

# Fisheries Management Amendment Act 2015 No 59

[2015-59]



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—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Fisheries Management Amendment Act 2015 No 59



New South Wales

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# Fisheries Management Amendment Act 2015 No 59



New South Wales

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

## 1 Name of Act

This Act is the *Fisheries Management Amendment Act 2015*.

## 2 Commencement

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

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

### [1]-[3] (Repealed)

### [4] Section 4 (1), definition of “charter fishing boat licence”

Omit the definition. Insert instead:

**charter fishing licence** means a licence issued under Division 2 of Part 4A and in force.

### [5] (Repealed)

### [6] Section 4 (1), definition of “fishing boat licence”

Omit the definition. Insert instead:

**fishing boat licence** means a licence issued under section 107B and in force.

### [7]-[16] (Repealed)

### [17] Section 20B

Insert after section 20A:

## **20B Shark finning and related prohibitions**

(1) A person must not, while on board a boat in any waters:

- (a) remove a fin from any species of shark, or
- (b) be in possession of a shark fin that is not naturally attached to the body of a shark, or
- (c) be in possession of any part of a shark.

Maximum penalty:

(a) in the case of an individual:

- (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
- (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or

(b) in the case of a corporation:

- (i) 1,000 penalty units for a first offence, or
- (ii) 2,000 penalty units for a second or subsequent offence.

(2) The regulations may provide for circumstances in which a person does not commit an offence against this section.

### **[18]-[23] (Repealed)**

### **[24] Section 44 Omission of share management fishery**

Omit section 44 (8). Insert at the end of section 44:

#### **Note—**

Division 4A permits a fishery to be redefined, without payment of compensation, if the redefinition proposal has majority support.

### **[25] Part 3, Division 4A**

Insert after Division 4:

## **Division 4A Redefinition proposals**

### **55A Minister may put forward redefinition proposal**

(1) The Minister may put a redefinition proposal to shareholders in one or more

share management fisheries.

- (2) In this Division, a **redefinition proposal** is a proposal to do any or all of the following:
  - (a) to change the description of one or more share management fisheries in Schedule 1,
  - (b) to amalgamate 2 or more classes of shares in one or more share management fisheries,
  - (c) to replace one or more classes of shares in one or more share management fisheries with one or more new or existing classes of shares.
- (3) A redefinition proposal may involve the cancellation of shares, the issue of new shares or the reissue of shares.

#### **55B Notice of redefinition proposal**

- (1) If the Minister decides to put a redefinition proposal to shareholders, the Minister is to give public notice of the redefinition proposal.
- (2) For the purposes of this section, **public notice** is notice:
  - (a) published in the Gazette, and
  - (b) published in any other way the Minister considers appropriate, and
  - (c) given to each shareholder affected by the redefinition proposal.
- (3) The public notice must:
  - (a) describe the redefinition proposal, and
  - (b) specify the redefinition arrangements for the redefinition proposal, and
  - (c) invite shareholders affected by the redefinition proposal to vote on the redefinition proposal, and
  - (d) set out the arrangements for voting on the redefinition proposal, and
  - (e) contain such other information as the Minister considers appropriate.
- (4) A public notice may be varied by further public notice under this section.
- (5) In this Division, **redefinition arrangements** are the proposed arrangements for the implementation of a redefinition proposal, including arrangements relating to the issue, cancellation or reissue of shares if the redefinition proposal is proceeded with.

### **55C Shareholders who are affected by a redefinition proposal**

For the purposes of this Division, a shareholder is **affected** by a redefinition proposal if:

- (a) in the case of a redefinition proposal that involves a change to a description of one or more share management fisheries in Schedule 1—the shareholder is a shareholder in a fishery the description of which will be changed under the proposal, and
- (b) in the case of a redefinition proposal that involves the amalgamation of classes of shares or replacing classes of shares—the shareholder holds a class of shares concerned.

### **55D Poll on redefinition proposal**

- (1) The Secretary may arrange for the conduct of a poll of shareholders affected by a redefinition proposal for the purposes of determining whether there is majority support for the redefinition proposal.
- (2) For the purposes of a poll under this section, each shareholder is entitled to no more than one vote regardless of the number of shares held.
- (3) A corporation that is a shareholder is required to nominate a single individual to vote in the poll on behalf of the corporation. The individual so nominated is taken, for the purposes of the poll, to be the shareholder of the shares held by the corporation.
- (4) Two or more persons who hold a share jointly are required to nominate a single individual to vote in the poll on behalf of the joint shareholders. The individual so nominated is taken, for the purposes of the poll, to be the shareholder of the shares held jointly.
- (5) The regulations may make further provision for or with respect to polls under this Division.

