



New South Wales

Fisheries Management and Environmental Assessment Legislation Amendment Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to require the environmental assessment of designated fishing activities under Part 5 of the *Environmental Planning and Assessment Act 1979*,
- (b) to provide for 2 separate categories of commercial share management fisheries with different entitlements to compensation for shareholders on termination and with different obligations with respect to payment for access to the fisheries,
- (c) to convert existing commercial restricted fisheries into category 2 share management fisheries (with the lesser entitlements and obligations), but to enable their future conversion to category 1 share management fisheries,

- (d) to extend the current requirement for payment of a fishing fee by recreational freshwater fishers to recreational saltwater fishers,
- (e) to provide an equitable mechanism for the reallocation of fisheries resources and for the payment of compensation to commercial fishers for the acquisition of their fishing entitlements,
- (f) to make further provision for the protection of fish habitat,
- (g) to make other miscellaneous changes to the *Fisheries Management Act 1994* (including in connection with the enforcement of the Act).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedules 1 and 6.

Clause 4 is a formal provision giving effect to the amendments to the *Fisheries Management Act 1994* set out in Schedules 2–7.

Clause 5 is a formal provision giving effect to the amendments to the *Native Title (New South Wales) Act 1994* set out in Schedule 8.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 relating to assessment of fishing activities

New Division 5 of Part 5 makes provision for environmental assessment under that Part of fishing activities designated under proposed Schedule 1A to the *Fisheries Management Act 1994*. The provisions are consistent with the scheme of assessment that applies under Part 5, with the following general modifications:

- (a) The assessment is to be made of the fishing activity permitted under all of the relevant fishing regulatory controls instead of only those activities authorised by fisheries approvals (that is, activities authorised by the provisions of the *Fisheries Management Act 1994* and the regulations under that Act, fisheries approvals under that Act, management plans under that Act, fishing closures made by Ministerial notification, total allowable fish catch determinations and Ministerial administrative policies).

- (b) The assessment is to be made of the cumulative environmental impact of the activities permitted by all fisheries approvals and other regulatory controls instead of only the impact of the issue of single fisheries approvals.
- (c) The assessment is to be made in the context of a fishery management strategy prepared by the Fisheries Minister that indicates the proposed regulatory controls for the fishing activity and sets performance indicators to monitor whether the objectives of the strategy and ecologically sustainable development are being attained.

The new Division requires the Fisheries Minister to obtain an environmental impact statement in relation to designated fishing activities in accordance with the current requirements of Part 5 (whether or not those activities will have a significant impact on the environment). In particular, the Fisheries Minister is required to give public notice of the statement and any person is entitled to make representations to the Minister in respect of the statement.

In accordance with the current requirements of Part 5, the environmental impact statement must be prepared in consultation with the Director-General of the Department of Urban Affairs and Planning and the Director-General is to be given a copy of the environmental impact statement and any representations made to the Fisheries Minister in relation to the statement. The Minister administering the *Environmental Planning and Assessment Act 1979* may direct that an inquiry be held with respect to all or any of the environmental aspects of the fishing activity that is the subject of the statement, and forward to the Fisheries Minister the findings of the inquiry, together with any advice on whether the activity should be permitted, modified or not permitted.

When the environmental assessment process is completed, the Fisheries Minister is required to make a determination with respect to the fishing activity that is the subject of the statement for the purpose of attaining the objects of the *Environmental Planning and Assessment Act 1979* relating to the protection and the enhancement of the environment and the objects of the *Fisheries Management Act 1994*. The Fisheries Minister may determine to permit the fishing activity (with or without modifications to the fishing regulatory controls) or to prevent the carrying out of the fishing activity.

Where the Fisheries Minister is the proponent of the fishing activity (for example, fish stocking), the determination of the Fisheries Minister will (consistently with the current requirements of Division 4 of Part 5) require the approval of the Minister administering the *Environmental Planning and Assessment Act 1979*. In addition (consistently with section 110B of that Act), the Minister administering that Act may determine that the Fisheries Minister is the proponent of any other designated fishing activity subject to assessment, in which case the determination of the

assessment by the Fisheries Minister will require the approval of the Minister administering the *Environmental Planning and Assessment Act 1979* under Division 4 of Part 5.

The new Division makes it clear that designated fishing activities will not be subject to any requirement for development consent under Part 4, but makes it clear that with the approval of the Fisheries Minister, local, regional or State planning instruments may prohibit or regulate designated fishing activities in addition to (or as an alternative to) controls imposed under the *Fisheries Management Act 1994* (any such planning instruments will become a fishing regulatory control that will be part of the environmental assessment under the new Division).

