

PEARLING ACT, 1912-1965.

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Approved for Reprint, 25th August, 1971.

WESTERN AUSTRALIA.

PEARLING.

No. 45 of 1912.¹

[As amended by Acts:

No. 17 of 1913, assented to 30th December, 1913;
No. 20 of 1919,² assented to 11th November, 1919;
No. 32 of 1922, assented to 21st December, 1922;
No. 28 of 1924, assented to 31st December, 1924;
No. 7 of 1922, assented to 15th November, 1928;
No. 13 of 1929, assented by 30th October, 1929;
No. 14 of 1931, assented to 18th August, 1931;
No. 17 of 1932, assented to 6th December, 1932;
No. 20 of 1935, assented to 25th November, 1935;
No. 36 of 1949, assented to 26th October, 1949;
No. 113 of 1965,³ assented to 21st December, 1965;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]^{*}

AN ACT to amend and consolidate the Statutes relating to the regulation of the Pearl Shell Fisheries and to dealing in Pearls, and for other relative purposes.

[Assented to 21st December, 1912.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Pearling Act, 1912-1965*, and shall come into operation on a day to be fixed by proclamation.¹

Short title and commencement. Amended by No. 113 of 1965, s. 4.

¹ Came into operation on 1st April, 1913. See *Gazette* 24/12/12, p. 5077.

² Came into operation on 1st January, 1920. See *Gazette* 12/12/19, p. 2195.

³ Decimal Currency Act, 1965, s. 4 (1). Came into operation 14/2/66.

* In this reprint

- (i) references in the marginal and foot notes to the 1924 reprint are references to the reprint of the *Pearling Act, 1912-1924*, contained in the appendix to the 1924 Sessional Volume of Statutes of W.A.
- (ii) the numbering or lettering of Parts, sections, subsections, paragraphs, etc., as adopted in the 1924 reprint, is retained.

Repeal.
First
Schedule.

2. The Acts mentioned in the First Schedule hereto are (in so far as they are not already repealed) hereby repealed.

Existing
licenses
subject to
Act.

3. Except as hereinafter provided, every license granted under any repealed Act and held at the commencement of this Act, and every person and ship licensed under any repealed Act, shall, during the subsistence thereof, be under and subject to this Act as if the license had been granted under this Act.

Regulations
annulled.

4. The Regulations dated the second day of June, 1898, made under the Immigration Restriction Act, 1897, are hereby annulled.

Interpre-
tation.
Amended by
No. 20 of
1919, s. 2;
No. 32 of
1922, s. 2;
No. 28 of
1924, s. 2.

5. In this Act subject to the context—

“Boat” means and includes only such small craft not exceeding two tons burthen as belong to and are ordinarily attached to or carried on board a pearling ship, but does not include any such craft during such time as the same may be used in or for the purpose of pearling independently of any such vessel;

“Court” includes a Court of Summary Jurisdiction;

“Document” includes book, paper, and writing;

“Daily Penalty” means a penalty for each day during which or any part of which an offence continues;

“Diver’s Tender” means the person attending on a diver and in charge of the diving operations when the diver is below;

“Fishing Station” means any land and any building thereon used for the purpose of pearling;

“Gazette” means the *Government Gazette* of Western Australia;

“Inspector” means the Chief or any other Pearling Inspector appointed under this Act;

“Licensing Officer” means any officer authorised to grant licenses under this Act;

“Magistrate” means a Stipendiary Magistrate;

“Master” includes any person (whether an owner or not) in charge of a ship;

“Minister” means the responsible Minister of the Crown charged by the Governor with the administration of this Act;

“Owner” includes part owner;

W.A., No. 10
of 1907, s. 2
(c).

“Pearl” includes baroque pearl and blister pearl;

“Pearling” includes the work of searching for or obtaining pearls or pearl shell;

“Pearl Fisher” means a person employed in or for the purpose of pearling on board of a ship by an owner thereof; and shall include the master when so employed;

“Pearling Ship” means a ship engaged in pearling;

“Pearl-shell Area” means and includes the pearl-shell area defined in the Second Schedule hereto and any other area which shall be hereafter declared to be a pearl-shell area by proclamation, or in respect of which a proclamation has heretofore been issued under the Act 61 Vict., No. 19;

See W.A., 55
Vict., No. 9,
s. 13.
Second
Schedule.

“Prescribed” means prescribed by this Act or by Regulations made thereunder;

“Proclamation” means proclamation by the Governor published in the *Gazette*;

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

“Regulations” means regulations made by the Governor;

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

“Special Inspector” means the Chief Pearling Inspector or any person appointed by the Governor to be a special inspector for the purposes of this Act;

“The State” means the State of Western Australia, including the territorial waters thereof;

“Tropical Waters adjacent to Western Australia” means the waters within the limits following:—On the North 13° 30', and on the South 27° of South Latitude, and on the West 112° 52', and on the East 129° of East Longitude;

“Vessel” includes ship and boat.

When ship
to be
deemed
engaged in
pearling.
cf. W.A., 50
Vict., No.
7, s. 1.

6. For the purposes of this Act, a ship shall be deemed to be used or employed in pearling—

- (a) if used as a place of abode or refuge or for storing provisions for pearl-fishers or persons engaged in superintending their operations; or
- (b) if used as a place for storing pearl-shell within one week after collection; or
- (c) if the ship or any boat of the ship is used as a place from which persons dive for pearl-shell, or is used in the immediate collection of pearl-shell found or recovered by divers or otherwise; or
- (d) if otherwise used in or for the purposes of pearling.

References
to Acts to
include
amendments.

7. The mention of any Act of Parliament shall be deemed to include a reference to the amendments thereof.

8. The mention of any penalty at the foot of any section or subsection of this Act means that any contravention of the section or subsection, as the case may be, whether by act or omission, shall be an offence against this Act, punishable on summary conviction by a penalty not exceeding the penalty indicated, or that any offence defined in the section or subsection, as the case may be, shall be punishable as aforesaid.

Penalties.

9. (1) The Governor may, from time to time, appoint and remove a Chief Pearling Inspector and so many other pearling inspectors and other officers as may appear to him to be necessary for the effective administration of this Act.

Appointment of inspectors and other officers.

(2) It shall be the duty of every police officer to aid and assist inspectors in the exercise and discharge of their powers and duties under this Act.

PART II.—LICENSESES.

Division 1.—General.

10. The following licenses may be issued under this Act:—

Classes of licenses. Amended by No. 32 of 1922, s. 3.

- (a) Ship licenses;
- (b) Exclusive licenses;
- (c) General licenses;
- (d) Beach combers' licenses;
- (e) Divers' licenses;
- (f) Divers' tenders' licenses;
- (g) Shell buyers' licenses;
- (h) Pearl dealers' licenses;
- (i) Pearl cleaners' licenses.

No license but diver's, diver's tender's, or pearl dealer's to be granted to alien.
Amended by No. 32 of 1922, s. 4.

11. No license other than a diver's, diver's tender's, or pearl dealer's license shall be granted, transferred, or renewed to or in favour of any person who is not a natural born or naturalised British subject.

When licenses may be granted to corporations.
Amended by No. 32 of 1922, s. 5.

12. (1) A ship, exclusive, general, shell buyer's, or pearl dealer's license may be issued, transferred, or renewed to or in favour of any body corporate consisting wholly of qualified persons established under and subject to the laws of some part of the Queen's Dominions.

(2) Save as herein otherwise provided, no license shall be issued to a corporation.

Licensing officers may make enquiries.
Added as s. 12a by No. 20 of 1919, s. 3.¹

13. When application is made to a licensing officer for the grant, transfer, or removal of a license, such officer may put to the applicant and to any other person such questions relevant to the application as he may think fit, and may require the applicant or any other person to produce and exhibit for inspection any document in his possession, custody, or power relating to or containing any entry relating to the subject matter of the application, and to allow the same to be examined.

Penalty for making false statement on application for license.
No. 45 of 1912, s. 13.
Amended by No. 20 of 1919, s. 4; No. 113 of 1965, s. 4 (1).

14. Any person who knowingly makes or gives or procures any other person to make or give any false, inaccurate, or misleading statement or information in or in connection with any application for a license or transfer or removal of a license commits an offence against this Act.

Penalty: One hundred dollars.

Lost licenses.
cf. Q., 50
Vict., No. 2,
s. 12.
No. 45 of
1912, s. 14.

15. Whenever a license is lost or destroyed or for any reason cannot be produced when required by the licensee, his executors, administrators, or assigns, a duplicate or certified copy thereof may, on payment of the prescribed fee, be issued by the proper Licensing Officer, and shall serve and be available in lieu of the original.

¹ Renumbered in 1924 reprint.

16. (1) Except as herein otherwise provided, the granting, renewal, removal, or transfer of licenses shall not be deemed to be as of right but shall, subject as hereinafter provided, be in the discretion of the Licensing Officer.

Grant, transfer, or renewal of licenses discretionary and subject to Ministerial control.

No. 45 of 1912, s. 15.

Amended by No. 20 of 1919, s. 4.

No. 17 of 1932, s. 2.

cf. W.A., 63 Vict., No. 9, s. 4.

55 Vict., No. 9, s. 7.

(2) Every Licensing Officer, other than the Minister, shall obey and observe such directions as the Minister may give him regarding the granting, renewal, removal, or transfer of licenses or of any particular license, and any grant, renewal, removal, or transfer of any license contrary to any such direction shall be null and void.

(3) There shall be an appeal to the Minister, subject to the prescribed conditions, against the refusal of any Licensing Officer (other than the Minister) to grant, renew, remove, or transfer any license.

(4) The Governor may at any time, and from time to time by notice published in the *Government Gazette*, prohibit the granting of any ship license which will increase the number of ship licenses granted and operating at the date of such publication. Such prohibition may relate to pearlshell areas generally, or to a particular pearlshell area, or to a defined portion of a particular pearlshell area, and may continue for such period as the Governor thinks fit.

17. (1) Every application for any ship, beach comber's, shell buyer's, pearl dealer's, or pearl cleaner's license shall be made during the currency of the calendar year in which the license is to have effect or in the month of December preceding that year, and every such license which shall be granted shall, subject to this Act, have effect for and during that year or the unexpired portion thereof and no longer.

Duration of ship, beach comber's, diver's, diver's tender's, shell buyer's, pearl dealer's, and pearl cleaner's license.

No. 45 of 1912, s. 16. Substituted by No. 32 of 1922, s. 6.

(2) Every application for any diver's or diver's tender's license shall be made during the currency of the term in which it is to have effect, and every

such license which shall be granted shall, subject to this Act, have effect for and during that term or the unexpired portion thereof and no longer.

(3) "Term" means the period from the 1st day of January to the 30th day of April or from the 1st day of May to the 31st day of August or from the 1st day of September to the 31st day of December (all days inclusive) in any year.

Fees.
Third
Schedule.
No. 45 of
1912, s. 17.

18. The fees payable on the grant, transfer, or renewal of licenses shall be as set out in the Third Schedule hereto.

Copies of
licenses, etc.,
to be
preserved.
No. 45 of
1912, s. 18.
Amended by
No. 20 of
1919, s. 5.

19. Every Licensing Officer shall make and keep a copy of every license issued, transferred, removed, or renewed by him and of all entries thereon, and shall duly preserve all documents delivered to him for safe custody by his predecessor (if any) in office.

