



New South Wales

Fisheries Management Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Fisheries Management Act 1994* (the *principal Act*) as follows:

- (a) to increase penalties for certain fisheries offences,
- (b) to establish higher penalties for certain second or subsequent offences and for certain offences committed in circumstances of aggravation,
- (c) to allow additional monetary penalties (to reflect the market value of fish taken) to be imposed in respect of certain offences,
- (d) to extend regulation making powers in the principal Act relating to bag limits, prohibited size fish and other matters,
- (e) to create a new indictable offence of trafficking in fish,
- (f) to recognise, protect and promote Aboriginal cultural fishing activities and practices,
- (g) to make further provision with respect to share management fisheries,
- (h) to tighten record-keeping requirements for fish sellers and for others who take possession of fish,

- (i) to extend the circumstances in which charter fishing arrangements are required to be licensed,
- (j) to give effect to a uniform national scheme relating to Commonwealth cooperative fishing arrangements,
- (k) to make further provision with respect to the grant of aquaculture permits and leases, and for the recovery of rental payments on aquaculture leases,
- (l) to authorise quarantine orders to be made in respect of pet shops and commercial aquariums,
- (m) to transfer from the regulations to the principal Act the list of diseases and noxious fish and marine vegetation that are the subject of the regulatory arrangements under the principal Act,
- (n) to give the Minister further powers with respect to quarantine areas,
- (o) to make further provision for the protection of areas where salmon and trout spawn,
- (p) to prohibit the importation of live marine vegetation that is not indigenous to New South Wales,
- (q) to require notice to be given to the Minister of certain works that affect waterways,
- (r) to authorise the making of stop work orders to prevent certain activities that may damage fish habitat or obstruct free passage of fish,
- (s) to create a new offence of interfering with fish of a threatened species and to make further provision with respect to the protection of threatened species generally,
- (t) to give further powers to fisheries officers to require information for the purposes of the principal Act,
- (u) to impose a duty on the master of a fishing boat to prevent contraventions of the principal Act,
- (v) to increase the jurisdictional limit of a Local Court under the principal Act,
- (w) to enable restoration orders to be issued in respect of certain contraventions of the principal Act and to expand the types of orders that can be made in respect of repeat offenders,
- (x) to make other miscellaneous amendments relating to the management of fishery resources.

The Bill also makes related amendments to other legislation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

Penalties for offences

Schedule 1 [11] relates to the offences of possessing and selling prohibited size fish. The maximum penalty for a first offence is increased and there is a higher maximum penalty for a second or subsequent offence. Two further offences (with higher penalties) are created for possessing or selling fish in circumstances of aggravation, which is defined as possessing or selling a commercial quantity of a priority species of fish. **Schedule 1 [12] and [16]** increase the maximum penalty for the offences of taking and possessing more fish than the daily bag limit and provide for an increased maximum penalty for a second or subsequent offence. **Schedule 1 [13] and [17]** create further offences (with higher penalties) of taking and possessing more fish than the daily bag limit in circumstances of aggravation, which is defined as taking or possessing a commercial quantity of a priority species of fish. **Schedule 1 [19]** provides that a court that finds a person guilty of an offence related to taking or possessing more than the daily limit of a priority species of fish can impose an additional monetary penalty of up to 10 times the market value of the fish the subject of the offence. **Schedule 1 [15]** makes a consequential amendment.

Schedule 1 [8] gives effect to proposed Schedule 1B, which contains a list of the fish that are priority species for the purposes of the new aggravated offences and sets out the commercial quantity of those fish. The Governor may amend the Schedule by regulation made on the recommendation of the Minister. **Schedule 1 [136]** inserts the proposed Schedule.

Schedule 1 [6] provides for an increased maximum penalty for a second or subsequent offence of taking or being in possession of fish in contravention of a fishing closure. It also increases the maximum penalty for a first offence of being in possession of fish in contravention of a fishing closure.

Schedule 1 [21] increases the maximum penalty for taking and being in possession of protected fish and provides for an increased maximum penalty for a second or subsequent offence.

Schedule 1 [23] provides for an increased maximum penalty for a second or subsequent offence of taking or selling fish that are protected from commercial fishing. This amendment is explained further below.

Schedule 1 [28] and [29] provide for an increased maximum penalty for a second or subsequent offence of unlawful use of fishing gear or possession of illegal fishing gear.

Schedule 1 [35] increases the maximum penalty for possessing fish that were illegally taken and provides an increased maximum penalty for a second or subsequent offence.

Schedule 1 [46] and [57] increase the penalties for contravening a condition of an endorsement on a licence. **Schedule 1 [54]** provides for an increased maximum penalty for a second or subsequent offence of commercial fishing without a licence.

Schedule 1 [4] makes it clear that if a provision of the principal Act provides for an increased maximum penalty for a second or subsequent offence, an offence is to be regarded as a second or subsequent offence only if a conviction was recorded in relation to the other offence and the other offence occurred on a separate occasion.

Regulation-making powers relating to bag limits and other matters

Schedule 1 [14] and [18] enable the regulations to specify a maximum limit of zero for the daily limits for taking and possessing fish, so that any taking of the fish is prohibited.

Schedule 1 [9] and [10] extend the power to make regulations declaring fish to be prohibited size fish, so that the regulations may declare different prohibited size fish for different classes of persons or for different circumstances and may specify the size of fish by reference to the number of individuals in any specified weight.

Schedule 1 [20] relates to the offence of possessing protected fish. The purpose of the amendment is to allow fish to be declared by the regulations to be protected fish absolutely or conditionally. If fish are absolutely protected, it will be an offence to be in possession of the fish in this State, whether or not the fish were taken from the waters of this State. If the fish are not absolutely protected, it will be an offence to be in possession of the fish in this State, but a defence to a prosecution of the offence if the person in possession proves that the fish were taken from waters outside this State.

Schedule 1 [22] allows the regulations to declare fish to be protected absolutely or conditionally from all or a class of commercial fishing. At present, it is only possible to declare a species of fish to be absolutely protected from all commercial fishing. As a consequence of the change, **Schedule 1 [23]** makes it an offence to take or sell fish protected from commercial fishing only if the fish were taken in breach of the declaration. However, similarly to the amendments relating to protected fish described above, the new provision allows the regulations to declare the sale of fish protected from commercial fishing to be absolutely prohibited. If the fish are absolutely protected from all commercial fishing it will be an offence to sell the fish in this State whether or not they were taken from the waters of this State. **Schedule 1 [26]** makes a consequential amendment.

Schedule 1 [24] enables the regulations to declare a specified species of fish or specified waters to be protected, absolutely or conditionally, from all or a class of recreational fishing. This is similar to existing provisions in relation to commercial fishing. It will be an offence to take fish in breach of such a declaration.

Schedule 1 [7] makes a consequential amendment.

Trafficking in fish

Schedule 1 [27] creates a new offence of trafficking in an indictable species of fish with a maximum penalty of 10 years imprisonment. A person traffics in an indictable species of fish if the person dishonestly takes, sells, receives or possesses fish of an indictable species in contravention of another provision of the principal Act or the regulations and the quantity is not less than the indictable quantity. The indictable

species and indictable quantity of fish are specified in Schedule 1C to the principal Act (as inserted by **Schedule 1 [136]**). The Governor may, by regulation made on recommendation of the Minister, amend Schedule 1C. A court that finds a person guilty of a trafficking offence may impose an additional monetary penalty of up to 10 times the market value of the fish the subject of the offence.

Aboriginal cultural fishing

Schedule 1 [1] makes it an object of the principal Act to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect and promote Aboriginal cultural fishing. **Schedule 1 [2]** defines *Aboriginal cultural fishing* as fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs or for educational, ceremonial or other traditional purposes, and which do not have a commercial purpose.

Schedule 1 [37] provides that the Minister may issue a fishing permit to a person for Aboriginal cultural fishing purposes. **Schedule 1 [42]** provides that the Minister may not issue a permit to a person for those purposes if it would be inconsistent with native title rights and interests or an indigenous land use agreement within the meaning of the *Native Title Act 1993* of the Commonwealth.

Schedule 1 [38] provides that a permit may authorise a specified person or class of persons, in addition to the permit holder, to take and possess fish or marine vegetation as authorised by the permit. This will enable permits to be issued in respect of activities of a particular group (rather than a particular person). **Schedule 1 [39]** makes a consequential amendment.

Share management fisheries

Schedule 1 [44] and [45] clarify the provisions relating to the duration of an endorsement on a commercial fishing licence, so that it is no longer necessary for the management plan for a fishery to specify the period for which an endorsement remains in force. Instead, the relevant period will be specified in the endorsement.

Schedule 1 [47] and [48] make it clear that if the maximum shareholding permitted in a share management fishery is decreased, existing shareholders are not required to sell any of their shares that exceed the new maximum limit.

Schedule 1 [49] makes it clear that when a review is conducted of a share management plan for a fishery and a new management plan is made, shares under that management plan are renewed for 10 years from the commencement of the new management plan. If a new management plan is not made after a review, the shares are renewed for 10 years from the expiry of the shares under the existing management plan.

Schedule 1 [50] authorises the Minister to cancel shares that are forfeited under the principal Act. At present, the shares must be sold.

Generally speaking, when forfeited shares are sold the purchase price is paid to the Consolidated Fund. If shares are forfeited because of a failure to pay a community contribution or other amount, the purchase price is paid to the shareholder after

deduction of the amounts owing under the principal Act. **Schedule 1 [51]** makes further provision for the deductions that can be made before the purchase price is paid to the Consolidated Fund, or paid to the shareholder, as the case requires. In a case where the purchase price is to be paid to the Consolidated Fund, the amendment authorises the deduction from the purchase price, and payment to the Commercial Fishing Trust Fund, of any amount payable to that Fund by the shareholder. In a case where the purchase price must be paid to the shareholder after deduction of amounts owing, the amendment authorises the reasonable expenses incurred in selling the forfeited shares (in addition to amounts owing) to be deducted from the purchase price. The amendment also makes it clear that the Minister can recover the reasonable costs incurred in the sale in cases where the purchase price is insufficient to cover those costs and that the Minister is not liable to pay any community contribution or other amount under the principal Act that becomes payable after shares are forfeited.

Schedule 1 [52] clarifies that the Director-General of the Department of Primary Industries (the *Director-General*) is required to register a dealing in shares in the Share Register only if the Director-General has approved the transaction.

Schedule 1 [53] removes a redundant reference to the cancellation of shares.

Record keeping

Schedule 1 [60] replaces the current requirements for the keeping of records of the sale and possession of fish, which only apply to the sale and possession of the quantities of fish prescribed by the regulations. Under the new provisions, any person who sells fish must make and give to the purchaser a record of the sale (irrespective of the quantity of fish) and must also make a record concerning the person's acquisition of the fish. The seller must keep the records for 5 years after the fish are sold and must produce a copy of the record when requested to do so by a fisheries officer.

In addition, a person in possession of fish must produce a prescribed record when requested by a fisheries officer, if the person is a fishing industry participant (that is, the holder of a fishing authority or a person carrying on the business of selling or processing fish) or if the person has more than the commercial quantity of fish prescribed by the regulations.

The amendment also provides for an increased maximum penalty for a second or subsequent offence against the new provisions, and for a higher penalty for corporate offenders.

Charter fishing

Schedule 1 [61] and [62] clarify that a boat is a charter fishing boat for the purposes of Part 4A (Charter fishing management) of the principal Act if it is used for recreational fishing activities on a commercial basis. This includes where persons using the boat pay for the right to fish from the boat or for connected services (such as accommodation), where the boat is being used by members of a club or

organisation that charges membership fees, and other arrangements prescribed by the regulations.

Co-operative fisheries management arrangements

Schedule 1 [5] and [63]–[72] make amendments to reflect the uniform national scheme for the management of co-operative fisheries consequent on the enactment of the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006* of the Commonwealth. The relevant changes to the Commonwealth Act:

- (a) allow a co-operative fisheries arrangement to be varied, and
- (b) allow a co-operative fisheries arrangement to provide for the management of part of a fishery in accordance with a law of the State, and the management of other parts of the fishery in accordance with a law of the Commonwealth or of another State.

Aquaculture permits and leases

Schedule 1 [74] makes it clear that an aquaculture permit is not required for aquaculture undertaken by the Minister under an aquaculture industry development plan or otherwise for the purposes of the administration of the principal Act.

Schedule 1 [75] provides that an aquaculture permit must specify the type of aquaculture that is authorised to be undertaken under the permit, rather than the species of fish or marine vegetation, as is currently the case. **Schedule 1 [76]** provides that the type of aquaculture specified may include the species that can be cultivated or kept under the permit, the things that can be cultivated from fish or marine vegetation kept under the permit and the part of the life cycle of a species during which the species may be cultivated. **Schedule 1 [25], [73] and [77]–[80]** make consequential amendments. **Schedule 1 [81] and [83]** make similar amendments in respect of aquaculture leases.

Schedule 1 [82] removes the public consultation requirements in relation to an application for an aquaculture lease if the area to which the application relates is the subject of an aquaculture industry development plan and the type of aquaculture proposed is a type that is suitable in that area according to the development plan.

Schedule 1 [84] removes the 3-month grace period for overdue rental payments for an aquaculture lease, so that interest may be charged on overdue rental as soon as it becomes overdue, rather than only after it has remained unpaid for 3 months.

Schedule 1 [85] allows the Minister to cancel an aquaculture lease as soon as any rental payment or other amount due under the lease is not paid on time, rather than having to wait until the amount has remained unpaid for 2 years.

Diseases affecting fish and marine vegetation

At present, the Minister may declare an area a quarantine area because of the presence or suspected presence of diseases affecting fish or marine vegetation. **Schedule 1 [89]** provides that the Minister may declare pet shops and commercial

aquariums as quarantine areas, in addition to areas of water, areas in the vicinity of water and areas subject to aquaculture permits. **Schedule 1 [90] and [91]** provide that the Minister may require owners or occupiers of land or premises within a quarantine area, as well as aquaculture permit holders, to take certain action within quarantine areas. **Schedule 1 [92]** allows a fisheries officer to enter any quarantine area (not only areas subject to aquaculture permits) to take the required action, if the owner, occupier or permit holder has not taken the action. **Schedule 1 [93] and [94]** make minor consequential amendments.

Under the amendments made by **Schedule 1 [88]**, declared diseases will be specified in Schedule 6B to the principal Act (as inserted by **Schedule 1 [137]**) rather than in the regulations. The Governor may, by regulation made on the recommendation of the Minister, amend the Schedule. **Schedule 1 [95]** enables the Minister, by order published in the Gazette, to exempt a declared disease from certain provisions of Division 4 (Diseased fish and marine vegetation) of Part 6 of the principal Act. In the case of an emergency, the Minister continues to be able to make urgent declarations, by order published in the Gazette, providing that a disease is a declared disease. **Schedule 1 [87]** makes a consequential amendment.

