

Fisheries

No. 116 of 1967

An Act to amend the *Fisheries Act* 1952–1966.

[Assented to 17 November 1967]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Fisheries Act* 1967.

Short title
and citation.

(2.) The *Fisheries Act* 1952–1966* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Fisheries Act* 1952–1967.

2. This Act shall come into operation on a date to be fixed by Proclamation.

Commence-
ment.

* Act No. 7, 1952, as amended by No. 3, 1953; No. 4, 1956; No. 48, 1959; and No. 93, 1966.

Definitions.

3. Section 4 of the Principal Act is amended—

(a) by inserting after the definition of “ fisherman ” the following definitions:—

“ ‘ fishing ’ means the taking of fish and includes the work of cutting up, dismembering, cleaning, sorting, packing, preserving, storing and transporting fish that have been taken;

“ ‘ foreign boat ’ means a boat other than—

(a) a boat owned by a resident of, or by a company incorporated in, Australia or a Territory, being a boat—

(i) that is registered in Australia or in a Territory;
or

(ii) the operations of which are based on a place in Australia or in a Territory; or

(b) a boat belonging to, and ordinarily attached to or carried on board, a boat of a kind referred to in the last preceding paragraph;”;

(b) by omitting paragraph (d) of the definition of “ officer ” and inserting in its stead the following paragraph:—

“ (d) a Commonwealth Police Officer; and ”; and

(c) by omitting the definition of “ Territory ” and inserting in its stead the following definitions:—

“ ‘ Territory ’ means Territory of the Commonwealth and includes the Territory of Nauru;

“ ‘ the declared fishing zone ’ means—

(a) the waters adjacent to Australia and having as their inner limits the baselines by reference to which the territorial limits of Australia are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant twelve international nautical miles from the point on one of those baselines that is nearest to the first-mentioned point; and

(b) the waters adjacent to each Territory not forming part of the Commonwealth and having as their inner limits the baselines by reference to which the territorial limits of that Territory are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant twelve international nautical miles from the point on one of those baselines that is nearest to the first-mentioned point,

but does not include any waters that are not proclaimed waters;

“ ‘the Minister’ means the Minister of State for Primary Industry and, in relation to the exercise of powers, functions and authorities under sections six and nine of this Act with respect to persons resident in, or boats the operations of which are based on a place in, a Territory not forming part of the Commonwealth, includes the Minister of State for Territories;”.

4. Section 5 of the Principal Act is amended by adding at the end thereof the following sub-section:— Application of Act.

“ (2.) In relation to proclaimed waters comprised in the declared fishing zone, this Act applies to all persons, including foreigners, and to all boats, including foreign boats.”.

5.—(1.) Section 9 of the Principal Act is amended— Licences and registration.

(a) by omitting sub-sections (1.) and (2.) and inserting in their stead the following sub-sections:—

“ (1.) The Minister, the Secretary or a prescribed authority may grant to a person a licence to engage in fishing in proclaimed waters or in an area of proclaimed waters.

“ (2.) The Minister, the Secretary or a prescribed authority may grant to a person a licence in respect of a boat authorizing the use of the boat for fishing in proclaimed waters or in an area of proclaimed waters.”; and

(b) by inserting in sub-sections (3.), (4.), (6.) and (8.), before the word “ Secretary ” (wherever occurring), the words “ Minister, the ”.

(2.) A licence in force immediately before the commencement of this Act under sub-section (1.) or sub-section (2.) of section 9 of the Principal Act has effect after the commencement of this Act as if it were a licence under sub-section (1.) or sub-section (2.), as the case may be, of section 9 of the Principal Act as amended by this Act.

6. Section 10 of the Principal Act is amended by omitting paragraphs (a) and (b) and inserting in their stead the following paragraphs:— Powers of officers.

“ (a) board or enter upon a boat in proclaimed waters or a boat that he has reason to believe has been used, is being used, or is intended to be used, for fishing in proclaimed waters and may search the boat for fish and for equipment used or capable of being used for fishing;

“ (b) examine any equipment found in any place, being equipment that he has reason to believe has been used, is being used, or is intended to be used, for fishing in proclaimed waters;”.

Offences.

