



New South Wales

Fishing Legislation Amendment (Right to Fish) Bill 2019

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Fisheries Management Act 1994* (the **1994 Act**) as follows—
 - (i) to constitute an independent statutory body to be known as the NSW Recreational Fishing Council (the **NSWRF Council**) and provide for its members, functions and procedure,
 - (ii) to enable the NSWRF Council to order an audit of the recreational fishing trust funds established under the 1994 Act,
 - (iii) to require the Minister to consult with the NSWRF Council in relation to priority species and commercial quantities of fish the subject of certain aggravated offences,
 - (iv) to enable designated fishing activities to be declared or amended only by an amending Act,
 - (v) to require the Minister to consult with the NSWRF Council and various other entities representing recreational fishing interests before revising existing fishery management strategies,
 - (vi) to require the Minister to consult with the NSWRF Council before making or amending a fishing closure,
 - (vii) to recommend the State provide compensation to commercial fishers for reduction in or loss of income due to a fishing closure,
 - (viii) to recommend the State provide revenue from recreational fishing fees to assist in activities, to be administered by the NSWRF Council, that provide recreational

- fishing and boating infrastructure and educational programs to promote recreational fishing,
- (ix) to remove doubt that the official receipt issued for payment of a recreational fishing fee is evidence of the holder's authority to take fish,
 - (x) to make it clear that a copy of a tax invoice issued on payment of a recreational fishing fee over the telephone or by electronic means is an official receipt for the purposes of the 1994 Act,
 - (xi) to remove a general power of the Minister to take any other action available for the purpose of cancelling commercial fishing entitlements acquired under the 1994 Act,
 - (xii) to remove a power of the Minister to require a fishing determination to be made by the Total Allowable Fishing Committee or the Secretary,
 - (xiii) to require the Minister to consult with the NSWRF Council before directing the allocation of non-commercial fishing determinations,
 - (xiv) to require the Secretary to undertake public consultation before making a fishing determination required by the regulations,
 - (xv) to require the Minister to carry out public consultation when reviewing existing regulatory restrictions in light of non-commercial fishing determinations,
 - (xvi) to limit the time within which the Share Management Fisheries Appeal Panel (the *Share Appeal Panel*) must set a date for the hearing of an appeal,
 - (xvii) to limit the time within which the Share Appeal Panel must determine an appeal,
 - (xviii) to enable a person who is eligible to make appeals in relation to the allocation of 2 or more classes of quota shares to elect to have the appeals heard together and to enable the regulations to prescribe a combined fee for these appeals,
 - (xix) to require the Minister to consult with aquaculture permit holders before making a fishing closure relating to the area to which the permit applies,
 - (xx) to replace the Minister's power to undertake research for the purposes of the 1994 Act with a power to engage researchers to carry out independent research for those purposes,
 - (xxi) to prevent restrictions being imposed under any law on access to or across public land for the purpose of recreational fishing unless public consultation is first carried out,
- (b) to amend the *Marine Estate Management Act 2014* (the **2014 Act**) as follows—
- (i) to include as members of the Marine Estate Management Authority between 2 and 6 nominees of peak bodies representing recreational fishers and a nominee of the NSWRF Council,
 - (ii) to provide for a 5-year moratorium on the declaration of marine parks,
 - (iii) to prevent regulations under the 2014 Act from prohibiting recreational fishing in a marine park,
 - (iv) to prevent management rules for a marine park from prohibiting recreational fishing in a marine park,
 - (v) to prevent the Minister from prohibiting recreational fishing in a marine park by notification under the 2014 Act,
- (c) to make various consequential or ancillary amendments to those Acts, including making provision for matters of a savings or transitional nature.

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 the day that is 3 months after the date of assent to the proposed Act.

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

Designated fishing activities and fishery management strategies

Schedule 1[2] removes the power of the Governor to declare new designated fishing activities under the 1994 Act, or amend or repeal existing designated fishing activities, by proclamation on the recommendation of the Minister. Instead, an amending Act will be required to declare, amend or repeal designated fishing activities.

Schedule 1[3] requires the Minister to undertake consultation with the NSWRF Council (constituted by **Schedule 1[26]**) and various other entities representing recreational fishing interests before revising an existing fishery management strategy (required by the 1994 Act to be prepared in relation to each designated fishing activity) and before setting or revising priorities for the implementation of any action contemplated by a fishery management strategy. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

General fisheries management—fishing closures and possession limits

Schedule 1[4] and [5] require the Minister to consult with the NSWRF Council before making a fishing closure under the 1994 Act or amending or revoking a fishing closure.

Schedule 1[6] recommends the State provide compensation to commercial fishers whose income is lost or reduced as a direct result of a fishing closure. The compensation is for the estimated value of the loss or reduction in income, calculated on an annual basis and payable annually as a lump sum or by way of instalments. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

Schedule 1[7] requires the Minister to consult with the NSWRF Council before recommending the making of regulations by the Governor to amend the 1994 Act to specify priority species or commercial quantities of fish (the taking, selling or possession of which constitutes circumstances of aggravation in offences under the 1994 Act of taking or selling prohibited size fish and taking or possessing fish in excess of bag or possession limits). The consultation requirement applies also in relation to regulations to amend or omit priority species or commercial quantities of fish already specified in the 1994 Act.