Schedule 1 [86] re-locates the definition of *disease* currently found in section 182 (2) of the principal Act.

Damaging salmon and trout spawning areas

Schedule 1 [97] increases the maximum penalty for damaging gravel beds in waters in which salmon or trout spawn from 100 penalty units to 1,000 penalty units (currently, \$110,000). **Schedule 1 [98]** provides that a person is conclusively taken to have known that the waters were waters in which salmon or trout spawn if the act or omission constituting the offence occurred in the course of carrying out development or an activity for which development consent or other approval was required but not obtained or the act or omission constituted a failure to comply with any such development consent or approval.

Noxious fish and noxious marine vegetation

Under the amendments made by **Schedule 1 [99]**, noxious fish and marine vegetation will be specified in Schedule 6C to the principal Act (as inserted by **Schedule 1 [137]**), rather than in the regulations. The Governor may, by regulation made on the recommendation of the Minister, amend the Schedule. Schedule 6C may also provide that a specified species of fish or marine vegetation is noxious in specified waters only. **Schedule 1 [100]** enables the Minister, by order published in the Gazette, to declare that certain provisions in the principal Act relating to noxious fish and noxious marine vegetation do not apply in respect of specified noxious fish or marine vegetation. In the case of an emergency, the Minister continues to be able to make urgent declarations, by order published in the Gazette, declaring a specified species of fish or marine vegetation to be noxious. **Schedule 1 [3]** makes a consequential amendment.

Prohibition on importation of live fish and live marine vegetation

Schedule 1 [104] restates the offence of importing live fish and creates a new offence of importing live marine vegetation. It will be an offence to bring into New South Wales any live fish or marine vegetation of a species prescribed by the regulations, except under the authority of a permit issued by the Minister. It will also be an offence to sell, buy or possess fish or marine vegetation knowing that it has been brought into New South Wales in contravention of those provisions. The offences do not apply to indigenous fish or marine vegetation. **Schedule 1 [101] and [102]** make consequential amendments.

Works affecting waterways

Schedule 1 [105] requires a person (other than a public authority) to notify the Minister in writing 28 days before commencing any construction or modification work on a dam, weir or reservoir on a waterway. The requirement does not apply in respect of any works approved by a public authority or by the Minister for Planning under Part 3A of the *Environmental Planning and Assessment Act 1979*.

Stop work orders

Schedule 1 [108] enables the Director-General to make a stop work order in relation to actions that are being carried out without a permit (or in contravention of a permit) under Division 3 or 4 of Part 7, or section 219, of the principal Act. The relevant provisions prohibit dredging or reclamation work, actions that may harm mangroves or other marine vegetation, and actions that may obstruct fish passage, except as authorised by a permit issued by the Minister. A stop work order may be issued if the action being carried out is likely to damage fish habitat or obstruct free passage of fish. Such an order may last for 40 days (and may be extended) and takes effect from the date on which the person carrying out the action is notified or the date on which a copy of the order is affixed in a conspicuous place in the vicinity of the relevant waters (whichever is the sooner). Provision is made for appeals to the Land and Environment Court against a decision to issue an order.

Threatened species conservation

Schedule 1 [116] makes it an offence for a person to interfere with fish of a threatened species. Interfering includes harassing, chasing, or tagging fish and any activity the purpose of which is to attract or repel fish, or any other activity prescribed by the regulations. It is a defence to the offence if the act or omission was carried out in accordance with certain licences and permits under the principal Act or the *Threatened Species Conservation Act 1995*. It is also a defence if the act or omission was reasonably necessary to prevent a risk to human health or to deal with a serious threat to human life or property or done in accordance with a direction given by a fisheries officer.

Schedule 1 [109] extends the power to make regulations that prohibit certain actions on specified critical habitat to enable regulations to be made that prohibit or regulate such actions in specified waters or within a prescribed distance of fish or marine vegetation of a threatened species or their habitat.

Schedule 1 [110] and [112] clarify an existing defence to prosecution for certain offences related to threatened species. The defence applies if the act or omission constituting the offence was a routine fishing activity. The amendment makes it clear that the defence is only available if the person charged satisfies the court that, on becoming aware of taking any threatened species of fish, the person took immediate steps to return the fish to its natural environment with the least possible injury.

Schedule 1 [36] clarifies that the general defence for the accidental taking of fish that applies to any offence under the principal Act or regulations does not apply to offences relating to threatened species, because defences to offences against Part 7A of the principal Act are contained in that Part.

Schedule 1 [113] extends the circumstances in which a court may order a person to carry out restoration work (in addition to or instead of paying a fine) so that the court may make such an order for any person convicted of any offence against Part 7A (Threatened species conservation) of the principal Act if the offence has caused damage to any threatened species, population or ecological community or their habitat. At present, the provision is limited to offences causing damage to critical habitat. If a person does not comply with the requirements of such an order, **Schedule 1 [114]** enables the Minister to cause the actions specified in the order to be carried out, to claim or realise any security provided by the person to meet the costs of carrying out those actions and to recover those costs from the person in a court of competent jurisdiction.

Schedule 1 [115] allows a court that makes a community service order against a person convicted of an offence related to threatened species to recommend that the community service work include restoring damaged habitat or work that otherwise assists in achieving the objects of Part 7A (Threatened species conservation) of the principal Act.

Schedule 1 [111] makes a minor statute law revision amendment.

Power to require information

Schedule 1 [121]–[124] clarify that a fisheries officer who requires a person to produce records or answer questions in relation to commercial fishing may do so either orally or by notice in writing and may require the person to produce the records immediately or at a specified place within a specified period. **Schedule 1 [125]** increases the maximum penalty for not complying with such a requirement from 50 penalty units to 1,000 penalty units in the case of a corporation (currently, \$110,000) or 200 penalty units in any other case (currently, \$22,000).

Similarly, **Schedule 1 [126]** clarifies that a person who is required by a fisheries officer to provide information (including their name and address) must provide that information immediately or within the period specified by the fisheries officer.

Schedule 1 [127] inserts a new provision that enables a fisheries officer to require information from a person or a corporation whom the officer suspects on reasonable grounds to have information that is required for the purposes of Part 7 (Protection of aquatic habitats) or Part 7A (Threatened species conservation) of the principal Act. A person who fails to comply with a requirement under this section is guilty of an offence with a maximum penalty of 1,000 penalty units in the case of a corporation or 200 penalty units in any other case.

Schedule 1 [127] also inserts a new provision that provides that a person must be warned that failure to comply with a requirement to provide information is an offence. A person is not excused from complying on the grounds of self-incrimination. However, information given by a person under such a requirement is inadmissible in proceedings against the person (other than proceedings relating to a failure to comply with the requirement to provide information) if the person objects or is not warned of his or her right to object.

Schedule 1 [118]–[120] make it clear that a fisheries officer has the power to enter a public place at any time, without having to give any notice that would be required before entry to commercial premises.

Duty of master of a boat to prevent contraventions of Act

Schedule 1 [132] imposes a duty on a master of a boat to prevent another person on the boat from committing certain serious fishing offences. If a person on board a boat commits a serious fishing offence (whether or not that person is charged with or convicted of the offence), the master of the boat is guilty of an offence. The maximum penalty is the same as the maximum penalty for the offence that the other person on the boat committed. It is a defence if the person charged proves that the person took reasonable precautions to ensure compliance with the principal Act, was not aware of the other person's conduct and could not have reasonably prevented the commission of the offence.

Proceedings for offences

Schedule 1 [130] increases the maximum monetary penalty a Local Court can impose for an offence under the principal Act or regulations from \$10,000 to 200 penalty units, which is currently \$22,000. Currently, a Local Court may also order the forfeiture of a boat or motor vehicle, which is valued at no more than \$10,000, and is seized in connection with a fisheries offence under the principal Act.

Schedule 1 [128] increases the maximum value of a boat or vehicle that can be forfeited to the jurisdictional limit of the Local Court, which is currently \$60,000.

Schedule 1 [129] and [131] provide that an offence against section 21B (Trafficking in fish) is an indictable offence. The amendment to the *Criminal Procedure Act 1986* in Schedule 2.1 provides that the offence is to be dealt with summarily unless the prosecutor elects otherwise.

Prohibition orders for repeat offenders

Schedule 1 [133] expands the court's power to make a prohibition order in respect of a repeat offender so that, in addition to prohibiting the person from engaging in specified commercial fishing activities or from being on a specified kind of boat in certain waters, the order may prohibit the person from being in possession of specified fishing gear or species of fish or marine vegetation and from being on any specified commercial fishing premises.

Restoration orders

Schedule 1 [134] inserts new provisions relating to the making of restoration orders and other actions that may be taken by the Minister or a court against certain persons whose conduct constitutes a serious fisheries offence and has damaged fishery resources. A *serious fisheries offence* is defined and includes offences relating to fishing closures, prohibited size fish and bag limits, trafficking in fish, illegal fishing gear, and contravening conditions of endorsements on fishing licences. Under proposed section 282I, the Minister may order a person who has contravened the principal Act and caused damage to a fishery resource (whether or not that person has been charged with or found guilty of an offence) to carry out actions that the Minister reasonably considers to be necessary to mitigate or rectify the damage. If the person does not comply with the order, the Minister may cause the actions specified in the order to be carried out and may recover from the person the reasonable costs of complying with the order. A person against whom an order is made may appeal against the making of the order to a Local Court, and the Local Court may determine the appeal by confirming the order, revoking the order or revoking the order and making a new order.

Under proposed section 282J, a court that convicts a person of a serious fisheries offence may, in addition to imposing a fine, order a person to carry out actions the court considers necessary to mitigate or rectify the damage. The court may require a person to provide security for the performance of any obligation imposed under the order. If the person does not comply with the order, the Minister may cause the actions specified in the order to be carried out and may claim or realise any security provided by the person, or recover as a debt from the person, the reasonable costs of complying with the order.

In addition, a court that makes a community service order against a person who has been convicted of a serious fisheries offence may recommend that the community service work include work that restores damage to any fishery resource or otherwise to enhance, maintain or protect fishery resources.

Other miscellaneous amendments

Schedule 1 [33] and [34] make it clear that a recreational fisher must have an official receipt in his or her immediate possession when taking fish, that is, the person must be able to immediately produce the receipt if required.

Schedule 1 [32] provides that the Director-General is to make appropriate arrangements to ensure that a person who pays a recreational fishing fee is issued with an official receipt. **Schedule 1 [30]** defines *official receipt* as the hard copy receipt (or a copy of that receipt) if the fee was paid in person, the receipt number if the fee was paid over the telephone or by electronic means, or any other evidence of payment prescribed by the regulations.

Schedule 1 [40] clarifies that an application for a permit is to be in a form approved by the Minister.

Schedule 1 [117] extends the circumstances in which a person is presumed to be engaged in fishing activities for commercial purposes to include if the person is in possession of fishing gear that cannot be lawfully used by a commercial fisher or a recreational fisher and the fishing gear is capable of being used to take more fish than a recreational fisher is entitled to take.

Schedule 1 [58] provides that money paid into various Trust Funds (such as the Commercial Fishing Trust Fund and the Recreational Fishing (Freshwater) and (Saltwater) Trust Funds), which comes mainly from fees and charges paid under the principal Act, can be used for taking measures to maintain and protect the fisheries, in addition to measures to enhance the fisheries, as is currently the case.

Schedule 1 [31] makes a consequential amendment to extend the purposes of fishing fees to enhancing, maintaining and protecting recreational fishing.

Schedule 1 [135] gives the Minister a general power to waive or refund any fees, charges, rental payments or other contributions payable under the principal Act or the regulations, if the Minister considers it is appropriate to do so.

Schedule 1 [103] and [106] remove an ambiguity in the definition of *waterway*. The amendment makes it clear that the offence of releasing live fish into waters without a permit extends to any flowing stream of water, whether natural or artificially regulated (such as by weirs, dams or pumping). Similarly, the Minister's power to require a person carrying out construction work on waterways to provide a fishway or fish by-pass applies to any flowing stream of water, whether natural or artificially regulated.

Schedule 1 [96] requires an appeal to the Land and Environment Court under the principal Act to be made within 30 days of receiving notice of the decision to which the appeal relates. The amendment also provides that an appeal does not operate to automatically stay a decision appealed against.

Schedule 1 [43] enables regulations to be made in relation to the fees payable in respect of an application for a permit under the principal Act (in addition to, or instead of, a fee for the issue of a permit). **Schedule 1 [41] and [107]** make consequential amendments.

Schedule 1 [55] and [56] provide that a declaration that a fishery is a restricted fishery is no longer required to specify the duration of the declaration, so that a fishery remains a restricted fishery until the declaration is revoked by the regulations or until the expiry of any specified period.

Schedule 1 [59] removes an outdated reference to the *Fisheries Act 1935*.

Schedule 1 [2] inserts a definition of *share management plan* in the principal Act, which is defined as a management plan for a share management fishery.

Savings and transitional provisions

Schedule 1 [138] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [139]–[144] insert savings and transitional provisions consequent on the amendments.

Schedule 2 Amendment of other Acts

Schedule 2.1 Criminal Procedure Act 1986 No 209

Schedule 2.1 provides that the new indictable offence of trafficking in certain species of fish (as inserted by Schedule 1 [27]) is to be dealt with summarily unless the prosecutor elects for the offence to be dealt with on indictment.

Schedule 2.2 Land and Environment Court Act 1979 No 204

Schedule 2.2 ensures that appeals in relation to the stop work orders that amendments in Schedule 1 allow the Director-General to make can be heard by the Land and Environment Court.

Schedule 2.3 Local Court Act 2007 No 93

Schedule 2.3 enables the Local Court, in its special jurisdiction, to hear proceedings on an appeal against a restoration order made by the Minister under the provisions to be inserted in the principal Act by Schedule 1.

Schedule 2.4 Local Courts Act 1982 No 164

Schedule 2.4 enables the Local Court, in its jurisdiction under Part 6 of the *Local Courts Act 1982*, to hear proceedings on an appeal against a restoration order made by the Minister under the provisions to be inserted in the principal Act by Schedule 1.

Schedule 2.5 Marine Parks Act 1997 No 64

Schedule 2.5 [1] makes it clear that, in applying certain enforcement provisions of the *Fisheries Management Act 1994* (Divisions 1–4 of Part 9 of that Act) to the *Marine Parks Act 1997*, a reference to a forfeiture offence is a reference to an offence declared by the regulations under the *Marine Parks Act 1997* to be a forfeiture offence. This allows the seizure powers conferred by the enforcement provisions of the *Fisheries Management Act 1994* to be applied to offences under the *Marine Parks Act 1997*.