Exclusive
and general
licenses not
transferable
without
permission.
cf. W.A., 55
Vict., No. 9,
s. 8.
No. 45 of
1912, s. 19.

20. No exclusive or general license shall be transferred, sublet, or assigned except with the written permission of the Minister and on payment of the prescribed fee.

Surrender of
licenses.
cf. W.A., 55
Vict., No. 9,
s. 9.
No. 45 of
1912, s. 20.

21. The holder of any exclusive or general license may, with the permission of the Minister, terminate his license and the obligation thereof, but no part of the license fee shall in any case be refunded.

Division 2.—Ship Licenses.

Power to
grant ship
licenses to
aliens in
certain
cases.
No. 45 of
1912, s. 21.
Amended by
No. 7 of
1928, s. 2.

22. (1) Notwithstanding anything hereinbefore contained, a ship license may be granted, transferred or renewed to or in favour of any alien who, at the commencement of this Act, is the holder of a license under the Pearl Shell Fishery Act, 1886, and any holder of a license under this section may lawfully acquire and have the profits of pearling operations

carried on by virtue thereof: but the grant, renewal or transfer of licenses hereunder shall be subject to the following condition:—

That the number of ships in respect of which such alien is licensed shall at no time exceed the number in respect of which he was licensed at the commencement of this Act and he shall be deemed a disqualified person in respect of any vessel or interest in any vessel in excess of that number that he may acquire.

(2) Any of the provisions in Part III. of this Act or the Fifth Schedule to this Act which would not otherwise apply to non-British ships, or the owners masters, or crews thereof, may, by proclamation, be made applicable within the jurisdiction of the State to any ships licensed under this section and to the masters, owners, or crews thereof, and such provisions shall then apply accordingly to the same extent as they would be applicable if the ships were owned by British subjects only or were registered as British ships.

23. All licenses in respect of ships granted under the Pearl Shell Fishery Act, 1886, in force at the commencement of this Act shall be deemed to be ship licenses granted under this Act, but shall cease and come to an end on a day to be fixed by proclamation.

Duration of existing licenses. No. 45 of 1912, s. 22.

24. Subject as hereinafter provided no owner or master of any ship, and no person employed thereon, shall use or employ the same or permit or suffer the same to be used or employed in pearling in the State, except pursuant to a ship license.

No ship to be used without license. cf. W.A., 50 Vict., No. 7, s. 2; No. 45 of 1912, s. 23. Amended by No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars, or a daily penalty of ten dollars.

25. A ship license according to the prescribed form may (subject to this Act) be granted by an inspector in respect of any ship (not being a vessel

Licenses how granted. No. 45 of 1912, s. 24.

registered under the law of any foreign power) on the application of any owner or his agent authorised in writing.

Application
for license.
No. 45 of
1912, s. 25.

26. The applicant shall—

- (a) produce to the officer a certificate of the ship's registry, or, in case the ship is not required by law to be registered, such evidence of ownership as the officer shall deem reasonable.
- (b) satisfy the officer that no alien is an owner of the ship or is entitled to any share or interest in the ship or that the license may be lawfully issued to the applicant pursuant to section twenty-two; and
- (c) pay the officer the prescribed fee.

Transfer of
licenses.
No. 45 of
1912, s. 26.

27. If any person shall satisfy an inspector that any licensee has transferred his interest in the ship to such person, or that such interest or the management or control thereof is vested in that person, such Inspector may by a memorandum according to the prescribed form indorse on the license a transfer of the same to such person, who shall thereupon become the licensee.

Notice of
application
for transfer.
No. 45 of
1912, s. 27.

28. No such transfer shall be made to any person other than a legal personal representative of the licensee, unless the Inspector shall be satisfied that the licensee or his legal personal representatives have been served with the prescribed notice of the intention to make the application, or that he or they concur in the application: Provided that, with the approval of the Minister, the Inspector may dispense with service of such notice for any reason which he shall deem sufficient, and subject to such conditions (if any) as he shall think proper.

29. (1) If any ship in respect of which a ship license is in force has been lost or so damaged that, in the opinion of an inspector, it is not practicable to make use of the license in connection therewith, such inspector may, on application made by or on behalf of the licensee, order that the license shall be removed to another ship of the applicant's, and such license shall thereupon and thereafter operate, and may be used in connection with such other ship accordingly.

Provision for removal of license from one ship to another. Added as s. 27a by No. 20 of 1919, s. 6.¹ Amended by No. 113 of 1965, s. 4 (1).

(2) Every such order shall be made by memorandum indorsed on the license according to the prescribed form, and the prescribed fee (not exceeding fifty cents) shall be paid therefor.

30. The inspector granting any license for a ship shall insert in such license, in figures, some number containing not more than three digits and not already appropriated to any other ship licensed at the same port, and such number shall during the currency of the license be deemed to be the number of the ship to which such license applies.

Licensed ships to be numbered. cf. W.A., 50 Vict., No. 7, s. 4. No. 45 of 1912, s. 28.

31. The owner or master of a licensed ship—

- (1) shall, before the ship is used or employed in pearling, cause the ship's number, preceded by the initial letter of the name of the port where the license was granted, to be conspicuously and legibly painted and displayed on each bow of the ship above the water line, in dark letters and figures on a light ground, or light letters and figures on a dark ground, such letters and figures being not less than twelve inches long;
- (2) shall keep and maintain such letter and figures legible and conspicuous during the whole time that the ship is licensed; and

Characteristic number and letter to be displayed on licensed ship. See *Ibid.* No. 45 of 1912, s. 29. Amended by No. 113 of 1965, s. 4 (1).

¹ Renumbered in 1924 reprint.

- (3) shall completely obliterate and remove such letter and figures on the ship becoming unlicensed, and shall prevent such letter or figures being painted or displayed on the ship whilst the same is unlicensed.

If any requirement of this section is not duly complied with, the master and each owner of the ship shall be guilty of an offence against this Act.

Penalty: One hundred dollars.

Forfeiture of license for offence.
No. 45 of 1912, s. 30.

32. If the holder of a ship license or the master of any ship authorised to be used under such a license shall, during the currency of the license, be twice convicted under this Act, or if each of them be during that time so convicted once, then the justices may, in lieu of or in addition to any other penalty provided by this Act which they may see fit to impose, order that the license be cancelled, and the same shall thereupon become void.

Forfeiture if unqualified person acquires interest in ship.
No. 45 of 1912, s. 31.
Amended by No. 32 of 1922, s. 7; No. 28 of 1924, s. 3; No. 7 of 1928, s. 3; No. 113 of 1965, s. 4 (1).
cf. Q., 63 Vic., No. 3, s. 2 (2).

33. (1) If any unqualified person shall have or acquire an interest, either legal or beneficial, in any ship engaged in pearling by sale, charge, lease, hire, transfer or otherwise howsoever, then and in any such case the license issued to such ship shall forthwith become null and void, and any two justices of the peace may on the complaint of any inspector make a declaratory order to that effect, and the ship shall be forfeited to Her Majesty, and may on such complaint as aforesaid be condemned by any two justices accordingly.

(2) The summons issued on any such complaint may, if a declaratory order regarding the license is sought, be addressed to the master or, if a condemnation of the ship is sought, it may be addressed to the owner, and, in either case, it shall be deemed to have been duly served if delivered personally to the person to whom it is addressed, or if it is served in the manner in which a writ of summons issued in an action *in rem* in the Admiralty Jurisdiction of the Supreme Court may be served.

(3) If any unqualified person shall have or acquire, by contract or arrangement with any owner of any ship or with any servant or agent of such owner, the right to share in the results or proceeds of any pearling in which the ship is or shall be used or employed, such and the like consequences shall ensue, and such and the like proceedings may be taken as if such person had acquired an interest in the ship.

(4) If any unqualified person shall acquire or hold any interest in any such ship as aforesaid or the right to share in the results or proceeds of any such pearling as aforesaid, or if any person shall be party or privy to the acquisition or holding by any unqualified person of any such interest or share as aforesaid, he shall be guilty of an offence.

Penalty: One thousand dollars, or a daily penalty of twenty dollars, or imprisonment for three months.

(5) When the remuneration to which a diver or other pearl-fisher employed in pearling in connection with any ship consists wholly or in part of an allowance or lay calculated with reference to the quantity of pearl-shell or pearls fished by him or with his assistance, then the right to such allowance or lay shall be deemed to be a right to share in the results or proceeds of the pearling, within the meaning of this section, unless the allowance or lay is calculated on such basis as shall be prescribed and at a percentage not exceeding the prescribed percentage.

(6) Any agreement, arrangement, or disposition which purports to vest or confer any such interest or right as aforesaid in or on any person shall (even though not legally enforceable or valid) be deemed to vest or confer an interest or right for the purposes of this section.

(7) For the purposes of this section, it shall be immaterial whether the interest or right is acquired or held as a partner or by way of mortgage or as security or otherwise howsoever.

(8) If any unqualified person shall—

- (a) lend to the holder of any ship licensed under this Act any money at a rate of interest exceeding twelve and a-half per centum per annum, or
- (b) be entitled to the benefit of any contract with any person who is such a licensee (whether he was such when the contract was made or not) whereby provision is made for the payment of interest at a rate exceeding twelve and a-half per centum per annum,

then such unqualified person shall, for the purposes of this section, be deemed to have acquired or to hold, as the case may be, a right to share in the results or proceeds of any pearling in which the ship is or shall be used or employed, and where the borrower or the person under an obligation to pay such interest as aforesaid holds licenses in respect of two or more ships, the right shall for the purposes aforesaid be deemed to extend to every such ship; provided that this subsection shall not apply if the lender or person entitled to the benefit of such contract as aforesaid shall prove that provision has been made for the payment of the interest from some source other than pearling, and that none of it has been paid or will be paid out of the proceeds or results of pearling.

(9) The expression “unqualified person” means any person who is not qualified to hold a ship license under this Act and includes a person to whom (either individually or as one of a class) a ship license should not be granted, renewed, or transferred by the licensing officer by reason of any direction by the Minister under section sixteen.

If under section sixteen of this Act the granting, renewal, or transfer to any person of a ship license has been refused, by direction of the Minister, such person shall be deemed an unqualified person within the meaning of those words in this section until such disqualification is removed by order in writing of the Minister.

33A. (1) Notwithstanding the provisions of the last preceding section, it shall be lawful for an owner of any ship, by himself, his agent or his servant, to contract or arrange with the first diver of the ship, whether or not he is a qualified person, for the carrying on of pearling operations on and from the ship upon terms which include provisions to the effect that, in respect of such operations during any agreed period not exceeding one year—

Owner may contract with first diver, whether or not he is qualified to carry on pearling operations. Added by No. 36 of 1949, s. 3.

- (a) the remuneration of the first diver shall consist wholly of a percentage (not exceeding sixty per centum) of the net proceeds of the pearlshell recovered as a result of such operations; and
- (b) the first diver shall pay the whole or part of the wages and the cost of victualling of the crew of the ship, and shall indemnify the owner against all liability in respect thereof.

(2) The making of any contract or arrangement as mentioned in subsection (1) of this section shall not of itself render either of the parties thereto or the ship liable to any of the consequences or penalties referred to in the last preceding section, and shall not be deemed to vest in or confer upon the first diver any interest in the ship.

