

Fisheries Act 1973

No. 218 of 1973

AN ACT

Relating to Fisheries in certain Australian Waters.

[Assented to 20 December 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Fisheries Act 1973*.

(2) The *Fisheries Act 1952-1970** 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 1952-1973*.

Commence-
ment.

2. (1) Sections 1, 2, 8, 18 and 20 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining sections of this Act shall come into operation on a date to be fixed by Proclamation.

Parts.

3. Section 3 of the Principal Act is repealed.

* Act No. 7, 1952, as amended by No. 3, 1953; No. 4, 1956; No. 48, 1959; No. 93, 1966; No. 116, 1967; No. 150, 1968; and No. 93, 1970.

4. Section 4 of the Principal Act is amended—

Definitions.

- (a) by inserting before the definition of “Australian waters” the following definition:—

“ ‘Australian boat’ means a boat the operations of which are based on a place in Australia or an external Territory and that is wholly owned by a natural person who is a resident of, or by a company incorporated in, Australia or an external Territory, being a boat that—

- (a) was built in Australia or an external Territory;
- (b) has been lawfully imported into Australia, otherwise than for a limited period, or into an external Territory; or
- (c) has been sold, or otherwise disposed of, in Australia or an external Territory after having been forfeited or distrained under this or any other Act or under a law of a State or Territory;”;

- (b) by omitting from paragraph (c) of the definition of “Australian waters” the words “a Territory, not being part of the Commonwealth,” and substituting the words “an external Territory”;

- (c) by inserting after the definition of “boat” the following definition:—

“ ‘carrying’, in relation to fish, includes preserving for the purpose of carriage or storing for that purpose;”;

- (d) by omitting the definitions of “fishing” and “foreign boat” and substituting the following definitions:—

“ ‘fishing’ means the taking of fish, and includes the processing of fish that have been taken or the carrying of fish that have been taken;

‘foreign boat’ means a boat other than an Australian boat;”;

- (e) by omitting the definition of “officer” and substituting the following definitions:—

“ ‘officer’ means—

- (a) an officer or employee of Australia, of the Administration of a Territory or of an authority of Australia who is authorized in writing by the Secretary to the Department of Primary Industry or by the Secretary to the Department of External Territories to perform duties under this Act;
- (b) an officer or employee of a State who is authorized in writing by the Secretary to the Department of Primary Industry to perform duties under this Act in pursuance of an arrangement between Australia and the State;

- (c) a member of the Commonwealth Police Force or of the Police Force of a State or Territory; or
 - (d) a member of the Defence Force;
- ‘ processing ’, in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting or packing;”;
- (f) by omitting the definition of “ Territory ”;
 - (g) by omitting from the definition of “ the declared fishing zone ” the words “ Territory not forming part of the Commonwealth ” and substituting the words “ external Territory ”;
 - (h) by omitting the definition of “ the Minister ” and substituting the following definition:—
 - “ ‘ the Minister ’ means the Minister of State for Primary Industry and, in relation to the exercise of powers, functions and authorities under sections 6, 9, 9A and 16 with respect to natural persons resident in, companies incorporated in, or boats the operations of which are based on a place in, Papua New Guinea, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, includes the Minister of State for External Territories;”;
 - (i) by inserting after the definition of “ the Secretary ” the following definition:—
 - “ ‘ traditional fishing ’ means fishing by indigenous inhabitants of an external Territory if—
 - (a) the fish are taken in a manner that, as regards the boat, the equipment and the method used, is substantially in accordance with the traditions of those inhabitants; and
 - (b) the fish are landed in that Territory by the boat from which they are taken;”.

5. Part II of the Principal Act is repealed and the following Part substituted:—

“ PART II—ADMINISTRATION

Secretary and delegates subject to directions of Minister.

“ 6. The Secretary or his delegate or a delegate of the Minister, other than a delegate who is a Minister of the House of Assembly for Papua New Guinea, is, in the exercise of his powers and the performance of his functions under this Act, subject to the directions of the Minister.

Delegation.

“ 6A. (1) Subject to this section, the Minister or the Secretary may, by writing under his hand, delegate to a person or authority, either generally or otherwise, all or any of his powers and functions under this Act except this power of delegation and powers and functions under section 9A.

“ (2) The Minister of State for External Territories may, by writing under his hand, delegate to a Minister of the House of Assembly for Papua New Guinea, either generally or otherwise, all or any of his powers

and functions under section 9A with respect to natural persons resident in, companies incorporated in, or boats the operations of which are based on a place in, Papua New Guinea.

