

PEARLING ACT 1990

(No. 88 of 1990)

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PEARLING ACT

No. 88 of 1990

AN ACT to regulate pearling and pearl oyster hatchery activities, to provide for the conservation and management of pearl oyster fisheries, to repeal the *Pearling Act 1912* and for connected purposes.

[Assented to 17 December 1990.]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Pearling Act 1990*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or such days as are respectively, fixed by proclamation.

Interpretation

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

“boat” includes every type of floating vessel or platform;

“Committee” means Pearling Industry Advisory Committee established under section 38 (1);

“Commonwealth Fisheries Act” means *Fisheries Act 1952* of the Commonwealth;

“Executive Director” means person holding or acting in the office of Director of Fisheries under the *Fisheries Act 1905*;

“farm lease” means pearl oyster farm lease issued under section 23 (1);

“Fisheries Research and Development Fund” means account established under section 35L of the *Fisheries Act 1905*;

“foreign boat” has the same meaning as it has in the Commonwealth Fisheries Act;

“hatchery activities” means all or any of the following activities—

(a) taking, or attempting to take, pearl oyster spat;

(b) taking, or attempting to take, pearl oysters for breeding stock;

(c) producing stocks of pearl oysters by acclimatization, propagation, hatching, breeding, rearing or raising, or attempting to do so; or

(d) moving, dumping, holding, storing or transporting pearl oysters or pearl oyster spat for the purposes of paragraph (a), (b) or (c),

and a reference to a hatchery activity is a reference to one of those activities;

“hatchery licence” means pearl oyster hatchery licence issued under section 23 (1);

“hatchery permit” means pearl oyster hatchery permit issued under section 23 (1);

“inspector” means inspector referred to in section 35 (1) or (2);

“licence” means pearling licence, hatchery licence, pearl diver’s licence, pearl boat licence or pearl boat master’s licence;

“master” means person who holds a pearl boat master’s licence;

“pearl” includes natural or cultured, whole, half, baroque, seedless or blister pearl;

“pearl boat licence” means pearl boat licence issued under section 23 (1);

“pearl boat master’s licence” means pearl boat master’s licence issued under section 23 (1);

“pearl culture techniques” includes any technique or practice used to produce, or encourage the production of, pearls from pearl oysters;

“pearl diver’s licence” means pearl diver’s licence issued under section 23 (1);

“pearl oyster” means pearl oyster of any of those species of pearl oysters declared under section 6 to be pearl oysters to which this Act applies and includes the shell of the pearl oyster and any pearl contained in that shell;

“pearl oyster farm” means area specified as a pearl oyster farm in a farm lease;

“pearling” means all or any of the following activities—

- (a) taking, or attempting to take, pearl oysters;
- (b) removing, or attempting to remove, pearls from pearl oysters;
- (c) moving, dumping, holding, storing or transporting pearl oysters; or

- (d) practising, or attempting to practise, pearl culture techniques,

and a reference to a pearling activity is a reference to one of those activities;

“pearling licence” means pearling licence issued under section 23 (1);

“pearling permit” means pearling permit issued under section 23 (1);

“permit” means pearling permit or hatchery permit;

“quota” means maximum number of pearl oysters that may be taken, or produced and used, or sold as breeding stock or for pearl culture techniques, under a licence or permit during the period of time specified in the licence or permit;

“sale”, without derogating from the normal meaning of the expression, includes sale by retail or wholesale, barter, exchange, supply for profit, offer or expose for sale, send, forward or deliver for sale or cause or suffer or permit to be sold;

“the Department” has the meaning given by the *Fisheries Act 1905*;

“the regulations” means regulations made under section 60;

“waters” or “Western Australian waters” means waters referred to in subsection (2);

“zone” means area of waters declared to be a zone by notice under section 5.

(2) Where in this Act there is a reference to Western Australian waters or to waters generally, that reference—

- (a) is a reference to all waters that are within the limits of the State;

- (b) except for purposes in relation to a pearl oyster fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Part IIA of the *Fisheries Act 1905* and except for purposes prescribed by paragraph (d), is a reference to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that, within the meaning of that Part, are Commonwealth proclaimed waters;
- (c) for purposes in relation to a pearl oyster fishery, as defined in section 43, that is to be managed in accordance with the law of the State pursuant to an arrangement under Part IIA of the *Fisheries Act 1905*, is a reference to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth or otherwise; and
- (d) for purposes in relation to activities to which this Act applies, being activities that are, within the meaning of the Commonwealth Fisheries Act, carried on for private purposes otherwise than by the use of a foreign boat, is a reference to any waters to which the legislative powers of the State extend with respect to those activities.

Position to be ascertained by reference to Australian Geodetic Datum

4. (1) Where for the purposes of this Act it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum.

(2) The Australian Geodetic Datum shall be defined as prescribed.

Declaration of zones

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

- (a) an area of waters described and given a zone designation in the notice to be a zone for the purposes of this Act; and
- (b) a part of a zone described and given a designation in the notice to be an area of a zone for the purposes of this Act.

(2) Where for the purposes of this Act it is necessary to describe a particular area of waters, that area may be described by reference to one or more, or areas of one or more, zones.

Declaration of pearl oysters

6. The Minister may, by notice published in the *Gazette*, declare those species of pearl oysters specified in the notice to be pearl oysters to which this Act applies.

PART 2—CONTROL OF PEARLING AND HATCHERY ACTIVITIES

Division 1—Pearling licences, hatchery licences and permits

Pearling and hatchery activities not to be carried out without licence or permit

7. (1) In the State and in Western Australian waters, a person shall not carry out—

(a) pearling except under a pearling licence or pearling permit;

or

(b) hatchery activities except under a hatchery licence or hatchery permit,

held by the person, or by a principal or employer of the person.

(2) A person who contravenes or who causes, permits or suffers another person to contravene subsection (1) commits an offence, the penalty for which is—

(a) \$50 000; and

(b) in every case, a further penalty irreducible notwithstanding section 70 of the *Interpretation Act 1984* of an amount that is twice the wholesale value at the time of the offence of any pearl oysters, or pearl oyster spat, the subject of the offence.

(3) It is a defence to a charge of an offence under this section if the person charged proves that at the time the offence occurred he or she—

- (a) was an agent or employee of a person who was in control of the pearling or hatchery activities; and
- (b) believed on reasonable grounds that his or her principal or employer held the relevant licence or permit.

Conditions on pearling licences, hatchery licences and permits to be complied with

8. (1) While carrying out pearling or hatchery activities in the State or in Western Australian waters, a person shall not contravene any condition imposed on the pearling licence, hatchery licence or permit—

- (a) under which the pearling or hatchery activities are carried out; and
- (b) which is held by the person or a principal or employer of the person.

(2) A person who contravenes, or who causes, permits or suffers another person to contravene, subsection (1) commits an offence, the penalty for which is \$10 000, unless section 9 or 10 applies.

(3) Where a regulation relating to—

- (a) the identification of pearl oysters;
- (b) the identification or use of containers used for pearling or hatchery activities; or
- (c) the taking, collecting, moving, dumping, holding, storing or transporting of pearl oysters,

has been contravened, all pearl oysters the subject of the contravention shall be regarded for the purposes of this Act as if they were taken in excess of the relevant quota imposed by condition on the pearling licence or hatchery licence or the permit under which the pearling or hatchery activities were carried out.

(4) Subsection (3) applies where a regulation relating to containers referred to in subsection (3) (b) is contravened, notwithstanding that no pearl oysters are involved in the contravention, and, where that situation occurs, the number of pearl oysters that shall be regarded as taken in excess of the relevant quota for the purposes of that subsection shall be the number that is prescribed in respect of the particular type of container.