Fisheries Management Amendment Bill 2009

Explanatory note

Schedule 2.5 [2] increases the maximum monetary penalty that the Local Court may impose for an offence against the *Marine Parks Act 1997* or the regulations made under that Act from \$20,000 to \$22,000. **Schedule 2.5 [4]** provides that the increased penalty applies only to offences committed after the commencement of the amendment.

Schedule 2.5 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

First print



New South Wales

Fisheries Management Amendment Bill 2009

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New South Wales

Fisheries Management Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *Fisheries Management Act 1994* to make further provision for the management of fishery resources; and to make related amendments to other Acts.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fisheries Management Amendment Act 2009</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Fisheries Management Act 1994 No 38	1
		2
[1]	Section 3 Objects of Act	3
	Insert at the end of section 3 (2) (g):	4
	, and	5
	(h) to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.	6 7 8 9
[2]	Section 4 Definitions	10
	Insert in alphabetical order in section 4 (1):	11
	<i>Aboriginal cultural fishing</i> means fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs, or for educational, ceremonial or other traditional purposes, and which do not have a commercial purpose.	12 13 14 15 16
	<i>share management plan</i> means a management plan for a share management fishery.	17 18
[3]	Section 4 (1)	19
	Omit the definitions of <i>noxious fish</i> and <i>noxious marine vegetation</i> .	20
	Insert instead:	21
	<i>noxious fish</i> —see section 209.	22
	<i>noxious marine vegetation</i> —see section 209.	23
[4]	Section 4 (3)	24
	Insert after section 4 (2) (before the note):	25
	(3) For the purposes of any provision of this Act that provides for an increased maximum penalty for a second or subsequent offence, an offence is to be regarded as a second or subsequent offence in relation to another offence only if:	26 27 28 29
	(a) a conviction was recorded in relation to the other offence, and	30 31
	(b) the other offence occurred on a separate occasion.	32
[5]	Section 7 Waters to which Act applies	33
	Insert “, or a part of a fishery,” after “a fishery” wherever occurring in section 7 (1) (b) and (c).	34 35

[6] Section 14 Offences relating to closures	1
Omit the maximum penalties from section 14 (1) and (2). Insert instead:	2
Maximum penalty:	3
(a) in the case of an individual:	4
(i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or	5
(ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	7
(b) in the case of a corporation:	9
(i) 1,000 penalty units for a first offence, or	10
(ii) 2,000 penalty units for a second or subsequent offence.	11
	12
[7] Part 2, Division 2, heading	13
Omit the heading. Insert instead:	14
Division 2 Offences relating to size, quantity and particular species of fish	15
	16
[8] Section 14A	17
Insert before section 15:	18
14A Definitions	19
(1) In this Division:	20
<i>commercial quantity</i> of a priority species of fish means:	21
(a) in relation to an offence against section 16—the quantity specified as a commercial quantity of fish for the species concerned in Column 3 of Part 1 of Schedule 1B, or	22
(b) in relation to an offence against section 17 or 18—the quantity specified as a commercial quantity of fish for the species concerned in Column 3 of Part 2 of Schedule 1B.	25
<i>priority species</i> of fish means:	26
(a) in relation to an offence against section 16—a species of fish specified in Column 1 of Part 1 of Schedule 1B, or	27
(b) in relation to an offence against section 17 or 18—a species of fish specified in Column 1 of Part 2 of Schedule 1B.	28
	29
	30
	31
	32
	33

(2)	If the commercial quantity of a priority species of fish is specified by reference to the total weight of the fish concerned, the total weight of the fish is to be determined in accordance with the regulations.	1 2 3 4
(3)	The common name of a species of fish specified in Column 2 of Schedule 1B is for information purposes only and does not limit the description of the species of fish in Column 1.	5 6 7
(4)	The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 1B to insert, alter or omit any matter in that Schedule.	8 9 10
[9]	Section 15 Declaration of prohibited size fish	11
	Insert after section 15 (1):	12
(1A)	The regulations may declare different prohibited size fish for different classes of persons or for different circumstances.	13 14
[10]	Section 15 (3)	15
	Omit the subsection. Insert instead:	16
(3)	The regulations may specify the size of fish by reference to measurement or weight (or both), or by reference to the number of individuals in any specified weight.	17 18 19
[11]	Section 16	20
	Omit the section. Insert instead:	21
	16 Prohibited size fish	22
(1)	A person who has prohibited size fish in the person's possession is guilty of an offence.	23 24
	Maximum penalty:	25
(a)	in the case of an individual:	26
(i)	200 penalty units or imprisonment for 6 months (or both) for a first offence, or	27 28
(ii)	400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	29 30
(b)	in the case of a corporation:	31
(i)	1,000 penalty units for a first offence, or	32
(ii)	2,000 penalty units for a second or subsequent offence.	33 34

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- (2) A person who has prohibited size fish in the person's possession, in circumstances of aggravation, is guilty of an offence. 1
Maximum penalty: 2
3
(a) in the case of an individual: 4
(i) 400 penalty units or imprisonment for 12 months (or 5
both) for a first offence, or 6
(ii) 800 penalty units or imprisonment for 18 months (or 7
both) for a second or subsequent offence, or 8
(b) in the case of a corporation: 9
(i) 2,000 penalty units for a first offence, or 10
(ii) 4,000 penalty units for a second or subsequent 11
offence. 12
- (3) A person who sells prohibited size fish is guilty of an offence. 13
Maximum penalty: 14
(a) in the case of an individual: 15
(i) 200 penalty units or imprisonment for 6 months (or 16
both) for a first offence, or 17
(ii) 400 penalty units or imprisonment for 12 months (or 18
both) for a second or subsequent offence, or 19
(b) in the case of a corporation: 20
(i) 1,000 penalty units for a first offence, or 21
(ii) 2,000 penalty units for a second or subsequent 22
offence. 23
- (4) A person who sells prohibited size fish, in circumstances of 24
aggravation, is guilty of an offence. 25
Maximum penalty: 26
(a) in the case of an individual: 27
(i) 400 penalty units or imprisonment for 12 months (or 28
both) for a first offence, or 29
(ii) 800 penalty units or imprisonment for 18 months (or 30
both) for a second or subsequent offence, or 31
(b) in the case of a corporation: 32
(i) 2,000 penalty units for a first offence, or 33
(ii) 4,000 penalty units for a second or subsequent 34
offence. 35

- (5) For the purposes of subsections (2) and (4), a person has possession of prohibited size fish, or sells prohibited size fish, in *circumstances of aggravation* if:
 - (a) the prohibited size fish in possession or sold by the person are a priority species of fish, and
 - (b) the quantity of prohibited size fish in possession or sold by the person is a commercial quantity of that species of fish.

[12] Section 17 Bag limits—taking of fish 8

Omit the maximum penalty from section 17 (2). Insert instead: 9

Maximum penalty: 10

- (a) in the case of an individual: 11
 - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 12
 - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or 14
- (b) in the case of a corporation: 16
 - (i) 1,000 penalty units for a first offence, or 17
 - (ii) 2,000 penalty units for a second or subsequent offence. 18

[13] Section 17 (2A) and (2B) 20

Insert after section 17 (2): 21

- (2A) A person who takes on any one day more fish than the daily limit of those fish, in circumstances of aggravation, is guilty of an offence. 22

Maximum penalty: 25

- (a) in the case of an individual: 26
 - (i) 400 penalty units or imprisonment for 12 months (or both) for a first offence, or 27
 - (ii) 800 penalty units or imprisonment for 18 months (or both) for a second or subsequent offence, or 29
- (b) in the case of a corporation: 31
 - (i) 2,000 penalty units for a first offence, or 32
 - (ii) 4,000 penalty units for a second or subsequent offence. 33

(2B)	For the purposes of subsection (2A), a person takes fish in <i>circumstances of aggravation</i> if:	1
(a)	the fish taken are a priority species of fish, and	2
(b)	the quantity of fish taken is a commercial quantity of that species of fish.	3
[14]	Section 17 (3A)	4
	Insert after section 17 (3):	5
(3A)	The regulations may specify a daily limit of zero for fish of a specified species or of a specified class. In that case, a reference in this section to taking more fish than the daily limit of those fish is to be read as a reference to taking any of those fish.	6
[15]	Section 18 Bag limits—possession of fish	7
	Omit “in any such circumstances” from section 18 (2).	8
[16]	Section 18 (2)	9
	Omit the maximum penalty. Insert instead:	10
	Maximum penalty:	11
(a)	in the case of an individual:	12
(i)	200 penalty units or imprisonment for 6 months (or both) for a first offence, or	13
(ii)	400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	14
(b)	in the case of a corporation:	15
(i)	1,000 penalty units for a first offence, or	16
(ii)	2,000 penalty units for a second or subsequent offence.	17
[17]	Section 18 (2A) and (2B)	18
	Insert after section 18 (2):	19
(2A)	A person who has in the person’s possession, in circumstances of aggravation, more than the possession limit of any fish is guilty of an offence. This subsection applies irrespective of the period over which the fish were taken.	20
	Maximum penalty:	21
(a)	in the case of an individual:	22
(i)	400 penalty units or imprisonment for 12 months (or both) for a first offence, or	23

(ii)	800 penalty units or imprisonment for 18 months (or both) for a second or subsequent offence, or	1 2
(b)	in the case of a corporation:	3
(i)	2,000 penalty units for a first offence, or	4
(ii)	4,000 penalty units for a second or subsequent offence.	5 6
(2B)	For the purposes of subsection (2A), a person has possession of fish in <i>circumstances of aggravation</i> if:	7 8
(a)	the fish in the person's possession are a priority species of fish, and	9 10
(b)	the quantity of fish in the person's possession is a commercial quantity of that species of fish.	11 12
[18]	Section 18 (3A)	13
	Insert after section 18 (3):	14
(3A)	The regulations may specify a possession limit of zero for fish of a specified species or of a specified class. In that case, a reference in this section to being in possession of more than the possession limit of those fish is to be read as a reference to being in possession of any of those fish.	15 16 17 18 19
[19]	Section 18A	20
	Insert after section 18:	21
18A	Additional monetary penalty for bag limit offences involving priority species	22 23
(1)	A court that finds a person guilty of an offence against section 17 or 18 in respect of any species of fish that is a priority species of fish in relation to the offence concerned may impose an additional penalty for the offence of up to 10 times the market value of the fish the subject of the offence.	24 25 26 27 28
(2)	The <i>market value</i> of the fish the subject of the offence is the amount determined by the court as the price at which the fish might reasonably have been expected to be sold by the person who committed the offence at the time the offence was committed.	29 30 31 32 33
(3)	In determining the market value of the fish the subject of the offence, the court may have regard to the following:	34 35
(a)	the price for which fish of that species were being sold at the time of the offence (whether or not to purchasers within this State and whether or not legally),	36 37 38

(b)	the price for which the fish were sold, or for which fish of that species have previously been sold, by the person who committed the offence,	1 2 3
(c)	any other matters it considers appropriate.	4
(4)	The court may determine the market value of the fish the subject of the offence by reference to the weight of the fish the subject of the offence, the number of fish the subject of the offence or by any other method it considers appropriate.	5 6 7 8
(5)	The penalty provided for by this section is in addition to the maximum penalty provided for by this Act in respect of the particular offence concerned.	9 10 11
[20]	Section 19 Protected fish	12
	Omit section 19 (4). Insert instead:	13
(4)	The regulations may declare the possession of any protected fish to be prohibited absolutely.	14 15
(5)	If the possession of protected fish is prohibited absolutely, subsection (3) applies whether or not the fish are taken from waters to which this Act applies.	16 17 18
[21]	Section 19, maximum penalty	19
	Omit the maximum penalty. Insert instead:	20
	Maximum penalty:	21
(a)	in the case of an individual:	22
(i)	200 penalty units or imprisonment for 6 months (or both) for a first offence, or	23 24
(ii)	400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	25 26
(b)	in the case of a corporation:	27
(i)	1,000 penalty units for a first offence, or	28
(ii)	2,000 penalty units for a second or subsequent offence.	29 30
[22]	Section 20 Fish and waters protected from commercial fishing	31
	Omit section 20 (1). Insert instead:	32
(1)	The regulations may declare that fish of a specified species are protected, absolutely or conditionally, from all or a class of commercial fishing.	33 34 35

[23] Section 20 (3)–(8)	1
Omit section 20 (3), (4) and (5). Insert instead:	2
(3) A person who:	3
(a) takes fish of a species declared under subsection (1) in breach of the declaration, or	4
(b) takes fish from waters declared under subsection (2) in breach of the declaration, or	6
(c) sells fish taken in breach of a declaration under subsection (1) or (2),	8
is guilty of an offence.	10
Maximum penalty:	11
(a) in the case of an individual:	12
(i) 1,000 penalty units or imprisonment for 6 months (or both) for a first offence, or	13
(ii) 2,000 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	15
(b) in the case of a corporation:	17
(i) 2,000 penalty units for a first offence, or	18
(ii) 4,000 penalty units for a second or subsequent offence.	19
(4) The regulations may declare the sale of any species of fish that is protected from commercial fishing under subsection (1) to be prohibited absolutely.	21
(5) A person who sells fish of a species declared under subsection (4) is guilty of an offence.	24
Maximum penalty:	26
(a) in the case of an individual:	27
(i) 1,000 penalty units or imprisonment for 6 months (or both) for a first offence, or	28
(ii) 2,000 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	30
(b) in the case of a corporation:	32
(i) 2,000 penalty units for a first offence, or	33
(ii) 4,000 penalty units for a second or subsequent offence.	34
(6) Subsection (5) applies whether or not the fish were taken from waters to which this Act applies.	35

(7)	A person cannot be found guilty of both an offence against subsection (1) (c) and an offence against subsection (5) in respect of the same sale.	1 2 3
(8)	Nothing in this section limits the power of the Minister to make a fishing closure in relation to commercial fishing.	4 5
[24]	Section 20A	6
	Insert after section 20:	7
20A	Fish and waters protected from recreational fishing	8
(1)	The regulations may declare that fish of a specified species are protected, absolutely or conditionally, from all or a class of recreational fishing.	9 10 11
(2)	The regulations may declare specified waters to be waters in which all or a class of recreational fishing is prohibited absolutely or conditionally.	12 13 14
(3)	A person who:	15
(a)	takes fish of a species declared under subsection (1) in breach of the declaration, or	16 17
(b)	takes fish from waters declared under subsection (2) in breach of the declaration,	18 19
	is guilty of an offence.	20
	Maximum penalty:	21
(a)	in the case of an individual:	22
(i)	200 penalty units or imprisonment for 6 months (or both) for a first offence, or	23 24
(ii)	400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	25 26
(b)	in the case of a corporation:	27
(i)	1,000 penalty units for a first offence, or	28
(ii)	2,000 penalty units for a second or subsequent offence.	29 30
(4)	Nothing in this section limits the power of the Minister to make a fishing closure in relation to recreational fishing.	31 32
[25]	Section 21 Defences	33
	Insert “or lawfully cultivated in” after “taken from” in section 21 (1) (a).	34

