

FISHERIES MANAGEMENT AMENDMENT BILL 2014

Bill introduced on motion by Ms Katrina Hodgkinson, read a first time and printed.

Second Reading

Ms KATRINA HODGKINSON (Burrinjuck—Minister for Primary Industries) [7.24 p.m.]: I move:

That this bill be now read a second time.

The purpose of the Fisheries Management Amendment Bill 2014 is to amend the Fisheries Management Act 1994 to provide fishing industry participants with improved access to information held by the Department of Primary Industries about their business, licences and fishing activity; to enable industry participants to carry out many transactions directly, in real time and on a 24-hour, seven-day-a-week basis; to replace the highly prescriptive provisions in the Act surrounding share management fisheries with provisions that provide improved flexibility within the regulations and share management plans; and to make various miscellaneous amendments aimed at improving the effectiveness and efficiency of the management arrangements for the State's fisheries resources. Amendments in this bill address many longstanding issues, which will allow for improved fisheries management into the future.

Broadly speaking, the bill offers the commercial and charter fishing industries greatly improved convenience in administration; provides for commercial fishing and charter fishing industry participants to tailor their businesses to suit anticipated fishing activities; reduces red tape; and further promotes providing for Aboriginal people's cultural fishing and broader interests related to fisheries resources. Overall, the bill provides mechanisms for ensuring the sustainability of the fisheries resources for present and future generations, and for appropriate sharing of the fishing resource. To be more specific, there will be flexible and streamlined administrative processes for commercial and charter boat fishers through amendments that allow full operational implementation of FishOnline.

FishOnline is the new administration system that will be accessible to fishers through a computer or internet-enabled mobile device. Commercial fishing and charter fishing operators will have access to their administration accounts and will be able to undertake a variety of operational and business-related transactions, report their fishing activities, as well as review and pay accounts related to the transactions. Access to the system will be available at all hours, every day of the week. If desired, access can be delegated to agents working on an account holder's behalf. This is about convenience for business owners; it is about providing immediate transactions to allow businesses to move quickly on operational decisions; it is about keeping up with other areas of business in a contemporary business and general societal context.

Commercial fishing and charter fishing operators will be able to transact and report on certain fishing activities when it best suits them. Renewal of licences, transferring of entitlements and quota, authorising or revoking nominated fishers, updating contact details, and submitting catch and effort reports are all examples of the functionality that will be

available. FishOnline also incorporates technologies to relay, in real time, particulars of when and where certain fishing activities are proposed, as well as estimates and confirmation of catches at the conclusion of fishing. Such pre- and post-fishing reporting will not be needed in all fisheries; but where it is, the new system will provide an easy and efficient way for fishers to comply.

It is fully appreciated that not all industry participants will want to undertake online transactions, so they will have the option to do transactions through the existing application processes. The ability to nominate an agent to do online transactions on their behalf provides a further option. This Government is working with commercial fisheries stakeholders to finalise the most significant reform of commercial fishing undertaken since the Fisheries Management Act was enacted in 1994. This bill addresses aspects of commercial fishery management explored in the 2012 Independent Review of Commercial Fisheries Policy, Management and Administration. In November 2012 the Government announced its support for the majority of recommendations arising from that review, including a recommendation to make the necessary legislative changes to implement significant reforms. This bill fulfils that commitment.

The changes proposed in this bill do not lock in any matters that are subject to continued consultation as part of the commercial fisheries reform program. Rather, they provide the machinery that will allow for the implementation of commercial fishing reforms once the details of the reform proposal have been settled between Government and stakeholders. It is important that further work and consultation is undertaken on reform options before the final decisions are made so that we get the structure right and make sure we end up with a sustainable and viable fishing industry in the long term.

As a primary industry, commercial fishing contributes directly to the social health and economic wealth of communities, which is multiplied by the activities of other businesses and industries in New South Wales that service the industry or draw from the activities of commercial fishing. This Government is committed to supporting and promoting viable fishing industries. This bill ensures that we have the framework to support the fishing industry through crucial reforms. Previously, there were about 20 fisheries-related advisory bodies and committees on the books.

These committees provided wide-ranging advice directly to the Minister. Whilst our fisheries are managed on a sustainable basis, this process was neither sustainable nor efficient.

The 2012 independent review clearly documents the significant problems that were associated with the previous consultation structure. The bill provides for the establishment of expertise-based advisory groups to replace commercial fishery management advisory committees. This is just another example of this Government's commitment to ensuring that the people with the best and most relevant expertise provide advice on key industry

management issues. The new expert advisory groups will be appointed by the Secretary of the Department of Trade and Investment and will also provide their advice directly to the secretary.