### **55E Outcome of poll**

- (1) Following the conduct of a poll, the Secretary is to determine whether, on the basis of the poll, the redefinition proposal has majority support.
- (2) The question of whether a redefinition proposal has majority support is to be determined in accordance with the regulations.
- (3) The regulations may provide that shareholders who fail to vote in a poll are to be disregarded when determining whether a redefinition proposal has majority support.

- (4) The regulations may provide for the weighting of votes on the basis of the number of shares held by a shareholder affected by a redefinition proposal.
- (5) Following the conduct of a poll, the Secretary may issue a certificate that specifies:
  - (a) the date on which the poll was conducted, and
  - (b) the results of the poll, and
  - (c) whether, on the basis of those results, the redefinition proposal has majority support.
- (6) A certificate issued under this section is admissible in evidence in any proceedings and is prima facie evidence of the matters certified in the certificate.
- (7) The Minister is to publicise the results of the poll by giving notice of the results to shareholders affected by the redefinition proposal and in such other manner (if any) as the Minister considers appropriate.

#### **55F Power to implement redefinition proposal that has majority support**

- (1) If a redefinition proposal has majority support, the Minister may implement the redefinition proposal, including by cancelling shares and issuing or re-issuing shares as contemplated by the redefinition arrangements for the redefinition proposal.
- (2) The regulations may make further provision for the implementation of redefinition proposals.
- (3) Section 45 does not apply to the redefinition of an existing share management fishery under a redefinition proposal that has majority support.
- (4) No compensation (including damages or any other form of compensation) is payable because of the cancellation of shares under this section or anything else that is done to implement a redefinition proposal that has majority support.
- (5) Subsection (4) does not apply to compensation (if any) that is expressly offered to shareholders under a redefinition proposal.

#### **55G Power to redefine fishery with shareholder support**

- (1) The Governor may, by proclamation made on the recommendation of the Minister and published on the NSW legislation website, amend Schedule 1 by inserting or omitting the description of a fishery.
- (2) The Minister is to recommend the making of a proclamation under this section

only if the Minister has issued a certificate that certifies that the purpose of the proclamation is to give effect to a redefinition proposal that has majority support.

- (3) Any defect in the certificate does not affect the validity of a proclamation made under this section.
- (4) Section 44 does not apply if a description of a share management fishery is omitted from Schedule 1 under this section.

**[26]-[40] (Repealed)**

**[41] Section 70 (2A)**

Insert after section 70 (2):

(2A) The Minister is to issue endorsements under this section in accordance with the criteria (if any) specified in the management plan for the fishery.

**[42] Section 70 (4) (b)**

Omit “of 6 months or such shorter period as is”.

**[43]-[60] (Repealed)**

**[61] Section 106**

Insert after section 105:

**106 Use of crew members**

The holder of a commercial fishing licence must not take fish for sale with the assistance of any other person (a **crew member**) unless the use of the crew member to assist in the taking of fish for sale is authorised by the holder’s commercial fishing licence.

Maximum penalty: 50 penalty units.

**[62] Part 4, Division 2**

Omit the Division. Insert instead:

**Division 2 Fishing boat licences**

**107 Licence required to use boat for declared commercial fishing boat**



## **activities**

- (1) A boat may be used for the purpose of a declared commercial fishing boat activity only if a fishing boat licence authorises the use of the boat for declared commercial fishing boat activities.
- (2) For the purposes of this Division, a **declared commercial fishing boat activity** is any commercial fishing boat activity declared by the regulations to be a commercial fishing boat activity for which a fishing boat licence is required.
- (3) A **commercial fishing boat activity** is any activity involving the use of a boat:
  - (a) to take fish for sale from waters to which this Act applies, or
  - (b) to land fish in New South Wales that were taken from other waters (after the boat departed from a port in New South Wales).
- (4) The regulations may provide that a boat licensed under a law of the Commonwealth or of another State or a Territory is taken to be authorised to be used for the purposes of declared commercial fishing boat activities.