[26] Section 21 (2)	1
Omit the subsection. Insert instead:	2
(2) Subsection (1) (a) does not apply to the following offences:	3
(a) an offence under section 19 (3), if the possession of the protected fish is prohibited absolutely by the regulations,	4
(b) an offence under section 20 (5).	5
[27] Part 2, Division 2A	6
Insert after Division 2:	7
Division 2A Trafficking in fish	8
21A Definitions	9
(1) In this Division:	10
<i>indictable quantity</i> of a species of fish means the quantity specified as an indictable quantity of fish for the species concerned in Column 3 of Schedule 1C.	11
<i>indictable species</i> of fish means a species of fish specified in Column 1 of Schedule 1C.	12
(2) If an indictable quantity of a species of fish is specified by reference to the total weight of the fish concerned, the total weight of the fish is to be determined in accordance with the regulations.	13
(3) The common name of a species of fish specified in Column 2 of Schedule 1C is for information purposes only and does not limit the description of the species of fish in Column 1.	14
(4) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 1C to insert, alter or omit any matter in that Schedule.	15
21B Trafficking in fish	16
(1) A person must not traffic in an indictable species of fish.	17
Maximum penalty: Imprisonment for 10 years.	18
(2) For the purposes of this Division, a person <i>traffics</i> in an indictable species of fish if:	19
(a) the person dishonestly takes, sells, receives or possesses fish of an indictable species, and	20

(b)	the taking, selling, receiving or possession of the fish by the person contravenes another provision of this Act or of the regulations, and	1 2 3
(c)	the quantity of fish of an indictable species taken, sold, received or possessed is not less than an indictable quantity of the species concerned.	4 5 6
(3)	Any defence that is applicable to proceedings for an offence in respect of a contravention of another provision of this Act or of the regulations also applies to proceedings for an offence against this section in respect of the same contravention.	7 8 9 10
(4)	A person may be found guilty of an offence against this section in relation to a contravention of another provision of this Act whether or not the person has been found guilty of an offence against another provision of this Act in relation to that contravention.	11 12 13 14 15
21C	Additional monetary penalty may be imposed	16
(1)	A court that finds a person guilty of an offence against section 21B may impose an additional penalty for the offence of up to 10 times the market value of the fish the subject of the offence.	17 18 19 20
(2)	The <i>market value</i> of the fish the subject of the offence is the amount determined by the court as the price at which the fish might reasonably have been expected to be sold by the person who committed the offence at the time the offence was committed.	21 22 23 24 25
(3)	In determining the market value of the fish the subject of the offence, the court may have regard to the following:	26 27
(a)	the price for which fish of that species were being sold at the time of the offence (whether or not to purchasers within this State and whether or not legally),	28 29 30
(b)	the price for which the fish were sold, or for which fish of that species have previously been sold, by the person who committed the offence,	31 32 33
(c)	any other matters it considers appropriate.	34
(4)	The court may determine the market value of the fish the subject of the offence by reference to the weight of the fish the subject of the offence, the number of fish the subject of the offence or by any other method it considers appropriate.	35 36 37 38

(5)	The penalty provided for by this section is in addition to the maximum penalty provided for by this Act in respect of the offence concerned.	1 2 3
[28]	Section 24 Lawful use of nets or traps	4
	Omit the maximum penalty from section 24 (1). Insert instead:	5
	Maximum penalty:	6
(a)	in the case of an individual:	7
(i)	200 penalty units or imprisonment for 6 months (or both) for a first offence, or	8 9
(ii)	400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	10 11
(b)	in the case of a corporation:	12
(i)	1,000 penalty units for a first offence, or	13
(ii)	2,000 penalty units for a second or subsequent offence.	14 15
[29]	Section 25 Possession of illegal fishing gear	16
	Omit the maximum penalty from section 25 (1). Insert instead:	17
	Maximum penalty:	18
(a)	in the case of an individual:	19
(i)	200 penalty units or imprisonment for 6 months (or both) for a first offence, or	20 21
(ii)	400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	22 23
(b)	in the case of a corporation:	24
(i)	1,000 penalty units for a first offence, or	25
(ii)	2,000 penalty units for a second or subsequent offence.	26 27
[30]	Section 34A Definitions	28
	Omit the definition of <i>official receipt</i> . Insert instead:	29
	<i>official receipt</i> means a receipt issued under this Division for payment of a recreational fishing fee, being:	30 31
(a)	if the fishing fee was paid in person—the hard copy receipt issued as evidence of payment (or a copy of that receipt), or	32 33 34

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	(b) if the fishing fee was paid over the telephone or by electronic means—the receipt number issued as evidence of payment, or	1 2 3
	(c) any other evidence of payment of a fishing fee prescribed by the regulations.	4 5
[31]	Section 34AA Purpose of fishing fees	6
	Insert “, maintaining or protecting” after “enhancing” in section 34AA (a).	7
[32]	Section 34G Issue of receipt on payment of fishing fee	8
	Insert after section 34G (3):	9
	(3A) The Director-General is to make appropriate arrangements to ensure that a person who pays a fishing fee is issued with an official receipt for the payment.	10 11 12
[33]	Section 34J Offences	13
	Insert “immediate” after “his or her” in section 34J (2).	14
[34]	Section 34J (4)	15
	Omit the subsection. Insert instead:	16
	(4) For the purposes of this section, a person has an official receipt in his or her <i>immediate possession</i> only if the person is able to immediately produce the official receipt if required.	17 18 19
[35]	Section 35 Possessing fish illegally taken	20
	Omit the maximum penalty from section 35 (1). Insert instead:	21
	Maximum penalty:	22
	(a) in the case of an individual:	23
	(i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or	24 25
	(ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or	26 27
	(b) in the case of a corporation:	28
	(i) 1,000 penalty units for a first offence, or	29
	(ii) 2,000 penalty units for a second or subsequent offence.	30 31

[36] Section 36 Defence for accidental etc taking of fish	1
Insert after section 36 (2):	2
(3) The defence provided under subsection (1) is not available in proceedings for an offence under Part 7A.	3 4
Note. See Division 4 of Part 7A for defences to offences under that Part.	5
[37] Section 37 Defence—special permits for research or other authorised purposes	6 7
Insert after section 37 (1) (c):	8
(c1) Aboriginal cultural fishing purposes,	9
[38] Section 37 (2A)	10
Insert after section 37 (2):	11
(2A) A permit may authorise a specified person or a specified class of persons, in addition to the permit holder, to take and possess fish or marine vegetation as authorised by the permit.	12 13 14
[39] Section 37 (3)	15
Omit “that the person was the holder of a permit under this section that authorised the act or omission constituting the offence”.	16 17
Insert instead “that the act or omission of the person constituting the offence was authorised by a permit under this section”.	18 19
[40] Section 37 (3A)	20
Insert after section 37 (3):	21
(3A) An application for a permit under this section is to be in a form approved by the Minister.	22 23
[41] Section 37 (6)	24
Omit “In particular, the regulations may prescribe the fee payable for the issue of a permit.”.	25 26
[42] Section 37 (8)	27
Insert after section 37 (7):	28
(8) The Minister is not to issue a permit to a person for Aboriginal cultural fishing purposes if to authorise the fishing activities and practices concerned would be inconsistent with native title rights and interests under an approved determination of native title (within the meaning of the <i>Native Title Act 1993</i> of the	29 30 31 32 33

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	Commonwealth) or with the terms of an indigenous land use agreement (within the meaning of that Act).	1 2
[43]	Section 40 Regulations relating to general management of fisheries	3
	Insert after section 40 (2) (l):	4
	(m) the fees payable in respect of an application for, or the issue of, a permit under this Act.	5 6
[44]	Section 68 Endorsements on licences	7
	Omit section 68 (1) and (2). Insert instead:	8
	(1) The Minister may endorse a commercial fishing licence for the taking of fish in a share management fishery.	9 10
[45]	Section 68 (6)	11
	Omit the subsection. Insert instead:	12
	(6) An endorsement:	13
	(a) remains in force for the period specified in the endorsement, and	14 15
	(b) may be renewed by the grant of an endorsement for a further period.	16 17
[46]	Section 68 (6C)	18
	Omit the maximum penalty. Insert instead:	19
	Maximum penalty:	20
	(a) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or	21 22
	(b) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence.	23 24
[47]	Section 72 Maximum shareholding permitted	25
	Omit “changed” from section 72 (4). Insert instead “decreased”.	26
[48]	Section 72 (4)	27
	Omit “change”. Insert instead “decrease”.	28

[49] Section 73 Duration of shareholding—category 1 share management fishery	1
	2
Omit section 73 (2) and (3). Insert instead:	3
(2) If during that 10-year period (or any subsequent period for which the shares are renewed) a fishery review is conducted and a new management plan is made under this Part, the shares are taken to be renewed (from the date the new plan commences) for a further period of 10 years and the balance of the current period is terminated.	4 5 6 7 8 9
(3) If a new management plan is not made by the end of that 10-year period (or any subsequent period for which the shares are renewed), the shares are taken to be renewed, at the end of their current period, for a further period of 10 years.	10 11 12 13
[50] Section 75 Forfeiture of shares for certain contraventions of Act	14
Omit section 75 (5). Insert instead:	15
(5) The Minister may cancel or sell forfeited shares to which this section applies.	16 17
(5A) Any forfeited shares sold by the Minister are to be sold by public tender.	18 19
[51] Section 75 (7)–(11)	20
Omit section 75 (7) and (8). Insert instead:	21
(7) If any amount is due under this Part in respect of the forfeited shares that would, on payment, be paid into the Commercial Fishing Trust Fund, that amount is to be deducted from the purchase price and paid to the credit of the Commercial Fishing Trust Fund, and the balance after payment is to be paid to the credit of the Consolidated Fund.	22 23 24 25 26 27
(8) If shares are forfeited for a failure by the shareholder to pay a community contribution or other amount due under this Part, the following provisions apply:	28 29 30
(a) any community contribution due under this Part is to be deducted from the purchase price and paid to the credit of the Consolidated Fund,	31 32 33
(b) any other amount due under this Part that would, on payment, be paid into the Commercial Fishing Trust Fund, is to be deducted from the purchase price and paid to the credit of the Commercial Fishing Trust Fund,	34 35 36 37

(c)	any reasonable costs incurred by or on behalf of the Minister in connection with the sale of the shares are to be deducted from the purchase price and paid to the credit of the Consolidated Fund,	1 2 3 4
(d)	the balance (if any) remaining after payment of the amounts referred to in paragraphs (a)–(c) is to be paid to the shareholder.	5 6 7
(9)	The regulations may authorise or require the payment of any part of the purchase price to a person (other than the shareholder) who had an interest in the shares. Any such payment may be made only after payment of the amounts referred to in subsection (8) (a)–(c).	8 9 10 11 12
(10)	The Minister may recover from a person, as a debt in any court of competent jurisdiction, any reasonable costs incurred by or on behalf of the Minister in selling shares forfeited by the person, being costs not otherwise recovered as provided by this section.	13 14 15 16
(11)	The Minister is not liable to pay any community contribution or other amount under this Act that becomes payable in respect of forfeited shares following the forfeiture.	17 18 19
[52]	Section 91 Registration of dealings in shares	20
	Omit “When such an application is made to the Director-General,” from section 91 (4).	21 22
	Insert instead “If such an application is approved by the Director-General,”.	23
[53]	Section 95 Cancellation or forfeiture of shares to be noted in Share Register	24 25
	Omit “and cancel the registration of the share” from section 95 (1).	26
[54]	Section 102 Commercial fishers required to be licensed	27
	Omit the maximum penalty from section 102 (1). Insert instead:	28
	Maximum penalty:	29
(a)	in the case of an individual:	30
(i)	1,000 penalty units for a first offence, or	31
(ii)	2,000 penalty units for a second or subsequent offence, or	32 33
(b)	in the case of a corporation:	34
(i)	2,000 penalty units for a first offence, or	35
(ii)	4,000 penalty units for a second or subsequent offence.	36 37

[55] Section 111 Declaration of restricted fisheries	1
Omit “during the period specified in the declaration” from section 111 (1).	2
[56] Section 111 (4)	3
Insert “or if the period (if any) specified by the regulations as the period during which the fishery is a restricted fishery expires” after “regulations”.	4 5
[57] Section 112 Commercial fishing licence to be endorsed for restricted fishery	6 7
Omit the maximum penalty from section 112 (4). Insert instead:	8
Maximum penalty:	9
(a) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or	10 11
(b) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence.	12 13
[58] Sections 115A (1) (a), 127D (1) (a), 234 (2) (a), 235 (2) (a), 236 (2) (a), 236A (2) (a), 237 (2) (a) and 238 (2) (a)	14 15
Insert “, maintain or protect” after “enhance” wherever occurring.	16
[59] Section 117 Fish receiver to be registered	17
Omit section 117 (2) (a).	18
[60] Sections 123 and 123A	19
Omit section 123. Insert instead:	20
123 Records to be made by sellers	21
(1) A person who sells any fish must make and deliver to the purchaser, on or before the sale, a record concerning the sale by the person of the fish in accordance with the regulations.	22 23 24
Maximum penalty:	25
(a) in the case of an individual:	26
(i) 200 penalty units for a first offence, or	27
(ii) 400 penalty units for a second or subsequent offence, or	28 29
(b) in the case of a corporation:	30
(i) 1,000 penalty units for a first offence, or	31
(ii) 2,000 penalty units for a second or subsequent offence.	32 33

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- (2) A person who sells any fish (*the seller*) must: 1
- (a) make, before the sale, or 2
 - (b) obtain, on or before the sale, from any other person from 3
whom the person acquired the fish, 4
- a record concerning the seller's acquisition of the fish in 5
accordance with the regulations. 6
- Maximum penalty: 7
- (a) in the case of an individual: 8
 - (i) 200 penalty units for a first offence, or 9
 - (ii) 400 penalty units for a second or subsequent 10
offence, or 11
 - (b) in the case of a corporation: 12
 - (i) 1,000 penalty units for a first offence, or 13
 - (ii) 2,000 penalty units for a second or subsequent 14
offence. 15
- (3) A person who is required to make or obtain a record under this 16
section must: 17
- (a) retain a copy of the record for not less than 5 years after the 18
fish are sold by the person, and 19
 - (b) during that 5-year period, produce the copy of the record 20
when requested to do so by a fisheries officer. 21
- Maximum penalty: 22
- (a) in the case of an individual: 23
 - (i) 200 penalty units for a first offence, or 24
 - (ii) 400 penalty units for a second or subsequent 25
offence, or 26
 - (b) in the case of a corporation: 27
 - (i) 1,000 penalty units for a first offence, or 28
 - (ii) 2,000 penalty units for a second or subsequent 29
offence. 30
- (4) An offence under this section applies whether or not the fish were 31
sold to a purchaser within the State. 32
- (5) This section does not apply in respect of oysters. 33
- (6) The regulations may provide that this section does not apply in 34
respect of the sale of fish: 35
- (a) if the fish are sold in circumstances specified in the 36
regulations, or 37