(5) Where a person has contravened a condition imposed in respect of the quota of pearl oysters that may be taken under the relevant licence or permit, but it is not possible to prove in which period of time the number of pearl oysters taken was in excess of the quota specified for that period of time, then the number of pearl oysters taken in excess of quota shall be deemed to have been taken in excess of the quota relating to the period of time when the contravention was reported in writing to the Executive Director by an inspector.

(6) It is a defence to a charge of an offence under this section if the person charged proves that, at the time the situation giving rise to that charge occurred, he or she was an agent or employee of the person who was in control of the pearling or hatchery activities and did not have any knowledge of the relevant condition imposed on the relevant licence or permit.

Penalty where condition contravened relates to quota

9. (1) The penalties set out in this section apply where a person is convicted under section 8 of an offence (in this section called "the quota offence") relating to the contravention of a condition described in section 26(2) (c) imposed on a pearling licence, hatchery licence or permit.

(2) Where the number of pearl oysters taken in excess of a quota is less than 100, the penalty for the quota offence is \$10 000, unless subsection (3) (a) or (4) (a) applies.

(3) Where the number of pearl oysters taken in excess of a quota—

(a) is less than 100 and it is the second such offence by the person in any period of 10 years; or

(b) is 100 or more and subsection (4) (b) does not apply,

the penalty for the quota offence is \$40 000 and, where the quota offence was committed with the knowledge of the holder of the relevant licence or permit, a reduction in accordance with subsection (5) in the quota of pearl oysters that may be taken under that licence or permit.

(4) Where the number of pearl oysters taken in excess of a quota—

- (a) is less than 100 and it is the third or subsequent such offence by the person in any period of 10 years; or
- (b) is 100 or more and it is the second or subsequent such offence by the person in any period of 10 years,

the penalty for the quota offence is \$100 000 and, where the quota offence was committed with the knowledge of the holder of the relevant licence or permit, a permanent reduction in the quota of pearl oysters that may be taken under that licence or permit by the number of pearl oysters taken in excess of the quota, rounded up to the nearest 1 000.

(5) Where subsection (3) applies, the quota of pearl oysters that may be taken under the relevant licence or permit shall be reduced—

- (a) if the number of pearl oysters taken in excess of the quota is less than 1 000, for a period of 2 years; or
- (b) if the number of pearl oysters taken in excess of the quota is 1 000 or more, for a period of 3 years,

by the number of pearl oysters taken in excess of the quota, rounded up to the nearest 1 000.

(6) In the absence of proof to the contrary, the holder of the relevant licence or permit shall be taken to have had knowledge that the quota offence was being committed for the purpose of determining whether or not a penalty referred to in this section is applicable.

Penalty where condition contravened relates to area

10. Where a person is convicted under section 8 of an offence relating to the contravention of a condition described in section 26 (2) (b) or (3) and imposed on a pearling licence, hatchery licence or permit, the penalty for that offence is—

- (a) \$50 000; and

- (b) in every case, a further penalty irreducible notwithstanding section 70 of the *Interpretation Act 1984* of an amount that is twice the wholesale value at the time of that offence of any pearl oysters, or pearl oyster spat, the subject of that offence.

Certain pearl oysters bought or otherwise obtained to be regarded as taken

11. In calculating the number of pearl oysters taken during a particular period of time under a pearling licence, hatchery licence or permit, all pearl oysters produced under a hatchery licence that are bought or otherwise obtained by the holder of the pearling licence, hatchery licence or permit during that period of time and used, or intended to be used, for any activity authorized under the pearling licence, hatchery licence or permit, shall be regarded as if they had been taken under the pearling licence, hatchery licence or permit.

Hatchery produced pearl oysters to be sold only with approval of Executive Director

12. (1) The holder of a hatchery licence shall not sell any pearl oyster produced under the hatchery licence without the written approval of the Executive Director.

(2) The approval of the Executive Director to the sale of any pearl oyster produced under a hatchery licence shall not be as of right and, if the Executive Director thinks it would be in the better interests of the pearling industry to do so, the Executive Director may refuse to give that approval.

(3) Where the Executive Director refuses to give his or her approval to the sale of pearl oysters produced under a hatchery licence the Executive Director shall, in writing, inform the holder of the hatchery licence of the refusal and the reasons for it.

(4) A person who contravenes, or who causes, permits or suffers another person to contravene, subsection (1) commits an offence, the penalty for which is—

- (a) \$10 000; and

- (b) in every case, a further penalty irreducible notwithstanding section 70 of the *Interpretation Act 1984* of an amount that is twice the wholesale value at the time of the offence of any pearl oysters the subject of the offence.

Division 2—Other licences

Pearl diver's licence

13. (1) A person shall not dive while carrying out pearling or hatchery activities in Western Australian waters unless that person holds a pearl diver's licence.

(2) A person shall not contravene or cause, permit or suffer another person to contravene subsection (1).

Penalty: \$2 000.

Pearl boat licence

14. (1) A person shall not use a boat to carry out pearling or hatchery activities in Western Australian waters, otherwise than on a pearl oyster farm, unless there is in force in respect of the boat a pearl boat licence and the boat is used to carry out the pearling or hatchery activities in accordance with the pearl boat licence.

(2) A person shall not contravene or cause, permit or suffer another person to contravene subsection (1).

Penalty: \$2 000.

Pearl boat master's licence

15. (1) A person shall not be in control of a boat used to carry out pearling or hatchery activities in Western Australian waters, otherwise than on a pearl oyster farm, unless that person holds a pearl boat master's licence and the pearling or hatchery activities are carried out in accordance with the pearl boat master's licence.

(2) A person shall not contravene or cause, permit or suffer another person to contravene subsection (1).

Penalty: \$2 000.

*Division 3—Pearl oyster farms***Pearl oysters and pearl oyster spat
to be moved to pearl oyster farm**

16. Subject to this Act, by 31 December in each year, or by such other date as the Executive Director specifies in writing in a particular case or year, the holder of a pearling licence or hatchery licence shall ensure that all live pearl oysters and pearl oyster spat taken or produced—

- (a) under the pearling licence or hatchery licence; or
- (b) under another pearling licence or hatchery licence on behalf of the holder of that pearling licence or hatchery licence,

in the preceding 12 months are moved to a pearl oyster farm, and are not removed from the pearl oyster farm after that date, otherwise than with the written approval of the Executive Director.

Penalty: \$10 000.

Exclusion of persons from pearl oyster farm

17. (1) The Executive Director may, by notice in writing given to the holder of a farm lease, authorize the holder of the farm lease to exclude persons from the pearl oyster farm specified in the farm lease, or from that part of the pearl oyster farm specified in the authorization.

(2) A person shall not enter or remain on a pearl oyster farm, or part of a pearl oyster farm, after being made aware that the holder of the relevant farm lease has been authorized under subsection (1) to exclude persons from the pearl oyster farm, or that part of the pearl oyster farm, unless the person—

- (a) has the permission of that holder so to enter or remain; or
- (b) is compelled so to enter or remain by weather conditions or some other reasonable cause.

(3) A person shall not contravene or cause, permit or suffer another person to contravene subsection (2).

Penalty: \$2 000.

**Pearls, pearl oysters and pearl oyster spat
used for pearling or hatchery activities
are property of farm lease holder**

18. Unless or until proved to the contrary, all pearls, pearl oysters and pearl oyster spat on a pearl oyster farm being used for pearling or hatchery activities shall be taken to be the property of the person who holds the relevant farm lease.

Division 4—General

**Minister may prohibit or restrict
pearling or hatchery activities**

19. (1) The Minister may, by notice published in the *Gazette*, prohibit or restrict in an area or areas of waters described in that notice and for the period of time specified in that notice pearling or hatchery activities to the extent specified in that notice.

(2) Notwithstanding any other provision of this Act or any licence or permit, a person shall not contravene a prohibition or restriction made under subsection (1).

Penalty: \$10 000.

**Interference with pearling
or hatchery activities**

20. A person shall not without reasonable cause—

- (a) prevent pearling or hatchery activities from being carried out in accordance with this Act; or
- (b) interfere with, hinder or harass a person who is carrying out pearling or hatchery activities in accordance with this Act.

