



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 78 of 1982

An Act to amend the Fisheries Act, 1971-1980.

[Assented to 9 September 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Fisheries Act Amendment Act, 1982". short titles.
- (2) The Fisheries Act, 1971-1980, is in this Act referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Fisheries Act, 1971-1982".

2. This Act shall come into operation on the day on which Part IVA of the *Fisheries Act* 1952 as amended, of the Commonwealth comes into operation. Commencement.

3. Section 3 of the principal Act is amended by inserting after the item: Amendment of s. 3—Arrangement of Act.

PART I—PRELIMINARY

the items:

PART IA—COMMONWEALTH-STATE MANAGEMENT OF FISHERIES

DIVISION I—PRELIMINARY:

DIVISION II—JOINT AUTHORITIES:

DIVISION III—ARRANGEMENTS WITH RESPECT TO THE MANAGEMENT OF PARTICULAR FISHERIES.

4. Section 5 of the principal Act is amended— Amendment of s. 5—Interpretation.
 - (a) by inserting after the definition of "boat" in subsection (1) the following definitions:

"Commonwealth Act" means the *Fisheries Act* 1952 of the Commonwealth as amended by subsequent Acts of the Commonwealth whether enacted before or after the commencement of the Fisheries Act Amendment Act, 1982:

“Commonwealth proclaimed waters” means waters that are, by virtue of a proclamation in force under the Commonwealth Act, proclaimed waters within the meaning of that Act.;

(b) by inserting after the definition of “fishing licence” in subsection (1) the following definition:

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

and

(c) by striking out subsection (2) and substituting the following subsection:

(2) Subject to any limitations expressly prescribed in this Act or in any regulation, proclamation or other instrument having effect pursuant to this Act, this Act shall apply—

(a) in relation to all waters that are within the limits of the State;

(b) except for purposes relating to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Division III of Part IA and except for purposes prescribed by paragraph (d)—in relation to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that are Commonwealth proclaimed waters;

(c) for purposes in relation to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Division III of Part IA—in relation to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth or otherwise;

and

(d) for purposes relating to activities to which this Act applies, being activities that are, within the meaning of the Commonwealth Act, carried on for private purposes otherwise than by the use of a foreign boat—in relation to any waters to which the legislative powers of the State extend with respect to those activities.

Insertion
of new
Part IA and
heading.

5. The following Part and the heading to that Part are inserted after section 6 of the principal Act:

PART IA

COMMONWEALTH-STATE MANAGEMENT OF FISHERIES

DIVISION I—PRELIMINARY

Interpretation.

6a. (1) In this Part, unless the context requires—

“arrangement” means an arrangement made by the State with the Commonwealth under Division III whether or not it is also made with another State or other States:

“authority” means a licence, permit, certificate of registration, authorization certificate, franchise or lease provided for by or under this Act:

“coastal waters” in relation to the State has the same meaning as it has in the Commonwealth Act:

“Commonwealth Minister” means the Minister for the time being administering the Commonwealth Act and any other Minister performing and exercising functions and powers pursuant to section 12C of the Commonwealth Act:

“fishery” means a class of activities by way of taking fish, being a class of such activities that is identified in an arrangement under this Part as a fishery to which the arrangement applies:

“Joint Authority” means—

(a) the South Eastern Fisheries Joint Authority established under section 12D (1) of the Commonwealth Act;

and

(b) any other Joint Authority established under section 12D (6) of that Act of which the Minister is a member:

“Joint Authority fishery” means a fishery in respect of which there is in force an arrangement under Division III under which the fishery is to be under the management of a Joint Authority.

(2) Without limiting the matters by reference to which a fishery may be identified in an arrangement under Division III, those matters include all or any of the following:

- (a) a species of fish;
- (b) a description of fish by reference to sex or any other characteristic;
- (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a kind or class of vessels;
- (f) a class of persons;
- (g) a purpose of activities.

DIVISION II—JOINT AUTHORITIES

6b. (1) The Minister may exercise and perform any power or function conferred on the Minister by Part IVA of the Commonwealth Act, including any power or function of the Minister as a member of a Joint Authority. Powers and functions of Minister.

(2) Where, in the exercise of the power conferred on him by Part IVA of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise and perform the powers and functions conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.

**Judicial
notice.**

6c. All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

**Functions
of Joint
Authority.**

6d. A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division III as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

Delegation.

6e. (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Act other than this power of delegation.

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

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

(a) in the service of;

(b) in the service of an authority of;

or

(c) under the law of,

the Commonwealth, another State or a Territory of the Commonwealth.

