



New South Wales

# Rock Fishing Safety Act 2016 No 66

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 High risk rock fishing locations	2
5 Rock fishing without lifejacket at high risk locations	3
6 Authorised officer may demand name and address	3
7 Nature of proceedings for offences	3
8 Penalty notices	3
9 Fines to be paid into Recreational Fishing (Saltwater) Trust Fund	3
10 Regulations	4
<b>Schedule 1 Savings, transitional and other provisions</b>	<b>5</b>

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New South Wales

# Rock Fishing Safety Act 2016 No 66

Act No 66, 2016

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An Act to require persons to wear appropriate lifejackets when fishing at declared high risk rock fishing locations; and for related purposes. [Assented to 23 November 2016]

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

**1 Name of Act**

This Act is the *Rock Fishing Safety Act 2016*.

**2 Commencement**

This Act commences on the date of assent to this Act.

**3 Definitions**

(1) In this Act:

**appropriate lifejacket** means a lifejacket of a kind prescribed by the regulations.

**Note.** Clause 3 of Schedule 1 prescribes certain lifejackets as appropriate lifejackets until the regulations make other provision.

**authorised officer** means the following:

- (a) a fisheries officer within the meaning of the *Fisheries Management Act 1994*,
- (b) a person employed by a local council, or subject to its control or direction, who is an authorised person (within the meaning of the *Local Government Act 1993*) for the purposes of section 679 (Penalty notices for certain offences) of that Act, but only within the local government area of the local council concerned,
- (c) an officer of the Service within the meaning of the *National Parks and Wildlife Act 1974*.
- (d) a police officer.

**child** means a person who is under the age of 12 years.

**fish** has the same meaning as in the *Fisheries Management Act 1994*.

**high risk rock fishing location**—see section 4.

**Recreational Fishing (Saltwater) Trust Fund** means the Recreational Fishing (Saltwater) Trust Fund established under Division 3 of Part 8 of the *Fisheries Management Act 1994*.

**take** fish has the same meaning as in the *Fisheries Management Act 1994*.

**wear**, in relation to a lifejacket, means wear with all closing or fastening devices such as zippers, buckles and tapes correctly secured as specified by the manufacturer.

**Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

**4 High risk rock fishing locations**

- (1) The Minister may, by order published in the Gazette, declare an area to be an area where high risk rock fishing takes place (a **declared area**).
- (2) In this Act, a **high risk rock fishing location** is a naturally occurring rock platform or other rock formation exposed to ocean swell within a declared area.
- (3) The Secretary of the Department of Justice is to cause the following to be published on the [www.watersafety.nsw.gov.au](http://www.watersafety.nsw.gov.au) website and any other website that the Secretary considers appropriate:
  - (a) each declared area, and
  - (b) a description and map that identify the high risk rock fishing locations within the declared area.

## **5 Rock fishing without lifejacket at high risk locations**

- (1) A person must not take fish by means of a rod and line or handline, or assist a person to take fish in that manner (for example, by using a handheld net to assist the person to land fish), at a high risk rock fishing location unless the person is wearing an appropriate lifejacket.

Maximum penalty: 50 penalty units.

- (2) A person must not permit a child in the person's care or supervision at a high risk rock fishing location to take fish by means of a rod and line or handline, or assist a person to take fish in that manner, unless the child is wearing an appropriate lifejacket.

Maximum penalty: 50 penalty units.

## **6 Authorised officer may demand name and address**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state the person's full name and residential address.

- (2) A person must not fail to comply with a requirement made by an authorised officer under subsection (1).

Maximum penalty: 50 penalty units.

- (3) A person is not guilty of an offence under this section unless it is established that the authorised officer:

- (a) warned the person that failure to comply with the requirement is an offence, and
- (b) identified himself or herself to the person as an authorised officer.

## **7 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

## **8 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.

- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note.** The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **9 Fines to be paid into Recreational Fishing (Saltwater) Trust Fund**

The following amounts are to be paid into the Recreational Fishing (Saltwater) Trust Fund:

- (a) all amounts of penalties recovered with respect to offences under this Act, and

- (b) all amounts recovered by means of penalty notices for any such offences issued under this Act.

**10 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create an offence punishable by a penalty not exceeding 10 penalty units.

## Schedule 1 Savings, transitional and other provisions

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Any such provision has effect despite anything to the contrary in this Schedule.
- (5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Moratorium on prosecution for offence of rock fishing without lifejacket

##### (1) Initial moratorium for 12 months

A person may not be convicted of an offence against section 5 (or issued with a penalty notice for that offence) in relation to an activity that occurs within 12 months after the commencement of that section.

##### (2) Moratorium by regulation for newly declared high risk rock fishing locations

The regulations may provide that a person may not be convicted of an offence against section 5 (or issued with a penalty notice for that offence) in relation to an activity at a place that occurs within 12 months after the declaration of the place as a high risk rock fishing location.

#### 3 Transitional provision—appropriate lifejackets

- (1) Until the regulations otherwise provide, an *appropriate lifejacket* for the purposes of this Act is a lifejacket that:
  - (a) in relation to a child—meets performance level 100 or greater of Australian Standard AS 4758, *Lifejackets* (as in force from time to time) that complies with the requirements set out in Schedule 7 to the *Marine Safety Regulation 2016* for that lifejacket, or
  - (b) in any other case—meets performance level 50S or greater of Australian Standard AS 4758, *Lifejackets* (as in force from time to time) that complies with the requirements set out in Schedule 7 to the *Marine Safety Regulation 2016* for that lifejacket.

- (2) Despite subclause (1), a lifejacket is not an *appropriate lifejacket* for the purposes of this clause if:
  - (a) the lifejacket relies solely on oral inflation for buoyancy, or
  - (b) the lifejacket is not the correct size for the wearer, or
  - (c) the lifejacket is not in good condition.
- (3) Despite subclause (1), an inflatable lifejacket is not an *appropriate lifejacket* for the purposes of this clause unless:
  - (a) the lifejacket was purchased or otherwise acquired new by the current owner no more than 12 months ago, or
  - (b) the lifejacket has been serviced:
    - (i) at intervals of 12 months or less, or
    - (ii) at least at such longer intervals as are indicated by the manufacturer's instructions (if any) provided for the lifejacket.

**4 Transitional provision—penalty notices: section 8**

Until the regulations otherwise provide:

- (a) an offence under section 5 is taken to be an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is \$100.

[Second reading speech made in—

Legislative Assembly on 8 November 2016

Legislative Council on 17 November 2016]