Penalty: \$2 000.

**Undersized and oversized
pearl oysters not to be taken**

21. (1) Subject to subsection (3), a person shall not—

- (a) take, be in possession or control of, or have in or on any receptacle, premises, boat, vehicle or aircraft under his or her control;
- (b) sell, give or consign; or
- (c) bring into Western Australian waters or into the State,

a pearl oyster the shell of which is—

- (d) smaller than the minimum size; or
- (e) larger than the maximum size,

declared under subsection (2).

Penalty: \$5 000.

(2) The Minister may, by notice published in the *Gazette*, declare minimum and maximum sizes for the purposes of subsection (1) and in that notice may specify—

- (a) different minimum and maximum sizes in respect of different waters or species of pearl oysters; and
- (b) the method, or methods, by which the size of pearl oyster shells shall be determined.

(3) Subsection (1) does not apply to hatchery activities carried out in accordance with a hatchery licence or a hatchery permit.

(4) An inspector may return to Western Australian waters any pearl oyster—

- (a) referred to in subsection (1); and
- (b) seized under section 36 (1) (g).

(5) Where a person convicted of an offence under subsection (1) establishes that at the time when the offence was committed—

- (a) he or she was an employee or agent;
- (b) the pearl oysters concerned were in the same state as that in which he or she received them from his or her employer or principal; and

- (c) he or she did not know that he or she was committing an offence under subsection (1) in relation to the pearl oysters concerned,

that person may recover from his or her employer or principal the amount of any penalty imposed as a result of his or her conviction of the offence and any costs for which he or she is liable in respect of that conviction.

(6) Subsection (5) shall operate notwithstanding that the employer or principal referred to in that subsection may also have been convicted of the offence referred to in that subsection and have been subjected to a penalty imposed as a result of that conviction.

PART 3—FARM LEASES, LICENCES AND PERMITS

Division 1—Application and issue

Applications for farm leases, licences and permits

22. (1) An application for the issue, renewal or transfer of a farm lease, licence or permit shall be in a form approved by the Executive Director.

(2) The Executive Director may approve of different forms for the purpose of making different applications under this section.

(3) An application for the issue, renewal or transfer of a farm lease, licence or permit shall be made to the Executive Director.

Issue of farm leases, licences and permits

23. (1) The Executive Director may issue a—

- (a) pearl oyster farm lease;
- (b) pearling licence;
- (c) pearl oyster hatchery licence;

- (d) pearl diver's licence;
- (e) pearl boat licence;
- (f) pearl boat master's licence;
- (g) pearling permit; and
- (h) pearl oyster hatchery permit,

in such form as is approved by the Executive Director, on payment of the appropriate annual fee referred to in section 27 (1).

(2) The Executive Director shall not issue a farm lease unless satisfied that the applicant holds—

- (a) a hatchery licence; or
- (b) a pearling licence authorizing the holder to carry out pearl culture techniques.

(3) The total area of a pearl oyster farm shall not exceed 4 square nautical miles.

(4) A pearl diver's licence or a pearl boat master's licence shall be issued only to a natural person.

(5) The Executive Director may issue—

- (a) a pearling permit to carry out any pearling activity;
- (b) a hatchery permit to carry out any hatchery activity,

if satisfied that the activities to be carried out under the permit are for—

- (c) the purpose of research or investigation; or
- (d) any other purpose prescribed for the purposes of this section.

(6) A farm lease, licence or permit shall not be issued as of right and, if the Executive Director thinks it would be in the better interests of the pearling industry to do so, the Executive Director may refuse to issue a farm lease, licence or permit.

(7) Where the Executive Director refuses to issue a farm lease, licence or permit, the Executive Director shall, in writing, inform the applicant of the refusal and the reasons for it.

(8) The Executive Director shall cause to be published in the *Gazette* a notice of any decision made under this section granting an application for the issue of a farm lease, pearling licence or hatchery licence and shall in that notice draw attention to the right of appeal set out in section 33.

Minister may issue policy guidelines

24. (1) The Minister may issue from time to time for the assistance of the Executive Director and the information of the pearling industry a policy statement consisting of guidelines in respect of matters considered by the Minister to be of significance in relation to the provisions of this Part.

(2) A policy statement issued under this section may be amended or revoked by the Minister at any time.

(3) In the exercise of the functions conferred on the Executive Director by this Part, the Executive Director shall have regard to any policy statement issued by the Minister under this section, but the issue of such a statement does not in any way derogate from the duty of the Executive Director to exercise discretion in a particular case nor does it preclude the Executive Director from taking into account matters other than those referred to in that statement.

(4) Nothing in this section shall be construed as authorizing the Minister to give directions or make a statement that concerns a particular application or matter or is inconsistent with any provision of this Act.

Duration of farm leases, licences and permits

25. Subject to section 27 and Division 2 of this Part—

- (a) a farm lease shall be valid and effectual only for such period of time not exceeding 21 years as is specified in the farm lease; and
- (b) a licence or permit shall be valid and effectual only for the period of time specified in the licence or permit.

Conditions imposed on licences and permits

26. (1) A licence or permit shall be subject to such conditions as the Executive Director may from time to time impose by notice in writing served on the holder of the licence or permit.

(2) Without limiting the generality of subsection (1)—

(a) a licence or permit held by—

- (i) an individual shall be subject to the condition that the individual comply; or
- (ii) a body corporate shall be subject to the condition that the body corporate ensure that there is at all times an officer of the body corporate nominated by notice in writing served on the Executive Director, which officer complies,

with such requirements as are prescribed in respect of the holder of a licence or permit of the kind in question;

- (b) a pearling licence or a hatchery licence may be subject to conditions relating to the areas of waters where particular pearling or hatchery activities are authorized to be carried out;
- (c) a pearling licence, or a hatchery licence authorizing the taking of pearl oysters, may be subject to a condition relating to the quota of pearl oysters that may be taken during the period of time specified in the licence and, if relevant, the areas of waters from which pearl oysters may be taken; and
- (d) a hatchery licence shall be subject to a condition relating to the quota of pearl oysters produced under the licence that, subject to section 12, may be used or sold for—
 - (i) breeding stock; or
 - (ii) pearl culture techniques.

(3) Notwithstanding any condition imposed under this section, every pearling licence, hatchery licence or permit is subject to the condition that pearl oysters may not be taken by any person from a pearl oyster farm, otherwise than as specified in subsection (4).

(4) A person who holds a farm lease for a pearl oyster farm, or an employee or agent of that person, may take pearl oysters from the pearl oyster farm in accordance with a pearling licence, hatchery licence or permit held by the person who holds that farm lease.

Annual fees for farm leases, licences and permits

27. (1) The annual fee in respect of—

- (a) a farm lease, pearling licence, hatchery licence or permit shall be of the amount, or calculated in the manner, declared by the Minister in respect of the farm lease, pearling licence, hatchery licence or permit for the year in question by notice published in the *Gazette*; or
- (b) a pearl diver's licence, pearl boat licence or pearl boat master's licence shall be such fee, if any, as is prescribed.

(2) If a person who holds a farm lease, licence or permit does not pay the annual fee referred to in subsection (1) in respect of the renewal of each farm lease, licence or permit held by that person within 28 days of receiving notice in writing from the Executive Director that that annual fee is due to be paid for the relevant year, or such longer period of time as the Executive Director allows in writing, then the farm lease, licence or permit in respect of which that annual fee is not paid is cancelled by virtue of this section.

(3) The Minister may, in the notice referred to in subsection (1) (a), provide for the annual fee to be paid in respect of a permit to vary in accordance with the purpose for which the activities under the permit are to be carried out.

(4) A farm lease, licence or permit shall not be renewed as of right on payment of the annual fee and, if the Executive Director thinks it would be in the better interests of the pearling industry to do so, the Executive Director may refuse to renew a farm lease, licence or permit.

