

# Fisheries Act 1935 No 58

[1935-58]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Fisheries and Oyster Farms Act 1935

### Authorisation

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## Contents

<b>Long title</b> .....	4
<b>Part 1 Preliminary</b> .....	4
1 Name of Act, commencement and construction .....	4
2, 3 (Repealed) .....	4
4 Definitions .....	4
<b>Parts 1A-2B (Repealed)</b> .....	5
<b>Part 3 Fishing generally</b> .....	5
<b>Divisions 1-5 (Repealed)</b> .....	5
<b>Division 6 Consignment and sale of fish</b> .....	5
35-41 (Repealed) .....	5
<b>Division 6A (Repealed)</b> .....	5
<b>Division 7 Returns</b> .....	5
42 Returns .....	5
<b>Part 4 Trout and salmon</b> .....	7
<b>Division 1 Acclimatisation districts</b> .....	7
43 Acclimatisation districts .....	7
<b>Division 2 Acclimatisation societies</b> .....	7

44 Registration of acclimatisation societies.....	7
45 (Repealed) .....	8
46 Acclimatisation society may provide camping grounds etc .....	8
47 Accounts.....	9
48 Cancellation of registration .....	9
<b>Divisions 3-7 (Repealed)</b> .....	10
<b>Parts 5-5B (Repealed)</b> .....	10
<b>Part 6 General and supplemental</b> .....	10
91 Recovery of rents etc.....	10
91A-108 (Repealed) .....	10
108A Service of notices etc .....	10
109-119 (Repealed) .....	10
119A Application of enforcement provisions of Fisheries Management Act 1994.....	11
119B Delegations .....	11
119C Offences by corporations .....	11
119D Penalties and proceedings for offences.....	11
<b>Part 7 Regulations</b> .....	11
120 Regulations.....	11
121 Penalties and application of regulations .....	13
122 (Repealed) .....	13
<b>Schedules A-E (Repealed)</b> .....	13

# Fisheries Act 1935 No 58



New South Wales

An Act relating to fisheries and fishing, and to oyster farms; to repeal the *Fisheries Act 1902*, the *Fisheries (Amendment) Act 1910* and the *Net Fishing (Port Hacking) Act 1901*; to amend the *Sydney Corporation Act 1932* and certain other Acts; and for the purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act, commencement and construction

- (1) This Act may be cited as the *Fisheries Act 1935*.
- (2) This Act shall commence on a date to be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

### 2, 3 (Repealed)

### 4 Definitions

- (1) In this Act, unless the context or subject-matter otherwise indicates or requires:

**commercial fisher** has the same meaning as it has in the *Fisheries Management Act 1994*.

**Director General** means the Director of NSW Fisheries.

**District** means any fish supply district constituted under and for the purposes of this Act.

**Fish** has the same meaning as it has in the *Fisheries Management Act 1994*.

**Inspector** means a fisheries officer within the meaning of the *Fisheries Management Act 1994*.

**Oyster** means any bivalve mollusc of the family Ostreidae, and includes an oyster without the shell, but not a canned oyster.

**Sell** includes:

- (a) sell by wholesale, retail, auction or tender,
- (b) barter or exchange,
- (c) supply for profit,
- (d) offer for sale, receive for sale, have in possession for sale or expose for sale,
- (e) consign or deliver for sale, and
- (f) cause, suffer or allow to be done anything referred to in paragraph (a), (b), (c), (d) or (e).

**This Act** includes any proclamation, regulation, notice, or notification made or issued thereunder.

(2), (3) (Repealed)

## **Parts 1A-2B**

**4A-17P (Repealed)**

## **Part 3 Fishing generally**

### **Divisions 1-5**

**18-34 (Repealed)**

### **Division 6 Consignment and sale of fish**

**35-41 (Repealed)**

#### **Division 6A**

**41A-41T (Repealed)**

### **Division 7 Returns**

#### **42 Returns**

- (1) The Minister may, from time to time, by notice published in the Gazette, require persons engaged in the operations referred to in subsection (2), to keep records as prescribed and to furnish returns in or to the effect of the prescribed form as to the catch, sales, output, gear used in connection with the operations, or business of such persons.