(b)	if the quantity of fish sold does not exceed a quantity specified by the regulations in respect of the fish or class of fish concerned, or	1 2 3
(c)	in any other circumstances prescribed by the regulations.	4
123A	Records of possession of fish	5
(1)	A person in possession of fish must produce a prescribed record concerning the possession of the fish when requested to do so by a fisheries officer if:	6 7 8
(a)	the person is a fishing industry participant, or	9
(b)	the quantity of fish in the person's possession is equal to, or more than, a commercial quantity of fish.	10 11
	Maximum penalty:	12
(a)	in the case of an individual:	13
(i)	200 penalty units for a first offence, or	14
(ii)	400 penalty units for a second or subsequent offence, or	15 16
(b)	in the case of a corporation:	17
(i)	1,000 penalty units for a first offence, or	18
(ii)	2,000 penalty units for a second or subsequent offence.	19 20
(2)	It is a defence to a prosecution for an offence under this section in respect of a defendant who is not a fishing industry participant if the defendant proves that the fish were in the defendant's possession otherwise than for the purpose of sale, transportation for reward or storage for reward.	21 22 23 24 25
(3)	It is a defence to a prosecution for an offence under this section in respect of a defendant who is a fishing industry participant if:	26 27
(a)	the defendant was in possession of less than a commercial quantity of fish, and	28 29
(b)	the defendant proves that the fish were in the defendant's possession otherwise than for the purpose of sale, transportation for reward or storage for reward.	30 31 32
(4)	An offence under this section applies whether or not the fish were taken from waters to which this Act applies.	33 34
(5)	This section does not apply:	35
(a)	to the possession of fish on any premises, or part of premises, occupied solely for residential purposes, or	36 37
(b)	to the possession of oysters.	38

(6)	The regulations may provide that this section does not apply in respect of the possession of fish:	1
	(a) if the fish are in possession in circumstances specified in the regulations, or	2
	(b) if the quantity of fish in possession does not exceed a quantity specified by the regulations in respect of the fish or class of fish concerned, or	3
	(c) in any other circumstances prescribed by the regulations.	4
(7)	In this section:	5
	<i>commercial quantity</i> of fish means the quantity prescribed by the regulations as the commercial quantity for the species of fish, or class of fish, concerned.	6
	<i>fishing industry participant</i> means:	7
	(a) the holder of a fishing authority (within the meaning of Part 9), or	8
	(b) a person who carries on the business of selling or processing fish or fish products.	9
[61]	Section 127A Meaning of charter fishing boat	10
	Omit section 127A (b). Insert instead:	11
	(b) the boat is used for recreational fishing activities on a commercial basis, and	12
[62]	Section 127A (2) and (3)	13
	Insert at the end of section 127A:	14
	(2) A boat is used for recreational fishing activities on a <i>commercial basis</i> if:	15
	(a) a payment or other consideration is required to be made or given by or on behalf of all or any of the persons using the boat for the right to fish from the boat or for any other activity or service (such as accommodation) provided in connection with the arrangement under which the boat is used, or	16
	(b) the boat is made available for recreational fishing activities by a commercial organisation and all or any of the persons using the boat for the recreational fishing activities are members of that commercial organisation, or	17

	(c) the boat is made available for recreational fishing activities under any other arrangement of a kind specified by the regulations to be a commercial charter fishing arrangement.	1 2 3 4
	(3) In this section, a <i>commercial organisation</i> means a club or other organisation that provides services (whether or not for profit) and that charges a fee for membership.	5 6 7
[63]	Section 128 Definitions	8
	Insert “and, if the arrangement is varied, means the arrangement as varied” after “States” in the definition of <i>arrangement</i> .	9 10
[64]	Section 135 Arrangement for management of certain fisheries	11
	Insert “varied or” after “may be” in section 135 (2).	12
[65]	Section 135 (3) and (3A)	13
	Omit section 135 (3). Insert instead:	14
	(3) After an arrangement has been made or varied, but before the arrangement or variation takes effect, licences, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by the arrangement or variation, as if the arrangement or variation had taken effect, but such a licence, endorsement, instrument or regulation does not have effect before the arrangement or variation takes effect.	15 16 17 18 19 20 21 22
	(3A) On the variation of an arrangement, licences, endorsements and other instruments granted, issued, renewed, made or executed, and regulations made, for the purpose of the operation of this Act as affected by the variation cease to have effect to the extent (if any) that they are inconsistent with the arrangement as varied.	23 24 25 26 27
[66]	Section 136 Application of this Act to fisheries in accordance with arrangements	28 29
	Insert “, or a part of a particular fishery,” after “particular fishery”.	30
[67]	Section 136	31
	Insert “, or the part of the fishery,” after “the fishery”.	32
[68]	Section 136	33
	Insert “, or that part of the fishery,” after “that fishery”.	34

[69] Section 137 Functions of Joint Authority	1
Insert “, or part of the fishery,” after “and the fishery” in section 137 (1).	2
[70] Section 138 Joint Authority to exercise certain powers instead of Minister	3
Insert “or part of which is to be managed in accordance with the law of the State,” after “the law of the State,” in section 138 (2).	5
[71] Section 141 Regulations	7
Insert “, or a part of a fishery,” after “manage a fishery” in section 141 (1).	8
[72] Section 141 (1) (a), (b) and (c)	9
Insert “or the part of the fishery” after “the fishery” wherever occurring.	10
[73] Section 142 Definitions	11
Insert in alphabetical order:	12
<i>development plan</i> has the meaning given by section 143.	13
[74] Section 144 Aquaculture prohibited except in accordance with a permit	14
Omit section 144 (4). Insert instead:	15
(4) However, this section does not apply:	16
(a) to aquaculture undertaken by the Minister under a development plan or under Part 8, or otherwise for the purposes of the administration of this Act, or	17
(b) to persons of a class excluded by the regulations from the operation of this section.	19
[75] Section 147 Permit to specify area and type of aquaculture	22
Omit “and the species of fish or marine vegetation authorised to be cultivated within any such area” from section 147 (1).	23
Insert instead “and the type of aquaculture authorised to be undertaken within any such area”.	24
[76] Section 147 (3)	25
Insert after section 147 (2):	26
(3) The aquaculture permit may specify the type of aquaculture authorised by the permit by specifying all or any of the following:	27
(a) the species of fish or marine vegetation that may be cultivated or kept (including any hybrid or polyploid form of species),	28
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	(b) the things that may be cultivated from fish or marine vegetation kept under the permit,	1 2
	(c) the part of the life cycle of a species during which the species may be cultivated or kept.	3 4
[77]	Section 148 Variation of permits	5
	Omit section 148 (1) (b). Insert instead:	6
	(b) vary the type of aquaculture that may be undertaken within any such area.	7 8
[78]	Sections 149 (1) and (2), 156 (1) (b), 179 (1) (a), 189 (1) and 191 (d)	9
	Insert “or kept” after “cultivated” wherever occurring.	10
[79]	Section 152 Conditions of permits	11
	Omit “cultivation of the species of fish or marine vegetation to which the permit relates” from section 152 (2) (a).	12 13
	Insert instead “type of aquaculture that may be undertaken under the authority of the permit”.	14 15
[80]	Section 154 Register of permits	16
	Omit section 154 (2) (e). Insert instead:	17
	(e) the type of aquaculture authorised by the permit within any such area, and	18 19
[81]	Section 163 Grant of aquaculture lease	20
	Omit “species of fish or marine vegetation authorised to be cultivated” from section 163 (3).	21 22
	Insert instead “type of aquaculture authorised to be undertaken”.	23
[82]	Section 163 (7)–(7B)	24
	Omit section 163 (7). Insert instead:	25
	(7) The Minister must not grant a lease on an application unless satisfied that:	26 27
	(a) the land to which the application relates is available for lease, and	28 29
	(b) the application is consistent with any relevant development plan.	30 31

(7A)	Before granting a lease on an application, the Minister must:	1
(a)	cause to be published in the Gazette and in a newspaper circulating in the area in which the land is situated, a notice of receipt of the application, specifying in the notice that written objections to the granting of the lease may be lodged with the Director-General before the expiration of a period specified in the notice, and	2 3 4 5 6 7
(b)	consider any objections to the granting of the lease that are lodged within the period specified in the notice for the making of written objections.	8 9 10
(7B)	The Minister is not required to comply with subsection (7A) if:	11
(a)	the area to which the application relates is the subject of a development plan and the type of aquaculture proposed is a type that the development plan provides is suitable in that area, or	12 13 14 15
(b)	the person to whom the lease is to be granted has obtained a development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> , or approval under Part 3A of that Act, to carry out development on the proposed leased area for the purposes of the aquaculture concerned.	16 17 18 19 20 21
[83]	Section 164 Rights conferred by lease	22
	Omit “to cultivate within, and to take from, the leased area the species of fish or marine vegetation specified in the lease” from section 164 (1) (a).	23 24
	Insert instead “to undertake the type of aquaculture specified in the lease”.	25
[84]	Section 166 Overdue rental	26
	Omit “remains unpaid 3 months” from section 166 (1).	27
	Insert instead “is unpaid”.	28
[85]	Section 177 Power of Minister to cancel leases in certain cases	29
	Omit “and the amount has remained unpaid for at least 2 years” from section 177 (1) (c).	30 31
[86]	Section 181 Definitions	32
	Insert in alphabetical order:	33
	<i>disease</i> means a disease (including a pest or parasite) that kills or causes illness in fish or marine vegetation (or a particular species of fish or marine vegetation) or that kills or causes illness in people who eat the infected fish or marine vegetation.	34 35 36 37

[87] Section 181, definition of “declared disease”	1
Omit the definition. Insert instead:	2
<i>declared disease</i> means a disease in respect of which this	3
Division applies under section 182 or 182A.	4
[88] Sections 182 and 182A	5
Omit section 182. Insert instead:	6
182 Declared diseases	7
(1) Each disease specified in Schedule 6B is a disease in respect of	8
which this Division applies.	9
(2) The common name of a species specified in Part 2 of	10
Schedule 6B is for information purposes only and does not limit	11
a description of species in that Schedule.	12
(3) The Governor may, by regulation made on the recommendation	13
of the Minister, amend Schedule 6B to insert, alter or omit any	14
matter in that Schedule.	15
182A Urgent declarations by Minister	16
(1) If the Minister considers that urgent action is required in respect	17
of a particular disease, the Minister may, by notice published in a	18
newspaper circulating generally in the State, or by radio or	19
television broadcast, declare that disease to be a disease in respect	20
of which this Division applies.	21
(2) In such an urgent case, the Minister is to publish the declaration	22
in the Gazette as soon as practicable after it is made.	23
(3) A declaration made by the Minister under this section may	24
provide that specified provisions of this Division do not apply in	25
respect of the disease or apply only in the circumstances specified	26
in the declaration.	27
(4) A declaration has effect according to its terms and remains in	28
force (unless sooner revoked by another declaration) for the	29
period, not exceeding 6 months, specified in the declaration.	30
[89] Section 183 Minister may declare quarantine area	31
Omit section 183 (2). Insert instead:	32
(2) An area may be declared a quarantine area if:	33
(a) it is subject to an aquaculture permit, or	34
(b) it is an area of water, or	35

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	(c) it is an area in the immediate vicinity of an area of water, or	1
	(d) it is a pet shop or an aquarium kept for commercial purposes.	2 3
[90]	Section 183 (4) (b)	4
	Omit “in the case of an area subject to an aquaculture permit—require the holder”.	5 6
	Insert instead “require a relevant person”.	7
[91]	Section 183 (4A)	8
	Insert after section 183 (4):	9
	(4A) For the purposes of this section, a <i>relevant person</i> means:	10
	(a) the holder of an aquaculture permit in respect of a quarantine area or part of a quarantine area, or	11 12
	(b) the owner or occupier of any land or premises within a quarantine area.	13 14
[92]	Section 183 (6) and (6A)	15
	Omit section 183 (6). Insert instead:	16
	(6) If a relevant person fails to take any action required by an order declaring a quarantine area, a fisheries officer may enter the quarantine area and take the required action.	17 18 19
	(6A) Subsection (6) does not authorise a fisheries officer to enter any premises used for residential purposes.	20 21
[93]	Section 183 (7) (a)	22
	Omit “holder of the aquaculture permit”. Insert instead “relevant person”.	23
[94]	Section 183 (7) (b)	24
	Omit “holder”. Insert instead “relevant person”.	25
[95]	Section 187A	26
	Insert after section 187:	27
	187A Exemptions	28
	(1) The Minister may, by order published in the Gazette, declare that any specified provisions of this Division do not apply in respect of a declared disease or apply only in the circumstances specified in the order.	29 30 31 32
	(2) Such an order has effect according to its terms.	33

[96] Section 202	1
Omit the section. Insert instead:	2
202 Appeal to the Land and Environment Court	3
(1) A person (including a local government authority) who is dissatisfied with a decision of the Minister concerning dredging or reclamation work may appeal against the decision to the Land and Environment Court within 30 days of receiving notice of the decision.	4 5 6 7 8
(2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.	9 10 11
[97] Section 206 Protection of spawning areas of salmon, trout and certain other fish	12 13
Omit “100” from the maximum penalty in section 206 (1).	14
Insert instead “1,000”.	15
[98] Section 206 (1A) and (1B)	16
Insert after section 206 (1):	17
(1A) In proceedings for an offence under this section in respect of an act or an omission of a person that causes damage to gravel beds in any waters where salmon or trout spawn or are likely to spawn, it is to be conclusively presumed that the person knew that the waters were waters of that kind if it is established that:	18 19 20 21 22
(a) the act or omission occurred in the course of the carrying out of development or an activity for which development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> , or an approval to which Part 5 of that Act applies, was required but not obtained, or	23 24 25 26 27
(b) the act or omission constituted a failure to comply with any such development consent or approval.	28 29
(1B) A person is not guilty of an offence against this section if the act or omission that constitutes the offence was done or omitted under the authority of a permit issued under this Part.	30 31 32