(5) Where the Executive Director refuses to renew a farm lease, licence or permit on payment of the annual fee, the Executive Director shall, in writing, inform the person who held the farm lease, licence or permit of that refusal and the reasons for it.

(6) The Executive Director shall, if he or she refuses to renew a farm lease, licence or permit, cause the annual fee paid in respect of the renewal so refused to be refunded to the person who paid that annual fee.

(7) The annual fees payable under this section in respect of—

- (a) farm leases and licences (other than pearling licences and hatchery licences) shall be paid into the Consolidated Revenue Fund; or
- (b) pearling licences, hatchery licences and permits shall be paid to the credit of the Fisheries Research and Development Fund.

*Division 2—Cancellation, suspension,
surrender and transfer*

**Cancellation, suspension and
surrender of licences and permits**

28. (1) The Executive Director may, by writing served on the holder of a licence or permit, cancel or suspend the licence or permit if—

- (a) the holder of the licence or permit, or, in the case of a pearl boat licence, the boat in respect of which the licence is issued, ceases to be qualified in terms of any requirements prescribed in respect of the holder of a licence or permit of the kind in question, or a boat used to carry out pearling or hatchery activities, as the case requires; or
- (b) the holder of the licence or permit has failed to comply with this Act, or with any condition to which the licence or permit is subject.

(2) The Executive Director may accept the surrender of a licence or permit.

**Automatic cancellation of pearling licence,
hatchery licence or permit on third
conviction under section 8**

29. If on 3 or more occasions in any period of 10 years the holder of a pearling licence, hatchery licence or permit has been convicted of an offence under section 8, then the licence or permit in respect of which all or the majority of those offences was committed is cancelled by virtue of this section.

Cancellation of farm lease

30. (1) If a person who holds a farm lease ceases to hold—

(a) a hatchery licence; or

(b) a pearling licence authorizing the holder to carry out pearl culture techniques,

the farm lease is cancelled by virtue of this section.

(2) If the Executive Director is satisfied that the holder of a farm lease is not using the pearl oyster farm specified in the farm lease in the better interests of the pearling industry, then the Executive Director may cancel the farm lease.

(3) Where the Executive Director cancels a farm lease under subsection (2), the Executive Director shall, in writing, inform the holder of the farm lease of that cancellation, the date from which that cancellation shall take effect and the reasons for that cancellation.

**Time within which equipment, etc.,
to be removed from pearl oyster farm,
and consequences if not removed**

31. (1) If a person who held a farm lease that has been cancelled under section 27 or 30 has not removed from the pearl oyster farm specified in that farm lease all pearl oysters, pearls, pearl oyster spat and equipment associated with pearling or hatchery activities within—

(a) 3 months from the cancellation of that farm lease;

(b) 3 months from the failure or withdrawal of an appeal lodged under Part 4 against a cancellation under section 30 (2); or

(c) such time as the Executive Director allows in writing,

whichever is the latest in time, then those pearl oysters and pearls and that pearl oyster spat and equipment are forfeited to the Crown by operation of this section.

(2) Everything forfeited to the Crown by operation of this section shall be destroyed or dealt with in such manner as the Minister directs and, where forfeited goods are sold as a result of a direction by the Minister, the proceeds from that sale shall be paid to the credit of the Fisheries Research and Development Fund.

Transfers

32. (1) Neither a farm lease, pearling licence nor hatchery licence held by a person, nor a right conferred on a person under a farm lease, pearling licence or hatchery licence, is transferable to any other person, otherwise than as provided in this section.

(2) Neither a pearl diver's licence, pearl boat licence, pearl boat master's licence nor permit held by a person, nor a right conferred on a person under a pearl diver's licence, pearl boat licence, pearl boat master's licence or permit, is transferable to any other person.

(3) The holder of a farm lease, pearling licence or hatchery licence may transfer it to another person with the written approval of the Executive Director.

(4) The holder of a farm lease may, with the written approval of the Executive Director, transfer part or parts of the pearl oyster farm specified in the farm lease to another person or other persons, and, where the Executive Director gives that approval, the farm lease shall be surrendered and 2 or more farm leases, as the case requires, shall be issued.

(5) The holder of—

- (a) a pearling licence or hatchery licence may, with the written approval of the Executive Director, transfer to another person part, or all, of the quota of pearl oysters that may be taken under the pearling licence or hatchery licence; or
- (b) a hatchery licence may, with the written approval of the Executive Director, transfer to another person part, or all, of the quota of pearl oysters produced under the hatchery licence that may be used or sold for—

(i) breeding stock; or

(ii) pearl culture techniques,

in accordance with the regulations.

(6) The approval of the Executive Director to a transfer under subsection (3), (4) or (5) shall not be as of right and, if the Executive Director thinks it would be in the better interests of the pearling industry to do so, the Executive Director may refuse to give that approval.

(7) Where the Executive Director refuses to give his or her approval to a transfer under subsection (3), (4) or (5), the Executive Director shall, in writing, inform the person who requested that approval of that refusal and the reasons for it.

PART 4—APPEALS

Appeals

33. (1) A person aggrieved by a decision of the Executive Director to issue under section 23 a farm lease, pearling licence or hatchery licence, whether unconditionally or subject to conditions, may, within 14 days after publication of notice of that decision in the *Gazette* under section 23 (8), appeal against that decision by serving on the Minister a statement in writing of the grounds of that appeal.

(2) The Executive Director shall serve notice in writing of any decision made by him or her under—

- (a) section 12 (1), 17 (1), 26 (1), 27 (4), 28(1), 30 (2), 32 (6) or 55 (2); or
- (b) section 23 refusing to issue a farm lease, pearling licence or hatchery licence,

on each person aggrieved by that decision and shall in that notice draw attention to the right of appeal set out in this section.

(3) A person aggrieved by a decision referred to in subsection (2) may, within 14 days after receiving notice of a decision under that subsection, appeal against that decision by serving on the Minister a statement in writing of the grounds of that appeal.

(4) On receiving a statement served on him under subsection (3), the Minister—

- (a) shall cause a copy of that statement, or the part of that statement that the Minister considers to be relevant, to be served on the body known as the Pearl Producers' Association (Incorporated) (in this section referred to as "the PPA");
- (b) may cause a copy of that statement, or the part of that statement that the Minister considers to be relevant, to be served on any person who, in the opinion of the Minister, may be affected by the outcome of the relevant appeal; and
- (c) shall attach to each copy of a statement, or part of a statement, served under this subsection a note stating that the Minister will consider any comment that the Minister may receive from the PPA or interested persons in accordance with this section before determining the appeal.

(5) The PPA and any interested person may, within 14 days after service of a statement, or part of a statement, of grounds of appeal under subsection (4), or within such longer period as the Minister allows in writing in a particular case, serve on the Minister comment in writing on that statement or part.

(6) The Minister shall, as soon as possible after receiving comment under subsection (5), cause a copy of that comment to be served on the appellant and the appellant may, within 14 days of receiving a copy of that comment, or within such longer period as the Minister allows in writing in a particular case, serve on the Minister a supplementary statement in writing dealing with any matter raised in that comment.

(7) After considering a statement of the grounds of an appeal served on the Minister under subsection (1) or (3) and any comment and supplementary statement served on the Minister under this section, the Minister may determine the appeal by modifying or setting aside, or refusing to modify or set aside, the decision against which that appeal has been made.

(8) The Minister may, before determining an appeal under this section, require the appellant or any person who has served comment on the Minister to provide such additional information as the Minister thinks desirable to enable the Minister to consider and determine the appeal.

(9) The determination of an appeal by the Minister under this section is final and binding on all parties concerned.