- (1A) The notice may require that a return is to be furnished even if the operations in respect of which the return is required indicate a nil return.
- (2) The operations in respect of which a return may be required under this section shall be:
- (a), (b) (Repealed)
  - (c) the sale of fish at any market or at any establishment at which fish is sold which has not passed through a market,
  - (d) the preserving, curing, smoking, drying, or salting of fish,
  - (e) the canning or bottling of fish or of any fish product intended for human consumption,
  - (f) the preparation of fertilisers from fish or of any fish product or by-product not intended for human consumption,
  - (g) the carriage of fish or oysters by sea, land or air,
  - (h) any other operations relating to the fishing and oyster farming industries as may be prescribed.
- (3) A notice under this section may require that a return shall be furnished by all persons engaged in the operations referred to in subsection (2), or in such of those operations as are specified in the notice, or by any specified class of such persons, or by all such persons other than persons of a specified class.
- (4) The notice may require returns to be furnished at such periods as may be specified therein, and may require that separate particulars shall be furnished as to the weight, quantity, value, or price of any one or more varieties or species of fish specified in the notice or as to the locality in which any fish or any one or more varieties or species of fish specified in the notice were taken.
- (4A) A person who, under subsection (1), is required to furnish a return shall keep a copy of the return for a period of one year after it has been furnished and shall make the copy available for inspection by an inspector on demand.
- (4B) A person authorised in writing by the Director may, or an inspector may, for the purpose of checking the information in a return under this section, at all times enter a market, shop, place of business, cool store, smokehouse, cannery or factory, or any other place, where any operation referred to in subsection (2) is carried on by the person who furnished the return and inspect any books of account, records or other documents relating to that operation.
- (4C) A person who carries on any operation referred to in subsection (2) shall, where the Director gives the person notice in writing so to do, produce for inspection by a person

specified in the notice all books of account, records and other documents which are in the possession or under the control of the person who carries on that operation and which relate to that operation.

- (5) Any person who neglects or fails to furnish a return in accordance with this section, or who furnishes any false information in any such return, or otherwise fails to comply with any provision of this section, is guilty of an offence.

Maximum penalty: 25 penalty units in the case of a corporation or 10 penalty units in any other case.

## **Part 4 Trout and salmon**

### **Division 1 Acclimatisation districts**

#### **43 Acclimatisation districts**

The Governor may, from time to time, by proclamation published in the Gazette, declare that any specified area within the boundaries of which trout fry, or young or mature salmon or trout, have been or are being liberated, placed or transplanted, shall be an acclimatisation district for the purposes of this Part.

Any such proclamation shall define the boundaries of the area thereby declared to be an acclimatisation district.

Such definition or any definition pursuant to section 44 may be by reference to county, parish or portion boundaries or to roads or natural features.

The Governor may, from time to time, by a further proclamation published in the Gazette, revoke or amend any such proclamation.

### **Division 2 Acclimatisation societies**

#### **44 Registration of acclimatisation societies**

- (1) Any society consisting of not less than ten members (in this Part referred to as an acclimatisation society) the objects of which as set out in the rules are wholly or mainly the distribution or protection of salmon or trout, may, subject to any regulations made under this Part, apply to the Governor for registration by depositing in the office of the Minister a copy of its rules signed by the chairperson of the society and countersigned by three of the members thereof, together with a statement showing the number of members of the society and indicating the area in respect of which the society desires to be registered.

Such area may comprise the whole of or any part of an acclimatisation district.

The rules shall provide for the nomination of a person who may be served with notices to the society and the person's address, and for the communication to the Minister of

any change of such person or the person's address.

