

**FISHERIES AND OYSTER FARMS (ADVISORY  
COUNCIL) AMENDMENT ACT 1989 No. 177**

NEW SOUTH WALES



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**FISHERIES AND OYSTER FARMS (ADVISORY  
COUNCIL) AMENDMENT ACT 1989 No. 177**

**NEW SOUTH WALES**



**Act No. 177, 1989**

An Act to amend the Fisheries and Oyster Farms Act 1935 to establish the New South Wales Commercial Fishing Advisory Council and Regional Advisory Committees; to consequentially amend the Public Finance and Audit Act 1983; and for other purposes. [Assented to 14 December 1989]

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Fisheries and Oyster Farms (Advisory Council) Amendment Act 1989.

**Commencement**

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) The provisions of Schedule 1 (3), and section 3 in its application to those provisions, commence on the date of assent to this Act.

**Amendment of Fisheries and Oyster Farms Act 1935 No. 58**

3. The Fisheries and Oyster Farms Act 1935 is amended as set out in Schedule 1.

**Consequential amendment of Public Finance and Audit Act 1983 No. 152**

4. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2 in alphabetical order the following words:

New South Wales Commercial Fishing Advisory Council.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Part 2B:

After Part 2A, insert:

**PART 2B - NEW SOUTH WALES COMMERCIAL  
FISHING ADVISORY COUNCIL AND REGIONAL  
ADVISORY COMMITTEES**

**Division 1 - Preliminary**

**Definitions**

17F. In this Part:

"Council" means the New South Wales Commercial Fishing Advisory Council constituted by section 17G;

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SCHEDULE 1 - AMENDMENTS - *continued*

**"interim Council"** means the New South Wales Commercial Fishing Advisory Council established by the Minister before the commencement of section 17G;

**"Regional Advisory Committee"** means a Regional Advisory Committee constituted by section 17L.

**Division 2 - New South Wales  
Commercial Fishing Advisory Council**

**Constitution of the New South Wales Commercial Fishing Advisory Council**

17G. (1) There is constituted by this Act a corporation with the corporate name of the New South Wales Commercial Fishing Advisory Council.

(2) Unless sooner dissolved by the Minister, the interim Council is dissolved on the commencement of this section.

**Membership and procedure of the Council**

17H. (1) The Council is to consist of 21 members.

(2) Of the members:

- (a) 1 is to be a person appointed by the Minister as Chairperson of the Council; and
- (b) 1 is to be the Director of Fisheries, Department of Agriculture and Fisheries; and
- (c) 14 are to be elected regional members; and
- (d) 5 are to be elected industry sector members.

(3) The elected regional members are to be persons holding current licences under section 24C, each 2 of whom are to be elected in accordance with the regulations for 1 of 7 prescribed regions by persons holding current licences under that section and having the qualifications (if any) prescribed by the regulations.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) The elected industry sector members are to be persons holding current licences under section 24C, each of whom:

- (a) is to be elected in accordance with the regulations to represent 1 of 5 prescribed sectors of the fishing industry; and
- (b) has the qualifications prescribed by the regulations in relation to the sector of the fishing industry which the person is to represent; and
- (c) is to be elected by persons holding current licences under that section and having the qualifications prescribed by the regulations.

(5) Schedule D has effect with respect to the members and procedure of the Council.

**Objects of Council**

17I. The objects of the Council are:

- (a) to act as a liaison body between the Minister and commercial fishermen; and
- (b) to advise the Minister on matters referred to it by the Minister in relation to commercial fishing; and
- (c) to advise the Minister on other matters relating to commercial fishing; and
- (d) to make such representations to the Minister as it thinks fit in relation to commercial fishing matters.