(3) In this section, subject to the context—

“first diver” means the person directing the pearling operations;

“net proceeds” means the price paid or payable for the pearlshell to the ship owner less insurance, freight and selling commission paid or payable in respect of the sale of the pearlshell.

34. (1) If any special inspector shall have reason to suspect that a breach of section thirty-three of this Act has been or is being committed, he may give information thereof to a magistrate in the prescribed manner.

Proceedings in case of suspected breaches of sec. 33: Added as s. 31a by No. 28 of 1924, s. 4.¹

¹ Renumbered in 1924 reprint.

(2) The magistrate, on being satisfied by oral or written evidence that there are substantial grounds for such suspicion, may make an order authorising the special inspector to hold an inquiry touching the matter of the suspected offence.

(3) The special inspector shall by virtue of such order have and may exercise, for the purposes of the inquiry thereby authorised, the powers of a Royal Commission and of the chairman thereof under the Royal Commissioners' Powers Act, 1902,¹ and the Royal Commissioners' Powers Act Amendment Act, 1914,¹ and the provisions of those Acts (including the penal provisions) shall apply to and in respect of the special inspector and the said inquiry as if such inquiry were in fact authorised by a Royal Commission.

(4) The result of the inquiry shall be reported to the Minister by the special inspector.

(5) Whenever it shall appear to the special inspector that it is necessary that he should inspect any document for the purposes of the inquiry, and he is unable to obtain such inspection without assistance, he may apply to a magistrate for the issue of a warrant according to the form in the Eighth Schedule, and the magistrate may issue such warrant on being satisfied of the necessity therefor. Every such warrant shall have effect according to its tenor.

Eighth
Schedule.

(6) No person shall be entitled to refuse to answer any question lawfully put to him at any such inquiry as aforesaid, or to produce any document required to be produced thereat, on the ground that the answer to the question or the production of the document may or may tend to criminate him or expose him or any other person to any criminal charge or to any penalty or forfeiture.

(7) Every application to a magistrate hereunder may be made *ex parte* by the special inspector or by a solicitor acting in his behalf.

¹ Now Royal Commissions Act, 1968.

Division 3.—Exclusive and General Licenses.

35. The Minister may (subject to this Act and to payment of the prescribed fee) grant an exclusive license to any person which shall give to the licensee the sole and exclusive right to plant, cultivate, and propagate pearl oyster shell and to gather, collect, and remove pearl-shell and pearls within or from any specific area of the coasts, islands, and territorial waters of Western Australia to be defined in the license or from any portion so defined of a pearl-shell area.

Authority to grant exclusive license.
cf. W.A., 55 Vic., No. 9, s. 5.
61 Vic., No. 19.
Q., 55 Vic., No. 29, s. 16.
No. 45 of 1912, s. 32.

36. Subject as hereinafter provided, an exclusive license—

- (i) shall confer on the licensee all or some one or more of the rights aforesaid;
- (ii) shall be subject to such conditions and obligations and to the payment of such rent and shall be in such form as the Minister may approve;
- (iii) may confer on the licensee the right to take, collect, and gather within the defined area (to the exclusion of all other persons) any marine animal life or product of the sea;
- (iv) may confer an absolute or qualified authority on the licensee to exclude persons from the defined area;
- (v) may confer on the licensee, subject to the payment of the prescribed fee, a right to the renewal of the license or to two or more successive renewals;
- (vi) must be accepted by the licensee or proposed licensee in writing under his hand, whereby he shall agree with the Minister (as representing Her Majesty's Government of the State) to observe and perform the conditions and obligations of the license, and to pay the rent thereby reserved;
- (vii) shall enure for the benefit of and be binding on the licensee, his executors, administrators, and permitted assigns.

Form, contents and conditions of exclusive licenses.
cf. W.A., 55 Vic., No. 9, s. 5.
61 Vic., No. 19.
Q. 55 Vic., No. 29, s. 16.
No. 45 of 1912, s. 33.

Increased
rent for
taking
products of
sea.
No. 45 of
1912, s. 34.

37. If any licensee shall under his license take, collect, or gather any marine animal life or product of the sea for sale or barter and not merely for his personal consumption, he shall pay such additional rent as shall be fixed from time to time by the Minister, subject to the terms of the license.

Application
for exclusive
license.
No. 45 of
1912, s. 35.

38. Every application for an exclusive license shall be made to the Minister in the prescribed form, and notice thereof shall be published in the prescribed manner.

Objections.
No. 45 of
1912, s. 36.

39. Any person who, within the prescribed time, gives notice to the Minister of objection, shall be heard in opposition to an application.

Area to be
covered by
license.
cf. W.A., 55
Vic., No. 9,
s. 5.
No. 45 of
1912, s. 37.

40. No exclusive license shall be granted under this Act in respect of more than four square miles.

Duration of
license.
cf. *ibid.*, s. 6.
No. 45 of
1912, s. 38.

41. No exclusive license shall be granted or renewed for a longer period than fourteen years.

Re-assess-
ment of
rent on
renewal.
No. 45 of
1912, s. 39.

42. (1) The application for the renewal of a license shall be in the prescribed form, and shall be made at least six months before the expiry of the license.

(2) Such renewal shall be subject to a re-assessment of the rent, which shall be made by the Minister forthwith after the receipt of the application.

(3) If the licensee is dissatisfied with the re-assessment by the Minister, he may appeal in the prescribed manner to a Judge of the Supreme Court.

(4) On the hearing of the appeal, the judge shall make such order as shall seem just regarding the subject matter of the appeal and the costs thereof, and his decision shall be final.

43. (1) All pearls and pearl-shell within any area defined in an exclusive license shall be deemed capable of being stolen, and in any prosecution the property may be laid in the licensee.

Theft of pearls and pearl-shell cf. W.A., 55 Vic., No. 9, s. 11.
No. 45 of 1912, s. 40.

(2) The licensee shall be the owner of any pearls or pearl-shell which have been so stolen.

44. Any inspector, or officer appointed under this Act, and any person authorised in writing or by telegraph by the Minister, may enter upon and inspect any area held under an exclusive license.

Inspection. No. 45 of 1912, s. 41.

45. (1) It shall be lawful for the Governor, by an Order in Council published in the *Gazette*, to close any portion of a pearl-shell area and to prohibit the gathering, collection, or removal of any pearls or pearl-shells within or from the portion so closed, for a specific period.

Portions of pearl-shell areas may be closed. Amended by No. 20 of 1919, s. 7; No. 17 of 1932, s. 3; No. 113 of 1965, s. 4 (1). cf. *ibid.*, s. 12.

(1a) It shall be lawful for the Governor by Order in Council published in the *Government Gazette* to limit the total quantity of pearlshell which may be gathered or collected during any specific period from any specified pearlshell area or areas by the holder of any ship license:

No. 45 of 1912, s. 42.

Provided that where any person holds more than one ship license operating in a pearlshell area to which such Order in Council relates, the total quantity of pearlshell which may be gathered or collected by such person from such pearlshell area shall be the quantity ascertained by multiplying the quantity specified in the Order in Council by the number of ship licenses held by such person as aforesaid.

(2) No person, whether licensed or unlicensed, shall contravene the terms of any Order in Council issued either under subsection (1) or subsection (1a) of this section.

Penalty: One hundred dollars.

(3) All pearls and pearl-shells which are the subject matter of any offence against this section shall be forfeited to Her Majesty.

Forfeiture,
cf. *ibid.*,
s. 10.
No. 45 of
1912, s. 43.

46. On non-payment of any rent reserved by an exclusive license, or on the breach or non-observance by the licensee of any of the conditions of any exclusive or general license, or of the provisions of this Act or the regulations, the Governor may cancel the license, and upon publication of notice of such cancellation in the *Gazette* such license shall be absolutely void, and production of the *Gazette* containing such notice shall be conclusive evidence in all courts of sufficient cause for the cancellation of such license, and that the same has been lawfully cancelled.

Holder of
general or
exclusive
license may
employ
ships.
No. 45 of
1912, s. 44.

47. Every person holding a general or exclusive license may (subject as hereinafter provided) use and employ any ship in pearling, within the area over which the authority of his license extends, without obtaining a ship license.

Ships to be
registered,
numbered,
and marked.
No. 45 of
1912, s. 45.
Amended by
No. 113 of
1965, s. 4 (1).

48. No person shall use or employ any ship, or permit or cause any ship to be used or employed as in section forty-seven mentioned, unless such ship has been previously registered in the prescribed manner after payment of a fee of fifty cents, and is numbered and marked in all respects in accordance with the regulations.

Penalty: Ten dollars.

General
licenses.
cf. W.A., 55
Vic., No. 9,
s. 5.
No. 45 of
1912, s. 46.

49. The Minister may, subject to this Act and the payment of the prescribed fee, grant any general license according to the prescribed form which shall give a general but not exclusive right to gather, collect, and remove pearls and pearl-shell from such portion or portions of the pearl-shell area or areas specified in the license as shall not for the time being be closed under an order or be the subject

of an exclusive license made or granted before the granting of the general license; provided that before the issue of such license the proposed licensee shall sign an undertaking in the prescribed form to abide by the conditions thereof.

50. General licenses may be granted for any period not exceeding one year, subject to the prescribed conditions, and to such other conditions (if any) as the Minister with the approval of the Governor may determine.

Term and conditions of general licenses.
cf. *ibid.* s. 6.
No. 45 of 1912, s. 47.

51. No person shall gather, collect, or remove pearls or pearl-shells from any pearl-shell area or from any area which is the subject of an exclusive license, or use or employ or permit or cause to be used or employed a ship or boat (whether licensed or unlicensed) for that purpose, except under the authority of a general or exclusive license.

Prohibition of pearling without license.
cf. *ibid.*, s. 14.
No. 45 of 1912, s. 48.
Amended by No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars, or a daily penalty of ten dollars.

52. Unless compelled by stress of weather or other unavoidable cause, no person shall, contrary to the order of an exclusive licensee given pursuant to a power of exclusion contained in the license—

Trespass contrary to orders of exclusive licensee.
No. 45 of 1912, s. 49.
Amended by No. 113 of 1965, s. 4 (1).

(a) enter or remain within the area defined in the license; or

(b) cause, permit, or suffer any vessel to enter or remain therein;

except for the purpose of obtaining a necessary supply of wood or water or of making any necessary passage in a vessel across any part of such area.

Penalty: Sixty dollars, or a daily penalty of six dollars.

Prohibition of taking marine products without permission of exclusive licensee.
No. 45 of 1912, s. 50.
Amended by No. 113 of 1965, s. 4 (1).

53. No person shall, contrary to any exclusive right of taking, collecting, or gathering any marine animal life or product of the sea conferred by any exclusive license, take, gather, or collect any such life or product within the area defined in the license, without the permission of the licensee.

Penalty: Thirty dollars, or a daily penalty of two dollars.

Preservation of existing licenses.
No. 45 of 1912, s. 51.

54. Nothing in this Act shall be deemed to authorise anything to the prejudice of a general or exclusive license granted before the commencement of this Act or to impair any such license, but every such license shall authorise such acts and be subject to such obligations as it would authorise or be subject to if this Act were not in existence.

Heading.
Amended by No. 32 of 1922, s. 8.