[99] Sections 209–209B	1
Omit section 209. Insert instead:	2
209 Definitions	3
For the purposes of this Act:	4
<i>noxious fish</i> means a species of fish that is noxious fish for the purposes of this Act under section 209A or 209B.	5
<i>noxious marine vegetation</i> means a species of marine vegetation that is noxious marine vegetation for the purposes of this Act under section 209A or 209B.	6
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209A Noxious fish and noxious marine vegetation	10
(1) Column 1 of Schedule 6C specifies the species of fish and marine vegetation that are noxious fish and noxious marine vegetation for the purposes of this Act.	11
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(2) If Column 3 of Schedule 6C specifies particular waters in relation to which a particular species of fish or marine vegetation is noxious fish or noxious marine vegetation, the species is noxious fish or noxious marine vegetation only when located in those specified waters.	14
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(3) The common name of a species of fish or marine vegetation specified in Column 2 of Schedule 6C is for information purposes only and does not limit the description of the species of fish or marine vegetation in Column 1.	19
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(4) The Governor may, by regulation on the recommendation of the Minister, amend Schedule 6C to insert, alter or omit any matter in that Schedule.	23
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209B Urgent declarations by Minister	26
(1) In the case of an emergency, the Minister may, by order published in the Gazette, declare any specified species of fish or marine vegetation to be noxious fish or noxious marine vegetation for the purposes of this Act.	27
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(2) An order made by the Minister under this section may:	31
(a) limit the declaration to fish or marine vegetation located in any specified waters, and	32
	33
(b) declare that specified provisions of this Division do not apply in respect of the relevant species of fish or marine vegetation or apply only in the circumstances specified in the declaration.	34
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(3)	An order has effect according to its terms and remains in force (unless sooner revoked by another order) for the period, not exceeding 6 months, specified in the order.	1 2 3
[100]	Section 214A	4
	Insert after section 214:	5
	214A Exemptions	6
(1)	The Minister may, by order published in the Gazette, declare that any specified provisions of this Division do not apply in respect of specified noxious fish or noxious marine vegetation or apply only in the circumstances specified in the order.	7 8 9 10
(2)	Such an order has effect according to its terms.	11
[101]	Part 7, Division 7, heading	12
	Omit the heading. Insert instead:	13
	Division 7 Protection of fish and marine vegetation from disease	14 15
[102]	Section 215	16
	Omit the section. Insert instead:	17
	215 Purposes of Division	18
	The purposes of this Division are:	19
(a)	to prevent the spread of diseases in fish and marine vegetation, and	20 21
(b)	to prevent any adverse effect on existing fish and marine vegetation and their habitats by introduced species of fish and marine vegetation.	22 23 24
[103]	Section 216 Releasing live fish into waters prohibited	25
	Omit “naturally” from section 216 (3).	26

[104] Sections 217 and 217A	1
Omit section 217. Insert instead:	2
217 Importation of live exotic fish	3
(1) A person must not bring into New South Wales any live fish of a species or class prescribed by the regulations except under the authority of a permit issued by the Minister.	4
Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.	5
(2) A person who sells, buys or has possession of fish knowing that the fish has been brought into New South Wales in contravention of this section is guilty of an offence.	6
Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.	7
(3) This section does not apply in respect of any species of fish that was established in the waters of the State, or in the waters of the sea adjacent to the State within the Australian fishing zone, before European settlement.	8
217A Importation of live exotic marine vegetation	9
(1) A person must not bring into New South Wales any live marine vegetation of a species or class prescribed by the regulations except under the authority of a permit issued by the Minister.	10
Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.	11
(2) A person who sells, buys or has possession of marine vegetation knowing that it has been brought into New South Wales in contravention of this section is guilty of an offence.	12
Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.	13
(3) This section does not apply in respect of any species of marine vegetation that existed in the State before European settlement.	14
[105] Section 218 Fishways to be provided in construction of dams and weirs	15
Insert after section 218 (5A):	16
(5B) A person (other than a public authority) must not construct, alter or modify a dam, weir or reservoir on a waterway unless the person ensures that the Minister is given notice in writing of the	17

	proposed works at least 28 days before the commencement of the works.	1
		2
	Maximum penalty: In the case of a corporation, 200 penalty units or in any other case, 100 penalty units.	3
		4
(5C)	Subsection (5B) does not apply in respect of any works approved by a public authority or approved by the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> under Part 3A of that Act.	5
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[106]	Section 218 (6), definition of “waterway”	9
	Omit “naturally” from the definition.	10
[107]	Section 220 Provisions relating to permits under this Part	11
	Omit “In particular, the regulations may prescribe the fee payable for the issue of a permit.” from section 220 (3).	12
		13
[108]	Section 220AA	14
	Insert after section 220:	15
220AA	Director-General may make stop work order	16
(1)	If the Director-General is of the opinion that any action is being, or is about to be, carried out in contravention of Division 3 or 4, or section 219, and that the action is likely to cause damage to fish habitat or obstruct the free passage of fish, the Director-General may order that such action is to cease and that no further action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the waters concerned within a period of 40 days after the date of the order.	17
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(2)	An order takes effect on and from the date on which:	25
(a)	a copy of the order is affixed in a conspicuous place in the vicinity of the waters the subject of the order, or	26
		27
(b)	the person carrying out or about to carry out the action is notified that the order has been made,	28
		29
	whichever is the sooner.	30
(3)	A person who does not comply with an order in force under this section is guilty of an offence.	31
		32
	Maximum penalty:	33
(a)	in the case of an individual, 1,000 penalty units and an additional 500 penalty units for each day the offence continues, or	34
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(b)	in the case of a corporation, 2,000 penalty units and an additional 1,000 penalty units for each day the offence continues.	1 2 3
(4)	The Director-General may, by making a further order under this section, extend an order for such further period or periods of 40 days as the Director-General thinks fit.	4 5 6
(5)	The Director-General is not required, before making an order under this section, to notify any person who may be affected by the order.	7 8 9
(6)	An order of the Director-General under this section has effect despite any consent, approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits the action prohibited by the order.	10 11 12 13
(7)	This section does not apply to the following:	14
(a)	any thing authorised by or under the <i>State Emergency and Rescue Management Act 1989</i> that is reasonably necessary to avoid a threat to life or property,	15 16 17
(b)	any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	18 19 20
(8)	A person who is dissatisfied with a decision of the Director-General to take action under this section may appeal against the decision to the Land and Environment Court within 30 days of receiving notice of the decision.	21 22 23 24
(9)	The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.	25 26 27
[109]	Section 220ZE Regulations may prohibit certain actions	28
	Omit section 220ZE (1). Insert instead:	29
(1)	The regulations may prohibit or regulate, for the purposes of this Part, the carrying out of specified actions, or actions of a specified class or description:	30 31 32
(a)	in specified waters, or	33
(b)	within a prescribed distance of any fish or marine vegetation of a threatened species, or	34 35
(c)	within a prescribed distance of the habitat of any fish or marine vegetation of a threatened species, or	36 37
(d)	on specified critical habitat.	38

[110] Section 220ZF Defences	1
Omit section 220ZF (1) (d). Insert instead:	2
(d) was a routine fishing activity (unless it was an activity of a kind that the regulations declare is not a routine fishing activity for the purposes of this paragraph), or	3 4 5
[111] Section 220ZF (4)	6
Omit “routine agricultural or aquacultural activity for the purposes of subsection (1) (e)”.	7 8
Insert instead “routine fishing activity or routine aquacultural activity for the purposes of subsection (1) (d) or (e)”.	9 10
[112] Section 220ZF (6) and (7)	11
Insert after section 220ZF (5):	12
(6) In this section, a <i>routine fishing activity</i> means a routine activity carried out in connection with the lawful taking of fish or marine vegetation other than a threatened species, population or ecological community.	13 14 15 16
(7) A defence that the act or omission constituting the offence was a routine fishing activity or routine aquaculture activity is available in proceedings for an offence against this Division only if the person charged satisfies the court that, on becoming aware of taking any fish of a threatened species, population or ecological community, the person took immediate steps to return the fish to its natural environment with the least possible injury.	17 18 19 20 21 22 23
[113] Section 220ZG Court may order offender to mitigate damage or restore habitat	24 25
Omit section 220ZG (1). Insert instead:	26
(1) If a court convicts a person of an offence against this Part and is satisfied the offence has caused damage to any threatened species, population or ecological community or to the habitat of any threatened species, population or ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person to take any action to mitigate the damage or to restore the habitat.	27 28 29 30 31 32 33

[114] Section 220ZG (3A)	1
Insert after section 220ZG (3):	2
(3A) If the requirements of an order under this section are not complied with within the period specified in it, the Minister:	3
(a) may cause the actions specified in the order to be carried out, and	4
(b) may claim or realise any security provided under this section by the person against whom the order was made to meet the reasonable costs of carrying out the actions specified in the order, and	5
(c) may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the person against whom the order was made the reasonable costs of carrying out the actions specified in the order (or the balance of those costs after claiming or realising any security provided by the person).	6
[115] Section 220ZGA	17
Insert after section 220ZG:	18
220ZGA Community service orders	19
(1) If a court makes a community service order in respect of a person convicted of an offence against this Part, the court may recommend that the community service work to be performed by the person include work the purpose of which is to restore damage to habitat (whether or not caused by the person) or to otherwise assist in achieving the objects of this Part.	20
(2) This section does not limit the powers of a court under the <i>Crimes (Sentencing Procedure) Act 1999</i> .	21
(3) In this section:	22
community service order has the same meaning as it has in the <i>Crimes (Sentencing Procedure) Act 1999</i> .	23
community service work has the same meaning as it has in the <i>Crimes (Sentencing Procedure) Act 1999</i> .	24
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[116] Part 7A, Division 4A	1
Insert after Division 4 of Part 7A:	2
Division 4A Interfering with fish of threatened species	3
220ZGB Interfering with fish of threatened species	4
(1) A person must not interfere with any fish of a threatened species.	5
Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both.	6 7
(2) In this section, <i>interfere with</i> includes harass, chase, tag or mark the fish or engage in any activity for the purposes of attracting or repelling the fish or any other activity prescribed by the regulations.	8 9 10 11
(3) A reference in section 220ZW, 221IA or 221O to harming any threatened species includes interfering with the threatened species.	12 13 14
(4) A person is not guilty of an offence under this section if the act or omission constituting the offence was authorised by, and was done or omitted in accordance with:	15 16 17
(a) a licence granted under this Part, or	18
(b) a Ministerial order or interim order made under Subdivision 1A of Division 6, or	19 20
(c) a permit under this Act, or	21
(d) a licence under Part 6 of the <i>Threatened Species Conservation Act 1995</i> .	22 23
(5) A person is not guilty of an offence under this section if the act or omission constituting the offence was:	24 25
(a) an action taken or omitted by the person that was reasonably necessary to prevent a risk to human health or to deal with a serious threat to human life or property, or	26 27 28
(b) done in accordance with a direction given to the person by a fisheries officer.	29 30
(6) The regulations may provide for exceptions to this Division or for defences to the prosecution of an offence against this Division.	31 32

[117] Section 241 Engaging in commercial fishing activities	1
Insert at the end of section 241 (2) (c):	2
(c1) if the person is in possession in any particular	3
circumstances of fishing gear or other equipment that	4
cannot be lawfully used by either a commercial fisher or	5
recreational fisher (in any circumstances or in the	6
particular circumstances) and the fishing gear or other	7
equipment is reasonably capable of being used in those	8
circumstances to take a quantity of fish that exceeds the	9
quantity of fish that a recreational fisher is entitled to take	10
in the waters concerned, or	11
[118] Section 250 Power to enter and search premises	12
Insert “(other than a public place)” after “into premises” in section 250 (3).	13
[119] Section 250 (4) (e)	14
Insert at the end of section 250 (4) (d):	15
, or	16
(e) the premises entered are a public place.	17
[120] Section 250 (7)	18
Omit the subsection. Insert instead:	19
(7) In this section:	20
<i>commercial premises</i> means any premises occupied by the	21
holder of a fishing authority, or by a person who should be the	22
holder of an appropriate fishing authority, or any market or	23
premises in which fish are sold or any other premises in which	24
any commercial activity is conducted relating to fish.	25
<i>public place</i> has the meaning given by the <i>Law Enforcement</i>	26
(<i>Powers and Responsibilities</i>) Act 2002.	27
[121] Section 256 Production of records relating to commercial fishing	28
activities and fish receivers	29
Insert “, either orally or by notice in writing,” after “may” in section 256 (1).	30
[122] Section 256 (1) (a)	31
Insert “, immediately or within a specified period and at a specified place,”	32
after “produce”.	33
[123] Section 256 (1) (b)	34
Insert “, within a specified period and at a specified place,” after “produce”.	35

[124] Section 256 (1) (c)	1
Insert “, immediately or within a specified period,” after “answer” where firstly occurring.	2 3
[125] Section 256 (4)	4
Omit the maximum penalty. Insert instead:	5
Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units.	6 7
[126] Section 258 Power to require information	8
Insert after section 258 (2):	9
(3) A person fails to comply with a requirement to provide information (including a requirement to state a name and address) made by a fisheries officer under this section if the person fails to provide that information immediately or within such period as the fisheries officer may allow.	10 11 12 13 14
[127] Sections 258A and 258B	15
Insert after section 258:	16
258A Special power to require information—Parts 7 and 7A	17
(1) A fisheries officer may require any person whom the fisheries officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of Part 7 or 7A to answer questions in relation to those matters.	18 19 20 21 22
(2) A fisheries officer may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation’s representative for the purpose of answering questions under this section.	23 24 25 26 27
(3) Answers given by a person nominated under subsection (2) bind the corporation.	28 29
(4) A fisheries officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.	30 31 32 33
(5) The place and time at which a person may be required to attend under subsection (4) is to be:	34 35
(a) a place and time nominated by the person, or	36

	(b) if a place or time nominated is not reasonable in the circumstances or a place or time is not nominated by the person, a place and time nominated by the fisheries officer that is reasonable in the circumstances.	1 2 3 4
	(6) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence. Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units.	5 6 7 8 9
258B	Provisions relating to requirements to provide information or answer questions	10 11
	(1) Warning to be given on each occasion A person is not guilty of an offence of failing to comply with an information requirement unless the person was warned on that occasion that a failure to comply is an offence.	12 13 14 15
	(2) Self-incrimination not an excuse A person is not excused from an information requirement on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.	16 17 18 19
	(3) Information or answer not admissible if objection made However, any information furnished or answer given by a natural person in compliance with an information requirement is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 258, 258A or 259) if:	20 21 22 23 24 25
	(a) the person objected at the time to doing so on the ground that it might incriminate the person, or	26 27
	(b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.	28 29 30
	(4) Records admissible Any record furnished by a person in compliance with an information requirement is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.	31 32 33 34 35