- (2) If the Governor is satisfied that the rules deposited are not repugnant to this Act or to any regulation made thereunder, and that the society is qualified to apply for registration under this section, the Governor may by writing under the Governor's hand grant the application for registration either without amendment or with such amendment of the area indicated therein as to the Governor seems fit.
- (3) As soon as is practicable after the grant of registration, a notification of the registration shall, together with the name or description of the area in respect of which the registration was granted, be published in the Gazette, and the date of such publication shall be deemed to be the date of registration.
- (4) No amendment of the rules of an acclimatisation society shall have any force or effect, unless application for the registration of the amendment has been made and granted in like manner.
- (5) Upon registration under this section an acclimatisation society shall become a body corporate by the name or title stated in the rules, and shall have perpetual succession and a common seal, and in its corporate name may hold and dispose of real and personal property, and may sue and be sued, and may recover any moneys due to the body corporate, whether by a member thereof or not.
- (6) Not more than one acclimatisation society shall be registered in respect of the same area.
- (7)
  - (a) The Governor may at any time, upon application by any acclimatisation society, by notification in the Gazette, increase, reduce or alter in any way the area in respect of which such society is registered.
  - (b) The Governor may in like manner, notwithstanding that no such application may have been made, reduce or alter the area in respect of which any acclimatisation society is registered, after having given such notice to such society as may be prescribed by the regulations.
  - (c) Every such notification shall define the area as increased, reduced or altered in pursuance of this subsection, and the area as so increased, reduced or altered shall be deemed to be the area in respect of which the society is registered.

#### **45 (Repealed)**

#### **46 Acclimatisation society may provide camping grounds etc**

A registered acclimatisation society may, with the approval of the Minister, expend any moneys received under this Act in the purchase of land within the area in respect of which it has been registered for camping grounds for anglers and in the erection thereon or on



any lands, the control and management of which are vested in the society, of necessary buildings for the accommodation of anglers, and in otherwise providing for their convenience.

#### **47 Accounts**

- (1) Every duly registered acclimatisation society shall on or before the thirty-first day of May in each year furnish to the Minister a full statement of its accounts, showing in detail the several receipts and items of expenditure of the society up to the thirtieth day of April next preceding.

Such statement shall be accompanied by a balance-sheet duly audited.

- (2) If any society makes default for a period of 3 months, or such longer period as the Minister may determine in a particular case, in forwarding such statement and balance-sheet in manner aforesaid, such society shall not thereafter be entitled to receive, nor shall the Minister thereafter pay to such society during such default, any moneys under this Act.

#### **48 Cancellation of registration**

- (1) If any registered acclimatisation society fails to comply with the requirements of section 47, or contravenes or fails to comply with any other provision of this Part, or of the regulations made in respect of any of the matters referred to in such Part, the Governor may by notification in the Gazette cancel the registration of the society.

(2)

(a) If it appears from the report of an inspector or other officer that any registered acclimatisation society is not taking proper steps to carry out, within the area in respect of which it is registered, such of its objects as stated in its rules as relate to the distribution or protection of salmon or trout, the Minister may by notice served upon the person nominated pursuant to the rules to be served with notices to the society, require the society to show cause why its registration should not be cancelled.

(b), (c) (Repealed)

- (2A) If no representations are made by a registered acclimatisation society within 1 month after the service on the society of a notice under subsection (2) (a) or, if after consideration of any such representations made by a society the Minister is satisfied that the society has for a period of 3 months or upwards failed to take proper steps to carry out the objects referred to in subsection (2) (a), the Governor may, on the recommendation of the Minister, by notification published in the Gazette, cancel the registration of the society.

- (3) Where the registration of an acclimatisation society is cancelled under this section:

- (a), (b) (Repealed)
- (c) the property in any land purchased by the society out of moneys received under this Act and any buildings or other improvements erected on any lands out of such moneys, shall be divested from the society and shall vest in the Minister,
- (d) any moneys received by the society under this Act, and held by the society at the date upon which its registration is so cancelled shall be paid to and may be recovered by the Minister,
- (e) the society shall cease to have the control and management of any lands, the control and management of which was at the date upon which its registration was cancelled, vested in the society.
- (f) (Repealed)

## **Divisions 3-7**

### **49-57 (Repealed)**

## **Parts 5-5B**

### **58-90L (Repealed)**

## **Part 6 General and supplemental**

### **91 Recovery of rents etc**

All rents, costs, charges and fees due and payable under this Act may be sued for and recovered by and in the name of the Minister on behalf of the Crown.

