

Continental Shelf (Living Natural Resources)

No. 149 of 1968

An Act relating to the Living Natural Resources of the Continental Shelf.

[Assented to 9 December 1968]

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.

1. This Act may be cited as the *Continental Shelf (Living Natural Resources) Act 1968*. Short title.

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

3. The *Pearl Fisheries Act 1952*, the *Pearl Fisheries Act 1953* and the *Pearl Fisheries Act (No. 2) 1953* are repealed. Repeal.

- Parts.** 4. This Act is divided into Parts, as follows:—
Part I.—Preliminary (Sections 1–10).
Part II.—Regulation of the Taking of Sedentary Organisms (Sections 11–14).
Part III.—Offences (Sections 15–20).
Part IV.—Research (Sections 21–22).
Part V.—Miscellaneous (Sections 23–25).
- Interpretation.** 5.—(1.) In this Act, unless the contrary intention appears—
“commercial purpose” includes any trading or manufacturing purpose;
“continental shelf” has the same meaning as in the Convention;
“controlled area” means an area of the Australian continental shelf, or an area of the continental shelf of a Territory, declared by notice in force under section 11 of this Act to be a controlled area in relation to sedentary organisms of any kind;
“diver” means a diver who dives with the aid of mechanical breathing apparatus, whether or not he also dives without such aid;
“diver’s tender” means the person attending on a diver and in charge of the diving operations while the diver is under water;
“exempt boat” means a boat (not being a foreign ship) that belongs to, and is ordinarily attached to or carried on board, a ship, but does not include such a boat at a time when the boat is used independently of a ship;
“foreign ship” means a ship other than—
(a) a ship that is owned by a resident of, or by a company incorporated in, Australia or a Territory and—
(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 ship of a kind referred to in the last preceding paragraph;
“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 in writing by the Secretary to the Department of Primary Industry, or the Secretary to the Department of External Territories, to perform duties under this Act;
(b) a person permanently or temporarily employed in the Public Service of a State and authorized in writing by the Secretary to the Department of Primary Industry, or the Secretary to the Department of External Territories, to

perform duties under this Act in pursuance of an arrangement between the Commonwealth and the State;

(c) a member of the Commonwealth Police Force or of the Police Force of a State or Territory; and

(d) a member of the Defence Force;

“sedentary organism” means an organism of a kind declared by Proclamation in force under section 7 of this Act to be a sedentary organism to which this Act applies;

“ship” means any vessel, boat or craft, other than a vessel or craft used in air navigation, and includes a barge, lighter or any other floating vessel;

“Territory” means Territory of the Commonwealth;

“the Australian continental shelf” means the continental shelf adjacent to the coast of Australia, and includes the continental shelf adjacent to the Territory of Ashmore and Cartier Islands and the sea-bed and subsoil of the territorial sea of that Territory;

“the continental shelf of a Territory” means the continental shelf adjacent to any Territory not forming part of the Commonwealth (other than the Territory of Ashmore and Cartier Islands), and includes the sea-bed and subsoil of the territorial sea of any such Territory;

“the Convention” means the Convention entitled “Convention on the Continental Shelf” signed at Geneva on the twenty-ninth day of April, One thousand nine hundred and fifty-eight.

(2.) Unless the contrary intention appears, a reference in this Act to the Australian continental shelf or to the continental shelf of a Territory shall be read as including a reference to the waters above the Australian continental shelf or the continental shelf of the Territory, as the case may be, and a reference in this Act to an area, or part of an area, of the Australian continental shelf or of the continental shelf of a Territory shall be read as including a reference to the waters above that area or that part of that area.

(3.) For the purposes of this Act, a person shall be deemed to be using a ship in searching for and taking sedentary organisms of a particular kind if—

(a) he is using the ship as a place of abode or refuge, or for storing provisions, for—

(i) persons employed in or in connexion with searching for or taking sedentary organisms of that kind; or

(ii) persons engaged in superintending persons so employed;

(b) he is using the ship for transporting, or as a place for storing, sedentary organisms, or parts of sedentary organisms of that kind;

(c) he is using the ship as a place from which persons search for or take sedentary organisms of that kind; or

(d) he is otherwise using the ship in or in connexion with searching for or taking sedentary organisms of that kind.