### **107A Offence of engaging in unlicensed activity**

- (1) The master of a boat must not use the boat, or permit the boat to be used, for a declared commercial fishing boat activity unless authorised to do so by a fishing boat licence.

Maximum penalty: 100 penalty units.

- (2) The use of a boat for a declared commercial fishing boat activity is authorised by a fishing boat licence only if:
  - (a) the master of the boat is the holder of a fishing boat licence or acting with the consent of the holder of a fishing boat licence, and
  - (b) the boat is being used in accordance with that fishing boat licence.

### **107B Fishing boat licences**

- (1) The Minister may issue to a person a licence (a **fishing boat licence**) that authorises a boat to be used for declared commercial fishing boat activities.
- (2) A fishing boat licence authorises the use of a single boat for all declared commercial fishing boat activities.
- (3) A fishing boat licence may be issued whether or not the applicant for the licence is able to provide identification details for the boat to be used under the authority of the licence.

- (4) The holder of a fishing boat licence must not use a boat, or permit a boat to be used, for a declared commercial fishing boat activity under the authority or purported authority of the licence unless the holder has given the Secretary notice of the identification details for the boat to be used.

Maximum penalty: 10 penalty units.

- (5) The notice must be given in a form approved by the Secretary.
- (6) In this section, the **identification details** for a boat means such details as the Secretary requires to identify a boat.

### **108 Provisions relating to fishing boat licences**

- (1) A person may apply to the Minister for the issue of a fishing boat licence.
- (2) An application is to be in the form approved by the Minister.
- (3) The Minister is required to issue a fishing boat licence if application for the licence is duly made unless the Minister is authorised by the regulations to refuse the application.
- (4) A fishing boat licence:
  - (a) is subject to such conditions as are prescribed by the regulations or specified in the licence, and
  - (b) remains in force for such period as is specified in the licence, and
  - (c) may be renewed from time to time in accordance with the regulations, and
  - (d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.
- (5) The regulations may prescribe different classes of fishing boat licences.
- (6) The Minister may, at any time by notice in writing to the holder of a fishing boat licence, revoke or vary the conditions of the licence or add new conditions. This subsection does not apply to conditions prescribed by the regulations.
- (7) The holder of a fishing boat licence who contravenes any condition of the licence is guilty of an offence.

Maximum penalty: 100 penalty units.

- (8) The regulations may make provision for or with respect to fishing boat licences. In particular, the regulations may prescribe the fee or fees payable in respect of an application for the issue or renewal of a licence.

### **109 Boat marking requirements for fishing boats (including boats exempt**

**from licensing)**

- (1) This section applies to a boat used for a commercial fishing boat activity that has been declared (or that could be but has not been declared) under section 107 as a commercial fishing boat activity for which a fishing boat licence is required.
- (2) The master of a boat to which this section applies, must not use the boat, or permit the boat to be used for a commercial fishing boat activity unless the boat is identified, in the manner required by the regulations, as a commercial fishing boat.

Maximum penalty: 100 penalty units.

**110 Evidentiary provision**

In any proceedings under this Act, evidence that a boat was being used or purportedly being used under the authority of a fishing boat licence, is evidence that fish taken by the use of the boat, or landed from the boat, were fish taken for sale.

**[63]-[71] (Repealed)**

**[72] Part 4A, Division 1**

Insert before section 127A:

**Division 1 Preliminary**

**127 Definitions**

In this Part:

***charter fishing activity***—see section 127A.

***charter fishing business*** means a business that provides a charter fishing activity.

***charter fishing business transfer rules*** means the rules referred to in section 127J.

***declared charter fishing activity***—see section 127B.

***employed guide*** means a person employed or engaged to guide, supervise or instruct persons who engage in recreational fishing activities as part of a charter fishing activity.

***guided non-motorised activity***—see section 127AA.

***recognised charter fishing business***—see section 127G.

**responsible person** for a charter fishing activity means:

- (a) the master of a boat being used for the charter fishing activity (if the activity is not a guided non-motorised activity), or
- (b) an employed guide in relation to the charter fishing activity (if the activity is a guided non-motorised activity).

**seat**—see section 127AB.

**transfer** of a recognised charter fishing business or a component of a recognised charter fishing business means the transfer, transmission, conveyance or assignment of a recognised charter fishing business or component of a recognised charter fishing business, and includes any other dealing in a recognised charter fishing business or component of a recognised charter fishing business of a kind prescribed by the regulations.

