Mark Paxton

**Date:** 22-Nov-2005

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**Re:**

**Pages:** 3

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Urgent       For Review       Please Comment       Please Reply       Please Recycle

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Please find attached a copy of my letter to Mr Max Ball of today's date.

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•  
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•  
•  
**facsimile transmittal**

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**To:** The Hon Jon Ford

**Fax:** 9425 4244

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**From:** Mark Paxton

**Date:** 22-Nov-2005

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**Re:**

**Pages:** 2

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Urgent     For Review     Please Comment     Please Reply     Please Recycle

•    •    •    •    •    •    •    •    •

Please find attached a copy of my letter to Mr Max Ball of today's date.

• •

## facsimile transmittal

To: John Newby

Fax: 9368 4034

**From:** Mark Paxton

**Date:** 22-Nov-2005

Re:

Pages: 2

Urgent

For Review

Please Comment

Please Reply

Please Recycle

Please find attached a copy of my letter to Mr Max Ball of today's date.

Legislative Council

TP051100

1100

Tabled November 29 2005

UNDER STANDING ORDER 43 TABLED  
PAPERS ARE NOT TO BE REMOVED  
FROM THE PRECINCTS OF THE HOUSE

(Please return by close of business same day)

## TABLED PAPER

TABLED BY: *MINISTER FOR FISHERIES* .....

HEADING: *QUESTIONS WITHOUT NOTICE* .....

SUBJECT: *CONSOLIDATED COPY OF PRAWN AND SCALLOP* .....

*FISHERIES MANAGEMENT PLAN (HON BRUCE DONNDSON)* .....

LAID UPON THE TABLE

OF THE

LEGISLATIVE COUNCIL

LEGISLATIVE COUNCIL

848

QUESTION WITHOUT NOTICE  
(Of which some notice has been given)

Tuesday, 29 November 2005

Bruce Donaldson to the Minister for Fisheries.

I refer to the original Notice amended to Amendment 1 of 2005 published in the Government Gazette of 11 November 2005 involving the Prawn and Scallop Fisheries.

1. Will the Minister inform the House the reason for the Amended Notice?
2. What scientific evidence supported or was used in arriving at this Amended Notice for the Prawn and Scallop Fisheries?
3. Will the Minister table any such documents, including Management Plans?
4. Is there any evidence of "Biological Sustainability" at risk?
5. If so, will the Minister table this in the House?

I thank the Hon. Member for some notice of this question.

For the Department of Fisheries:

1. The three key objectives of the amendment were to insert an end date of 15 November 2005 for the lodging of any further applications for managed fishery licences in the fishery, to explicitly state the capacity of the fishery in terms of trawl net head rope length and to recognise the historical use of try nets within the fishery. The licence application and grant process for the fishery took place in 1986 and the current head rope length in the fishery is a result of a long term Department-industry agreed policy position to continually reduce vessel numbers and effort in the fishery to support scallop stock sustainability and enhance the economic viability of the fleet.

2. The basis for the amendment was administrative not scientific.

3. I will table a consolidated copy of the management plan as it is now displayed on the Department of Fisheries website.

4. No

5. N/A



**QUESTION WITHOUT NOTICE**  
(of which some notice is given)

**Tuesday 29 November 2005**

---

**Hon Bruce Donaldson MLC to the Minister for Fisheries Hon Jon Ford MLC.**

I refer to the original Notice amended to Amendment 1 of 2005 published in the Government Gazette of 11 November 2005 involving the Prawn and Scallop Fisheries.

1. Will the Minister inform the House the reason for the Amended Notice?
2. What scientific evidence supported or was used in arriving at this Amended Notice for the Prawn and Scallop Fisheries?
3. Will the Minister table any such documents, including Management Plans?
4. Is there any evidence of "Biological Sustainability" at risk?
5. If so, will the Minister table this in the House?

## Parliamentary Question

**Minister Representing:**

Portfolio: Fisheries  
 Year: 2005  
 Parliament: 37  
 Session Number: 1  
 Chamber: Council

Question No: 934

Question Date: 29/11/2005

Answer Date: 29/11/2005

Question Type: Question Without Notice

Asked By: Hon BRUCE DONALDSON

Tabled Paper No:

**Question:**

### ABROLHOS ISLANDS AND MID-WEST TRAWL FISHERY

**934. Hon BRUCE DONALDSON to the Minister for Fisheries:**

I refer to the original notice involving the prawn and scallop fisheries as amended by amendment 1 of 2005, which was published in the *Government Gazette* on 11 November 2005.

- (1) Will the minister inform the house of the reason for the amended notice?
- (2) What scientific evidence supported or was used in arriving at this amended notice for the prawn and scallop fisheries?
- (3) Will the minister table any such documents, including management plans?
- (4) Is there any evidence that biological sustainability is at risk?
- (5) If so, will the minister table it in the house?

**Hon JON FORD replied:**

I thank the member for some notice of this question.

(1) The three key objectives of the amendment were to insert an end date of 15 November 2005 for the lodging of any further applications for managed fishery licences in the Abrolhos Islands and mid-west trawl fishery, to explicitly state the capacity of the fishery by prescribing trawl net head rope length and to recognise the historical use of try nets within the fishery. The licence application and grant process for the fishery took place in 1986 and the current head rope length in the fishery is a result of a long-term department and industry agreed policy position to continually reduce vessel numbers and an effort in the fishery to support scallop stock sustainability and enhance the economic viability of the fleet. On that basis, the fleet was reduced at a time when there was unlimited ability for many boats to come back into the fishery. If we had not taken that action, we would have ended up with a sustainability issue.

(2) The basis for the amendment was administrative, not scientific.

(3) I table the consolidated copy of the management plan as it is now displayed on the Department of Fisheries web site.

[See paper 1100.]

(4) No.

(5) Not applicable. I advise the member that there is one vacant licence within that plan.

Fisheries Act 1905

ABROLHOS ISLANDS AND MID WEST TRAWL LIMITED ENTRY FISHERY NOTICE  
1993

Arrangement

Clause

1. Citation
2. Interpretation
3. Declaration of limited entry fishery
4. Prohibition on fishing for prawns or scallops
5. Prohibition on selling or dealing
6. Criteria to determine the boats which may operate in the Fishery
7. Application for a licence
8. Details on a licence
9. Publication of details
10. Authorised means of operating in the Fishery
11. Crew limits
12. Closure of the Fishery
- 12A. Stowage of otter boards and otter trawl nets
- 12B. Requirement for the installation of an Automatic Location Communicator
- 12C. Presence in the Fishery
13. Transfer of licence and gear units
14. Boat replacement
15. Boat modification
16. Engine seals
17. Inspection of fishing gear, engines and seals
18. Restriction on unloading whole scallops
19. Applications and fees
20. Procedure before this Plan may be amended or revoked
- 20A. Offences and major provisions
21. Revocation
- Schedule 1
- Schedule 2

Fisheries Act 1905

ABROLHOS ISLANDS AND MID WEST TRAWL LIMITED ENTRY FISHERY NOTICE  
1993

Notice No. 604

FD 749/86

Made by the Minister under Section 32.

**Citation**

1. This notice may be cited as the *Abrolhos Island and Mid West Trawl Limited Entry Fishery Notice 1993*.

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**Interpretation**

2. In this notice unless the contrary intention appears —

- "ALC" means an Automatic Location Communicator as defined in regulation 55A of the regulations that is capable of transmitting to the Executive Director at any time accurate information as to the geographical position, course and speed of the authorised boat;
- "approved directions for use" means the directions for use of an ALC given by the Executive Director in a notice in writing to the master of an authorised boat or a licence holder;
- "approved form" means in a form approved by the Director;
- "authorised boat" means
  - (a) a licensed fishing boat the name, licensed fishing boat number and length of which are specified in a licence; or
  - (b) a boat specified in a written authority under regulation 132 where that boat is to be used in place of a boat described in (a).
- "calendar year" means the period of 12 months commencing on each first day of January and ending on the last day of the next December;
- "chafer" means a piece of net attached to the exterior surface of the cod end to protect it from wear;
- "closed waters" means any waters of the Fishery in which fishing is prohibited;
- "cod end" means that part of a trawl net furthest to the rear when the net is being towed which forms a pocket and acts as a receptacle for prawns or scallops taken by the net;
- "Code" means the Uniform Shipping Laws Code adopted by the Marine and Ports Council of Australia and published in the *Commonwealth of Australia Gazette* on 11 May 1981;
- "Fishery" means the Abrolhos Islands and Mid West Trawl Limited Entry Fishery declared under Clause 3;
- "gear unit" means 7.31 metres of net measured at the headrope;
- "headrope" means the rope onto which is attached the upper half of the mouth of the trawl net;
- "headrope length" means the distance measured along the headrope from where the net attaches to one end of the headrope to where it attaches to the other end of the headrope;
- "licence" means a managed fishery licence which authorises a person to fish for prawns or scallops in the Fishery;
- "liner" means a piece of net attached to the interior surface of the cod end to protect it from wear;
- "otter board" means one of the boards used on a trawl net to keep the mouth of the net open while under tow;
- "otter trawl net" means a fishing net designed or intended to be towed having its mouth or opening controlled by otter boards;
- "Port Area" means the area within 2 nautical miles of the locations specified in Schedule 2;
- "prawns" means all species of *decapod crustacea* of the Family *Penaeidae*;
- "regulations" means the *Fish Resources Management Regulations 1995*;
- "scallop" means any species of fish in the superfamily *Pectinacea* of the phylum *Mollusca*;
- and
- "sweeps" means the cables connecting the net to the back straps of the otter boards;
- "transferred" means the passing of ownership or effective control of a licence from one person to another person;
- "try net" means an otter trawl net with a headrope length not exceeding 5 metres.

**Declaration of limited entry fishery**

3. It is hereby declared that the use of trawl nets to take prawns or scallops in the waters described in Item 1 of Schedule 1 shall constitute a limited entry fishery to be called the Abrolhos Islands and Mid West Trawl Limited Entry Fishery.

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**Prohibition on fishing for prawns or scallops**

4. (1) Subject to subclause (2), a person shall not fish for prawns or scallops in the Fishery other than —  
(a) in accordance with this Plan; and  
(b) under the authority of a licence.  
(2) A person fishing in accordance with the Act for a non commercial purpose may fish for prawns or scallops in the waters described in item 1 of Schedule 1.

**Prohibition on selling or dealing**

5. (1) A person shall not sell or deal, or attempt to sell or deal in any way with prawns or scallops taken from the Fishery in contravention of this notice.  
(2) A person shall not sell or deal, or attempt to sell or deal with prawns or scallops taken from the Fishery unless those prawns or scallops were taken by the holder of a professional fisherman's licence when operating from an authorised boat.

**Criteria to determine the boats which may operate in the Fishery**

6. (1) The criteria that shall be applied to determine the boats which may operate in the Fishery are —  
(a) that immediately before the coming into operation of this notice the boat was authorised to take prawns and scallops in the Abrolhos Islands and Mid West Trawl Limited Entry Fishery; or  
(b) the boat replaces a boat to which paragraph (a) applied.  
(2) In addition to the criteria provided for in subclause (1), a criterion for the grant of a licence is that the application for the grant of the licence was received by the Executive Director on or before 15 November 2005.

**Application for a licence**

7. The owner of a boat which fulfils the criteria specified in Clause 6 may apply in accordance with Clause 19 for a licence authorising the boat to operate in the Fishery.

**Details on a licence**

8. A licence shall contain the following details —  
(a) the name and licensed fishing boat number of the boat in respect of which it is issued;  
(b) the name and address of the licensee of that boat;  
(c) the licence number;  
(d) the date of issue;  
(e) the period for which the licence is valid;  
(f) the number of gear units conferred by the licence; and  
(g) any conditions imposed on the licence by the Executive Director.

**Publication of details**

9. The Director may from time to time give notice of —  
(a) the names of licensees;  
(b) the names of boats and registration numbers of those boats; and  
(c) the number of gear units those boats may use,  
by publishing that information in such a manner as deemed appropriate.

**Capacity of the fishery**

9A. The maximum amount of headrope length of net, excluding the headrope length of the try nets specified in subclause 10(6), that may be used under the authority of all the licences in the waters of the Fishery other than the waters described in Item 3 of Schedule 1 is 336.26 metres.

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**Authorised means of operating in the Fishery**

10. (1) A person shall not use nets to fish in the Fishery other than nets that have –

- (a) the ground rope equal to or longer than the head rope;
- (b) the head rope sweeps less than or equal to the ground rope sweeps;
- (c) the head rope and ground rope sweeps equal to or longer than two metres; and
- (d) drop chains that are equal to or further apart than one metre.

(2) Unless otherwise authorised by the Director, a person shall not fish for prawns or scallops in the waters described in Item 2 or Item 4 of Schedule 1 other than by using a maximum of one try net and –

- (a) not more than two otter trawl nets at any one time; and
- (b) an otter trawl net or nets with a total headrope length not exceeding 29.24 metres.

(3) A person shall not fish for prawns or scallops in the waters described in Item 3 of Schedule 1 other than by using a maximum of one try net and –

- (a) two otter trawl nets with each trawl net having a headrope length not exceeding 14.62 metres; or
- (b) one otter trawl net with a headrope length not exceeding 18.3 metres.

(4) A net referred to in subclause (2) —

- (a) when used in the waters described in Item 2 or Item 4 of Schedule 1 shall —
  - (i) have meshes throughout of not less than 100 millimetres; and
  - (ii) not have chafers or liners covering more than the bottom half of the cod end;
- (b) when used in the waters described in Item 3 of Schedule 1 shall have meshes of not less than 45 millimetres in the cod end and 51 millimetres in the remainder; and
- (c) may have attached to each end of the headrope a single otter board the measurements of which do not exceed 2.29 metres in length and 0.91 metres in breadth.

(5) An authorised boat shall not be more than 375 boat units calculated in accordance with subclause (4) of clause 14.

(6) A boat, when being operated in the waters of the Fishery other than the waters described in Item 3 of Schedule 1, shall not be used to take, or attempt to take, prawns or scallops with more net measured at the headrope than the amount specified in gear units on the licence for that boat and one try net.

(7) Any otter trawl net, when being used in the Fishery, shall have only one ground chain attached to each net and that ground chain shall have links not exceeding 10 millimetres in diameter.

(8) A person must not fish in the waters of the Fishery by means of a try net or otter trawl net unless the person is fishing under the authority of a licence that authorises the use of not less than one gear unit.

**Crew limits**

11. Unless otherwise authorised in writing by the Minister a boat authorised to operate in the Fishery shall not have more than 13 persons on board the boat at any one time.

**Closure of the Fishery**

12. (1) A person acting under the authority of a licence must not fish for prawns or scallops at any time in any part of the Fishery other than in the parts, and at the permitted dates and times, specified in a notice in writing by the Executive Director made in accordance with subclause (2).

(2) Where the Executive Director is of the opinion that it is in the better interests of the Fishery to do so, the Executive Director may by notice in writing to all licence holders, –

- (a) prohibit fishing for prawns or scallops in the Fishery or in any part of the Fishery; or
- (b) permit fishing for prawns or scallops in the Fishery or in any part of the Fishery.

(3) The provisions of a notice made in accordance with subclause (2) may be made to apply at all times or at any specified time.

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**Stowage of otter boards and otter trawl nets**

12A. (1) Otter boards, warp wires and otter trawl nets carried on or attached to any boat shall be secured to that boat and kept out of the water at any time the boat is in a part of the Fishery closed to the taking of prawns or scallops

(2) An authorised boat, when in the waters described in Item 2 and Item 4 of the Schedule, shall not, at any time, be used to carry any net which has -

- (a) meshes less than 100 millimetres; or
- (b) chafers or liners covering more than half of the cod end

**Requirement for the installation of an Automatic Location Communicator**

12B. (1) For the purpose of this clause "approved" and "approved person" have the same meaning as provided for in regulation 55A of the regulations.

(2) A licence holder must not allow the authorised boat specified on that licence to be used in the Fishery unless—

- (a) an ALC has been installed in that boat in accordance with the approved directions for use and by an approved person;
- (b) the ALC installed on that boat has been serviced in accordance with the approved directions for use, by an approved person and at intervals specified by the Executive Director in the approved directions for use; and
- (c) the licence holder has given a legible copy of the approved directions for use to the master of that authorised boat; and
- (d) the ALC installed on the boat is being used in the manner specified in the approved directions for use.

(3) It is a condition of the licence that an authorised boat referred to in subclause (2) must not be used in the Fishery unless an ALC is fitted to the boat and serviced in accordance with subclause (2) and the approved directions for use are being complied with.

(4) It is a condition of a licence that regulation 55C of the regulations is complied with at all times.

**Presence in the Fishery**

12C. (1) The master of an authorised boat must, when intending to fish within the Fishery, not allow that boat to—

- (a) enter the waters of the Fishery; or
- (b) be outside a Port Area within the waters of the Fishery;

at any time when any part of the Fishery is open to fishing unless—

- (c) the Department has received from a master of that boat a nomination of intention to enter the Fishery and comply with the requirements of the Management Plan; and
- (d) that nomination is current.

(2) If the Department receives a nomination pursuant to subclause 1(c) in any calendar year, that nomination is current for the remainder of that year unless—

- (a) the Department receives a nomination from a master of that boat cancelling it; or
- (b) the boat leaves the waters of the Fishery.

(3) A licence holder must not allow the master of an authorised boat specified on that licence to fish in the waters of the Fishery unless—

- (a) the Department has received a nomination pursuant to subclause 1(c); and
- (b) that nomination is current.

(4) The master of an authorised boat must not allow that boat to enter or be under way in closed waters when any other part of the Fishery is open to fishing unless the Department—

- (a) has received a nomination to enter or remain in closed waters (as the case may be); and
- (b) received the nomination no more than one hour before the boat entered or was under way in those waters.

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- (5) Any nomination to the Department made in accordance with this clause must be made using an ALC in accordance with the approved directions for use.
- (6) In any proceedings for an offence against the Act, unless proven to the contrary, a reading of the position of an authorised boat received by the Department from an ALC installed on that boat is to be taken to be conclusive proof of the actual position of that boat at that time.
- (7) For the purposes of section 62(l) of the Act the areas specified are the areas detailed in Items 1 to 4 in Schedule 1.

#### Transfer of licence and gear units

13. (1) With the prior written approval of the Director —
  - (a) a licence granted under this notice may be transferred and the licence endorsed accordingly; and
  - (b) the holder of a licence may transfer all or part of the gear units allocated to that licence to one or more licences provided that any transfer involves a minimum of one half of one gear unit and that any transfer of more than one half of one gear unit shall be in multiples of one half of one gear unit.
- (2) A licensee may accumulate gear units.
- (4) Where all the transferable gear unit entitlement of a licence has been transferred to another licence, the licence from which the entitlement was transferred shall be cancelled.
- (5) Notwithstanding the provisions of subclause (2) the maximum headrope length that may be used by any authorised boat at any one time is the length specified in Clause 10.

#### Boat replacement

14. (1) The licensee of an authorised boat may apply to the Director to replace the boat to which the licence applies ("the licensed boat") with another boat ("a replacement boat").
- (2) Subject to subclause (3) and if the Director considers it appropriate to do so, the Director may approve the replacement of the licensed boat.
- (3) A replacement boat shall not exceed 375 boat units calculated in accordance with subclause (4).
- (4) For the purpose of this Clause —
  - (a) "B" means "breadth" as defined in the Code;
  - "D" means "depth" as defined in the Code;
  - "ML" means "measured length" as defined in the Code measured in accordance with Appendix A to Section 1 of the Code; and
  - "IEP" is installed engine power in kilowatts of the boat's engine as certified by the supplier;
- (b) "boat units" means units calculated in accordance with the following formula —

$$\frac{ML \times B \times D \times 0.6}{2.83} + IEP$$

#### Boat modification

15. The licensee of an authorised boat shall not, without the prior approval of the Director —
  - (a) replace the main engine with an engine having a greater power rating than the engine being replaced;
  - (b) modify the main engine of the boat such that the power rating of the engine is increased; or
  - (c) change or modify the configuration of the gearbox, propeller shaft or other drive component.

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**Engine seals**

16. (1) The owner of a boat licensed to operate in the Fishery shall —  
(a) on the written instruction of the Director cause the suppliers of an engine for the boat to install a lead seal on the fuel pump of the engine; and  
(b) authorise the Director to install or permit the installation of any further lead seals as the Director may require.

(2) The owner of a boat which has had a lead seal installed on the engine in accordance with subclause (1)(a) or (b) shall —  
(a) not permit the removal or allow any interference to the seal without the prior written approval of the Director; and  
(b) immediately report to the Director any interference to the seal caused by accident or mechanical requirements and as soon as practical thereafter arrange for re-certification of the installed engine power by the supplier and the installation of a new seal.

**Inspection of fishing gear, engines and seals**

17. The owner of a boat licensed to operate in the Fishery shall permit the inspection of the engine configuration and any seal by an officer of the Fisheries Department and shall permit on board any person the officer may require for such inspection.

**Restrictions on unloading whole scallops**

18. (1) A persons shall not bring an authorised boat into any port or mainland anchorage unless all whole scallops on that boat are bagged.

(2) A person shall not unload, or permit or allow another person to unload —  
(a) whole scallops, unless those scallops are unloaded from an authorised boat;  
(b) whole scallops, from an authorised boat unless those scallops are bagged; or  
(c) more than the permitted number of bags of scallops from an authorised boat.

(3) A person shall not use an authorised boat to carry more than the permitted number of bags of scallops.

(4) All whole scallops which are not unloaded and remain on an authorised boat shall be bagged.

(5) When whole scallops have been unloaded from an authorised boat the total number of bags of whole scallops unloaded from, and held on, that boat shall not exceed the permitted number of bags of scallops.

(6) The total weight of a bag of whole scallops shall not exceed 15 kilograms.

(7) For the purpose of this clause —  
“bagged” means the scallops are contained within a standard bag;  
“permitted number of bags of scallops” means 100 bags of whole scallops multiplied by the number of gear units specified on the licence;  
“standard bag” means a bag, which when laid flat has dimensions which do not exceed 55cm in width and 85cm in length.

**Applications and fees**

19. Applications under clauses 7, 13, 14, 15 and 18 shall be —  
(a) in the approved form;  
(b) lodged in accordance with the instructions if any; and  
(c) accompanied by the fee prescribed by regulation.

**Procedure before this Plan may be amended or revoked**

20. For the purposes of section 65(1) of the Act the licensees are the persons to be consulted before this Plan is amended or revoked.

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**Offences and major provisions**

20A. A person who contravenes a provision of—  
(a) clauses 4, 5, 10, 11, 12, 12A, 12B(2)(a), 12C(4), 15, 16, 17 or 18; or  
(b) clauses 12B(2)(c); 12C(1), 12C(3) or 12C(5)  
commits an offence and for the purpose of section 75 of the Act the offences specified in subclause (a) are major provisions.

**Revocation**

21. The following notices are cancelled —

Notice Number	Date published in the <i>Gazette</i>
440	30 March 1990
485	22 March 1991
499	31 May 1991
557	22 December 1992

**Schedule 1**

**Item 1—Description of the Fishery**

All waters of the Indian Ocean between 27°51' south latitude and 29°03' south latitude on the landward side of a line commencing at the intersection of 27°51' south latitude and 113°08.25' east longitude; thence south south east along the geodesic to the intersection of 27°55' south latitude and 113°10' east longitude; thence continuing south south east along the geodesic to the intersection of 28°35' south latitude and 113°29' east longitude; thence south east by south along the geodesic to the intersection of 29° south latitude and 113°46' east longitude; thence continuing south east by south along the geodesic to the intersection of 29°03' south latitude and 113°48.15' east longitude, being the end point of the line.

**Item 2—Abrolhos Island Area**

All waters of the Fishery bounded by a line commencing at the intersection of 27°51' south latitude and 113°46' east longitude; thence southeasterly along the geodesic to the intersection of 29°03' south latitude and 114°18' east longitude; thence extending west along the parallel to the intersection of 29°03' south latitude and 113°48.15' east longitude; thence extending north west by north along the geodesic to the intersection of 29° south latitude and 113°46' east longitude; thence continuing north west by north along the geodesic to the intersection of 28°35' south latitude and 113°29' east longitude; thence north north west along the geodesic to the intersection of 27°55' south latitude and 113°10' east longitude; thence continuing north north west along the geodesic to the intersection of 27°51' south latitude and 113°08.25' east longitude; thence extending east along the parallel to the commencement point.

**Item 3—Port Gregory Area**

All waters of the Fishery bounded by a line commencing at the intersection of 27°51' south latitude and 114°03' east longitude; thence south along the meridian to where it intersects with 28°13' south latitude; thence west along the parallel to the intersection of 113°58' east longitude; thence south along the meridian to the intersection of 28°17' south latitude; thence east along the parallel to the intersection of 114°10' east longitude; thence northerly along the geodesic to the intersection of the high water mark at 28°06.83' south latitude (Shoal Point); thence northerly along the high water mark to the intersection of 27°51' south latitude; thence west along the parallel to the commencement point.

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Item 4

All waters of the Fishery bounded by a line commencing at the intersection of 28°31' south latitude and 114°11' east longitude; thence east along the parallel to the intersection of 114°17' east longitude; thence south along the meridian to the intersection of 28°36' south latitude; thence west along the parallel to the intersection of 114°11' east longitude; thence north along the meridian to the commencement point.

Schedule 2  
Port Areas

1. Geraldton Port—The area within 2 nautical miles of the intersection of 28°46.47' south latitude and 114°35.298' east longitude.
2. Port Gregory—The area within 2 nautical miles of the intersection of 28°11.45' south latitude and 114°14.94' east longitude.

Dated this 18th day of May 1993.

MONTY HOUSE, Minister for Fisheries.

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# facsimile transmittal

**To:** Department of Fisheries      **Fax:** 9482 7224

**Attention:** Shane O'Donahue

**From:** Mark Paxton

**Date:** 30-Nov-2005

**Re:**

**Pages:**

Urgent

For Review

Please Comment

Please Reply

Please Recycle

Dear Shane

Further to my request of 9 November 2005 to charge Peter Rogers under s171(A) of the FRMA, I wish to defer this request until my forthcoming SAT hearing is completed.

Also, in line with the wishes of the Minister, Jon Ford, please make the following information available to me:

- Full licence/unit history of AIMWTF industry;
- Copy of the instruction by Jon Ford to Peter Rogers which resulted in the amendments to Notice 1993, Section 6 & 9A;
- Copy of the scientific study to ascertain the biological sustainability of the Abrolhos scallop industry which recommended said amendments; and
- All correspondence/notes/internal memos/comments pages of FBLs, etc relating to Concession 1921 & 1890, and my subsequent claim to said fishing right, ie to the Ombudsman, DPP State Solicitor, Blenkinsop Faye Nominees and myself, and any legal representatives of the above.

Yours sincerely

  
Mark Paxton



**Department of Fisheries**  
Government of Western Australia



*Fish for the future*

Your Ref:  
Our Ref:  
Enquiries:

File: MWG193/98-07  
S. O'Donoghue (08) 9482 7306

[REDACTED]

[REDACTED]

***Abrolhos Islands and Mid West Trawl Fishery Management Plan Amendment 2005***

I am writing to inform you of a recent amendment to the Abrolhos Islands and Mid West Trawl Fishery Management Plan 1993 that took effect on 11 November 2005.

The Plan was amended after it became apparent that the entry criteria contained in the current 1993 management plan for the fishery were still "live" and could be met on technical grounds by the current owners of any vessels which operated in the fishery in 1993.

The Minister amended the management plan under the provisions of section 65(3) of the *Fish Resources Management Act 1994* as an urgent amendment. In line with the provisions of section 65(4), I am writing to you on the Minister's behalf regarding the amendment and to invite any comments you may have.

The key aspects of the amendment are listed below:

- a cut-off date of 15 November 2005 for the lodgement of applications for managed fishery licences for the fishery has been inserted;
- the capacity of the fishery has been explicitly included in the management plan as 336.26m of trawl net head rope, this being the current total amount of head rope authorised within the fishery;
- the use of a try net in the fishery has been restricted to those managed fishery licences having a minimum of one gear unit endorsed on the licence; and
- a small number of administrative and grammatical corrections.

