

PEARL FISHERIES.

No. 8 of 1952.

An Act relating to Pearl Shell, Trochus, Bêche-de-mer and Green Snail Fisheries in certain Australian Waters.

[Assented to 13th March, 1952.]

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

PART I.—PRELIMINARY.

- Short title.** 1. This Act may be cited as the *Pearl Fisheries Act* 1952.
- Commencement.** 2. This Act shall come into operation on a date to be fixed by Proclamation.
- Repeal.** 3.—(1.) The laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth, known as *The Queensland Pearl Shell and Beche-de-mer Fisheries (Extra-territorial) Act of 1888* and *The Western Australian Pearl Shell and Beche-de-mer Fisheries (Extra-Territorial) Act of 1889* are repealed.
- (2.) Section eight of the *Acts Interpretation Act* 1901–1950 applies to the repeal effected by this section as if the laws repealed were Acts passed by the Parliament.

4. This Act is divided into Parts, as follows :—

Parts.

Part I.—Preliminary.

Part II.—Administration.

Part III.—Regulation of Pearl Fisheries.

Part IV.—Research and Development.

Part V.—Miscellaneous.

5.—(1.) In this Act, unless the contrary intention appears—

Definitions.

“ Australian waters ” means—

- (a) Australian waters beyond territorial limits ; and
- (b) the waters adjacent to a Territory and within territorial limits ;

“ boat ” means a boat which does not exceed two tons dead weight and belongs to and is ordinarily attached to or carried on board a pearling ship but does not include such a boat in respect of a time during which the boat is used in or for the purpose of pearling independently of a pearling ship ;

“ diver’s tender ” means the person attending on a diver and in charge of the diving operations while the diver is under water ;

“ officer ” means—

- (a) a person permanently or temporarily employed in the Public Service of the Commonwealth or of a Territory or by an authority of the Commonwealth and authorized to perform duties under this Act ;
- (b) a person permanently or temporarily employed in the Public Service of a State and authorized to perform duties under this Act in pursuance of an arrangement between the Commonwealth and the State ;
- (c) a member of the police force of a State or Territory ;
- (d) a Peace Officer appointed under the *Peace Officers Act* 1925 ; and
- (e) a member of the Defence Force ;

“ pearl fisher ” means a person employed in or for the purpose of pearling on board a pearling ship or at a pearling station and includes the master of a pearling ship, or the person in charge of a pearling station, when engaged in pearling ;

“ pearling ” includes the work of searching for or obtaining pearl shell, trochus, bêche-de-mer or green snails ;

“ pearling ship ” means a ship used for pearling ;

“ pearling station ” means land, and a building on land, used for the purpose of pearling ;

“proclaimed waters” means Australian waters specified by Proclamation in force under section eight of this Act ;

“provisions” includes every description of food and drink for man ;

“ship” includes every kind of vessel or craft (not being a boat) of any size, with or without a deck or fixed mast, and whether propelled by oars only or otherwise ;

“Territory” means Territory of the Commonwealth ;

“the Secretary” means the Secretary to the Department of Commerce and Agriculture.

(2.) For the purposes of this Act, a ship shall be deemed to be used for pearling—

(a) if the ship is used as a place of abode or refuge, or for storing provisions, for persons employed in or for the purposes of pearling or persons engaged in superintending the operations of persons so employed ;

(b) if the ship is used for transporting, or as a place for storing, pearl shell, trochus, bêche-de-mer or green snail ;

(c) if the ship, or a boat belonging to the ship, is used as a place from which persons dive for pearl shell, trochus, bêche-de-mer or green snail, or is used in the immediate collection of pearl shell, trochus, bêche-de-mer or green snail ; or

(d) if the ship is otherwise used in or for the purpose of pearling.

Application
of Act.

6. This Act extends to all the Territories and to all Australian waters.

PART II.—ADMINISTRATION.

Delegation.

7.—(1.) The Minister or the Secretary may, by instrument in writing, delegate to a person or authority all or any of his powers, functions and authorities under this Act (except this power of delegation) in relation to a matter or class of matters or to a State, part of the Commonwealth or Territory, or in relation to an area of Australian waters, so that the delegated powers, functions and authorities may be exercised by the delegate with respect to the matter or class of matters, or the State, part of the Commonwealth, Territory or area of Australian waters specified in the instrument of delegation.

(2.) A delegation under the last preceding sub-section is revocable in writing at will and does not prevent the exercise of a power, function or authority by the Minister or the Secretary.

PART III.—REGULATION OF PEARL FISHERIES.

Proclaimed
waters.

8. The Governor-General may, by Proclamation, declare any Australian waters to be proclaimed waters for the purposes of this Act.

