

**FISHERIES AND OYSTER FARMS (PENALTIES AND
ENFORCEMENT) AMENDMENT ACT 1989 No. 52**

NEW SOUTH WALES



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**FISHERIES AND OYSTER FARMS (PENALTIES AND
ENFORCEMENT) AMENDMENT ACT 1989 No. 52**

NEW SOUTH WALES



Act No. 52, 1989

An Act to amend the Fisheries and Oyster Farms Act 1935 to increase penalties and to make further provision with respect to seizure and forfeiture of property. [Assented to 19 May 1989]

*Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989***The Legislature of New South Wales enacts:****Short title**

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

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Fisheries and Oyster Farms Act 1935 No. 58

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

Transitional provision

4. Sections 96 and 97 of the Fisheries and Oyster Farms Act 1935, as in force immediately before the commencement of Schedule 3 (5), continue to apply to articles seized before (but not after) that commencement.

**SCHEDULE 1—AMENDMENTS INCREASING
PENALTIES FOR MAJOR OFFENCES**

(Sec. 3)

- (1) Section 28 (**Method of dragging or drawing nets**)—
Omit “and liable to a penalty not exceeding \$500”.
- (2) Section 29 (**Waters not to be stalled**)—
(a) Section 29 (1)—
Omit “and liable to a penalty not exceeding \$200”.
(b) Section 29 (2)—
Omit “and liable to a penalty not exceeding \$200”.
- (3) Section 103 (**Penalties for certain offences**)—
Section 103 (2)—
Omit “\$1,000”, insert instead “50 penalty units”.
- (4) Section 106 (**General penalty and liability of directors etc. of corporations**)—
(a) Section 106 (1)—
Omit “\$1,000” insert instead “100 penalty units in the case of a corporation or 50 penalty units in any other case”.

*Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989*SCHEDULE 1—AMENDMENTS INCREASING PENALTIES FOR
MAJOR OFFENCES—*continued*

(b) Section 106 (2)–(4)—

Omit section 106 (2), insert instead:

(2) If a corporation contravenes any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(3) A person may be proceeded against and convicted under a provision pursuant to subsection (2) whether or not the corporation has been proceeded against or convicted under that provision.

(4) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

(5) Section 114 (**Persons unlawfully in possession of fish**)—

(a) Omit “and liable to a penalty not exceeding—

(a) \$2,000, where the fish concerned are abalone; or

(b) \$1,000 in any other case”.

(b) At the end of the section, insert:

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

(6) Section 116 (**Possession of prohibited size fish**)—

(a) Omit from section 116 (1) “and liable to a penalty not exceeding—

(d) \$2,000, where abalone are a class of fish specified under section 120 (3) and the fish concerned are prohibited size abalone; or

(e) \$1,000, in any other case”.

(b) At the end of section 116 (1), insert:

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

(7) Section 121 (**Penalties and application of regulations**)—

Omit section 121 (1), insert instead:

(1) A regulation may impose a penalty not exceeding 100 penalty units in the case of a corporation or 50 penalty units in any other case.

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**SCHEDULE 2—AMENDMENTS INCREASING
PENALTIES FOR OTHER OFFENCES**

(Sec. 3)

- (1) Section 7 (**Honorary fisheries rangers**)—

Omit from section 7 (6) “and liable to a penalty not exceeding \$50” and at the end of the subsection, insert:
Maximum penalty: 5 penalty units.
- (2) Section 26 (**Registration of nets and other fishing gear**)—

Omit from section 26 (2) “and liable to a penalty not exceeding \$20” and at the end of the subsection, insert:
Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.
- (3) Section 30 (**Wilful damage to nets by certain means**)—
 - (a) Section 30 (1)—

Omit “and liable to a penalty not exceeding \$200” and at the end of the subsection, insert:
Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.
 - (b) Section 30 (2)—

Omit “and liable to a penalty not exceeding \$200” and at the end of the subsection, insert:
Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.
- (4) Section 32A (**Interference with fishing operations etc.**)—

Omit “and liable to a penalty not exceeding \$50” and at the end of the section, insert:
Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.
- (5) Section 38 (**Fish consignments to be labelled**)—

Omit from section 38 (1) “and liable to a penalty not exceeding \$50” and at the end of the subsection, insert:
Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.
- (6) Section 42 (**Returns**)—

Omit from section 42 (5) “and liable to a penalty not exceeding \$100” and at the end of the subsection, insert:
Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.

Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989

SCHEDULE 2—AMENDMENTS INCREASING PENALTIES FOR
OTHER OFFENCES—*continued*

(7) Section 54 (**Use of light prohibited**)—

Omit “and liable to a penalty not exceeding \$100” and at the end of the section, insert:

Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.

(8) Section 85 (**Persons may take oysters from reserves and Crown lands for their own consumption**)—

Omit from section 85 (2) “and liable to a penalty not exceeding \$50” and at the end of the subsection, insert:

Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.

(9) Section 87 (**Protection of training walls etc.**)—

(a) Omit from section 87 (4) “and liable to a penalty not exceeding \$200 and is liable in addition”, insert instead “and is liable in addition to any penalty for the offence”.

(b) At the end of section 87 (4), insert:

Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.

(10) Section 90 (**Licensing of oyster vendors**)—

(a) Section 90 (4)—

Omit “and liable to a penalty not exceeding \$200” and at the end of the subsection, insert:

Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.

(b) Section 90 (5)—

Omit “and liable to a penalty not exceeding \$200” and at the end of the subsection, insert:

Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.

(11) Section 104 (**Master of boat to have licence on board**)—

Omit “and liable to a penalty not exceeding \$50” and at the end of the section, insert:

Maximum penalty: 10 penalty units.