A copy of the relevant Government Gazette can be accessed on the State Law Publisher's website at [www.slp.wa.gov.au](http://www.slp.wa.gov.au) and a consolidated version of the management plan for the fishery is also available via the Department's website at [www.fish.wa.gov.au](http://www.fish.wa.gov.au).

3rd Floor, The Atrium 168 St Georges Terrace Perth Western Australia 6000  
Telephone +61 8 9482 7333 Facsimile +61 8 9482 7389

Email: [headoffice@fish.wa.gov.au](mailto:headoffice@fish.wa.gov.au)  
Website <http://www.fish.wa.gov.au>  
ABN 55 689 794 771

Any comments or questions regarding the management plan amendment can be directed to the author by telephone (08) 9482 7393 or in writing at the Department of Fisheries, Locked Bag 39, Cloisters Square Post Office, Perth WA 6850.

Yours sincerely



Shane O'Donoghue  
Principal Management Officer  
Department of Fisheries

1 December 2005

**FORM 7**  
**APPELLANT'S CASE**

SUPREME COURT OF WESTERN AUSTRALIA Court of Appeal		No: CACV 126 of 2006  Appellant's Case (r.29)
Parties to the appeal	<b>MARK ASHLEY PAXTON</b> Appellant <b>MINISTER FOR FISHERIES &amp; EXECUTIVE DIRECTOR OF DEPARTMENT OF FISHERIES</b> Respondent	
Notice	Attached to this form are these documents in this order- <ul style="list-style-type: none"> <li>• Appellant's grounds of appeal</li> <li>• Appellant's submissions</li> <li>• Appellant's legal authorities</li> <li>• Orders wanted</li> <li>• Draft chronology</li> <li>• Draft appeal book indexes</li> </ul>	
Certificate	I certify- <ul style="list-style-type: none"> <li>• That in preparing the attached documents I have fully prepared the Appellant's case; and</li> <li>• That in all respects other than the preparation of the appeal book, the appellant is ready for the hearing of the appeal.</li> </ul>	
Time estimate	I estimate it will take 30 minutes to orally present the appellant's case at the hearing of this appeal.	
Signature of Appellant or lawyer	 Appellant/Appellant's lawyer	Date: <i>2 March 2007</i>
<b>Appellant's details for service</b>		
Name	LEASK & CO	
Street address	26 Cliff Street, Fremantle, WA 6160	
Telephone	08 9430 6688	Fax No: 08 9430 4044
Email address	law@leask.com.au	
Reference No.	1146/DL	

SUPREME COURT OF WESTERN AUSTRALIA  
Court of Appeal

No: CACV 126 of 2006  
**Grounds of Appeal**

**MARK ASHLEY PAXTON**

Appellant

**MINISTER FOR FISHERIES &  
EXECUTIVE DIRECTOR OF DEPARTMENT OF FISHERIES**  
Respondents

### **APPELLANT'S GROUNDS OF APPEAL**

1. The learned Master erred in fact and in law in finding that:
  - (a) the conclusion at which the second respondent arrived as a result of the Department of Fisheries internal inquiries as set out in the second respondent's letter dated 25 October 2005 did not constitute a decision which affected the Appellant's rights or gave rise to legal consequences; and
  - (b) the conclusions reached by the second respondent as to whether the Department of Fisheries was at fault as alleged by the Appellant in connection with the transfer of the managed fishery licence could not be said to affect the Appellant's legal rights or gave rise to legal consequences; and
  - (c) the second respondent having caused internal departmental inquiries to be conducted to ascertain whether there was any substance in the appellant's allegations and if so what if anything the second respondent might be prepared to do to compensate the appellant, the outcome of those inquiries was not a decision which affected the appellants legal rights in any relevant respect or gave rise to legal consequences.  
as such findings were inconsistent with:
    - (i) the statement by the then Minister of Fisheries in his letter dated 22 December 2003 that he would consider the matters raised by the appellant and if appropriate would amend the *Abrolhos Islands and Midwest Trawl Fishery Management Plan 1993* to provide the Appellant with an opportunity to apply for the grant of a new licence; and

- (ii) the statement by the first respondent in his letter dated 21 October 2005 that, the matter of the appellant's claim of a lost right to fish having been concluded, the appellants application for a managed fishery licence could be finalised.
- 2. The learned Master erred in fact and in law in not finding that the outcome of the Department of Fisheries internal inquiries was relevant to the appellant's fishing history and should be taken into account under section 71(2) and/or section 72(2) of the *Fish Resources Management Act 1994* (WA) ("the Act") on an application by the appellant for a managed fishery licence, and that the outcome of the said enquiries was a decision which was capable of affecting the appellant's rights, since subsections 71(2) and 72(2) of the Act respectively require the second respondent to take the appellant's fishing history, and his prior holding of an authorisation, into account on an application by the appellant for an authorization.
- 3. The learned Master erred in fact and in law in finding that in the circumstances of the case fairness did not require that the second respondent provide the appellant with an opportunity to be heard on matters adverse to him since the outcome of the enquiry at the very least may have lead to a final decision which affected the appellant's rights.

SUPREME COURT OF WESTERN AUSTRALIA  
Court of Appeal

No: CACV 126 of 2006  
**Appellant's submissions**

**MARK ASHLEY PAXTON**

Appellant

**MINISTER FOR FISHERIES &  
EXECUTIVE DIRECTOR OF DEPARTMENT OF FISHERIES**  
Respondents

### **APPELLANT'S SUBMISSIONS**

#### **Grounds 1 and 2**

1. The enquiry the outcome of which the appellant contends is a reviewable decision, and in respect of which the appellant seeks an order nisi, was conducted in response to the appellant's request for the second respondent to recognise the appellant's claimed right to a managed fishery licence and a unit entitlement and take action to restore those rights (p.5, appellant's affidavit sworn 21 April 2006 ("the appellant's affidavit")).
2. The concept of a "right" includes an interest or legitimate expectation (Schmidt v Secretary of State for Home Affairs [1969] 2 Ch 149 at 170 per Lord Denning MR).
3. The appellant's rights which it is contended were affected by the decision were his ability to
  - (a) have the Minister of Fisheries amend the *Abrolhos Islands and Midwest Trawl Fishery Management Plan 1993* to provide the Appellant with an opportunity to apply for the grant of a new licence. The enquiry was accordingly one step in a process that could lead to the applicant successfully applying for an authorization and outcome of the enquiry affected his actual or prospective right to make such an application (R. v Brisbane City Council; Ex Parte Read (1985) 57 LGRA;
  - (b) have the Department of Fisheries involvement in or responsibility for the "loss" of the appellant's licence and unit ("the lost rights") taken into consideration pursuant to sections 71(2) and/or 72 of the *Fish Resources Management Act 1994* (WA) ("the Act") in any application the applicant might make for the issue of a managed fishery licence and unit entitlement:

(i) section 71 of the Act provides that

*“(1) The fact that a person engaged in fishing, or used any boat for fishing, in a fishery before a management plan was determined for the fishery is not to be taken as conferring upon that person any right to the grant of an authorization if a management plan is determined for that fishery.*

*(2) Despite subsection (1), the Executive Director is to take into account a person’s past history of fishing in a fishery when determining whether or not to grant the person an authorization.”*

(ii) section 72 of the Act provides that

*“(1) The grant of an authorization to any person is not to be taken as conferring on that person any right to the grant of another authorization if a subsequent management plan is determined for the fishery*

*(2) Despite subsection (1), the Executive Director is to take into account the fact that a person held an authorization when determining whether or not to grant the person another authorization.*

(iii) Accordingly, in determining whether or not to grant the appellant an authorization the second respondent was obliged to take into account the appellant’s fishing history and the fact that he had held an authorization.

(iv) The appellant’s “fishing history” includes the circumstances in which the lost rights were alienated and the Department of Fisheries involvement in or responsibility therefore. Further, the circumstances in which the lost rights were alienated would also be relevant in the second respondent’s consideration of the fact that the appellant had held an authorization. The fact of the prior authorization and the circumstances of the alienation of the lost rights were each a relevant matter to be considered by the second respondent in determining an application by the appellant for an authorization .

(v) The second respondent’s conclusion, being a finding in relation to rights the applicant enjoyed arising from the authorization which had previously been issued to him, the exercise of which constituted part of his fishing history, therefore had a direct bearing on the determination by the second respondent of an application by the appellant for an authorization and affected, or could have affected, his rights in applying for an authorization.

3. The nexus between the enquiry on the one hand and on the other the appellant's application for an authorization is evident from:
  - (a) the first respondent's letter to the appellant dated 21 October 2005 in which the first respondent stated that, the matter of the appellant's claim of a lost right to fish having been concluded, the appellant's application for a managed fishery licence could be finalised; and
  - (b) the First Respondent's letter to the Appellant dated 21 October 2005 (p59, Appellant's affidavit) in which the First Respondent states that "*I now view the matter of your claim of a lost right to fish in the Fishery as concluded. I am advised that the matter regarding your application form for a managed fishery licence submitted in December can now also be finalised and that the Executive Director has written to you regarding your application form.*"  
for if there was no connection between the outcome of the enquiry and the determination of the appellant's application for an authorization then the latter would have been capable of determination irrespective of and without reference to the status of the enquiry.
4. If the determination of the appellant's application for an authorization was in any way influenced by the outcome of the enquiry, the appellant's rights (being the rights conferred by section 66 of the Act to make application for the grant of an authorization) were affected by the outcome of the enquiry and that outcome is accordingly a decision amenable to review.

### **Ground 3**

5. The learned Master's reasoning in relation to the issue of procedural fairness at paragraphs 47 to 49 of his reasons appears to proceed on the basis that the scope of the enquiry was limited to a claim by the appellant for compensation, whereas the appellant had requested an enquiry into the Department of Fisheries' involvement in the alienation of the lost rights and redress which included both restoration of the lost rights and compensation.

6. The requirement for procedural fairness arises because the power being exercised by the second respondent is one which may “*destroy, defeat or prejudice a persons rights, interest or legitimate expectation*” (Annetts v McCann (1990) 170 CLR 596 at 598).
7. The decisive issue is the nature of the power, not the character of the proceeding which attends its exercise (Ainsworth v Criminal Justice Commission (1992) 175 CLR 564).
8. Given the connection between the outcome of the enquiry and the appellant’s rights as referred to at paragraph 3 above, there is no apparent explanation for the learned Master’s finding that the appellant was not entitled to be heard on matters adverse to the outcome of the enquiry as requested by the appellant, a finding which appears to be at odds with the authorities referred to in those paragraphs.

A handwritten signature in black ink, appearing to read "David Leask", is placed above a horizontal dotted line.

David Leask

SUPREME COURT OF WESTERN AUSTRALIA  
Court of Appeal

No: CACV 126 of 2006  
**Appellant's Legal Authorities**

**MARK ASHLEY PAXTON**

Appellant

**MINISTER FOR FISHERIES &  
EXECUTIVE DIRECTOR OF DEPARTMENT OF FISHERIES**  
Respondents

### **APPELLANT'S LEGAL AUTHORITIES**

#### **Written Laws**

1. *Fish Resources Management Act, 1994 (WA) s66; s71; s72*
2. *Abrolhos Islands and North West Trawl Fishery Management Plan, 1993*

#### **Judgments**

1. Annetts v McCann (1990) 170 CLR 596 at 598
2. Ainsworth v Criminal Justice Commission (1992) 175 CLR 564
3. Minister of State for Immigration & Ethnic Affairs v Teoh (1995) 183 CLR 273
4. Re Minister for Immigration & Multicultural Affairs; ex parte Lamb (2003) 214 CLR 1
5. Re Refugee Review Tribunal; ex parte Aala (2000) 204 CLR 82
6. Schmidt v Secretary of State for Home Affairs [1969] 2 Ch 149 at 170
7. Talbot v Lane (1994) 14 WAR 120
8. R v Brisbane City Council; Ex parte Read (1985) 57 LGRA
9. Re MacTiernan; ex parte Coogee Coastal Coalition Incorporated [2004] WASC 264
10. Re Western Australian Planning Commission; ex parte South Fremantle/Hamilton Hill Residents Association Inc [2005] WAFC 50
11. Kioa v West (1985) 159 CLR 550

SUPREME COURT OF WESTERN AUSTRALIA  
Court of Appeal

No: CACV 126 of 2006  
**Orders Wanted**

**MARK ASHLEY PAXTON**

Appellant

**MINISTER FOR FISHERIES &  
EXECUTIVE DIRECTOR OF DEPARTMENT OF FISHERIES**  
Respondents

**ORDERS WANTED**

1. Appeal allowed from Master Newnes's decision that there was no reviewable decision by the First Respondent in informing the Appellant that the enquiry had been completed and the claim by the Appellant dismissed.
2. Appeal allowed from Master Newnes's decision that there was no reviewable decision by the Second Respondent and that the Appellant does not have an arguable case.
3. Order nisi granted directed to the First Respondent and the Second Respondent to show cause why a Writ of Certiorari directed to the First Respondent and the Second Respondent should not be issued.
4. The First and Second Respondents pay the Appellant's costs of this Appeal and the costs of the application for order nisi.
5. There be liberty to apply.

SUPREME COURT OF WESTERN AUSTRALIA  
Court of Appeal

No: CACV 126 of 2006  
**Draft Chronology**

**MARK ASHLEY PAXTON**

Appellant

**MINISTER FOR FISHERIES &  
EXECUTIVE DIRECTOR OF DEPARTMENT OF FISHERIES**  
Respondents

**DRAFT CHRONOLOGY**

**Date           Event**

20/11/1986 Appellant issued with Fishing Boat Licence LFBG 249 and Limited Entry Fishing Licence 1921.

28/08/1988 Appellant transferred MFL 1929 to Mandare Holdings Pty Ltd.

00/00/1988 Appellant sold LFBG 249.

00/00/1990 Appellant arranged for transfer of MFL 1921 to Faye & Blenkinsop Nominees Pty Ltd.

00/05/1991 Faye & Blenkinsop Nominees Pty Ltd transferred MFL 1921 to third parties without Appellant's knowledge or consent.

22/12/2003 Minister for Agriculture, Forestry & Fisheries wrote to Appellant, granting ministerial exemption.

18/02/2004 Appellant wrote to Second Respondent, claiming recognition of one Managed Fishery Licence and one unit and requested action to restore the rights.

22/12/2004 Minister for Agriculture, Forestry & Fisheries wrote to Appellant, advising that the exemption would remain in force until 31/12/2005.

09/03/2005 Minister for Agriculture, Forestry & Fisheries wrote to Appellant, advising that the exemption would continue in force until the Department of Fisheries investigation into the Appellant's claims had been completed.

21/10/2005 First Respondent's letter to Appellant, advising that enquiry into claimed "lost right to fish" concluded.

25/10/2005 Second Respondent's letter to Appellant, advising of outcome of enquiry.

23/04/2006 Ex parte notice of originating motion, CIV 1395 of 2006, issued.

**Date**      **Event**

11/08/2006 Application for an order nisi for a Writ of Certiorari heard.

05/09/2006 Application for order nisi dismissed.

26/09/2006 Appeal notice filed.

SUPREME COURT OF WESTERN AUSTRALIA  
Court of Appeal

No: CACV 126 of 2006  
**Draft Appeal Book  
Indexes**

**MARK ASHLEY PAXTON**

Appellant

**MINISTER FOR FISHERIES &  
EXECUTIVE DIRECTOR OF DEPARTMENT OF FISHERIES**  
Respondents

**DRAFT APPEAL BOOK INDEXES**

**WHITE APPEAL BOOK**

No	Document	Date	Page
1.	Index to the White Appeal Book		1
2.	Appeal Notice	26/09/2006	2
3.	Notice of First & Second Respondents' Intention		3
4.	Appellant's case	02/03/2007	
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7.	Certificate of Correctness of Appeal Book		

**BLUE APPEAL BOOK**

8.	Index to the Blue Appeal Book		1
9.	Order dismissing Originating Motion	05/12/2006	2 - 3
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**GREEN APPEAL BOOK**

12.	Index to the Green Appeal Book		
13.	Transcript of hearing before Master Newnes	11/08/2006	
14.	Affidavit of Mark Ashley Paxton, sworn 21 April 2006, and annexures "MAP-1" – "MAP-3"	21/02/2006	

# LEASK & CO.

BARRISTERS & SOLICITORS  
ABN 11 113 988 134

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The Hon Jon Ford, JP, MLC  
14<sup>th</sup> floor  
May Holman Centre  
32 St George's Terrace  
PERTH WA 6000

Our Ref: 1078\DL:gw  
Your Ref: MT3913

13 March 2006

Dear Sir

## MARK PAXTON : ABROLHOS ISLANDS & MID-WEST TRAWL MANAGED FISHERY

We act for Mark Paxton who, as you know, has a pending application for a licence for the above fishery.

As you will also be aware, our client had been granted an exemption whereby he was allowed to fish the 2004 Abrolhos season and, following variation of the exemption, the 2005 season.

In your letter of 21 October 2005, you stated that you would not be renewing the ministerial exemption in light of "*the outcome of the investigation*".

Although Mr Rogers' letter of 25 October 2005 does not contain an express indication as to the nature and scope of the investigation, the evidence considered and submissions made, or the decision reached and the reasons therefore, it can reasonably be inferred that the outcome was to not recognise our client's right, given the recommendation given to you that you do not extend or renew the exemption granted to our client for the 2004 and 2005 seasons.

Mr Rogers' said letter concludes by stating that "*The matter of your application for the grant of a managed fishery licence quite separate and distinct from the circumstances surrounding cancellation of LEFL 1921 and LEFL 1890*".

It is our client's contention that the circumstances surrounding the cancellation of the two LEFs and the current application for the grant of a managed fishery licence are inextricably connected and that the Executive Director will, and, if he does not, should, take our client's claim to a "lost right" into account in considering his application for a managed fishery licence. Indeed, the consideration by the Executive Director of our client's claim in the context of his application for a managed fishery licence is impliedly referred to in the Executive Director's letter to our client dated 10 October 2004, a copy of which is enclosed for ease of reference.

We submit that there is nothing in the Executive Director's letter dated 25 October 2005 to suggest that the "...*investigation into the claims you have raised regarding the cancellation of one AIMWTMF licence*", as referred to in the Minister's letter dated 22 November 2004, has been finalised. Indeed, the letter states that "...*I have sought legal evidence from State Solicitor's Office on aspects of your claims*" (emphasis added), indicating that the Executive Director has only given consideration to unspecified selective elements, rather than the totality, of our client's claim.

Until such time as our client is advised as to what aspects of his claim have been investigated, by whom, how and with what outcome, and he has been advised of and given the opportunity to pursue any rights of review or appeal, it cannot be said that the investigation of our client's claims has been finalised.

Given the repeated statements made by the former Minister for Fisheries that the exemption would be given to our client until the outcome of the investigation was known, we believe that the exemption should be extended to the 2006 season as, quite clearly, the promised investigation has either not been undertaken or concluded or, if it has been, our client has not been properly advised of the nature and outcome of the investigation nor given the opportunity to seek a review or institute an appeal in relation to any decision which has been made.

Our client's application for the managed fishery licence has been outstanding since 1998. When the writer appeared before the President of the State Administrative Tribunal on 28 February 2006, the Department's representative advised the President that the application for the managed fishery licence was outstanding in part because some information was awaited from the applicant. We indicated to the President, and it was accepted by the Department's representative, that, so far as the applicant was concerned, there was no outstanding request for information and, indeed, the Department's representative advised the President that the Department would be seeking further information from the applicant but had not, at that stage, done so. As at the time of writing there has still been no further request for information addressed to our client.

As you will be aware, the Abrolhos fishing season commences on 4 April 2006. In the event that the application for a managed fishery licence is granted our client will not have sufficient time prepare and crew his vessel. If the application is refused, he will not be able to make application to the SAT in time for him to participate in the 2006 Abrolhos season. In either case he will suffer considerable financial loss.

Please therefore confirm that the exemption will be extended to the 2006 season whereon our client will submit an application in accordance with the regulations.

Yours faithfully

LEASK & CO

Encl

14/3/2006

I, MARK PAXTON, of 2 Mardie Street,  
Beaconsfield, WA 6162, am the promoter  
of this petition which contains signatures

## PETITION

To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.

I, the undersigned, of Western Australia respectfully request an enquiry into the Fisheries Department of Western Australia regarding:

### Facts and circumstances

Prior to 1994, an “informal system of register” existed to recognise and safeguard beneficial ownership of fishing rights. This system had no written parameters (legislated into Acts or Notices) for the Department or fishermen to rely and act upon. Fisheries assumed responsibility to notify beneficial owner, of fishing boat licence holder’s intention to transfer

NB: Licensing system:

Fishing Boat Licence (FBL)  $\Rightarrow$  Limited Entry Fishing Licence (LEF)  $\Rightarrow$  Units (eg cray pots or fathoms of net)

“Entitlements attached to the fishing boat licence are also considered to be owned by that licensee” - Peter Rogers, 14/02/1994

This system was necessary due to the licensing system not recognising a person’s actual ownership if leasing an FBL but owning the LEF.

This system was inadequate and applied incompetently. Therefore, in respect of 7.3(A), the “structure, efficiency and effectiveness” of this licensing system is questionable.

As evidenced, I was recognised and recorded as beneficial owner through an “informal system” that had no parameters.

Subsequent to the transfer of said fishing right, Peter Rogers and Peter Millington have made repeated misleading and deceiving statements to conceal:

- (a) Blenkinsop Fay Nominees (FBL holder) fraudulent sale of my fishing right; and
- (b) Their failure of duty of care.

Examples of misleading statements:

- (a) Peter Rogers, 14/02/1994 – “Apparently... Mr Paxton has... maintained some form of ownership outside of the Fisheries regulations.”

- (b) Peter Rogers, 14/02/1994 - "Mr Paxton ceased to own the AITLEF licence when he first transferred it to Mandare Holdings."
- (c) Letter, Ombudsman to Paxton 29/05/1998 - "I take due note of Mr Millington's letter of 10 March 1993 (att 12) to you and have been advised that Mr Millington has confirmed that he was aware at the time that you had claimed to be the beneficial owner."

Several other instances can be found in my letter to Peter Rogers, 18/02/2004, which I forwarded to the Hon Barry House, MLC.

Further to this situation is legislation passed on 11/11/2005 that has no use or purpose but to frustrate due process (State Administrative Tribunal (SAT)) and deprive me of (if proved in SAT) a legal right to fish. See letter to Barry House.

Note: attachments refer to letter sent to the Hon Barry House on 24/11/2005.

### **Chronology**

23/08/1988 Mark Paxton sells FBL G298, transfers LEF for AITF (being the fishing right in question) to LFBF 780 – beneficial ownership by Mark Paxton recorded on “comments” page of LFBF 780, see att.8.

1990 1 unit transferred from LFBF 780 to LFB G249 “The entitlement was transferred to them (owners of LFB G249) on your application”, Peter Rogers letter, 25/05/1998, recognising my beneficial ownership.

April 1990 Meeting, Paxton & Millington (Director of Licensing), Att.12 & 17 :

Letter, P Millington to M Paxton, 10/03/1993 answering questions relating to meeting

Question 1: Did you have a meeting with Mark Paxton in early 18990 concerning Limited Entry Licence 1921 recognising this endorsement as Mark Paxton's even though it was on LFB F780 licensed in the name of Bert Boschetti?

Answer: I did have a meeting in April 1990 about a proposal by yourself concerning the transfer of Abrolhos Islands and Mid West Trawl Limited Entry Fishery Licence 1921 to a Western Australian Fishing Boat Licence G249 in the name of Blenkinsop Nominees and J&K Fay. It was my understanding at that meeting you were the beneficial owner at that time of the Limited Entry Fishery Licence.

Question 2: Did this discussion include consideration of the transfer of the LEF licence 1921 to LFB G429 with you still regarding it as Mark Paxton's?

Answer: Yes, see 1, above.

03/05/1991 Blenkinsop Faye Nominees, owners of LFB G249 (FBL) "considered owners" of my fishing right, transfer and sell said fishing right.

Your petitioner therefore respectfully requests that the Legislative Council will hold an enquiry into the actions of the Western Australian Fishing Department resulting in my lost fishing right.

(And your petitioner as in duty bound, will ever pray.)

Name:



MARK ASHLEY PAXTON  
2 Mardie Street, Beaconsfield, 6162

At the hearing of the current proceedings on 28 February 2006 you stated that you required copies of certain documents in order to take instructions from your client. I provided you with a Bundle of Documents that included in it the documents that you had referred to. Would you please advise whether you have been able to obtain instructions from your client in respect of the documents and the future conduct of the current proceedings?

As you acknowledge that the decision on your client's 'Application for the Grant of a Licence' is yet to be made, it seems to follow that the current proceedings are misconceived and should be dismissed.

Given that there is not as yet a decision that is reviewable under the *State Administrative Tribunal Act 2004*, and in the event that a reviewable decision is in due course made in respect of your client's 'Application for the Grant of a Licence' under s 66 of the *Fish Resources Management Act 1994*, the Executive Director does not consider s49 of the *State Administrative Tribunal Act 2004* would apply.

Would you please let me know your client's position with respect to the current proceedings? It appears to me that the proceedings should be dismissed.

Yours faithfully



Martyn Cavanagh  
**COUNSEL FOR THE EXECUTIVE DIRECTOR**

14 March 2006

# facsimile transmittal

**To:** Peter Rogers **Fax:** 9482 7224

**Executive Director**

**Department of Fisheries**

---

**From:** Mark Paxton **Date:** 22-Mar-2006

---

**Re:** **Pages:**

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Urgent       For Review       Please Comment       Please Reply       Please Recycle

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## APPLICATION FOR AUTHORISATION – ABROLHOS ISLAND TRAWL FISHERY – ONE (1) MANAGED FISHERY LICENCE & UNIT

It has been 18 months and you have failed to process my application. I am now giving you 10 days notice of my intention to serve you with a Supreme Court Writ of Mandamus as per Civil Procedure Western Australia – Supreme Court, s56.15.1, Mandamus:

“A Writ of Mandamus does not issue except to command the fulfilment of some duty of a public nature which remains unperformed.”

It is my contention that you have on three separate occasions evidenced that you will not approve my application (Att 1) and that I have adhered to authorisation application requirements (Att 2), therefore the only reason for your refusal to answer my application must be to frustrate due process, being a State Administrative Tribunal hearing for the purpose of concealing the fraud, maladministration and corruption you have perpetrated in the loss of my fishing right and my subsequent claims and demands for it to be restored.

### Attachment 1,

- letter 25/10/05 : re outcome of the investigation into my claimed fishing right (the basis of my application for an authorisation) “No valid claim”;



Minister for Local Government and Regional Development;  
Fisheries; the Kimberley, Pilbara and Gascoyne

Ref 21-3050

Leask & Co  
Barristers and Solicitors  
PO Box 1161  
FREMANTLE WA 6959

Dear Sirs

**EXEMPTION FOR MARK PAXTON TO FISH IN THE ABROLHOS ISLANDS  
AND MID WEST TRAWL MANAGED FISHERY DURING 2006**

Thank you for your letter of 15 March regarding the granting of an Exemption to permit your client, Mr Mark Paxton, to operate in the Abrolhos Islands and Midwest Trawl Managed Fishery during the 2006 season without holding a Managed Fishery Licence. I also note that Mr Paxton has lodged an application for Exemption at the Department of Fisheries on 23 March, however, no application fee was lodged with the application.

Your client was granted Exemptions to operate in the Fishery during 2004 and 2005. However, I note that the grounds for granting those Exemptions do not relate to your client's current application for the grant of a Managed Fishery Licence.

While your client may hold a personal view that the matters are linked in some way, in law they are clearly separate and there are statutory processes in place that govern the consideration, grant and review processes associated with applications for authorisations. [I understand that at this point, your client has been given one further and final opportunity to satisfy the Executive Director by that he is the owner of the *Atlantic Ocean*, the boat the subject of the application. I understand that your client has until 3 April 2006 to provide this information. After this time I am advised that the Executive Director will be in a position to make a decision in regard to your client's application.]

In my view and that of the Executive Director, the investigation into a claimed lost right to fish in the Fishery by your client addressed the matters raised by your client with the Department and is concluded.

In regard to the application lodged at the Department of Fisheries on 23 March, I have been advised that the application refers to the varying of the 2004 and 2005 Exemption to include 2006.

It is not possible to vary an Exemption once it has expired, and in any event I wrote to your client in October last year clearly indicating that I would not be renewing or extending the 2004/2005 Exemption. I understand that the Department will be returning the form to Mr Paxton.

For Mr Paxton to be formally considered for a new Exemption to operate in the fishery during the 2006 season, an application for an Exemption must be lodged together with the relevant fee and any supporting information as to why the Exemption should be granted. I should note however, that your client's application for a Managed Fishery Licence is a stand-alone matter, and it would be unusual to grant an Exemption pending the outcome of an application for an authorisation.

Thank you for raising these matters with me.

Yours sincerely

Hon Jon Ford MLC  
**MINISTER FOR FISHERIES**

29 MAR 2006



Our ref: 682/05  
Your ref: 1078/DL;gw

Mr David Leask  
Leask & Co  
Barristers and Solicitors  
PO Box 1161  
Fremantle WA 6959

Dear Mr Leask

**MR MARK ASHLEY PAXTON - APPLICATION FOR MANAGED FISHERY  
LICENCE -FISH RESOURCES MANAGEMENT ACT 1994 – OPPORTUNITY  
TO RESPOND TO RELEVANT POLICY MATERIAL**

I refer to the application dated 1 September 2004 submitted by Mr Paxton seeking the grant of an authorisation (a managed fishery licence) which is referred to in this latter “the application”. The application is to be considered by the Executive Director in the exercise of his discretion under section 66 of the *Fish Resources Management Act 1994* (“the Act”).

I wrote to you on 20 March 2006 seeking information from Mr Paxton in support of his claim of ownership of the vessel *Atlantic Ocean* and providing information in the possession of the Department relevant to that matter - so that Mr Paxton had the opportunity to comment on that material. The information was requested to be provided to me by 4:00 pm 3 April. No information has been received to date from Mr Paxton or yourself in response to my 20 March 2006 letter.

On the basis of the information before me, I have formed the preliminary view even if I was satisfied that Mr Paxton is the current owner of the vessel the *Atlantic Ocean* and that he was the owner of that vessel at the time of making the application, to grant the application would be contrary to longstanding and fundamental policy principles for the administration of the fishery and limited entry fisheries and that there are no special circumstances warranting departure from that policy.

In light of that preliminary view, therefore I would like to give Mr Paxton an opportunity to provide comment on the above issues.

Relevant considerations that I have taken into account in reaching my preliminary view in relation to the merits of the application are:-

ALL MEAN THAT MEETING 6A) DOESN'T ALLOW GRANT OF AUTH.

- a. the objects of the Act (which underpin the policy),
- b. the long-standing Limited Entry Fishery management framework established in WA,
- c. the management arrangements of the Abrolhos Islands and Mid West Trawl Managed Fishery and other comparable fisheries,
- d. the policy and practice of issuing licences in limited entry fisheries,

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The LEF (now an MFL) originally issued in respect of the *Atlantic Ocean* is still in existence and operational in the fishery. To duplicate the existing MFL would be contrary to the long-standing operation of WAs limited entry fisheries management framework.

No licence cancellation and new grant process has taken place in the fishery since the initial licence grant process in 1986. The policy of licence and equipment reduction has been developed for reasons of sustainability and equity and to facilitate an orderly rationalisation of the industry. This policy has been applied since 1985 with further development since then. An essential element of the policy, which has remained unchanged, is the reduction in the number of boats and concentration of head-rope. In a measure to ensure that effort could not increase, the total capacity of the fishery in head-rope was fixed in a 2005 management plan amendment.

As a result of the 2005 management plan amendment (which precludes further applications and establishes the head rope capacity of the fishery), the granting of a licence to Mr Paxton would not of itself have a significant effect on the sustainability of the fishery and economic viability of persons lawfully operating in that fishery. There is a risk of reducing economic efficiency through the dilution of fishing effort through the marginal increase in the size of the fishing fleet.

The granting of the application would also have no positive consequences for the sustainability and economic viability of the fishery.

The granting of the application would be contrary to the sound and longstanding policy of limiting entry to fisheries and only granting new licences after initial grant processes in special circumstances. This policy was established for the protection of the sustainability of fish stocks and economic viability and efficiency of fisheries. No reasons or special circumstances are apparent why the policy should be departed from in this matter.

Considering the matters set out in the preceding part of this letter, I do not consider the grant of the licence to be consistent with the policy for the good management of the fishery, including the principles of the Limited Entry Fishery management framework and the intended scope of operation of the entry provisions in the LEF Notice.

Relevant documents concerning the administration of the fishery are provided with this letter. These documents are listed in the attachment to this letter.

As a matter of procedural fairness I now extend your client the opportunity to comment on the matters referred to in this letter and their application to the merits of Mr Paxton's application. Comments should be received by me no later than 10:00 am on Wednesday 19 April so that I may proceed to make a decision on your application thereafter.

Please advise me at your earliest convenience if you would like an extended period for comment.

You may also advise me in writing before 10am on 19 April if you do not wish to take the opportunity to comment on the matters in this letter in which case I will then proceed to making the decision.

Yours sincerely



**P P ROGERS**  
**EXECUTIVE DIRECTOR**

10 April 2006

27/4/2006

## STATEMENT OF REASONS

### APPLICATION FOR A MANAGED FISHERY LICENCE

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File Number	1224/98-2
Applicant	Mark Ashley PAXTON
Application Date	1 September 2004
Application Type	Managed Fishery Licence - Abrolhos Islands and Mid West Trawl Managed Fishery

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#### 1. DECISION

I hereby refuse the application for the grant of a Managed Fishery Licence for the Abrolhos Islands and Mid West Trawl Managed Fishery (the Fishery) to Mark Ashley Paxton on the basis that:

- 1) pursuant to section 66 (1) of the *Fish Resources Management Act 1994* and clause 6 of the *Abrolhos Islands and Mid West Trawl Managed Fishery Management Plan 1993*, the applicant has failed to satisfy me that he is the owner of the vessel, *Atlantic Ocean*, thereby not satisfying the criteria in the relevant management plan.

I have also formed the view that even if I were satisfied that Mr Paxton is the current owner of the vessel the *Atlantic Ocean* and that he was the owner of that vessel at the time of making the application, to grant the application would be inconsistent with the good management of the Fishery.

I consider that the grant of the application would have a potential negative effect on the economic viability of the existing licence holders within the Fishery and the associated return to the community from the use of what is a valuable common property resource. A negative impact as outlined above would not be consistent with the objects of the *Fish Resources Management Act 1994*.

Relevant considerations that I have taken into account in reaching my view in relation to the merits of the application are:-

- a. the objects of the Act (which underpin the policy);
- b. the long-standing Limited Entry Fishery management framework established in WA;
- c. the management arrangements of the Abrolhos Islands and Mid West Trawl Managed Fishery and other comparable fisheries;
- d. the policy and practice of issuing licences in limited entry fisheries;
- e. the duplication of a managed fishery licence that would result from granting the application; and

f. the negative effect on the sustainability and economic efficiency of the Fishery that could result from the granting of the application.

## 2. BACKGROUND

On 1 September 2004 Mr Paxton submitted an application for a managed fishery licence on a form with a print date of 12 May 1998 (see attachment 1). A cheque for \$210 from *Paxton-Bodkin Trading Pty Ltd* was receipted by the Department on 2 September 2004. The correct fee for the application submitted was \$255.00.

Mr Paxton provided the remainder of the fee on 13 October 2005, together with a second application form (see attachment 2). The application has been taken to be made on 1 September 2004 and comprises the information provided on both application forms.

## 3. RELEVANT LEGISLATION

The application has been made under section 135 of the *Fish Resources Management Act 1994* ('the Act') and is to be considered under section 66, and other relevant provisions of the Act.

### *Fish Resources Management Act 1994*

The *Fish Resources Management Act 1994* governs the management and administration of commercial fishing in Western Australia. The sections of the *Fish Resources Management Act 1994* that are relevant to the consideration of the application in question are outlined below:

#### *3. Objects*

- (1) *The objects of this Act are to conserve, develop and share the fish resources of the State for the benefit of present and future generations.*
- (2) *In particular, this Act has the following objects*
  - (a) *to conserve fish and to protect their environment;*
  - (b) *to ensure that the exploitation of fish resources is carried out in a sustainable manner;*
  - (c) *to enable the management of fishing, aquaculture and associated industries, aquatic eco-tourism and other tourism reliant on fishing;*
  - (d) *to foster the development of commercial and recreational fishing and aquaculture including the establishment and management of aquaculture facilities for community or commercial purposes;*
  - (e) *to achieve the optimum economic, social and other benefits from the use of fish resources;*
  - (f) *to enable the allocation of fish resources between users of those resources;*
  - (g) *to provide for the control of foreign interests in fishing, aquaculture and associated industries;*
  - (h) *to enable the management of fish habitat protection areas and the Abrolhos Islands reserve.*

*[Section 3 amended by No. 41 of 2000 s. 4; No. 2 of 2002 s. 4.]*

**66. Grant of managed fishery licences and interim managed fishery permits**

(1) If a person applies to the Executive Director for the grant of an authorisation and

(a) the Executive Director is satisfied that the criteria specified in the relevant management plan for the grant of the authorisation have been satisfied; and

(b) if a procedure is specified in the plan for determining which persons are to be granted authorisations, the person is selected in accordance with that procedure,

the Executive Director may grant to the person an authorisation.

(2) An authorisation may authorise a person, or persons acting on that person's behalf, to engage in fishing or any fishing activity of a specified class in a managed fishery or an interim managed fishery (as the case requires).

(3) The entitlement a person has under an authorisation may be limited by reference to all or any of the following-

(a) a quantity of fish that may be taken;

(b) a quantity of fishing gear that may be used or carried;

(c) a boat, vehicle or aircraft, or a number of boats, vehicles or aircraft, or a class or length of boat, vehicle or aircraft, that may be used;

(d) a number of persons that may operate;

(e) an area of land or waters;

(f) a period of time;

(g) any other factor.

(4) For the purposes of subsection (3), the extent of an entitlement under an authorisation may be expressed in terms of units of entitlement defined in the management plan.

**135. Applications**

(1) An application for the grant, renewal or variation of an authorisation or for the transfer of an authorisation or part of an entitlement under an authorisation (an application) must be

(a) made to the Executive Director in a form approved for that purpose by the Executive Director;

(b) accompanied by the fee (if any) prescribed, or specified in the relevant management plan, for such an application; and

(c) accompanied by any information that the Executive Director reasonably requires for a proper consideration of the application.

(2) An applicant must provide the Executive Director with any further information that the Executive Director by notice in writing requires the applicant to provide in respect of an application.

(3) An applicant must, if required to do so by the Executive Director, verify by statutory declaration any information contained in, or given in connection with, an application.

(4) The Executive Director may refuse to consider an application if the application does not conform to a provision of this section or if the applicant has failed to comply with a provision of this section.

#### **266. Savings and transitional provisions**

*The savings and transitional provisions in Schedule 3 have effect.*

#### **Schedule 3**

[Section 266]

#### **Savings and transitional provisions**

##### **1. Interpretation Act 1984 not affected**

*Nothing in this Schedule limits the operation of the Interpretation Act 1984.*

##### **10. Limited entry fishery licence continued in force**

(1) A licence or endorsement in force under the repealed Act immediately before the commencement of this Act authorising a person to engage in any fishing activity, or to operate or use any boat, in a limited entry fishery continues in force on the commencement of this Act as if it were a managed fishery licence granted under section 66 and as if a reference in the licence or endorsement

(a) to the repealed Act or a provision of that Act were a reference to this Act or the corresponding provision of this Act; and

(b) to a limited entry fishery were a reference to a managed fishery.

(2) An entitlement under any licence or endorsement referred to in subclause

(1) continues in force on the commencement of this Act as if it were an entitlement under a managed fishery licence.

#### ***Abrolhos Islands and Mid West Trawl Managed Fishery Management Plan 1993***

##### ***Criteria to determine the boats which may operate in the Fishery***

**6. The criteria that shall be applied to determine the boats which may operate in the Fishery are-**

(a) that immediately before the coming into operation of this notice the boat was authorized to take prawns and scallops in the Abrolhos Islands and Mid West Trawl Limited Entry Fishery; or

(b) the boat replaces a boat to which paragraph (a) applied.

##### ***Application for a licence***

**7. The owner of a boat which fulfils the criteria specified in Clause 6 may apply in accordance with Clause 19 for a licence authorising the boat to operate in the Fishery.**

#### ***Interpretation Act 1984      Part V - Repeal of written law***

##### ***37. General savings on repeal***

(1) Where a written law repeals an enactment, the repeal does not, unless the contrary intention appears-

(c) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;

#### 4. MATERIAL CONSIDERED

In making the decision with respect to the application, the following material was considered and is included as attachments to this Statement of Reasons:

1. The Application for a Managed Fishery Licence submitted by the applicant on 1 September 2004 and received by the Department of Fisheries on 2 September 2004. The application specified the vessel the *Atlantic Ocean* as the subject of the application.
2. Copy of application form lodged by Mr Paxton with the Department on 13 October 2005.
3. Information lodged with the Department on 13 October 2005 in the form of a copy of a contract for sale for the vessel *Atlantic Ocean*.
4. Copy of a letter by the Registrar as delegate of the Executive Director of 25 January requiring further information from Mr Paxton.
5. Copy of letter from the Executive Director to Mr Paxton dated 8 July 2005 seeking proof of ownership of the *Atlantic Ocean*.
6. Copy of letter from Mr Paxton to the Executive Director dated 26 July 2005.
7. Copy of letter from the Executive Director to Mr Paxton dated 28 July 2005 seeking proof of ownership of the *Atlantic Ocean*.
8. Copy of computer generated print out provided by Mr Paxton to the Department.
9. Copy of email from the Department of Planning and Infrastructure to the Department dated 19 January 2006.
10. Documentation supplied by Mr Robert Bodkin on 27 January 2006 in respect of the ownership of the *Atlantic Ocean*.
11. Copy of fax to Leask & Co dated 27 January 2006.
12. Copy of request to Leask & Co regarding ownership of the *Atlantic Ocean* dated 20 March.
13. Copy of email message from Leask & Co dated 30 January.
14. Copy of letter to Mr Paxton inviting comments on matters pertaining to the merits of the application.
15. The *Fish Resources Management Act 1994*, and the *Fisheries Act 1905* ('the repealed Act'), and the *Fisheries Resources Management Regulations 1995*, and the *Interpretation Act 1984*. NOT INCLUDED AS ATTACHMENT
16. *Abrolhos Islands and Mid West Trawl Management Plan 1993*. (Consolidated version)
17. *Abrolhos Islands Limited Entry Otter Trawl Fishery Notice*, no.222 dated 15 March 1986.
18. *Abrolhos Islands and Mid West Trawl Limited Entry Fishery Notice* no.440, dated 30 March 1990.
19. The *Abrolhos Islands Scallop Fishery Working Group Report* to the Minister for Fisheries (November 1985).
20. Departmental Minute dated 7 January 1986 to Minister for Fisheries seeking approval of proposed management rules and regulations and notices for the implementation of the management program.
21. Press release of the Minister for Fisheries dated 30 January 1986 on declaration of a limited entry fishery.
22. Fisheries management paper no.21 *Commercial fishing licensing in Western Australia* (January 1989).

## 5. ASSESSMENT OF APPLICATION

I will deal with the eligibility criteria in Part A and the merits of the application in Part B of the assessment.

Section 135 (4) of the Act provides the Executive Director with discretion to refuse to consider an application if further information is required of the applicant by the Executive Director and not provided by the applicant. Such a requirement for further information was made on 27 January 2006 by the Registrar, as delegate of the Executive Director (see attachment 4). The further information was not provided, however, I have decided to consider the application.

### PART A

Before I can exercise my discretion under section 66 of the Act as to whether or not to grant an authorisation, I must be satisfied of certain matters. Specifically, section 66(1) provides:

*“(1) If a person applies to the Executive Director for the grant of an authorisation and -*

*(a) the Executive Director is satisfied that the criteria specified in the relevant management plan for the grant of the authorisation have been satisfied; and*

*(b) if a procedure is specified in the plan for determining which persons are to be granted authorisations, the person is selected in accordance with that procedure, the Executive Director may grant to the person an authorisation. “*

The relevant management plan in respect of the application is the **Abrolhos Islands and Mid West Trawl Managed Fishery Management Plan 1993** (“the 1993 Management Plan”).

The 1993 management plan is current, as clause 21 of the 1993 management plan repealed the earlier 1990 notice.

The relevant criteria to which section 66 (1)(a) refers are, in the case of this fishery, set out in clauses 6 and 7 of the 1993 Management Plan. Those clauses provide:

#### ***Criteria to determine the boats which may operate in the Fishery***

*6. (1) The criteria that shall be applied to determine the boats which may operate in the Fishery are —*

*(a) that immediately before the coming into operation of this notice the boat was authorised to take prawns and scallops in the Abrolhos Islands and Mid West Trawl Limited Entry Fishery; or*

*(b) the boat replaces a boat to which paragraph (a) applied.*

*(2) In addition to the criteria provided for in subclause (1), a criterion for the grant of a licence is that the application for the grant of the licence was received by the Executive Director on or before 15 November 2005.*

#### ***Application for a licence***

*7. The owner of a boat which fulfils the criteria specified in Clause 6 may apply in accordance with Clause 19 for a licence authorising the boat to operate in the Fishery.”*

Before I can exercise my discretion in relation to the application made under the 1993 Management Plan, I must be satisfied that the application meets the requirements of clauses 6 and 7 of the management plan.

*Clause 6(1)(a)*

Satisfied.

*Clause 6(1)(b)*

Not applicable.

*Clause 6(2)*

Satisfied.

*Clause 7*

On the basis of the information before me I have formed the view that I cannot be satisfied that Mr Paxton is the current owner of the *Atlantic Ocean* nor that he was the owner of that vessel at the time of making the application.

On the 1 September 2004 application form (which refers to the 1993 Management Plan), for the "name of fishing boat", Mr Paxton wrote the vessel the "*Atlantic Ocean*" and for "LFB" (licensed fishing boat) number wrote "F611" (see attachment 1).

As part of normal process, the Department's Licensing Branch routinely makes enquiry with the Department of Planning and Infrastructure regarding boat ownership details contained on vessel Certificates of Survey in connection with applications received. A phone enquiry to the Department of Planning and Infrastructure regarding the vessel Certificate of Survey indicated that the vessel *Atlantic Ocean* was owned by Paxton-Bodkin Trading Pty Ltd.

Further information seeking proof of Mr Paxton's ownership of the *Atlantic Ocean* was requested under section 135(2) of the *Fish Resources Management Act 1994* by letter to Mr Paxton from the Executive Director of 8 July 2005 (see attachment 5). Mr Paxton wrote to the Executive Director dated 26 July questioning "*how the ownership of the Atlantic Ocean is relevant to my application...*" (see attachment 6). The Executive Director by letter dated 28 July 2005 replied to Mr Paxton referring to the entry criteria in the 1993 Management Plan and among other things the provision of information as to ownership of the *Atlantic Ocean* (see attachment 7).

Mr Paxton provided to the Department by facsimile message of 10 November 2005 a copy of a computer-generated print out obtained from the Department of Planning and Infrastructure (see attachment 8). The information appeared to show that Mr Paxton was the owner of the *Atlantic Ocean*. Mr Paxton had also supplied a copy, on 13 October 2005, of a contract of sale for the *Atlantic Ocean* dated 22 November 1999 (see attachment 3) which lists Mr Paxton as the purchaser.

Between October and December 2005, Departmental staff also had verbal conversations with Mr Paxton regarding his application during which the request for more information regarding ownership of the *Atlantic Ocean* was repeated and the need for the information was explained.

Advice was, however, received from the Department of Planning and Infrastructure on 19 January 2006 that the computer-generated information was not conclusive evidence of the current ownership of the *Atlantic Ocean* vessel by Mr Paxton (see attachment 9).

The Department of Planning and Infrastructure advised by email message of 19 January 2006 that “[t]he Western Australia Australian Marine Act [1982] requires this office to deal with owners of the vessel to facilitate the survey, hence we deal with purported owners who are in a position to arrange and authorise surveys with this Department”.

The 19 January 2006 email also referred to a transfer of ownership form, which the Department of Planning and Infrastructure received on 10 November 2005, which stated that the vessel the *Atlantic Ocean* changed ownership from Paxton-Bodkin Trading Pty Ltd to Mark Ashley Paxton. The date on which ownership changed was not referred to.

The Department of Planning and Infrastructure's advice was that, following receipt of that form, it amended its records accordingly, and this information was reflected in the computer-generated information. An internal email message from the Department of Planning and Infrastructure of 19 January 2006 which was forwarded on to this Department noted that “[F]isheries [Department] should be made aware that these transfers of ownership [forms and records] are not proof of ownership”(see attachment 9).

In view of this information, and verbal information received from Mr Robert Bodkin on 24 January 2006 that raised further concern regarding ownership the Registrar, as my delegate, wrote to Leask & Co on 25 January 2006 (see attachment 4) advising that insufficient proof had been received that Mr Paxton was the owner of the vessel the *Atlantic Ocean*. The Registrar required Mr Paxton to provide further information to substantiate his claim to be the current owner of the *Atlantic Ocean*.

Written information in the form of a written declaration (witnessed by a Justice of the Peace) was received from Mr Robert Bodkin on 27 January 2006 (see attachment 10). The declaration and documents which were attached to it indicate that the vessel the *Atlantic Ocean* was then at that time owned by *Paxton-Bodkin Trading Pty Ltd* (ACN 090 830 014), and was owned by that company at the time of the making of the application by Mr Paxton on 1 September 2004. A copy of Mr Bodkin's declaration and the accompanying documents were provided to Leask & Co on the same day (see attachment 11) and subsequently on 20 March 2006 (see attachment 12). Mr Paxton's response to the information was requested on both of these occasions.

By email message of 30 January 2006 Leask & Co advised that Mr Paxton did not intend to provide further information in respect of ownership of the vessel the *Atlantic Ocean* (see attachment 13)

As a matter of procedural fairness I extended to Mr Paxton a further and final opportunity to provide me with material, which would satisfy me that, he is and was at the time of the application, the owner of the *Atlantic Ocean*.

A letter was forwarded to Leask & Co on 20 March 2006 (see attachment 12) requesting a response by 3 April. No information has been received in response to date.

In view of the competing claims as to the ownership of the vessel I am unable to satisfy myself that Mr Paxton was at the material times the owner of the *Atlantic Ocean*.

Therefore I am not satisfied that the criteria specified in the *Abrolhos Islands and Mid West Trawl Managed Fishery Management Plan 1993* for the grant of an authorisation have been satisfied. As a result, I cannot grant Mr Paxton the authorisation sought.

## PART B

I have formed the view even if I was satisfied that Mr Paxton is the current owner of the vessel the *Atlantic Ocean* and that he was the owner of that vessel at the time of making the application, to grant the application would be contrary to longstanding and fundamental policy principles for the administration of the Fishery and limited entry fisheries and that there are no special circumstances warranting departure from that policy.

Relevant considerations which I have taken into account in reaching my view in relation to the merits of the application are:-

- the objects of the Act (which underpin the policy);
- the long-standing Limited Entry Fishery management framework established in WA;
- the management arrangements of the Abrolhos Islands and Mid West Trawl Managed Fishery and other comparable fisheries;
- the policy and practice of issuing licences in limited entry fisheries;
- the duplication of a managed fishery licence that would result form granting the application; and
- the effect on the sustainability and economic efficiency of the Fishery that could result form the granting of the application.

I have reservations about granting a managed fishery licence, which is based solely on the history of a vessel hull.

To grant such an application would amount to the duplication of an existing managed fishery licence in the Fishery. The *Atlantic Ocean* was the vessel authorised on Limited Entry Fishery Licence (LEFL) 2251 in May 1993. As part of normal business operation, the *Atlantic Ocean* was replaced by another vessel after that time and the name of the authorised vessel on LEFL 2251 was changed. LEF 2251 is still operational in the Fishery, having a replacement vessel authorised on the LEFL, which is now referred to as a Managed Fishery Licence (MFL). To grant another MFL based on the *Atlantic Ocean* being a vessel authorised to fish in the Fishery in May 1993 would be duplicating LEFL 2251.

The duplication of licences in managed fisheries is not contemplated by the long-standing limited entry fishery management framework underpinning the sustainable management of Western Australia's commercial fisheries since the 1950s.

The *Fisheries Act 1905* provided the responsibility and power to conserve and manage WA commercial fisheries through the development of a Limited Entry Fishery regime. The objects of the *Fish Resources Management Act 1994* broaden the goals of the 1905 Act to an ecosystem-based fishery management focus. The objects in the Act support a continuation of the Limited Entry approach to fisheries management in WA.

A total of 37 managed fisheries have been progressively established in Western Australia since the 1960s. All of these fisheries incorporate limited entry management arrangements together with input controls (eg pot numbers & closed seasons) and output controls (eg total catch quota) to achieve a sustainable fisheries management framework that also maximises operational flexibility to enhance economic return to licensees and the community.

Without exception, Fishing Boat Licence holders are required to have relevant catch history in order to apply for an authorisation in the Limited Entry Fishery (LEF). It was not intended that a person could meet the eligibility criteria simply by being the owner of a boat.

It was intended in the case of all LEFs that once a fishery was established by the Limited Entry Fishery Notice (which is now referred to as a management plan), authorisations to operate in the LEF were to be allocated at the time the fishery was established or later by way of a transfer of an existing licence. The practice of the Executive Director has been that new licences are not issued other than through administrative changes. These include management measures such as the amalgamation of licences to consolidate two single rigs into a double rig licence.

The *Abrolhos Islands Limited Entry Otter Trawl Fishery* (as the Fishery was then known) was established in March 1986 as the result of extensive consultation and development of management arrangements in conjunction with industry and Government. The management plan for the Fishery addresses both sustainability and economic viability concerns relating to the scallop trawl fishery in waters adjacent to the Abrolhos Islands.

A policy of licence and equipment reduction was developed for the Fishery for reasons of sustainability and equity and to facilitate an orderly rationalisation of the industry. This policy has been applied since 1985 with further development since then. An essential element of the policy, which has remained unchanged, is the reduction in the number of boats and concentration of head-rope onto fewer vessels. The only licences granted in the Fishery since the initial grant of licences when the Fishery was established in 1986 have been as a result of licence amalgamation. The length of the scallop trawl net head rope permitted on vessels authorised in the Fishery determines the size of the opening of each trawl net and is one of the key measures and controls of fishing effort applied in the Fishery. Another key control applied in the last two seasons ( ) has been the catch rate cut off threshold, which is the level of catch that when reached, fishing must cease.

2005-2006  
10

On the basis of the restrictive eligibility criteria applied in the 1986 management plan of the Abrolhos Islands trawl fishery, only 29 LEF licences were issued. No applications were called for or made following the commencement of the 1990 and 1993 management plans apart from the application from Mr Paxton in 2004.

In the case of each of the 29 LEFLs granted, the applicant had been the holder of an authority to take prawns and scallops in the period immediately before commencement of the 1986 management plan.

All 46 gear units (of trawl net head rope length), representing the total capacity of the Fishery as stated in the management plan, are allocated to the existing 16 licence holders in the Fishery.

As a result of the 2005 management plan amendment (which precludes further applications and establishes the head rope capacity of the fishery), the granting of a managed fishery licence (void of any associated gear entitlement, which in this case is trawl net head rope length) to Mr Paxton would provide an avenue for Mr Paxton to obtain gear entitlement through transfer and then become active in the fishery.