Recreational fishing fee

Schedule 1[9] recommends the State provide revenue from recreational fishing fees to assist certain activities, to be administered by the NSWRF Council, involving the building and maintenance of recreational fishing and boating infrastructure on, or on land adjacent to, private land used by recreational fishers (with the consent of the landowner) and the provision of educational programs that promote and encourage participation in recreational fishing.

Schedule 1[10] restates a provision concerning the status of an official receipt that is issued on payment of a recreational fishing fee to remove a statement that the receipt is not an authority to take fish (and ancillary wording). A note to the restated provision refers to the existing power of a fisheries officer to require recreational fishers to produce an official receipt as evidence of their authority to take fish, and to an existing provision that makes it an offence for a recreational fisher to take fish without having an official receipt in his or her immediate possession. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

Schedule 1[8] makes it clear that a copy of a tax invoice issued on payment of a recreational fishing fee over the telephone or by electronic means that specifies a receipt number is an official receipt for the purposes of the 1994 Act.

Acquisition of commercial fishing entitlements

Schedule 1[12] removes a general power exercisable by the Minister to take any other action available to the Minister for the purpose of terminating commercial fishing entitlements following a declaration by the Minister of the acquisition of those entitlements. (The general power is in addition to the specific powers of the Minister to cancel shares in a share management fishery and

to cancel commercial fishing licences for that purpose.) **Schedule 1[11]** makes a consequential amendment.

Fishing determinations

Schedule 1[13] removes a power of the Minister to require a fishing determination (of total allowable catch of fish or total allowable fishing effort) to be made under the 1994 Act by the Total Allowable Fishing Committee or the Secretary, with the result that a fishing determination may only be made by that Committee or the Secretary if required by the regulations under the 1994 Act. **Schedule 1[15] and [16]** make consequential amendments. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

Schedule 1[18] requires the Minister to consult with the NSWRF Council before directing the allocation of a non-commercial fishing determination among fishers or classes of fishers, or the manner and extent to which, and the fishers or classes of fishers among whom, a non-commercial fishing determination is to be allocated.

Schedule 1[14] requires the Secretary to undertake public consultation before making a fishing determination that is required to be made by the regulations but (in the absence of the regulations specifying who is to make the determination) directed by the Minister to be made by the Secretary. **Schedule 1[17] and [28]** make consequential amendments.

Schedule 1[19] requires the Minister to undertake public consultation in relation to reviews of regulations and other instruments under the 1994 Act that the Minister is required to undertake in light of any non-commercial fishing determination and any allocation of that determination.

Share Appeal Panel

Schedule 1[22] requires the Share Appeal Panel established under the 1994 Act to determine an appeal within 90 days after the appeal is received. **Schedule 1[21]** makes a consequential amendment.

Schedule 1[23] requires the Chairperson of the Share Appeal Panel to fix the time, date and place for the hearing of an appeal, within 10 days after the appeal is received.

Schedule 1[20] enables a person who is eligible to make appeals to the Share Appeal Panel in relation to the allocation of 2 or more classes of quota shares to elect to have the appeals heard together. Provision is also made to enable the regulations made under the 1994 Act to prescribe a combined fee for these appeals that reflects the reduction in administrative costs of having the appeals heard together.

Schedule 1[31] contains related provisions of a savings or transitional nature.

Closing of aquaculture operations

Schedule 1[24] requires the Minister to consult with an aquaculture permit holder before making a fishing closure prohibiting the taking of fish or marine vegetation cultivated or kept under the permit.

Research

Schedule 1[25] replaces the power of the Minister to undertake research for the purposes of the 1994 Act and to exercise ancillary powers for those purposes with a power to engage suitably qualified persons to undertake independent research for the purposes of the 1994 Act and to exercise ancillary powers for those purposes.

NSW Recreational Fishing Council

Schedule 1[26] constitutes the NSWRF Council, with a Board consisting of 11 members. The Council is a NSW Government agency but is generally not subject to the control or direction of the Minister in the exercise of its functions (although it must provide reports about its activities and any other information if requested to do so by the Minister).

The NSWRF Council is to investigate and advise the Minister or the Secretary on any matter concerning recreational fishing that is referred to it by the Minister or the Secretary or on its own initiative. The Council has any other functions that are conferred or imposed on it by or under the 1994 Act or any other Act, including the function of administering educational programs and other activities provided for in **Schedule 1[9]**, the auditing function provided for in **Schedule 1[27]**, and various specific consultative functions provided for in the proposed Act. **Schedule 1[26]** also makes express provision for the Minister or the Secretary to delegate any of their functions under the 1994 Act to the NSWRF Council.

Schedule 1[1] makes a consequential amendment to insert a definition.

Schedule 1[30] contains provisions about the membership and procedure of the Board of the NSWRF Council.

Recreational fishing trust funds

Schedule 1[27] enables the NSWRF Council to order an audit of the financial statements relating to the Recreational Fishing (Freshwater) Trust Fund and the Recreational Fishing (Saltwater) Trust Fund established under the 1994 Act.

Restriction of recreational fishers' access to public land

Schedule 1[29] prevents the operation of any legislative provision that enables restrictions to be imposed on recreational fishers' access to or across public land for the purposes of recreational fishing unless public consultation is carried out before any decision under the provision is made.

Schedule 2 Amendment of Marine Estate Management Act 2014 No 72

Constitution of Marine Estate Management Authority

Schedule 2[1] requires between 2 and 6 persons who are representatives of peak bodies that represent recreational fishers, and 1 person who is a nominee of the NSWRF Council, to be members of the Marine Estate Management Authority. **Schedule 2[6]–[15]** make consequential amendments. **Schedule 2[16]** contains related provisions of a savings or transitional nature.

Moratorium on declaration of marine parks

Schedule 2[2] prevents the declaration of any new marine park for a period of 5 years after the date on which the proposed Act commences.

Prohibitions on recreational fishing in a marine park

Schedule 2[3] prevents regulations under the 2014 Act from prohibiting recreational fishing in a marine park or entry into a marine park for that purpose.

Schedule 2[4] prevents management rules under the 2014 Act from prohibiting recreational fishing in a marine park or entry into a marine park for that purpose.

Schedule 2[5] prevents relevant Ministers from prohibiting recreational fishing in a marine park or entry into a marine park for that purpose by notification under the 2014 Act.



New South Wales

Fishing Legislation Amendment (Right to Fish) Bill 2019

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New South Wales

Fishing Legislation Amendment (Right to Fish) Bill 2019

No. , 2019

A Bill for

An Act to amend the *Fisheries Management Act 1994* and the *Marine Estate Management Act 2014* to make further provision with respect to fishing (including the management of fishing and the representation of fishers); and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Fishing Legislation Amendment (Right to Fish) Act 2019*.

3

2 Commencement

4

This Act commences on the day that is 3 months after the date of assent to this Act.

5

Schedule 1	Amendment of Fisheries Management Act 1994	1
	No 38	2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4(1)—	4
	<i>NSW Recreational Fishing Council</i> means the NSW Recreational Fishing Council constituted under section 231A.	5 6
[2] Section 7B		7
	Omit the section. Insert instead—	8
7B Declaration of designated fishing activities		9
	Fishing activities described in Schedule 1A are declared to be designated fishing activities for the purposes of this Part.	10 11
[3] Section 7C Fishery management strategy for designated activities		12
	Insert after section 7C(4)—	13
	(5) Before the Minister revises the existing strategy for an activity or sets or revises priorities for the implementation of any action contemplated by an existing strategy under this section, the Minister must give the following persons and bodies an opportunity to make submissions on the proposal and take all submissions that are duly made into account—	14 15 16 17 18
	(a) the NSW Recreational Fishing Council,	19
	(b) advisory councils or advisory groups representing recreational fishing interests that the Minister considers to have a sufficient interest in the proposal,	20 21 22
	(c) peak bodies representing recreational fishers.	23
[4] Section 8 Closure of waters to fishing		24
	Insert after section 8(2)—	25
	(3) The Minister must consult with the NSW Recreational Fishing Council at least 28 days before making a fishing closure.	26 27
	(4) The NSW Recreational Fishing Council may agree to a period of less than 28 days for the purposes of subsection (3) if it considers the shorter period is warranted because of urgent circumstances (as referred to in section 9).	28 29 30
[5] Section 11 Amendment or revocation of closures		31
	Insert at the end of the section—	32
	(2) The Minister must consult with the NSW Recreational Fishing Council at least 28 days before amending or revoking a fishing closure.	33 34
[6] Section 13A		35
	Insert after section 13—	36
13A Compensation for commercial fishers		37
	(1) This section applies to a person if—	38
	(a) the person would be entitled to take fish from the waters the subject of a fishing closure under a commercial fishing licence but for the fishing closure, and	39 40 41

(b)	the fishing closure will result in a loss of or reduction in income earned by the person from fishing in those waters under the commercial fishing licence.	1 2 3
(2)	Parliament recommends the State provide compensation in accordance with this section to a person to whom this section applies for the estimated value of the loss of or reduction in income of the person occurring as a direct result of the fishing closure.	4 5 6 7
(3)	Parliament recommends the amount of compensation received by a person to whom this section applies—	8 9
(a)	is to be calculated on an annual basis in accordance with the regulations, and	10 11
(b)	is payable annually as a lump sum or by way of instalments in accordance with the regulations.	12 13
(4)	A claim for compensation is to be made in accordance with the regulations.	14
(5)	Compensation is not payable under this section if the person is entitled to compensation under Division 4B in respect of the fishing closure.	15 16
[7]	Section 14A Definitions	17
	Insert after section 14A(4)—	18
(5)	The Minister must consult with the NSW Recreational Fishing Council before making a recommendation for the purposes of subsection (4).	19 20
[8]	Section 34A Definitions	21
	Insert at the end of the section—	22
(2)	To avoid doubt, a copy of a tax invoice issued on payment of a fishing fee over the telephone or by electronic means that specifies a receipt number is an official receipt within the meaning of paragraph (b) of the definition of <i>official receipt</i> in subsection (1).	23 24 25 26
[9]	Section 34AA Purpose of fishing fees	27
	Insert at the end of the section—	28
(2)	Parliament recommends the State also provide revenue from fishing fees to assist the following activities, to be administered by the NSW Recreational Fishing Council—	29 30 31
(a)	building and maintaining recreational fishing and boating infrastructure—with revenue from fishing fees to be used for the costs of installing and maintaining approved amenities for recreational fishers on, or on land adjacent to, private land where recreational fishers use the land (or water over the land) for recreational fishing,	32 33 34 35 36
(b)	providing educational programs that promote and encourage participation in recreational fishing—with revenue from fishing fees to be used for the costs of providing those programs.	37 38 39
(3)	In this section—	40
	<i>approved amenities</i> means amenities the installation and maintenance of which are consented to by the land owner concerned and that are otherwise lawful.	41 42 43
[10]	Section 34G Issue of receipt on payment of fishing fee	44
	Omit section 34G(2). Insert instead—	45

(2)	A receipt is evidence of the payment of the fishing fee.	1
	Note. A fisheries officer may require recreational fishers to produce an official receipt as evidence of their authority to take fish (see section 257). A recreational fisher who is required to pay a fishing fee must not take fish without having an official receipt in his or her immediate possession (see section 34J).	2 3 4 5
[11]	Section 34N Termination of commercial fishing entitlements following declaration of acquisition	6 7
	Omit “any one or more” from section 34N(2). Insert instead “either or both”.	8
[12]	Section 34N(2)(c)	9
	Omit the paragraph.	10
[13]	Section 40B When fishing determinations are required to be made	11
	Omit section 40B(2).	12
[14]	Section 40C Who makes fishing determinations	13
	Insert after section 40C(4)—	14
(4A)	Before the Secretary makes a fishing determination referred to in subsection (4), the Secretary must call for public submissions on the determination.	15 16
(4B)	When the Secretary makes a fishing determination referred to in subsection (4), the Secretary must have regard to any public submissions received within the time fixed by the Secretary for the making of those submissions.	17 18 19
	Note. Section 284 regulates the public consultation procedure. It requires copies of the proposed fishing determination to be publicly exhibited and a period of at least 30 days for public comment.	20 21 22
[15]	Section 40C(5)	23
	Omit the subsection.	24
[16]	Sections 40J(2)(a) and 40O(4)(a)	25
	Insert “under section 40C” after “Minister” wherever occurring.	26
[17]	Section 40M Making of fishing determination by Secretary	27
	Insert after section 40M(5)—	28
(6)	Subsection (4) does not apply in relation to a fishing determination referred to in section 40C(4).	29 30
[18]	Section 40Z Allocation of non-commercial fishing determination	31
	Insert after section 40Z(4)—	32
(5)	The Minister must consult with the NSW Recreational Fishing Council before making a direction under this section.	33 34
[19]	Section 40ZA Implementation of non-commercial fishing determinations	35
	Insert after section 40ZA(2)—	36
(3)	The Minister is to make arrangements for public consultation with respect to the review and allow a period of not less than 28 days for public submissions.	37 38
(4)	The Minister must have regard to any submissions received within the time fixed by the Minister for the making of those submissions, in making any decision in relation to the review.	39 40 41

[20] Section 84 Making of appeals	1
Insert after section 84(4)—	2
(5) A person who is eligible to make appeals in relation to the allocation of 2 or more classes of quota shares may elect to have the appeals heard together.	3 4
(6) An election under subsection (5) is to be made in accordance with the regulations.	5 6
(7) Section 86(6) does not limit the operation of subsection (5).	7
(8) The regulations may make provision for or with respect to the payment of a combined fee or deposit to accompany an appeal the subject of an election under subsection (5) that reflects the reduction in administrative costs of having appeals heard together.	8 9 10 11
[21] Section 86 Procedure at appeals	12
Omit “, and as quickly,” from section 86(1)(b).	13
[22] Section 86(1A)	14
Insert after section 86(1)—	15
(1A) The Panel must determine an appeal as quickly as the requirements of this Act and the proper consideration of the matter permit and, in any case, within 90 days after the appeal is received.	16 17 18
[23] Section 86(2)	19
Insert “within 10 days after the appeal is received” after “the appeal”.	20
[24] Section 189 When aquaculture operations can be closed	21
Insert after section 189(1)—	22
(1A) The Minister must consult with the permit holder at least 28 days before making the fishing closure.	23 24
Note. Section 8(3) requires the Minister to also consult with the NSW Recreational Fishing Council at least 28 days before making a fishing closure.	25 26
[25] Section 225	27
Omit the section. Insert instead—	28
225 Minister may engage persons to carry out or assist research	29
(1) The Minister may engage suitably qualified persons to undertake independent research for the purposes of this Act.	30 31
(2) The Minister may establish and maintain, or assist in establishing or maintaining, scientific stations at which the research may be undertaken.	32 33
(3) The independent research may include the following—	34
(a) carrying out, or assisting in the carrying out of, investigations into any biological or other problem associated with fisheries,	35 36
(b) carrying out, or assisting in the carrying out of, investigations into aquaculture.	37 38
[26] Part 8, Division 2A	39
Insert after section 231—	40

Division 2A	NSW Recreational Fishing Council	1
231A	Constitution of NSW Recreational Fishing Council	2
	There is constituted by this Act a corporation with the corporate name of NSW Recreational Fishing Council.	3 4
231B	Status of NSW Recreational Fishing Council	5
	The NSW Recreational Fishing Council is a NSW Government agency.	6
231C	Ministerial control	7
(1)	The NSW Recreational Fishing Council is not subject to the control and direction of the Minister in the exercise of its functions.	8 9
(2)	Subsection (1) does not apply to a function delegated to the Council by the Minister or the Secretary.	10 11
231D	Board of NSW Recreational Fishing Council	12
(1)	There is to be a Board of the NSW Recreational Fishing Council.	13
(2)	The Board is to consist of the following members—	14
(a)	1 person appointed by the Board as the Chairperson of the Board,	15
(b)	2 persons appointed by the Minister to represent recreational fishers, the recreational fishing industry or related interests (such as the fishing tackle industry or charter fishing boat industry),	16 17 18
(c)	8 persons who are representatives of peak bodies that represent recreational fishers.	19 20
(3)	The Chairperson of the Board is to be appointed by the Board following the completion of a selection process determined by the Board and carried out in accordance with the regulations.	21 22 23
(4)	The Minister is, in accordance with the regulations, to request nominations from relevant organisations and bodies for the appointment of the members of the Board referred to in subsection (2)(b).	24 25 26
(5)	The members of the Board referred to in subsection (2)(c) are to be elected by the members of the peak bodies representing recreational fishers in accordance with the regulations.	27 28 29
(6)	Schedule 3A sets out provisions relating to the members and procedure of the Board.	30 31
(7)	In this Division, the Board means the Board, established by this section, of the NSW Recreational Fishing Council.	32 33
231E	Chief Executive Officer	34
(1)	The Chief Executive Officer is responsible for the day-to-day management of the affairs of the NSW Recreational Fishing Council in accordance with the specific policies and general directions of the Board.	35 36 37
(2)	Any act, matter or thing done in the name of, or on behalf of, the NSW Recreational Fishing Council by the Chief Executive Officer is taken to have been done by the NSW Recreational Fishing Council.	38 39 40
(3)	In this Division, Chief Executive Officer means the person employed in the Public Service as the Chief Executive Officer of the NSW Recreational Fishing Council.	41 42 43

231F	Appointment of advisory committees	1
(1)	The Board may appoint advisory committees for the purposes of advising the Board and the NSW Recreational Fishing Council for the purposes of this Act.	2 3
(2)	An advisory committee has the functions that the Board may from time to time determine in respect of it.	4 5
(3)	An advisory committee consists of any committee members appointed by the Board that the Board thinks fit.	6 7
(4)	An advisory committee member holds office for the period specified in the instrument of appointment of the committee member, but the appointment may be terminated by the Board at any time.	8 9 10
(5)	One of the advisory committee members, in and by the instrument by which the committee member is appointed or another instrument made by the Board, is to be appointed as chairperson of the committee.	11 12 13
(6)	An advisory committee member is entitled to be paid the fees and allowances (if any) that the Minister may determine, from time to time, in respect of the committee member.	14 15 16
(7)	Subject to the regulations and any directions of the Board, the procedure of an advisory committee appointed under this section is to be as determined by the advisory committee.	17 18 19
(8)	The Board may dissolve an advisory committee appointed under this section.	20
231G	Staff	21
	Persons may be employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the NSW Recreational Fishing Council to exercise its functions.	22 23 24
	Note. Section 59 of the <i>Government Sector Employment Act 2013</i> provides that the persons so employed (or whose services the NSW Recreational Fishing Council makes use of) may be referred to as officers or employees, or members of staff, of the NSW Recreational Fishing Council. Section 47A of the <i>Constitution Act 1902</i> precludes the NSW Recreational Fishing Council from employing staff.	25 26 27 28 29
231H	Delegation of NSW Recreational Fishing Council's functions	30
(1)	The NSW Recreational Fishing Council may delegate to an authorised person any of its functions, other than this power of delegation.	31 32
(2)	A delegate may subdelegate to an authorised person any function delegated by the NSW Recreational Fishing Council if the delegate is authorised in writing to do so by the NSW Recreational Fishing Council.	33 34 35
(3)	This section does not apply to a function delegated to the NSW Recreational Fishing Council by the Minister or the Secretary unless the subdelegation is authorised by the Minister or the Secretary.	36 37 38
(4)	In this section, <i>authorised person</i> means—	39
(a)	a member of staff of the NSW Recreational Fishing Council, or	40
(b)	a person, or committee of persons, of a class approved by the Minister or prescribed by the regulations.	41 42
231I	Functions	43
(1)	The NSW Recreational Fishing Council has the following functions—	44

(a)	to investigate and advise the Minister or the Secretary on any matter concerning recreational fishing that may be referred to it by the Minister or the Secretary or on its own initiative,	1 2 3
(b)	any other functions that are conferred or imposed on it by or under this or any other Act.	4 5
	Note. The functions of the NSW Recreational Fishing Council include those conferred by sections 34AA(2) (relating to administering educational programs and certain other activities referred to in that provision) and 239C (relating to audits of the recreational fishing trust funds under the Act), and various other specific consultative functions conferred by this Act.	6 7 8 9 10
(2)	The NSW Recreational Fishing Council may do all the supplemental, incidental or consequential acts that may be necessary or expedient for the exercise of its functions.	11 12 13
(3)	The Minister may delegate to the NSW Recreational Fishing Council any function of the Minister under this Act, other than this power of delegation.	14 15
(4)	The Secretary may delegate to the NSW Recreational Fishing Council any function of the Secretary under this Act, other than this power of delegation.	16 17
(5)	The Secretary may subdelegate to the NSW Recreational Fishing Council any function delegated to the Secretary by the Minister if the Secretary is authorised to do so by the Minister.	18 19 20
231J	Annual report to include certain matters	21
	The annual report of the NSW Recreational Fishing Council required to be prepared under the <i>Annual Reports (Statutory Bodies) Act 1984</i> is to include a report as to the outcomes achieved by the NSW Recreational Fishing Council during the reporting period.	22 23 24 25
231K	Provision of other information by NSW Recreational Fishing Council	26
	The NSW Recreational Fishing Council must provide reports about its activities and any other information if requested to do so by the Minister.	27 28
231L	Personal liability	29
	A matter or thing done or omitted to be done by the NSW Recreational Fishing Council, the Board or a member of the Board, the Chief Executive Officer, a member of an advisory committee appointed under this Act, or a person acting under the direction of the NSW Recreational Fishing Council, the Board or the Chief Executive Officer does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member of the Board, the Chief Executive Officer, the member of the advisory committee or the person so acting personally to any action, liability, claim or demand.	30 31 32 33 34 35 36 37 38
[27]	Section 239C	39
	Insert after section 239B—	40
239C	NSW Recreational Fishing Council may audit recreational fishing trust funds	41
	The NSW Recreational Fishing Council may order an audit of the financial statements relating to the Recreational Fishing (Freshwater) Trust Fund and the Recreational Fishing (Saltwater) Trust Fund by an auditor nominated by the NSW Recreational Fishing Council.	42 43 44 45

[28]	Section 284 Public consultation procedure	1
	Insert “, or by the Secretary pursuant to section 40C(3)” after “TAF Committee” in section 284(1)(b).	2 3
[29]	Section 288E	4
	Insert after section 288D—	5
288E	No restriction of recreational fishers’ access to public land without public consultation	6 7
	(1) This section has effect despite any law to the contrary (whether made before or after the commencement of this section).	8 9
	(2) A provision of any law that enables a decision-maker to restrict access by recreational fishers to or across public land for the purpose of recreational fishing (a <i>relevant provision</i>) has no effect unless the public consultation required by this section has been carried out.	10 11 12 13
	(3) Before a decision-maker makes a decision to restrict access by recreational fishers under a relevant provision, the decision-maker must give the following persons and bodies an opportunity to make submissions on the proposed restriction and take all submissions that are duly made into account—	14 15 16 17
	(a) the NSW Recreational Fishing Council,	18
	(b) advisory councils or advisory groups representing recreational fishing interests that the Minister considers to have a sufficient interest in the proposal,	19 20 21
	(c) peak bodies representing recreational fishers.	22
	(4) This section does not affect any rights conferred on the owner of private land.	23
	(5) This section does not apply if the reason for the proposed restriction is to protect the health or safety of a person.	24 25
	(6) In this section—	26
	<i>decision-maker</i> means the entity on whom the power to restrict access by recreational fishers to or across public land for the purpose of recreational fishing is conferred (including, for example, a local council on whom the power is conferred).	27 28 29 30
[30]	Schedule 3A	31
	Insert after Schedule 3—	32
	Schedule 3A Members and procedure of Board of NSW Recreational Fishing Council	33 34
	(Section 231D(6))	35
	Part 1 General	36
	1 Definitions	37
	In this Schedule—	38
	<i>appointed member</i> means a person who is—	39
	(a) appointed by the Board as the Chairperson of the Board, or	40

(b) appointed by the Minister as a member of the Board referred to in section 231D(2)(b). 1
2

elected member means a person who is elected to be a member of the Board referred to in section 231D(2)(c). 3
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member means any member of the Board. 5

Part 2 Constitution 6

2 Terms of office of members 7

Subject to this Schedule and the regulations— 8

(a) an appointed member holds office for the period (not exceeding 3 years) that is specified in the member's instrument of appointment, and 9
10

(b) an elected member holds office for a period of 3 years, 11
but each is eligible (if otherwise qualified) for re-appointment or re-election. 12

3 Part-time appointments 13

Members hold office as part-time members. 14

4 Remuneration 15

The Minister may from time to time determine an amount of remuneration (including travelling and subsistence allowances) in respect of the office of member of the Board. 16
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5 Deputies of members 19

(1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment. 20
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(2) In the absence of a member, the member's deputy may, if available, act in the place of the member. 22
23

(3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member. 24
25

(4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member. 26
27

(5) The Board may do either or both of the following— 28

(a) direct a member not to appoint a person or any person as a deputy of the member, 29
30

(b) revoke an appointment of a deputy made by a member. 31

(6) This clause does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson. 32
33

6 Vacancy in office of member 34

(1) The office of a member becomes vacant if the member— 35

(a) dies, or 36

(b) completes a term of office and is not re-appointed or re-elected, or 37

(c) resigns the office by instrument in writing addressed to the Minister, or 38

(d) is removed from office by the Minister under this clause, or 39

(e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on 40
41

- leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or 1
2
- (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 3
4
5
- (g) becomes a mentally incapacitated person, or 6
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable. 7
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- (2) The Minister may remove a member who is appointed by the Minister from office at any time. 11
12
- (3) The Minister may, on the recommendation of the Board, remove an elected member or a member who is appointed by the Board from office at any time for misbehaviour or incompetence. 13
14
15
- 7 Filling of vacancy in office of member** 16
- If the office of an appointed member or an elected member becomes vacant, a person is, subject to this Act and the regulations, to be appointed or elected (as the case requires) to fill the vacancy. 17
18
19
- 8 Disclosure of pecuniary interests** 20
- (1) If— 21
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and 22
23
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, 24
25
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board. 26
27
28
- (2) A disclosure by a member at a meeting of the Board that the member— 29
- (a) is a member, or is in the employment, of a specified company or other body, or 30
31
- (b) is a partner, or is in the employment, of a specified person, or 32
- (c) has some other specified interest relating to a specified company or other body or to a specified person, 33
34
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 35
36
37
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board. 38
39
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- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines— 42
43
- (a) be present during any deliberation of the Board with respect to the matter, or 44
45
- (b) take part in any decision of the Board with respect to the matter. 46

(5)	For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—	1 2 3
(a)	be present during any deliberation of the Board for the purpose of making the determination, or	4 5
(b)	take part in the making by the Board of the determination.	6
(6)	A contravention of this clause does not invalidate any decision of the Board.	7
9	Disclosure of other matters	8
(1)	This clause applies to a member if the member—	9
(a)	has an interest in a matter that is being considered or is about to be considered at a meeting of the Board, and	10 11
(b)	the interest is of a kind that is required to be disclosed under a code of conduct prepared by the Minister and specified in the regulations.	12 13
(2)	Clause 8 applies to or in respect of a member to whom this clause applies in the same way as that clause applies to or in respect of a member who has an interest that is required to be disclosed under clause 8(1).	14 15 16
10	Effect of certain other Acts	17
(1)	The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to a member.	18 19
(2)	If by or under any Act provision is made—	20
(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	21 22
(b)	prohibiting the person from engaging in employment outside the duties of that office,	23 24
	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.	25 26 27
Part 3	Procedure	28
11	General procedure	29
	The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.	30 31 32
12	Quorum	33
	The quorum for a meeting of the Board is a majority of its members for the time being.	34 35
13	Presiding member	36
(1)	The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.	37 38 39
(2)	The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	40 41

14	Voting	1
	A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.	2 3
15	Transaction of business outside meetings or by telephone	4
(1)	The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.	5 6 7 8
(2)	The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	9 10 11 12
(3)	For the purposes of—	13
	(a) the approval of a resolution under subclause (1), or	14
	(b) a meeting held in accordance with subclause (2),	15
	the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.	16 17
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.	18 19
(5)	Papers may be circulated among the members for the purposes of subclause (1) by email or other electronic means.	20 21
16	First meeting	22
(1)	The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.	23 24
(2)	The Minister must ensure that the members referred to in section 231D(2)(b) are appointed, and elections are held to elect the members referred to in section 231D(2)(c), within 6 months after the commencement of the <i>Fishing Legislation Amendment (Right to Fish) Act 2019</i> .	25 26 27 28
(3)	The Minister must call the first meeting within 28 days of the appointment of the members referred to in section 231D(2)(b) or the election of the members referred to in section 231D(2)(c), whichever last occurs.	29 30 31
(4)	At the first meeting of the Board, the Board is to—	32
	(a) appoint a person from the members present to be the interim Chairperson of the Board, and	33 34
	(b) determine the process for selecting and appointing the member of the Board who is to be the Chairperson of the Board.	35 36
(5)	The interim Chairperson is to hold office, subject to this Schedule, until the Board appoints a Chairperson in accordance with section 231D(3).	37 38
(6)	The Board is taken to be properly constituted for the purposes of subclause (4).	39
[31]	Schedule 7 Savings, transitional and other provisions	40
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	41

Part	Provisions consequent on enactment of Fishing Legislation Amendment (Right to Fish) Act 2019	1
		2
Definitions		3
	In this Part—	4
	<i>amending Act</i> means the <i>Fishing Legislation Amendment (Right to Fish) Act 2019</i> .	5
	<i>assent date</i> means the date of assent to the amending Act.	6
	<i>commencement date</i> means the date of commencement of the amending Act (being 3 months after the assent date).	7
		8
		9
Review of fishery management strategies and priorities		10
	Section 7C(5), as inserted by the amending Act, extends to the revision of strategies approved or priorities set before the commencement date.	11
		12
Compensation for fishing closures		13
	Section 13A, as inserted by the amending Act, extends to—	14
	(a) a fishing closure made on or after the assent date but before the commencement date, and	15
		16
	(b) a fishing closure made before the assent date that is varied on or after the assent date to broaden its scope.	17
		18
Receipts for payment of recreational fishing fees		19
	(1) Section 34A(2), as inserted by the amending Act, extends to a copy of a tax invoice referred to in that provision issued before the commencement date for the payment of a recreational fishing fee for a period any part of which occurs on or after the assent date.	20
		21
		22
		23
	(2) Section 34G(2), as substituted by the amending Act, extends to an official receipt issued before the commencement date for the payment of a recreational fishing fee for a period any part of which occurs on or after the assent date.	24
		25
		26
Fishing determinations required by Minister		27
	The amendment of section 40B by the amending Act does not affect the validity of a fishing determination required to be made by the Minister and in force immediately before the commencement date, and the Act continues to apply to the fishing determination as if that and any consequential amendments had not been made.	28
		29
		30
		31
		32
Appeals to Share Appeal Panel		33
	To avoid doubt, sections 84 and 86, as amended by the amending Act, apply only to appeals made on or after the commencement date.	34
		35

Schedule 2	Amendment of Marine Estate Management Act 2014 No 72	1
		2
[1]	Section 7 Establishment of Marine Estate Management Authority	3
	Insert at the end of section 7(2)(f)—	4
	, and	5
	(g) at least 2 but not more than 6 persons who are representatives of peak bodies that represent recreational fishers and who are appointed by the Secretary of the Department of Planning, Industry and Environment on the nomination of the peak body concerned, and	6 7 8 9
	(h) a person nominated by the NSW Recreational Fishing Council.	10
[2]	Section 23A	11
	Insert after section 23—	12
23A	Five year moratorium on declaration of marine parks	13
	No marine park may be declared under this Act for a period of 5 years after the commencement of the <i>Fishing Legislation Amendment (Right to Fish) Act 2019</i> .	14 15 16
[3]	Section 39 Regulations relating to marine parks and aquatic reserves generally	17
	Insert at the end of the section—	18
	(2) Despite subsection (1), the regulations may not prohibit recreational fishing in a marine park or entry into a marine park for that purpose (a relevant prohibition).	19 20 21
	(3) A relevant prohibition in the regulations that is in force immediately before the commencement of the <i>Fishing Legislation Amendment (Right to Fish) Act 2019</i> ceases to have effect on that commencement.	22 23 24
	(4) Subsections (2) and (3) do not apply if the reason for the relevant prohibition is to protect the health or safety of a person.	25 26
[4]	Section 42 Regulations relating to management rules for marine parks and aquatic reserves	27 28
	Insert after section 42(2)—	29
	(2A) Despite subsection (2), the management rules may not prohibit recreational fishing in a marine park or entry into a marine park for that purpose (a relevant prohibition).	30 31 32
	(2B) A relevant prohibition in the management rules that is in force immediately before the commencement of the <i>Fishing Legislation Amendment (Right to Fish) Act 2019</i> ceases to have effect on that commencement.	33 34 35
	(2C) Subsections (2A) and (2B) do not apply if the reason for the relevant prohibition is to protect the health or safety of a person.	36 37
[5]	Section 57 Prohibition of activities in marine parks and aquatic reserves	38
	Insert after section 57(2)—	39
	(3) Despite subsection (1), a notification under this Division may not prohibit recreational fishing in a marine park or entry into a marine park for that purpose (a relevant prohibition).	40 41 42

(4)	A relevant prohibition in a notification under this Division that is in force immediately before the commencement of the <i>Fishing Legislation Amendment (Right to Fish) Act 2019</i> ceases to have effect on that commencement.	1 2 3
(5)	Subsections (3) and (4) do not apply if the reason for the relevant prohibition is to protect the health or safety of a person.	4 5
[6]	Schedule 1 Constitution and procedure of Authority	6
	Omit the definition of <i>appointed member</i> from clause 1. Insert instead—	7
	<i>appointed member</i> means the following—	8
	(a) the Chairperson and a person who is appointed by the relevant Ministers to chair the Marine Estate Expert Knowledge Panel,	9 10
	(b) a person who is appointed by the Secretary under section 7(2)(g).	11
[7]	Schedule 1, clause 1	12
	Insert in alphabetical order—	13
	<i>nominated member</i> means a person nominated by the NSW Recreational Fishing Council under section 7(2)(h).	14 15
[8]	Schedule 1, clause 2	16
	Omit the clause. Insert instead—	17
	2 Terms of office of members	18
	Subject to this Schedule and the regulations—	19
	(a) an appointed member holds office for the period (not exceeding 4 years) specified in the member’s instrument of appointment, and	20 21
	(b) a nominated member holds office for a period of 4 years, but each is eligible (if otherwise qualified) for re-appointment or re-nomination.	22 23 24
[9]	Schedule 1, clause 3	25
	Insert “and nominated” after “Appointed”.	26
[10]	Schedule 1, clauses 4 and 6(1)	27
	Insert “or a nominated” after “appointed” wherever occurring.	28
[11]	Schedule 1, clauses 5(1) and 6(2)	29
	Insert “referred to in paragraph (a) of the definition of that term in clause 1” after “appointed member” wherever occurring.	30 31
[12]	Schedule 1, clause 6(1)(b)	32
	Insert “or re-nominated” after “re-appointed”.	33
[13]	Schedule 1, clause 6(3)	34
	Insert after clause 6(2)—	35
	(3) The relevant Ministers may remove an appointed member referred to in paragraph (b) of the definition of that term in clause 1, or a nominated member, from office at any time for misbehaviour or incompetence.	36 37 38

[14] Schedule 1, clause 7	1
Omit the clause. Insert instead—	2
7 Filling of vacancy in office of appointed or nominated member	3
(1) If the office of an appointed member referred to in paragraph (a) of the definition of that term in clause 1 becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.	4 5 6
(2) If the office of an appointed member referred to in paragraph (b) of the definition of that term in clause 1 becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy in the same way as the person whose office has become vacant was appointed.	7 8 9 10
(3) If the office of a nominated member becomes vacant, a person is, subject to this Act and the regulations, to be nominated to fill the vacancy in the same way as the person whose office has become vacant was nominated.	11 12 13
[15] Schedule 1, clause 9	14
Insert “or a nominated” after “an appointed” wherever occurring.	15
[16] Schedule 2 Savings, transitional and other provisions	16
Insert at the end of the Schedule, with appropriate Part and clause numbering—	17
Part Provisions consequent on enactment of Fishing Legislation Amendment (Right to Fish) Act 2019	18 19
Definition	20
In this Part—	21
<i>amending Act</i> means the <i>Fishing Legislation Amendment (Right to Fish) Act 2019</i> .	22 23
Constitution of Authority	24
The Marine Estate Management Authority is not invalidly constituted during the period of 7 months after the commencement of the amending Act only because a member referred to in section 7(2)(g) or (h), as inserted by the amending Act, may not, during that period, have been appointed (in the case of section 7(2)(g)) or nominated (in the case of section 7(2)(h)).	25 26 27 28 29