Administration.

6. A reference in a provision of this Act to the appropriate Minister or to the appropriate Secretary, shall, in the application of that provision in relation to the Australian continental shelf, be read as a reference to the Minister of State for Primary Industry or to the Secretary to the Department of Primary Industry, as the case may be, and shall, in the application of that provision in relation to the continental shelf of a Territory, be read as a reference to the Minister of State for External Territories or the Secretary to the Department for External Territories, as the case may be.

Declaration of sedentary organisms to which this Act applies.

7. Where the Governor-General is satisfied that a marine organism of any kind is, for the purposes of the Convention, part of the living natural resources of the Australian continental shelf, or the continental shelf of a Territory, by reason that it is, for the purposes of the Convention, an organism belonging to sedentary species, he may, by Proclamation, declare the organism to be a sedentary organism to which this Act applies.

Declaration of areas of continental shelf adjacent to Territories.

8.—(1.) The Governor-General may, by Proclamation, declare an area of continental shelf specified in the Proclamation to be, for the purposes of this Act, an area of continental shelf adjacent to a Territory (being a Territory not forming part of the Commonwealth) so specified.

(2.) Where a Proclamation is in force under the last preceding subsection, the area of continental shelf specified in the Proclamation shall, for the purposes of this Act, be deemed to be an area of continental shelf adjacent to the Territory specified in the Proclamation, and shall be deemed not to be an area of continental shelf adjacent to Australia.

Application of Act.

9. This Act extends to all the Territories and to all parts of the Australian continental shelf and all parts of the continental shelf of a Territory, and applies to all persons, including foreigners, and to all ships, including foreign ships.

Delegation.

10.—(1.) A Minister of State, or the Secretary to a Department, on whom powers or functions are conferred by this Act may, by instrument in writing, delegate to a person or authority, either generally or otherwise as provided in the instrument of delegation, all or any of those powers or functions, except this power of delegation.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of 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.

(3.) 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.

PART II.—REGULATION OF THE TAKING OF SEDENTARY ORGANISMS.

11. The appropriate Minister may, by notice published in the *Gazette*, declare an area of the Australian continental shelf, or an area of the continental shelf of a Territory, specified in the notice to be, in relation to sedentary organisms of a kind so specified, a controlled area for the purposes of this Act.

Controlled areas.

12.—(1.) The appropriate Minister may, by notice published in the *Gazette*—

Notices by Minister.

- (a) prohibit the taking, either at all times or during a specified period, of sedentary organisms of a specified kind in, or in a specified part of, an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of that kind;
- (b) prohibit the taking of any sedentary organism of a specified kind that is less than a specified size in, or in a specified part of, an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of that kind;
- (c) prohibit the taking, by a method or equipment of a specified kind, of any sedentary organism of a specified kind in, or in a specified part of, an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of that kind;
- (d) prohibit the taking by any one ship, during a specified period, of a quantity of sedentary organisms of a specified kind that is in excess of a specified quantity in, or in a specified part of, an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of that kind;
- (e) prohibit the taking by any one person, during a specified period, of a quantity of sedentary organisms of a specified kind that is in excess of a specified quantity in, or in a specified part of, an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of that kind; and
- (f) prohibit the removal of sedentary organisms of a specified kind from the Australian continental shelf, or the continental shelf of a Territory, being a Territory specified in the notice, unless the organisms are dead.

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

13.—(1.) The appropriate Minister or the appropriate Secretary may grant to a person a licence authorizing the person to search for and take sedentary organisms of a specified kind in, or in a specified part of, an

Licences.

area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of that kind.

(2.) The appropriate Minister or the appropriate Secretary may grant to a person a licence in respect of a ship authorizing the use of the ship by that person, or by a person acting on his behalf, in searching for and taking sedentary organisms of a specified kind in, or in a specified part of, an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of that kind.