Were Mr Paxton, subject to being granted a managed fishery licence, to acquire existing entitlement (trawl net head rope) in the Fishery and thereby split an existing fishing unit by dividing the permitted trawl net head rope between two vessels, a negative and unfair effect would occur in regard to the economic viability of the 16 existing licensees in the Fishery.

The focus of the world's fisheries managers is to maintain both economic and biological sustainability. In the scallop trawl fishery, the fishery's sustainability is managed by an agreed total allowable catch, which once reached in any given season, results in the termination of catching effort. In the scallop fishery, the point at which total allowable catch is reached is referred to as the catch rate cut-off threshold<sup>1</sup>. This important management tool is augmented by restrictions on the length of head-rope used in trawl nets, which limits, to a certain extent, the rate of catch. More importantly, the amount of headrope used by each vessel is unitised (and is traded between fishers) in order to allocate the catch across the fleet. The units, as the market allocates them across the fleet, serves as a fair way to distribute catch amongst fishers, reflecting the respective investments of individual fishers in head-rope entitlements.

However, while the established system is fair for existing fishers (in that catch reflects fishers investment in entitlements) the introduction of an additional vessel to the fishery would erode and distort the allocation of catch amongst existing fishers. It should be noted that existing scallop fishers have cooperated by consolidating their head-rope allocations onto fewer boats in order to ensure that economic sustainability is maintained.

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<sup>1</sup> Note that the agreed catch rate cut-off threshold is triggered each fishing season when 40% of the residual spawning biomass remains in the fishery, which is a precautionary and world best practice measure ensuring ongoing stock recruitment.

Should Mr Paxton enter the Fishery with an additional vessel and split existing entitlements, the economics of all existing fishers would be distorted and the cooperation between existing scallop fishers, whom have foregone their own catching capacity in order to protect economic viability of the industry as a whole, would be seriously undermined.

In high catch years scallop vessels trawl for only short periods of time and then have to anchor up and process the catch (by removing the shell and gut from the adductor muscle, packing the scallops into cartons and then snap freezing them before moving onto the next round of trawling).

The vessels carry a maximum of up to 13 crew-members in order to maximise the speed of processing on each vessel. In high abundance years each vessel simply cannot process the scallops any faster so the vessels catch tends to be evened out across the whole fleet (regardless of each vessels allocated head-rope length).

The phenomena of the evening out of catch in high abundance years is something the existing fleet has adjusted to and reflects in the market value of a managed fishery licence and associated gear units with a premium paid for a licence (authorisation). But if the number of vessels were to increase, then this would depress the profitability of all vessels in all years and impact on the investment value of managed fishery licences and associated gear units.

In low catch years, the period of time during which vessels anchor up to process catch before recommencing trawling is much shorter because processing can keep up with the catching rate. In these years there is a better relationship between head-rope length and thus trawl capacity is shared more equitably in proportion to the unit holdings of each vessel. Even so, vessel numbers continues to be the dominant influence and sharing of the catch as the highest proportion of the catch is always taken in the opening period (days) of the season. It is also acknowledged that during low catch years the early periods of the fishing year dominate profit levels simply due to the relationship between relative daily catch rates, costs and profits.

Over a period of years, an additional fishing vessel carrying a full crew would potentially increase the catching and processing capability of the existing fleet by up to 5.9% (1/17).

The extra vessel would also mean that the remainder of the fleet would have up to 5.9% fewer scallops available to be taken (as the catch is taken by the extra boat), resulting in a drop in the economic viability of all vessels in the fleet. Furthermore, a drop of revenue of 5.9% (due to an extra vessel entering the fishery) would have a much greater impact on the profit bottom line because each vessel has a fixed cost, before it even begins its fishing activity in any given season.

This means that every additional vessel allowed in the Fishery will erode the average profits of remaining boats in the fleet hence undermining the long-term policy of Government to protect economic sustainability of the Fishery. This issue is particularly difficult for a fishery that experiences a considerable year-to-year variation in catch.

The granting of the application would be contrary to the sound and longstanding policy of limiting entry to fisheries and only granting new licences after initial grant processes in special circumstances.

This policy was established for the protection of the sustainability of fish stocks and economic viability and efficiency of fisheries. No reasons or special circumstances are apparent why the policy should be departed from in this matter, particularly noting the scallop industry's long-term position of support for industry restructuring from 29 vessels to 16 vessels over a period of approximately 20 years.

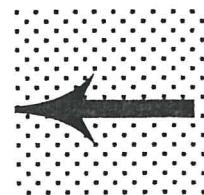
With cost price trends, particularly long term fuel costs and input costs, longer term economic viability of the fleet requires further fleet number reduction (not increase) in order to maintain profitability levels over the longer term.

I do not consider the grant of the application to be consistent with the policy for the good management of the fishery, including the principles of the Limited Entry Fishery management framework and the intended scope of operation of the entry provisions in the LEF Notice. I consider that the grant of the application would also have a potential negative and unfair effect on the economic viability of the existing licence holders within the Fishery and the associated return to the community from the use of what is a valuable common property resource. In other words, the grant of an extra licence could add to the total cost of fishing without increasing community return. A negative impact as outlined above would not be consistent with the objects of the *Fish Resources Management Act 1994*.

My preliminary views regarding the merits of the application were put to Mr Paxton by letter dated 10 April (see attachment 14) seeking his views on the matters and my preliminary view by 19 April. No comment has been received from Mr Paxton.



**P P ROGERS**  
**EXECUTIVE DIRECTOR**



27 April 2006



Our Ref: RSB115/05  
Inquiries: Prosecutions (943208033)

Mr M A Paxton  
2 Mardi Street  
BEACONSFIELD WA 6162

**RE: Authorisations      CFL: 94050      FBL: 1756**

Dear Mr Paxton

It has been reported to me by a Departmental Officer that on 12 July 2005, the following offence was detected:

You had contravened a condition of an Exemption.

This action renders you liable to prosecution action under Section 7(7) of the Fish Resources Management Act 1994.

The circumstances of the report have been considered and prosecution action in this instance will not be taken. Should any similar report be received in the future such leniency may not be extended and legal proceedings may be initiated.

Yours faithfully



EXECUTIVE DIRECTOR

19 May 2006



# SUPREME COURT OF WESTERN AUSTRALIA

Stirling Gardens, Barrack Street

Perth WA 6000

Switchboard: (08) 9421 5333 Fax: (08) 9221 4436

Your Ref: 1146/DL

Our Ref:

CS: CIV/1395/2006

Leask & Co  
26 Cliff Street  
FREMANTLE WA 6160

Enquiries:

Listings Co-Ordinator

Direct Line:  
9421 5360

Direct Fax  
9221 5353

21<sup>st</sup> June 2006

Dear Sirs,

**Re: CIV 1395 2006 – PAXTON v FORD**

I refer to the above matter.

I advise that the Applicants Ex Parte Originating Motion to Show Cause for the Issue of a Writ of Certiorari dated 21<sup>st</sup> April 2006, has been listed for a special appointment before a Master in chambers on **Friday 11<sup>th</sup> August 2006 at NOT BEFORE 10:30AM**.

**Note:** If Practice Direction No 1 of 2002 has not been complied with an application will need to be filed to alter this hearing date.

**It is your responsibility to advise all parties.**

Yours faithfully,

*K. Chapman*

**PRINCIPAL REGISTRAR**

**cc** State Solicitors Office  
141 St Georges Terrace  
PERTH WA 6000



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## STATE SOLICITOR'S OFFICE

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Your Ref: 1146\DL:gw  
Our Ref: SSO 1897/06  
Enquiries: Kate Glancy  
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DX 175

Facsimile No: 9264 6428

20 July 2006

Messrs Leask & Co  
Barristers & Solicitors  
PO Box 1161  
FREMANTLE WA 6959

By Facsimile: 9430 4044

### **ATTENTION: MR DAVID LEASK**

### **PAXTON v MINISTER FOR FISHERIES & EXECUTIVE DIRECTOR, DEPARTMENT OF FISHERIES - CIV 1395 OF 2006-**

I refer to the above.

The orders made by Master Newnes on 15 June 2006 require the respondents to file and serve any affidavit in opposition to the Originating Motion on or before 20 July 2006.

The solicitor with the conduct of this action, Mr Dale, is on annual leave. As I have some familiarity with this matter, I have taken over its conduct until Mr Dale returns to the office on 26 July 2006.

Unfortunately, I have been unable to attend to this matter as promptly as was necessary and consequently I am not in a position to file the respondents' affidavit(s) today as required.

In the circumstance I seek your confirmation that you will consent to any affidavit(s) being filed by close of business on 24 July 2006.

If you are unwilling to give that consent, I will file the affidavits late in any event and, if necessary, ask the Court for leave to have done so.

Yours faithfully,

**Kate Glancy**  
**SENIOR ASSISTANT STATE SOLICITOR**



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## STATE SOLICITOR'S OFFICE

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Our Ref: SSO 1897/06  
Enquiries: Mr Greg Dale  
Telephone No: 9264 1687

Leask & Co  
PO Box 1161  
FREMANTLE WA 6959

Westralia Square  
141 St Georges Tce  
Perth, Western Australia 6000

GPO Box B83 Perth W.A. 6838  
Telephone (08) 9264 1888  
Fax (08) 9264 1440  
Facsimile No: 9264 1440  
DX 175

**Attention: David Leask**

**SUPREME COURT MATTER CIV 1395 of 2006:  
PAXTON v MINISTER FOR FISHERIES & EXECUTIVE DIRECTOR,  
DEPARTMENT OF FISHERIES**

I refer to the above matter, and to the order made by Master Newnes on 15 June 2006 requiring the Respondents to file any affidavit in opposition to the Originating Motion on or before 20 July 2006.

I confirm that no affidavit has been filed by the 1st or 2nd Respondent, and that neither Respondent intends to file an affidavit.

Yours faithfully

**GREG DALE  
LEGAL OFFICER**

31 July 2006

cc      Supreme Court  
          Stirling Gardens  
          Barrack Street  
          PERTH WA 6000

## THE MINISTER'S DECISION NOT TO RENEW THE EXEMPTION

### **The Exemption**

29. On 5 November 2003 the Applicant applied to the Minister for an exemption authorising the Applicant to fish in the Fishery.

30. On 23 December 2003 the Minister granted the Applicant Ministerial Exemption No. 545 ("Exemption"). The Exemption expired on 31 December 2004.

See *affidavit of Mark Ashley Paxton* – attachment 23 to letter of 18 February 2004

31. A letter from the Minister accompanying the Exemption provided:  
"I do not consider that an exemption is the appropriate legislative instrument to use for the purposes of granting a licence".

The letter later continued:

"...given the circumstances which surround your claims, I have determined that I will grant you an exemption which will permit you to legally operate in the Abrolhos Islands and Mid-West Trawl Fishery in the 2004 season without being the holder of a Managed Fishery Licence."

See *affidavit of Mark Ashley Paxton* - attachment 23 to letter of 18 February 2004.

32. On 22 December 2004 the Minister varied Exemption No. 545 to expire on 31 December 2005.

9.

See *affidavit of Mark Ashley Paxton* – attachment 23 to letter of 18 February 2004.

33. On 21 October 2005 the Minister wrote to the Applicant in the following terms:

"In regard to the Ministerial Exemption permitting you to operate in the Abrolhos trawl fishery during 2005, in light of the outcome of the investigation I will not be renewing or extending the Exemption further."

See *affidavit of Mark Ashley Paxton* – MAP-2

#### **The law relating to exemptions**

34. Section 7 of the FRMA relevantly provides that the Minister may, by an instrument in writing, exempt a specified person or any specified class of persons from any specified provisions of this Act. Section 7(2) provides that the Minister may grant an exemption for any purpose. Section 7(6) provides that the Minister may, if he or she thinks fit, by further instrument in writing, vary or revoke an exemption.

35. Subject to the objects of the FRMA (as set out in section 3 of the FRMA), the Minister's discretion to grant, renew, vary or revoke exemptions is unfettered by statute.

#### **Right, interest or legitimate expectation**

36. An obligation to afford procedural fairness exists only when a person holds a right, interest or legitimate expectation.

10.

37. A legitimate expectation that a person will obtain or continue to enjoy a benefit or privilege must be distinguished from a mere hope that he or she will continue to enjoy a benefit or privilege. A hope that a statutory power will be exercised does not give rise to a legitimate expectation sufficient to attract the rules of natural justice.

*South Australia v O'Shea* (1987) 163 CLR 378 at 402; *Houcher v Minister for Immigration and Ethnic Affairs* (1990) 169 CLR 648 at 681-2 per McHugh J.

38. To attract the operation of the rules of procedural fairness, there must be some undertaking or course of conduct acquiesced in by the decision-maker or something about the nature of the benefit or privilege which suggests that, in the absence of some special or unusual circumstances, the person concerned will obtain or continue to obtain a benefit or privilege.

*Houcher* at 682 per McHugh J.

39. Given the breadth of the Minister's discretion in dealing with granting exemptions, the nature of correspondence from the Minister to the Applicant, and the circumstances surrounding the grant of the Exemption, the Applicant could not have held a legitimate expectation that the Exemption would be renewed in circumstances where the Minister (advised by his Department) had reached an adverse view in respect of the Applicant's claim to a right to fish.

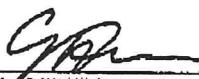
### Futility

40. In the alternative, if the Applicant was denied procedural fairness, the Applicant has not identified any evidence or submission that could materially have influenced the Minister's decision not to renew the exemption.

11.

**Conclusions**

41. The only decision the subject of the current application that is capable of affecting legal rights is the decision of the Minister not to renew the Exemption.
42. After the Investigation reached an adverse conclusion in respect of the Applicant's claim to a right to fish in the Fishery, the Applicant could not have held a legitimate expectation that the Exemption would be renewed.
43. In the absence of a legitimate expectation, there was no obligation on the part of the Minister to hear the Applicant prior to deciding not to renew the Exemption.

for   
TIMOTHY SHARP  
STATE SOLICITOR FOR WESTERN AUSTRALIA  
SOLICITOR FOR FIRST AND SECOND RESPONDENTS

The place of business of the State Solicitor for Western Australia, Solicitor for the First and Second Respondents, is 14th floor, Westralia Square, 141 St Georges Terrace, Perth.

And to:

LEASK & CO

Barristers & Solicitors

26 Cliff Street

FREMANTLE WA 6160



# LEASK & CO.

BARRISTERS & SOLICITORS  
ABN 11 113 988 134

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PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959  
TELEPHONE (08) 9430 6688  
FACSIMILE (08) 9430 4044  
EMAIL law@leask.com.au

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Our Ref: 1146\DL:gw

Your Ref:

16 August 2006

FILE COPY

Dear Mark

## CERTIORARI

I write to confirm that, on 11 August 2006, Master Newnes reserved his decision on your application for leave to issue a writ of certiorari against the Minister and Chief Executive Officer of the Department of Fisheries.

The critical question in deciding whether or not to issue leave will be whether your rights are likely to have been sufficiently affected as a result of the Fisheries Department's enquiry. This is because, where the outcome of an enquiry will not directly affect your rights, there is no obligation on the part of the Fisheries Department to afford you natural justice in relation to the enquiry.

Our argument is that the outcome of the enquiry is bound to affect your rights given the provisions of s71(2) which state that:

*“...the Executive Director is to take into account a person’s past history of fishing in a fishery when determining whether or not to grant the person an authorisation.”*

Given that you had an application for an authorisation on foot, and that the Executive Director had to take into account your past history of fishing when determining that application, the circumstances in which your licence and the unit were alienated, which were the subject of the Department's enquiry, would be relevant to the Executive Director's decision.

In Ainsworth v Criminal Justice Commission (1992) 175 CLR 564, Brennan J stated (at 595) that:

*“In a majority of cases in which an act or decision is judicially reviewed, an exercise of statutory power affects the applicant’s rights adversely or there is a failure to exercise a statutory power which, if exercised, would or might affect the applicant’s rights beneficially. In such cases, where a person’s rights or liabilities will or might be affected by the exercise or*

---

*non-exercise of a statutory power following upon an inquiry, that person is prima facie entitled to be accorded natural justice in the conduct of the inquiry. Failure to accord that person natural justice ordinarily results in the setting aside of an adverse exercise of the power or in an order to exercise the power, as the case may be.”*

Although the Department's enquiry was not of itself determinative of your rights in relation to the application for the licence, we argued that you should have been afforded natural justice because the future exercise or non-exercise by the Executive Director of a statutory power (namely, the power to grant a licence) was to be made following the outcome of the enquiry and the enquiry was into a matter which the Executive Director was bound by statute to take into account.

There may be a flaw in our argument: since s71(1) refers to fishing history prior to the introduction of a management plan, section 71(2) might be interpreted as being limited to an application for a licence following the implementation of a management plan, but not thereafter. If that is so then section 71(2) would not apply to your recent application since you were granted an application following the implementation of the management plan.

The existence of the exemption was not of itself a right which could be affected by the enquiry given that the exemption had only been issued to you pending the outcome of the enquiry. Once the enquiry had been concluded, the purpose for which the exemption had been granted was achieved and the need for the exemption therefore fell away. It was therefore not possible to argue that the outcome of the enquiry directly affected the exemption since the exemption did not have an existence independent of the enquiry itself.

Yours sincerely



David Leask  
LEASK & CO



# LEASK & CO.

BARRISTERS & SOLICITORS  
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160  
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959  
TELEPHONE (08) 9430 6688  
FACSIMILE (08) 9430 4044  
EMAIL law@leask.com.au

Mr M Paxton  
2 Mardie Street  
BEACONSFIELD WA 6162

Our Ref: 1146\DL:gw

Your Ref:

5 September 2006

Dear Mark

**FILE COPY**

## CERTIORARI

Master Newnes dismissed your application for leave to issue a writ of certiorari against the Minister for Fisheries and the Executive Director of the Department of Fisheries.

Enclosed please find a copy of the reasons for decision. The reasoning is contained in paras 35-51 and, as anticipated, the Master was not satisfied that the outcome of the enquiry affected your rights – see para 43.

The Master's judgment in relation to the lack of a connection between the outcome of the investigation and any effect on your legal rights seems to be inconsistent with Kim Chance's letter of 22 December 2003, in which he states, "*I am continuing to consider the matters raised regarding the cancelled licence and, if appropriate, I will amend the Abrolhos Islands & Mid West Trawl Fishery Management Plan, 1993, to provide you with the opportunity to apply for the grant of a new licence.*"

Please telephone once you have had a chance to consider the reasons for decision.

Yours sincerely

David Leask  
LEASK & CO

Encl



## STATE SOLICITOR'S OFFICE

Your Ref: 1146/DL:gw  
Our Ref: SSO 1897/06  
Enquiries: Mr J Quinn  
Telephone No: 9264 1669

Westralia Square  
141 St Georges Tce  
Perth, Western Australia 6000

GPO Box B83 Perth W.A. 6838  
Telephone (08) 9264 1888  
Fax (08) 9264 1440, 9264 1442  
DX 175

Facsimile No: 9264 1440

20 September 2006

Leask & Co  
Barristers & Solicitors  
26 Cliff Street  
FREMANTLE WA 6160

Attention: Mr David Leask

Dear Sir

**SUPREME COURT ACTION NO. 1395 of 2006**  
**PAXTON v MINISTER FOR FISHERIES and EXECUTIVE DIRECTOR OF**  
**DEPARTMENT OF FISHERIES**

Reference is made to our letter dated 6 September 2006 in relation to the above matter.

As indicated now please find enclosed a copy of the extracted order for your records.

We look forward to your response in relation to payment of the costs as ordered by the court totalling \$1,800.00.

Yours faithfully

for STATE SOLICITOR

2 Mardie Street  
Beaconsfield  
WA 6162

Tel: 08 9336 1364

The Hon Kim Chance  
Dumas House

2 May 2007

Dear Kim

I am writing in respect of your duty to notify the CCC in writing of suspected misconduct, as is imposed by s28, *corruption & Crime Commission Act*, 2003).

In our meeting on Tuesday, 13 March 2007, attended by you, Mike McMullen and me, I made you aware of the cancellation of Exemption 545 by the Minister for Fisheries, the Hon Jon Ford, as a result of the “outcome” of an investigation held by the Fisheries Department.

The Fisheries Department failed to investigate the issues and matters raised by me and agreed upon by you and Peter Rogers (see enclosures), instead giving an opinion on the *Limitations Act*, 1948?, and reference to the *Fisheries Act*, 1905, ~~and~~ having no ability to recognise, or obligation to validate “interests” in a licence and/or subsequent transactions involving licences.

This reference to the Department and the Minister having no “obligation” to notify or consult with me, the recognised beneficial owner of the fishing right, completely ignores and contradicts the obligations and duty of care arising from the Department’s “informal register” of beneficial ownership. No mention of the well-documented (encl PMillington letter) existence of the informal register of beneficial ownership or my recognised beneficial ownership (encl) appears in Peter Rogers’s “outcome of investigation”. There is no reference as to whether I was:

- (a) actual beneficial owner; or
- (b) recognised by the Fisheries Department as actual/beneficial owner,

two facts you have been shown categoric proof of, and which were not disputed in our several meetings, and which was the basis of my claim, which you took into account when issuing to me an Exemption to fish the Abrolhos Scallop fishery (encl 22/12/03).

The Hon Jon Ford cancelled the Exemption with the full knowledge that the “investigation” did not address these crucial issues. He has received a copy of my letter to Peter Rogers of 18 February 2004, outlining the situation and providing documentary proof of:

- (i) informal register of beneficial ownership;

- (ii) signed statement by Peter Millington, recognising my beneficial ownership;
- (iii) statements by G249 wetline holders “considered” owners of my fishing right, clearly stating they were not beneficial owners; and
- (iv) clearly defined claims accepted by you and Peter Rogers, to be investigated.

In your letter of 22 December 2003, you stated, “*I am continuing to consider the matters raised regarding the cancelled licence and, if appropriate, I will amend the AIMWFT Management Plan, 1993, to provide you with the opportunity to apply for the grant of a new licence.*”

I am now denied this opportunity.

Peter Rogers, in his letter of 25 October 2005, referring to the “outcome” of the investigation, also refers to my claim that he has breached s171, *FRMA*:

“*I*) *A person must not, without reasonable excuse –*

*A)* *prevent a person from lawfully fishing...”,*

as incorrect, as it refers to interference of a physical nature. This claim is false, as s171, 1(c), and s172, *FRMA*, deal with interference of a physical nature, s171, 1(a), does not.

Peter Rogers’s misconduct, and that of the Minister, as a result of the investigation, resulting in the cancellation of my Exemption, clearly prevents me from lawfully fishing under that Exemption.

#### **Further evidence of misconduct by the Hon Jon Ford:**

- the Minister, on 16 November 2005, assured me that he had made amendments to allow me to have my, as he said, “*day in court*”: “*I have changed legislation to enable 17 boats to fish*” (NB: presently, 16 licensed boats);
- “*I have made it possible for you to have your day in court*”, “*If the SAT agrees, you will have your fishing right recognised and registered*”.

These assurances were also made privately to Bruce Donaldson and referred to in Parliament on 29 November 2005 in the Hon Jon Ford’s words, “*I advise the Member that there is one vacant licence within that Plan*”: reference to Notice, 1993, AIMTF Management Plan.

The Hon Jon Ford misled Parliament.

If fact, on 11 November 2005, five amendments were made to that Plan, completely contrary to the Hon Jon Ford’s statements and assurances. With the only explanation

coming from the Hon Jon Ford's staff member, Steve Dawson, “*Jon sometimes signs legislation without reading it*”. Those five amendments do not affect any current licence holders, but made it impossible even if my rights were recognised by the SAT, for me to be able to fish in the Abrolhos.

That statement does not now or then appear in Notice, 1993. The Hon Jon Ford misled Parliament.

Those five amendments, in effect, made my “*day in court*” impossible. The amendments referred to in our meeting, but not made, were to allow the SAT to look at my application for a licence without having to adhere to the Plan (ss6 & 7) - that only allows for licence renewal, not the granting of a new licence.

The Hon Jon Ford's knowledge of “his” amendments not being made, and his failure to rectify the amendments that Peter Rogers duped him in to passing, amount to a corrupt act and corruptly failing to act.

The CCC's Notification Guidelines states that:

“*Misconduct essentially occurs if a public officer:*

- *corruptly acts or corruptly fails to act – in the performance of the functions of the public officer's office or employment;*
- *corruptly takes advantage for own benefit or detriment to another – a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or*
- *commits offence in official capacity – a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment.*

*OR*

*A public officer engages in conduct that:*

- *adversely affects, or could adversely affect, the honest or impartial performance of the functions of a public authority or public officer whether or not acting in their official capacity at the time;*
- *involves the public officer performing his or her functions without honesty or impartiality;*
- *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*

- suggests that the public officer misused information for personal benefit or the detriment of another person.”

**Points:**

- Peter Rogers's investigation not addressing issues that would affect the outcome.
- The Hon Jon Ford's acceptance of the investigation and subsequent cancellation of my Exemption.
- Peter Rogers's deliberate attempt to misinform me regarding a section of the *FRMA*.
- The Hon Jon Ford misleading parliament and frustrating the SAT's ability, and Notice 1993's ability, to restore my fishing right.
- Peter Rogers's and the Hon Jon Ford's continued campaign to cover up the alienation of my fishing right.

All constitute misconduct as outlined above.

Yours sincerely

KIM CHANCE FAX 92136701

Mark Paxton

cc: The Hon Alan Carpenter      FAX 9322 1213  
 the Hon Jon Ford      FAX 9213 7201  
 BRUCE DONALSON.      FAX 9321 1287

**ENCLOSURES**

1	QS FROM M.P. TO PETER MILLINGTON	9/3/94
2	AS TO QS FROM M.P. FROM P.M.	10/3/94
3	LETTER K.C. TO M.P. RE MATTERS RAISED	22/12/03
4	LETTER M.P. TO PETER ROGERS	18/2/04
6	FACTS TO BE ESTABLISHED + EVIDENCE	
5	QS IN PARLIAMENT	19/8/04
6	LETTER K.C. TO M.P.	22/9/04
7	LETTER P.R. TO M.P.	1/10/04

20 Livingstone Street  
Beaconsfield  
WA 6163

9336 1364

## facsimile transmittal

**To:** Glen Cridland

**Fax:** 9482 7390

**From:** Mark Paxton

**Date:** 7/06/2007

**Re:**

**Pages:** 1

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

Dear Glen

Further to our telephone conversations yesterday and today, and discussion with Ray Burrows, could you please supply me with the following:

1. Legislative or non-legislative obligations to conform with NCP Principles and Reviews in relation to amended legislation.
2. NCP Report for Amendment o2 of 2004.
3. Biological Sustainability Report into Port Gregory Fishery, confirming need for daytime closure, ie Notice 02/2004.

Yours sincerely



Mark Paxton

20 Livingstone Street  
Beaconsfield  
WA 6163

9336 1364

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Yours sincerely



Mark Paxton

# Premier's Circular

Number:	2005/13
Issue Date:	27/10/2005
Review Date:	27/10/2007

## TITLE

### LEGISLATION REVIEW REQUIREMENTS OF NATIONAL COMPETITION POLICY - PUBLIC CONSULTATION

## POLICY

Ministers are responsible for reviewing legislation that restricts competition in accordance with Clause 5 of the Competition Principles Agreement of National Competition Policy (NCP) and the timetable agreed by Cabinet. Any new legislation, amendments to existing legislation and new subordinate legislation that have the potential to restrict competition must also be reviewed. Public consultation is an essential requirement of any such review.

## BACKGROUND

A legislation review requires that the benefits and costs of restrictions on competition be assessed from the point of view of the community as a whole. Legislation reviews therefore need to be conducted in a balanced way and with an appropriate degree of independence and opportunity for input from all interested parties. This particularly applies where there are strongly held and divergent views in the community and the economic consequences of the restriction are significant.

To minimise the potential for public criticism of reviews by interested parties, and to avoid concerns by the national body responsible for assessing progress on implementing competition policy, it is vital that consultation with interested parties and/or inviting them to input are essential parts of review processes.