(10) In subsections (1) and (3), "person aggrieved" includes—

- (a) in relation to an application for the approval under section 12 of the sale of pearl oysters produced under a hatchery licence, the persons who wish to sell, and the persons who wish to buy, those pearl oysters;
- (b) in relation to a decision of the Executive Director to issue a farm lease, pearling licence or hatchery licence under section 23, a person who holds a farm lease, pearling licence or hatchery licence; and
- (c) in relation to an application for the approval of a transfer under section 32 (3), (4) or (5), the persons from whom and to whom the transfer is proposed.

Effect of appeals

34. Notwithstanding anything in this Act, pending the determination of an appeal under this Part from a decision of the Executive Director—

- (a) imposing a condition under section 26 (1), the condition is suspended, unless it was imposed at the same time as the licence or permit to which the condition attaches was issued;
- (b) refusing to renew a farm lease, licence or permit under section 27 (4), the lease, licence or permit remains in force;
- (c) cancelling or suspending a licence or permit under section 28 (1), the licence or permit remains in force; and
- (d) cancelling a farm lease under section 30 (2), the farm lease remains in force.

PART 5—INSPECTION

Inspectors

35. (1) The Executive Director shall appoint such officers of the Department to be inspectors for the purposes of this Act as the Executive Director considers necessary.

(2) Every person who is an inspector of fisheries appointed under section 5 (1c) of the *Fisheries Act 1905* is an inspector for the purposes of this Act.

(3) The Executive Director shall issue to each inspector a certificate in a form approved by the Executive Director certifying that the person is an inspector under this Act.

(4) An inspector shall produce the certificate referred to in subsection (3) whenever required to do so by any person in respect of whom the inspector has exercised, or is about to exercise, any of the powers of an inspector under this Act.

(5) Production of a certificate referred to in subsection (3) is *prima facie* evidence that the person to whom the certificate relates is an inspector for the purposes of this Act.

(6) Every police officer shall, if so requested by an inspector, aid and assist the inspector or any other inspector in enforcing compliance with the provisions of this Act and has, while so aiding and assisting, all the powers and authorities of an inspector.

Powers of inspectors

36. (1) An inspector may, for the purposes of this Act—

- (a) stop or detain any boat, vehicle or aircraft;
- (b) board any boat and enter any vehicle, aircraft or place and inspect and search that boat, vehicle, aircraft or place;
- (c) when boarding a boat or entering a vehicle, aircraft or place, bring such equipment and materials as are appropriate;

- (d) direct any person to produce for inspection any farm lease, licence or permit which should, in the opinion of the inspector, be held by that person;
- (e) conduct such examination and inquiry as are necessary to ascertain whether or not there has been compliance with this Act or any condition imposed under this Act;
- (f) require any person to state his or her name and principal place of residence;
- (g) seize any pearl oyster, pearl oyster spat or equipment associated with pearling or hatchery activities or any other thing which the inspector has reason to believe—
 - (i) is, or is intended to be, used in or in relation to a contravention of this Act or any condition imposed under this Act; or
 - (ii) was taken in contravention of this Act or any condition imposed under this Act;
- (h) take photographs and measurements, and make sketches and recordings;
- (i) require the production of, examine, and remove for the purpose of taking copies or extracts from or production in evidence, any records;
- (j) require that any boat, vehicle, aircraft or place be left undisturbed for as long as is specified in that requirement by writing served on the master or person in apparent control of the boat or on the manager or person in apparent control of the vehicle, aircraft or place, as the case requires;
- (k) require the owner, manager, master or person in apparent control of a boat, vehicle, aircraft or place by writing served on that owner, manager, master or person to render such assistance to the inspector as the inspector considers necessary;

- (l) direct and, if necessary, escort into any port a boat that the inspector believes is being used in contravention of this Act, or of any condition imposed under this Act, and direct that the boat be held until either—
 - (i) any court dealing with a charge of an offence under this Act arising out of the use of the boat otherwise directs; or
 - (ii) if no charge of an offence under this Act arising out of the use of the boat has been brought within the period of 3 days after the boat has arrived at the port, the expiry of that period;
 - (m) in relation to a pearl boat, direct—
 - (i) the holder of the relevant pearl boat licence;
 - (ii) the master of the pearl boat; or
 - (iii) the person in apparent control of the pearl boat,or any 2 or all 3 of them by writing served on him, her or them not to proceed to sea unless accompanied by an inspector;
 - (n) in relation to a boat other than a pearl boat, direct the person in apparent control of that boat by writing served on that person not to proceed to sea unless accompanied by an inspector;
 - (o) exercise such other powers as are necessary for the purposes of this Act.
- (2) If, in the case of—
- (a) a requirement under subsection (1) (j), there appears to the inspector making the requirement to be no master or person in apparent control of the relevant boat or manager or person in apparent control of the relevant vehicle, aircraft or place, that inspector may, instead of effecting the service referred to in that subsection, affix to that boat, vehicle or aircraft or in that place in a conspicuous position a notice setting out the requirement; or

(b) a direction under—

- (i) subsection (1) (m) in respect of a pearl boat, there appears to the inspector giving the direction to be no immediate prospect of locating the holder of the relevant pearl boat licence or to be no master or person in apparent control of the pearl boat, as the case requires, that inspector may, instead of effecting the service referred to in that subsection, affix to the pearl boat; or
- (ii) subsection (1) (n) in respect of a boat other than a pearl boat, there appears to the inspector giving the direction to be no person in apparent control of that boat, that inspector may, instead of effecting the service referred to in that subsection, affix to that boat,

in a conspicuous position a notice setting out the direction.

(3) An inspector may arrest without warrant a person who the inspector has reason to believe has committed an offence against this Act if the inspector has reason to believe—

- (a) that such an arrest is necessary to prevent that offence from continuing; or
- (b) that any other procedure for dealing with that offence would not be effective.

Transporting of inspectors on pearling boats

37. (1) An inspector may for the purposes of this Act require, in writing, that the holder of the pearl boat licence issued in respect of, or the master or person in apparent control of, a pearl boat, or the person in apparent control of a boat used for pearling or hatchery activities on a pearl oyster farm, as the case requires, transport the inspector on that pearl boat or boat to another boat or to a place or places nominated by the inspector.

(2) Where an inspector is transported on a boat in compliance with a requirement made under subsection (1), the master or person in apparent control of the boat shall provide food and accommodation for the inspector and shall allow the inspector to use any equipment on the boat, including equipment for communicating and navigating, and where the inspector so requires shall—

(a) carry on board the boat any equipment, fuel or stores;

and

(b) tow any smaller boat.

(3) The holder of a pearl boat licence in respect of, or master or person in apparent control of, a boat used in compliance with a requirement made under subsection (1) may apply to the Executive Director for reimbursement of any costs incurred in that use and the Executive Director shall decide the amount, if any, that is to be paid to that holder, master or person and that amount shall be paid to that holder, master or person from the Fisheries Research and Development Fund.

(4) A decision of the Executive Director made under subsection (3) is final and binding.

PART 6—PEARLING INDUSTRY ADVISORY COMMITTEE

Establishment and functions of Committee

38. (1) There is established by this subsection a Committee to be known as the Pearling Industry Advisory Committee.

(2) The functions of the Committee are to advise the Minister or Executive Director concerning any matter referred to it by the Minister or Executive Director, or any matter in respect of which the Committee is of the opinion it should provide advice to the Minister or Executive Director, in relation to—

(a) the management, control, protection, regulation or development of pearling or hatchery activities;

(b) pearl oysters;

(c) pearl oyster hatcheries; and

(d) pearl oyster fisheries,

in the State, or in Western Australian waters or in any waters adjacent thereto.

(3) The Committee is not an agent of the Crown in right of the State, except in relation to a matter in which the Committee is specifically authorized by the Minister to act on behalf of the Crown in right of the State.

Composition of Committee

39. The Committee shall comprise such persons as are appointed by the Minister to provide advice in relation to the matters referred to in section 38 (2).