(3.) A licence authorizing the use of a ship in searching for and taking sedentary organisms of a particular kind in an area of the Australian continental shelf, or an area of the continental shelf of a Territory, extends, subject to any conditions specified in the licence, to authorizing the use of the ship in that area, in relation to sedentary organisms of that kind, for any purpose specified in a paragraph of sub-section (3.) of section 5 of this Act.

(4.) The appropriate Minister or the appropriate Secretary may grant to or in respect of a person—

- (a) a licence authorizing the employment of the person, in a controlled area specified in the licence, as a diver;
- (b) a licence authorizing the employment of the person, in a controlled area specified in the licence, as a trial diver; or
- (c) a licence authorizing the employment of the person, in a controlled area specified in the licence, as a diver's tender.

(5.) A person authorized to grant licences under this section may, in his discretion, grant or refuse an application for a licence.

(6.) A licence granted under this section—

- (a) is subject to such conditions as are specified in the licence; and
- (b) remains in force for such period as is specified in the licence.

(7.) The appropriate Minister or the appropriate Secretary 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 a licence, or the transfer of a licence, under this section.

(9.) Where, during any month of the year, a licence under this section relating to the continental shelf of a Territory has been granted or transferred, the Commonwealth shall, not later than the last day of the next succeeding month, pay to the Administration of the Territory an amount equal to the amount of any fee received by the Commonwealth in respect of the grant or transfer of the licence.

(10.) Where—

- (a) a person authorized to grant a licence under this section is satisfied that there has been a contravention of, or failure to comply with, a condition specified in such a licence; or
- (b) the holder of the licence has been convicted of an offence against this Act or the *Fisheries Act 1952–1968*,

the person so authorized may cancel the licence.

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

14. An officer may—

Powers of
officers.

- (a) board or enter upon a ship in a controlled area, or a ship that he has reason to believe has been used, is being used or is intended to be used for searching for or taking sedentary organisms in a controlled area, and may search the ship for equipment used, or capable of being used, for searching for or taking sedentary organisms;
- (b) examine any equipment found on any ship or in any place, being equipment that he has reason to believe has been used, is being used or is intended to be used for searching for or taking sedentary organisms in a controlled area;
- (c) seize, take, detain, remove and secure any ship that the officer has reason to believe has been used, is being used or is intended to be used in contravention of this Act or any sedentary organisms that the officer has reason to believe have been taken in contravention of this Act;
- (d) arrest, without warrant, 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 that 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 specified by the officer, being a place in Australia or a Territory, 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 that 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 remain in control of the ship pending the taking of proceedings in respect of that contravention;
- (g) require the master or other person in charge of a ship in respect of which a licence is required to be in force under this Act to produce the licence, and take copies of, or extracts from, the licence;

- (h) require the master or other person in charge of a ship in respect of which a licence is required to be in force 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 in respect of which a licence is required to be in force under this Act, or who is engaged in searching for or taking any sedentary organisms in a controlled area, 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 searching for or taking sedentary organisms in a controlled area to state whether he is the holder of a licence under sub-section (1.) or (4.) of section 13 of this Act and, if so, to produce the licence; and
- (k) sell any sedentary organisms seized by him under this Act.

PART III.—OFFENCES.

Offences in relation to licences and unlicensed operations.

15.—(1.) A person shall not, in an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of any kind, whether on his own account or as the partner, agent or employee of another person, search for or take sedentary organisms of that kind except as authorized by a licence granted to him under sub-section (1.) of section 13 of this Act.

(2.) A person shall not, in an area of the Australian continental shelf, or an area of the continental shelf of a Territory, that is a controlled area in relation to sedentary organisms of any kind, use a ship (other than an exempt boat) in searching for or taking sedentary organisms of that kind or except as authorized by a licence granted to him, or to a person on whose behalf he is acting, under sub-section (2.) of section 13 of this Act.

(3.) A person shall not, in a controlled area, have in his possession or in his charge a ship (other than an exempt boat) for use in searching for or taking sedentary organisms unless there is in force in respect of the ship a licence under sub-section (2.) of section 13 of this Act authorizing the use of the ship by him, or by a person on whose behalf he is acting, in searching for and taking sedentary organisms in that area.