The Department of Treasury and Finance provides information on how legislation reviews are to be conducted in its competition policy publications at <http://www.dtf.wa.gov.au>.

DR GEOFF GALLOP MLA

## PREMIER

For enquiries contact:	David Morrison 9222 9825 Director Structural Policy Department of Treasury and Finance
Other relevant Circulars:	N/A
Circular/s replaced by this Circular:	1998/01

OFFICE OF THE PREMIER  
-RGE'S TERRACE PERTH, WESTERN AUSTRALIA 6000  
PHONE (08) 9322 1213

Our ref T.26734/0 I

CIRCULAR TO MINISTERS NO. 1 /98

**LEGISLATION REVIEW PROGRAM UNDER NATIONAL COMPETITION POLICY**

As you are aware, Ministers are responsible for reviewing legislation which restricts competition in accordance with clause 5 of the Competition Principles Agreement of National Competition Policy (NCP) and the timetable agreed by Cabinet.

This requires that the benefits and costs of restrictions on competition be assessed from the point of view of the community as a whole. Legislation reviews therefore need to be conducted in a balanced way and with an appropriate degree of independence and opportunity for input from all interested parties. This particularly applies where there are strongly held and divergent views in the community and the economic consequences of the restriction are significant.

There have been a number of occasions where interested parties have not had this opportunity and as a consequence, have publicly criticised the review.

The national body responsible for assessing progress on implementing competition policy has also expressed concerns about these reviews. I therefore stress the need to consult with interested parties and/or invite them to input, are essential parts of review processes.

To raise community awareness of the legislation reviews to be undertaken by 30 June 1998 or 31 December 1998. Treasury will be placing an advertisement in the West Australian newspaper.

A further point I would like to raise is that legislation reviews generally, are being commenced too late to meet the agreed timetable. I request your co-operation to ensure slippage in the timetable does not occur while also maintaining a high standard of review.

PREMIER AND TREASURER  
2 February 1998



**Department of Treasury and Finance**  
Government of Western Australia

**FACSIMILE TRANSMISSION**

TO: Mr Mark Paxton

FAX NO: 9430 4044

FROM: Neil Thomson  
ASSISTANT DIRECTOR

TEL NO: 08 9222 9829  
FAX NO:

DATE: 7 June 2007

NO OF PAGES: 2

---

Dear Mr Paxton

**FAX TO MR PAXTON**

Please find attached the Premier's Circular 1/98 regarding the legislation review program under National Competition Policy. Circular 2005/13 has superseded Circular 1/98.

A copy of this circular is available on the Internet at:

[http://www.dpc.wa.gov.au/psmd/pubs/legis/premcirculars/1998\\_01.pdf](http://www.dpc.wa.gov.au/psmd/pubs/legis/premcirculars/1998_01.pdf)

Yours sincerely

Neil Thomson

Name of legislation	Agency	Description / Comment on review process	Date of review	Date review completed	Reform progress
<i>Explosives and Dangerous Goods Act 1971</i>	M	Licensing. Review underway.	1997-98		
<i>Fertilisers Act 1977 and Regulations</i>	PI	Licensing	1996-97	1997	Amendments to be made so that regulations applying to fertilisers with a low risk of heavy metal contamination (about 70%) be replaced by a voluntary code of practice.
<i>Finance Brokers Control Act 1975 and Regulations</i>	FT	Licensing. Review underway.	1997-98		
<i>Firearms Act 1973 and Regulations 1994</i>	Po	Licensing	1998		
<i>Fish Resources Management Act 1994</i>	Fis	Licensing, differential treatment. Review underway.	1999-00		
<i>Fisheries Adjustment Schemes Act 1987 and Regulations</i>	Fis	Licensing. Review underway.	1999-00		
<i>Fishing Industry Promotion Training and Management Levy Act 1994</i>	Fis	Licensing. Review underway.	1999-00		
<i>Fremantle Port Authority Act 1902 and Regulations</i>	Tpt	Licensing, third line forcing, market power, competitive neutrality	NA	NA	To be repealed and replaced by a generic <i>Port Authorities Bill</i> when it is enacted.
<i>Friendly Societies Act 1894 and Regulations</i>	J	Licensing	1996	NA	To be repealed
<i>Fruit Growing Industry Trust Fund Act 1941 and Regulations</i>	PI	Market power.	1996	NA	Has been repealed
<i>Gaming Commission Act 1987 and Regulations</i>	RG	Licensing. Review deferred until December 1998.	1998		
<i>Gas Corporation Act 1994</i>	Egy	Market power	1996	1998	Act to be amended by other legislation implementing National Gas Access Laws.



Department of  
Fisheries



## State Government Directions in Response to National Competition Policy

### *Fish Resources Management Act 1994*

#### Summary of Outcomes

1. As the primary emphasis, in relation to meeting NCP related anti-competitive restrictions is on Fishery Management plans and associated regulations these plans should be continually reviewed and monitored for anti-competitive restrictions and adjusted, as appropriate, especially as the potential benefits are minimal in the majority of cases.
2. The current input based management regime for the Western Rock Lobster Fishery remain in place until at least December 2006 with the Department of Fisheries and the Rock Lobster Industry Advisory Committee to review and quantify any further efficiency gains from additional changes to the current regulatory regime including the costs and risks of management failure, over the next 2-3 years.
3. The maximum pot holding restriction of 150 pots in the Western Rock Lobster fishery is to be removed by 1 July 2003. The minimum pot holding restriction of 63 pots to remain in place until at least the end of 2006.
4. In order to improve information levels and maximise the opportunities for investment in those fisheries that are managed under a unitised system a register will recognise the current and ongoing changes to individual unit holdings.
5. A review of the composition of the Rock Lobster Industry Advisory Committee, to ensure membership is consistent with the needs of all key stakeholder groups, to take place in parallel to the review of the Act.
6. The current licence transferability restrictions and limits around individual holdings of access entitlements across all fisheries is to be reviewed and a new framework consistent with NCP guidelines introduced by December 2004.
7. The review of all fisheries to include the review of and addition of clear and explicit objectives for all fisheries either within the legislative plan or in a plan of management for that fishery.

26 April 2002

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Published: 7 May 2002 | Last Updated: Dec 2004

Name of legislation	Agency	Major restrictions	Review activity	Reform activity
Fish Resources Management Act 1994	F	Licensing of fishers. Prohibitions on market outlets. Input controls on boat, gear and fishing methods. Output controls such total allowable catches, quota, bag and size limits.	First review completed in 1999. Review recommended that the Government: <ul style="list-style-type: none"> <li>retain most of the existing restrictions;</li> <li>in the rock lobster fishery: <ul style="list-style-type: none"> <li>- commission an independent update on the net benefits of moving to output-based management; and</li> <li>- in the interim, remove the 150 pot maximum holding, and separate pot licences from boat licences;</li> <li>amend the Act to clarify its objectives; and</li> <li>integrate NCP principles into the ongoing fisheries management review cycle.</li> </ul> </li> </ul>	In relation to fisheries generally, the Government decided to: <ul style="list-style-type: none"> <li>include a clear statement of objectives in all fisheries management plans over the next 2-3 years;</li> <li>schedule by June 2003 reviews of specific fisheries management plans against NCP; and</li> <li>introduce by December 2004 a new framework consistent with NCP for individual holdings of access entitlements and licence transfers.</li> </ul>
Fisheries Adjustment Schemes Act 1987	F	Ministerial discretion as to eligibility for compensation upon cancellation of fishing property rights.	Review by independent consultant recommended no change to the Act. No NCP implications identified.	Act retained without reform.

20 Livingstone Street  
Beaconsfield  
WA 6162

Tel: 08 9336 1364

The Liberal Party  
Attention: Shane Hart

**By facsimile : 9226 2015**

6 September 2007

copy

Dear Shane

Further to our telephone conversation today, three questions follow for the Rt Hon Kim Chance:

1. Did you, when Minister of Fisheries, agree to allow the exemption, Ex545, to remain in force while the Fisheries Department finalised an investigation into the claims Mark Paxton raised in respect of the cancellation of the licence, namely:
  - (i) Mark Paxton's beneficial/actual ownership of one (1) unit ("the unit") and one (1) AIMWTF licence ("the licence") at the time the unit was transferred in 1991 and when the licence was cancelled; and
  - (ii) Fisheries Department's responsibility to safeguard and maintain Paxton's beneficial ownership in and of the licence and the unit,  
(together, "the issues")?
2. Did you have a meeting in March 2007 with Mark Paxton at which a letter from Peter Rogers to Mark Paxton dated 25/10/2005, was shown to you, which letter referred to the "outcome" of an investigation?
3. Did the "outcome" or the investigation referred to in the letter dated 25/10/05, address any, and, if so, which, of the issues?

Sincerely

Mark Paxton

20 Livingstone Street  
Beaconsfield WA 6162

0427 817 522 / 9336 1364

# facsimile transmittal

**To:** Shane Hart – Liberal Party **Fax:**

**From:** Mark Paxton **Date:** 4/10/2007

**Re:** **Pages:** 1

Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Dear Shane • • • • •

## Questions for Rt Hon Kim Chance

1. In a meeting with and letter to Mark Paxton on 13/10/2003, you stated, "*I would consider amending the Management Plan of the AIMWTF to make provision for the issue of additional MFLs.*"
2. In a letter to Mark Paxton dated 22/12/2003, you stated, "*I am continuing to consider the matters raised regarding the cancelled licence and, if appropriate, I will amend the AIMWTF Management Plan, 1993, to provide you with the opportunity to apply for the grant of a new licence. However, my decision as to whether or not to take this course of action is awaiting further input from current licence holders in the fishery.*"

For the purpose of requesting the present Minister, Rt Hon Jon Ford, to make this opportunity available to Mark Paxton, please state whether, and, if so, what input from the then licence holders on the fishery had bearing on your decision to allow Mark Paxton to "*apply for the grant of a new licence*" and what facts **–do you know the answer to this question?** - would have been required to satisfy you sufficiently to "*amend the AIMWTF Management Plan, 1993, to provide you [Mark Paxton]*" with the opportunity to apply for the grant of a new licence.

Regards

Mark Paxton

20 Livingstone Street  
Beaconsfield WA 6162

0427 817 522 / 9336 1364

# facsimile transmittal

**To:** Shane Hart – Liberal Party **Fax:**

**From:** Mark Paxton **Date:** 4/10/2007

**Re:** **Pages:**

Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Dear Shane • • • • • • •

## Questions for Rt Hon Jon Ford

Following an enquiry held by the Fisheries Department from 18/02/2004 – 25/10/2005, 20 months, into, to quote the then Minister Rt Hon Kim Chance, 09/03/2005, “*Matters you have raised*”, “*your claims*”. *AND*

Peter Rogers, 23/02/2004, “*matters raised*” referring to “*issues and matters raised by Mark Paxton*”, you cancelled Mark Paxton’s exemption to fish stating repeatedly that the investigation addressed the matters raised, and that no further action was necessary.

In relation to the issues and matters raised by Mark Paxton and accepted by the then Minister and ex-Director, are you satisfied:

1. That Mark Paxton was not the beneficial/actual owner and therefore not subject to a duty of care by the Department to safeguard and maintain, taking into account:
  - (i) that the “*informal system of register*” was not gazetted therefore no parameters existed as guidelines for the Department or fishermen to adhere to;
  - (ii) Peter Millington stated in a letter referring to a meeting 18 months after Mark Paxton ceased to be the “*considered owner*”, ie, owner of the “*wet licence*” to which the LEF licence and unit were attached, that he

(ix) statements to Fraud Squad by Jim and Kerry Fay (partners in BFN), stating clearly that BFN the “considered owners” were not the beneficial owners but that Paxton was the beneficial/actual owner.

2. That the Department did not fail to create and maintain a licensing system which adequately safeguarded and maintain beneficial interests.
3. That the informal system of register (prior to 1994) was adequate and applied competently.
4. That Rogers’s actions, being his reply (16/12/1992) to a request to clarify ownership of one (1) unit on the Licence G249 from Altorfer & Stowe, lawyers, dated 23/11/1992, that did not inform BFN, the “considered owners”, of the existence of the informal system of register and the distinction between “considered owners” and “beneficial owners”, did not result in BFN’s decision to not return the fishing right.
5. That the Department or Fisheries officers have not had a criminal intent to deprive Paxton of his fishing right for the purpose of concealing an act of fraud. Did you, in relation to this issue involving possible criminal behaviour by the Department, ensure it was investigated by the proper authorities, ie, Public Section Department of the Major Crime Squad.
6. That Rogers acted with due diligence and good faith when he failed to address BFN’s request for clarification of ownership in December 1992.
7. That the Department did not misinform the Ombudsman, during his enquiry of 1994, as to Paxton’s recognised beneficial ownership, when Peter Millington contradicted his signed statement of 03/1994, as evidenced in a letter from the Ombudsman to Paxton of 29/05/1998: “*Mr Millington has confirmed that he was aware at the time that you claimed to be the beneficial owner*”, and in reference to non-existent mechanisms to restore a LEF. NB: Why would Peter Millington, Director of Fisheries Management Policy and now Executive Director, be having a meeting with Paxton 18 months after Paxton ceased to be considered owner, if Paxton was not recognised as beneficial owner?
8. That the Department informed BFN fully of its licensing system, including the recognition of “beneficial ownership” as distinct from “considered ownership”.
9. That the Department acted properly in not informing the Fraud Squad of a possible use of its licensing system to commit fraudulent acts.
10. Please table the report of the 20-month investigation and confirm that the above questions 1-9 in relation to the accepted “issues and matters” were fully addressed.
11. Given that:
  - (a) s143(c) of the FRMA, 1994, provides that – “*the ex-Director may... cancel... the authorisation – (c) if the authorisation was obtained by fraud or misrepresentation*”, is it the Department’s opinion and policy that, if fraud

or misrepresentation can be proved in relation to an authorisation that it should be restored to the status quo?

(b) Rogers wrote to Paxton, 25/05/1998, stating, "*If fraud had been proved in a court and clearly if a court so ordered, I am in a position to determine a rearrangement of licences and entitlements.*",

would the Department restore Mark Paxton's fishing right if its alienation was a result of fraud and misrepresentation?

12. Did you, in a meeting on 16/11/2005, tell Paxton:

- (i) *"I have changed legislation to enable 17 boats to fish"?*
- (ii) *"I have made it possible for you to have your day in court. If the SAT agrees, you will have your fishing right recognised and registered"?*
- (iii) and, in Parliament on 26/11/2005, state, *"I advise the Member that there is one vacant licence within that plan"* (Management Plan, 1993)?

Did the amendments made to Notice 1993 on 11/11/2005 and referred to in the above three statements:

- (i) create a 17<sup>th</sup> licence or a vacant licence in the Plan?
- (ii) make it possible for the SAT to entertain an application by Paxton's seeking a review of the Department's refusal of his licence application, taking into account the circumstances surrounding the transfer and cancellation in 1991 of Paxton's fishing right?

If the answer to the above 2 questions is No, did you mislead Parliament and frustrate a due process, being that the SAT could possibly have approved the issuing of a licence to Paxton to replace the licence alienated in 1991?

13. Given that the outcome of the investigation as stated in a letter from Rogers to Paxton dated 25/10/2005 only refers to two matters of record already known to the Minister and Paxton prior to the investigation and neither of which were among the *"issues and matters raised"*, and taking into account the strong likelihood that the Department's licensing system was used to commit a fraudulent act, due to the Department's failure of duty of care, will you now, upon application by Paxton, grant an exemption to fish in the AIMWTF with one unit to Paxton for the 2008 season until the SCPA, the Rt Hon Barry House, Chairman, having confirmed the Committee would accept a request to investigate, can fully investigate independently of the Department, the issues and matters relevant to Paxton's lost fishing right, so as to allow, as stated by the Rt Hon Kim Chance on 22/12/2003, for the opportunity for Paxton to apply for the grant of a new licence?

Regards

Mark Paxton

20 Livingstone Street  
Beaconsfield WA 6162

0427 817 522 / 9336 1364

# facsimile transmittal

**To:** Shane Hart – Liberal Party **Fax:**

**From:** Mark Paxton **Date:** 10/10/07

**Re:** **Pages:** 1

Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Dear Shane • • • • • •

## Questions for Rt Hon Kim Chance

1. In a meeting with and letter to Mark Paxton on 13/10/2003, you stated, "*I would consider amending the Management Plan of the AIMWTF to make provision for the issue of additional MFLs.*"
2. In a letter to Mark Paxton dated 22/12/2003, you stated, "*I am continuing to consider the matters raised regarding the cancelled licence and, if appropriate, I will amend the AIMWTF Management Plan, 1993, to provide you with the opportunity to apply for the grant of a new licence. However, my decision as to whether or not to take this course of action is awaiting further input from current licence holders in the fishery.*"

For the purpose of requesting the present Minister, Rt Hon Jon Ford, to make this opportunity available to Mark Paxton, please state whether, and, if so, what input from the then licence holders on the fishery had bearing on your decision to allow Mark Paxton to "*apply for the grant of a new licence*" and what facts would have been required to satisfy you sufficiently to "*amend the AIMWTF Management Plan, 1993, to provide you [Mark Paxton]*" with the opportunity to apply for the grant of a new licence.

Regards

Mark Paxton

CO  
PY

# facsimile transmittal

CO  
PY

**To:** Shane Hart – Liberal Party **Fax:**

**From:** Mark Paxton **Date:** 10/10/07

**Re:** **Pages:** 5

Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Dear Shane • • • • •

## Questions for Rt Hon Jon Ford

Following a purported enquiry held by the Fisheries Department ("the Department") from 18/02/2004 – 25/10/2005, 20 months, into, to quote the then Minister Rt Hon Kim Chance, 09/03/2005, "*Matters you have raised*" and "*your claims*", referring to issues and matters raised by Mark Paxton ("Paxton").

Acting on the Department's letter signed by Peter Rogers ("Rogers" and dated 23/02/2004 in which reference was made to the "*matters raised*" and "*issues and matters raised by Mark Paxton*", you cancelled Paxton's exemption to fish stating repeatedly that the investigation addressed the matters raised, and that no further action was necessary.

In relation to the issues and matters raised by Paxton and accepted by the then Minister and ex-Director, are you satisfied:

1. That Paxton was not the beneficial/actual owner of an Abrolhos Islands & Mid-West Trawl Fishery Licence ("AIMWTFL") comprising one (1) unit, and therefore not owed a duty of care by the Department to safeguard and maintain his beneficial interest, taking into account:
  - (i) that the "*informal system of register*" existed, as evidenced by Peter Millington's letter of 10/03/1993, but was not gazetted therefore no parameters existed as guidelines for the Department or fishermen to adhere to;
  - (ii) Rogers's statement and letter to Paxton outlining "*Outcomes of Investigation*", "*that at law you held no 'interest' in LEF 1921 once the*

"recognised" Mark Paxton as the "beneficial owner";

- (iii) record on LFBF780 of Mark Paxton's beneficial ownership – "AIMWTF licence refer Mark Paxton";
- (iv) statement by "considered" owners – Mrs Blenkinsop – stating that the money from the sale of Mark Paxton's fishing right should be given to him;
- (v) statements from lawyers of "considered owners" reiterating intention to remunerate Mark Paxton for selling his fishing right;
- (vi) no stamp duty paid as would be the case if B/O was transferred to the "considered owners";
- (vii) no contract selling licence to "considered owners" or consideration paid;
- (viii) statement by FB "considered owner" that it was never Mark Paxton's unit and that the Fisheries Department issued him that licence – not confirmed by Fisheries' licence files;
- (ix) Fraud Squad statements by Jim and Kerry Fay – stating clearly that BF&N the "considered owners" were not the beneficial owners but that Mark Paxton was the beneficial/actual owner.

2. That the Department did not fail to create and maintain a licensing system which adequately safeguarded and maintain beneficial interests.
3. That the informal system of register (prior to 1994) was adequate and applied competently.
4. That Peter Rogers's actions did not result in Blenkinsop Fay & Nominees's ("BFN") decision to not return the fishing right.
5. That the Department has not had a criminal intent to deprive Mark Paxton of his fishing right for the purpose of concealing an act of fraud. Did you, in relation to this issue involving possible criminal behaviour by the Department, ensure it was investigated by the proper authorities, ie, Public Section Department of the Major Crime Squad.
6. That Peter Rogers acted with due diligence and good faith when he failed to address BFN's request for clarification of ownership in December 1992.
7. That the Department did not misinform the Ombudsman as to Mark Paxton's recognised beneficial ownership, when Peter Millington contradicted his signed statement of 03/1994 (?) to the Ombudsman and in reference to non-existent mechanisms to restore a LEF.
8. That the Department informed BFN fully of the licensing of equitable interests.

*INFORMING*

9. That the Department was correct in not informing the Fraud Squad of a possible use of its licensing system to commit fraudulent acts.
10. Please table the report of the 20-month investigation and confirm that the above questions in relation to the accepted “*issues and matters*” were fully addressed.
11. Does the Fisheries Department condone the use of its licensing system to commit fraudulent acts?
12. Given that s143(c) of the FRMA, 1994, refers to – “*the ex-Director may... cancel... the authorisation – (c) if the authorisation was obtained by fraud or misrepresentation*”, is it the Department’s opinion and policy that, if fraud or misrepresentation can be proved in relation to an authorisation that it should be restored to the status quo? If so, would the Department restore Mark Paxton’s fishing right if its alienation was a result of fraud and misrepresentation?
13. Did you, in a meeting on 16/11/2005, tell Mark Paxton:
  - (i) “*I have changed legislation to enable 17 boats to fish*”?
  - (ii) “*I have made it possible for you to have your day in court. If the SAT agrees, you will have your fishing right recognised and registered*”?
  - (iii) and, in Parliament on 26/11/2005, state, “*I advise the Member that there is one vacant licence within that plan*” (Management Plan, 1993)?

Did the amendments made on 11/11/2005 and referred to in the above three statements:

- (i) create a 17<sup>th</sup> licence or a vacant licence in the Plan?
- (ii) make it possible for the SAT to judge Mark Paxton’s licence application, taking into account the circumstances surrounding the transfer and cancellation in 1991 of Mark Paxton’s fishing right?

If the answer to the above 2 questions is No, did you mislead Parliament and frustrate a due process, being that the SAT could possibly have restored Mark Paxton’s fishing right?

14. Given that the outcome of the investigation as stated in a letter from Peter Rogers to Mark Paxton dated 25/10/2005 only refers to two matters of record already known to the Minister and Mark Paxton prior to the investigation and not being the “*issues and matters raised*”, will you now, upon application by Mark Paxton, grant an exemption to fish in the AIMWTF with one unit to Mark Paxton for the 2008 season until the SCPA, the Rt Hon Barry House, Chairman, having confirmed the Committee would accept a request to

Director of Fisheries, on your application, transferred LEFL 1921 to Mandare on 28/08/1988", ignoring:

- (a) the Department's recognition of Paxton's beneficial ownership as stated by Peter Millington in a letter dated 10/03/1993, referring to a meeting that took place in April 1990, 18 months after Paxton ceased to be the "considered owner", ie, owner of the "wet licence" to which the LEF licence and unit were attached, in which he "recognised" Paxton as the "beneficial owner";
- (b) Paxton's specific and general reliance on the Department, and therefore the Department's duty of care, to safeguard and maintain Paxton's fishing right, as established by the 1978 Justice Mason High Court "*Specific and General reliance test*" to determine duty of care by public administrators "*if an individual has a specific or general reliance on a public administration that public administrator has a duty of care to the individual*";
- (iii) record on Mandare's licence LBF780 of Paxton's beneficial ownership – "*AIMWTF licence refer Mark Paxton*" – contrary to a statement by Rogers, "...*Mr Paxton ceased to own the AITLEF licence when he first transferred it to Mandare Holdings...*";
- (iv) statement by Mrs Blenkinsop, a partner of Blenkinsop Fay & Nominees ("BFN") "considered owners" by the Department (Rogers's letter of 14/02/1994), to MJ Hayter & Co, Lawyers, stating that the money from the sale of Paxton's fishing right should be given to him; NB: the Department recognised Paxton as the beneficial owner as distinct from considered owner, Peter Millington's letter of 10/03/1993;
- (v) letters to considered owners, BFN, from their respective lawyers, reiterating intention to remunerate Paxton for selling his fishing right:
  - (a) letter, Altorfer & Stowe to Glynn & Gray, Solicitors, 11/11/1992: "*We confirm that our clients [Blenkinsop] are agreeable, in principal, to the 'Paxton endorsement'*", being returned to him..."; and
  - (b) letter, Glynn & Gray (representing Mr & Mrs Fay) to Paxton, 12/11/1992: "*Mr Fay has as you are aware indicated to us his agreement in broad terms to you receiving the balance of the proceeds which we hold in trust from sale of the scallop endorsement...*"
- (vi) no stamp duty paid on the transfer of beneficial ownership, as would be the case if beneficial ownership was transferred to the "considered owners";
- (vii) no contract selling licence, being one (1) AIMWTFL unit 1921 transferred from F780 to G249 to "considered owners" or consideration paid;
- (viii) statement by Fred Blenkinsop, "considered owner", to Fraud Squad that it was never Paxton's unit and that the Department issued him that licence – not confirmed by Fisheries' licence files;

20 Livingstone Street  
Beaconsfield WA 6162

0427 817 522 / 9336 1364

# facsimile transmittal

**To:** The Right Hon Murray Criddle **Fax:** 9321 75111

**From:** Mark Paxton

**Date:** 12 November 2007

**Re:**

**Pages** 7

:

**Urgent**

**For Review**

**Please Comment**

**Please Reply**

**Please Recycle**

• Dear Sir • • • • • • •

As discussed, copy letters sent to Shane Hart of Liberal Party follow.

Regards

Mark Paxton

Encl

20 Livingstone Street  
Beaconsfield WA 6162

0427 817 522 / 9336 1364

# facsimile transmittal

**To:** The Right Hon Barry House **Fax:** 9757 9599

**From:** Mark Paxton **Date:** 12 November 2007

**Re:** **Pages:** 7

Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Dear Sir • • • • • • • •

As discussed, copy letters sent to Shane Hart of Liberal Party follow.

Regards

Mark Paxton

Encl

## **FACSIMILE**

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**Date** : 7 December 2007

**To** : *The Hon Jon Ford*  
*Minister for Fisheries*

**Fax no:** 9213 7201

---

Dear Sir

I refer to my numerous telephone calls to your office to discuss how I might serve a Writ on you with the minimum of inconvenience to all concerned.

Your office has refused to cooperate. I am therefore writing to formally request that you notify me of the time and place at which I might serve the Writ on you or, alternatively, on a person whom you might nominate to accept service on your behalf.

Please note that, if you fail to respond to this fax by **5.00pm, Wednesday, 12 December 2007**, I will make application to the Court for an order for substituted service. I look forward to receiving your response.

Yours faithfully

Mark Paxton  
Tel: 9336 1364

## **Hon. Jonathan (Jon) Robert Ford MLC JP**

Minister for Regional Development; Fisheries; the Kimberley, Pilbara and Gascoyne

**House:** Legislative Council

**Party:** Australian Labor  
Party

**Electorate:** Mining and Pastoral



**Inaugural Speech:** [\[Link\]](#)

**Speeches by Hon. Jonathan (Jon) Robert Ford**

**Electorate Office:**...

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Newman WA 6753  
Ph: (08) 9177 8904  
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7 BALL RD  
MUNDARING WA 6073

**Ministerial Office:**

9th Floor, Dumas House  
2 Havelock Street  
Perth WA 6000  
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Email3: cindy.portland@dpc.wa.gov.au

**- FAX TRANSMISSION -**

From : **Mark Paxton**  
No.of pages : 2  
Date : 31 October 2008  
To : **OFFICE OF THE ATTORNEY GENERAL;  
MINISTER FOR CORRECTIVE SERVICES**  
Attention : **Peter Phillips, Policy Adviser**  
Facsimile No. : 9221 4665

Dear Peter

**DEPARTMENT OF FISHERIES**

Thank you for your fax of 24 October 2008, in which you suggest that I:

- (a) set out precisely the contact I have had with the DPP; and
- (b) what action I request on the part of the Attorney General.