The ability to create groups on an as-needs basis and having flexibility as to the participants is key to addressing issues effectively and efficiently. For instance, if a problem with a particular species of fish becomes evident the new structure will enable the engagement of fishers and experts who are identified as having specific knowledge of, or experience with, that species. A key limitation with the existing management framework in the Act is that the capacity to set and allocate total allowable catch determinations is limited to commercial share management fisheries only. In recognition of the increased focus on determining both total allowable catches and total allowable fishing effort, the bill introduces the term "fishing determinations" and renames the Total Allowable Catch Committee as the Total Allowable Fishing Committee.

To facilitate a variety of potential share linking options and to provide for further quota management of fisheries generally, amendments in the bill will enable the Total Allowable Fishing Committee to determine a total allowable catch in relation to one or more species of fish; any fishery or class of shares; any class of persons; any type of fishing method; and any area or time period. In addition, fishing effort could be determined in relation to one or more methods of fishing; one or more species of fish; any fishery or class of shares; any class of persons; and any area or time period. The bill introduces more flexible mechanisms for the making of fishing determinations. Regulations, a fishery management plan or the Minister may require either the Total Allowable Fishing Committee or the Secretary of NSW Trade and Investment to make a fishing determination. When making a determination the secretary must have regard to any relevant scientific assessment. The secretary may also seek advice from the Total Allowable Fishing Committee or conduct public consultation when making a fishing determination.

Also, it will no longer be the case that the whole of a determined catch must be allocated to the commercial fishing sector. This change recognises the fact that in some circumstances it may be desirable to only partially allocate a fishing determination or not allocate any of the determination. For example, shares may have been surrendered to reduce harvest pressure. Reallocating the proportion of the fishing determination associated with those shares would be at odds with the objective of the surrender. In such a scenario, pursuing a partial allocation of a fishing determination could be a more appropriate course of action. Further, in other cases a fishing determination may be carried out simply to help guide the management of fisheries. In this case it is not intended that any part of the allocation should be formally allocated. The bill includes provisions that will ensure that this is possible. In many cases, regulations will provide for how much of a determination is to be allocated, the manner in which it is to be allocated and to whom the allocation is to be made.

Existing constraints in the Act only permit the transfer of quota between commercial fishery shareholders in the same fishery. Changes proposed in the bill will enable quota to be traded between a new group called "commercial fishing authority holders". This group includes commercial fishers and any other person or class of persons declared by the regulations. Any restrictions deemed necessary on the trading of quota will also be imposed by the regulations. The bill also puts in place provisions to improve debt management by building on the existing policy of refusing the transfer of quota if there are outstanding fees or charges associated with a particular shareholding allocated to the quota. Under proposed changes the Minister could order that quota or a portion of quota for the period is forfeited in circumstances where a fee, charge or contribution required under the Act has not been paid.

The bill also provides for the Minister to put forward a redefinition proposal in respect of commercial share management fisheries. A redefinition proposal may involve a change to a fishery description, the amalgamation of two or more share classes or replacing existing share classes with new share classes. Under existing arrangements, if a fishery description is omitted from the Act—including for the purpose of redefining a fishery—all shares in the fishery are cancelled and compensation is payable. Changes proposed in the bill provide for the implementation of a redefinition proposal without triggering compensation provisions provided the redefinition proposal has majority support from affected shareholders. Majority support would be determined by the conduct of a poll, as provided for in the bill.

Further, the Act currently provides for two classes of share management fishery: a "category 1" share management fishery and a "category 2" share management fishery. There are no longer any category 2 share management fisheries since the conversion of all category 2 share management fisheries to the more secure category 1 share management fisheries many years ago. Accordingly, the bill includes a simple amendment to remove references to these categories. Key features of category 1 share management fisheries, including the issue of shares in perpetuity and compensation provisions, are unchanged.

The bill will amend the way that commercial fishery shares are managed more generally, including removing maximum shareholding requirements, changes to minimum shareholdings and increasing options available to the Minister for issuing new shares and dealing with shares that have been forfeited or surrendered. To improve management flexibility, changes proposed in the bill will remove the default maximum shareholding of 5 per cent of shares in a fishery from the Act and provide that the relevant fishery management plan may fix the maximum shareholding. In addition, it will be possible to apply different maximums to each class of share within a fishery. The bill will also remove the need to meet minimum shareholding requirements when a fishery management plan does not set a minimum shareholding. Any new share linkages to catch or any effort to improve the link with resource access in certain circumstances will see minimum shareholding requirements become unnecessary.