7. Section 13 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1.) the words “the taking of fish” and inserting in their stead the word “fishing”;
- (b) by omitting paragraph (b) of sub-section (1.) and inserting in its stead the following paragraphs:—
- “ (aa) in an area of proclaimed waters, use a boat for fishing, or have a boat for fishing in his possession or in his charge, unless that boat is licensed under this Act, in his name or in the name of a person on whose behalf he is acting, for use in fishing in that area;
- “ (b) in an area of proclaimed waters, use a net, trap or other equipment for the taking of fish, or have a net, trap or other equipment for the taking of fish in his possession or in his charge, unless that net, trap or equipment is registered under this Act, in his name or in the name of a person on whose behalf he is acting, for use in the taking of fish in that area;”;
- (c) by inserting after sub-section (1.) the following sub-sections:—
- “ (1A.) A reference in paragraph (aa) of the last preceding sub-section to a boat shall be read as not including a reference to a foreign boat if—
- (a) the nets, traps and other equipment belonging to the boat are stowed and secured; and
- (b) the work of cutting up, dismembering, cleaning, sorting or packing fish is not being carried out on the boat.
- “ (1B.) The reference in paragraph (b) of sub-section (1.) of this section to a person having a net, trap or other equipment for the taking of fish in his possession or charge shall, in relation to a net, trap or other equipment belonging to a foreign boat, be read as not including a reference to a net, trap or other equipment that is stowed and secured.”; and
- (d) by omitting from sub-section (2.) the words “the last preceding sub-section” and inserting in their stead the words “sub-section (1.) of this section”.

8. After section 13A of the Principal Act the following section is inserted:—

Using or having
charge of
foreign boat for
fishing in
declared fishing
zone.

“ 13AA.—(1.) A person shall not, in an area of proclaimed waters comprised in the declared fishing zone—

- (a) use a foreign boat for fishing; or

(b) have a foreign boat for fishing in his possession or in his charge, unless that boat is licensed under this Act, in his name or in the name of a person on whose behalf he is acting, for use in fishing in that area.

“(2.) A reference in paragraph (b) of the last preceding sub-section to a foreign boat shall be read as not including a reference to a foreign boat if—

- (a) the nets, traps and other equipment for the taking of fish belonging to the boat are stowed and secured; and
- (b) the work of cutting up, dismembering, cleaning, sorting or packing fish is not being carried out on the boat.

“(3.) A person who contravenes sub-section (1.) of this section is guilty of an offence punishable—

- (a) upon summary conviction—by a fine of not more than One thousand dollars or imprisonment for a period of not more than six months, or both; or
- (b) upon conviction on indictment—by a fine of not less than One thousand dollars and not more than Ten thousand dollars or imprisonment for a period of not more than twelve months, or both,

and, if the court so orders, by the forfeiture of any boat used in the commission of the offence and its equipment and contents (other than the personal effects of members of the crew) and any fish found on the boat or the proceeds of the sale of any such fish.

“(4.) Subject to the next succeeding sub-section, an offence against this section may be prosecuted either summarily or upon indictment, but an offender is not liable to be punished more than once in respect of the same offence.

“(5.) Proceedings in respect of an offence against this section shall not be heard and determined summarily except with the consent of the defendant.”.

9. Section 15 of the Principal Act is repealed and the following section inserted in its stead:—

“15.—(1.) Subject to this section—

- (a) the several courts of the States are invested with federal jurisdiction; and
- (b) jurisdiction is conferred on the several courts of the Territories,

with respect to offences against this Act or the regulations that are committed outside Australia and the Territories.

Jurisdiction of
courts.

“(2.) The jurisdiction invested in or conferred on courts by the last preceding sub-section is invested or conferred within the limits (other than limits having effect by reference to the places at which offences are committed) of their several jurisdictions, but, in the case of a court of a State, subject to the conditions and restrictions specified in paragraphs (a), (b) and (c) of sub-section (2.) of section thirty-nine of the *Judiciary Act* 1903–1966.

“(3.) The jurisdiction invested in a court of summary jurisdiction of a State by this section shall not be judicially exercised except by a Chief, Police, Stipendiary, Resident or Special Magistrate.

“(4.) The trial on indictment of an offence against section thirteen AA of this Act may be held in any State or Territory.

“(5.) Subject to this Act, the laws of a State or Territory with respect to the arrest and custody of offenders or persons charged with offences and the procedure for—

- (a) their summary conviction;
- (b) their examination and commitment for trial on indictment;
- (c) their trial and conviction on indictment; and
- (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith,

and for holding accused persons to bail apply, so far as they are applicable, to a person who is charged in that State or Territory with an offence against this Act or the regulations that was committed outside Australia and the Territories.

“(6.) Except as provided by this Act, the *Judiciary Act* 1903–1966 applies in relation to offences against this Act or the regulations.”.

10. After section 16 of the Principal Act the following section is inserted:—

“16A.—(1.) This section applies in relation to the Territory of Papua, the Territory of New Guinea, Norfolk Island and the Territory of Nauru.

“(2.) The Commonwealth shall, not later than the last day of each month of the year, pay to the Administration of a Territory in relation to which this section applies an amount equal to the amount of any fee received by the Commonwealth during the preceding month in respect of the grant of an application for a licence or registration, or the transfer of a licence, under section nine of this Act to a person resident in, or in respect of a boat the operations of which are based on a place in, that Territory.”.

Certain
payments to
be made by
Commonwealth
to Adminis-
trations of
certain
Territories.