**[73] Section 127A Meaning of “charter fishing activity”**

Omit section 127A (1). Insert instead:

- (1) A **charter fishing activity** is an activity in which a boat is used for recreational fishing activities on a commercial basis.
- (1A) The recreational fishing activities need not take place in waters within the limits of the State.

**[74] Section 127A (2) (c)**

Insert “used or” after “the boat is”.

**[75] Sections 127AA and 127AB**

Insert after section 127A:

**127AA Guided non-motorised activity**

- (1) A **guided non-motorised activity** is any charter fishing activity in which one or more manually operated boats are used by one or more persons, in the presence of an employed guide, for recreational fishing activities.
- (2) In this section, a **manually operated boat** means a canoe, kayak or other boat of a kind prescribed by the regulations.

**127AB Seats available for use in charter fishing activities**

- (1) A **seat** is a notional seat or position in a boat that can be used or made available for use by a charter fishing client when the boat is used for a charter

fishing activity.

- (2) The **class** of the seat is the class assigned to the seat by the Secretary, on the basis of the class of charter fishing activities for which the seat may be used or made available.
- (3) In this section, a **charter fishing client** means any person on board a boat being used for a charter fishing activity, excluding:
  - (a) in the case of a guided non-motorised activity—an employed guide, or
  - (b) in any other case—the master of the boat or a crew member.

**[76] Part 4A, Division 2, heading**

Insert before section 127B:

Division 2 **Charter fishing licences**

**[77] Sections 127B-127CC**

Omit sections 127B and 127C. Insert instead:

**127B Certain charter fishing activities require licence**

- (1) A boat may be used for the purpose of a declared charter fishing activity only if that activity is authorised by a charter fishing licence.
- (2) For the purposes of this Part, a **declared charter fishing activity** is any charter fishing activity declared by the regulations to be a charter fishing activity for which a charter fishing licence is required.
- (3) The regulations may provide that a boat licensed or otherwise authorised under a law of the Commonwealth or of another State or a Territory to be used for a charter fishing activity is taken to be authorised under this Part for use in all or any specified declared charter fishing activities.

**127C Offence for providing unauthorised charter fishing activity**

A person must not provide, or hold out that the person is able to provide, a declared charter fishing activity unless the person:

- (a) is the holder of a charter fishing licence or acting with the consent of the holder of a charter fishing licence, and
- (b) the licence authorises the charter fishing activity concerned.

Maximum penalty:

- (a) in the case of an individual:

- (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
  - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
  - (i) 400 penalty units for a first offence, or
  - (ii) 800 penalty units for a second or subsequent offence.

**127CA Responsible person to ensure charter fishing activity is authorised by licence**

- (1) The responsible person for a charter fishing activity that is a declared charter fishing activity must not use a boat, or permit a boat to be used, for that charter fishing activity unless authorised to do so by a charter fishing licence.

Maximum penalty:

  - (a) in the case of an individual:
    - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
    - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
  - (b) in the case of a corporation:
    - (i) 400 penalty units for a first offence, or
    - (ii) 800 penalty units for a second or subsequent offence.
- (2) The use of a boat for a charter fishing activity is authorised by a charter fishing licence only if:
  - (a) the responsible person is the holder of a charter fishing licence or acting with the consent of the holder of a charter fishing licence, and
  - (b) the licence authorises the use of a boat for the charter fishing activity concerned, and
  - (c) the responsible person is in physical possession of that licence at the time that the boat is used for the charter fishing activity, and
  - (d) the boat is being used in accordance with that licence.
- (3) An employed guide for a guided non-motorised activity is taken to permit a boat

to be used for a guided non-motorised activity when the employed guide acts as an employed guide in relation to that activity.

### **127CB Provisions relating to charter fishing licences**

- (1) The Minister may issue to a person a licence (a **charter fishing licence**) that authorises a boat to be used for any specified declared charter fishing activity.
- (2) A charter fishing licence authorises the use of a single boat at any given time for the specified declared charter fishing activity, unless the charter fishing activity is a guided non-motorised activity.
- (3) A charter fishing licence that authorises a guided non-motorised activity authorises the use of a specified number of boats for the activity.
- (4) The boat or boats to be used for the specified declared charter fishing activity need not be identified by the licence, but must comply with any requirements specified in the licence or in the conditions of the licence.
- (5) A charter fishing licence:
  - (a) is subject to such conditions as are prescribed by the regulations or specified in the licence, and
  - (b) remains in force for such period as is specified in the licence, and
  - (c) may be renewed from time to time in accordance with the regulations, and
  - (d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.
- (6) The regulations may prescribe different classes of charter fishing licences.
- (7) The Minister may, at any time, by notice in writing to the holder of a charter fishing licence, revoke or vary the conditions of the licence or add new conditions. This subsection does not apply to conditions prescribed by the regulations.
- (8) The holder of a charter fishing licence who contravenes any condition of the licence, or causes or permits any condition of the licence to be contravened, is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual:
  - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or