Division 4.—Divers' and Divers' Tenders' Licenses.

None but licensed divers and divers' tenders to be employed.
cf. Q., 50 Vic., No. 2, s. 11.
No. 45 of 1912, s. 52.
Amended by No. 32 of 1922, s. 9; No. 113 of 1965, s. 4 (1).

55. No person being the owner of a ship or boat, or an agent or manager of or for the owner of a ship or boat, shall after the commencement of this Act, employ or authorise or permit the employment as a diver for pearls or pearl-shell of any person using a diving apparatus, unless such person is the holder of a diver's license under this Act, or employ or authorise or permit the employment of any person as a diver's tender unless such person is the holder of a diver's tender's license under this Act.

Penalty: Twenty dollars, or a daily penalty of two dollars.

No person to act as diver or diver's tender unless licensed.
cf. *ibid.*, s. 5.
No. 45 of 1912, s. 53.
Amended by No. 32 of 1922, s. 10; No. 113 of 1965, s. 4 (1).

56. (1) No person using a diving apparatus shall dive for pearls or pearl-shell unless he is the holder of a pearl diver's license under this Act.

(2) No person shall act as a diver's tender unless he is the holder of a diver's tender's license under this Act.

Penalty: Twenty dollars, or a daily penalty of two dollars.

57. Pearl divers' and divers' tenders' licenses according to the prescribed form may subject to this Act be issued by an inspector.

Grant of divers' and divers' tenders' licenses.
No. 45 of 1912, s. 54.
Amended by No. 32 of 1922, s. 11; No. 17 of 1932, s. 4.

58. Notwithstanding anything hereinbefore contained, an inspector may, without payment of any fee, issue a permit, for a period not exceeding four months to any person which shall, whilst in force, authorise such person to use a diving apparatus and dive for pearls and pearl-shell, and to be employed by anyone for that purpose, but any such permit may be revoked by any inspector at any time and for any reason or without any reason being assigned.

Revocable licenses.
No. 45 of 1912, s. 55.

59. The holder of a pearl diver's or diver's tender's license shall produce and exhibit his license whenever called upon so to do by an inspector, harbour-master, police officer, or justice of the peace.

Licenses to be produced on demand.
cf. *ibid.*, s. 7.
No. 45 of 1912, s. 56.
Amended by No. 32 of 1922, s. 12; No. 113 of 1965, s. 4 (1).

Penalty: Ten dollars.

60. (1) If the holder of a pearl diver's or diver's tender's license is convicted of an offence against this Act or the Regulations, the justices before whom he is convicted may cause the conviction to be indorsed on the license, and may suspend or cancel such license in their discretion.

Cancellation and suspension of licenses.
cf. *ibid.*, s. 9.
No. 45 of 1912, s. 57.
Amended by No. 32 of 1922, s. 12; No. 113 of 1965, s. 4 (1).

(2) If the holder of a diver's or diver's tender's license is convicted of a crime or misdemeanour, his license may be cancelled or suspended by two justices on the complaint of an inspector.

(3) The holder of any diver's or diver's tender's license cancelled or suspended, or on which an indorsement is to be made, shall on demand of the justices or an inspector, deliver the same to them or him to be dealt with according to this Act.

Penalty: Ten dollars.

(4) A diver's or diver's tender's license if cancelled or whilst suspended shall be kept and retained by an inspector.

Division 5.—Pearl Dealer's Licenses.

Pearl dealers' licenses to be granted. cf. W.A., 63 Vic., No. 33, s. 2. No. 45 of 1912, s. 58. Amended by No. 32 of 1922, s. 14.

61. Any magistrate may, subject to this Act, on application, grant to any person who, in the opinion of such magistrate, is a person of good character and reputation a pearl dealer's license according to the prescribed form: Provided that no pearl dealer's license shall be granted or transferred to a person who is licensed to sell intoxicating liquor¹ under a publican's general, wayside house, Australian wine and beer or Australian wine license, and if any holder of a pearl dealer's license becomes so licensed to sell intoxicating liquor, his pearl dealer's license shall thereupon become absolutely void.

Pearl dealer's licenses shall be of two kinds—general and limited; but the effect of both kinds of license shall be the same, save as in sections sixty-eight and seventy-eight is otherwise provided.

Certain persons prohibited from buying or selling pearls. cf. *ibid.*, s. 3. No. 45 of 1912, s. 60. Amended by No. 32 of 1922, s. 15; No. 113 of 1965, s. 4 (1).

62. No person shall buy or sell any pearl unless either the buyer or the seller is the holder of a pearl dealer's license, and the sale is effected at the registered place or one of the registered places of business of the holder of such license.

Penalty: Four hundred dollars.

Pearls not to be bought or sold North of 27° S. Lat. except by or to a licensed dealer. No. 45 of 1912, s. 59. Amended by No. 20 of 1919, s. 8; No. 32 of 1922, s. 16; No. 13 of 1929, s. 2; No. 113 of 1965, s. 4 (1).

63. No person who is not the holder of a ship, exclusive, general, beach comber's, or pearl dealer's license shall, within that portion of the State lying to the North of the twenty-seventh parallel of South Latitude, sell or deliver for sale any pearl to a licensed pearl dealer, and no licensed pearl dealer shall buy or receive for sale any pearl of any such person.

Penalty: Four hundred dollars.

Provided that this section shall not apply to the purchase or receipt for sale by a licensed pearl dealer of pearls not the product of the State, if such

¹ Now see section 23 and the Second Schedule of the Liquor Act, 1979.

dealing is transacted in the office of an inspector, and it is proved to the satisfaction of the inspector that the pearls were not the product of the State.

64. No person, whether a licensed pearl dealer or not, shall, at any place North of the twenty-seventh parallel of South Latitude, buy or sell any pearl after the hour of six o'clock in the evening till eight o'clock in the morning.

Hours of selling.
No. 45 of 1912, s. 61.
Amended by No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars.

65. (1) No person shall send or take any pearl out of the portion of the State North of the twenty-seventh parallel of South Latitude, unless he shall have given to an inspector forty-eight hours' previous written notice of his intention so to do.

No pearl to be sent out of portion of State to which this Part applies except after notice to Inspector.
Added as s. 61a by No. 20 of 1919, s. 9;¹ No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars.

(2) Every person who has given such notice as is mentioned in this section shall, on demand made before the pearl is despatched or taken, permit an inspector to view and inspect such pearl.

Penalty: Forty dollars.

(3) This section shall not apply to any pearl which was found or has at any time been conveyed South of the said parallel or outside the limits both of the State and of the tropical waters adjacent to Western Australia.

66. (1) Licenses granted under the Pearl Dealers' Licensing Act, 1899, and in force at the commencement of this Act shall expire on a day to be fixed by proclamation.

Expiry of existing licenses.
No. 45 of 1912, s. 62.

(2) Until that day every such license shall have effect as a pearl dealer's license granted under this Act.

¹ Renumbered in 1924 reprint.

Register of
pearl
dealers.
cf. *ibid.*, s. 4.
No. 45 of
1912, s. 63.

67. (1) A register of licenses issued by any magistrate shall be kept by such clerk of petty sessions, stationed at a place where the magistrate exercises jurisdiction as the magistrate selects, and a general register of licensed pearl dealers shall be kept at the office of the Chief Pearling Inspector in Perth.

(2) The register shall contain the number of each license and the names in full and the place of business of the licensee.

(3) The register shall be open to public inspection, without fee, at all times during ordinary office hours.

(4) Every licensee shall be struck off the register on the expiration of his license, unless a renewal thereof has been previously granted.

(5) Every clerk of petty sessions shall, with all convenient speed, notify the Chief Pearling Inspector of every entry made in the register kept by him.

Registered
places of
business.
No. 45 of
1912, s. 64.
Amended by
No. 32 of
1922, s. 17;
No. 113 of
1965, s. 4 (1).

68. (1) A licensed pearl dealer may have more than one registered place of business.

(2) A licensed pearl dealer may, on application to the licensing officer, and on payment of a fee of fifty cents, change any registered place of business to another place, or may register any additional place of business.

(3) An endorsement thereof shall be made by the licensing officer on the license, and notified to the Chief Inspector of Fisheries for entry in the general register.

(4) Every licensed pearl dealer shall have his name at length painted or fixed in legible letters at least three inches long with the words "licensed pearl dealer" constantly and permanently remaining and plainly to be seen and read on a conspicuous part of the outside of his registered place or places of business.

Daily penalty: Two dollars.

(5) A licensed pearl dealer who is merely the holder of a limited license shall not have any registered place of business North of the twenty-seventh parallel of South Latitude.

69. (1) Every licensed pearl dealer shall keep at his registered place or places of business a pearl dealer's book, in the prescribed form, and immediately after every sale or purchase of any pearl shell make an entry in such book of the name and address of the buyer or seller, as the case may be, and of such other particulars as may be prescribed.

Pearl dealer's book.
No. 45 of 1912, s. 65.
Amended by No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars.

(2) Every licensed pearl dealer shall, immediately after the importation by him of a pearl, make an entry in his book of such importation in the prescribed form, and giving the prescribed particulars.

Penalty: Forty dollars.

70. Every person selling any pearl to or buying any pearl of any pearl dealer shall sign with his true name the entry of the transaction made in the pearl dealer's book.

Entries to be signed.
No. 45 of 1912, s. 66.
Amended by No. 113 of 1965, s. 4 (1).

Penalty: Forty dollars.

71. No person shall knowingly make or sign in a pearl dealer's book any entry which is false in any particular.

Penalty for false entry.
No. 45 of 1912, s. 67.
Amended by No. 113 of 1965, s. 4 (1).

Penalty: Two hundred dollars.

72. (1) Any magistrate or inspector, and any other person with the authority in writing of a magistrate or inspector may, at any time, enter any place of business of the holder of a pearl dealer's license or any other place where a pearl dealer's book may be, and inspect such book and take extracts therefrom.

Inspection.
cf. W.A., 63 Vic., No. 33, s. 6.
No. 45 of 1912, s. 68.
Amended by No. 113 of 1965, s. 4 (1).

(2) Every person refusing to produce such book, or resisting or impeding inspection thereof, shall be guilty of an offence against this Act.

Penalty: Sixty dollars.

Sale includes
exchange or
pledge.
No. 45 of
1912, s. 69.

73. Every exchange or pledge of pearls shall be deemed a sale for the purpose and within the meaning of this Act.

Forfeiture
of license.
cf. W.A., 63
Vic., No. 33,
s. 2.
No. 45 of
1912, s. 70.

74. A pearl dealer's license may be cancelled by any magistrate before whom the licensee is convicted of any offence against this Act or the regulations, or of any other offence which, in the opinion of the magistrate, renders the licensee unfit to hold a license.

Pearl dealers
to make
returns.
No. 45 of
1912, s. 71.
Amended by
No. 32 of
1922, s. 18;
No. 113 of
1965, s. 4 (1).

75. (1) Every licensee shall, not more than three days after the beginning of each month, make and deliver to the licensing officer or to the clerk of petty sessions stationed nearest to the licensee's registered place of business, a true and complete return in the prescribed form and with the prescribed particulars of all pearls which on the last day of the preceding month were in his possession or under his control in the State, and of all pearls which were purchased or sold by him in the State during the preceding month.