**Contact with DPP**

There follow copies of letters from:

- (i) State Crime Squad to me, dated 8 May 1997;
- (ii) DPP to Fraud Squad, dated 3 June 1997; and
- (iii) DPP to me, dated 16 October 2008.

The DPP's letter of 16 October 2008 is a reasonably accurate summation of my contact with that Department, save for one important matter which I raised in mid-2008. That involved my oral request to Julian Williams that the Department re-consider my case in light of the prosecutions of Jim Mace and Andre Hoskins in relation to seven (7) counts of fraud in relation to the sale of crayfishing entitlements in or about 1996 ("the Mace & Hoskins case").

I requested the DPP reassess my case in light of the Mace & Hoskins case as I have always considered that there were overwhelming similarities between my case and that involving Mace and Hoskins in that, in both cases, the beneficial owner was deprived of their interest in the licence as a result of the legal title being transferred without their knowledge.

I also believe that my case should be re-considered in light of the Mace & Hoskins case, as the DPP did not appear to consider the issue of fraud when it previously considered the matter, instead limiting its analysis to theft.

On 10 September 2008, Julian Williams told me, in a telephone conversation, that he had checked the files in relation to the Mace issue, and my file, and had sent a report to Ken Bates. I have not seen that report.

I have had no substantive contact with the DPP since receiving its letter of 16 October 2008.

**Requested action on the part of the Attorney General**

I request the Attorney General to assess whether or not, firstly, there is a *prima facie* case of fraud against any of the parties involved in the sale of my scallop unit and, secondly, whether I lost my scallop unit through the fraudulent act of any party or parties. In making this request, I would like to be consulted in relation to:

- (a) the scope of the investigation;
- (b) the evidence to be considered in the investigation; and
- (c) the person, or body, who is to conduct the investigation.

Also, I wish to have the opportunity of making written and oral submissions to the Attorney General in relation to the findings of the enquiry I am requesting. This is because the “enquiry” referred to in the letters from the Minister 21 October 2001, and from the CEO of the Fisheries Department dated 25 October 2005, failed to disclose what issues and evidence have been considered by whom, and the reasons for the “outcome” of the supposed enquiry.

I am very grateful to you for allowing me to approach you in this matter, which is of fundamental importance to me and, I believe, the fishing industry of Western Australia.

Please let me know if you would like me to provide further detail in relation to anything in this fax.

Yours sincerely



**Mark Paxton**

Encl



## Attorney General; Minister for Corrective Services

Our Ref: 35-01032

Mr Mark Paxton

By Facsimile: 9430 4044

Dear Mr Paxton

Thank you for your facsimile to my office, received 21 November 2008. I appreciate the personal and pecuniary importance to you of the matters you have raised.

In relation to your request for action on my part, I do not consider it appropriate for me to assess whether there is a *prima facie* case of fraud in relation to your matter or whether such fraud caused you to suffer loss. As Attorney General, I am not ordinarily able to step into the shoes of the Courts, the Director of Public Prosecutions or indeed the Police in relation to their decision making functions.

It appears based on the correspondence you have forwarded from the Office of the Director of Public Prosecutions ("DPP") that no formal brief of evidence was presented to the DPP in relation to your matter. If this is the case, it would appear that any decision making powers in relation to your matter are still primarily within the sphere of the Police and specifically the Fraud squad. If, on the basis of information you provide to them, they wish to seek further advice from the DPP in relation to the prospects of gaining a conviction in your matter, no doubt the DPP will be prepared to provide such advice to them. However, such advice would likely only be provided on the basis of a further request from the police.

If you request such action of the Police and are not satisfied with their response, you are within your rights to contact the relevant Minister, whose details are set out below.

The Hon. R F Johnson  
Minister for Police  
20<sup>th</sup> Floor, Governor Stirling Tower  
197 St George's Terrace  
PERTH WA 6000

I hope this information is of some assistance to you. If you require further clarification in relation to the DPP's position with respect to your matter, please do not hesitate to contact my office.

Yours sincerely

C. Christian Porter MLA

ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

cc The Hon. R F Johnson  
Minister for Police

31 DEC 2008

The Rt Hon Norman Moore  
Level 4  
London House  
216 St George's Terrace  
Perth, WA 6000

20 Livingstone Street  
Beaconsfield  
WA 6162  
08 9336 1364

30 January 2009

Dear Sir

I write to:

1. place on record the Department of Fisheries' dealings with me in relation to my ongoing claim to a fishing right, and
2. to apply for an exemption.

On 6 October 2008 I requested a meeting with you as Minister of Fisheries I then forwarded a comprehensive outline of my situation to you on 16 October 2008, which included:

1. References to the then Minister, Kim Chance's assurances that I could fish on exemption until this matter is resolved (that is, by a concluded Fisheries Department investigation into the matters I had raised with Kim Chance). It should be noted that Kim Chance accepted all relevant facts/evidence, ie:
  - I was the beneficial owner of my fishing right;
  - Fred Blenkinsop was not the beneficial owner of my fishing right;
  - The Fisheries Department's licensing system was inadequate to safeguard and maintain beneficial ownership; and
  - Fred Blenkinsop's actions amounted to alleged fraud.

Kim Chance stated that "*If appropriate, I will make amendments to allow you to apply for a licence*".

2. Requested Outcomes – the Exemption being reinstated; and A properly instituted enquiry with agreed terms of reference,

On 4 November 2008 I requested that you supply, at our meeting, details of the departmental investigation that resulted in my right to fish (Exemption 545) being cancelled. That request asked for

*"copies of:*

- (a) *the terms of reference;*
- (b) *the material considered;*
- (c) *the findings; and*
- (d) *the final report,*  
*of or by the Fisheries Department's investigation"*

On 9 December 2008 a meeting did take place, however it was not with you, but with Trevor Whittington, when I asked:

1. "*Has the Department held an investigation?*" to which Mr Whittington raised his eyebrows and made no comment; and
2. "*Have you seen the results of the investigation?*" - again, Mr Whittington's response was to raise his eyebrows and make no comment.

I took to that meeting, thinking it was necessary, evidence of my claim and a request for an exemption, all of which Mr. Whittington declined to accept or consider.

The only outcome of the meeting was Mr Whittington's statement "*The Minister is passing the whole thing to the Attorney General*", however the Attorney General's department have told me that they have made enquiries of your department in relation to the supposed referral of the matter to the Attorney General and that your department have no intention of making any such referral.

Following the meeting of 9 December 2008, I made a written request to Mark Pagano on 12 December 2008 in which I again requested details of the investigation, minutes of the meeting and clarification of your intentions and response to my request for an exemption. I have had no reply to that request.

I have yet to receive an explanation as to how the Department can suggest that the investigation into the matters I have raised has been completed, given that the outcome of the supposed enquiry:

- (a) failed to address the major issue of the Department's failure of duty of care, a matter for the Supreme Court, whilst the Department has the legislative power through FRMA 155(2) to have the Supreme Court "*consider and determine any case stated*";
- (b) failed to address the beneficial ownership of my fishing right, having written evidence of Fred Blenkinsop's four (4) varying claims to beneficial ownership that claim to be, but are not, substantiated by any document, contract, remuneration or Fisheries Department records and are refuted by his two partners in Fraud Squad statements. NB: Fraud Squad also did not accept his claim to beneficial ownership (see below (d)(2));
- (c) failed to address any of the "*matters*" and "*circumstances surrounding*", agreed upon as the terms of reference for the enquiry by myself and Kim Chance, instead having two "*outcomes*":
  - (i) the State Solicitor statement that the Limitations Act does not allow me to sue the Fisheries Department; and
  - (ii) they had no legislative framework to protect my beneficial ownership.

two matters of record already known to myself and Kim Chance – not the above-mentioned and agreed upon terms of reference. NB: I have a legal opinion that Point (ii) constitutes a failure of duty of care;

- (d) failed to seek any advice or clarification from the DPP and ignores:
  - (1) District Court Geraldton 101996, in which the "*considered*", but not "*beneficial*", owner of a fishing right was jailed for four (4) years on seven (7) counts of fraud, establishing:
    - (i) that a licence is something capable of being stolen;
    - (ii) beneficial ownership can be established; and
    - (iii) that the licensing system failed to safeguard and maintain beneficial ownership.

Three facts that Peter Rogers told the SCPA in October 1999 could not be established;

(2) the letter from Samantha Tough, Legal Officer of the Fraud Squad to me in which she stated "*My assessment of this matter is that there is probably a prima facie case of stealing*".

(e) failed to seek advice from the Major Crimes Squad as to my allegations of Peter Rogers's and Peter Millington's possible fraudulent actions, as set out in evidence to Kim Chance in relation to:

- (i) Peter Rogers's original response to the situation, including letters to Fred Blenkinsop's lawyers, in relation to licence ownership; and
- (ii) misleading statements to the SCPA, the DPP, the Ombudsman and to several lawyers.

Mr Moore, please do not lose sight of the fact that this fishing right would not exist if I had not been one of a small number of Geraldton fishermen who started and developed this industry.

I first started fishing in the Abrolhos Islands in 1981 as a crew hand, when there were only four (4) boats. I realized the potential, bought a 32' boat and converted it to a trawler. I put in five (5) years of very hard work prior to licensing, labouring under the assumption that I would be licensed (licences issued 1986) and be able to develop a career fishing for scallops. That has been denied to me by a Fisheries Department that has:

- Created a licensing system that "considered", in 1991, someone else to be the owner of my licence whilst "recognizing" in writing that I was the beneficial owner but created no legislative system to protect my beneficial ownership;
- Realised my right to fish was lost due to an act of fraud, yet ignored FRMA 143(C);
- Misled Parliament, the SCPA, the DPP and the Ombudsman, and frustrated all efforts to have this matter investigated by the SAT, Supreme Court (certiorari, re enquiry) and a ministerial assured enquiry.

Please do not:

- (a) use the excuse of my suing Jon Ford and Peter Rogers for negligence, in the Supreme Court, to ignore my request for an exemption. It is my understanding that those are separate issues and that the action does not absolve you of the responsibility to assess my application for an exemption; or
- (b) refer me to the SCPA or CCC, as I believe those courses of action would only be appropriate if you as the present Minister of Fisheries, are unwilling to take any action to access my exemption application, after satisfying yourself of the validity of the enquiry/investigation.

I have not included the exemption application fee as the application fee was paid in 2003 when exemption was originally approved. What I am requesting is a variation to the previously approved exemption to allow me to fish the 2009 Abrolhos Islands scallop season with 1 x 4 fathom unit.

The original exemption was approved on the basis that Kim Chance accepted that:

- (a) I was beneficial owner of one (1) unit;

- (b) Fay & Blenkinsop Nominees Pty Ltd committed what amounts to a fraudulent act;
- (c) the Fisheries Department had an informal system of register of beneficial ownership that failed to protect my interest;
- (d) the Fisheries Department recognised Mark Paxton as beneficial owner, as evidenced by Peter Millington's letter of April 1993 confirming recognition,

and that these "matters" and "circumstances" would be investigated by Kim Chance, and, if appropriate, Kim Chance would make amendments to allow for the grant of a licence.

I am requesting you to waive the fee as this matter should have been resolved many, many years ago.

Considering the information provided in this letter and in my letter of 4 November 2008 to your office, including a letter dated 10 October 2007 to Jon Ford, outlining facts not taken into account and the reasons that the enquiry/investigation into the relevant and agreed upon parameters has not been held, I believe you are now in a position, and, with my application for an exemption, have a responsibility to validate this enquiry.

Having had no reply to my letters of 4 November 2008 and 12 December 2008, and having had no meeting with you, as requested in my letter of 6 October 2008, if I have no reply with ten (10) days to my exemption request, I will assume you have accepted the Fisheries Department's investigation as refuting the above facts already accepted by Kim Chance;

If you suspect that there has been any misconduct by the Fisheries Department, you have a "*duty to notify*" the CCC in writing, as imposed by section 28, Corruption & Crime Commission Act, 2003.

Yours faithfully



Mark Paxton  
20 Livingstone Street  
Beaconsfield 6162  
0417 817 523  
08 9336 1364

Encl

cc by fax: Premier Colin Barnett	9322 1213
Hon Barry House	9757 9599
Hon Brendon Grylls	9123 7001

20 Livingston Street  
Beaconsfield  
WA 6162

08 9336 1364

The Chairperson  
Standing Committee on Public Administration

3 February 2009

Dear Sir/Madam

I write to request the Standing Committee on Public Administration to reconvene the preliminary investigation which included Session 2 of 2 on 13 October 1999, a copy of the transcript of evidence given at which is enclosed for ease of reference.

The reason for my requesting that the preliminary investigation be reconvened is that the issue which was to have been the subject of the investigation was not addressed by Mr Rogers. Towards the end of his interjectory remarks on p1 of the transcript, the Chairman states, “*...what is the procedure for someone having his or her beneficial interest noted on the Register?*” Mr Rogers confirmed that the Department recognised the distinction between the legal owner and the beneficial owner in his comment at p3, “*In fairness, the Department always dealt with the licensee, which does not necessarily mean the owner.*”

However, in giving his evidence to the Committee, Mr Rogers limited his discussion to the treatment by the Department of security interests and, to a lesser extent, leasing arrangements. Neither of these issues were relevant to the existence or otherwise of a procedure for a beneficial owner having his or her interest noted on the Register.

The discussion in relation to security interests was, with respect, completely irrelevant to the issue of the recognition of beneficial ownership. The issue of the treatment by the Department of leasing arrangements was also irrelevant because it has never been suggested by me that I leased my licence to another party, notwithstanding the Chairman’s comments at p5, “*That is what the Paxton case is all about. He alleges that a person leased his property and then took it and sold it. It is a straight case of theft.*”

What happened in my case was that I leased a number of licences belonging to Faye & Blenkinsop Nominees Pty Ltd and I arranged for the transfer of the scallop units which I beneficially owned (and which were then registered on the Mandare wet licence) to the Faye & Blenkinsop Nominees wet licence. Faye & Blenkinsop Nominees did not lease my licence, and, obviously, I did not lease it from myself.

Given that the legal and factual basis of my claim has been mis-stated and/or misunderstood, and the issue raised by the Chairman has not even been discussed, I think it is most important that the preliminary enquiry is reconvened.

I would also draw to your attention the fact that the problem was not one that was limited to myself. At p3 of the transcript, Mr Rogers states, "During the period of providing a service without any legislative basis, no major issues came to the surface that were not sorted out by the major parties, perhaps with the exception of the Paxton case." This is untrue as there were ~~two~~ <sup>one</sup> instances where the registered (legal) owner of the licence fraudulently transferred the licence without the consent or knowledge of the beneficial owner. The registered owners were, in both cases, prosecuted and convicted of fraud - I respectfully refer you to the District Court (Geraldton) case involving Andrea ?? and Mace, GER10 of 1996. ~~POSSESSIONS~~

If you are in any doubt as to whether or not the preliminary enquiry should be reconvened, please bear in mind that, when I was given the opportunity of discussing the Fisheries Department's ... beneficial ownership with the Honourable Kim Chance in 2003, he:

*Treatment of my*

- (a) instigated an enquiry into the issues which I have raised; and
- (b) granted me an exemption, which was to remain effective until the conclusion of the investigation.

I fished under the exemption in the 2004 & 2005 seasons – the exemption was then not renewed because Peter Rogers advised the then Minister, Jon Ford, that the enquiry had been concluded, however, it was apparent from Peter Rogers's letter dated 21 October 2005 that the only question which had been addressed by that enquiry was whether or not any cause of action I had against the Department of Fisheries for negligence was statute barred – this was not amongst the issues I had raised with the Honourable Kim Chance.

Please let me know if you wish me to clarify any aspect of the above – I have kept this letter brief and can expand on all the matter raised, if required.

Yours faithfully

MARK PAXTON

*+ PROVING THAT BENEFICIAL OWNERSHIP  
CAN BE PROVED Pg 4 PARA 4*

*A LIC IS "SOMETHING" CAPABLE OF  
BEING STOLEN Pg 4 PARA 8.*

*AND THAT THE LICENSING SYSTEM  
WAS INADEQUATE TO THE POINT OF  
BEING USED TO COMMIT FRAUD Pg 3 PARA 8*

*\* Pg 4 PARA 1 — MY B/O INTEREST WAS  
RECORDED ON COMMENTS PAGE OF FBL  
F780 - P.M's COMMENT/STATEMENT RECOGNISED THAT*



## Premier of Western Australia

Our Ref: 200900814

Mr M Paxton  
20 Livingstone Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

Thank you for the copy of your letter to the Hon Norman Moore, Minister for Fisheries, and your telephone call to this office regarding your claim to a fishing right and dealings with the Department of Fisheries.

The detailed information provided in your correspondence has been noted, and the points you raised will be appropriately considered.

Yours sincerely

Colin Barnett MLA  
**PREMIER**

26 FEB 2009



Ref: 26-00148

MINISTER FOR MINES  
AND PETROLEUM;  
FISHERIES;  
ELECTORAL AFFAIRS;  
LEADER OF THE  
GOVERNMENT IN THE  
LEGISLATIVE COUNCIL

Mr Mark Paxton  
20 Livingstone Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

**REQUEST FOR MEETING AND APPLICATION TO VARY EXPIRED EXEMPTION**

I refer to your email of 6 October 2008, and facsimiles of 16 October 2008 and 4 November 2008 requesting a meeting with me, and your facsimile of 3 February 2009 attaching an application to vary expired Exemption 545.

I understand the matters you raise in your facsimiles have been well ventilated over the years, and have been the subject of a number of unsuccessful proceedings in the Supreme Court and the State Administrative Tribunal.

Further, you have commenced new Supreme Court proceedings against my predecessor, the Hon Jon Ford MLC, and the former Executive Director of Fisheries, Mr Peter Rogers (action number CIV 2076 of 2007). While these proceedings remain on foot, it would be inappropriate for me to meet with you to discuss the claims and allegations made in your facsimiles.

I note that in your 16 October 2008 facsimile you claim to have "*remained beneficial owner of the MFL whilst the same was on Fay and Blenkinsop's wetline licence and attached to vessel LFBG 249*" (par 1.(g)). If your claim to beneficial ownership of the MFL is valid, then you would be able to enforce that right in the Courts. If you are unable to enforce your claim then it would appear that you do not have the "beneficial interest" that you claim to have.

I understand that you met with my Chief of Staff, Mr Trevor Whittington, on 9 December 2008. I have been apprised of the matters you raised at the meeting. In the circumstances, I am unable to see how the meeting you propose with me can be of assistance to you.

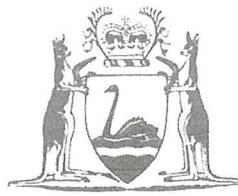
With respect to your undated application to vary Exemption 545, which expired in 2005, I cannot vary an Exemption that has ceased to exist. I assume you wish to apply for a further Exemption. In accordance with section 7(4)(c) of the *Fish Resources Management Act 1994*, an application for an Exemption *must* be accompanied by the prescribed fee (\$2,060.00). I am unable to consider your application for an Exemption until the prescribed fee is paid.

Yours sincerely



**HON NORMAN MOORE MLC**  
**MINISTER FOR FISHERIES**

27 FEB 2009



REGISTRARS' CHAMBERS,  
SUPREME COURT  
PERTH, W.A. 6000

TELEPHONE: (08) 9421 5333  
FACSIMILE: (08) 9221 8352

27 February, 2009

YOUR REF :  
OUR REF : SD:RD:CIV/2076/2007  
ENQUIRIES : Rodney Duke (94215181)

Mr M Paxton  
20 Livingstone Street,  
Beaconsfield WA 6162

Dear Sir

**RE: CIV 2076 OF 2007 PAXTON v MINISTER FOR FISHERIES & ANOTHER**

Pursuant to O. 29A r. 18A of the *Rules of the Supreme Court 1971*, if no procedural step is taken in a case for 12 months by any party to the case, the case is to be taken to be inactive unless a Judge, Master or Case Management Registrar orders otherwise. No procedural steps have been taken in this action for 12 months and therefore the case is taken to be inactive. A Judge, Master or Case Management Registrar has not ordered otherwise.

I now advise pursuant to O. 29A r. 19 (1) of the Rules that the case has been placed on the inactive cases list. I also advise that pursuant to O. 29A r. 21 of the Rules, a case that has been on the inactive cases list for six continuous months is to be taken to be dismissed for want of prosecution.

Yours faithfully

A handwritten signature in black ink, appearing to read 'K.F. Chapman'.  
Principal Registrar

.cc State Solicitors Office  
Westralia Square,  
141 St Georges Terrace,  
Perth WA 6000  
Ref:SSO4301/07



## STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Mr Mark Paxton  
20 Livingstone Street  
BEACONSFIELD WA 6162

20 April 2009

Dear Mr Paxton

I refer to your letter to dated 5 February 2009. In your letter you refer to a hearing conducted by the former Standing Committee on Public Administration in 1999. You also corresponded with the current Standing Committee on Public Administration in 2006.

The Standing Committee on Public Administration will not be taking any further action in this matter.

The Committee is able to inquire into any matter that may be indicative of systemic problems in the system of public administration in Western Australia. The Committee is of the view that your complaint essentially relates to an individual issue, not a systemic issue. The Committee is not empowered to investigate an individual case, and make findings and enforce remedies relating to an individual case. There are more appropriate avenues for you to seek redress to your complaint.

The Committee also noted the significant lapse of time since your initial complaint (your complaint relates to matters occurring over 10 years ago, the pertinent transfer occurred in 1991), that you have not provided new factual information since your previous contact with the Committee, and there have been relevant system changes since 1999.

If you have any queries please contact Suzanne Veletta, Advisory Officer, on 9222 7250.

Yours sincerely

**Hon Barry House MLC**  
Chair

*Note that this document (including attachments) are privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.*



## STATE SOLICITOR'S OFFICE

**SSO Ref:** 4301/07  
**Enquiries:** Kate McDonald  
Telephone: 9264 1888  
Direct Fax: 9264 1670

Westralia Square  
141 St Georges Terrace  
Perth, Western Australia 6000

GPO Box B83 Perth W.A. 6838  
Telephone (08) 9264 1888  
Fax (08) 9264 1440  
DX 175

**Date:** 28 July 2009

Mr Mark Paxton  
20 Livingstone Street  
BEACONSFIELD WA 6162

Dear Mr Paxton

**PAXTON V MINISTER FOR FISHERIES & PETER ROGERS  
SUPREME COURT ACTION CIV 2076 OF 2007**

I refer to your application to have the above action removed from the Inactive Cases List on 4 August 2009.

As you have not adequately explained the reason for the significant delay in preparing a Statement of Claim which in turn fails to disclose a cause of action, the Defendants will be opposing your application.

Yours faithfully

A handwritten signature in black ink, appearing to read "Kate McDonald".

**KATE McDONALD  
SENIOR ASSISTANT STATE COUNSEL**



Mark Paxton  
20 Livingstone Street  
Beaconsfield 6162  
08 9336 1364

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## FACSIMILE

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**Date : 6 November 2009**

**To : The Right Honourable Norman Moore**  
**Minister for Mines and Petroleum; Fisheries; Electoral Affairs**

**Fax no : 9422 3001**

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Dear Sir

I write to create a record of the Department of Fisheries' knowledge and involvement in my ongoing claim to a fishing right, and to apply for an exemption.

Following a request for a meeting with you as Minister of Fisheries on 6 October 2008, having forwarded a comprehensive outline of my situation to you on 16 October 2008, followed by a request on 4 November 2008 to have you supply, at our meeting, details of the departmental investigation that resulted in my right to fish (Exemption 545) being cancelled, a meeting did take place, not with you, but with Trevor Whittington, on 9 December 2008 at which I asked:

1. Has the Department held an investigation? To which Mr Whittington raised his eyebrows and made no comment; and
2. Have you seen the results of the investigation? Again, raised eyebrows and no comment.

I took to that meeting, thinking it was necessary, evidence of my claim and a request for an exemption, none of which was requested by Mr Whittington.

Including:

1. References to the then Minister, Kim Chance's assurances that I could fish on exemption until this matter is resolved. NB: Kim Chance accepted all relevant facts/evidence, ie:
  - I was the beneficial owner of my fishing right;
  - Fred Blenkinsop was not the beneficial owner of my fishing right;
  - The Fisheries Department's licensing system was inadequate to safeguard and maintain beneficial ownership; and
  - Fred Blenkinsop's actions amounted to alleged fraud.

Kim Chance stated that "If appropriate, I will make amendments to allow you to apply for a licence".

2. Requested Outcomes – the Exemption being reinstated; and A properly instituted enquiry with agreed terms of reference.

The only resolution of the meeting appears to be that "The Minister is passing the whole thing to the Attorney General", which I have now found out from the Attorney General's office you have no intention of doing.

Following the meeting, I made a written request on 12 December 2008. I again requested details of the investigation, minutes of the meeting and clarification of your intentions and response to my request for an exemption – no reply.

Do you accept that the investigation has been completed, even though it:

- (a) fails to address the major issue of the Department's failure of duty of care, a matter for the Supreme Court, whilst the Department has the legislative power through FRMA 155(2) to have the Supreme Court "*consider and determine any case stated*";
- (b) fails to address the beneficial ownership of my fishing right, having written evidence of Fred Blenkinsop's four (4) varying claims to beneficial ownership that claim to be, but are not, substantiated by any document, contract, remuneration or Fisheries Department records and are refuted by his two partners in Fraud Squad statements;
- (c) fails to address "*matters*" and "*circumstances surrounding*", agreed upon as its parameters by myself and Kim Chance, instead having two "*outcomes*":
  - (i) states that a solicitor states that the Limitations Act does not allow me to sue the Fisheries Department; and
  - (ii) they had no legislative framework to protect my beneficial ownership;

Two matters of record already known to myself and Kim Chance – not the above-mentioned and agreed upon parameters. NB: I have a legal opinion that Point (ii) constitutes a failure of duty of care;

- (d) failed to seek any advice or clarification from the DPP and ignores District Court Geraldton 101996, in which the "*considered*", but not "*beneficial*", owner of a fishing right was jailed for four (4) years on seven (7) counts of fraud, establishing:
  - (i) that a licence is something capable of being stolen;
  - (ii) beneficial ownership can be established; and
  - (iii) that the licensing system failed to safeguard and maintain beneficial ownership.

Three facts that Peter Rogers told the SPCA in October 1999 could not be established;

- (e) failed to seek advice from the Major Crimes Squad as to my allegations of Peter Rogers's and Peter Millington's possible fraudulent actions, as set out in evidence to Kim Chance in relation to:
  - (i) Peter Rogers's original response to the situation, including letters to Fred Blenkinsop's lawyers, in relation to licence ownership; and
  - (ii) Misleading statements to the SPCA, the DPP, the Ombudsman and to several lawyers.

Mr Moore, please do not lose sight of the fact that this fishing right would not exist if I had not been one of a small number of Geraldton fishermen who started and developed this industry.]

I first started fishing in the Abrolhos Islands in 1981 as a crew hand, when there were only four (4) boats. I realized the potential, bought a 32' boat and

converted it to a trawler. I put in five (5) years of very hard work prior to licensing, labouring under the assumption that I would be licensed (licences issued 1986) and be able to develop a career fishing for scallops. That has been denied to me by a Fisheries Department that has:

- Created a licensing system that "considered", in 1991, someone else to be the owner of my licence whilst "recognizing" in writing that I was the beneficial owner but created no legislative system to protect my beneficial ownership;
- Realized my right to fish was lost due to an act of fraud (see FRMA 143(C));
- Misled Parliament, the SCPA, the DPP and the Ombudsman, and frustrated all efforts to have this matter investigated by the SAT, Supreme Court (certiorari, re enquiry) and a ministerial assured enquiry.

Please do not:

- (a) use the excuse of my suing Jon Ford and Peter Rogers for negligence, in the Supreme Court, to ignore my request for an exemption. It is my understanding that they are separate issues and that the action does not absolve you of the responsibility to assess my application for an exemption; or
- (b) refer me to the SCPA or CCC, as I believe those courses of action would only be appropriate if you as the present Minister of Fisheries, are unwilling to take any action to access my exemption application, after satisfying yourself of the validity of the enquiry/investigation.