- (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
  - (i) 400 penalty units for a first offence, or
  - (ii) 800 penalty units for a second or subsequent offence.
- (9) The regulations may make provision for or with respect to charter fishing licences. In particular, the regulations:
  - (a) may make provision for or with respect to permitting, prohibiting or restricting the use of a boat for both declared charter fishing activities and for declared commercial fishing boat activities (within the meaning of Division 2 of Part 4), and
  - (b) may prescribe the fee or fees payable in respect of an application for the issue or renewal of a licence.

#### **127CC Applications for charter fishing licences**

- (1) A person may apply to the Minister for the issue of a charter fishing licence.
- (2) An application is to be in the form approved by the Minister.
- (3) The Minister is required to issue a charter fishing licence if an application for the licence is duly made, unless the Minister is authorised or required by the regulations to refuse the application.
- (4) Without limiting subsection (3), the regulations may authorise or require the Minister to refuse an application because of any applicable restriction on the issue of charter fishing licences (including the maximum number that may be issued) under a management plan prescribed by the regulations for the charter fishing industry.

#### **[78] Section 127D Annual contribution to industry costs**

Omit “boat licence” wherever occurring in section 127D (1) and (7).

Insert instead “licence”.

#### **[79] Section 127E Responsible person to make records of fishing activities**

Omit section 127E (1). Insert instead:

- (1) The responsible person for a charter fishing activity must make such records as the regulations require about any declared charter fishing activity for which the person



is a responsible person.

**[80] Section 127E (2)**

Omit “master of a charter fishing boat”. Insert instead “responsible person”.

**[81] Section 127E (2) (a)**

Omit “recreational fishing activities”. Insert instead “declared charter fishing activities”.

**[82] Section 127E (2) (e)**

Omit the paragraph. Insert instead:

- (e) any period in which the responsible person did not engage in declared charter fishing activities (that is, use a boat or permit a boat to be used for declared charter fishing activities).

**[83] Section 127E (4) and (5)**

Omit “master of a charter fishing boat” wherever occurring.

Insert instead “responsible person”.

**[84] Section 127EA Records of declared charter fishing activities—licence holder**

Omit section 127EA (1). Insert instead:

- (1) The holder of a charter fishing licence must make such records as the regulations require about declared charter fishing activities that are engaged in under the authority of the licence.

**[85] Section 127EA (2) (a)**

Omit “recreational fishing activities”. Insert instead “declared charter fishing activities”.

**[86] Section 127EA (2) (e)**

Omit the paragraph. Insert instead:

- (e) any period in which declared charter fishing activities were not engaged in under the authority of the licence.

**[87] Section 127EA (4) and (6)**

Omit “boat” wherever occurring.

**[88] Section 127EA (5)**

Omit the subsection. Insert instead:

- (5) The responsible person for a charter fishing activity carried out under the authority of a charter fishing licence must not fail to provide the holder of the licence with such information concerning the charter fishing activity as the licence holder may reasonably require to comply with this section.

Maximum penalty: 200 penalty units.

**[89] Section 127EA (7)**

Omit “boat licence is also master of the boat”.

Insert instead “licence is also the responsible person for charter fishing activities carried out under the licence”.

**[90] Section 127F Appeal rights**

Omit “boat licence”. Insert instead “licence”.

**[91] Part 4A, Division 3**

Insert after section 127F:

## **Division 3 Charter fishing businesses and transfer rules**

### **127G Charter fishing business determinations**

- (1) The Secretary may, from time to time, determine:
- (a) that a business that the Secretary considers to be a separate and identifiable charter fishing business is a recognised charter fishing business, and
  - (b) the charter fishing licences that are components of that charter fishing business, and
  - (c) the number and class of seats that are components of that charter fishing business.
- (2) A charter fishing licence is a component of a charter fishing business if the Secretary considers that the charter fishing licence is held in connection with the charter fishing business.
- (3) A seat is a component of a charter fishing business if the Secretary considers that the seat is available for use by that business under a charter fishing licence

held in connection with the charter fishing business.