**Powers of the Council**

17J. The Council may:

- (a) appoint such staff as the Council considers necessary to carry out its functions; and
- (b) pay any expenses, charges and obligations incurred or undertaken by the interim Council or the Council in the exercise of its functions; and
- (c) pay any expenses, charges and obligations, of a type specified in guidelines issued by the Minister,

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SCHEDULE 1 - AMENDMENTS - *continued*

incurred or undertaken by a Regional Advisory Committee.

**Furnishing of reports etc. by Council**

17K. The Council is to furnish to the Minister such minutes, reports and statements of account arising out of the Council's activities as the Minister may require.

**Division 3 - Regional Advisory Committees**

**Regional Advisory Committees**

17L. (1) There is constituted by this Act a Regional Advisory Committee for each region referred to in section 17H (3).

(2) Each Regional Advisory Committee is to consist of:

- (a) the 2 persons elected under section 17H (3) to represent the region on the Council; and
- (b) in the case of the region prescribed for the purposes of this subsection as the central region, 10 persons elected by persons holding current licences under section 24C and having the qualifications prescribed by the regulations; and
- (c) in the case of any other region, 8 persons elected by persons holding current licences under section 24C and having the qualifications prescribed by the regulations.

(3) It does not matter if the persons elected to a Regional Advisory Committee under subsection (2) (b) or (c) include the persons referred to in subsection (2) (a).

(4) Schedule E has effect with respect to the members and procedure of a Regional Advisory Committee.

**SCHEDULE 1 - AMENDMENTS - *continued***

**Functions of Regional Advisory Committees**

17M. A Regional Advisory Committee:

- (a) is to provide a forum for discussions of regional fisheries issues; and
- (b) is to provide direction and advice to the persons elected under section 17H (3) to represent the region on the Council; and
- (c) is to establish and maintain liaison with the officers of the Fisheries Division of the Department of Agriculture and Fisheries.

**Division 4 - Finance**

**Funds of the Council**

17N. (1) The Council is to establish an account to be known as the "New South Wales Commercial Fishing Advisory Council Account".

(2) The funds of the Council are to be paid to the credit of the account and are to consist of:

- (a) any money appropriated by Parliament for the purposes of the Council; and
- (b) all annual contributions received under section 17P; and
- (c) all money in any account standing to the credit of the interim Council immediately before its dissolution; and
- (d) all other money received from any source by the Council.

(3) The funds of the Council are to be applied only:

- (a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the interim Council or the Council in the exercise of its functions; and
- (b) in payment or discharge of the expenses, charges and obligations, of a type specified in guidelines

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SCHEDULE 1 - AMENDMENTS - *continued*

issued by the Minister, incurred or undertaken by a Regional Advisory Committee; and

- (c) in payment of allowances (if any) payable to members of the Council or Regional Advisory Committees.

(4) The funds in the account may be kept in 1 or more financial institutions.

(5) The account does not form part of the Consolidated Fund.

**Investment**

17O. The Council may invest funds held by it:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power to invest funds held by the Authority:
  - (i) in any manner authorised for the time being for the investment of trust funds; and
  - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

**Annual contributions towards Council's costs**

17P. A licence under section 24C is not to be issued to a person or renewed unless the person has paid to the Minister by the date by which the fee for the issue or renewal of the licence is due a prescribed contribution towards the funds of the Council.

(2) Section 120 (**Regulations**):

After section 120 (2) (ttt), insert:

- (uuu) with respect to the election of members of the New South Wales Commercial Fishing Advisory Council and of Regional Advisory Committees constituted under section 17L;



SCHEDULE 1 - AMENDMENTS - *continued*

- (vvv) prescribing the procedure for the calling of meetings of that Council and such Regional Advisory Committees and the conduct of business at such meetings; and
- (www) with respect to the application of the funds of that Council.