Penalty: Sixty dollars or a daily penalty of four dollars.

(2) Within ten days after the expiry of a ship, exclusive, general, or beach comber's license, the person who was the holder thereof may deliver to the licensing officer or to the clerk of petty sessions stationed nearest to such person's residence or place of business, a true and complete return in the prescribed form (verified by statutory declaration) enumerating with the prescribed particulars all pearls which were obtained by him under or in the exercise of his license, and which on the expiry of

his license were in his possession or under his control, and such person shall by force of this subsection and without obtaining any license be authorized for a period of four months from the expiry of his license to sell or dispose of the pearls so enumerated as if the expired license were still in force.

76. Every person making any inspection under section seventy-two or to whom any return may be delivered under section seventy-five shall keep secret and aid in preserving secrecy with regard to all matters which may come to his knowledge in his official capacity, and shall not communicate any such matter to any other person except his official superiors or as a witness in a court of law or otherwise in performance of his duties.

Inspectors to preserve secrecy. No. 45 of 1912, s. 72. Amended by No. 113 of 1965, s. 4 (1).

Penalty: Forty dollars.

77. Notwithstanding anything hereinbefore contained, a pearl dealers' license may be granted to any corporation carrying on the business of banking.

License may be granted to Bank. No. 45 of 1912, s. 73.

78. No person shall act or be employed or engaged as the agent or deputy of a pearl dealer unless he is himself the holder of a pearl dealer's license.

Agent of pearl dealer to be licensed. Added as s. 73a by No. 20 of 1919, s. 11.¹ Amended by No. 32 of 1922, s. 19; No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars.

Provided that nothing in this section shall prevent a manager, general or local, of a corporation, which is the holder of a pearl dealer's license, from acting as the agent or deputy of such corporation under and by virtue of the license held by it, but so that no corporation which is the holder of a limited license only shall be entitled to be represented by any such manager outside the portion of the State to which its license extends.

¹ Renumbered in 1924 reprint.

PART III.—PEARL FISHERS.

All pearl fishers to enter into a pearling agreement. *cf.* 57 and 58 Vict., c. 60, s. 399. No. 45 of 1912, s. 74. Amended by No. 113 of 1965, s. 4 (1).

79. (1) No person shall be employed as a pearl fisher unless under agreement in the prescribed form (hereinafter called a pearling agreement), and any owner, and any agent of any owner of every ship on which any person is employed contrary to this section commits an offence against this Act.

Penalty: Twenty dollars, or a daily penalty of two dollars.

(2) A person shall be deemed to be an agent of an owner of a ship for the purposes of this Part if he is authorised to act for such owner in or about the engagement of pearl fishers to serve on that ship.

Form and conditions of agreement. *cf.* *ibid.*, s. 400. No. 45 of 1912, s. 75.

80. A pearling agreement shall bear the date of the signing thereof, and shall state—

- (a) the nature and duration of the agreement;
- (b) the capacity in which each pearl fisher is to serve;
- (c) the remuneration which each pearl fisher is to receive, together with additional reward (if any) for skill, success, or special exertion;
- (d) such other terms as may be prescribed or agreed upon.

Mode of entering into the agreement. No. 45 of 1912, s. 76.

81. (1) The owner or his agent shall sign a pearling agreement before it is signed by any other party.

(2) The agreement shall be read over and explained to each pearl fisher in the presence of a superintendent, by whom the signature of each pearl fisher shall be attested.

(3) The agreement shall be of no effect unless endorsed by the superintendent according to the prescribed form.

(4) Every such agreement shall be deemed a contract of service within the meaning of the Masters and Servants Act, 1892, and shall be enforceable accordingly, notwithstanding anything contained in section twenty-eight of that Act.

(5) "Superintendent" means any officer or person who shall be authorised by the Governor to discharge the duties of a superintendent under this Part of the Act.

82. The superintendent, before endorsing the agreement, shall satisfy himself—

Facts of which superintendent to be satisfied before endorsing agreement. No. 45 of 1912, s. 77.

- (1) that the agreement is dated as required by this Act, and contains the prescribed forms and particulars;
- (2) that every pearl fisher who is a party thereto is a male and is a free and voluntary agent, and understands and assents to the terms thereof.

83. The agreement shall be signed in duplicate, and the owner or his agent shall deliver to the superintendent one part of the agreement, and the superintendent shall retain the same, and give to every pearl fisher employed a certificate in the prescribed form; and the other part of the agreement shall be retained by the owner or his agent.

Agreement to be in duplicate. No. 45 of 1912, s. 78.

84. Pearling agreements may be made for service in a particular ship, or in two or more ships belonging to the same owner; and, in the latter case, after the name of the ship at the head of the agreement, there shall be written the names of the other ship or ships, or the words "or any other ship belonging to and appointed by the same owner".

Agreement may be for service in several ships. cf. *ibid.*, c. 402. No. 45 of 1912, s. 79.

85. No person shall—

- (a) by any means whatever persuade a pearl fisher to commit any breach of his agreement; or

Inciting to breach of agreement. cf. *ibid.*, s. 236. No. 45 of 1912, s. 80. Amended by No. 113 of 1965, s. 4 (1).

- (b) wilfully harbour or secrete a pearl fisher who has deserted from or wilfully failed to join his ship.

Penalty: Forty dollars.

Alterations, etc., in agreements to be attested. cf. *ibid.*, s. 122 and s. 407. No. 45 of 1912, s. 81.

86. Every erasure, interlineation, or alteration in a pearling agreement shall be wholly inoperative, unless made with the assent of all the persons interested in the erasure, interlineation, or alteration, and attested by the superintendent.

Offences as to pearl fishing agreements. cf. *ibid.*, s. 408. No. 45 of 1912, s. 82. Amended by No. 113 of 1965, s. 4 (1).

87. If an owner or his agent—

- (1) improperly alters or makes any false entry in a pearling agreement, or is a party to any such alteration or entry; or
- (2) delivers or is privy to the delivery of a false copy of a pearl fishing agreement;

he commits an offence against this Act.

Penalty: One hundred dollars.

Payment of wages. cf. Q., 57 Vict., No. 7, s. 2. No. 45 of 1912, s. 83.

88. (1) Subject as hereinafter provided, the wages of every pearl fisher shall be deemed to accrue due from day to day.

(2) The wages of every pearl fisher and every additional pecuniary reward earned by him shall be paid in current coin of the realm or other legal tender or by bank cheque at intervals not exceeding one month if so required by him, except the wages for the last two months of the term of his agreement, which shall be paid in the presence of a superintendent.

(3) No deduction shall be made from any wages or pecuniary reward, except in respect of—

- (a) money paid to the pearl fisher in advance;
- (b) money paid to the pearl fisher during his term of service;

- (c) goods which are shown, to the satisfaction of a superintendent, to have been sold at a fair and reasonable price; and
- (d) fines or forfeitures under the pearling agreement or money ordered to be forfeited by a court under this Act.

(4) No payment of wages or pecuniary reward to any pearl fisher shall be of any effect unless made in accordance with this section.

89. (1) On the termination of his engagement a pearl fisher shall within the prescribed time be discharged by the owner or his agent, in manner prescribed by regulations, and every person wilfully infringing this subsection shall be guilty of an offence against this Act.

Particulars of discharge and release to be attested. No. 45 of 1912, s. 84. Amended by No. 20 of 1919, s. 12; No. 113 of 1965, s. 4 (1).

Penalty: Twenty dollars.

(2) The payment of the balance of the wages on discharge, and the signature of each member of the crew who signs a release on discharge, shall be witnessed and attested by a superintendent.

90. No pearl fisher shall be entitled to wages—

- (a) for any period during which he unlawfully fails to work when required, whether before or after the time fixed by the agreement for his beginning work, or
- (b) unless the Court hearing the case otherwise directs, for any period during which he is lawfully imprisoned, or for any period during which he is by reason of illness, caused by his own wilful act or default, incapable of performing his duty.

Wages not to accrue during refusal to work or imprisonment. 57 and 58 Vict. (Imp.), c. 60, s. 159. *ibid.*, s. 160. No. 45 of 1912, s. 85.

91. If a pearl fisher is discharged, otherwise than in accordance with the terms of his agreement, without fault on his part justifying that discharge, and without his consent, he shall be entitled to

Compensation for premature discharge. *ibid.*, s. 62. No. 45 of 1912, s. 86.

receive from the master or owner, in addition to any wages he has earned, compensation not exceeding one month's wages, and may recover that compensation as if it were wages duly earned.

Wages to run till payment in certain cases. *Ibid.*, s. 134 (c).
No. 45 of 1912, s. 87.

92. In the event of a pearl fisher's wages or any part thereof not being paid or settled as in this Act provided, then unless the delay is due to the act or default of the pearl fisher or to any reasonable dispute as to liability or to any other cause not being the wrongful act or default of the owner or his agent, the pearl fisher's wages shall continue to run and be payable until the time of the final settlement thereof.

Settlement of wages. No. 45 of 1912, s. s. 88. Amended by No. 20 of 1919, s. 12. Release to be signed before superintendent. *Ibid.*, s. 136.

93. The following rules shall be observed with respect to the settlement of wages:—

- (a) Upon the completion before a superintendent, of any discharge, and on full payment or satisfaction of wages, the owner or his agent and each pearl fisher shall, in the presence of the superintendent, sign in the form prescribed a mutual release of all claims in respect of the past engagement, and the superintendent shall also sign and attest it and shall retain it.
- (b) Every such release shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past engagement.
- (c) A copy of such release, certified under the hand of the superintendent to be a true copy, shall be receivable in evidence, and shall have all the effect of the original.

Release to be discharge.

and to be evidence.

Application of provisions from Part II. of the Merchant Shipping Act, 1894. Fifth Schedule. No. 45 of 1912, s. 89.

94. The provisions set out in the Fifth Schedule adapted from Part II. of the Merchant Shipping Act, 1894, shall according to their tenor apply to pearling ships trading with or being at any port in the State or registered (under the said Act) at any such port and to the owners, masters, and crews of such ships;

and, so far as such provisions or any other provisions of this Act apply, the corresponding provisions of the Merchant Shipping Act, 1894, shall not be deemed to apply to the ships, owners, masters or crews aforesaid under or by virtue of the Merchant Shipping Act Application Act, 1903.

95. The provisions in the Fifth Schedule shall be construed as sections of this Act, provided that the words "pearling ship" or the word "ship" shall not in those provisions or section ninety-four (except as in this Act otherwise provided), include any description of vessel which is not a British ship within the meaning of the Merchant Shipping Act, 1894.

Construction of provisions in Fifth Schedule. No. 45 of 1912, s. 90.

96. A justice may, on the application of an owner party to a pearling agreement or his agent, by order under his hand, release any pearl fisher bound by such agreement from any imprisonment which he is undergoing during the term of such agreement for any offence committed during such term against this Part of this Act, including the provisions in the Fifth Schedule (except the provision numbered one), and direct any police officer to convey him on board his ship for the purpose of completing his agreement, and such officer shall so convey him accordingly.

Pearl fisher may be released from imprisonment and conveyed on board ship. No. 45 of 1912, s. 91.