The new Division continues the effect of an existing regulation that has suspended the operation of the current provisions of Part 5 with respect to the issue of individual fishing approvals until 1 July 2003 to enable environmental assessments to be completed for existing fishing activities.

Schedule 2 Amendment of Fisheries Management Act 1994 relating to environmental assessment

New Part 1A and Schedule 1A make the requisite provisions contemplated by the new fisheries environmental assessment requirements described above. Provision is made for the designation of fishing activities that will be subject to assessment (including all the significant commercial fisheries, the recreational fishery, the charter boat fishery, fish stocking, shark beach meshing and other activities prescribed by proclamation). For the purposes of assessment the Minister is to arrange for the preparation of a fisheries management strategy for each designated activity (incorporating any relevant management plan) and describing the applicable regulatory controls.

A fishery management strategy is to set performance indicators to monitor whether the objectives of the strategy and ecologically sustainable development are being attained. The strategy is to specify the point at which a review of the strategy is required when performance indicators are not being satisfied.

Following environmental assessment, the Minister is required to revise the draft strategy so as to reflect the result of the determination of the assessment.

The first management plan for a share management fishery (which triggers rights to fully tradeable shares in the fishery and to compensation for the closure of the fishery) will not be able to be made until the completion of the environmental assessment.

If fishing controls have been imposed or are proposed in order to protect a fishery by prohibiting or restricting fishing activities, the Schedule prevents the fishing controls from being declared invalid or delayed because of any failure to comply with the procedural and other requirements for environmental assessment without a reasonable opportunity being given by the court to enable those requirements to be complied with.

Schedule 3 Amendment of Fisheries Management Act 1994 relating to commercial fisheries

Share management fisheries

The amendments create a new category of share management fishery. At present, there is only one category of share management fishery (to be called a category 1 share management fishery). Shares in a category 1 share management fishery are issued for a 10-year period and are automatically renewed. If the fishery is terminated, the shares are cancelled and compensation is payable to the shareholders. Shareholders in the fishery must pay a community contribution for their right of access to the fishery.

The new category of share management fishery (category 2) will have shares that are issued initially for a 15-year period. If the fishery is terminated (by its omission from Schedule 1) during the currency of those shares, compensation is payable. Compensation is not payable if the Minister terminates the fishery (by order), with effect at the end of the current term of the shares in the fishery (provided the Minister gives at least 5 years' notice of that termination). Shareholders in the fishery will not be liable for a community contribution, but must pay a rental charge for their right of access to the fishery. The maximum rental charge will be \$100 for a 12-month period (adjustable in accordance with the consumer price index).

A category 2 share management fishery may be converted to a category 1 share management fishery. The Minister may, at the request of the Management Advisory Committee for a category 2 share management fishery, direct that a poll be taken of shareholders in the fishery to determine whether conversion of the fishery to a category 1 share management fishery is supported. If conversion is supported at the poll, the Minister must take steps to bring about that conversion of the fishery.

The following restricted fisheries will become category 2 share management fisheries on the commencement of the relevant amendments:

- (a) ocean prawn trawl fishery,

- (b) ocean fish trawl fishery,
- (c) ocean hauling fishery,
- (d) ocean trap and line fishery,
- (e) estuary general fishery,
- (f) estuary prawn trawl fishery.

Since some of the fisheries cover more than one species of fish, provision is made to allow the management plan for the fishery to restrict the allocation of any total allowable catch for one of those species among those shareholders who are or were engaged in taking that species of fish.

TAC Committee

The *Fisheries Management Act 1994* currently authorises the Total Allowable Catch Setting and Review Committee to determine the total allowable catch of fish for a share management fishery, if the management plan for the fishery so requires. The amendments will allow the Committee to make other determinations requested by the Minister with respect to fishing effort in a share management fishery (for example, determinations as to the size of boats that may be used in the fishery).

Management advisory committees

The *Fisheries Management Act 1994* provides for the establishment of management advisory committees for each share management fishery and each restricted fishery. The amendments provide for the appointment of members of the management advisory committees by the Minister, rather than by the Director of NSW Fisheries. They also require the chairperson of a committee to be a person who is neither engaged in the administration of the Act nor engaged in commercial fishing in the fishery.

Schedule 4 Amendment of Fisheries Management Act 1994 relating to recreational fishing fee

At present the *Fisheries Management Act 1994* requires a recreational fisher to pay a fishing fee for any period during which the recreational fisher takes fish from freshwater. The amendments extend that requirement to recreational saltwater fishers. In order to achieve this, the recreational freshwater fishing fee is replaced with a general recreational fishing fee.