(4.) A person shall not, in a controlled area, employ or have on board a ship, for the purpose of searching for or taking any sedentary organisms, a diver, trial diver or diver's tender unless there is in force in respect of him a licence granted under sub-section (4.) of section 13 of this Act authorizing his employment, in that area, as a diver, trial diver or diver's tender, as the case may be.

(5.) A person who is the holder of a licence under this Act shall not contravene a condition of the licence and a person acting on behalf of the holder of a licence under sub-section (2.) of section 13 of this Act shall not contravene a condition of that licence.

(6.) It is a defence to a prosecution for an offence against sub-section (1.), (2.), (3.) or (4.) of this section if the person charged with the offence proves—

- (a) in the case of an offence against sub-section (1.) of this section—that he was not searching for or taking sedentary organisms for a commercial purpose;
- (b) in the case of an offence against sub-section (2.) of this section—that he was not using a ship in searching for or taking sedentary organisms for a commercial purpose;
- (c) in the case of an offence against sub-section (3.) of this section—that he did not have a ship in his possession or in his charge for use in searching for or taking sedentary organisms for a commercial purpose; or
- (d) in the case of an offence against sub-section (4.)—that the diver, trial diver or diver's tender was not employed or on board the ship for the purpose of searching for or taking sedentary organisms for a commercial purpose.

(7.) Sub-sections (2.) and (3.) of this section do not apply in relation to a foreign ship if—

- (a) the equipment for searching for and taking sedentary organisms belonging to the ship is stowed and secured; and
- (b) the work of cutting up, dismembering, cleaning, sorting or packing sedentary organisms is not being carried out on the ship.

16. A person (including a person who is, or is acting on behalf of the person who is, the holder of a licence under this Act or in respect of whom a licence is in force under this Act) shall not contravene a notice in force under section 12 of this Act.

Offences in relation to notices under section 12.

17. A person shall not—

- (a) fail to facilitate by all reasonable means the boarding of a ship by an officer acting in pursuance of his powers under this Act;
- (b) refuse to allow a search to be made that is authorized by or under this Act;
- (c) refuse or neglect to comply with a requirement made by an officer under section 14 of this Act;
- (d) when lawfully required to state his name and place of abode to an officer acting in pursuance of his powers under this Act—state a false name or place of abode to the officer;
- (e) when lawfully required to give information by an officer acting in pursuance of his powers under this Act—give false or misleading information to the officer;
- (f) use abusive or threatening language to an officer acting in pursuance of his powers under this Act;

Obstruction of officers, &c.

- (g) assault, resist or obstruct an officer acting in pursuance of his powers under this Act;
- (h) impersonate an officer; or
- (i) in an application for the purposes of this Act—make a statement or furnish information which is false or misleading in any particular.

Punishment of offences.

18.—(1.) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2.) Subject to this section, an offence against this Act shall be prosecuted summarily and is punishable by a fine not exceeding One thousand dollars.

(3.) An offence against sub-section (2.) or (3.) of section 15 of this Act committed in respect of a foreign ship may be prosecuted summarily or upon indictment, but an offender is not liable to be punished more than once in respect of the same offence, and such an offence is punishable—

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

(4.) Where proceedings for an offence against sub-section (2.) or (3.) of section 15 of this Act committed in respect of a foreign ship are brought in a court of summary jurisdiction, the court may commit the defendant for trial or, with the consent of the defendant, determine the proceedings.

(5.) Where a person is convicted of an offence against section 15 or 16 of this Act, the court may order the forfeiture of any ship used or otherwise involved in the commission of the offence, and of its equipment and contents (other than the personal effects of members of the crew) and of any sedentary organisms found on the ship or the proceeds of the sale of any sedentary organisms so found.

Jurisdiction of courts.

19.—(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.

(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.

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

(4.) 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.

(5.) Except as provided by this Act, the *Judiciary Act* 1903–1968 applies in relation to offences against this Act or the regulations.

20.—(1.) In a prosecution for an offence against this Act or the regulations, a certificate by the Minister of State for Primary Industry or the Minister of State for External Territories or a person authorized in writing by either of those Ministers to issue certificates under this section—

Evidentiary
certificates.