The bill will also clarify that public consultation is not required to amend a fishery management plan or supporting plan. Importantly, however, this does not prevent consultation occurring for amendments likely to attract broad public interest, and the clear intention is for consultation to occur in such cases. Provisions in the bill will also provide flexibility in the way that any new classes of shares are issued. Amendments clarify that the detailed provisions associated with issuing shares in a new share management fishery do not apply to issuing further shares to current shareholders. This will ensure significant reductions in red tape.

Greater scope will be afforded to the Minister to manage shares forfeited due to outstanding debt or certain contraventions. Under current arrangements forfeited shares can be cancelled or sold. Changes proposed in the bill will provide the Minister with the further options of being able to reissue or retain such shares. Furthermore, the Minister will no longer be required to sell surrendered shares at the request of the shareholder. Instead, the Minister will have the options to sell, cancel, reissue or retain surrendered shares in the same way the Minister has discretion to manage forfeited shares. It is envisaged that one use of reissued shares would be to reissue shares to Aboriginal communities to enable their participation in the State's commercial fishing industry.

The bill provides for a simpler, more flexible licensing system for commercial fishing boat licences by separating the licence from the physical boat. Regulations will detail fishing boat activities for which a fishing boat licence will be required. Licensing provisions will be applied only where they are needed for resource management. Where they are not needed, steps will be taken to reduce the boat licensing related administrative burden on fishery participants. The bill clarifies that option is available to be applied for payment of fees by way of instalments for both restricted and share management fisheries. New provisions requiring commercial fisher cooperation will help to facilitate the operations of a scientific observer program required under commercial fishery management strategies. Capacity to collect information on catch composition, retained and discarded catch as well as biological information on important species taken in each fishery stands to be enhanced as a result of the new provisions.

Improvements have also been made to the system of special endorsements and permits. At present, the Act provides for the Minister to issue a special endorsement to take fish for sale in a commercial share management fishery, which can be issued for a maximum period of six months. In future, there will not be a time limit for the validity of these endorsements. In addition, the bill provides for the relevant fishery management plans to detail criteria and circumstances under which a special endorsement may be issued. To improve administrative efficiency, the bill expands existing protection from prosecution permit provisions by allowing the Minister to make an order authorising a class of persons to take or possess fish or marine vegetation without requiring an individual to hold a permit on behalf of that class of persons. In addition, the proposed changes clarify that a permit

holder may be required to contribute towards the costs of management, monitoring, compliance and research related to activities authorised by the permit.

The amendments to the Act will also facilitate modern business-orientated management arrangements for the charter fishing boat industry. The new arrangements are similar to those in commercial fisheries, with a "fishing business" concept replacing the charter fishing boat licence. Components of the charter fishing business will comprise charter fishing licences that specify a certain number of charter boat seats. The licence will be independent from the physical boat, making vessel replacement simpler.

Entitlements remain transferrable. However, now it will be possible to transfer a licence without the need for the physical boat to be traded. The amendments also allow for a new concept of tradeable "seats". Different classes of seats authorising different charter fishing activities will be tradeable between industry participants. While the overall fishing capacity of the State's charter fishing industry remains capped at the existing total number of seats within the industry, these changes will bring much-needed flexibility for charter operators.

It is important to note that this bill is not only about improving efficiencies for the fishing industry, it is also about having adequate protections in place to ensure environmental remediation and ecological sustainability. In circumstances where illegal dredging or reclamation works have been undertaken, the Act currently enables the Minister or a court to make a remediation order in respect of those works. To encourage compliance with remediation orders, changes proposed in the bill create an offence provision for non-compliance with an order. Maximum penalties would be 2,000 penalty units for corporations and 1,000 penalty units in any other case.

To further strengthen these remediation provisions, the bill also provides for a court to make a remediation order in respect of illegal dredging or reclamation works, even if charges are dismissed or a person is conditionally discharged following conviction for these offences. Provisions will also be implemented to further protect aquatic habitats. Presently, protections for mangroves and other marine vegetation only extend to the "mean high water mark" unless a separate ministerial order is made. Provisions in the bill will help ensure that marine vegetation such as mangroves and salt marsh, which may grow above the mean high water mark, is afforded appropriate protection under the Act by extending these protections to the whole of the foreshore area, including land up to the highest astronomical tide.