The amendments also allow the Minister to issue a fishing fee exemption certificate in respect of particular recreational fishing activities, for example, fishing activities that are conducted on a charter fishing boat. The regulations may require a fee to be paid in respect of such a certificate.

Recreational freshwater fishing fees are currently paid into a trust account that is used for purposes connected with recreational freshwater fishing. As the recreational fishing fee will now be paid by saltwater fishers, as well as freshwater fishers, the fees that are collected will now be divided between the Recreational Fishing (Freshwater) Trust Fund and the Recreational Fishing (Estuarine and Marine) Trust Fund (which is to be re-named the Recreational Fishing (Saltwater) Trust Fund).

The amendments also create a separate trust fund in respect of the charter fishing boat sector. All fees collected under Part 4A of the Act (which relates to the licensing of charter fishing boats) will be paid into that fund. The fund will be called the Charter Fishing Trust Fund.

Schedule 5 Amendment of Fisheries Management Act 1994 relating to acquisition of commercial fishing entitlements

Schedule 5 provides an equitable mechanism for the reallocation of fishing resources, by allowing the Minister to “buy-out” the commercial fishing entitlements of fishers in a particular fishery.

Under the amendments, the Minister may, by order published in the Gazette, declare any fishery to be a fishery to which the buy-out arrangements apply, and specify the relevant commercial fishing entitlements that will be the subject of the buy-out. Such an order may be made only after consultation with the persons whose entitlements are to be acquired and other relevant persons and bodies.

After making the order, the Minister is to cancel the relevant commercial fishing entitlements. A person who holds a commercial fishing entitlement that is cancelled will be entitled to compensation for the market value of the entitlement as at 19 January 2000 or another date specified in the Minister’s order.

Schedule 6 Amendments to fisheries management and environmental assessment legislation relating to habitat protection

Schedule 6 makes a number of miscellaneous changes to Part 7 of the *Fisheries Management Act 1994* and to the *Environmental Planning and Assessment Act 1979* for the protection of aquatic habitats.

Aquatic reserves

The amendments expand and clarify the purpose for declaring an aquatic reserve under the *Fisheries Management Act 1994*. The obligation to obtain the consent of the owner of land submerged by tidal waters before declaring an aquatic reserve is to be removed. Where the consent of a landholder is required, special provision is made with respect to the notification of and the consent of landholders in line with similar provision applying in connection with the issue of mining authorities. The amendments also authorise the making of management plans for each aquatic reserve by regulation. The management plan may impose higher penalties for offences created by the plan than other regulations under the Act (up to 1,000 penalty units).

Dredging and reclamation

The amendments revise the provisions regulating dredging and reclamation work in the *Fisheries Management Act 1994* to make clear the purpose of the provisions and to define more precisely the activities covered.

The purpose of the restrictions on dredging work and reclamation work is to conserve the biodiversity of fish and aquatic vegetation and to protect fish habitat.

Dredging work is defined to mean any work that involves excavating water land, and any other work involving the removal of material from water land that is prescribed by the regulations. Reclamation work is defined to mean using any material to fill in or reclaim water land, or depositing any material on water land for the purpose of constructing something over it (for example, a bridge), or draining water from water land for the purpose of its reclamation.

At present, exemptions apply to certain mining works, public works and works carried out by the Waterways Authority. Those exemptions are removed. However, new exemptions are provided, including exemptions for work carried out in respect of certain artificial bodies of water and farm dams.

Protection of mangroves and other marine vegetation

The amendments enhance the protection of marine vegetation under Division 4 of Part 7 of the *Fisheries Management Act 1994*:

- (a) by making it clear that a protected area extends to the whole of a foreshore area of public water land or an aquaculture lease up to the mean high water mark of the waters concerned, and
- (b) by allowing the Minister, by order published in the Gazette, to extend the protected area to any other land adjacent to the public water land or leased area that is below the highest astronomical level of the waters concerned, and
- (c) by making it clear that the provisions extend to the taking of dead marine vegetation as well as living marine vegetation.

The amendments also permit exemptions from the provisions by regulation.

Importation of live fish

At present live fish of a species not taken from NSW waters cannot be imported into the State without the authority of a permit issued by the Minister under the *Fisheries Management Act 1994*. The prohibition is to be applied to fish of any species other than those species indigenous to the waters of the State or the coastal sea adjacent to the State or those species exempted by regulation.