(4) For the purposes of this Act:

- (a) a **recognised charter fishing business** is a business determined by the Secretary to be a recognised charter fishing business under this section, and
- (b) the charter fishing business is comprised of those components that are determined by the Secretary to be components of the charter fishing business.

(5) The Secretary may, from time to time, amend or revoke a determination under this section by making a further determination.

(6) A determination by the Secretary under this section is called a **charter fishing business determination**.

(7) A charter fishing business determination is to be made in accordance with this Act and any requirements of the regulations.

(8) The Secretary may make a charter fishing business determination at any time:

- (a) on his or her own initiative, or
- (b) on an application made, in a form and manner approved by the Secretary, by the person or persons who own the business in respect of which the determination is sought.

(9) The Secretary is required to give the person or persons who own a business that is the subject of a charter fishing business determination notice in writing of the determination.

(10) A reference in or under this Act to the **owner of a charter fishing business** is a reference to the person or persons who, from time to time, own a business that is, or has been, determined to be a recognised charter fishing business by the Secretary under this section.

#### **127H Allocation of charter fishing business number**

- (1) The Secretary is to allocate a unique identification number to each recognised charter fishing business.
- (2) The Secretary may endorse a charter fishing licence that is a component of a recognised charter fishing business with the number allocated to the charter fishing business.

#### **127I Register of charter fishing business determinations**

- (1) The Secretary is required to keep a register of charter fishing business

determinations.

- (2) For each charter fishing business determination there is to be recorded in the register:
  - (a) the name of the person or persons who own the business the subject of the determination, and
  - (b) the number allocated by the Secretary to the charter fishing business, and
  - (c) particulars of the components of the charter fishing business, and
  - (d) such other particulars as are required by the regulations to be recorded in the register in relation to the charter fishing business.
- (3) The register may be kept wholly or partly by means of a computer.
- (4) The register is to be made available for public inspection at the head office of the Department during ordinary business hours.
- (5) If the register is kept wholly or partly by means of a computer, subsection (4) may be complied with by making the contents of the register available on the website of the Department.
- (6) The Secretary may correct any error in or omission from the register.
- (7) A certificate signed or purporting to be signed by the Secretary, or a person employed in the Department who is authorised in writing by the Secretary to exercise the functions conferred by this subsection, that certifies that, on a specified date or during a specified period, the particulars contained in the register as to specified matters were as so specified, is admissible in any proceedings and is evidence of the matters so certified.

## **127J Charter fishing business transfer rules**

- (1) The regulations may make provision for or with respect to the transfer of a recognised charter fishing business (or components of a recognised charter fishing business), including by:
  - (a) prohibiting or restricting any transfer, or specified type of transfer, of a recognised charter fishing business or any component of a recognised charter fishing business, and
  - (b) providing for the recognition of charter fishing rights following the transfer of a recognised charter fishing business or a component of a recognised charter fishing business.
- (2) Such provisions are referred to as ***charter fishing business transfer rules***.

- (3) In particular, the charter fishing business transfer rules may provide that a person to whom a component of a recognised charter fishing business is transferred, or purportedly transferred, does not, as a consequence of that action, acquire any right to hold or be issued with a charter fishing licence unless all components of the recognised charter fishing business are either transferred to the person or surrendered to the Minister for cancellation.
- (4) The charter fishing business transfer rules may authorise the Minister to cancel a charter fishing licence if the licence or any other component of the charter fishing business of which the licence is a component is transferred, or purportedly transferred, in contravention of the charter fishing business transfer rules.
- (5) No compensation is payable by or on behalf of the State for the cancellation of a charter fishing licence in accordance with the charter fishing business transfer rules.