### **91A-108 (Repealed)**

### **108A Service of notices etc**

Any notice or other document, other than a summons, to be given or served on any person for the purposes of this Act may, unless otherwise specially provided, be given or served:

- (a) by delivering it personally to the person to whom it is addressed,
- (b) by posting it by certified mail in an envelope duly stamped and addressed to the person to whom it is addressed at the place last known as the person's place of abode or business, or
- (c) by delivering it to the place last known as the place of abode or business of the person to whom it is addressed and by leaving it there for the person with some other person.

### **109-119 (Repealed)**

### **119A Application of enforcement provisions of [Fisheries Management Act 1994](#)**

- (1) Part 9 (Enforcement) of the [Fisheries Management Act 1994](#) applies for the purposes of this Act and the regulations under this Act.
- (2) Accordingly, references in that Part to that Act, the regulations under that Act or anything done under that Act extend to this Act, the regulations under this Act or anything done under this Act.

### **119B Delegations**

- (1) The Minister may delegate to the Director any function of the Minister under this Act, other than this power of delegation.
- (2) This section is taken to have had effect on and from the repeal of section 8A by the [Fisheries Management Act 1994](#) and any delegation purported to have been made by the Minister under this Act after that repeal is taken to have been made under this section.

### **119C Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **119D Penalties and proceedings for offences**

- (1) A person guilty of an offence under this Act is, where no specific penalty is provided for the offence, liable to a penalty not exceeding 100 penalty units in the case of a corporation or 50 penalty units in any other case.
- (2) The provisions of the [Fisheries Management Act 1994](#) relating to the bringing of proceedings apply to offences under this Act in the same way as they apply to offences under that Act.

## **Part 7 Regulations**

### **120 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all

matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect.

- (2) Without limiting the generality of the power conferred by subsection (1) the Governor may make regulations:
- (a) defining the duties of inspectors and other persons upon whom any duty or authority is imposed or conferred by or under this Act,
  - (b) prescribing the forms or other documents required for the purposes of this Act,
  - (c) (Repealed)
  - (d) prescribing the fee or deposit to be paid for or with respect to any lease, licence, permit, consent, certificate of exemption or other authority made, issued or given, or for any service rendered, under this Act,
  - (e)-(v) (Repealed)
  - (w) providing for the method and means of consigning or conveying any fish or oysters to any destination for the purpose of sale,
  - (x)-(gg) (Repealed)
  - (hh) regulating the icing, packing, handling, and storage of fish for sale, and regulating or prohibiting the repacking of fish intended for sale,
  - (ii) providing for the inspection of fish intended for sale, and requiring the use of standard containers for fish intended for sale,
  - (jj)-(ss) (Repealed)
  - (tt) providing for fixing, levying and collecting rents, commissions, tolls, dues, rates, fees and charges and the granting of a rebate of portion of such rents, commissions, tolls, dues, rates, fees and charges to specified persons or classes of persons in specified circumstances,
  - (uu)-(mmm) (Repealed)
  - (nnn) regulating vehicles used for the carrying of fish for sale; providing for the carrying on any such vehicle of lists containing the prescribed particulars relating to fish carried on such vehicle,
  - (ooo), (ppp) (Repealed)
  - (qqq) regulating, restricting or imposing conditions on canning, smoking, freezing or otherwise preserving, processing or storing fish and providing for the inspection of any premises where fish are canned, smoked, frozen or otherwise preserved or processed or stored.

(rrr)-(www) (Repealed)

(2A)-(4) (Repealed)

### **121 Penalties and application of regulations**

- (1) A regulation may impose a penalty not exceeding 100 penalty units in the case of a corporation or 50 penalty units in any other case.
- (2) The regulations may apply generally or may differ in their application according to different factors.
- (3) A regulation may authorise any matter or thing to be from time to time determined, applied, or regulated, by the Governor or the Minister or by an inspector or other officer authorised in that behalf by the regulations either generally or for any class of cases or in any particular case.

(4), (5) (Repealed)

### **122 (Repealed)**

### **Schedules A-E (Repealed)**