97. (1) If a term of imprisonment to which a pearl fisher is sentenced under this Part of this Act terminates during the subsistence of the pearling agreement under which he is engaged, the owner party to the pearling agreement or his agent shall, as soon as practicable, either—

Duty of employer on determination of imprisonment of pearl fisher. No. 45 of 1912, s. 92. Amended by No. 113 of 1965, s. 4 (1).

- (a) cause the pearl fisher to go or to be put on board his ship; or
- (b) terminate the engagement of the pearl fisher.

(2) Any person wilfully infringing this section shall be guilty of an offence against this Act.

Penalty: Ten dollars.

Police assistance.
No. 45 of
1912, s. 93.

98. All police officers shall, at the request of the owner or his agent, aid and assist him in putting any pearl fisher on board the ship pursuant to this Act.

Fees charge-
able under
this Part,
Seventh
Schedule.
Added as
s. 93a by
No. 20 of
1919, s. 13.¹

99. The fees payable in respect of the various matters mentioned in the Seventh Schedule to this Act shall be as therein respectively set out.

Powers of
superintend-
ents regard-
ing the
employment
of masters
and pearl
fishers.
Added as
s. 93a by
No. 32 of
1922, s. 20.¹
Amended by
No. 113 of
1965, s. 4 (1).

100. (1) No person shall be engaged or employed as a pearl fisher or a pearl fisher in charge on a pearling ship if a superintendent shall be of opinion that such person is of evil fame, and shall give notice of such opinion to the owner or an agent of the owner of the ship on which it is intended to employ such person.

(2) A superintendent may refuse to endorse a pearling agreement under this Part if he is satisfied that any person named therein as pearl fisher is a person of evil fame.

(3) It shall not be lawful for any pearling ship to proceed to or remain at sea unless notice of the name of the master has been given to and approved by a superintendent, and such master goes and remains on board such ship.

(4) Every person who commits or aids in or is party or privy to the commission of any breach of this section shall be guilty of an offence against this Act.

Penalty: One hundred dollars.

¹ Renumbered in 1924 reprint.

PART IV.—THE REGULATION OF PEARLING
OPERATIONS AND PEARLING SHIPS

101. (1) An inspector may at any time of the day or night—

- (a) enter and search any vessel which he shall on reasonable grounds believe to be engaged or to be about to be engaged in pearling;
- (b) bring any ship which he is satisfied is being used or employed in pearling contrary to this Act into any port, and proceed against the owner, master, or other person liable under any provision of this Act applicable to the case, and hold the ship pending the proceedings;
- (c) enter any fishing station;
- (d) require the owner or master of any vessel or any person in charge of a fishing station to produce and allow to be examined any of the following documents, if in his possession or control, that is to say, any certificate of registry, license, official paper, pearling agreement, muster roll, or other document relating to any ship or boat or to any person employed thereon or who is at the station, and may take copies of any such document or any part thereof;
- (e) by order in writing forbid any vessel being employed in pearling, or being sent or taken to sea in order to be employed in pearling without having on board a supply of provisions and articles of protection against cold and heat certified to be sufficient by an inspector or magistrate, or if in his opinion the ship is unseaworthy;
- (f) muster the persons employed at the station or on board any ship or boat engaged in pearling;
- (g) require the owner or master or the person in charge of the station to give any explanation concerning the station or any

Powers of inspectors. cf. Q., 55 Vic., No. 29, s. 6. W.A., 37 Vic., No. 11, ss. 11 and 12; 50 Vic., No. 7, s. 15. No. 45 of 1912, s. 94. Amended by No. 20 of 1919, s. 14; No. 32 of 1922, s. 21.

ship or boat, or any person employed in any ship, boat, or the station, or who is at the station, or concerning any document required to be produced;

- (h) examine the sails, lights, boats, anchors, grapnels, and fishing implements belonging to any ship, boat, or station;
- (i) examine the diving dress, air pump, air-tubes, and gear, and all other gear or tackle in any ship or boat or at a station or at any other place; and by order under his hand forbid the further use of any article so examined which is, in his opinion, unsafe or insufficient.
- (j) make any inquiries or searches (whether of the person or of premises or effects) that he thinks necessary to ascertain whether any contravention of this Act or of the Aborigines Act, 1905,¹ or of any regulation under either Act, has been committed on or about any ship or fishing station;
- (k) employ assistants in and about the exercise of any of the foregoing powers, and use force whether by breaking open doors or otherwise.

(2) No power by this section conferred shall be exercised in respect of any vessel which is South of the twenty-seventh parallel of South Latitude

Appeal from order for-bidding use of gear.
cf. Q., 55 Vic., No. 29, s. 7.
No. 45 of 1912, s. 95.
Amended by No. 32 of 1922, s. 22.

102. (1) An owner or master, or the person in charge of a fishing station, if he objects to an order of an inspector forbidding the further use of any gear, tackle, or other article, may, by the prescribed notice, require the same to be tested, whereupon the gear, tackle, or other article shall be taken before a magistrate or some person appointed by a magistrate for the purpose, and shall be tested in such manner as the magistrate or person before whom it is taken may direct or approve; and the magistrate may, after having seen or been informed of the result of such testing, confirm the order or

¹ Now Native Welfare Act, 1963.

reverse it or make an order allowing the gear, tackle, or other article to be used after the making of such alterations or repairs as he may prescribe.

The costs and expenses of and incidental to any such proceedings shall be in the discretion of the magistrate.

(2) An owner or master of any ship which an inspector has by order forbidden to be employed in pearling or taken to sea in order to be employed in pearling, or any pearl fisher or pearl fisher in charge of a pearling ship is refused by the superintendent to be engaged or employed, may, in the prescribed manner, appeal against such order to a magistrate, who may reverse, confirm, or vary such order, and the order, if varied, shall be enforceable as an order of the inspector.

103. No person shall use or permit to be used, in connection with diving in pearling operations, any diving dress, air pump, air tubes, or gear which has not or have not been submitted to an inspector for examination within the last preceding period of six months.

Diving gear to be examined every six months. cf. *ibid.*, s. 8. No. 45 of 1912, s. 96. Amended by No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars.

104. Subject as aforesaid no person shall use any gear, tackle, or other article aforesaid after an inspector has forbidden the further use of it and while the order is in force.

Penalty for using condemned gear or tackle. cf. *ibid.*, s. 9. No. 45 of 1912, s. 97. Amended by No. 113 of 1965, s. 4 (1).

Penalty: One hundred dollars.

105. (1) A ship employed in pearling shall not have on board any intoxicating liquor in any greater quantity than that prescribed by the regulations, or any opium whatever.

Ships not to carry intoxicating liquor beyond certain quantity or opium. No. 45 of 1912, s. 98. Amended by No. 113 of 1965, s. 4 (1).

(2) If any such ship is found having a larger quantity of liquor or any opium on board, the liquor or opium shall be forfeited to Her Majesty, and the master shall be guilty of an offence against this Act.

Penalty: One hundred dollars.

Governor may prescribe sizes of pearl-shell.
 cf. Q., 60, Vic., No. 32, s. 3.
 No. 45 of 1912, s. 99.
 Amended by No. 113 of 1965, s. 4 (1).

106. (1) The Governor may, from time to time, by proclamation, prescribe the minimum dimensions of the several sorts of pearl-shell below which it shall be unlawful to take or obtain the same, and may vary such dimensions for different parts of the coast of Western Australia and the islands thereof, and may prescribe pecuniary penalties for breaches of such proclamation; and such penalties may be imposed and enforced in like manner as penalties for offences against this Act.

Possession of pearl-shell, etc., below lawful size to be accounted for.

(2) On the demand of an inspector, every person found in possession of any pearl-shell of dimensions below the prescribed minimum shall disclose the mode in which, or the name and address of the person from whom, he obtained the same, and, in default, shall be guilty of an offence against this Act.

Penalty: Twenty dollars.

Examination. Seizure.

(3) An inspector may examine any pearl-shell taken, collected, carried away, or exposed for sale, and may seize any shell contained in a bag or other receptacle in which is any shell of less size than that prescribed by proclamation, or any heap or other collection of shells in which is any such shell.

(4) If any pearl-shell of dimensions below the prescribed minimum has been taken or obtained contrary to any proclamation under this section such pearl-shell shall be forfeited to Her Majesty, and a declaration to that effect may be made by any two justices of the peace on the application of an inspector in the prescribed manner.

Master of ship *prima facie* liable for offences committed by persons employed on ship.
 cf. Q., 55 Vic., No. 29, s. 19.
 No. 45 of 1912, s. 100.

107. When an offence against this Act or any of the regulations has been committed by a person employed in or in connection with a ship or boat, the master shall also be guilty of the offence, unless he proves that he issued proper orders for the observance, and used all reasonable means to enforce the observance of this Act, and that the offence in question was committed without his concurrence.

108. No person shall use any ship for pearling or permit any ship to be so used or send or take any ship to sea for the purpose of being so used unless the ship is equipped with lifesaving appliances according to the rules in the Sixth Schedule hereto.

Penalty: Two hundred dollars.

Ships to carry lifesaving appliances. No. 45 of 1912, s. 101. Amended by No. 113 of 1965, s. 4 (1). Sixth Schedule.

PART V.—MISCELLANEOUS.

109. (1) An inspector may, subject to this Act and the payment of the prescribed fee, grant a beach-comber's license in the prescribed form, which shall give a general but not an exclusive right to collect and remove pearl-shell from such portion or portions of the sea-shore of Western Australia North of the Tropic of Capricorn as shall not for the time being be included in a pearl-shell area or be subject to an exclusive license.

Beach-combers' licenses. Added as s. 101a by No. 20 of 1919, s. 15.¹ Amended by No. 113 of 1965, s. 4 (1).

(2) The fee for a beach-comber's license shall be the same as that for a general license.

(3) No person shall gather, collect, or remove pearl-shell from any part of the sea-shore of Western Australia North of the Tropic of Capricorn, except under the authority of a beach-comber's or some other license granted under this Act.

Penalty: Forty dollars, or a daily penalty of four dollars.

(4) For the purposes of this section, "sea-shore" includes all that portion of the shore of the mainland or any island or reef which is uncovered at the lowest tide.

110. (1) Any stipendiary magistrate of any magisterial district lying wholly or partially to the North of the twenty-seventh parallel of South Latitude may, subject to this Act, on application grant to any person who, in the opinion of such magistrate, is a person of good character and reputation, a pearl-cleaner's license.

Pearl-cleaners' licenses. Added as s. 101b by No. 20 of 1919, s. 15.¹ Amended by No. 32 of 1922, s. 25; No. 113 of 1965, s. 4 (1).

¹ Renumbered in 1924 reprint.

Pearling.

(2) The fee for a pearl-cleaner's license shall be four dollars.

(3) Such license shall authorize the licensee to act as a pearl-cleaner.

(4) No person shall, North of the twenty-seventh parallel of South Latitude, act as a pearl-cleaner, except under the authority of a pearl-cleaner's license.

Penalty: One hundred dollars.

(5) "Pearl-cleaner" means a person who cleans, cuts, or alters pearls or improves the shape or appearance of pearls, or receives pearls or has pearls in his possession for the purpose of performing any of the operations aforesaid thereon.

(6) Every licensed pearl-cleaner shall keep a book in the prescribed form, and immediately after the receipt of any pearl shall make an entry in such book of the name and address of the person from whom he received it, and the pearl-cleaner shall also enter in the book a record of the nature of any work done on any pearl, and the name and address of the person to whom he has delivered any pearl, together with any other prescribed particulars.

Penalty: Forty dollars.

(7) Every person delivering or receiving any pearl to or from any pearl-cleaner shall sign in the pearl-cleaner's book a note of such delivery or receipt setting out the date thereof.

Penalty: Forty dollars.

(8) The provisions of sections sixty-seven and seventy-two shall apply *mutatis mutandis* to and in respect of pearl-cleaners and pearl-cleaners' licenses, as if such cleaners and licenses were mentioned therein.

111. (1) Any inspector may, on application and on payment of the prescribed fee, grant a shell-buyer's license.

Shell-buyers' licenses. Added as s. 101c by No. 20 of 1919, s. 15.¹ Amended by No. 32 of 1922, s. 25; No. 113 of 1965, s. 4 (1).

(2) Such license shall authorise the holder to purchase pearl-shell from any holder of a ship, exclusive, general, shell-buyer's or beach-comber's license, but not from any other person.

(3) No person shall at any place North of the twenty-seventh parallel of South Latitude purchase any pearl-shell except under the authority of a shell-buyer's license.

Penalty: One hundred dollars.

(4) Every holder of a shell-buyer's license shall, on demand by a magistrate or an inspector, give an account of all pearl-shell purchased by him during any period mentioned in the demand.

Penalty: Forty dollars.

(5) The receipt or acquisition of any pearl-shell by way of pledge or exchange shall be deemed a purchase for the purposes of this section.

112. Any inspector may put to any licensed pearl-dealer or cleaner such questions relating to his business and transactions under or in connection with his license as he may think fit, and may require such dealer or cleaner or any agent, clerk, or servant of his to produce and exhibit for inspection all documents in his possession, custody, or power relating to or containing any entry relating to such business or transactions, and to allow the same to be examined.

Additional powers of inquiry by inspectors. Added as s. 101d by No. 20 of 1919, s. 15.¹

113. [*Repealed by No. 36 of 1949 S. 4.*]

¹ Renumbered in 1924 reprint.

Penalties for obstructing officers, and similar offences, cf. Q. 55 Vic., No. 29, s. 17. W.A. 50 Vic., No. 7, s. 14. No. 45 of 1912, s. 102. Amended by No. 20 of 1919, s. 16; No. 113 of 1965, s. 4 (1).

114. No person—

- (a) shall resist or obstruct any officer or his assistant in the performance of any duties or the exercise of any powers under this Act;
- (b) being lawfully required shall fail to produce or exhibit any document or allow any document to be examined;
- (c) shall wilfully mislead any officer in any particular likely to affect the discharge of his duty;
- (d) being lawfully asked any question by any officer pursuant to this Act shall fail to answer the same truthfully and completely to the best of his knowledge, information, and belief;
- (e) shall contravene or fail to comply with or be party or privy to any contravention of or non-compliance with any order, requisition, or direction made or given by an inspector under section one hundred and one;
- (f) shall fail to bring his vessel to for boarding on being approached by or hailed or signalled from any vessel in the service of the State and flying the State flag.

Penalty: One hundred dollars.

In case of certain offences, ship, etc., liable to execution though not the property of the offender. No. 45 of 1912, s. 103. Amended by No. 20 of 1919, s. 17. cf. W.A., 50 Vic., No. 7, s. 2; 55 Vic., No. 9, s. 14.

115. (1) On the conviction of any person for using or employing a ship contrary to sections twenty-four or fifty-one or on conviction of any person for causing, permitting, or suffering a ship to enter or remain in any area defined in an exclusive license contrary to an order of the licensee given pursuant to a power of exclusion contained in the license, the ship involved and all things thereon even though it and they be not the property of the offender, shall be liable to the same process of execution for enforcing payment of any penalty and costs as if it and they were the unencumbered property

and goods of the offender, and any such fine and costs shall be a first charge on the proceeds of any sale of such ship and things in priority to all other claims.

(2) If the person convicted is the sole or a part owner of the ship, and has been previously convicted of any offence against this Act, the court may, in lieu of inflicting any other punishment, declare the ship and all things thereon forfeited to Her Majesty, and the same shall thereupon be forfeited accordingly.

Forfeiture
of ship in
certain
cases.

(3) Any justice may by order under his hand authorise the detention by any person of such ship and things pending the proceedings in respect of the offence.

116. The Governor may make regulations not inconsistent with this Act with regard to—

Regulations.
cf. W.A., 39
Vic., No. 13.
ss. 2, 3.
No. 45 of
1912, s. 104.
Amended by
No. 20 of
1919, s. 18;
No. 113 of
1965, s. 4 (1).

- (a) the mode in which, the limits at which, and the circumstances under which pearl fishing may be or shall not be carried on;
- (b) the accommodation to be afforded in ships and boats employed in pearling;
- (c) the provisioning and equipment of such ships and boats, and the number of persons to be carried therein;
- (d) the conduct of pearl fishers on board;
- (e) the number of persons which it shall be lawful to employ under one general license;
- (f) the regulation of diving operations;
- (g) the conditions upon which exclusive licenses shall be granted and held;
- (h) the regulation or prohibition of the carrying of firearms by pearl fishers;
- (i) the limitation of the amount of money which may be lawfully carried or kept on any pearling ship;

- (j) all matters which by this Act are required or permitted to be prescribed or which it may be necessary or convenient to regulate for giving effect to this Act or the regulations, including the imposition of any penalty not exceeding forty dollars for the breach of any regulation.

Forms sufficient if substantially correct. S.A., 1908, No. 970, s. 233. Fourth Schedule. No. 45 of 1912, s. 105.

117. (1) It shall be sufficient in all cases to use such of the forms provided in the Fourth Schedule to this Act, or by regulation as in this section mentioned, as are applicable.

(2) Any form may be varied to suit the circumstances of the case, and no variation in any form used shall invalidate such form provided that the substance and effect thereof are not altered.

(3) By regulations made under this Act any form provided in such schedule may be altered and new forms may be provided in substitution for, or in addition to, or for other purposes than those for which any of the forms provided in such schedule are provided.

Regulations, how made. No. 45 of 1912, s. 106.

118. (1) Any regulations made under this Act shall—

- (i) be published in the *Gazette*;
- (ii) take effect from the date of publication or from a later date to be specified in such regulations;
- (iii) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

Either House may disallow any regulation.

(2) If either House of Parliament passes a resolution at any time within twenty days after such regulations have been laid before such House

disallowing any regulation, such regulation shall thereupon cease to have effect; subject, however, to such and the like savings as apply in the case of the repeal of a statute.

119. A prosecution for a simple offence against this Act may be commenced at any time within twelve months after the offence was committed.

Limitation of prosecution.
Added as s. 107 by No. 20 of 1919, s. 19.¹

120. (1) The minimum penalty for an offence against this Act shall be one-tenth of the maximum, and no minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the court.

Minimum penalty.
No. 45 of 1912, s. 107.
Amended by No. 17 of 1913, s. 2; No. 113 of 1963, s. 4 (1).

(2) When any person is convicted of an offence against this Act and it shall appear that such person has been previously convicted of a similar offence, the maximum penalty shall be double what it would be in the case of a first conviction.

In case of previous conviction penalty doubled.

(3) Any attempt to commit any offence against this Act shall be an offence against this Act punishable as if the offence had been committed.

Attempts.

(4) In any case in which the court has power to inflict a penalty of two hundred dollars or more, it may, if the offender has been previously convicted of an offence against this Act, sentence him, in lieu of all other punishment, to be imprisoned with or without hard labour for not less than two and not more than six months.

Imprisonment in lieu of fine.

(5) When the committal of an offence causes a forfeiture of any goods, or when a court makes a declaration of forfeiture of goods under this Act, a conviction for the offence or any such declaration shall have effect as a condemnation of the goods.

Condemnation of forfeited goods.

¹ Renumbered in 1924 reprint.

(6) Whenever any court has authority under this Act to impose a sentence of imprisonment, then the court may direct that such imprisonment shall be with hard labour, and the person on whom the the sentence is imposed shall serve it with hard labour accordingly.

Exception of offences against Fifth Schedule.

(7) This section, except subsection (3) and subsection (6) thereof, does not apply to or in respect of any offence against any provision in the Fifth Schedule.

Procedure of justices. Added as s. 109 by No. 32 of 1922, s. 27.¹

121. All proceedings before justices under this Act shall be regulated by the provisions of the Justices Act, 1902-1920,² and any decision given in any such proceeding shall be subject to appeal as provided in that Act.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Date of Act.	Title or Short Title of Act.
37 Vict., No. 11	The Pearl Shell Fishery Regulation Act, 1873.
39 Vict., No. 13	The Pearl Shell Fishery Regulation Act, 1875.
47 Vict., No. 10	The Pearl Shell Fishery Regulation Act, 1883.
50 Vict., No. 7	The Pearl Shell Fishery Act, 1886.
51 Vict., No. 18	The Pearl Shell Fishery Regulation Acts Amendment Act, 1889.
53 Vict., No. 9	The Pearl Shell Duty Reduction Act, 1889.
55 Vict., No. 9	The Sharks Bay Pearl Shell Fishery Act, 1892.
61 Vict., No. 19	An Act to extend the provisions of the Sharks Bay Pearl Shell Fishery Act, 1892, to other places.
63 Vict., No. 33	The Pearl Dealer's Licensing Act, 1899.

¹ Renumbered in 1924 reprint.

² Now Justices Act, 1902-1968.

SECOND SCHEDULE.¹

Section 5.

Sharks Bay Pearl-shell Area

The area is bounded by a South-West line from Charles Point on the mainland to Cape Ronsard at the North end of Bernier Island, then by the Western shores of Bernier and Dorre Islands to Cape St. Cricq, then by a straight line to Cape Inscription at the North end of Dirk Hartog Island and by its Western shore to Surf Point, thence by a straight line to Steep Point on the mainland, and from thence by the coast line to the starting place at Charles Point.

THIRD SCHEDULE.

	\$	Section 18. Substituted by No. 32 of 1922, s.28; Amended by No. 13 of 1929, s. 3; No. 14 of 1931, s. 2; No. 20 of 1935, s. 2; No. 113 of 1965, s. 4 (1).
The fee for a Ship License is	20.00	
The fee for a General License	8.00	
The fee for an Exclusive License	2.00	
The fee for a Beach Comber's License	8.00	
The fee for a Diver's License	1.00	
The fee for a Diver's Tender's License	1.00	
The fee for a Pearl Dealer's License (General)	100.00	
The fee for a Pearl Dealer's License (Shark Bay General)	40.00	
The fee for a Pearl Dealer's License (Limited)	10.00	
The fee for a Shell Buyer's License	6.00	
The fee for a Pearl Cleaner's License	10.00	
The fee for a Transfer of any License	1.00	
The fee for a Renewal of an Exclusive License	1.00	

Provided that the fee for—

- (a) a ship license; and
- (b) a pearl dealer's license of any kind

may be fixed from time to time by the Minister at such lesser amount than the amount prescribed by this Schedule for such license, as the Minister may think fit.

¹ Second Schedule amended by *Government Gazettes*; 6/2/1914, p. 145; 14/10/1921, p. 1845; 16/12/1932, p. 1848.

Section 117.
Amended by
No. 113 of
1965, s. 4 (1).

FOURTH SCHEDULE.

PEARLING ACT, 1912-1965.

Form of Ship License.

Whereas J.S., owner (or one of the owners) of the barque "Atalanta," has applied to me for a License to use the said ship in Pearling, and has exhibited to me the certificate of registry of the said ship (or has produced evidence of ownership to my satisfaction), and has paid the sum of _____ dollars for the License: Now, therefore, license is hereby granted for the use of the said ship in pearling by the said J.S., his servants and agents [*add if J.S. is not the sole owner*, either on the sole account of the said J.S. or on account of the said J.S. and any other owner of owners of the said ship] from the date hereof until (and including) the 31st day of December next ensuing.

The characteristic letter and figures of the said ship during the currency of this license are to be _____, which are to be painted on the ship _____, in accordance with the Act above-named.

Dated this _____ day of _____, 19 .

(Signature.)
Pearling Inspector.
Port of _____.

Form of General License.

Know all men by these presents that A.B., of _____, his executors, administrators, and permitted assigns, is and are hereby licensed by himself and his agents and servants to gather and collect pearls and pearl-shell, and to remove the same, within and from those portions of (*here describe the area*) not closed for a specific period and not held under Exclusive License for the term of _____ from the date hereof.

This license is issued under and subject to the Pearling Act, 1912-1965.

Dated the _____ day of _____, 19 .

Inspector of Fisheries.

PEARLING ACT, 1912-1965.

Form of Pearl Diver's License.

A.B. of _____, is hereby licensed to dive for pearls and pearl-shell, subject to the Pearling Act, 1912-1965.

Dated the _____ day of _____, 19 .

(Signature)
Inspector of Fisheries,
Port of _____.

PEARLING ACT, 1912-1965.

Form of Pearl Dealer's License.

A.B. is hereby licensed to deal in pearls during the year ending the _____ day of _____, 19____, at his place [or places] of business situated at _____, or at any other place which is registered as his place of business.

This license is issued under and subject to the Pearling Act, 1912-1965.

Dated the _____ day of _____, 19____. Stipendary Magistrate.

FIFTH SCHEDULE.

1. Any pearl-fisher who by wilful breach of duty or by neglect of duty, or by reason of drunkenness—

Section 94.
Certain offences a misdemeanour. M.S.A. 1894, s. 220. Amended by No. 113 of 1965, s. 4 (1).

(a) does any act tending to the immediate loss, destruction, or serious damage of the ship, or tending immediately to endanger the life or limb of a person belonging to or on board the ship; or

(b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board the ship from immediate danger to life or limb,

shall be guilty of a misdemeanour and liable to imprisonment with or without hard labour for any period not exceeding two years.

2. The acts specified in Column 1 hereunder shall be offences against discipline, and a pearl-fisher committing any one of them shall be liable, on summary conviction, to

Offences against discipline.

a punishment not exceeding the punishment set opposite to the offence in Column 2 hereunder:—

	Column 1. <i>Offences.</i>	Column 2. <i>Punishments.</i>
<i>Ibid.</i> , s. 221.	Desertion from his ship.	Three months' imprisonment or forfeiture of all accrued wages and additional reward.
M.S.A., 1894, 221 (b).	Failing to join or to proceed to sea in his ship without reasonable cause. Absence without leave from duty, such absence not amounting to desertion.	Two months' imprisonment or forfeiture of ten days' wages, with an additional forfeiture of ten days' wages for every twenty-four hours of absence.
<i>Ibid.</i> , s. 225 (a).	Quitting the ship without leave after arrival in port and before she is placed in security.	Forfeiture of one month's wages.
<i>Ibid.</i> , s. 225 (b).	Insubordination or wilful disobedience to any lawful command.	One month's imprisonment or forfeiture of ten days' wages.
<i>Ibid.</i> , s. 225 (c).	Continued wilful disobedience to lawful commands or continued wilful failure in duty.	Three months' imprisonment or forfeiture of the whole of his wages and additional reward.
<i>Ibid.</i> , s. 225 (d).	Assaulting master.	Six months' imprisonment or a penalty of forty dollars.
<i>Ibid.</i> , s. 225 (e).	Conspiring with any other of crew to disobey lawful commands, neglect duty, impede the navigation of the ship or progress of the voyage.	Six months' imprisonment.
<i>Ibid.</i> , s. 225 (f).	Wilfully damaging the ship or stealing or wilfully damaging her cargo, stores, or equipment.	Twelve months' imprisonment or a penalty equal in amount to the loss sustained.

Subject as aforesaid any forfeiture under this provision shall be out of such wages as have accrued or may accrue to the person committing the offence.

Smuggling
by seaman
or apprentice.
Ibid., s. 225
(g).

3. If a pearl-fisher commits any act of smuggling by which loss or damage is occasioned to the owner of the ship, he may be ordered by any court of summary jurisdiction to pay to the owner a sum sufficient to recoup the loss or damage, and that sum may, without prejudice to any other remedy, be deducted from any wages or additional reward due to the pearl-fisher.

Entry in the
log of
offence and
offender's
defence.
Ibid., s. 228.

4. (1) Upon the commission of any offence against discipline, or of any act of misconduct for which the offender's agreement imposes a fine and for which it is intended to enforce the fine, an entry of the offence or act shall be made in the log-book, and the offender, if still in the ship shall be furnished with a copy of the entry or have it read over to him, and he may thereupon make such reply thereto as he thinks fit, which shall also be entered.

(2) In any legal proceeding the Court may, if such entries be not produced or proved, refuse to receive evidence of the offence.

5. Whenever a pearl-fisher is charged before any Court with having—

- (a) failed to join or to proceed to sea in his ship without reasonable cause; or
- (b) deserted or otherwise absented himself therefrom without leave,

Seamen may be sent on board in lieu of being imprisoned.
M.S.A., 1894, s. 224.

the Court, upon proof of the offence, instead of committing the offender to prison may, if the owner or his agent so requires, and if the offender consents, cause him to be conveyed on board for the purpose of serving under his agreement; and may also order any expenses properly incurred by or on behalf of the owner by reason of the offence to be deducted from any wages or additional reward which the offender has then earned, or which by virtue of his then existing engagement he may afterwards earn.

6. Nothing in the preceding sections shall take away or limit any remedy by action or before a court of summary jurisdiction which an owner would otherwise have for any breach of contract in respect of matters constituting an offence under any such section, but no owner shall be compensated more than once in respect of the same damage.

Civil Right unaffected by criminal provisions.
M.S.A. s. 226.

7. Where any wages or reward are or is forfeited under the foregoing provisions, the forfeiture shall be for the benefit of the owner by whom the wages or reward are or is payable.

Application of forfeitures.
M.S.A. s. 232.

8. Any question concerning the forfeiture or deductions from the wages of a pearl-fisher may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Decision in questions of forfeiture and deductions in suits for wages.
M.S.A., s. 233.

9. (1) Whenever a question arises before a court whether the wages of any pearl-fisher are forfeited for desertion, it shall be sufficient for the person insisting on the forfeiture to show that the pearl-fisher was duly engaged for service on the ship and left the ship before the completion of the voyage or engagement.

Facilities for proving desertion so far as concerns forfeiture of wages.
M.S.A. s. 231.

(2) The desertion shall thereupon, so far as relates to any forfeiture of wages, be deemed to be proved unless the pearl-fisher can produce a proper certificate of discharge or can otherwise show to the satisfaction of the Court that he was not guilty of desertion.

10. When the master is a pearl-fisher, the foregoing provisions shall, so far as practicable, apply to him as to other pearl-fishers.

Application of provisions to master.

Documents
to be
handed over
to master's
successor,
Ibid., s. 258.

11. (1) If during the progress of a voyage the master is removed or suspended or for any other reason quits the ship, he shall deliver to his successor the various documents in his custody relating to the navigation of the ship and to the crew thereof.

Penalty: Two hundred dollars.

(2) Such successor shall immediately on assuming command of the ship enter in the official log-book a list of the documents so delivered to him.

Section 108.
Amended by
No. 20 of
1919, s. 21.

SIXTH SCHEDULE.

Rules as to Life-saving Appliances to be carried.

1. Pearling Ships employed as Store Ships or tenders shall carry—

- (a) A boat or boats of wood or metal at least sufficient for all persons on board and in such a position as to be readily got into the water.
- (b) Approved life-belts, so that there may be at least one for each person carried on board the ship; and
- (c) Not less than two approved life-buoys.

2. All other pearling ships shall carry—

- (a) An approved life-belt for each person on board; and
- (b) One approved life-buoy.
- (c) A dinghy which shall have been certified within the last preceding six months to be suitable, by writing under the hand of an inspector.

3. An approved life-belt shall mean a belt which does not require to be inflated before use, and which is capable at least of floating in the water for twenty-four hours with fifteen pounds of iron suspended from it. Life-belts are to be cut out two inches under the armpits and fitted so as to remain securely in their place when put on.

4. An approved life-buoy shall mean either—

- (a) A life-buoy built of solid cork, capable of floating in the water for at least twenty-four hours with thirty-two pounds of iron suspended from it; or
- (b) A strong life-buoy of any other approved pattern or material, provided that it is capable of floating in the water for at least twenty-four hours with thirty-two pounds of iron suspended from it, and provided also that it is not stuffed with rushes, cork shaving, or other shavings, or loose granulated cork, or other loose material, and does not require inflation before use.

All life-buoys shall be fitted with beackets securely seized, and not less than two of them shall be fitted with life-lines fifteen fathoms in length.

5. All life-buoys and life-belts shall be so placed as to be readily accessible to all persons on board, and so that their position may be known to those for whom they are intended.

SEVENTH SCHEDULE.

Section 99.
Added by
No. 20 of
1919, s. 22.
Amended by
No. 113 of
1965, s. 4 (1).

	\$	
For a form of pearling agreement in duplicate	0.50	
For every pearl-fisher engaged before a super-intendent (payable by employer)	0.20	
For every pearl-fisher discharged before a super-intendent (payable by pearl-fisher)	0.20	
For every desertion certified by superintendent	0.20	

EIGHTH SCHEDULE.

Section 34.
Added by
No. 28 of
1924, s. 5.

To wit.

To.....(an officer of Police).

Whereas it has been made to appear to me, A.B., a Stipendary Magistrate assigned to keep the peace in and for the State of Western Australia, that it is necessary that X.Y., a Special Inspector conducting an inquiry under Section 34 of the Pearling Act, 1912-1965, by virtue of an order made by me (or by C.D. S.M.,) on the.....day of19 , should inspect, for the purposes of the said inquiry, certain documents, namely (*here describe documents*) believed to be(*state place where documents are believed to be*), and that such Inspector is unable to obtain such inspection without assistance. This, therefore, is to require you, in the name of Her Majesty, to enter, with such assistants as you think necessary, into (*here specify the place*), and if necessary to use force for making such entry, whether by breaking open doors or otherwise, and there diligently to search for and seize the documents aforesaid, and to produce the same before the said Inspector in order that he may inspect, copy, and take extracts therefrom in such manner as he shall judge necessary for the purposes of the said inquiry.

Given under my hand at.....this..... day of19 .

A.B.,
Stipendary Magistrate.