Constitution and proceedings of Committee—Schedule 1

40. The provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of the Committee.

Remuneration and allowances

41. A Committee member shall be paid from the Fisheries Research and Development Fund such remuneration and travelling and other allowances as the Minister may from time to time after consultation with the Public Service Commissioner determine.

Protection of Committee members

42. A Committee member is not personally liable for any act done or omitted to be done in good faith by the Committee or by that member while acting as a Committee member.

PART 7—COMMONWEALTH-STATE MANAGEMENT OF PEARL OYSTER FISHERIES

Interpretation in Part 7

43. (1) Words and expressions used in this Part have the same respective meanings as in Part IIA of the *Fisheries Act 1905*.

(2) In this Part—

“pearl oyster fishery” or “Joint Authority pearl oyster fishery” means a fishery, or a Joint Authority fishery, that is identified in an arrangement by reference to pearl oysters or pearling.

Application of this Act to pearl oyster fisheries in accordance with arrangements made under *Fisheries Act 1905*

44. Where there is in force an arrangement that provides that a particular pearl oyster fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the pearl oyster fishery, except that those provisions do not apply to or in relation to the pearl oyster fishery in respect of foreign boats in Commonwealth proclaimed waters or operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters or in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before that arrangement took effect.

Functions of Joint Authority

45. Where, in respect of a pearl oyster fishery, there is in force an arrangement under which a Joint Authority has the management of the pearl oyster fishery and the pearl oyster fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of keeping constantly under consideration the condition of the pearl oyster fishery, formulating policies and plans for the good management of the pearl oyster fishery and, for the purposes of the management of the pearl oyster fishery, exercising the powers conferred on it by this Act and co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Fisheries Act) in matters of common concern.

Joint Authority to exercise certain powers instead of Minister, etc.

46. (1) Save as provided in this section, a licence or permit issued or renewed under this Act otherwise than by virtue of this section does not authorize the doing of any act or thing in or in relation to a Joint Authority pearl oyster fishery.

(2) In respect of a Joint Authority pearl oyster fishery that is to be managed in accordance with the law of the State, the powers (including powers with respect to the issue, renewal, cancellation and suspension of licences and permits) conferred on the Minister or any other person under this Act (this Part excepted) are exercisable by the Joint Authority instead of the Minister or the other person and are so exercisable as if references in the relevant provisions to the Minister, and to the other person, were references to the Joint Authority.

(3) A licence or permit granted under this Act by a Joint Authority shall contain such conditions and limitations as are necessary to ensure that it applies only in relation to a Joint Authority pearl oyster fishery, or Joint Authority pearl oyster fisheries, managed by the Joint Authority.

(4) A Joint Authority may endorse a licence or permit issued under this Act (including such a licence or permit issued by the Joint Authority or another Joint Authority) so as to extend the operation of the licence or permit to matters to which the licensing powers of the Joint Authority under this Act are applicable and, where such an endorsement is made—

- (a) the endorsement ceases to have effect if the licence or permit ceases to have effect; and
- (b) the Joint Authority may suspend or cancel the endorsement as if it were a licence or permit granted by the Joint Authority.

(5) Subject to section 48 (1) (b) and (c), where, at a time a pearl oyster fishery becomes a Joint Authority pearl oyster fishery, any subsidiary legislation made under this Act would, but for this subsection, apply to the pearl oyster fishery, that subsidiary legislation ceases so to apply.

(6) This section does not empower a Joint Authority to issue, or to take other action in respect of, a licence in respect of a foreign boat or to endorse such a licence.

**Application of certain provisions
relating to offences**

47. The provisions of this Act relating to offences and enforcement and legal proceedings shall extend and apply in respect of anything done to or in relation to pearl oysters to which a Joint Authority pearl oyster fishery relates or otherwise in relation to a Joint Authority pearl oyster fishery and for that purpose shall be read and construed—

- (a) as if a reference in those provisions to a licence or permit were a reference to a licence or permit or an endorsement of a licence or permit issued or renewed by the relevant Joint Authority, in relation to the person alleged to have committed the relevant offence or the boat alleged to have been used in the commission of that offence; and
- (b) as if a reference in those provisions to pearl oysters were a reference to pearl oysters to which the Joint Authority pearl oyster fishery relates.

Regulations and notices

48. (1) Where a Joint Authority is to manage a pearl oyster fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority and having perused the written record of that decision—

- (a) make regulations for the management of the pearl oyster fishery;
- (b) make a regulation applying to the pearl oyster fishery a regulation made otherwise than pursuant to this section; or
- (c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the pearl oyster fishery, whether or not it also applies to any other pearl oyster fishery.

(2) Where a Joint Authority is to manage a pearl oyster fishery in accordance with the law of the State, the Minister may, for the purpose of giving effect to a decision of the Joint Authority and having perused the written record of that decision—

- (a) by notice published in the *Gazette* apply to the pearl oyster fishery a notice under this Act given otherwise than pursuant to this section; or
- (b) amend by notice published in the *Gazette* a notice under this Act given otherwise than pursuant to this section so that it is expressed to apply to the pearl oyster fishery, whether or not it also applies to any other pearl oyster fishery.

(3) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1) (a) or (b) or the amendment of a regulation in the manner referred to in subsection (1) (c).

(4) Where a regulation or notice affecting a pearl oyster fishery that is to be managed by a Joint Authority is expressed to be made or given pursuant to this section, it shall be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority and that the Governor or the Minister, as the case requires, had perused the written record of that decision before that regulation or notice was made or given.

**Powers before arrangement takes effect,
on termination of arrangement and before
termination takes effect**

49. (1) After an arrangement for the management of a pearl oyster fishery has been made but before that arrangement takes effect, licences, permits, endorsements and other instruments may be issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by that arrangement, as if that arrangement had taken effect, but such a licence, permit, endorsement, instrument or regulation does not itself have effect before that arrangement takes effect.

(2) Upon the termination of an arrangement for the management of a pearl oyster fishery, licences, permits, endorsements and other instruments issued, renewed, made or executed, and regulations made, for the purposes of the operation of this Act as affected by that arrangement cease to have effect.

(3) After action for the purpose of the termination of an arrangement for the management of a pearl oyster fishery has been taken, but before that termination takes effect, licences, permits, endorsements and other instruments may be issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by the termination of that arrangement, as if that arrangement had been terminated, but such a licence, permit, endorsement, instrument or regulation does not have effect before the termination of that arrangement takes effect.

Delegation

50. (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by that instrument, delegate to a person any of its powers under this Act, other than this power of delegation or the power conferred by section 51.

(2) Where a power delegated under subsection (1) is exercised by the delegate, that power shall, for the purposes of this Act, be deemed to have been exercised by the Joint Authority.

(3) A delegation under this section may be expressed to be a delegation to the person from time to time holding, or performing the duties of, a specified office, including an office—

- (a) in the service of;
- (b) in the service of an authority of; or
- (c) under the law of,

the Commonwealth or another State or a Territory.

(4) A delegate of a Joint Authority shall, in the exercise of his or her delegated powers, comply with any directions given to him or her by the Joint Authority.

(5) A delegation by a Joint Authority under this section—

- (a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time when the power was delegated);
- (b) does not prevent the exercise of the power by the Joint Authority; and
- (c) continues in force notwithstanding any change in the membership of the Joint Authority.

(6) Where, under this Act, the exercise of a power by a Joint Authority is dependent upon the opinion, belief or state of mind of the Joint Authority in relation to a matter and the power has been delegated in pursuance of this section, the power may be exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

(7) A certificate signed by a member of a Joint Authority and stating any matter with respect to a delegation under this section by the Joint Authority is evidence of that matter.

(8) A document purporting to be a certificate referred to in subsection (7) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(9) Nothing in this Part prevents the delegation by a Joint Authority, in accordance with the law of the Commonwealth, of powers conferred on the Joint Authority by the law of the Commonwealth.