(3) Schedule C (Savings, transitional and other provisions):

After clause 1, insert:

**Appointments and elections**

2. (1) For the purpose only of enabling the New South Wales Commercial Fishing Advisory Council to be constituted in accordance with this Act on or after (but not before) the commencement of section 17G:

- (a) appointments may be made; and
- (b) elections may be held; and
- (c) anything else may be done,

before that commencement, as if the whole of Part 2B commenced on the date of assent to the Fisheries and Oyster Farms (Advisory Council) Amendment Act 1989, but so that no member of the Council as so constituted assumes office as a member before the commencement of section 17G.

(2) For the purpose only of enabling a Regional Advisory Committee to be constituted in accordance with this Act on or after (but not before) the commencement of section 17L:

- (a) elections may be held; and
- (b) anything else may be done,

before that commencement, as if the whole of Part 2B commenced on the date of assent to the Fisheries and Oyster Farms (Advisory Council) Amendment Act 1989, but so that no member of the Committee as so constituted assumes office as a member before the commencement of section 17L.

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**SCHEDULE 1 - AMENDMENTS - *continued***

**Contributions under section 17P**

3. (1) Regulations may be made, and if made are to be taken to have effect, for the purposes of section 17P, and contributions may be levied under that section, as if that section had commenced on the date of assent to the Fisheries and Oyster Farms (Advisory Council) Amendment Act 1989.

(2) Any such contributions levied before the commencement of section 17G are to be paid directly to the credit of an account nominated by the Minister and if the Minister so directs may be applied towards the expenses of the interim Council.

(4) Schedules D, E:

After Schedule C, insert:

**SCHEDULE D - PROVISIONS RELATING TO  
MEMBERS AND PROCEDURE OF NEW SOUTH  
WALES COMMERCIAL FISHING  
ADVISORY COUNCIL**

(Sec. 17H (5))

**Definitions**

1. In this Schedule:

"Council" means the New South Wales Commercial Fishing Advisory Council constituted by section 17G;

"member" means a member of the Council.

**Deputies of members**

2. (1) A member (other than an appointed member) may, from time to time, appoint a person to be the deputy of the member, and may at any time revoke any such appointment.

**SCHEDULE 1 - AMENDMENTS - *continued***

(2) In the absence of a member, the member's deputy:

- (a) may, if available, act in the place of the member;  
and
- (b) while so acting, has all the functions of the member  
and is to be taken to be the member.

(3) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

**Terms of office**

3. Subject to this Schedule, an elected or appointed member holds office for a term of 3 years but is eligible (if otherwise qualified) for re-election or re-appointment.

**Allowances**

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

**Vacancy in office of elected or appointed member**

5. (1) The office of an elected or appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-elected or re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) in the case of an appointed member, is removed from office by the Minister under this clause; or
- (e) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the

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SCHEDULE 1 - AMENDMENTS - *continued*

Council for having been absent from those meetings; or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
  - (i) in the case of an elected member, ceases to be the holder of a licence under section 24C.
- (2) The Minister may remove an appointed member from office at any time.

**Filling of vacancy in office of member**

6. (1) If the office of an elected or appointed member becomes vacant, a person is, subject to this Act, to be elected or appointed to fill the vacancy.

(2) If a vacancy occurs in the office of an elected member otherwise than because of the expiration of the term of the office and within 12 months of the next election for the office, the Minister may appoint a person to fill the office for the remainder of that term being:

- (a) in the case of an elected member referred to in section 17H (2) (c), a person nominated by the relevant Regional Advisory Committee; and

**SCHEDULE 1 - AMENDMENTS - *continued***

- (b) in the case of an elected member referred to in section 17H (2) (d), a person who the Minister decides, after consultation with the relevant industry sector, is appropriate for that office.

**Effect of certain other Acts**

7. (1) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(2) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**Personal liability of members etc.**

8. A matter or thing done by the Council, a member of the Council or any person acting under the direction of the Council does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**General procedure**

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be determined by the Council.

**Quorum**

10. The quorum for a meeting of the Council is 10 elected members.

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SCHEDULE 1 - AMENDMENTS - *continued*

**Presiding member and voting rights**

11. (1) The Chairperson of the Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The Chairperson of the Council, and the Director of Fisheries, Department of Agriculture and Fisheries, do not have the right to vote.