“(3) A power or function delegated under sub-section (1) or (2) may be exercised or performed by the delegate in accordance with the delegation, and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the person who gave the delegation.

“(4) The Minister of State for Primary Industry or the Secretary to the Department of Primary Industry shall not delegate any of the following powers except to a person holding, or performing the duties of, an office in the Department of Primary Industry:—

- (a) power to grant a licence under this Act in respect of a foreign boat;
- (b) power to grant a licence under sub-section (3) of section 9;
- (c) power to transfer a licence granted under sub-section (3) of section 9.

“(5) A delegation referred to in sub-section (4) is effective only for so long as the delegate holds, or performs the duties of, an office in the Department of Primary Industry.

“(6) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the person who gave the delegation.”.

6. Section 8 of the Principal Act is amended—

Regulation
of fishing.

- (a) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph: —

“(b) prohibit the taking, from an area of proclaimed waters, of fish included in a class of fish specified in the notice that—

- (i) are less than a size so specified;
- (ii) are not greater than a size so specified;
- (iii) have a dimension less than a dimension so specified;
- or
- (iv) have a part with a dimension less than a dimension so specified in relation to that part;”;

- (b) by adding at the end of that sub-section the following paragraphs:—

“(d) prohibit fishing in an area of proclaimed waters in respect of fish included in the class of fish specified in the notice, other than—

- (i) traditional fishing; or

- (ii) fishing that consists of taking, processing or carrying fish of that class with the use of a boat in respect of which there is a licence under section 9 that, by virtue of an endorsement under sub-section (4) of section 9, extends to authorizing that taking, processing or carrying, as the case may be;
 - (e) prohibit a person from having in his possession or in his charge in a boat in an area of proclaimed waters equipment of a specified kind for taking fish unless that equipment is stowed and secured;
 - (f) prohibit a person from using, or having in his possession or in his charge in a boat, in an area of proclaimed waters a quantity of equipment of a specified kind for taking fish that is a quantity in excess of a quantity specified in, or ascertainable as provided in, the notice;
 - (g) prohibit a person from using, or having in his possession or in his charge in a boat, in an area of proclaimed waters to which a notice under paragraph (f) applies, equipment of a kind to which the notice applies, unless that equipment is registered, or there is a licence in respect of that equipment, under the law of a State or a Territory specified in the notice.”; and
- (c) by omitting from sub-section (3) the word “crayfish” (wherever occurring) and substituting the words “rock lobster”.

7. Section 9 of the Principal Act is repealed and the following sections substituted:—

Licences.

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

“ (2) The Minister or the Secretary may grant to a person a licence in respect of a boat authorizing the use of the boat by that person, or a person acting on his behalf, in, or in a specified area of, proclaimed waters for taking fish and for processing and carrying fish that have been taken with the use of that boat.

“ (3) The Minister or the Secretary may grant to a person a licence in respect of a boat authorizing the use of the boat by that person, or a person acting on his behalf, for carrying, or for processing and carrying, in, or in a specified area of, proclaimed waters fish that have been taken with the use of another boat.

“ (4) Where a licence granted under this section authorizes the use of a boat for a purpose in an area of proclaimed waters that includes an area of waters to which a notice under paragraph (d) of sub-section (1) of section 8 applies, the Minister or the Secretary may endorse the licence so as to extend it to authorize the use of the boat for that purpose in the area of waters to which the notice applies in respect of fish to which the notice applies.

“(5) A licence granted under this section—

- (a) is subject to such conditions as are specified in the licence;
- (b) comes into force on a date specified in the licence or, if no date is so specified, on the date on which it is granted; and
- (c) remains in force, subject to this section, until the expiration of the day specified in the licence, in accordance with sub-section (6), as the day until which it is to remain in force.

“(6) A licence granted under this section shall specify as the day until which the licence is to remain in force a day in the period of twelve months commencing on the day on which the licence comes into force or, in the case of a licence that comes into force during the month of December in any year, a day not later than 31 December in the next succeeding year.

“(7) The Minister or the Secretary may, on the application of the holder of a licence in respect of a boat 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 a licence, the endorsement of a licence, or the transfer of a licence, under this section.

“(9) A licence under this section shall be in accordance with a form approved by the Minister of State for Primary Industry.

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

“(11) Nothing in this Act prevents a licence under this section and a licence of the same kind under a law of a State or Territory being combined and issued as one instrument.