Joint Authority may issue policy guidelines

51. (1) A Joint Authority may issue from time to time to a person to whom it has under section 50 delegated any of its powers under this Act a policy statement consisting of guidelines relating to matters considered by the Joint Authority to be of significance in relation to the provisions of this Part.

(2) A policy statement issued under this section may at any time be amended or revoked by the Joint Authority which issued it (whether or not that Joint Authority is at the time of amendment or revocation constituted by the persons constituting that Joint Authority at the time when that policy statement was issued), and continues in force notwithstanding any change in the membership of the Joint Authority.

(3) A delegate under section 50 shall, in the exercise of the powers conferred on him or her by the delegation concerned, comply with any policy statement issued to him or her under this section.

(4) Nothing in this section shall be construed as authorizing a Joint Authority to issue a policy statement that is inconsistent with any provision of this Act.

PART 8—PROCEEDINGS FOR OFFENCES

Prosecutions

52. (1) Proceedings for an offence against this Act may be instituted by the Executive Director or any person authorized to do so by the Executive Director.

(2) A complaint for an offence against this Act may be made at any time within one year from the time when the matter of complaint arose.

Evidentiary provisions

53. (1) In any prosecution for an offence against this Act an allegation in a complaint that—

- (a) a person or boat was in a particular area of;
- (b) an event took place in a particular area of; or
- (c) pearl oysters or pearl oyster spat were taken from,

Western Australian waters, shall, in the absence of evidence to the contrary, be conclusive evidence of the area of waters where the person or boat was or the event took place, or the waters from which the pearl oysters or pearl oyster spat were or was taken.

(2) In any prosecution for an offence against this Act, proof that a person was handling, or had in his or her possession or control, any pearl oyster, pearl oyster spat or pearl oyster container shall, in the absence of evidence to the contrary, be conclusive evidence that the person was carrying out pearling or hatchery activities.

(3) In any prosecution for an offence against this Act the wholesale value of any pearl oysters at the time of the offence shall be taken to be such amount as the Executive Director, by affidavit, declares.

Forfeiture of seized goods

54. (1) Subject to section 55, where a person is convicted of an offence against this Act, the court may order that any pearl oyster, pearl oyster spat, boat or equipment associated with pearling or hatchery activities seized by an inspector under section 36 (1) (g) that is shown to the satisfaction of the court to have been used in, or in connection with, the commission of that offence be forfeited to the Crown.

(2) After the time limited for appeal from an order referred to in subsection (1) has expired, everything forfeited under that order shall be destroyed or dealt with in such manner as the Minister directs and, where forfeited goods are sold as a result of a direction under this subsection by the Minister, the proceeds from that sale shall be paid to the credit of the Fisheries Research and Development Fund.

Seized pearl oyster spat and pearl oysters

55. (1) Any pearl oyster or pearl oyster spat seized by an inspector under section 36 (1) (g)—

(a) that has no apparent owner may—

- (i) be returned by the inspector to Western Australian waters; or
- (ii) with the approval of the Minister, be sold by the Executive Director in the manner prescribed;

or

(b) in respect of which prosecution of a person for an offence against this Act is pending may—

- (i) with the approval of the Minister, be sold by the Executive Director in the manner prescribed; or
- (ii) subject to subsection (2), be held by a person subject to—

- (A) written conditions imposed by the Executive Director and given to that person; and

- (B) payment to the Executive Director by that person of an amount not exceeding the wholesale value of the seized pearl oyster or pearl oyster spat determined by the Executive Director, which amount shall be held by the Executive Director until that offence has been prosecuted and any appeal has been heard or the time for lodging an appeal has expired without an appeal having been lodged, and then be returned to that person.

(2) Where the Executive Director decides that a person has breached a condition imposed under subsection (1) (b) (ii), the amount paid to the Executive Director under that subsection is forfeited to the Crown by virtue of this section and paid to the credit of the Fisheries Research and Development Fund and the person shall be notified in writing accordingly.

(3) The proceeds of the sale of any pearl oyster or pearl oyster spat under subsection (1) shall—

- (a) where there is no apparent owner of that pearl oyster or pearl oyster spat, be forfeited to the Crown by virtue of this section and paid to the credit of the Fisheries Research and Development Fund;
- (b) if a person is convicted of an offence referred to in subsection (1) (b) in respect of that pearl oyster or pearl oyster spat, be forfeited to the Crown by virtue of this section and shall be paid to the credit of the Fisheries Research and Development Fund; and

- (c) if no person is convicted of an offence referred to in subsection (1) (b) in respect of that pearl oyster or pearl oyster spat and there is an apparent owner of that pearl oyster or pearl oyster spat, be paid to the person from whom the pearl oyster or pearl oyster spat was seized.

(4) Where, after the proceeds of the sale of any pearl oyster or pearl oyster spat have been paid to the credit of the Fisheries Research and Development Fund under subsection (3) (a), a person is identified as the owner of that pearl oyster or pearl oyster spat, the amount of the proceeds of the sale of that pearl oyster or pearl oyster spat shall be refunded to the person from the Fisheries Research and Development Fund if the person shows to the satisfaction of the Executive Director that that pearl oyster or pearl oyster spat was not the subject of, or associated with, an offence against, or a contravention of any condition imposed under, this Act.

(5) A person from whom pearl oysters were seized and returned to Western Australian waters—

- (a) under subsection (1) (a) (i) shall, if that person is identified as the owner of the pearl oysters and shows to the satisfaction of the Executive Director that the pearl oysters were not the subject of, or associated with, any offence against, or a contravention of any condition imposed under, this Act; or
- (b) under section 21 (4) shall, if prosecution for an offence under section 21 (1) in respect of the pearl oysters does not result in any person being convicted of that offence,

be paid from the Fisheries Research and Development Fund such amount, if any, in compensation as the Executive Director decides.

(6) A decision of the Executive Director under subsection (4) or (5) is final and binding.

Offences by bodies corporate

56. (1) Where a body corporate is found guilty of an offence against this Act and it is proved that that offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with the functions of management of the member as if the member were a director of the body corporate.

Liability of master of boat

57. (1) The master 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 on conviction as if it were the primary offence.

(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) Sections 54 and 55 apply where a person is convicted of an offence against this section in the same way as they would apply if the person had been convicted of the primary offence.

Offence to furnish false information

58. A person shall not knowingly furnish false, misleading or inaccurate information—

- (a) to an inspector;
- (b) in, or in connection with, any records kept, returns made or information supplied under this Act; or
- (c) in, or in connection with, an application for, or for renewal or transfer of, a farm lease, licence or permit.

Penalty: \$2 000 or, where the information is furnished by the holder of a farm lease, licence or permit, \$10 000.

Miscellaneous offences

59. A person shall not—

- (a) without reasonable cause, contravene any direction or requirement of an inspector made under this Act;
- (b) obstruct, interfere with or assault an inspector in the exercise of his or her powers under this Act;
- (c) impersonate an inspector or forge any document purporting to be a certificate of the kind referred to in section 35 (3); or
- (d) directly or indirectly prevent another person from complying with a direction or requirement made under this Act.

Penalty: \$20 000.

PART 9—MISCELLANEOUS**Regulations—Schedule 2**

60. (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without affecting the generality of subsection (1), regulations may be made with respect to any of the matters specified in Schedule 2.

(3) The regulations may create offences and provide in respect of any such offence a penalty not exceeding \$2 000.

Immunity of Minister, officers and inspectors

61. A person who is, or has been, the Minister or the Executive Director or an officer of the Department or an inspector is not personally liable for anything done or omitted in good faith for or in connection with the exercise or purported exercise of any power conferred on him or her by this Act.

Secrecy of information

62. (1) A person shall not, except in accordance with subsection (2), disclose or make use of any information—

- (a) contained in any record kept, return made or information supplied under this Act by the holder of a farm lease, licence or permit; or
- (b) furnished, or obtained, in connection with the execution of this Act.

