

# Fisheries Management Amendment Act 2006 No 18

[2006-18]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2007](#)

### Authorisation

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# Fisheries Management Amendment Act 2006 No 18



New South Wales

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# Fisheries Management Amendment Act 2006 No 18



New South Wales

An Act to amend the *Fisheries Management Act 1994* to make further provision with respect to the management of fishery resources.

## 1 Name of Act

This Act is the *Fisheries Management Amendment Act 2006*.

## 2 Commencement

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

## 3 Amendment of **Fisheries Management Act 1994 No 38**

The *Fisheries Management Act 1994* is amended as set out in Schedule 1.

## Schedule 1 Amendments

(Section 3)

### [1]-[5] (Repealed)

### [6] Section 66 Who may fish in share management fisheries after commencement of management plan

Omit "in the Share Register" from section 66 (a).

### [7] Section 68 Endorsements on licences

Omit "in the Share Register" from section 68 (3) (a).

### [8] (Repealed)

### [9] Section 68 (4B) and (4C)

Insert after section 68 (4A):

(4B) The licence of a shareholder may not be endorsed if the shareholder is already

authorised, by endorsement, to take fish in another share management fishery, unless the further endorsement is authorised by the management plan for each fishery in which the shareholder is, or will (as a consequence of the further endorsement), be authorised to take fish.

(4C) Subsection (4B) does not prevent a shareholder from nominating another person to take fish on behalf of the shareholder in any fishery in which the shareholder is prevented from holding an endorsement, subject to compliance with any requirements under section 69.

**[10], [11] (Repealed)**

**[12] Section 68 (8A)-(8C)**

Omit section 68 (8A). Insert instead:

(8A) An endorsement of the licence of a shareholder, or of the licence of a nominated fisher of a shareholder, may also be revoked by the Minister on a request made by the shareholder in accordance with the requirements (if any) of the management plan for the fishery.

(8B) The Director-General is to record particulars of any endorsement under this section, and any suspension, cancellation or revocation of an endorsement, in the Share Register.

(8C) The Minister may approve arrangements under which a person who is eligible for an endorsement is given such an endorsement in the form of a separate document from the commercial fishing licence of the person. Any such document is taken to be an endorsement on the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery, and references in this Act or the regulations to an endorsement extend to an endorsement in that form.

**[13] Section 69 Nomination of commercial fisher by holder of shares**

Omit section 69 (6)-(8). Insert instead:

(6) However, the holder (the ***nominating shareholder***) may not:

- (a) nominate a commercial fisher who is nominated by another shareholder in the same fishery, unless authorised to do so by the management plan for the fishery, or
- (b) nominate a commercial fisher who is nominated by another shareholder in another fishery, unless authorised to do so by the management plan for each fishery in which the commercial fisher will be authorised to take fish as a consequence of the nominations.

- (7) The management plan for a fishery may make further provision for nominations under this section, and for the revocation of nominations, including by requiring a shareholder to keep a record of a nomination or revocation of a nomination.
- (8) The Director-General is to record any nomination under this section, and any revocation of the nomination, in the Share Register.

**[14]-[16] (Repealed)**

**[17] Section 76 Management charges**

Omit section 76 (1). Insert instead:

- (1) The Minister may, subject to this section, determine the management charge payable by holders of shares in a share management fishery. The charge is payable annually, or as otherwise determined by the Minister.

**[18] Section 76 (4A)**

Insert after section 76 (4):

- (4A) The management charge may be fixed to provide for, and the provisions of a management plan relating to the management charge may facilitate, either or both of the following:
  - (a) the calculation of a single management charge for more than one share management fishery (that is, so that holders of shares in more than one share management fishery are not liable to pay a separate management charge in respect of each fishery),
  - (b) the calculation of a single management charge for a single fishing business (even if the fishing business is comprised of, or includes, shares in more than one share management fishery).

**[19] (Repealed)**

**[20] Section 106 Annual contribution to cost of research and to other industry costs**

Omit the section.

