

**FISHERIES AND OYSTER FARMS (COMMONWEALTH-  
STATE ARRANGEMENTS) AMENDMENT ACT, 1982, No. 71**

**New South Wales**



ANNO TRICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 71, 1982.**

An Act to amend the Fisheries and Oyster Farms Act, 1935, to enable arrangements with respect to the management of certain fisheries to be entered into between, and given effect to by, the Commonwealth and the State. [Assented to, 21st May, 1982.]

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*Fisheries and Oyster Farms (Commonwealth-State Arrangements)  
Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**Short title.**

1. This Act may be cited as the "Fisheries and Oyster Farms (Commonwealth-State Arrangements) Amendment Act, 1982".

**Commencement.**

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on the date on which Part IVA of the Fisheries Act 1952 of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament, comes into operation.

**Principal Act.**

3. The Fisheries and Oyster Farms Act, 1935, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules :—

SCHEDULE 1.—INSERTION OF PART IA INTO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO CERTAIN WATERS.

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**Amendment of Act No. 58, 1935.**

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

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SCHEDULE 1.

(Sec. 5.)

INSERTION OF PART IA INTO THE PRINCIPAL ACT.

## (1) Section 3—

After the matter relating to Part I, insert :—

PART IA.—COMMONWEALTH—STATE MANAGEMENT OF  
FISHERIES—*ss.* 4A—4N.

DIVISION 1.—*Preliminary*—*s.* 4A.

DIVISION 2.—*Joint Authorities*—*ss.* 4B—4G.

DIVISION 3.—*Arrangements with respect to the  
management of particular fisheries*—*ss.* 4H—4N.

## (2) Part IA—

After Part I, insert :—

PART IA.

COMMONWEALTH—STATE MANAGEMENT OF FISHERIES.

DIVISION 1.—*Preliminary*.

**Interpretation: Part IA.**

4A. (1) In this Part, except to the extent that the context or subject-matter otherwise indicates or requires—

“arrangement” means an arrangement made by the State with the Commonwealth under Division 3, whether or not it is also made with another State or other States;

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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

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

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

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

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

“Joint Authority” means—

- (a) the South Eastern Fisheries Joint Authority established under section 12D (1) of the Commonwealth Act; and
- (b) any other Joint Authority established under section 12D (6) of that Act of which the Minister is a member;

“Joint Authority fishery” means a fishery in respect of which there is in force an arrangement under Division 3 under which the fishery is to be under the management of a Joint Authority.

(2) Without limiting the matters by reference to which a fishery may be identified in an arrangement under Division 3, those matters include all or any of the following :—

- (a) a species of fish;

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SCHEDULE 1—*continued.*INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

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

DIVISION 2.—*Joint Authorities.***Powers and functions of Minister.**

4B. (1) The Minister may exercise and perform any power or function conferred on the Minister by Part IVA of the Commonwealth Act, including any power or function of the Minister as a member of a Joint Authority.

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

**Judicial notice.**

4C. All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

**Functions of Joint Authority.**

4D. A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division 3 as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

**Delegation.**

4E. (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Act other than this power of delegation.

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

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

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

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

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

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

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

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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

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

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

(6) Section 40 of the Interpretation Act, 1897, applies in relation to a delegation under this section as if the Joint Authority were a person.

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

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

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

**Procedure of Joint Authorities.**

4F. (1) The provisions of section 12F (1)–(8) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.

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

(3) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of the Joint Authority shall be deemed to have

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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

been duly executed by the Joint Authority and, unless the contrary is proved, shall be deemed to be in accordance with a decision of the Joint Authority.

**Report of Joint Authority.**

4G. The Minister shall cause a copy of a report of a Joint Authority prepared under section 12G of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after preparation of the report.

DIVISION 3.—*Arrangements with respect to the  
management of particular fisheries.*

**Arrangement for management of certain fisheries.**

4H. (1) The State may, in accordance with section 12J of the Commonwealth Act, make an arrangement referred to in section 12H of that Act for the management of a particular fishery.

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

(3) After an arrangement has been made, but before the arrangement takes effect, licenses, 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, as if the arrangement had taken effect, but such a license, endorsement, instrument or regulation does not have effect before the arrangement takes effect.

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



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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

(5) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect, licenses, 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 termination of the arrangement, as if the arrangement had been terminated, but such a license, endorsement, instrument or regulation does not have effect before the termination of the arrangement takes effect.

**Application of this Act to fisheries in accordance with arrangements.**

4I. Subject to this section, where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of foreign boats in Commonwealth proclaimed waters or operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters or in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before the arrangement took effect.

**Functions of Joint Authority.**

4J. Where, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.

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*Fisheries and Oyster Farms (Commonwealth-State Arrangements)  
Amendment.*

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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

**Joint Authority to exercise certain powers instead of Minister.**

4K. (1) Subject to this section, a license or endorsement granted, issued, renewed or made under this Act otherwise than by virtue of this section does not authorise the doing of any act or thing in or in relation to a Joint Authority fishery.