(12) Section 116B (**Damage etc. to official notice board**)—

Omit “and liable to a penalty not exceeding \$100” and at the end of the section, insert:

Maximum penalty: 10 penalty units.

*Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989*SCHEDULE 2—AMENDMENTS INCREASING PENALTIES FOR
OTHER OFFENCES—*continued*(13) Section 120 (**Regulations**)—

Omit from section 120 (2A) (c) “one hundred dollars”, insert instead “5 penalty units”.

SCHEDULE 3—AMENDMENTS RELATING TO ENFORCEMENT

(Sec. 3)

(1) Section 14 (**Further powers of inspectors**)—

Omit section 14 (c), insert instead:

(c) seize, take, detain, remove and secure—

(i) any fish, any net or other fishing gear or any other article which the inspector has reason to believe is liable to be forfeited under this Act or the regulations;
or

(ii) any boat or trailer which the inspector has reason to believe is liable to be forfeited under this Act or the regulations;

(2) Section 92—

Omit the section, insert instead:

Proceedings and penalties for offences

92. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

(2) If proceedings are brought in a Local Court, the maximum penalty that the Local Court may impose for the offence is, notwithstanding any other provision of this Act, 100 penalty units or the maximum penalty provided for the offence by this Act or the regulations, whichever is the lesser.

(3) A Local Court may not order forfeiture under this Act of a boat or trailer unless it is satisfied that the value of the boat or trailer, or in the case of the forfeiture of a boat and a trailer, their combined value, does not exceed 100 penalty units.

(4) If a court is satisfied that the defendant was, at the time of the commission of the offence, engaged in commercial fishing operations, the maximum penalty which the court may impose is, subject to subsection (2), twice the maximum penalty otherwise provided for that offence.

*Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989*SCHEDULE 3—AMENDMENTS RELATING TO ENFORCEMENT—
continued

(5) The regulations may specify the circumstances in which it will be presumed, unless the defendant proves to the contrary, that the defendant was, at the time of the commission of the offence, engaged in commercial fishing operations.

(3) Section 94 (**Property liable to be forfeited**)—

At the end of section 94, insert:

(2) A boat is liable to be forfeited if the boat is used in the commission of an offence under section 18, 19 or 33, or of a prescribed offence under this Act or the regulations, by a person who is, at the time of the commission of the offence, engaged in commercial fishing operations.

(3) The trailer used to transport the boat to the water in relation to which the offence was committed is also liable to be forfeited.

(4) The regulations may specify the circumstances in which it will be presumed, unless the defendant proves to the contrary, that the defendant was, at the time of the commission of the offence, engaged in commercial fishing operations.

(4) Section 95 (**Conviction etc. to operate as forfeiture**)—

After “an article” in section 95 (1), insert “, other than a boat or trailer,”.

(5) Sections 96 and 97—

Omit the sections, insert instead:

Forfeiture of boats and trailers by order of the court

96. Where a boat or trailer, or both, is seized in connection with an alleged offence under this Act or the regulations and a court—

- (a) convicts a person of the offence; or
- (b) makes an order under section 75B of the Justices Act 1902 in respect of the offence; or
- (c) makes an order under section 556A of the Crimes Act 1900 in respect of the offence,

the court may order forfeiture of the boat or trailer, or both.

Forfeiture where no offence proceedings taken

97. (1) Where an article, other than a boat or trailer, has been seized by an inspector in connection with an alleged offence under this Act or the regulations, an inspector shall notify the owner of the article of the seizure if the owner was not present at the seizure and the owner’s business or residential address is known.

*Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989*SCHEDULE 3—AMENDMENTS RELATING TO ENFORCEMENT—
continued

(2) Notification shall be given by delivering written notice of the seizure to the owner personally or by delivering it or sending it by post to the owner's last known place of residence or business.

(3) The owner may dispute the seizure by giving the Minister notice in writing to that effect—

- (a) not later than 28 days after notification of the seizure has been given to the owner in accordance with this section; or
- (b) in a case where there is no requirement under this section to notify the owner of the seizure, not later than 28 days after seizure.

(4) If—

- (a) the owner of the seized article does not dispute the seizure in accordance with this section; and
- (b) no offence proceedings have been commenced in connection with the alleged offence within 28 days after seizure,

the article is forfeited.

(5) If—

- (a) the owner of the seized article disputes the seizure in accordance with this section; and
- (b) no offence proceedings have been commenced in connection with the alleged offence within 28 days after seizure,

an inspector shall, unless offence proceedings are brought, bring proceedings before a Local Court for an order that the article be forfeited.

(6) In proceedings brought before a Local Court for an order that the article be forfeited, the court shall—

- (a) if satisfied that the seized article is liable to be forfeited, order that the article be forfeited; and
- (b) if not so satisfied, order that the article be returned to the owner.

(7) In this section, "offence proceedings" means proceedings which could result in the forfeiture of an article under section 95.

Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989

SCHEDULE 3—AMENDMENTS RELATING TO ENFORCEMENT—
continued

(6) Section 109 (**Release of seized property**)—

After section 109 (2), insert:

(3) **Where—**

- (a) any boat or trailer has been seized in connection with an alleged offence under this Act or the regulations; and
- (b) proceedings for the offence are not commenced within 28 days after the seizure,

the boat or trailer shall be returned—

- (c) in the case of a boat—to the owner or master of the boat or the person from whose possession the boat was seized; and
 - (d) in the case of a trailer—to the owner of the trailer or the person from whose possession the trailer was seized.
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[*Minister's second reading speech made in—
Legislative Assembly on 20 April 1989
Legislative Council on 10 May 1989 a.m.*]