I have not included the exemption application fee. I am requesting you to waive the fee as this matter should have been resolved many, many years ago.

Considering the information provided in this letter and in my letter of 4 November 2008 to your office, including a letter dated 10 October 2007 to Jon Ford, outlining facts not taken into account and the reasons that the enquiry/investigation into the relevant and agreed upon parameters has not been held, I believe you are now in a position, and, with my application for an exemption, have a responsibility to validate this enquiry.

If you suspect that there has been any misconduct by the Fisheries Department, you have a "*duty to notify*" the CCC in writing, as imposed by section 28, Corruption & Crime Commission Act, 2003.

Yours faithfully

Mark Paxton  
20 Livingstone Street  
Beaconsfield 6162  
0417 817 523  
08 9336 1364

**PAXTON v MINISTER FOR FISHERIES**

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<b>Date</b>	<b>Contact</b>	<b>Method</b>	<b>Reason</b>
13/03/07	Kim Chance		Meeting re Jon Ford's letter
03/05/07	Kim Chance	Letter	Evidence of corruption request for CCC
10/08/07	Kim Chance Barry House	Telephone Telephone	Meeting SCPA petition
14/08/07	Jon Ford	Telephone	Request meeting re cancelled exemption
15/08/07	Jon Ford Liberal Party Barry House CCC Kim Chance	Telephone Telephone Telephone Telephone Facsimile	Won't return call    CCC, section 28
16/08/07	Shane Hart (Liberal Party) Alan Carpenter	Telephone Telephone	Re fax to Kim Chance (CCC), request meeting
27/08/07	Liberal Party Jon Ford	Telephone Telephone	Questions for Parliament Won't return call
06/09/07	Liberal Party	Facsimile	Questions for Parliament
14/09/07	Alex Omedpas	Telephone	Questions for Kim Chance
19/09/07	Mike McMullen (K Chance)	Telephone	Questions & meeting
27/09/07	Kim Chance Liberal Party	Telephone Telephone	Meeting Questions for Parliament
28/9/07	Kim Chance (M McMullen)	Telephone	My questions for Kim Chance
17/10/07	Jon Ford Kim Chance Liberal Party	Telephone Telephone Telephone	
31/10/07	Mike McMullen Shane Hart	Telephone Telephone	Questions for Kim Chance Questions for Kim Chance
12/11/07	Murray Criddle Barry House	Telephone Telephone	Questions for Kim Chance Questions for Kim Chance
13/11/07	Shane Hart: will talk to Murray re questions	Telephone	
20/11/07	Bruce Donaldson	Telephone	Questions for Kim Chance
23/11/07	Tony Papsilas (N Moore) Murray Criddle	Telephone Telephone	Questions to Kim Chance/Jon Ford
26/11/07	Tony Papsilas Colin Murray, Auditor General Bruce Donaldson	Telephone Telephone Telephone	Questions for Parliament Situation

Date	Contact	Method	Reason
28/11/07	Tony Papasilias Malcolm Peacock Bruce Donaldson Jon Ford	Telephone Telephone Telephone Telephone	Questions going to Parliament Jon Ford misleading Parliament Won't do questions Serving Writ
30/11/07	Tony Papasilas	Telephone	Questions next Tuesday
03/12/07	Malcolm Peacock Auditor General	Telephone Telephone	
04/12/07	Tony Papasilas Attorney General Malcolm Peacock	Telephone Telephone Telephone	
05/12/07	Tony Papsilas: N Moore spoke to B Donaldson – no questions	Telephone	
06/12/07	Jon Ford: Reception hung up on me, no one will return calls Malcolm Peacock Liberal Party: B Donaldson won't do questions Murray Criddle	Telephone Telephone Telephone	
07/12/07	K Chance office, have received questions	Telephone	
11/12/07	Grant Woodhams PM	Facsimile Letter	
*10/12	Malcolm Peacock <i>PETER O'LEARY TON</i>	Letter	<i>RE INQUIRY / AMENDMENTS</i>
17/12/07	Barry House	PAX	SCPA
02/01/08	State Solicitor, Kate Glancy Kim Chance office		Re-write Writ
03/01/08	State Solicitor, Kate Glancy		
08/01/08	Kim Chance, Mike McMullen		
09/01/08	Bruce Donaldson		
10/01/08	Greg Paust Colleen Eagan, journalist Bruce Donaldson Barry House		
16/01/08	Greg Paust	Letter	
17/01/08	Kim Chance: M McMullen rang: re-submit questions for K Chance	Telephone	
21/01/08	Kim Chance	Letter	

Date	Contact	Method	Reason
19/08/08	DPP Liberal Party – Christian Porter Stuart Mirfin, Police Grant Woodhams		
25/08/08	DPP, Julian Williams Peter Phillips & Christian Porter	MEETING	
01/09/08	DPP, Julian Williams Peter Phillips		
10/09/08	Martin – Brendan Grylls DPP, Julian Williams		
22/09/08	Peter Phillips		
25/09/08	DPP, Julian Williams/Ken Bates		
30/09/08	Norman Moore DPP, J Williams		
07/10/08	Mike Pagano, N Moore		
10/10/08	Mike Pagano, DPP		
13/10/08	Mike Pagano Peter Phillips		
23/10/08	Peter Phillips		
24/10/08	Peter Phillips, said “What can we do?”		
31/10/08	Peter Phillips	Facsimile	
21/12/08	Peter Phillips Mark Pagano		
05/12/08	Norman Moore		Meeting arranged for 09/12/08
09/12/08	Norman Moore	MEETING	TW – will instruct CP to investigate
10/12/08	Peter Phillips Brendon Grylls		
15/12/08	Peter Phillips: no instruction from N Moore		
16/12/08	Stuart Smith, CEO, Fisheries Dept Barry House		
17/12/08	Norman Moore Grant Woodhams Stuart Smith		

\* 4/11/08 - PAX TO MARK PAGANO

1334-090817

Date	Contact	Method	Reason
23/01/08	Greg Paust Mike McMullen		Kim Chance questions
29/01/08	Supreme Court		
30/01/08	Liberal Party, Alex Tenby: will show questions to Troy Buswell		
20/02/08	WAFIC	FAX	RE: S.F. AMENDMENTS
22/2		ANTHONY FELS	
25/02/08	Gary Snook		
26/02/08	Norman Moor		
29/02/08	Anthony Fels: will talk to J Ford		ANOTHER FAX TO A.F.
04/03/08	Anthony Fels (FAX to A.F.) Grant Woodhams Mike McMullen (K Chance)	5/3 6/6	Hansard, Parliament Jon Ford - vacant licence
11/03/08	Anthony Fels: confirmed questions in Parliament 04/03. "Yes" vacant licence	QS IN PARL	HANSARD J.F. ANSWER.
13/03/09	Shane O'Donohue, Fisheries Dept Mike McMullen Rita Saffiotti, Alan Carpenter		Please confirm "vacant licence"
14/03/08			
17/03/08	Shane O'Donohue Rita Saffiotti Jon Ford Mike McMullen	FAX TO KIM CHANCE LETTER TO M.P. RE: AMENDMENTS 20/3/08 ~ REPLY LETTER FROM F/O.	LETTER — ISSUES HAVE BEEN CONSIDERED
01/04/08	Tony Papasilas, N Moore		Vacant licence
3/04/08	Anthony Fels	HANSARD QS TO J.F. + ANSWERS.	
16/04/08	Tony Papasilas		Questions for Jon Ford
04/06/08	Tony Papasilas		Questions for Jon Ford
05/06/08	Tony Papasilas		Questions for Jon Ford
10/06/08	Tony Papasilas	MEETING	
17/06/08	Tony Papasilas	QS TO J.F.	Info on licence
18/06/08	NORMAN MOORE		HANSARD 615
14/07/08	Tony Papasilas		
28/07/08	DPP SCPA CCC Tony Papasilas		
31/07/08	Tony Papasilas		Evidence of B/O
29/5/08		QS 527 + 531	HANSARD
		RE: INQUIRY.	

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Date	Contact	Method	Reason
18/12/08	Mike Cuomo <i>Barry House - FAX</i>		Stuart Smith meeting
15/01/09	Barry House		SCPA
19/01/09	Barry House, said will talk to N Moore		
21/01/09	Norman Moore		
22/01/09	Norman Moore Fisheries Dept: M McMullen, Glenn Cridland		
30/01/09	Barry House <i>written to N. Moore</i>		
05/02/09	Barry House Brendon Grylls Colin Barnett		
06/02/09	Brendon Grylls, Marty		
17/02/09	Norman Moore Colin Barnett	Fax received	
23/02/09	Norman Moore, Barry House Fisheries Dept: M Cuomo, M McMullen		

*REQUESTS TO F/D & P.M.*

*AF*

*N.M.*

# Mark Paxton / Fisheries Department

**Mark Paxton** (fremantletrawlcooperative@live.com.au)

Tuesday, 18 December 2012 5:48:27 PM

cherie.mcneill@mua.org.au

It has been brought to our attention that our member Mark Paxton has lost his fishing rights in the Abrolhos Island and Mid West Trawl Fishery as a result of your licensing system. We understand you have been made aware of this situation by Mark Paxton when first in opposition and since becoming Minister of Fisheries.

Could you please explain this situation and the Departments subsequent actions in relation to this matter.

In 2003 the then Minister of Fisheries Kim Chance in a letter to Mark Paxton 22/12/03 stated- " I am continuing to consider the matters raised regarding the cancelled licence and if appropriate, I will amend the AIMWTF Management plan1993 to provide you with opportunity to apply for the grant of a new licence". "Nevertheless, given the circumstances which surround your claim, I have determined that I will grant you an exemption which will permit you to legally operate in the AIMWTF in the 2004 season without being the holder of a Managed Fishery Licence[MFL].

The "matters raised" –Mark Paxton's Specific and General reliance on the Fisheries Department to maintain and safeguard his fishing right, and the Department's failure of duty of care to do so. [NB the department did not have a Legislated licencing system capable of registering and protecting Beneficial Ownership.

Blenkitisop Fay and Nominees as "considered owners" assuming Beneficial Ownership and selling Mark Paxton's fishing right, in affect committing Fraud.

An inquiry was instigated, Confirmed in writing by Kim Chance and the Executive Director Peter Rogers . Note Fish Resources Management Act 1994 –Section 249-(2) The Executive Director may appoint a person or persons to conduct an inquiry to determine who holds, controls or has an interest in an authorization and to report to the Executive Director the findings of the inquiry."

Apart from the question of the department's duty of care, the question of who had an interest in the authorization when it was transferred by BFN , as per FRMA 1993 section 249 (2), was the main Fact to be established.

Categoric evidence of Mark Paxton's Beneficial Ownership was supplied to the Department (accepted by Kim Chance) and a copy of Justice Mason's 1985 High court ruling "If a person has a specific or general reliance on a public administration, that public administration has a duty of care to that person". Nevertheless the inquiry that began from a meeting between Mark Paxton and Kim Chance on 23/7/03 continued till Kim chance ceased to be Minister, with a letter from the Executive Director over two years later 25/10/05 stating Mark Paxton had no "interest" in the fishing right and that the Department had no "obligation" ie duty of care to Mark Paxton.

A fisherman has lost his constitutional right as a result of a Fraudulent act being committed, bought about by an inadequate licencing system. Given that FRMA 1994 section 143 (1)(c) relates to cancellation suspension and renewal "If the authorization was obtained by fraud or misrepresentation" could this section be amended to allow for the cancellation of the transfer that alienated Mark Paxton's beneficial ownership. The authorization in question has subsequently been bought back by the department.

The inquiry outcome raises many questions, what evidence exists refuting Mark Paxton's Beneficial Ownership (interest)? Why has the Department's duty of care to Mark Paxton been ignored? Has the Department had an agenda to conceal a Fraudulent act and a failure of duty of care, encompassing the Department possibly misleading the DPP, Ombudsman, Standing committee of public administration, and as you are aware Parliament.

Fw: Mark Paxton -Misconduct of the Fisheries Department as defined in the Corruption,Crime and Misconduct Act 2003 , Division 1, 4 abd 12345

MP Mark Paxton <fremantletrawlcooperative@live.com.au>

Reply | v

Wed 15/03, 12:28 PM

dave.kelly@mp.wa.gov.au

dave.kelly@mp.wa.gov.au

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**From:** Mark Paxton <fremantletrawlcooperative@live.com.au>

**Sent:** Monday, 13 March 2017 5:05 PM

**To:** dave.kelly@mp.wa.gov.au

**Subject:** Mark Paxton -Misconduct of the Fisheries Department as defined in the Corruption,Crime and Misconduct Act 2003 , Division 1, 4 abd 12345

HISTORY 1 ABROLHOS ISLANDS AND MID WEST TRAWL FISHERY 1 UNIT 1984  
Commenced fishing in the Abrolhos Islands for scallops.19/11/86 M Paxton issued with single rig licence No. 1921 for LFBG298.15/05/90 Licence No 1921 transferred to LFBG249, licensees JF & KA Fay and Blenkinsop Nominees.I was leasing their licence as it had on it 1 AIMWTF Unit and an Onslow Prawn endorsement.This enabled me to fish with 2 nets in the AIMWTF .I wrote a contract to lease with an option to buy, signed by licence holders.03/05/91- 2 AIMWTF units transferred off LFBG249.This transfer 1 Constitutes a failure of a Duty of Care to safeguard and maintain my fishing right by the department.See Justice Mason 1978 Specific and General Reliance Test.-Supreme Court Tort of Negligence. 2 Is a breach of FRMA 1994 143[c]Fred Blenkinsop obtained my authorisation by fraud and misrepresentation.He assumed beneficial ownership to sell my unit,this constitutes fraud.3 Criminal Fraud.2003 The then Minister of Fisheries Kim Chance stating that he had no problem with the evidentiary facts above,issued me with a Ministerial Exemption for 2004 and 2005 whilst the Department held an investigation into "the matters you have raised"-K C 09/03/2005 Letter to MP.02/09/2004MP applied for an AIMWTF licence.2005 Minister of Fisheries Jon Ford cancels exemption as it was only valid until completion of the inquiry ,which is now completed.I applied for a AIMWTF licence in 2004 in the hope that a refusal would trigger an appeal to the SAT. See Hansard 22/03/2006 It took the threat to the Minister of a Writ of Mandamus in Parliament to get my answer NO.2005 I asked Jon ford in a meeting ,that if another Government Body ie the SAT could decide the issue would he be agreeable,he of course said yes.At this meeting he full well understood that this would require Amendments to the AIMWTF notice 1993,saying I will create a 17th licence.This is in line with and being aware of KC letter to

MP 13/08/2003 "One outcome of that meeting[23 july]was that I indicated I would consider amending the Management Plan for the AIMWTF to make provision for the issue of additional Managed Fishery Licences [MFLs]"Amendment 1 of 2005 passed Government Gazette 11/11 2005.These amendments do not include a 17th or vacant licence and in fact do not affect any fisherman in the industry but me, and were in fact written to frustrate due process being the SAT, and my ability to fish in the industry

should the original exemption be renewed.See Hansard 29/11/2005 JF reads a prepared answer[by Fisheries] to my questions regarding the Amendments then adds 13 words of his own "I advise the member there is one vacant licence in the plan".He even tabled the Plan which doesn't have a "vacant licence" I have notified JF by phone and in writing that his Amendments do not include a vacant or 17th licence or any provision for the SAT to address or rectify the issue.His staffer on the phone said "Jon doesn't read the legislation he signs. 2008 Hansard 123 Is there a vacant licence-JF"

YES" .Contempt of Parliament.I This matter I then took to Supreme Court who apparently condoned Contempt of Parliament and dismissed my claim that JF had breached FRMA 1994 244 1 [a] and 2. Not showing good faith by lying in Parliament to frustrating due process and breaching FRMA 1994 171 [1][a] preventing me from lawfully fishing.The contempt of Parliament is just the tip of the iceberg.Mr Rogers

apparent involvement in concealing his department's failure of Duty of Care and concealment and collusion in an act of fraud , raises a lot of questions including, that if found to be corrupt what becomes of all his Legislation. 09/11/2016 Discussion with Grant Hitchcock of The Legislative Council Procedures and Privileges Committee He said what has happened in particular the SCTs decision regarding lying in parliament, was impossible as section 4 of the Bill of Rights precludes the SCT from matters related to Parliament, and that JFs statement in Parliament raised a lot questions.I

am planning meetings with the SSO[ I think they need a heads up, and the new Attorney may be interested] and the LCPPC but would like to discuss with you a possible solution first, being the cancellation of the transfer 03/05/1991 as per FRMA 143 {C}. Oh and congratulations, the wa public passed the intelligence test.Eli and Kelly

have my particulars.And thank you Eli I really needed the typing practise. MP







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## RE: Attention Dave Kelly and Mark ChiminskiMM

KM Kelly, Minister &lt;Minister.Kelly@dpc.wa.gov.au&gt;

Today, 6:01 PM

You ▾

Reply | ▾

Thank you for your email.

This email is to acknowledge that your correspondence to the Hon Dave Kelly MLA, Minister for Water; Fisheries; Forestry; Innovation and ICT; Science has been received.

Please be assured your correspondence will be actioned in due course.

Thank you for taking the time to contact the Hon Dave Kelly MLA.

Kind regards

**Office of the Hon Dave Kelly MLA**  
**Minister for Water; Fisheries; Forestry; Innovation and ICT; Science**

Level 8, Dumas House

2 Havelock Street

WEST PERTH WA 6005

Ph: (08) 6552 6100 | Fax: (08) 6552 6101

Email: [minister.kelly@dpc.wa.gov.au](mailto:minister.kelly@dpc.wa.gov.au) | Website: [www.dpc.wa.gov.au](http://www.dpc.wa.gov.au)



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Liza Harvey Leader

Mark McGowan Premier

cc Peter Tinley Minister of Fisheries

Phone 0417817523

e mail

Mark Paxton Fishermans Advocate for the Maritime Rights Organisation WA

Please find enclosed letters from the

elite".

The CEC needs a commissioner who makes decisions based on law not with a track record of making specious and perverse decisions to satisfy the "desired outcome" of the "entitled

Corruption by John McKechnie.

You now like to have a meeting with me to see the complete irrefutable evidence of CEC I would like to go on record as having supplied this information to you, and ask would Now that I have become aware that you are part of the selection process for the head of the

conspiracy to conceal and abet a FRAUD.

from the public register, as well as John McKechnie's perverse targeting of justice and involvement in a Parliament to frustrate a SAT hearing as acceptable, the transcript of which has "VANISHED" Court can't deliberate on any thing pertaining to Parliament that accepted Jon Fords lying in Director, a Supreme Court case that breached the Bill of Rights proviso that the Supreme issue involves contempt of Parliament by a Minister of Fisheries and his Executive I was surprised that you as Government Integrity Spokeswoman did not contact me, as this

DPP.

case of Mr McKechnie achieving his "desired outcome", by acting corruptly in his position as Australian 22/2018 "subverted" due to "political interference" in reference to another Department's exposure to litigation. To quote from Andrew Burrows headline article in The Director of Fisheries, Peter Rogers, incompetence and involvement in the FRAUD, and the save exposure of the Fisheries Department's failure of Duty of Care and The Executive contrary to his opinion, ignoring Fisheries records confirming guilt and defying logic, to built, ignoring witness statements confirming built, ignoring Fraud Squad council opinion Mr McKechnie did not prosecute a FRAUD, ignoring and contradicting President confirming

subverting a FRAUD squad case for political reasons.

corruption by the Fisheries department that involved John McKechnie the then DPP day, I supplied your office, Aron the receptionist made copies, with information relating to On the 17th of October 2019, after a phone conversation with Jocaspa Sibbel the previous

Fraudulent sale of my Fishing Right  
Offer and Acceptance to buy licenses. This shows I was contracted to by their ONE unit, Fred sold TWO units the second one being mine, that was transferred to his LFB after this contract was signed. See statement to Freds lawyer in Judith Ann Blenkinisop handwriting confirming sale proceeds from the sale of my license "are to be paid to Mark Paxton" [See Signed letter by Fred and his wife which establishes that Judith Ann Blenkinisop wrote this].  
Letters from lawyers acting for both Parties of the Blenkinisop and Fay partnership, after I had informed Freds lawyer that Fred had committed FRAUD, referring to sale money from the sale of my fishing right my fishing right. Rogers created the licensing system that enabled my license to be stolen, then after I incidentally this offer was retracted after Peter Rogers informed them they were CONSIDERED OWNER of my fishing right. Rogers informed them they were CONSIDERED OWNER of my fishing right by offering my the sale money, instead of informing them, that if not planned to rectify by offering my the sale money, Rogers instead of informing them, which they accepted and had informed Fred, and the Fays lawyers that a FRAUD had been committed and SOLD it, they would be BENEFICIAL/ACTUAL OWNERS of my license when they transferred and SOLD it, they would be committing FRAUD, actually told them they owned it. And as mentioned, the boat broker Jim MacC seeing Fred get away with FRAUD had a go himself, resulting in him being sentenced to 4 years in jail, which categorically created the president that LFs are capable of being stolen, and that act is seeing Fred get away with FRAUD had a go himself, resulting in him being sentenced to 4 years in jail, which categorically created the president that LFs are capable of being stolen, and that act is FRAUD.

IS A LFB LICENSE HOLDER IS NOT BENEFICIAL OWNER OF AN LFB HE IS TRANSFERRING AND SELLING HE IS COMMITTING BREACH OF TRUST. WHICH IS FRAUD.

DPF letter to Fraud Squad.

To get a conviction all the DPP had to do was establish who is the BENEFICIAL OWNER, anything else is irrelevant.

Mr McKenie does not accept this as you will note "contrary to the Fraud Squads counsel."

Freds claim to ownership, see statement, was that the Fisheries "granted it to him in return for agreeing to sell his LFB [which he was trying to do] back to the Fisheries AT MARKET VALUE, is not only ridiculous, but not confirmed by any document or the Fisheries Departments records.

Freds second claim to ownership is the failure of me fulfilling the contract I signed to buy his licenses that does NOT include MY license.

This contract was in fact frustrated by condition [2] in that the Department didn't make the One low

PROOF OF EVIDENCE

14/10/2019

license Transferable, as we had hoped.

Freds third claim to ownership, see Freds partner Jim Fays Statement, is that I surrendered my license to him pursuant to a signed agreement regarding default of payments. No such agreement exists and both his partners confirm this.

Both Freds partners Jim and Kerri Fay stated in signed statements that My license was never the property of the "partnership".

Freds guilty is obvious.

Incredibly the Fisheries Department will not recognise a change of ownership unless stamp duty is paid. As there was no sale to Fred of my license no stamp duty was paid.

As to the statement that an LEF is not something capable of being stolen, well I think that was pretty well established in the MacE Hoskins Case.

Mr McKechnie also states that "if a reasonable doubt remained that Blenkinsoops version of events was correct one jury would inevitably have to acquit him" That does not make sense, and which version of events is he referring to: the one refuted by Fisheries records, the one referring to non-existent default clauses in a non existant contract, the one his Partners swear is not true, the version relating to the actual contract I signed to buy his one Scallop unit that makes no reference to my unit [license].

Mr McKechnie expressed his doubts as to whether Blenkinsoops actions amounted to deceit or fraudulent means. Well assuming beneficial ownership and selling a license You don't own is exactly that, as the Fraud Squads counsel had no trouble identifying.

Mr McKechnie ignored precedent, Fisherery Department records, conflicting and varying claims to ownership with no proof of, and Freds Partners statements, can find no grey area here, no possibility of him being mistaken or misled, the evidence is overwhelming.

The only assumption here is that he subverted the case for POLITICAL reasons.

John Ford, the then Minister of Fisheries, read a prepared statement, by Rogers, in Parliament Question 934 29/11/2005 to answer my questions regarding recent amendment legislation, 11/11/2005, and said 13 words out on the statement but permantly in hindsight "advised the Member that there is one vacant licence within that Plan", that he tabled having signed but not read, that DID NOT include a vacant licence. A vacant licence he assured me he would legislate, when I suggested it to him, to allow a State licence. A vacant licence to give to me, as a way of somebody else sorting out my lost

The Contempt of Parliament relates to the tip off the iceberg, the one crack in the specious perverse cover up of the Departments failure of duty of care and the subsequent Fraud it enabled.

Executive Directors of the Fisheries Department for the purpose of concealing the course of Natural Care, concealing and abetting Fraud, frustrating due process, and preserving the course of Duty of being "Contempt of Parliament", the actions and inactions of Peter Rogers and Peter Millington, being "Misconduct". The misconduct being, Jon Ford and Peter Rogers amendment Gazette 11/11/2005 serious misconduct. The misconduct being, Jon Ford and Peter Rogers amendment Gazette 11/11/2005 a breach of Crime Corruption and Misconduct Act 2003 sections 28 and 29 relating to Duty to notify the Minister to explain to the Supreme Court for the Minister to explain to the Supreme Court

As you have only been E.D. a short while I would like the opportunity to fill you in on my history with the department. As you have come from the corporate world I would like your opinion on two career public servants, ex Executive Directors of the Fisheries Department, Peter Rogers and Peter Millington, their Fraud, Maladministration, Corruption and Bent Legislation.

I bring to your attention the following matter-A Writ to be served on David Kelly Fisheries Minister to explain not reporting corruption. The Writ is for the Minister, your inclusion is automatic as Executive Director. The Minister has confirmed, I raised this matter with him on 16/3/16, that he has been fully briefed on this matter by the Department of Fisheries, and has refused to take any action or meet with me to discuss the situation.

Dear Sir

TO THE EXECUTIVE DIRECTOR OF FISHERIES EAMON MCABE.

DEPARTMENT OF PARLIAMENT.

FISHERIES DEPARTMENTS ACTIONS AND INACTIONS IN RELATION TO THIS TRANSFER [PRIOR TO AND FOLLOWING], CONSTUTING, FAILURE OF DUTY OF CARE, BREACH OF PSSC GUIDELINES, MALFESCENCE, FRAUD DENYING NATURAL JUSTICE, FRUSTRATING DUE PROCESS AND

OWNER OF LEIS KNOWLEDGE OR PERMISSION, CONSTUTING BREACH OF TRUST, FRAUD.

LICENCE [LEF] BY LICENCED FISHING BOAT LICENCE [LFB] HOLDER WITHOUT ACTUAL/BENEFICIAL RE:FISHERIES DEPARTMENT AUTHORIZATON TRANSFER:3/5/1991 TRANSFER OF LIMITED ENTRY

29/11/19  
TO SETHEN TINLEY  
AND DELIVERED

[3] Can Mr Mark Paxton apply for the vacant licence; and, if not, why not?

[2] Will the minister table documents to prove that there is a vacant licence?

[1] Has anyone applied for the vacant licence for the Abrolhos and mid-west trawl fishery management plan?

I refer to question without notice 123

309 Hon ANTHONY FELS to the Minister for Fisheries:

Queried again by Anthony Fels on the third of April 2008

## THAT'S CONTEMPT OF PARLIAMENT

I thank Hon Anthony Fels for some notice of the question. The answer to the question is Yes.

John JON FORD replied

time; and, if not, why not?

I refer to the minister's letter inquest notice 934 in reference to the Abrolhos Islands and Mid-West trawl fishery management plan. On 29 November 2005, the minister stated in the Legislative Council that there was one vacant licence on the plan. Will he confirm that there was a vacant licence at that

Answering to question 123. Hon ANTHONY FELS to the Minister for Fisheries:

## LICENSE.

That's misleading Parliament, he may not know there's not a vacant licence in the Plan, which unfortunately is true, with his office, when I informed them by phone, that there is no VACANT LICENCE in his recent legislation, informing me that quote "John doesn't always read Legislation before he signs it", incredible. When he got a Parliamentary Question with some notice 123, Tuesday, 4/2008 from Liberal Hon Member Anthony Fels, at my request, he was fully aware that there was no VACANT

John Ford on 29/11/2005 was still unaware of Rogers' amendments actually being designed to frustrate any attempt by the Minister, in line with his and Kim Charnes assurances and letters confirming Quote "if appropriate I will amend the AIMWTF management plan to provide you with the opportunity to apply new licence to resolve this situation.