**[21] (Repealed)**

**[22] Section 115A**

Insert after section 115:

### **115A Annual contribution to industry costs**

- (1) A participant in a restricted fishery must, if the regulations so require, pay to the Minister an annual contribution towards one or more of the following:
  - (a) the costs of taking measures to enhance the effective management of commercial fishing,
  - (b) the costs of carrying out research into commercial fishing,
  - (c) the costs of management and administration of commercial fishing,
  - (d) the costs of ensuring compliance with commercial fishing regulatory controls,
  - (e) the costs of consultative arrangements with commercial fishers.
- (2) For the purposes of this section, a **participant** in a restricted fishery means:
  - (a) a person who has an endorsement on his or her commercial fishing licence that authorises the person to take fish for sale in the restricted fishery, or
  - (b) the owner of a fishing business of which the endorsement is a component.
- (3) The amount of the contribution is to be specified in or determined under the regulations.
- (4) The regulations may provide for payment of the annual contribution by instalments.
- (5) If a contribution, or an instalment of a contribution, is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, that rate.
- (6) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.
- (7) Interest charged on an overdue annual contribution, or instalment of a contribution, under subsection (5) is taken to be part of the contribution.

### **[23] Section 119 Fish receiver to supply information**

Omit section 119 (2). Insert instead:

- (2) The regulations may make provision for or with respect to the information to be given by registered fish receivers.

**[24] Section 119 (3)**

Omit “, or keep records,”.

**[25] Sections 121-122A**

Omit sections 121 and 122. Insert instead:

**121 Records to be made by commercial fishers**

- (1) A commercial fisher must make such records as the regulations require in respect of fishing activities engaged in by the commercial fisher for commercial purposes.
- (2) In particular, the regulations may require a record to be made of the following:
  - (a) particulars of all fishing activities engaged in by a commercial fisher for commercial purposes (including those where no fish were taken),
  - (b) particulars of all fish taken during those fishing activities,
  - (c) the location in which the fishing activities were carried out,
  - (d) the fishing gear used in connection with the fishing activities,
  - (e) any period in which the commercial fisher did not engage in any fishing activities for commercial purposes.
- (3) The record must be made in such form and manner as is prescribed by the regulations or (subject to the regulations) as is approved by the Minister.
- (4) A commercial fisher who fails to make a record as required by this section is guilty of an offence.

Maximum penalty: 200 penalty units.

- (5) A commercial fisher who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

**122 Records to be made by employers of commercial fishers**

- (1) A fishing employer must make such records as the regulations require in respect of fishing activities engaged in by a nominated fisher on behalf of the fishing employer.
- (2) In particular, the regulations may require a record to be made of the following:

- (a) particulars of all fishing activities engaged in by a nominated fisher on behalf of the fishing employer (including those where no fish were taken),
  - (b) particulars of all fish taken during those fishing activities,
  - (c) the location in which the fishing activities were carried out,
  - (d) the fishing gear used in connection with the fishing activities,
  - (e) any period in which the nominated fisher did not engage in any fishing activities on behalf of the fishing employer.
- (3) The record must be made in such form and manner as is prescribed by the regulations or (subject to the regulations) as is approved by the Minister.
- (4) A fishing employer who fails to make a record as required by this section is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 200 penalty units.

- (5) A nominated fisher who engages in any fishing activity on behalf of a fishing employer must not fail to provide the fishing employer with such information concerning those activities as the fishing employer may reasonably require to comply with this section.

Maximum penalty: 200 penalty units.

- (6) A fishing employer who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

- (7) In this section:

***fishing employer*** means a shareholder in a share management fishery, an owner of a fishing business, or any other person, who nominates a commercial fisher to take fish in a fishery on behalf of the shareholder, owner or other person.

***nominated fisher*** of a fishing employer means a commercial fisher who is for the time being nominated by the fishing employer under this Act or the regulations to take fish in a fishery on behalf of the fishing employer.