(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred before or after the commencement of this Part on the Minister, his delegate or a prescribed officer referred to in section 25 (2) by or under this Act (this Part excepted) or the regulations (including powers with respect to the issue, renewal, cancellation and suspension of licenses) are exercisable by the Joint Authority to the exclusion of the Minister, his delegate and that prescribed officer.

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

(4) A Joint Authority may endorse a license referred to in section 23, 24 or 25 (including such a license granted by that Joint Authority or another Joint Authority) so as to extend the operation of the license to matters to which the licensing powers of the Joint Authority under this Act are applicable and, where such an endorsement is made—

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

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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

(5) Subject to section 4N (1) (b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, notification or order under this Act would, but for this subsection, apply to the fishery, the regulation, notification or order, as the case may be, ceases so to apply.

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

**Application of certain provisions relating to offences.**

4L. For the purposes of the prosecution of a person for an offence under section 23, 24 or 25 in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery—

- (a) a reference in section 23 or 24 to a license shall be read as a reference to a license, or an endorsement of a license, granted, issued, renewed or made by the relevant Joint Authority, in relation to the boat alleged to have been used in the commission of the offence;
- (b) a reference in section 25 to a license shall be read as a reference to a license, or an endorsement of a license, granted, issued, renewed or made by the relevant Joint Authority; and
- (c) a reference in section 23, 24 or 25 to taking fish from prescribed waters or any other waters shall be read as a reference to taking fish to which the Joint Authority fishery relates.

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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

**Presumption relating to certain statements.**

4M. A statement in an arrangement to the effect that specified waters—

- (a) in the case of an arrangement to which the Commonwealth and the State are the only parties—are waters adjacent to the State; and
- (b) in the case of any other arrangement—are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States,

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

**Regulations.**

4N. (1) Where a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority—

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

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

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*Fisheries and Oyster Farms (Commonwealth-State Arrangements)  
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SCHEDULE 1—*continued.*

INSERTION OF PART IA INTO THE PRINCIPAL ACT—*continued.*

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

(3) Section 8A (1)—

After “this Act”, insert “(Part IA excepted)”.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO  
CERTAIN WATERS.

(1) (a) Section 4 (1), definition of “Commonwealth Act”—

After the definition of “Boat”, insert :—

“Commonwealth Act” means the Fisheries Act 1952 of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament, whether enacted before or after the commencement of the Fisheries and Oyster Farms (Commonwealth-State Arrangements) Amendment Act, 1982.

(b) Section 4 (1), definition of “Foreign boat”—

After the definition of “Fishing gear”, insert :—

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

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Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO  
CERTAIN WATERS—*continued.*

(c) Section 4 (3)—

Omit the subsection, insert instead :—

(3) Where, in a provision of this Act, there is a reference to prescribed waters or to waters generally, the reference—

- (a) is a reference to all waters that are within the limits of the State;
- (b) except for purposes in relation to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Division 3 of Part IA and except for purposes prescribed by paragraph (d)—is a reference to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that, within the meaning of that Part, are Commonwealth proclaimed waters;
- (c) for purposes in relation to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Division 3 of Part IA—is a reference to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the Coastal Waters (State Powers) Act 1980 of the Parliament of the Commonwealth or otherwise; and
- (d) for purposes in relation to activities to which this Act applies, being activities that are, within the meaning of the Commonwealth Act, carried on for private purposes

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*Fisheries and Oyster Farms (Commonwealth–State Arrangements)  
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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO  
CERTAIN WATERS—*continued.*

otherwise than by the use of a foreign boat  
—is a reference to any waters to which the  
legislative powers of the State extend with  
respect to those activities.

- (2) (a) Section 20 (1)—  
Omit “territorial”, insert instead “prescribed”.
- (b) Section 20 (2) (b)—  
Omit “territorial”, insert instead “prescribed”.
- (3) Section 22A (1)—  
After “waters”, insert “within prescribed waters”.
- (4) Section 23 (1), (8)—  
Omit “territorial” wherever occurring, insert instead  
“prescribed”.
- (5) (a) Section 24 (1)—  
Omit “waters referred to in section 23”, insert instead  
“prescribed waters”.
- (b) Section 24 (3)—  
Omit “territorial waters”, insert instead “prescribed  
waters”.
- (6) (a) Section 25 (1) (a)—  
Omit “territorial”, insert instead “prescribed”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO  
CERTAIN WATERS—*continued.*

(b) Section 25 (14) (a)—

Omit “territorial”, insert instead “prescribed”.

(7) Section 25D (3)—

Omit “territorial”, insert instead “prescribed”.

(8) Section 33 (5) (c) (ii)—

Omit “tidal and inland”.

(9) Section 120 (2) (ff)—

Omit “territorial”, insert instead “prescribed”.

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