- (a) that a submarine area specified in the certificate is an area of the Australian continental shelf or an area of the continental shelf of a Territory;
- (b) that, at a time specified in the certificate, a person specified in the certificate was not the holder of a licence under sub-section (1.) of section 13 of this Act authorizing him to search for and take sedentary organisms of a kind specified in the certificate in an area of the Australian continental shelf, or an area of the continental shelf of a Territory, so specified;
- (c) that, at a time specified in the certificate, a person specified in the certificate was not the holder of a licence under sub-section (2.) of section 13 of this Act authorizing the use of a ship by him or by a person acting on his behalf in searching for and taking sedentary organisms of a kind specified in the certificate in an area of the Australian continental shelf, or an area of the continental shelf of a Territory, so specified; or
- (d) that, at a time specified in the certificate, a licence under sub-section (4.) of section 13 of this Act was not in force authorizing the employment of a person specified in the certificate, in a controlled area so specified, as a diver, as a trial diver or as a diver's tender, as the case may be,

is evidence of the matter to which the certificate relates.

(2.) Where a person (including a person on board a ship) is at any place that is, or is above, a part of the Australian continental shelf or a part of the continental shelf of a Territory and he has in his possession or under his control any sedentary organism, then, in any prosecution of that person for an offence against sub-section (1.) of section 15 of this Act, that possession or control is evidence that the person took the sedentary organism in that part of the Australian continental shelf or that part of the continental shelf of the Territory, as the case may be.

PART IV.—RESEARCH.

Research in relation to the living natural resources of the continental shelf.

21. The appropriate Minister may cause to be carried out research into the living natural resources of the Australian continental shelf or of the continental shelf of a Territory and, in particular, without limiting the generality of the foregoing, research into—

- (a) means for developing the commercial exploitation of those resources; and
- (b) means for the conservation of those resources.

Investigations into economic matters.

22. The appropriate Minister may cause investigations to be carried out into economic matters relating to the exploitation of the living natural resources of the Australian continental shelf or of the continental shelf of a Territory.

PART V.—MISCELLANEOUS.

Issue of permits for scientific purposes.

23.—(1.) The appropriate Minister, or a person authorized in writing by the appropriate Minister to grant permits under this section, may grant a permit to a person authorizing that person, in an area of the Australian continental shelf or an area of the continental shelf of a Territory, to search for and take, for scientific purposes, subject to such conditions as are specified in the permit, sedentary organisms 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 that is authorized by the permit.

Description of areas by reference to a larger area, &c.

24.—(1.) A part of a controlled area is, for the purposes of this Act, sufficiently identified in an instrument under this Act if it is described in the instrument as being such part of the controlled area as is within an area specified in the instrument notwithstanding that the area specified in the instrument includes any area that is not part of the controlled area.

(2.) An area of continental shelf is, for the purposes of this Act, sufficiently described in an instrument under this Act if it is described in the instrument as being the area of continental shelf beneath an area of waters specified in the instrument.

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

- (a) for prescribing short methods of reference to areas of the Australian continental shelf, or areas of the continental shelf of a Territory, specified in the regulations, and the purposes for which those methods of reference may be used;
- (b) for prescribing signals and rules of navigation to be observed by persons in charge of ships engaged in searching for or taking sedentary organisms in controlled areas;
- (c) for prescribing the method of marking a ship in respect of which a licence is in force under this Act;
- (d) for providing for the sale or disposal of any ship, sedentary organisms or other goods the forfeiture of which is ordered under this Act or of unclaimed equipment for use in searching for or taking sedentary organisms found in controlled areas;
- (e) for regulating the rights of priority, in respect of the searching for or taking of sedentary organisms in controlled areas, as between persons engaged in searching for or taking sedentary organisms and for prescribing rules to be observed by persons engaged in searching for and taking of sedentary organisms in controlled areas;
- (f) for providing for the furnishing of statistics in relation to the taking of sedentary organisms in controlled areas and in relation to the sale or disposal of sedentary organisms taken in controlled areas; and
- (g) for prescribing penalties not exceeding a fine of Two hundred dollars for offences against the regulations.