## **122A Records to be made by fish receivers**

- (1) A registered fish receiver must make such records as the regulations require relating to fish received by the fish receiver.



(2) The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.

(3) A registered fish receiver who fails to make a record as required by this section is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 200 penalty units.

(4) A registered fish receiver who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

**[26] Section 127D**

Insert after section 127C:

**127D Annual contribution to industry costs**

(1) The holder of a charter fishing boat licence must, if the regulations so require, pay to the Minister an annual contribution towards one or more of the following:

(a) the costs of taking measures to enhance charter fishing,

(b) the costs of carrying out research into charter boat fishing,

(c) the costs of management and administration of charter fishing boat operations,

(d) the costs of ensuring compliance with charter fishing boat regulatory controls,

(e) the costs of consultative arrangements with owners and operators of charter fishing boats.

(2) The amount of the contribution is to be specified in or determined under the regulations.

(3) The regulations may provide for payment of the annual contribution by instalments.

(4) If a contribution, or instalment of a contribution, is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, that rate.

- (5) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.
- (6) Interest charged on an overdue annual contribution, or instalment of a contribution, under subsection (4) is taken to be part of the contribution.
- (7) The payment required under this section is taken to be a condition of every charter fishing boat licence.

**[27] Sections 127E-127EB**

Omit section 127E. Insert instead:

**127E Charter fishing boat operators to make records of fishing activities**

- (1) The master of a charter fishing boat must make such records as the regulations require in respect of the use of the boat for recreational fishing activities (regardless of whether those fishing activities are activities for which it is required to be licensed).
- (2) In particular, the regulations may require the master of a charter fishing boat to make a record of the following:
  - (a) particulars of all recreational fishing activities engaged in (including those where no fish were taken),
  - (b) particulars of all fish taken during the fishing activities,
  - (c) the location in which the fishing activities were carried out,
  - (d) the fishing gear used in connection with the fishing activities,
  - (e) any period in which the charter fishing boat was not used for recreational fishing activities for which it is required to be licensed.
- (3) A record required under this section must be made in such form and manner as is prescribed by the regulations or (subject to the regulations) as is approved by the Minister.
- (4) A master of a charter fishing boat who fails to make a record as required by this section is guilty of an offence.  
  
Maximum penalty: 200 penalty units.
- (5) A master of a charter fishing boat who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

**127EA Records of recreational fishing activities—licence holders**

- (1) The holder of a charter fishing boat licence must make such records as the regulations require in respect of the use of the licensed charter fishing boat for recreational fishing activities (whether or not those activities are activities for which it is required to be licensed).
- (2) In particular, the regulations may require the licence holder to make a record of the following:
  - (a) particulars of all recreational fishing activities engaged in (including those where no fish were taken),
  - (b) particulars of all fish taken during the fishing activities,
  - (c) the location in which the fishing activities were carried out,
  - (d) the fishing gear used in connection with the fishing activities,
  - (e) any period in which the charter fishing boat was not used for recreational fishing activities for which it is required to be licensed.
- (3) The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.
- (4) The holder of a charter fishing boat licence who fails to make a record as required by this section is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 200 penalty units.

- (5) The master of a boat that is a licensed charter fishing boat must not fail to provide the holder of the licence for the boat with such information concerning the use of the boat for recreational fishing activities as the licence holder may reasonably require to comply with this section.

Maximum penalty: 200 penalty units.

- (6) The holder of a charter fishing boat licence who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

- (7) If the holder of a charter fishing boat licence is also master of the boat, the holder of the licence is taken to have complied with this section if the holder

complies with his or her obligations under section 127E.

**127EB False records**

A person who makes an entry in a record, or copy, for the purposes of this Part knowing that the entry is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

**[28]-[36] (Repealed)**

**[37] Schedule 7, clause 12A**

Insert after clause 12:

**12A Repeal of section 106**

Any annual contribution that was payable under section 106, immediately before its repeal by the *Fisheries Management Amendment Act 2006*, remains payable despite the repeal of that section.

**[38] (Repealed)**