(5) Further information	1
Further information obtained as a result of a record or information furnished or of an answer given in compliance with an information requirement is not inadmissible on the ground:	2 3 4
(a) that the record or information had to be furnished or the answer had to be given, or	5 6
(b) that the record or information furnished or answer given might incriminate the person.	7 8
(6) For the purposes of this section, an <i>information requirement</i> is a requirement made by a fisheries officer under section 258 or 258A.	9 10 11
[128] Section 269 Forfeiture of boats and motor vehicles by order of court	12
Omit section 269 (2). Insert instead:	13
(2) A Local Court must not order any such forfeiture if it is satisfied that the value of the boat or motor vehicle exceeds the jurisdictional limit of the Local Court sitting in its General Division within the meaning of the <i>Local Courts Act 1982</i> .	14 15 16 17
(3) To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of any provision of this Act that provides for the maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations.	18 19 20 21 22
[129] Section 277 Nature of proceedings for offences	23
Insert “(other than an indictable offence)” after “under this Act” in section 277 (1).	24 25
[130] Section 277 (2)	26
Omit “\$10,000” from section 277 (2). Insert instead “200 penalty units”.	27
[131] Section 277 (3) and (4)	28
Insert after section 277 (2):	29
(3) An indictable offence is to be prosecuted on indictment. However, Chapter 5 of the <i>Criminal Procedure Act 1986</i> (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of any such offence.	30 31 32 33 34
(4) In this section, an <i>indictable offence</i> means an offence against section 21B.	35 36

[132] Section 279A	1
Insert after section 279:	2
279A Duty of master of boat to prevent contraventions of Act	3
(1) A person commits an offence if:	4
(a) the person is master of a boat while it is used for any fishing activities, and	5 6
(b) another person (the <i>principal offender</i>) on board the boat commits a serious fisheries offence while the boat is being used for fishing activities.	7 8 9
(2) The maximum penalty for an offence against this section is the maximum penalty for the serious fisheries offence committed by the principal offender.	10 11 12
(3) It is a defence to proceedings for an offence against this section if the person charged proves that:	13 14
(a) the person issued proper instructions and took reasonable precautions to ensure compliance with this Act, and	15 16
(b) the serious fisheries offence occurred without the person's knowledge, and	17 18
(c) the person could not by the exercise of reasonable diligence have prevented the commission of the serious fisheries offence.	19 20 21
(4) A person may be proceeded against and convicted under this section whether or not the principal offender has been proceeded against or been convicted for the serious fisheries offence committed by the principal offender.	22 23 24 25
(5) In this section:	26
<i>serious fisheries offence</i> means an offence against section 14, 16, 17, 18, 19, 20, 20A, 24, 25, 35, 68, 102 or 112.	27 28
[133] Section 282C Prohibition orders may be made against repeat offenders	29
Omit section 282C (1). Insert instead:	30
(1) A court that convicts a repeat offender of a fisheries offence may, on application by the prosecutor, make an order that prohibits the offender from doing any or all of the following:	31 32 33
(a) engaging in specified fishing activities,	34
(b) being in possession of specified fishing gear,	35
(c) being in possession of fish or marine vegetation of a specified species,	36 37

(d)	being on a boat of a kind specified in the order while on or adjacent to any waters or waters specified in the order,	1 2
(e)	being on any specified premises (that are premises in which fish are sold or in which any commercial fishing activity is conducted).	3 4 5
[134] Part 9, Division 8		6
	Insert after Division 7 of Part 9:	7
Division 8	Restoration orders and other actions	8
282H	Definitions	9
	In this Division:	10
	<i>fishery resource</i> includes fish stock and fish habitat.	11
	<i>serious fisheries offence</i> means an offence against section 14, 16, 17, 18, 19, 20, 20A, 21B, 24, 25, 35, 68, 102 or 112.	12 13
282I	Power of Minister to make restoration order	14
(1)	If the Minister is satisfied that a person has contravened this Act and, as a result of the contravention, caused damage to any fishery resource, the Minister may, by order in writing given to the person, require the person to carry out, within a period specified in the order, such actions as the Minister reasonably considers to be necessary to mitigate or rectify the damage.	15 16 17 18 19 20
(2)	The Minister may make an order against a person under this section only if satisfied that the person's contravention of this Act amounted to a serious fisheries offence.	21 22 23
(3)	However, the Minister may make the order regardless of whether the person has been charged with, or found guilty of, having committed a serious fisheries offence.	24 25 26
(4)	If the requirements of an order under this section are not complied with within the period specified in it, the Minister:	27 28
(a)	may cause the actions specified in the order to be carried out, and	29 30
(b)	may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the person against whom the order was made the reasonable costs of carrying out the actions specified in the order.	31 32 33 34

(5)	A person against whom an order is made may appeal to a Local Court against the making of the order within 30 days after the order is given to the person.	1 2 3
(6)	A Local Court may determine the appeal by confirming the order, revoking the order or revoking the order and making a new order.	4 5
282J	Power of court to make restoration order	6
(1)	A court that convicts a person of a serious fisheries offence may, if satisfied that the offence has caused damage to a fishery resource, order the person to carry out such actions as the court considers necessary to mitigate or rectify the damage.	7 8 9 10
(2)	The court may specify the actions to be carried out and may order the person to maintain the area the subject of the actions until those actions have been fully performed.	11 12 13
(3)	The court may order the person to provide security for the performance of any obligation imposed under this section.	14 15
(4)	A court may make an order under this section in addition to or in substitution for any monetary penalty for the offence.	16 17
(5)	If the requirements of an order under this section are not complied with within the period specified in it, the Minister:	18 19
	(a) may cause the actions specified in the order to be carried out, and	20 21
	(b) may claim or realise any security provided under this section by the person against whom the order was made to meet the reasonable costs of carrying out the actions specified in the order, and	22 23 24 25
	(c) may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the person against whom the order was made the reasonable costs of carrying out the actions specified in the order (or the balance of those costs after claiming or realising any security provided by the person).	26 27 28 29 30 31
282K	Community service orders in respect of serious fisheries offences	32
(1)	If a court makes a community service order in respect of a person convicted of a serious fisheries offence, the court may recommend that the community service work to be performed by the person include work the purpose of which is to restore damage to any fishery resource (whether or not caused by the person) or to otherwise enhance, maintain or protect fishery resources.	33 34 35 36 37 38 39

- (2) This section does not limit the powers of a court under the *Crimes (Sentencing Procedure) Act 1999*. 1
2
- (3) In this section: 3
community service order has the same meaning as it has in the 4
Crimes (Sentencing Procedure) Act 1999. 5
community service work has the same meaning as it has in the 6
Crimes (Sentencing Procedure) Act 1999. 7

[135] Section 288B 8

Insert after section 288A: 9

288B Waiver and refund of fees, charges and contributions 10

The Minister may waive or refund payment of all or part of any 11
 fee, charge, rental payment or contribution payable under this Act 12
 or the regulations, if the Minister considers it is appropriate to 13
 do so. 14

[136] Schedules 1B and 1C 15

Insert after Schedule 1A: 16

Schedule 1B Priority species and commercial quantities of fish 17
18

(Section 14A) 19

Part 1 Prohibited size fish offences 20

Division 1 Fish—marine or estuarine 21

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Achoerodus viridis</i>	Groper, blue, red or brown	5
<i>Seriola lalandi</i>	Kingfish, yellow tail	10
<i>Scomberomorus commerson</i>	Mackerel, Spanish or narrow barred	10 comprised wholly of a single species or a combination of species
<i>Scomberomorus munroi</i>	Mackerel, spotted	

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Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Argyrosomus japonicus</i>	Mulloway	10
<i>Atractoscion aequidens</i>	Teraglin	10
<i>Pagrus auratus</i>	Snapper	20

Division 2 Fish—freshwater or estuarine

1

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Macquaria ambigua</i>	Golden perch	20
<i>Maccullochella peeli</i>	Murray cod	10
<i>Anguilla reinhardtii</i>	Eel, longfinned	20 comprised wholly of a single species or a combination of species
<i>Anguilla australis</i>	Eel, shortfinned	

Division 3 Invertebrates

2

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Haliotis rubra</i>	Abalone	10
<i>Scylla serrata</i>	Crab, mud, black or mangrove	10
<i>Jasus verreauxi</i>	Lobster, eastern rock	5 comprised wholly of a single species or a combination of species
<i>Jasus edwardsii</i>	Lobster, southern rock	

Division 4 Invertebrates—freshwater

1

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Euastacus armatus</i>	Murray crayfish	20

Part 2 Bag limit offences

2

Division 1 Fish—marine or estuarine

3

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Rexea solandri</i>	Gemfish	5
<i>Polyprion oxygenios</i>	Hapuka	6 comprised wholly of a single species or a combination of species
<i>Hyperoglyphe</i>	Trevalla	
<i>Epinephelus ergastularius</i>	Banded rockcod	
<i>Polyprion americanus</i>	Bass grouper	
<i>Achoerodus viridis</i>	Groper, blue, red or brown	5
<i>Seriola lalandi</i>	Kingfish, yellow tail	10
<i>Scomberomorus commerson</i>	Mackerel, Spanish or narrow barred	10 comprised wholly of a single species or a combination of species
<i>Scomberomorus munroi</i>	Mackerel, spotted	
<i>Argyrosomus japonicus</i>	Mulloway	10
<i>Atractoscion aequidens</i>	Teraglin	10

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Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
All species of shark (other than wobbegong shark)	Shark (other than wobbegong shark)	(a) 2 tiger sharks, 2 mako sharks, 2 blue sharks, 2 hammerhead sharks or 2 whaler sharks, or
		(b) 10 comprised wholly of a single species of shark not referred to in paragraph (a) (other than wobbegong shark), or
		(c) 10 comprised of a combination of any species of shark (other than wobbegong shark)
<i>Pagrus auratus</i>	Snapper	20
<i>Thunnus alalunga</i>	Tuna, albacore	10 comprised wholly of a single species or a combination of species
<i>Thunnus obesus</i>	Tuna, bigeye	
<i>Thunnus tonggol</i>	Tuna, longtail	
<i>Thunnus maccoyii</i>	Tuna, southern bluefin	
<i>Thunnus albacares</i>	Tuna, yellowfin	

Division 2 Fish—freshwater or estuarine

1

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Macquaria ambigua</i>	Golden perch	20
<i>Maccullochella peeli</i>	Murray cod	10

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Anguilla reinhardtii</i>	Eel, longfinned	20 comprised wholly of a single species or a combination of species
<i>Anguilla australis</i>	Eel, shortfinned	

Division 3 Invertebrates

1

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Haliotis rubra</i>	Abalone	10
<i>Scylla serrata</i>	Crab, mud, black or mangrove	10
<i>Jasus verreauxi</i>	Lobster, eastern rock	5 comprised wholly of a single species or a combination of species
<i>Jasus edwardsii</i>	Lobster, southern rock	

Division 4 Invertebrates—freshwater

2

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Euastacus armatus</i>	Murray crayfish	20

Schedule 1C Indictable species and indictable quantities

3

4

(Section 21A)

5

Column 1	Column 2	Column 3
Species of fish	Common name	Indictable quantity
<i>Haliotis rubra</i>	Abalone	50
<i>Jasus verreauxi</i>	Lobster, eastern rock	20

[137] Schedules 6B and 6C	1
Insert after Schedule 6A:	2
Schedule 6B Diseases affecting fish and marine vegetation	3
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Crayfish plague (<i>Aphanomyces astaci</i>)	1
Spawner-isolated mortality virus disease	2
Necrotising hepatopancreatitis	3
Baculoviral midgut gland necrosis	4
White tail disease	5
Infectious myonecrosis	6
Milky lobster disease	7
<i>Monodon</i> slow growth syndrome	8

Division 3 Diseases affecting molluscs 9

Infection with <i>Bonamia ostreae</i>	10
Infection with <i>Bonamia</i> species	11
Infection with <i>Bonamia exitiosa</i>	12
Infection with <i>Bonamia roughleyi</i>	13
Infection with <i>Mikrocytos mackini</i>	14
Infection with <i>Marteilia refringens</i>	15
Infection with <i>Marteilia sydneyi</i>	16
Infection with <i>Perkinsus marinus</i>	17
Infection with <i>Perkinsus olseni</i>	18
Infection with <i>Haplosporidium nelsoni</i>	19
Infection with <i>Haplosporidium costale</i>	20
Abalone viral ganglioneuritis	21
Abalone viral mortality	22
Infection with <i>Marteilioides chungmuensis</i>	23
Infection with <i>Xenohaliotis californiensis</i>	24
Akoya oyster disease	25
Iridoviroses	26

Part 2 Class B diseases (Pests or parasites) 27

Division 1 Finfish 28

Species	Common name
<i>Oreochromis mossambicus</i>	Mozambique mouthbrooder
<i>Tilapia zillii</i>	Redbelly tilapia
<i>Tilapia mariae</i>	Black mangrove cichlid
<i>Neogobius melanostomus</i>	Round goby
<i>Siganus rivulatus</i>	Marbled spinefoot

Division 2 Crustaceans

1

Species	Common name
<i>Eriocheir</i> spp	Chinese mitten crab
<i>Charybdis japonica</i>	Lady crab
<i>Hemigrapsus sanguineus</i>	Japanese shore crab, Asian shore crab
<i>Hemigrapsus takanoi</i>	Pacific crab, brush-clawed shore crab
<i>Hemigrapsus penicillatus</i>	Pacific crab, brush-clawed shore crab
<i>Carcinus maenas</i>	European green crab, green shore crab
<i>Balanus improvisus</i>	Barnacle

Division 3 Molluscs

2

Species	Common name
<i>Mytilopsis sallei</i>	Black-striped mussel
<i>Perna viridis</i>	Asian green mussel
<i>Perna perna</i>	Brown mussel
<i>Perna canaliculus</i>	New Zealand green lipped mussel
<i>Musculista senhousia</i>	Asian bag mussel, Asian date mussel
<i>Potamocorbula amurensis</i>	Asian clam, brackish-water corbula
<i>Varicorbula gibba</i>	European clam
<i>Mya arenaria</i>	Soft shell clam
<i>Ensis directus</i>	Jack-knife clam
<i>Rapana venosa</i>	Rapa whelk
<i>Crepidula fornicata</i>	American slipper limpet, slipper limpet
<i>Maoricolpus roseus</i>	New Zealand screw shell

Division 4 Echinoderms

3

Species	Common name
<i>Asterias amurensis</i>	Northern Pacific seastar

Division 5 Ascidians 1

Species	Common name
<i>Didemnum vexillum</i>	Colonial sea squirt

Division 6 Polychaetes 2

Species	Common name
<i>Marenzelleria</i> spp.	Red gilled mudworm
<i>Sabella spallanzanii</i>	European fan worm