(4) A delegate of a Joint Authority is, in the exercise of his delegated powers, subject to the directions of the Joint Authority.

(5) A delegation of a power under this section—

(a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);

(b) does not prevent the exercise of the power by the Joint Authority;

and

(c) continues in force notwithstanding any change in the membership of the Joint Authority.

(6) Where the exercise of a power of the Joint Authority delegated under this section depends upon the opinion, belief or state of mind of the Joint Authority, the delegate may, subject to any directions of the Joint Authority, exercise the power according to his opinion, belief or state of mind.

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

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

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

6f. (1) The provisions of section 12F (1) to (8) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act. Procedure of Joint Authorities.

(2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or his deputy, who took part in or made the decision, is evidence that the decision, as recorded, was duly made.

(3) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of the Joint Authority shall be deemed to have been duly executed by the Joint Authority and, unless the contrary is proved, shall be deemed to be in accordance with a decision of the Joint Authority.

6g. The Minister shall cause a copy of a report of a Joint Authority prepared under section 12G of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after preparation of the report. Report of Joint Authority.

DIVISION III—ARRANGEMENTS WITH RESPECT TO THE MANAGEMENT OF PARTICULAR FISHERIES

6h. (1) The State may, in accordance with section 12J of the Commonwealth Act, make an arrangement referred to in section 12H of that Act for the management of a particular fishery. Arrangement for management of certain fisheries.

(2) An arrangement may be terminated as provided by the Commonwealth Act.

(3) After an arrangement has been made, but before the arrangement takes effect, authorities, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations, proclamations and notices may be made, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect, but such an authority, endorsement, instrument, regulation, proclamation or notice does not have effect before the arrangement takes effect.

(4) Upon the termination of an arrangement, authorities, endorsements and other instruments granted, issued, renewed, made or executed, and regulations, proclamations and notices made, for the purposes of the operation of this Act as affected by the arrangement cease to have effect.

(5) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect, authorities, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations, proclamations and notices may be made, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such an authority, endorsement, instrument, regulation, proclamation or notice does not have effect before the termination of the arrangement takes effect.

Application of this Act to fisheries in accordance with arrangements.

6i. Subject to this section, where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of foreign boats in Commonwealth proclaimed waters or operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters or in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before the arrangement took effect.

Functions of Joint Authority.

6j. Where, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.

Joint Authority to exercise certain powers instead of Minister or Director.

6k. (1) Subject to this section, an authority or endorsement granted, issued, renewed or made under this Act otherwise than by virtue of this section does not authorize the doing of any act or thing in or in relation to a Joint Authority fishery.

(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred before or after the commencement of this Part on the Minister or the Director or the delegate of the Minister or Director by or under this Act (this Part excepted) or the regulations (including powers with respect to the grant, renewal, revocation and suspension of authorities) are exercisable by the Joint Authority to the exclusion of the Minister or the Director or the delegate of the Minister or Director.

(3) An authority granted under this Act by a Joint Authority shall contain such conditions and limitations that it does not apply in relation to a Joint Authority fishery, or Joint Authority fisheries, not managed by that Joint Authority.

(4) A Joint Authority may endorse an authority granted under this Act (including an authority granted by that Joint Authority or another Joint Authority) so as to extend the operation of the authority to matters

to which the powers of the Joint Authority under this Act are applicable and, where such an endorsement is made—

(a) the endorsement ceases to have effect if the authority ceases to have effect;

and

(b) the Joint Authority may suspend or revoke the endorsement as if it were an authority granted by the Joint Authority.

(5) Subject to section 6n (1) (b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, proclamation or notice under this Act would, but for this subsection, apply to the fishery, the regulation, proclamation or notice, as the case may be, ceases so to apply.

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

6l. For the purposes of the prosecution of a person for an offence under this Act in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery, any reference in the provision creating the offence to an authority of a particular kind shall be read as a reference to such an authority, or an endorsement of such an authority, granted, issued, renewed or made by the relevant Joint Authority.

Application of certain provisions relating to offences.

6m. A statement in an arrangement to the effect that specified waters—

Presumption relating to certain statements.

(a) in the case of an arrangement to which the Commonwealth and the State are the only parties—are waters adjacent to the State;

and

(b) in the case of any other arrangement—are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States,

shall, for the purposes of this Act, be conclusively presumed to be correct.

6n. (1) Where a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority—

Regulations.

(a) make regulations for the management of the fishery;

(b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section;

or

(c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.

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

(3) Where a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made pursuant to this section, it shall be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

Redesignation
of s. 6a.

6. Section 6a of the principal Act is redesignated as section 6o.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor