

FISHERIES AND OYSTER FARMS (PENALTIES AND ENFORCEMENT) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Fisheries and Oyster Farms Act 1935—

- (a) to increase penalties for offences under the Act and the regulations; and
- (b) to provide for the forfeiture of boats and trailers used in the commission of more serious offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedules of amendments.

Clause 4 is a transitional provision. It provides that the amendments to sections 96 and 97 (relating to the forfeiture of property) apply only to property seized after the amendments come into force.

SCHEDULE 1—AMENDMENTS INCREASING PENALTIES FOR MAJOR OFFENCES

Schedule 1 (1)–(7) increases penalties for major offences under the Act and regulations to 50 penalty units, in the case of a natural person, and 100 penalty units, in the case of a corporation. The value of a penalty unit is currently \$100 (s. 56 of the Interpretation Act 1987). The highest current penalty for any of these offences is \$2,000.

SCHEDULE 2—AMENDMENTS INCREASING PENALTIES FOR OTHER OFFENCES

Schedule 2 (1)–(13) increases penalties for other offences under the Act and regulations. The increases are generally to 10 penalty units, in the case of a natural person, and 25 penalty units, in the case of a corporation. The highest current penalty for any of these offences is \$200.

Fisheries and Oyster Farms (Penalties and Enforcement) Amendment 1989

SCHEDULE 3—AMENDMENTS RELATING TO ENFORCEMENT

Seizure of boats and trailers

Schedule 3 (1) and (3)–(6) provide for the seizure and forfeiture of boats and trailers used in the commission of certain offences by persons engaged at the time of commission of the offence in commercial fishing operations. If a boat or trailer is seized, the boat or trailer must be returned unless proceedings for the alleged offence are commenced not later than 28 days after the seizure. Unlike other property seized under the Act which may be forfeited without a court order to that effect, a boat or trailer can only be forfeited at the discretion of a court on the court finding that a person has committed the alleged offence.

Proceedings and penalties for offences

Schedule 3 (2) inserts a new section 92. The new section provides that proceedings for offences against the Act or the regulations shall be dealt with summarily either by a Local Court or by the Supreme Court. If the proceedings are brought in a Local Court the maximum penalty the court can impose is 100 penalty units. Similarly a Local Court cannot order the forfeiture of a boat or trailer valued at more than \$10,000. 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 twice the maximum penalty which otherwise would apply. The regulations may specify the circumstances in which it will be presumed that the defendant was engaged in commercial fishing operations.

Forfeiture of property other than boats and trailers when no offence proceedings taken

Schedule 3 (5) inserts a new section 97 to replace existing sections 96 and 97 with a provision drafted in simpler and more contemporary language. The new section (as did the replaced sections) applies to the case where property (other than a boat or trailer) has been seized and no proceedings have been taken against any person for the alleged offence which led to the seizure. The new section provides for the property to be forfeited if the owner does not dispute the seizure. If there is a dispute, the matter is to be resolved by the Local Court.