“9A. (1) The Minister or the Secretary may cancel a licence under section 9, or cancel such a licence in its application to an area of proclaimed waters, if—

Cancellation
and
suspension
of licences.

- (a) he is satisfied that there has been a contravention of, or a failure to comply with, a condition to which the licence is subject;
- (b) the holder of the licence has been convicted of an offence under this Act or the *Continental Shelf (Living Natural Resources) Act 1968* or that Act as amended; or
- (c) the holder has been convicted of an offence under the law of a State or Territory relating to fisheries.

“(2) The Minister or the Secretary may, by notice in writing expressed to be given under this sub-section given to the holder of a licence under section 9, suspend that licence if he has reasonable ground to suspect that there has been a contravention of, or a failure to comply with, a condition to which the licence is subject, not being grounds in relation to which he has previously exercised his powers under this sub-section.

“(3) The suspension of a licence under sub-section (2), unless sooner revoked, ceases—

- (a) if proceedings for an offence in respect of the licence are instituted against its holder within one month after the suspension—on the completion of those proceedings; or
- (b) in any other case—on the expiration of one month after the suspension.

“(4) The Minister or the Secretary may, by notice in writing expressed to be given under this sub-section given to the holder of a licence under section 9, suspend that licence for a specified period if—

- (a) the holder has had a licence relating to a boat or to fishing held by him under the law of a State or Territory suspended or cancelled; and
- (b) the Minister or the Secretary, as the case may be, is satisfied, after consulting the relevant authority of the State or Territory, that suspension for that period under this sub-section is necessary for the proper management of fisheries in an area.

“(5) A suspension of a licence under sub-section (2) or (4) may be expressed to operate either generally or in so far as the licence applies in relation to a specified area of proclaimed waters.”

Powers of officers.

8. Section 10 of the Principal Act is amended by inserting in paragraph (f), after the word “taking”, the words “and determination”.

Exploratory operations.

9. Section 11 of the Principal Act is amended by omitting the words “The Secretary may, subject to the directions of the Minister, carry out” and substituting the words “The Minister may cause to be carried out”.

Investigation.

10. Section 12 of the Principal Act is amended by omitting the words “The Secretary shall, subject to the directions of the Minister,” and substituting the words “The Minister may”.

11. Sections 13, 13A and 13AA of the Principal Act are repealed and the following sections substituted:—

Offences.

“13. (1) A person shall not—

- (a) in an area of proclaimed waters, engage in fishing, whether on his own account or as the partner, agent or employee of another person, unless he is the holder of a licence under sub-section (1) of section 9 authorizing him to do so;
- (b) in an area of proclaimed waters—
 - (i) use a boat for taking fish;
 - (ii) use a boat for processing fish that have been taken with the use of that boat;
 - (iii) use a boat, not being a foreign boat, for carrying fish that have been taken with the use of that boat; or

- (iv) have in his possession or in his charge a boat for taking fish,
unless he is, or he is acting on behalf of a person who is, the holder of a licence under sub-section (2) of section 9 authorizing the use of the boat in that area for taking fish;
- (c) in an area of proclaimed waters, use a boat for processing or carrying fish that have been taken with the use of another boat unless he is, or he is acting on behalf of a person who is, the holder of a licence under sub-section (3) of section 9 authorizing the use of the first-mentioned boat for that processing or for that carrying, as the case may be, in that area;
- (d) in an area of proclaimed waters, trans-ship fish to a boat in respect of which there is no licence under sub-section (3) of section 9 in respect of that area;
- (e) in an area of proclaimed waters, have a fish in his possession or under his control in a boat at a time when the taking of the fish in that area is prohibited by a notice in force under section 8;
- (f) being the holder of a licence under this Act, contravene a condition of the licence;
- (g) being the holder of a licence under this Act in respect of a boat, cause or permit a person acting on his behalf to contravene a condition of the licence;
- (h) being a person acting on behalf of the holder of a licence under this Act in respect of a boat, contravene a condition of the licence; or
- (i) do an act prohibited by a notice for the time being in force under section 8.

Penalty: \$1,000.

“(2) A reference in sub-paragraph (iv) of paragraph (b) of sub-section (1) to a boat shall be read as not including a reference to a foreign boat if the nets, traps and other equipment for the taking of fish belonging to the boat are stowed and secured.

“(3) A person does not contravene paragraph (a), (b) or (c) of sub-section (1) by reason only of engaging in, or using a boat in, or having a boat for engaging in, traditional fishing.