(3) The member elected to preside at meetings in the absence of the Chairperson retains any voting rights which the member has as a member.

**Voting**

12. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

**First meeting**

13. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

**SCHEDULE E - PROVISIONS RELATING TO  
MEMBERS AND PROCEDURE OF REGIONAL  
ADVISORY COMMITTEES**

(Sec. 17L (4))

**Definitions**

1. In this Schedule:

"**member**", in relation to a Regional Advisory Committee, means a member of the Regional Advisory Committee;

**SCHEDULE 1 - AMENDMENTS - *continued***

**"Regional Advisory Committee"** means a Regional Advisory Committee constituted by section 17L.

**Chairperson**

2. (1) A Regional Advisory Committee is to elect one of its members to be Chairperson of the Committee.

(2) A Regional Advisory Committee may at any time remove a person from the office of Chairperson.

(3) A person who is Chairperson of a Regional Advisory Committee vacates that office if the person:

- (a) is removed from that office by the Committee; or
- (b) resigns that office by instrument in writing addressed to the Committee; or
- (c) ceases to be a member.

(4) The Committee may, from time to time, appoint a person to be the deputy of the Chairperson, and the Committee may at any time revoke any such appointment.

(5) In the absence of the Chairperson, the Chairperson's deputy:

- (a) may, if available, act in the place of the Chairperson; and
- (b) while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.

(6) A person while acting in the place of the Chairperson is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

**Terms of office**

3. Subject to this Schedule, an elected member holds office for a term of 3 years but is eligible (if otherwise qualified) for re-election.

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SCHEDULE 1 - AMENDMENTS - *continued*

**Allowances**

4. An elected member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

**Vacancy in office of member**

5. The office of an elected member of a Regional Advisory Committee becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-elected; or
- (c) resigns the office by instrument in writing addressed to the Committee; or
- (d) is absent from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for having been absent from those meetings; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence



SCHEDULE 1 - AMENDMENTS - *continued*

which, if committed in New South Wales, would be an offence so punishable; or

- (h) ceases to be the holder of a licence under section 24C.

**Filling of vacancy in office of elected member**

6. (1) If the office of an elected member becomes vacant, a person is, subject to this Act, to be elected to fill the vacancy.

(2) If a vacancy occurs in the office of an elected member of a Regional Advisory Committee otherwise than because of the expiration of the term of the office and within 12 months of the next election for the office, the Minister may appoint a person nominated by the Committee to fill the office for the remainder of that term.

**Effect of certain other Acts**

7. (1) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or  
(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(2) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**Personal liability of members etc.**

8. A matter or thing done by a Regional Advisory Committee, a member of a Regional Advisory Committee or any person acting under the direction of a Regional Advisory Committee does not, if the matter or thing was

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SCHEDULE 1 - AMENDMENTS - *continued*

done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**General procedure**

9. The procedure for the calling of meetings of a Regional Advisory Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, and to any directions given by the New South Wales Commercial Fishing Advisory Council, to be determined by the Committee.

**Quorum**

10. The quorum for a meeting of a Regional Advisory Committee is a majority of the members for the time being of the Committee.

**Presiding member**

11. The Chairperson of a Regional Advisory Committee or the Chairperson's deputy or, in the absence of both, another member elected to chair the meeting by the members present is to preside at a meeting of the Committee.

**Voting**

12. A decision supported by a majority of the votes cast at a meeting of a Regional Advisory Committee at which a quorum is present is the decision of the Committee.

**First meeting**

13. The Minister is to call the first meeting of each Regional Advisory Committee in such manner as the Minister thinks fit.

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[*Minister's second reading speech made in -  
Legislative Assembly on 14 November 1989  
Legislative Council on 22 November 1989*]