Greater cohesion between fisheries aquatic habitat protection provisions and planning processes will now be promoted by aligning consultation time frames for public authorities proposing dredging and reclamation works with those outlined in the State environmental planning policy. Various amendments will also be made to improve clarity around actions concerning threatened species. Changes in the bill will clarify that the issue of a certificate by the Secretary of NSW Trade and Investment certifying that a proposed action is not likely

to significantly affect threatened species, populations or ecological communities or their habitats and that a threatened species licence under Part 7A of the Act is not required provides a defence to prosecution of the applicant for offences relating to threatened species, populations or ecological communities.

New powers are also included that will enable the preparation of recovery plans for critically endangered ecological communities and align the Act with recovery planning provisions under the Threatened Species Conservation Act 1995. The bill looks to promote resource management related to recreational fishing, most notably through adding to the existing approach to bag and possession limits. The Act currently provides for limits which restrict the number of fish that an individual may take or have in their possession. Unfortunately, the limits have proven ineffective in cases where boats are deliberately loaded to capacity with non-fishing passengers who are then used to claim part of the catch as theirs.

To address this issue without imposing lower individual limits on all fishers, changes proposed in the bill provide for the application of a boat limit. The master of a boat will commit an offence where the quantity of fish held on the boat exceeds the boat limit. Like arrangements for individual bag limits, the Minister is required to consult with any relevant advisory council or advisory group before specifying or changing boat limits. To facilitate more flexible and responsive management arrangements, changes proposed in the bill will enable the Minister to impose an individual possession limit by the making of an order. Such a provision will be particularly useful where there is an urgent need to specify a maximum quantity of fish that a person may have in possession.

To provide more responsive resource management arrangements, the bill provides for changes to fishing closure arrangements and an enhanced compliance and enforcement scheme. Existing arrangements for fishing closures will now be complemented by the capacity to urgently amend or revoke closures. Fishing closures will take precedence over commercial fishery share management plans to ensure that they can be implemented as intended—as a short-term measure to swiftly address issues, which can be applied across all aspects of fishing activity. New enforcement provisions in the bill create a general power to allow the recovery through the courts of unpaid fees or charges imposed under the Act.

A general offence for providing false or misleading information in connection with a requirement under the Act or regulations is also now included, in line with powers of other natural resource regulators. The bill also includes a range of miscellaneous amendments that will improve the regulatory framework and reduce red tape for stakeholders. For example, the bill will provide ongoing protection against the practice of shark finning at sea, which has been prohibited in New South Wales since 1999. Amendments will reduce the administration associated with the remaking of fishing closures and provide new offence provisions that prohibit the practice of shark finning.

The bill will also improve the management of biosecurity risks in New South Wales. These changes include allowing Fisheries officers to euthanase live fish reasonably suspected of being noxious for the purpose of seeking expert identification. To encourage compliance with orders to destroy noxious fish or marine vegetation, changes proposed in the bill will also create an offence provision for non-compliance with such an order. A new power for the Minister will also be created to impose importation orders that prohibit or impose conditions on the importation into the State of anything that is likely to introduce or spread a declared disease. Such an order could remain in force for up to five years.

Changes proposed in the bill would allow the Minister to make an order requiring specific measures to be taken in relation to waste water or abalone waste from live abalone holding facilities that the Minister considers are necessary to minimise the risk of transmission of a declared disease. Finally, this bill will provide mechanisms to further improve the management of Aboriginal fishing. Changes proposed in the bill will establish a specific trust fund to provide a suitable and transparent accounting mechanism for incoming funds and expenditure associated with Aboriginal fishing. The trust fund will be a special deposits account and will be allocated any moneys received from the Department of Primary Industries or through grants or other external funding for Aboriginal cultural fishing purposes.

Moneys expended would need to be approved by the Minister and will be for the purpose of enhancing, maintaining or protecting Aboriginal cultural fishing. The Minister will also be required to consult with any relevant advisory councils about policies and priorities for expenditure. In summary, this bill provides a raft of very important amendments, many of which are the product of considered consultation and review of the fisheries industry. The amendments proposed in this bill are generally about reducing red tape and introducing greater regulatory effectiveness and efficiency.

This bill is about opening up capacity for industry to be more directly in charge of business operations through online connectivity, providing flexible arrangements for share management of commercial fisheries and commercial fishery licensing, aligning industry operations to more contemporary business practices, and enhancing compliance and enforcement provisions. This bill is an important measure to ensure that we continue to meet the community's expectations in relation to managing our fisheries resources. The bill will help ensure the sustainability of the resource, provide for the ongoing viability of the fishing industry, increase opportunities for high-quality fishing and promote and protect Aboriginal cultural fishing practices. I commend the bill to the House.

Debate adjourned on motion by Dr Andrew McDonald and set down as an order of the day for a future day.