“(4) It is a defence to a prosecution for an offence arising under paragraph (e) of sub-section (1) if the person charged satisfies the court—

- (a) that the fish was not taken, caught, captured or retained for trading or manufacturing purposes;
- (b) that the fish was not taken, caught or captured in the area of proclaimed waters; or
- (c) that the taking, catching or capturing of the fish was not in contravention of this Act.

“(5) For the purposes of the prosecution of a person for an offence arising under paragraph (i) of sub-section (1), an act done by an employee or other agent of the person charged shall be deemed to have been done also by that person.

Removing fish from traps, &c.

“13A. A person shall not, in proclaimed waters, remove a fish from a net, trap or other equipment for the taking of fish unless he is the owner of the net, trap or other equipment or is acting with the authority of the owner.

Penalty: \$200 or imprisonment for 6 months.

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

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

- (a) use a foreign boat for taking fish;
- (b) use a foreign boat for processing fish that have been taken with the use of that boat; or
- (c) have in his possession or in his charge a foreign boat for taking fish,

unless there is in force a licence under sub-section (2) of section 9 authorizing the use of the boat in that area.

“(2) A person shall not, in an area of proclaimed waters comprised in the declared fishing zone, use a foreign boat for processing or carrying fish that have been taken with the use of another boat unless there is in force a licence under sub-section (3) of section 9 authorizing the use of the first-mentioned boat for that processing or for that carrying, as the case may be, in that area.

“(3) A reference in paragraph (c) of sub-section (1) to a foreign boat shall be read as not including a reference to a foreign boat if the nets, traps and other equipment for the taking of fish belonging to the boat are stowed and secured.

“(4) A person does not contravene sub-section (1) or (2) by reason only of his using a boat for traditional fishing or of his having a boat in his possession or charge for the purposes of traditional fishing.

“(5) A person who contravenes sub-section (1) or (2) is guilty of an offence punishable—

- (a) upon summary conviction—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or
- (b) upon conviction on indictment—by a fine of not less than \$1,000 and not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

“(6) Subject to sub-section (7), an offence against this section may be prosecuted either summarily or upon indictment, but an offender is not liable to be prosecuted more than once in respect of the same offence.

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

“13C. Where a court convicts a person of an offence against section 13 or section 13B, the court may order the forfeiture of— Forfeiture.

- (a) a boat, net, trap or equipment used in the commission of the offence;
- (b) fish on board such a boat at the time of the offence; or
- (c) the proceeds of the sale of any such fish.

“13D. Any boat or other property ordered by a court to be forfeited under this Act becomes the property of Australia and shall be dealt with or disposed of in accordance with the directions of the Secretary.”. Forfeited property.

12. Section 14 of the Principal Act is amended—

(a) by inserting in paragraph (f), after the word “abusive”, the words “or threatening”; and Obstruction of officers, &c.

(b) by omitting the words—

“Penalty: One thousand dollars.”

and substituting the words—

“Penalty: \$1,000 or imprisonment for 6 months.”.

13. After section 14 of the Principal Act the following section is inserted:—

“14A. (1) The master or other person in charge of a boat on which, or by the use of which, an offence against this Act (in this section referred to as ‘the primary offence’) is committed is guilty of an offence against this section punishable upon conviction as if it were the primary offence. Liability of master or person in charge of boat.

“(2) A person may be convicted of an offence against this section, whether or not the identity of the person who committed the primary offence appears, or has appeared, from the evidence in the proceedings in respect of the offence against this section or in any other proceedings, but a person shall not be convicted both of an offence against this section and of the primary offence.

“(3) The provisions of section 13 relating to forfeiture and of section 13C apply where a person is convicted of an offence against this section in like manner as they would apply if that person had been convicted of the primary offence.”.

14. Section 15 of the Principal Act is amended by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:— Jurisdiction of courts.

“(2) The jurisdiction invested in or conferred on courts by sub-section (1) 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 and is in addition to any other jurisdiction in relation to offences under this Act.

“(3) The trial on indictment of an offence against this Act not committed within a State may be held in any State or Territory.”.

Evidence.