9.—(1.) The Minister may, by notice published in the *Gazette*— Regulation
of fishing.

- (a) prohibit, either at all times or during a period specified in the notice, the taking, from proclaimed waters or from an area of proclaimed waters, of pearl shell, trochus, bêche-de-mer or green snail ;
- (b) prohibit the taking, from proclaimed waters or from an area of proclaimed waters, of pearl shell, trochus, bêche-de-mer or green snail not exceeding a size specified in the notice ;
- (c) prohibit the taking, from proclaimed waters or from an area of proclaimed waters, of pearl shell, trochus, bêche-de-mer or green snail by a method or equipment specified in the notice ;
- (d) prohibit the taking, by any one pearling ship, during a period and in an area of proclaimed waters specified in the notice, of pearl shell, trochus, bêche-de-mer or green snail in excess of a quantity so specified ; and
- (e) prohibit the removal of live pearl shell, trochus, bêche-de-mer or green snail from proclaimed waters.

(2.) A notice under this section may provide for exemptions from the prohibition contained in the notice.

10.—(1.) The Secretary or a prescribed authority may grant to a person a licence to search for and obtain pearl shell, trochus, bêche-de-mer or green snail in proclaimed waters or in an area of proclaimed waters. Licences and
registration.

(2.) The Secretary or a prescribed authority may grant to a person a licence in respect of a ship authorizing the use of the ship in searching for and obtaining pearl shell, trochus, bêche-de-mer or green snail in proclaimed waters or in an area of proclaimed waters.

(3.) A licence authorizing the use of a ship in searching for and obtaining pearl shell, trochus, bêche-de-mer or green snail extends, subject to the conditions of the licence, to authorizing the use of the ship for any of the purposes specified in sub-section (2.) of section five of this Act in relation to or arising out of the first-mentioned use.

(4.) The Secretary or a prescribed authority may grant a licence to or in respect of a diver, trial diver or diver's tender employed on a ship licensed under sub-section (2.) of this section.

(5.) The Secretary or a prescribed authority may, in his discretion, grant or refuse an application for a licence under this section.

(6.) A licence granted under this section—

- (a) is subject to such conditions as are specified in the licence ;
and
- (b) remains in force until the succeeding thirty-first day of January.

(7.) The Secretary or a prescribed authority may, in his discretion, on the application of the holder of a licence in respect of a ship and of another person as proposed transferee, transfer the licence to that other person.

(8.) Such fees (if any) as are prescribed are payable in respect of the grant of an application for a licence, or the transfer of a licence, under this section.

(9.) Where the Secretary or a prescribed authority is satisfied that there has been a contravention of, or failure to comply with, a condition specified in a licence granted under this section, the Secretary or prescribed authority may cancel the licence.

(10.) Registers showing the licences granted under this section and in force from time to time shall be kept at such places as the Minister directs.

Powers of officers.

11. An officer may—

- (a) board or enter upon a ship or boat in proclaimed waters or a ship or boat which he has reason to believe has been used, is being used, or is intended to be used, for pearling in proclaimed waters and may search the boat for equipment used or capable of being used for pearling ;
- (b) examine any equipment found in any place, being equipment which he has reason to believe has been used, is being used, or is intended to be used, for pearling in proclaimed waters ;
- (c) seize, take, detain, remove and secure any ship, pearl shell, trochus, bêche-de-mer or green snail which the officer has reason to believe has been taken or used, is being used, or is intended to be used, in contravention of this Act ;
- (d) without warrant, arrest a person whom the officer has reason to believe has committed an offence against this Act ;
- (e) require the master or other person in charge of a ship which the officer has reason to believe has been used, is being used or is intended to be used in contravention of this Act to bring the ship to a place in Australia or a Territory specified by the officer and to remain in control of the ship at that place until an officer permits him to depart from that place ;
- (f) bring a ship which the officer has reason to believe has been used, is being used or is intended to be used in contravention of this Act to a place in Australia or a Territory and may remain in control of that ship pending the taking of proceedings in respect of that contravention ;
- (g) require the master or other person in charge of a ship required to be licensed under this Act to produce the licence for the ship and take copies of, or extracts from, the licence ;
- (h) require the master or other person in charge of a ship required to be licensed under this Act to give information concerning the ship and the crew and any person on board the ship ;
- (i) require a person who is on board a ship required to be licensed under this Act, or is engaged in pearling in proclaimed waters, or whom he reasonably suspects of having committed an offence against this Act, to state his name and place of abode ;

- (j) require a person engaged in pearling in proclaimed waters to state whether he is the holder of a licence under sub-section (1.) of section ten of this Act and, if so, to produce the licence ; and
- (k) sell any pearl shell, trochus, bêche-de-mer or green snail seized by him under this Act.

PART IV.—RESEARCH AND DEVELOPMENT.

12. The Secretary may, subject to the directions of the Minister, carry out operations— Exploratory operations.

- (a) for ascertaining whether any pearl shell, trochus, bêche-de-mer or green snail fishery in Australian waters can be engaged in on a commercial basis ; and
- (b) for the development of pearl shell, trochus, bêche-de-mer or green snail fisheries in Australian waters.

13. The Secretary shall, subject to the directions of the Minister, cause investigations to be made into economic matters relating to pearling in Australian waters. Investigations.

PART V.—MISCELLANEOUS.

14. A person shall not—

- (a) in an area of proclaimed waters, engage in pearling otherwise than in pursuance of a licence in force under sub-section (1.) of section ten of this Act of which he is the holder ;
- (b) in an area of proclaimed waters, use a ship for pearling otherwise than in pursuance of a licence in respect of the ship in force under this Act in his name or in the name of a person on whose behalf he is acting ;
- (c) being the holder of a licence under this Act, contravene a condition of the licence ;
- (d) do an act prohibited by a notice for the time being in force under section nine of this Act ; or
- (e) employ, or have on board a ship, in proclaimed waters, for the purpose of pearling, a diver, trial diver or diver's tender who is not registered under sub-section (4.) of section ten of this Act.

Offences.

Penalty : Five hundred pounds, and, if the Court so orders, the forfeiture of any ship or equipment used in the commission of the offence or any pearl shell, trochus, bêche-de-mer or green snail taken in contravention of this Act, or the proceeds of the sale of any such pearl shell, trochus, bêche-de-mer or green snail.

15. A person shall not—

- (a) fail to facilitate by all reasonable means the boarding of a ship by an officer ;
- (b) refuse to allow a search to be made which is authorized by or under this Act ;

Obstruction of officers, &c.

- (c) refuse or neglect to comply with a requirement made by an officer under section eleven of this Act ;
- (d) when lawfully required to state his name and place of abode to an officer, state a false name or place of abode to the officer ;
- (e) when lawfully required by an officer to give information, give false or misleading information to the officer ;
- (f) use abusive language to an officer ;
- (g) assault, resist or obstruct an officer in the exercise of his powers under this Act ;
- (h) impersonate an officer ; or
- (i) in an application under this Act, make a statement or furnish information which is false or misleading in any particular.

Penalty : Five hundred pounds.

Issue of
permits for
scientific
purposes.

16.—(1.) The Minister, or a person authorized in writing by the Minister, may grant a permit to a person authorizing that person to take, for scientific purposes, subject to such conditions as are specified in the permit, pearl shell, trochus, bêche-de-mer and green snail the taking of which is otherwise prohibited by or under this Act.

(2.) The holder of a permit under this section is not guilty of an offence against this Act by reason of anything done by him which is authorized by the permit.

Jurisdiction
of courts.

17.—(1.) Subject to the next succeeding sub-section—

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

with respect to offences against this Act or the regulations.

(2.) The jurisdiction invested in or conferred on courts of summary jurisdiction by the last preceding sub-section is invested or conferred within the limits (other than limits arising by reason of the place at which an offence was committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.

(3.) Jurisdiction vested in, or conferred on, a court by this section shall not be judicially exercised except by a Judge, a Chief, Police, Stipendiary or Special Magistrate, or a District Officer or Assistant District Officer of a Territory.

(4.) Nothing in this section affects the jurisdiction vested in courts other than courts of summary jurisdiction by the *Judiciary Act* 1903–1950 or by or under any other Act.

(5.) For the purposes of this section, " court of summary jurisdiction " includes a court of a Territory sitting as a court for the making of summary orders or summary punishment of offences under the law of the Territory.

18. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular— Regulations.

- (a) for prescribing penalties not exceeding One hundred pounds for offences against the regulations ;
 - (b) for prescribing signals and rules of navigation to be observed by persons in charge of pearling ships in proclaimed waters ;
 - (c) for prescribing the method of marking of ships licensed under this Act ;
 - (d) for providing for the sale or disposal of—
 - (i) unclaimed ships or boats used, or capable of being used, for pearling ; or
 - (ii) pearling equipment, found in proclaimed waters ;
 - (e) for regulating the rights or priority as between pearl fishers in proclaimed waters and for prescribing the rules of pearling in proclaimed waters ; and
 - (f) for providing for the furnishing of statistics in relation to pearling in proclaimed waters and to the sale or disposal of pearl shell, trochus, bêche-de-mer or green snail taken in proclaimed waters.
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