Division 7 Ctenophores 3

Species	Common name
<i>Mnemiopsis leidyi</i>	Comb jelly, sea walnut

Division 8 Marine vegetation 4

Species	Common name
<i>Undaria pinnatifida</i>	Japanese seaweed, wakame
<i>Grateloupia turuturu</i>	Red macroalga
<i>Sargassum muticum</i>	Asian seaweed
<i>Codium fragile</i> spp. <i>tomentosoides</i>	Green macroalga, dead man's fingers

Division 9 Holoplankton 5

Species	Common name
<i>Pfiesteria piscicida</i>	Toxic dinoflagellate
<i>Pseudo-nitzschia seriata</i>	Pennate diatom
<i>Dinophysis norvegica</i>	Toxic dinoflagellate
<i>Alexandrium monilatum</i>	Toxic dinoflagellate

Species	Common name
<i>Chaetoceros concavicornis</i>	Centric diatom
<i>Chaetoceros convolutus</i>	Centric diatom

Schedule 6C Noxious fish and noxious marine vegetation

(Section 209A)

Part 1 Noxious fish

Division 1 Class 1 Noxious fish

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Acestrorhynchus microlepis</i> (Acestrorhynchidae family)		All waters
<i>Hydrocynus</i> spp. (Alestiidae family)	Pike characin, giant tigerfish	All waters
<i>Amia calva</i> (Amiidae family)	Bowfin	All waters
<i>Anabas testudineus</i> (Anabantidae family)	Climbing perch	All waters
<i>Anaspidoglanis macrostoma</i> (Bagridae family)	Flatnose catfish	All waters
<i>Bagrus ubangensis</i> (Bagridae family)	Ubangi shovelnose catfish	All waters
<i>Procambarus clarkii</i> (Cambaridae family)	Red swamp crayfish	All waters
Centrarchidae family		All waters
<i>Centropomus</i> spp. (Centropomidae family)	Snook	All waters
<i>Lates microlepis</i> (Centropomidae family)	Forktail lates	All waters
<i>Lates niloticus</i> (Centropomidae family)	Nile perch	All waters

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Chaca chaca</i> (Chacidae family)	Angler, frogmouth and squarehead catfish	All waters
<i>Channa</i> spp. (Channidae family)	Snake head	All waters
<i>Colossoma</i> spp. (Characidae family)		All waters
<i>Serrasalmus</i> spp. (Characidae family)	Redeye piranha	All waters
<i>Pygocentrus</i> spp. (Characidae family)	Red piranha	All waters
<i>Boulengerochromis microlepis</i> (Cichlidae family)	Giant cichlid, yellow belly cichlid	All waters
<i>Oreochromis</i> spp. (Cichlidae family)	Tilapia	All waters
<i>Hemichromis fasciatus</i> (Cichlidae family)	Banded jewelfish	All waters
<i>Sargochromis</i> spp. (Cichlidae family)	Pink, slender, greenwood, mortimer, cunean, green happy	All waters
<i>Sarotherodon</i> spp. (Cichlidae family)	Blackchin tilapia	All waters
<i>Serranochromis</i> spp. (Cichlidae family)		All waters
<i>Tilapia</i> spp. (except <i>T. buttikoferi</i>) (Cichlidae family)	Redbelly tilapia	All waters
<i>Ichthyborinae</i> subfamily (Citharinadae family)	African pike-characin, tubenose poacher, fin eater	All waters
<i>Clarias</i> spp. (Clariidae family)	Walking catfish	All waters
<i>Misgurnus anguillicaudatus</i> (Cobitidae family)	Weatherloach, oriental weatherloach	All waters
<i>Aristichthys nobilis</i> (Cyprinidae family)	Bighead carp	All waters
<i>Barbodes hexagonolepis</i> (Cyprinidae family)	Copper mahseer	All waters
<i>Catla catla</i> (Cyprinidae family)	Catla	All waters

Fisheries Management Amendment Bill 2009

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Catlocarpio siamensis</i> (Cyprinidae family)	Giant barb	All waters
<i>Cirrhinus cirrhosus</i> (Cyprinidae family)	Mrigal	All waters
<i>Ctenopharyngodon idella</i> (Cyprinidae family)	Grass carp	All waters
<i>Labeo calabasu</i> (Cyprinidae family)	Orange fin labeo	All waters
<i>Labeo rohita</i> (Cyprinidae family)	Rohu	All waters
<i>Zacco platypus</i> (Cyprinidae family)	Freshwater minnow	All waters
<i>Hypophthalmichthys molitrix</i> (Cyprinidae family)	Silver carp	All waters
<i>Tor</i> spp. (Cyprinidae family)	River carp, deccan, high backed, jungaha, putitor, Thai mahseer	All waters
<i>Notropis</i> spp. (Cyprinidae family)	Shiner	All waters
<i>Phoxinus erythrogaster</i> (Cyprinidae family)	Southern redbelly dace	All waters
<i>Oxydoras</i> spp. (Doradidae family)	Ripsaw catfish, black doras, black shielded catfish	All waters
<i>Mytilopsis</i> spp. (Dreissenidae family)	Black striped mussel	All waters
<i>Elassoma</i> spp. (Elassomatidae family)	Pygmy sunfish	All waters
<i>Oxyeleotris marmorata</i> (Eleotridae family)	Marble goby	All waters
<i>Erythrinus</i> spp. (Erythrinadae family)		All waters
<i>Hoplerythrinus</i> spp. (Erythrinadae family)	Aimira	All waters
<i>Hoplias</i> spp. (Erythrinadae family)	Trahira	All waters
<i>Esox</i> spp. (Esocidae family)	Pike	All waters

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Pungitius pungitius</i> (Gasterosteidae family)	Ninespine stickleback	All waters
<i>Apeltes quadracus</i> (Gasterosteidae family)	Four spined stickleback	All waters
<i>Culaea inconstans</i> (Gasterosteidae family)		All waters
<i>Acanthogobius flavimanus</i> (Gobiidae family)	Yellow fin goby	All waters
<i>Tridentiger trignocephalus</i> (Gobiidae family)	Chameleon goby, striped goby, Japanese goby	All waters
<i>Gymnarchus niloticus</i> (Gymnarchidae family)	Aba aba	All waters
<i>Electrophorus electricus</i> (Gymnotidae family)	Electric eel	All waters
<i>Hepsetus odoe</i> (Hepsetidae family)	African pike	All waters
<i>Heteropneustes fossilis</i> (Heteropneustidae family)	Stinging catfish	All waters
<i>Atractosteus</i> spp.(Lepisosteidae family)	American gar, armoured gar, alligator gar	All waters
<i>Malapterurus</i> spp. (Malapteruridae family)	Electric catfish	All waters
<i>Mormyrops anguilloides</i> (Mormyridae family)	Bottlenose, cornish jack	All waters
<i>Belonesox belizanus</i> (Poeciliidae family)	Pike minnow, pike killifish	All waters
<i>Gambusia</i> spp. (excluding <i>Gambusia holbrooki</i>) (Poeciliidae family)	Mosquitofish	All waters
<i>Polyodon spathula</i> (Polyodontidae family)	Mississippi paddlefish	All waters
<i>Psephurus gladius</i> (Polyodontidae family)	Chinese swordfish	All waters
<i>Protopterus annectens</i> (Protopteridae family)	African lungfish	All waters

Fisheries Management Amendment Bill 2009

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Schilbe mystus</i> (Schilbeidae family)	African butter catfish	All waters
<i>Silurus</i> spp. (Siluridae family)	European catfish, wels catfish	All waters
<i>Paravandelia oxyptera</i> (Trichomycteridae family)	Parasitic catfish	All waters
<i>Valencia hispanica</i> (Valenciidae family)	Valencia toothcarp	All waters

Division 2 Class 2 Noxious fish

1

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Amniataba percooides</i> (Terapontidae family)	Banded grunter	All waters
<i>Crassostrea gigas</i> (Ostreidae family)	Pacific oyster	Estuarine and ocean waters (other than Port Stephens)
<i>Phalloceros caudimaculatus</i> (Poeciliidae family)	Speckled mosquitofish, dusky millions fish	All waters

Division 3 Class 3 Noxious fish

1

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Gambusia holbrooki</i> (Poeciliidae family)	Plague minnow, eastern gambusia	Waters in the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, City of Sydney, Fairfield, Gosford, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lake Macquarie, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Warringah, Waverley, Willoughby, Wollongong, Woollahra and Wyong
<i>Cyprinus carpio</i> (Cyprinidae family)	European carp, common carp, carp, ornamental Koi carp	All waters

Part 2 Noxious marine vegetation 1

Division 1 Class 1 Noxious marine vegetation 2

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Caulerpa taxifolia</i> (Caulerpaceae family)	Caulerpa	All waters

[138] Schedule 7 Savings, transitional and other provisions 3

Insert at the end of clause 2 (1): 4

Fisheries Management Amendment Act 2009 5

[139] Schedule 7, clause 6AB 6

Insert after clause 6AA: 7

6AB Changes to maximum penalties 8

An amendment made to this Act by the *Fisheries Management Amendment Act 2009* that provides for an increased maximum penalty for a second or subsequent offence against this Act applies to a second or subsequent offence that occurs after that amendment (including in a case where the previous offence occurred before the amendment). 9
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[140] Schedule 7, clause 14A 15

Insert after clause 14: 16

14A Changes to co-operative arrangements 17

The amendments made to section 7 and Part 5 of this Act by the *Fisheries Management Amendment Act 2009* extend to arrangements made under Division 3 of that Part before the commencement of those amendments. 18
19
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21

[141] Schedule 7, clauses 15A–15C	1
Insert after clause 15:	2
15A Applications for aquaculture leases	3
The amendments made to section 163 by the <i>Fisheries Management Amendment Act 2009</i> apply only to applications for aquaculture leases that are made on or after the commencement of the amendments.	4 5 6 7
15B Overdue rental	8
The amendment made to section 166 by the <i>Fisheries Management Amendment Act 2009</i> applies only to rental payments that first become due on or after the commencement of the amendment.	9 10 11 12
15C Cancellation of leases by Minister	13
The amendment made to section 177 by the <i>Fisheries Management Amendment Act 2009</i> extends to leases that were entered into before the commencement of the amendment and to any rental or other payments that are overdue on the commencement of the amendment.	14 15 16 17 18
[142] Schedule 7, clause 17AB	19
Insert after clause 17AA:	20
17AB Requirement to notify construction, alteration or modification of dams, weirs and reservoirs	21 22
Section 218 (5B), as inserted by the <i>Fisheries Management Amendment Act 2009</i> , applies in respect of any works for the construction, alteration or modification of a dam, weir or reservoir on a waterway that are first commenced after the commencement of that subsection.	23 24 25 26 27
[143] Schedule 7, clauses 21A–21C	28
Insert after clause 21:	29
21A Local court forfeiture powers	30
The amendment made to section 269 by the <i>Fisheries Management Amendment Act 2009</i> applies only in respect of an offence committed on or after the commencement of the amendment.	31 32 33 34

21B Prohibition orders (2009 changes)	1
(1) A court has power to make an order under section 282C, as in force after the substitution of section 282C (1) by the <i>Fisheries Management Amendment Act 2009</i> , if the court convicts a repeat offender of a fisheries offence committed on or after that substitution (it does not matter that the other fisheries offences of which the repeat offender has been convicted were committed before that substitution).	2 3 4 5 6 7 8
(2) A court continues to have power to make an order under section 282C, as in force immediately before the substitution of section 282C (1) by the <i>Fisheries Management Amendment Act 2009</i> , if the court convicts a repeat offender of a fisheries offence committed before that substitution.	9 10 11 12 13
21C Restoration orders	14
Division 8 of Part 9, as inserted by the <i>Fisheries Management Amendment Act 2009</i> , applies only in respect of offences committed on or after the commencement of that Division.	15 16 17
[144] Schedule 7, clause 26	18
Insert after clause 25:	19
26 References to Local Court	20
On the date on which the <i>Local Courts Act 1982</i> is repealed by the <i>Local Court Act 2007</i> a reference in this Act:	21 22
(a) to a Local Court is to be read as a reference to the Local Court constituted by the <i>Local Court Act 2007</i> , and	23 24
(b) to the <i>Local Courts Act 1982</i> is to be read as a reference to the <i>Local Court Act 2007</i> .	25 26

Schedule 2	Amendment of other Acts	1
2.1	Criminal Procedure Act 1986 No 209	2
	Schedule 1 Indictable offences triable summarily	3
	Insert after clause 10B in Part 6 of Table 2:	4
	10C Trafficking in fish	5
	An offence under section 21B of the <i>Fisheries Management Act 1994</i> .	6 7
2.2	Land and Environment Court Act 1979 No 204	8
	Section 19 Class 3—land tenure, valuation, rating and compensation matters	9 10
	Omit “or 202” from section 19 (g1). Insert instead “, 202 or 220AA”.	11
2.3	Local Court Act 2007 No 93	12
	Section 3 Definitions	13
	Insert after paragraph (h) of the definition of <i>criminal proceedings</i> in section 3 (1):	14 15
	(i) proceedings on an appeal against an order under section 2821 of the <i>Fisheries Management Act 1994</i> .	16 17
2.4	Local Courts Act 1982 No 164	18
	Section 36 Proceedings to which Part does not apply	19
	Insert after section 36 (2) (e):	20
	(f) proceedings on an appeal against an order under section 2821 of the <i>Fisheries Management Act 1994</i> .	21 22
2.5	Marine Parks Act 1997 No 64	23
[1]	Section 36 Application of Fisheries Management Act 1994	24
	Insert at the end of section 36 (2) (d):	25
	, and	26
	(e) a reference to a forfeiture offence is to be read as a reference to an offence against this Act or the regulations that is declared by the regulations to be a forfeiture offence.	27 28 29 30

Fisheries Management Amendment Bill 2009

Schedule 2 Amendment of other Acts

[2] Section 39 Proceedings for offences	1
Omit “\$20,000” from section 39 (2). Insert instead “\$22,000”.	2
[3] Schedule 3 Savings, transitional and other provisions	3
Insert at the end of clause 1 (1):	4
<i>Fisheries Management Amendment Act 2009</i>	5
[4] Schedule 3, Part 5	6
Insert after clause 11:	7
Part 5 Provision consequent on enactment of Fisheries Management Amendment Act 2009	8
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12 Penalties imposed by Local Court	11
The amendment made to section 39 (2) by the <i>Fisheries Management Amendment Act 2009</i> applies only in respect of an offence committed on or after the commencement of the amendment.	12
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	15