15. Section 16 of the Principal Act is amended—

- (a) by inserting after the word “regulations” the words “or in proceedings for the condemnation or recovery of a boat seized under this Act”; and
- (b) by adding at the end thereof the following sub-sections:—

“(2) The Minister or a person authorized in writing by him to give certificates under this section may give a certificate—

- (a) that, at a time specified in the certificate, a boat specified in the certificate was, or was not, an Australian boat;
- (b) that, at a time specified in the certificate, an area of waters specified in the certificate was part of proclaimed water or part of the declared fishing zone;
- (c) that, at a time specified in the certificate, a person specified in the certificate was, or was not, the holder of a licence under sub-section (1) of section 9 to engage in fishing in an area of proclaimed waters specified in the certificate;
- (d) that, at a time specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a licence under section 9 in respect of a boat specified in the certificate authorizing the use of the boat for a purpose specified in the certificate in an area of proclaimed waters specified in the certificate; or
- (e) that, at a time specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a licence under section 9 in respect of a boat specified in the certificate endorsed under sub-section (4) of that section so as to authorize the use of the boat in an area of proclaimed waters specified in the certificate for a purpose specified in the certificate relating to fish of a kind specified in the certificate.

“(3) A person giving a certificate under paragraph (d) or (e) of sub-section (2) that a person was the holder of a licence may, in the certificate, certify that conditions specified in the certificate were the conditions specified in the licence.

“(4) In proceedings for an offence against this Act or the regulations, a certificate given under this section is *prima facie* evidence of the matters specified in the certificate.

“(5) For the purposes of this section, a writing purporting to be a certificate given under this section shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.”.

16. Section 16A of the Principal Act is amended by omitting from sub-section (2) the words “ or registration ”.

Certain payments to be made by Australia to Administrations of certain Territories.

17. Section 17 of the Principal Act is amended

Regulations.

(a) by omitting from paragraph (c) the words “ registered under this Act ” and substituting the words “ used for taking fish ”;

(b) by inserting after paragraph (c) the following paragraph:—

“(ca) for providing for service in actions for the condemnation of foreign boats seized as forfeited;”;

(c) by omitting paragraph (f) and substituting the following paragraph:—

“(f) for providing for the furnishing of returns containing information in relation to

(i) the taking of fish in Australian waters and the sale or disposal of such fish; or

(ii) the processing of fish in Australia or in Australian waters and the sale or disposal of fish so processed.”; and

(d) by adding at the end thereof the following sub-sections:—

“(2) The Minister of State for Primary Industry shall cause to be compiled, from the returns furnished under regulations made under sub-section (1) and from other sources, statistics in relation to the matters referred to in paragraph (f) of sub-section (1) and shall publish or make available, in such manner as he thinks fit, such of those statistics as he thinks fit.

“(3) Information derived from returns furnished under regulations made under this section is not to be used for purposes other than statistical purposes.

“(4) A person is not excused from furnishing a return required by regulations made under this section, or including information in such a return, on the ground that the return or information might tend to incriminate him, but his return is not admissible in evidence against him in any proceedings, other than proceedings in respect of false information contained in the return or in respect of a refusal or failure to include information in the return.

“(5) In this section, ‘ Australian waters ’ includes Australian waters within territorial limits.”.

Formal
amendments.

18. The Principal Act is amended as set out in the Schedule.

Savings.

19. (1) A delegation under sub-section (1) of section 6 of the Principal Act that before the commencement of this section had not been revoked or become inoperative has effect after the commencement of this section as if it were a delegation under sub-section (1) of section 6 of the Principal Act as amended by this Act.

(2) A notice in force or purporting to be in force immediately before the commencement of this section under paragraph (b) of sub-section (1) of section 8 of the Principal Act has effect after the commencement of this section as if it were a notice under paragraph (b) of sub-section (1) of section 8 of the Principal Act as amended by this Act.

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

Regulations.

20. Regulations for the purposes of the Principal Act as amended by the provisions of this Act that are to come into operation on a date to be fixed by Proclamation may be made at any time after this Act receives the Royal Assent, but regulations so made shall be expressed not to come into operation before the date so fixed by Proclamation.

SCHEDULE

Section 18

FORMAL AMENDMENTS

1. Sections 5A and 16A of the Principal Act are amended by omitting the words "the Commonwealth" (wherever occurring) and substituting the word "Australia".

2. The following provisions of the Principal Act are amended by omitting any number expressed in words that is used to identify a section of that Act or of another Act, and substituting that number expressed in figures:—

Sections 4 (definition of "proclaimed waters"), 10 (i), 14 (c) and 16A (2).

3. The following provisions of the Principal Act are amended by omitting the words "of this Act", "of this section" or "of this definition" (wherever occurring):

Sections 4 (definitions of "fish" and "proclaimed waters"), 8 (3) and (4), 10 (j), 14 (c) and 16A (2).