Penalty: \$1 000.

(2) Information referred to in subsection (1) may be disclosed or used—

- (a) for the purpose of giving effect to the objects of, and in the performance of a duty under, this Act;
- (b) with the prior consent in writing of the person to whose activities the information relates;
- (c) in circumstances in which that disclosure or use is permitted under this Act; or
- (d) for the purpose of releasing general information regarding the pearling industry or pearl oyster fisheries.

Repeal of *Pearling Act 1912*

63. *The Pearling Act 1912** is repealed.

[**Reprinted as approved 25 August 1971 and amended by Acts Nos. 94 of 1972 (as amended by No. 42 of 1975) and 13 of 1986.*]

Savings and transitional provisions
—Schedule 3

64. The savings and transitional provisions in Schedule 3 shall have effect.

Review of Act

65. (1) Within a period of 12 months commencing on the fifth anniversary of the day, or of the later or latest of the days, as the case requires, on which the provisions of this Act come into operation, the Minister shall cause an investigation and review to be conducted, and a report prepared, concerning—

- (a) the attainment of the objects of this Act;
- (b) the effectiveness of this Act in regulating the pearling industry;
- (c) the need for this Act to continue in operation; and
- (d) such other matters as appear to the Minister to be relevant.

(2) The Minister shall cause copies of the report referred to in subsection (1) to be laid before each House of Parliament within 6 sitting days of that House next following the completion of that report.

SCHEDULE 1

(Section 40)

CONSTITUTION AND PROCEEDINGS OF COMMITTEE**Term of office of Committee member**

1. (1) Subject to this clause, a Committee member shall hold office for such term, not exceeding 3 years, as is specified in his or her instrument of appointment, and is eligible for reappointment.

(2) The Minister may grant leave of absence to a Committee member on such terms and conditions as the Minister determines.

(3) The Minister may terminate the appointment of a Committee member for inability, inefficiency or misbehaviour.

(4) A Committee member may resign office by writing under his or her hand delivered to the Minister.

Meetings of Committee

2. The Committee shall hold meetings at such times and places as are necessary to enable it to discharge its functions under this Act and the Minister may at any time convene a meeting of the Committee.

Advisors to Committee, and subcommittees

3. (1) Any person with special knowledge or experience may be invited to act in an advisory capacity on the Committee if the Committee is of the opinion that that person will assist the Committee in the performance of its functions.

(2) The Committee may appoint subcommittees consisting of—

- (a) Committee members;
- (b) both Committee members and persons who are not Committee members;
- or
- (c) persons who are not Committee members,

to advise the Committee on any matter or class of matters relevant to the performance of the functions of the Committee.

(3) The invitation of a person under subsection (1) or the appointment of a subcommittee under subsection (2) does not relieve the Committee members of responsibility for the proper performance of the functions of the Committee.

(4) Sections 41 and 42 apply—

- (a) to a person—
 - (i) invited under subclause (1); or
 - (ii) on a subcommittee appointed under subclause (2) who is not a Committee member,

as if that person were a Committee member; and

- (b) in respect of a person on a subcommittee appointed under subclause (2) as if a reference to the Committee were a reference to the subcommittee.

Committee to determine own procedure and that of subcommittee

4. Subject to this Act, the Committee shall determine its own procedure and that of any subcommittee appointed under clause 3 (2).

SCHEDULE 2

(Section 60)

MATTERS WITH RESPECT TO WHICH REGULATIONS MAY BE MADE

1. The requirements for holding a licence or permit.
2. The requirements for the transfer of quotas under section 32 (5), including providing for the surrender of part of a quota on any such transfer.
3. The records to be kept, returns to be made and information to be supplied by the holder of a farm lease, licence or permit and the manner of that supply, whether by radio, post or otherwise.
4. The duties and obligations of the holder of a farm lease, licence or permit.
5. Regulating the methods, equipment (other than diving equipment) and containers to be used for pearling or hatchery activities and the times and conditions under which pearling and hatchery activities may take place.
6. The use and identification of equipment (other than diving equipment) and containers to be used for pearling or hatchery activities.
7. Limiting the purposes for which pearl oysters or pearl oyster spat may be used.
8. The identification, by marker buoys or otherwise, of an area of waters, including a pearl oyster farm, that the holder of a farm lease, licence or permit is authorized to use under this Act.
9. The identification of pearl oysters.
10. Fees (including differential and periodic fees) for the purposes of this Act.
11. Forms to be used for the purposes of this Act.

SCHEDULE 3

(Section 64)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation in Schedule 3

1. In this Schedule—

“the repealed Act” means the Act repealed by section 63;

“the repeal time” means the commencement of section 63.

Ship licences

2. A ship licence issued under the repealed Act and in force immediately before the repeal time shall be deemed to be a pearl boat licence for the purposes of this Act and, subject to this Act, shall continue in force until the day on which the term of that ship licence would have expired under the repealed Act.

Divers' licences

3. A diver's licence issued under the repealed Act and in force immediately before the repeal time shall be deemed to be a pearl diver's licence for the purposes of this Act and, subject to this Act, shall continue in force until the day on which the term of that diver's licence would have expired under the repealed Act.

Exclusive licences

4. (1) The Executive Director shall, before the repeal time, consider the rights conferred by the repealed Act on the holder of each exclusive licence issued under the repealed Act and in force immediately before the repeal time and determine whether that exclusive licence should be deemed to be a pearling licence or hatchery licence or both and shall, at or immediately after the repeal time, serve notice of that determination on that holder.

(2) On the service under subclause (1) of notice of a determination on the holder of an exclusive licence referred to in that subclause, that exclusive licence shall—

(a) be deemed to be a pearling licence or hatchery licence or both in accordance with the determination; and

(b) subject to this Act, continue in force until the day on which the term of that exclusive licence would have expired under the repealed Act.

(3) The area defined under section 35 of the repealed Act in an exclusive licence issued under the repealed Act shall be deemed to be a pearl oyster farm for the purposes of this Act and, subject to this Act, shall continue in force until the day on which the term of that exclusive licence would have expired under the repealed Act, and, in relation to the pearl oyster farm, that exclusive licence shall operate as a farm lease.

(4) Subclause (3) applies notwithstanding that an area defined under section 35 of the repealed Act in an exclusive licence issued under the repealed Act exceeds 4 square nautical miles.

Renewal of pearling licences or hatchery licences held at commencement of Act

5. Notwithstanding section 24, the Executive Director shall not have regard to any policy statement issued by the Minister under section 24 in exercising the powers conferred on him under section 27 (4) with respect to the renewal by a person of a pearling licence, hatchery licence or pearl boat licence held by the person at the repeal time.

Quota imposed before arrangement

6. (1) Where a person who held a licence that was in force immediately before the commencement of an arrangement was authorized at that time under the *Continental Shelf (Living Natural Resources) Act 1968* of the Commonwealth to take pearl oysters on a condition imposed in respect of waters managed after that commencement in accordance with the law of the State under that arrangement, that condition shall be deemed to be a condition imposed on the licence, or licences, that the person holds, or is deemed to hold, under clause 4(2) until, subject to this Act, the period of time specified as part of that condition elapses.

(2) A condition imposed under the Commonwealth Act referred to in subclause (1) in respect of any period of time during the 3 years immediately before the commencement of an arrangement shall be deemed to be a condition in respect of the quota of pearl oysters that may be taken under a licence or permit for the purposes of section 8 (5) of this Act.

(3) In this clause—

“arrangement” means arrangement made under Part IIA of the *Fisheries Act 1905* for the management of a pearl oyster fishery (as defined in section 43 of this Act) in accordance with the law of the State;

“condition” means condition that no more than a certain number of pearl oysters are to be taken during a specified period of time;

“licence” means exclusive licence issued under the repealed Act or pearling licence or hatchery licence issued under this Act.