NB: I had a meeting with Jon Ford 16/11/2005, 5 days after the new legislation was passed, in which he said Quote "I have changed Legislation to enable 17 boats to fish", "I have made it possible for you to have your day in court, if the SAT agrees, you will have your fishing right recognised and have your day in court. If the SAT disagrees, you will have your fishing right recognised and have your day in court". There can be no doubt Rogers ignored the Minister, Jon Ford's, directive in relation to his request for legislation containing a "VACANT LICENSE", and this is why I had him questioned by Bruce Donaldson, opposition Minister of Fisheries on 29/11/2005.

license, and is confirmed by Jon Ford having already told the opposition Fisheries Minister Bruce Donaldson he had created a 17th license, there being 16 at the time.

care?

For a smart guy he is not very bright, and for a bright guy he is not very smart. He is working on the assumption that no one will know, no-one will care, but I know and now so do you the question is, do you

with just a try net.

Now look at this amendment in light of the fact that section 13 [4] makes it already impossible to fish

[8] A person must not fish in the waters of the Fisher by means of a try net or otter trawl net unless the person is fishing under the authority of a licence that authorizes the use of not less than one gear unit.

Clause 10 [8]

Minister of Fisheries, or Court making orders recognizing my fishing right.

In 1986, this legislation was written by Rogers for one reason, to stop any State Administrative Tribunal reason to limit headrope length, there is no reason to set a cut off date for applications, all that was done

issued licences, the is no "unlimited ability for many boats to come back into the fishery", there is no

These two clauses are completely unnecessary. All people meeting the criteria for a licence in 1986 were

Fisher other than the waters described in item 3 of Schedule 1 is 336.26 metres.

specified in subclause 10[6], that may be used under the authority of all the licences in the waters of the

9 At the maximum amount of headrope length the headrope length of the try nets

Clause 9A inserted: Capacity of the Fisher

before 25 November 2005.

Clause 6 amended [2] in addition to the criteria provided for in subclause [1], a criterion for the grant of

licence is that the application for the grant of the licence was received by the Executive Director on or

amendments, can be seen for what they really are.

integrity, a FRAUD, and his total disregard for his legal obligations as Ex. Dir. When looked at the specific

Administrative Tribunal, and of course to continue his campaign to cover up his incompetence, lack of

bogus rogue amendments. Rogers wrote these unnecessary, Amendments to frustrate a State

This isn't just misleading, it alludes to the CONTEMPT of PARLIAMENT, of Peter Rogers. These are

legislative Council then LED to The Legislative Council.

had also confirmed a month earlier in handover. There is no VACANT LICENCE, Jon Ford first misled The

from the date 11/11/2005, 18 days prior to him confirming the existence of the Vacant licence. Which

Vacant licence included, but now there is no longer the provision for an additional or VACANT licence

He is referring to the amendments Gazzeted 11/11/2005, he tabled 29/11/2005, whilst saying there is a

of any additional licence for the Fisher.

Abrolhos Islands and mid-west trawl management plan, there is no longer the provision for the grant

[1]-[3] Following introduction of the cut-off date of 15 November for applications for licences in the

Hon JON FORD replied:

[2]

the 2004 and 2005 Abrolhos Island Scallop seasons, and told me there would be an inquiry, FMA s. 249 the Department's regulating of beneficial ownership. He issued me an Exemption to allow me to fish I told him, Kim Chance, Rogers lied to him in a SCPA informal hearing into The Paxton issue, in particular

of Fisheries,

case subverted by the DP, the Ombudsman dropping the ball and then Kim Chance, became Minister He invented a non-existent legal term "CONSIDERED OWNERSHIP". What followed was a fraud squad

in writing as belonging to me.

but instead told them they were the CONSIDERED OWNER, of a fishing right that they have confirmed 10/3/1993, he was aware that a FRAUD had been committed but still didn't inform the LFB holder of this As he and Peter Millington knew I was the BENEFICIAL OWNER, see signed statement by Peter Millington

"CONSIDERED OWNER" of all associated endorsements.

and this is were it starts getting incredible, wrote back saying the fishing boat license holder is the transferring and selling my license, with his lawyers telling me in writing that I would get the proceeds of the sale less \$3000. Fred's lawyer then wrote to Peter Rogers re ownership of my license with Rogers told him he, Fred, signed the transfer to transfer my fishing right. He decide to recoup my debt to him, one unit, I owed Fred Blenkinsop \$3000 on the lease of his LFB and the boat broker selling his licenses

This has all arisen from me leasing a LFB to enable me to fish my LEF, an Abrolhos scallop license

CARE.

confirming the BREACH OF TRUST and one confirming the Fisheries Department's FAILURE OF DUTY OF in a Breach of Trust Fraud 409 C, by the LFB owner, pretty straightforward, I have two legal opinions, one fishing right, by not having an adequate license system to protect beneficial actual ownership resulting facts, that being that the Department had failed in its Duty of Care to safeguard and maintain my When approached, to issue me an exemption to fish in 2003, Kim Chance said he accepted all evidence

never fish again.

Peter Rogers' determination to make sure there would be no Vacant Licence, and make sure I would Chance, Jon Ford's attempt to rectify the situation with a vacant licence to be accessible to the SAT, and Peter Rogers' refusal to hold the FMA s.249 inquiry he was told to hold by Jon's predecessor Kim The situation in Parliament had come about as a result of Jon Ford, like myself, not being satisfied with name to the Fisheries was like setting off the fire alarm.

plane from Broome to Perth I shook his hand and thanked him for trying to help, he said mentioning my Jon Ford Minister of Fisheries, felt for me but could not rock the boat. Standing together waiting for a only fish with JUST a try net.

between the scallop and cray fisherman stating that when fishing new ground scallop fisherman should have fished with just a try net using my Exemption issued to me by Kim Chance Minister of Fisheries for 2004 and 2005, in 2005, No else has ever fished with just a try net, and in fact Rogers issued an accord

FRMA 1994 PART 19 s.24A Protection from liability-[2]A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith"

"VACANT" license to me.  
due process and natural justice, as the SAT was unable to, upon acceptance of evidence, give that Vacant license, was acting not in good faith, the failure to legislate the "VACANT" license frustrated Parliamentarily. Privilege allows the Minister to lie in Parliament is irrelevant, his answer to where's the misled Parliament, ran my case and argued that my friends [kate Macdonalds] statement that the Supreme Court Judge [CIV 2076 of 2007] that Parliamentary privilege allows Jon Ford to lie and of the inquiry clearly stated in FRMA 249. This was outside the Supreme Court, after she had convinced investigation, saying she knew nothing about the actual agreed, between myself and the Minister, scope wrong direction, with Kate McDonald from the State Solicitors Office, who Rogers said held the C'd, and f'that are both dealt with by the Supreme Court, Rogers in guessingly stearred the inquiry in the Considering. Failure of Duty of Care is a tort of Negligence and Breach of Trust is Criminal Code 409 1 orders as it thinks fit.

Department can get the Supreme Court to "consider and determine any case stated and to make such The provision in FRMA 1994 s.155, Case stated, for the opinion of the Supreme Court shows the

can't be decide by an E.D. it has to be a ruling from the Supreme Court.  
the Department Failed in its Duty of care, and if this led to a Fraud being committed. Which incidentally outcome of the inquiry was that any action by me was out of time. The inquiry was supposed to find if Rogers waited Kim out, 20 months, Jon Ford comes in, inquiry finalised exemption not renewed. The

underestimated his arrogance.  
recommenced this. Kim Chance and I both thought Rogers would clean up his own mess, we done, with the amendments gazetted 11/12/2005, even though Rogers bogus inquiry did not denied to me by Rogers. Which incidentally was what the next Minister of Fisheries thought he had with the opportunity to apply for the grant of a new license [Letter 22/12/2003] that opportunity was will amend the Abrolhos Islands and Mid-West Trawl. Fishery Management Plan 1993 to provide you Kim Chance instructed Rogers to hold the inquiry, with Kim stating in writing that "if appropriate to authorisation [2] to determine who holds controls or has an interest in, "The "inquiry", was "finalised". idle in the harbour now for ten years. My exemption was valid till a FRMA 1994 s.249 inquiry relating I had remained in the industry having a 68 ft double ended bilge steel trawler, that's been sitting Fraud.

had failed in its Duty of Care to safeguard and maintain my fishing right and if that failure had enabled a knowledge or consent was to be investigated and established so as to determine if the Department

Ownership, that is actual beneficial ownership, on the day my license was transferred without my director the findings of that inquiry.  
determine who holds, controls or has an interest in an authorisation and to report to the Executive FRMA s.249 [2] The executive Director may appoint a person or persons to conduct an inquiry to

Cancellation of the transfer of my fishing right that was a breach of trust Fraud ,as per FMA 1994 s.143

A meeting to discuss this situation.

I am requesting

explain their actions and inactions.

misconduct and corruption, and Subpoena Peter Rogers ,Peter Millington Jon Ford and John McKeonie to

actions and inactions of Peter Rogers ,Peter Millington Jon Ford and John McKeonie do not constitute

Mandalus will summon yourself and the Minister to the Supreme Court to explain why you believe the

report corruption or recognise a constitutional right to fish. A Proactive Supreme Court Writ of

MROWA will not countenance a Minister of Fisheries or Executive Director of Fisheries that doesn't

continue a vendetta against me. And don't forget Jon Ford lying to Parliament, to cover for Rogers.

Legislative Council to frustrate due Process deny natural justice ,being Complaint of Parliament, and

an Inquiry and draft Legislation as DIRECTED, and the Fisheries Department [Rogers] using The

register, The Fisheries Department [Peter Rogers] ignoring 2 Minister of Fisheries directives ,being to hold

Court breaching its Bill of Rights obligations, then removing evidence there of from the public

Department ,the DPPs office, and The Ombudsman office, colluding to cover up a FRAUD, The Supreme

So what we have got here is, The Fisheries Department failing in their Duty of Care, The Fisheries

reviewed, management Plans amended and compensation paid.

Rogers and Peter Millington corrupt, with a view to having all their Legislation cancelled and

Policy, and even falsifying research data to remove fisherman from the industry. MROWA will prove Peter

survival of the fittest campaign in the 90s, which involved breaches of the National Competition

and dozens of Western Australian fisherman who lost their livelihoods due to Peter Rogers, as I call it

I have formed the Maritime Rights Organisation Western Australia incorporated to represent the dozens

want back what is mine.

of Western Australia , if those involved are called to the Supreme Court to explain their actions, just

underestimate the upheaval this will cause on the Political, Public Administration and judicial landscape

Minister and whoever else applicable. We will see Hypocrisy addressed by Democracy. Please do not

Council Privileges and Procedures Committee, PSC Commissioner, SCPA, Attorney General, CJC, Police

This case does resonate with the W.A. public who will be asked to sign Petitions to the Legislative

an inadequate licensing system and your Departments Failure of Duty of Care.

Department, there is no reason you can't cancel that transfer, that was a fraudulent Act bought about by

sold, was operating in the industry. The licence has now been bought back by the Fisheries

Unfortunately this option was not available to Kim Chance and Jon Ford, as "my" licence, having been

3/1991 and return the licence to my LBL 011.

is easily achieved by using FMA ACT 1994 s.143 [or an amended version of, to cancel the transfer

just want back what is mine, one Abrolhos Islands and Mid-West Trawl Fishery Licence with one unit. This

Act 2003 to report this, [See Notification Guidelines and sections 28 and 29 included with this letter].

Report of Peter Rogers , Peter Millington and John McKechnie to the Crime and Corruption Commission.  
[C] or amended version for that purpose.

Mark Paxton.  
Fishermans Advocate-MRQWA PH 0417 817 523 txt only ,email  
fremantletrawlcooperative@live.com.au  
cc Christy Cain MUA President  
cc Mark McGowan W.A. Premier  
cc Christian Porter Federal Attorney General

sentenced to 4 years gaol for FRAUD.

Andre Hoskins were "CONSIDERED OWNERS" as LBL owner selling a Mr Ackersroms Lef, and were paid as there was no transaction giving ownership to Blenkinisop Fay and Nominees. NB: Jim Macie and DOESNOT recognise change of ownership until Stamp Duty is paid on the transaction, no Stamp Duty was 12, and contradicted by Peter Millingtons statement see ATTACHMENT 13. In fact The Fisheries

CLAIM TO OWNERSHIP 4 Being "CONSIDERED OWNER" by Peter Rogers, see ATTACHMENT 11 and NO 1890. This is ridiculous and not confirmed by any Fisheries documents or records.

Fisheries Department, Victoria Fish was granted another 4 metre scallop licence to become part of licence NO 1860. The result of this was that because of my understanding to the become part of my licence no 1860. The result of this was that because of my understanding to the agreeing to give up a wet licence, Fisheries would grant me another 4 metre scallop licence which was to

CLAIM TO OWNERSHIP 3 FISHERIES GRANTED IT TO ME. ATTACHMENT 10 "in consideration for me

DEFALUT CLAUSE GIVING LICENSE TO FEND NOMINEES.

of licences, I did not see any paperwork in regards to this. CLAIM TO OWNERSHIP 2, NONEXISTENT payments. Fred said he had him all signed up in regards to default of payments of the boat and the lease that Paxton had surrendered his single rig for scallop to us because he had been in default of Nominees. In fact Jim Fays statement ATTACHMENT 9, states "About 1 year ago Fred Blenkinisop told these statements confirm the My fishing right was never the property of Blenkinisop Fay and

ATTACHMENTS 6,7,8 Statements from Partners in Blenkinisop Fay and Nominees.

outstanding lease payments.

return it, then that proceeds from the FRAUDULENT sale of My unit will be "received by me", less ATTACHMENTS 4 and 5 confirm that My endorsement, will be returned to me, the buyer refused to

OWNERSHIP 1 OFFER AND ACCEPTANCE THAT DOESNT INCLUDE MY LICENSE.

licences. Again that contract does not include the second unit being at all times My property. CLAIM TO NONTRANSFERRABILITY frustrating the contract and making it impossible for me to purchase the was NOT transferable, at a fisheries meeting late 1990 in Onslow it was decided to retain the Fisheries Department not being meet. At the time of signing of the contract the Onslow prawn licence contract". The contract was in actual fact frustrated by CONDITION 2 being transferability by the licences expired long ago as you were unable to pay any part of the consideration pursuant to that ATTACHMENT 6 "The contract by which you had the right to buy that licence together with other partners see witness statements and in fact by the Blenkinisops see ATTACHMENT 3

Offer and Acceptance, only ONE unit is being bought in this contract. After my unit was transferred to the LBL the LBL had 2 units attached to it, one mine one theirs. This is confirmed by Fred Blenkinisops

1 PROOF OF GUILT, RE FREDD BLENKINISOP FRAUD

COMMENTS ON EVIDENCE ATTACHMENTS

12/1/20

1 FOUR DIFFERENT CLAIMS TO OWNERSHIP UNSUBSTANTIATED AND REJECTED BY FISHERIES AND PARTNERS.

2 JOHN MCKETTIES SPECIOUS AND PERVERSE REASONS FOR NOT PROSECUTING FRED BLENKINSOP FOR FRAUD, SUBVERTING A FRAUD CASE.

1 Scallops license [being an LEF] not something capable of being stolen, this is ridiculous as this was established in the MacE Hoskins case. Evidently my LEF isn't something capable of being stolen but Mr Ackermans LEF is.

2 Mr McKettie expressed his doubts as to whether Blenkinstops actions amounted to deceit or fraudulent means. Ridiculous, if the LBL holder is not the actual/beneficial owner when transferring an attachment LEF he is committing BREACH of TRUST, FRAUD Criminal code 409, McKettie ignores a council's opinion confirming just that. Considering Fred has given 4 differing unsubstantiated claims to ownership, his Partners dispute all his claims to ownership and Fisheries records do not confirm his ownership "CONSIDERED OWNER" by Peter Rogers DOESNT create actual/beneficial ownership. You couldn't give him my license, the contract to buy his licenses at time of signing did not include my license, and "deceit or fraudulent means" The Fisheries did not "GRANT" the license to him, there is no default clause stating that the Department GRANTED it to him, its more than obvious his actions amount to deceit.

3 "if a reasonable doubt remained that Blenkinstops version of events was the correct one a jury would have to acquit him. Blenkinstops has 4 different versions of events giving him ownership, that contradicts each other, and are unsubstantiated, REASONABLE DOUBT!

4 This relates to the last paragraph were Paul Yovich CROWN PROSECUTOR who wrote this letter, and is careful to attribute all SPECIALS and PERVERSE statements to McKettie, states "like you, my sympathies are with Mr Paxton, who appears from the facts as you have outlined them to have been most unfortunate in his dealings in this area" Well if my license was stolen, where's the misfortune? Is it the Fisheries failure of Duty of Care, Freds indisputable Fraud, or McKetties decision not to prosecute, all

lying to the SCPA.

Admiral's inquiry did not in any way address the crucial question of who was BENEFICIAL OWNER the day it was transferred. Rogers as he did again in a Standing Committee of Public Administration hearing, ignored my beneficial ownership, ownership that was confirmed in writing by the then Director of Licensing Peter Millington, and failed to answer the question put to him "How does the Department protect BENEFICIAL OWNERSHIP?" misleading and

its duty of care giving rise to an act of FRAUD, and the return of my Fishing Right. WAS THE BENEFICIAL OWNER, the answer to which would establish the Department failed in Department was tasked with answering the ONE and ONLY question of any relevance, WHO fishing right the day it was transferred. Peter Rogers the then Ex. Dir. of the Fisheries Kim was showing due diligence by requiring ONE FACT, who was the beneficial owner of my

PART [2] "The Executive Director may appoint a person or persons to conduct an inquiry to determine who holds controls or has an interest in an authorisation"

#### AUTHORIZATION

[1] Kim Chance the then Minister of Fisheries in 2003, issued me an exemption to fish in the AIMWTF which the Fisheries Department held a FIMA ACT 249 INQUIRY RELATING TO

These FACTS, [Breach of duty of care and FRAUD] as Kim Chance called "the evidentiary facts" have been accepted by three Ministers in WA Government.

HOSKINGS case, and is also confirmed in another Legal Opinion. is committing FRAUD. The PRECEDENT of FRAUD by an LBL holder was created in the MACE licence, situated on that LBL without the knowledge or consent of the beneficial owner he [2] FRAUD if a fishing boat licence [LBL] holder transfers a Limited Entry Fisher

ADMISTRATOR THAT PUBLIC ADMINISTRATOR HAS A DUTY OF CARE TO THAT INDIVIDUAL. This reliance test ie IF AN INDIVIDUAL HAS A SPECIFIC OR GENERAL RELIANCE ON A PUBLIC maintain and safeguard my fishing right as per Justice Masons 1978 specific and general failure of duty of care by the Fisheries Department has been confirmed in a Legal Opinion. there can be no argument that they did not fail in their Duty of Care, by not creating a legislated register of BENEFICIAL OWNERSHIP.

[AIMWTF] was transferred without my knowledge or consent, constituting -

On the fifth of June 1991 my fishing right in the Abrolhos Islands and Mid Trawl Fisher FRAUD, and offered to help resolve. made aware of the Fisheries Department actions and inactions being complicit in a to our original meeting several years ago at your electoral office, at which you first were supplied to you in December 2019 at your residence, as an outline of this issue, and further further to the draft letter, addressed to the Executive Director of Fisheries, personally

If Rogers's behavior seems incredible, it is easily explained by his massiveegotistical arrogance and legendary disdain for fisherman. At our only meeting in 1993, at which I legislated obligation to report FRAUD and cancel the transfer, he refused, then told him he did not have the competence or integrity required for his position. Rogers arrogance would not allow him to accept a mere fisherman lecturing him on his legislation and tell him how to do his job, what he must do, questioning his integrity, and calling him incompetent to his face in front of his legal advisor and an officer from the licensing department. With him realising my frustration in anger and ran out of the room in fear, very very to his immediate personnel safety, he got up and ran out of the room in fear, very very department. After that I continued trying to have the issue correctly resolved led to an escalation in his corruption and corruption involving several Public Administrators [DPP and Ombudsman], Ex Dir of Fisheries Peter Millington, the Legislative Council and the Supreme Court. He obviously has very corrupt, and the Supreme Court, which confirms a FRAUD was committed. Peter Millington, the Legislative Council and the Supreme Court. He obviously has very corrupt, and the Supreme Court, which confirms a FRAUD was committed. [2] Jon Ford-At a meeting, after my exemption was cancelled, as Rogers had waited Kim out and told Jon, the then Minister of Fisheries, to cancel my exemption as the inquiry had been completed, finding any "right to litigate the F.D. was statute barred" which is correct but has nothing to do with the inquiry, when I explained Rogers corruption, told me he would create through Legislation a 17th Licence for the forthcoming Jon Ford's administration Tribunal to give to me. He also told the Opposition Minister of Fisheries he had created a 17th Licence. As we now know that was thwarted by Rogers ignoring Jon Ford's instruction by writing amendments that not only didn't include a VACANT OR 17TH Licence but created unnecessary to the fishery, amendments not affecting anyone but me, designed to frustrate Jon Ford's process and reverting justice.

Rings Jon Ford he will confirm this. Unfortunately Jon didn't read Rogers amendments, and by giving me the VACANT OR 17TH licence, tabled the Plan with amendments he was not aware of or had requested, stating 13 words not in the answer, prepared by Rogers, to my questions presented by the opposition Minister of Fisheries Bruce Donaldson, relating to the amendments prepared by Rogers-Question 34 29/11/2005 hasard-1 ADVISE THE MEMBER THAT THERE IS ONE VACANT LICENCE WITHIN THAT PLAN". Those 13 words confirm Rogers, agenda, there was not nor ever has been a "VACANT LICENCE in the Plan.

After making Jon aware he had been dupped by Rogers, I had Member of Parliament confirm Rogers, agenda, there was not nor ever has been a "VACANT LICENCE in the Plan. 2

After that meeting set on ruining my career at any cost. He expected me to go away, the legislation and corruption involving the DPP, Ombudsman, SCA, 249 inquiry, contempt of court Millington, the Legislative Council and the Supreme Court. He obviously has very corrupt, and the Supreme Court, which confirms a FRAUD was committed. Peter Millington, the Legislative Council and the Supreme Court. He obviously has very corrupt, and the Supreme Court, which confirms a FRAUD was committed. [2] Jon Ford-At a meeting, after my exemption was cancelled, as Rogers had waited Kim out and told Jon, the then Minister of Fisheries, to cancel my exemption as the inquiry had been completed, finding any "right to litigate the F.D. was statute barred" which is correct but has nothing to do with the inquiry, when I explained Rogers corruption, told me he would create through Legislation a 17th Licence for the forthcoming Jon Ford's administration Tribunal to give to me. He also told the Opposition Minister of Fisheries he had created a 17th Licence. As we now know that was thwarted by Rogers ignoring Jon Ford's instruction by writing amendments that not only didn't include a VACANT OR 17TH Licence but created unnecessary to the fishery, amendments not affecting anyone but me, designed to frustrate Jon Ford's process and reverting justice.

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section 155 case stated, that would have allowed the Supreme Court to make a ruling as to BENEFICIAL OWNERSHIP as requested by his Minister, Kim Chance. Failed to use FMA Failed to hold the inquiry as requested by his Minister. Failed to establish

Committed FRAUD - Criminal Code 409- 1 [c], [d], [f] and 2 [b]

Failed to report FRAUD.

BENEFICIAL OWNERSHIP.

PETER ROGERS-Failed to create an adequate licensing system to register and protect

FACTS-

are obliged to respond.

requesting a meeting to resolve this situation. As I am a registered FBL holder, LFB011, you members of your Department, Public Administrators, Politicians and the Supreme Court, I am Court and it being precluded from any decision pertaining to Parliament, involving several the Subsidiary Legislation process, and breaching of the Bill of Rights, concerning the Supreme process, several breaches of the Public Sector Standards. Commissions rules, preventing of justice, contempt of Parliament [on] Fords and Peter Rogers [failure and corruption of due Malfeasance, maladministration, misconduct, corruption, FRAUD, abuse of power, preventing

Considering you are now aware of evidence confirming and proving -

Mcketinies abuse of power, and of SUBVERTING A FRAUD CASE.

letter with its SPECIUS and PERVERSE reasons for not prosecuting is catastrophic PROOF of were not very happy all their hard work was subverted by McKetinie, and sent me the letter to them from the DPPs office to them, giving reasons why they would not prosecute. That judicial Blenkinsops GUILTY of FRAUD to the Fraud Squad to get her charged. Incidentally they complicate in the FRAUD. It is my intention to take Christians letter to me, and evidence of that Freds wife, Secretary and co Director, who was not interviewed by the Fraud Squad, was

As Fred had died in the interim, that course of action was out. But it has now come to light Christian, very diplomatically, wrote a letter to me, stating 'It appears.....that no formal brief of evidence was presented to the DPP, suggesting to request such action [resubmitted brief] to the Police .

[3] Christian Porter the then Attorney General, accepted, to quote Kim, 'the evidentiary facts, stating to his legal council Peter Phillips, "It appears the Fisheries Department have overriden a constitutional right and failed to report FRAUD", as you would expect from

Christian, spot on.

the Plan, unfortunately for Jon, being, unwilling and incapable of standing up to Rogers and expose Rogers, what can only be described as a vendetta against me, the Fisherman who made a fool of him in our meeting, he committed contempt of Parliament.

Anthony Fels question Jon. Question 123 11/03/08 Jon stated there WAS a vacant licence in

Failed to report Peter Rogers's collusion to FRAUD and Fraudulent actions and inactions to the Fraud Squad and the CCC and the Public Sector standards

I have hundreds of pages of evidence confirming all facts I have supplied to you, and would like the opportunity to show you, so you can make a fully informed decision that will lead to the resolution of this issue, being the cancellation of the FRAUDULENT transfer and

Peter this series of events is unacceptable.

There is no doubt Peter Rogers, led a campaign to conceal FRAUD, due to me making a fool so many Public Administrators were willing to back him up, in obvious well documented of him in front of two of his underlings, what should be a worry to you is the evidence that collusion to FRAUD.

Subverted a FRAUD case for political reasons.

Abused his position of power.

Failed to accept the opinion of the Major Crimes Squad that it was a prima facie case of stealing. Of course the FRAUD SQUAD were in no doubt Fred stole my license, all evidence confirmed it, and no evidence exists refuting the FACT.

Failed to accept my BENEFICIAL OWNERSHIP contrary to signed statement by the Director of Licensing Peter Mililton confirming me as RECOGNISED BENEFICIAL OWNER prior to and after my fishing rig being transferred to Fred Blenkinsops LBL.

OWNER, when no contract exists changing ownership, no stamp duty was paid as there was no change of BENEFICIAL OWNERSHIP. NB: The Fisheries Department does not accept change of OWNERSHIP until Stamp Duty is paid.

Failed to accept a LEGAL OPINION confirming FRAUD.

Failed to accept that Fred Blenkinsop was not the BENEFICIAL HOSKINS was not the BENEFICIAL OWNER of. This is the exact thing Fred Blenkinsop did. I think that pretty much proves McKetnie subverted the case. Sentenced to four years jail for contracting to sell an LEF on Andre Hoskins LBL that stole, when this was established and accepted in the Mac Hoskins case. They were

refuted by witnesses [his partners in, Fisheries records, and Stamp Duty office records. Blenkinsops built of FRAUD. Fred claimed 4 different conflicting claims to ownership, all failed to accept and act upon on fisheries records providing Fred

Prosecute.

Failed to accept, and ignored, PRECEDENT, when deciding not to

John McKetnie-

case in the last 50 years to her knowledge that is not on the Public Register. What happened to it????? Maybe Mr Quigley might be interested to know as well.

registration of my AIMWTF licence on my LFBL 011.

Thankyou Peter, regards, Mark Paxton ph 0417817523

cc Christy Cain National President Maritime Union of Australia

Please confirm by email you having received this email thankyou.