



New South Wales

# Fisheries Management Amendment (Enforcement Powers) Bill 2022

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Fisheries Management Act 1994* (the *FM Act*) to clarify certain enforcement powers of fisheries officers under that Act.

## 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 date of assent to the proposed Act.

## Schedule 1      Amendment of Fisheries Management Act 1994 No 38

**Schedule 1[1]** substitutes the definition of *premises* in the FM Act, section 4(1). The substituted definition makes it clear that *premises* includes the following—

- (a) land or a place, whether built on or not—for example, a beach, trail, track, wharf, jetty, rock platform, riverbank and a similar location,
- (b) a structure or building.

**Schedule 1[2]** inserts proposed section 255A into the FM Act. Proposed section 255A(1) provides that a fisheries officer may search for or examine a thing if the fisheries officer—

- (a) has reason to believe the thing is connected with a fisheries offence, or

- (b) considers it necessary for the purpose of investigating, monitoring or enforcing compliance with the FM Act.

In the proposed section, **thing** does not include a person.

Proposed section 255A(2) enables a fisheries officer to require a person to give a thing in the possession of or under the control of the person to the fisheries officer for examination, if the fisheries officer has reason to believe a thing in the person's possession or under the person's control is connected with a fisheries offence. The person must give the thing to the fisheries officer immediately or within a period the fisheries officer allows. Failure to comply with the requirement is an offence.

The proposed section makes it clear that—

- (a) the functions referred to in proposed section 255A(1) and (2) may be exercised anywhere, including on premises or elsewhere, and
- (b) if the thing given to a fisheries officer under proposed section 255A(2) is a bag or container, the fisheries officer may break open and search and examine the bag or container.



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## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Fisheries Management Act 1994 No 38</b>	<b>3</b>



New South Wales

# Fisheries Management Amendment (Enforcement Powers) Bill 2022

No. , 2022

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## **A Bill for**

An Act to amend the *Fisheries Management Act 1994* regarding enforcement powers of fisheries officers.

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

1

**1 Name of Act**

2

This Act is the *Fisheries Management Amendment (Enforcement Powers) Act 2022*.

3

**2 Commencement**

4

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

5

<b>Schedule 1</b>	<b>Amendment of Fisheries Management Act 1994</b>	1
	<b>No 38</b>	2
<b>[1] Section 4 Definitions</b>		3
	Omit section 4(1), definition of <i>premises</i> . Insert instead—	4
	<i>premises</i> includes the following—	5
	(a) land or a place, whether built on or not,	6
	<b>Example—</b> Land or a place could include a beach, trail, track, wharf, jetty, rock platform, riverbank and a similar location.	7
	(b) a structure or building.	8
<b>[2] Section 255A</b>		10
	Insert after section 255—	11
<b>255A Other power to search for or examine things</b>		12
(1)	A fisheries officer may search for or examine a thing if the fisheries officer—	13
(a)	has reason to believe the thing is connected with a fisheries offence, or	14
(b)	considers it necessary for the purpose of investigating, monitoring or enforcing compliance with the Act.	15
(2)	A fisheries officer may require a person to give a thing in the possession of or under the control of the person to the fisheries officer for examination, if the fisheries officer has reason to believe a thing in the person's possession or under the person's control is connected with a fisheries offence.	16
(3)	The person must give the thing to the fisheries officer immediately or within a period the fisheries officer allows.	17
(4)	To avoid doubt—	18
(a)	the functions referred to in subsections (1) and (2) may be exercised anywhere, including on premises or elsewhere, and	19
	<b>Note—</b> Section 254 provides that this Part does not authorise entry into any part of premises that is being used for residential purposes except with the consent of the occupier or under the authority of a search warrant.	20
(b)	if the thing given to a fisheries officer under subsection (2) is a bag or container, the fisheries officer may break open and search and examine the bag or container.	21
(5)	A person who fails, without reasonable excuse, to comply with a requirement of a fisheries officer made under subsection (2) is guilty of an offence.	22
	Maximum penalty—50 penalty units.	23
(6)	In this section—	24
	<b>thing</b> includes fish, fishing gear and other equipment, but does not include a person.	25