**127K Method for transferring charter fishing businesses and their components**

- (1) A transfer of a recognised charter fishing business or a component of a recognised charter fishing business must be effected:
  - (a) by electronic transfer (that is, by using the online transfer system), or
  - (b) by manual transfer (that is, by giving the Secretary notice in writing of the transfer).
- (2) The regulations may prescribe fees for the use of the online transfer system.
- (3) For a manual transfer, the notice given to the Secretary must be in an approved form and must be accompanied by the prescribed fee (if any) for manual transfers.
- (4) A transfer of a recognised charter fishing business or a component of a recognised charter fishing business does not take effect until the transfer is confirmed.
- (5) An electronic transfer is confirmed if the online transfer system generates a message to the effect that the transfer is confirmed.
- (6) A manual transfer is confirmed if the Secretary gives notice in writing to the person lodging the transfer that the transfer has been approved.
- (7) If a transfer is confirmed, the Secretary must ensure a new charter fishing business determination is made that recognises the transfer.
- (8) This section does not authorise a transfer of a recognised charter fishing

business or a component of a recognised charter fishing business contrary to the charter fishing business transfer rules.

(9) In this section:

**online transfer system** means a facility approved by the Secretary that enables the transfer of recognised charter fishing businesses or their components by electronic communication.

**[92]-[119] (Repealed)**

**[120] Section 236A Charter Fishing Trust Fund**

Insert “activities” after “charter fishing” in section 236A (2) (a).

**[121] Section 236A (2) (b)**

Omit “boat fishing”. Insert instead “fishing activities”.

**[122] Section 236A (2) (c)**

Omit “boat operations”. Insert instead “activities”.

**[123] Section 236A (2) (d)**

Omit “charter fishing boat regulatory controls”.

Insert instead “regulatory controls for charter fishing activities”.

**[124] Section 236A (2) (e)**

Omit “owners and operators of charter fishing boats”.

Insert instead “owners of charter fishing businesses and operators of boats used for charter fishing activities”.

**[125] Section 236A (4)**

Insert after section 236A (3):

(4) Expressions used in this section that are defined in Part 4A have the same meanings in this section as they have in that Part.

**[126] (Repealed)**

**[127] Section 241 Engaging in commercial fishing activities**

Omit section 241 (2) (a). Insert instead:

(a) if the person is in any waters on a boat while it is used, or purportedly used, under

the authority of a fishing boat licence, or

**[128] (Repealed)**

**[129] Section 258 Power to require information**

Omit “of a licensed fishing boat” from section 258 (1) (a).

Insert instead “of a boat being used or purportedly being used under the authority of a fishing boat licence”.

**[130]-[133] (Repealed)**

**[134] Section 283A Disclosure of information**

Omit section 283A (3). Insert instead:

- (3) The Department is authorised to disclose to the holder of a charter fishing licence any information provided to the Department by a responsible person (within the meaning of Part 4A) in any record made under this Act that relates to the use of a boat for charter fishing activities that were engaged in, or purportedly engaged in, under the authority of the licence (including information provided before the licence holder acquired the licence).

**[135]-[137] (Repealed)**

**[138] Section 286A Certain licences, leases, permits and other rights not personal property under [Personal Property Securities Act 2009](#) (Cth)**

Omit “boat” from section 286A (g).

**[139]-[152] (Repealed)**

**[153] Schedule 7, clause 12B**

Insert after clause 12A:

**12B Saving of existing fishing boat licences (2015 amendments)**

- (1) A fishing boat licence in force under Division 2 of Part 4 immediately before the amendments made to that Division by the [Fisheries Management Amendment Act 2015](#), is taken, on the commencement of those amendments, to be a fishing boat licence issued under that Division, as amended.
- (2) The licence remains in force for the period specified in the licence, unless sooner cancelled or suspended.

**[154] Schedule 7, Part 4A**

Insert after Part 4:

**Part 4A Provisions relating to charter fishing**

**12C Transition to new form of licence (2015 amendments)**

- (1) A charter fishing boat licence in force under Part 4A immediately before the commencement of section 127CB, as inserted by the [Fisheries Management Amendment Act 2015](#), is taken, on that commencement, to be a charter fishing licence issued under that section.
- (2) The licence remains in force for the period specified in the licence, unless sooner cancelled or suspended.
- (3) The charter fishing licence authorises the use of a boat for any charter fishing activity specified in the licence that is a declared charter fishing activity.
- (4) The charter fishing licence is taken, from that commencement, to authorise the use of any one boat at any given time for that charter fishing activity (not limited to the boat specified in the licence), subject to any requirements relating to the boat that are specified in the licence, the conditions of the licence or in any regulations made under clause 2.

**[155], [156] (Repealed)**

**Schedule 2 (Repealed)**