Fishways

At present, the Minister may require fishways to be provided in the construction of dams, weirs, reservoirs or floodgates on a waterway under the *Fisheries Management Act 1994*. The amendments ensure that the provision applies to lagoons or other bodies of water that are subject intermittently to tidal influence or that intermittently flow into other waterways. The penalty for a failure to comply with a requirement of the Minister is increased.

Obstruction of passage of live fish

At present, it is an offence under the *Fisheries Management Act 1994* to obstruct the passage of fish by nets, material or other obstruction, except as authorised by or under the Act. The amendments make it clear that the offence applies to the construction of dams, weirs, causeways and floodgates. An exemption is provided to exclude activities authorised by an Act or by a permit from the Minister. The regulations may provide for other exemptions. The penalty for the offence is increased.

The *Environmental Planning and Assessment Act 1979* is amended so that the integrated development assessment provisions of that Act will apply to a permit issued under the *Fisheries Management Act 1994* provisions.

Schedule 7 Miscellaneous amendments to Fisheries Management Act 1994

Regulation-making powers

A power is inserted to make regulations with respect to:

- (a) regulating recreational fishing competitions, and
- (b) prohibiting the possession or receipt of fish illegally taken, processed or dealt with in any place outside the State.

Charter fishing

The amendments:

- (a) extend the definition of *charter fishing boat*, so that it is not limited to boats that are used principally for recreational fishing activities, and
- (b) allow the regulations to prohibit or restrict the use of a licensed charter fishing boat as both a charter fishing boat and a commercial fishing boat.

Noxious or diseased fish

The amendments allow any class of fish that is declared to be a noxious fish to be designated as a pest species or a controlled species or by any other name.

The amendments also allow a quarantine order with respect to diseased fish to modify, in a particular case, provisions relating to the destruction, sale etc of diseased fish.

Seizure of motor vehicles

Amendments are made so that a motor vehicle that is alleged to have been used in connection with an offence may be seized by an enforcement officer, and forfeited to the State, in the same circumstances as a boat that is alleged to have been used in connection with an offence.

Compliance audits

Provision is made for compliance audits along the lines of mandatory environmental audits under Part 6.2 of the *Protection of the Environment Operations Act 1997*. A compliance audit is a periodic or particular documented evaluation of the fishing activity to which a fishing authority relates for either or both of the following purposes:

- (a) to provide information to the persons carrying out or managing the fishing activity and to the persons administering the Act on compliance with legal requirements and relevant policies under the Act relating to the fishing activity,
- (b) to enable those persons to determine whether the way the activity is carried on can be improved in order to promote the objects of the Act.

Compliance audits may be required under conditions of fishing authorities and are to be carried out by the holder of the authority or by a compliance auditor accredited in accordance with the regulations (or both). A report is required for any compliance audit and any false or misleading report is subject to criminal sanction.

Information must be supplied by a person for a compliance audit even if it might incriminate the person. The information supplied may be used for compliance purposes (including being admissible in evidence in criminal proceedings against the holder of the fishing authority).

The compliance audit provisions extend to aquaculture activities or other activities regulated under Part 7 of the *Fisheries Management Act 1994* (habitat protection).

Prohibition orders

The amendments allow a court that convicts a repeat offender of a fisheries offence to make an order prohibiting the repeat offender from:

- (a) engaging in specified commercial fishing activities, and
- (b) being on any boat, or in any premises, of a kind specified in the order that are associated with those commercial fishing activities.

The order remains in force for no more than 5 years.

The amendments make other provisions with respect to prohibition orders, including by providing for appeals against prohibition orders.

Schedule 8 Amendment of Native Title (New South Wales) Act 1994

The amendment preserves native title rights and interests in respect of an area declared to be an aquatic reserve under the *Fisheries Management Act 1994*.



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No. , 2000

A Bill for

An Act to amend the *Fisheries Management Act 1994* and the *Environmental Planning and Assessment Act 1979* to provide for the environmental assessment of fishing activities; to restructure the management of commercial fisheries; to require recreational saltwater fishers as well as freshwater fishers to pay a fishing fee; to make further provision for the protection of aquatic habitats; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	8 9
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedules 1 and 6.1.	10 11
4 Amendment of Fisheries Management Act 1994 No 38	12
The <i>Fisheries Management Act 1994</i> is amended as set out in Schedules 2–5, 6.2 and 7.	13 14
5 Amendment of Native Title (New South Wales) Act 1994 No 45	15
The <i>Native Title (New South Wales) Act 1994</i> is amended as set out in Schedule 8.	16 17

Schedule 1	Amendment of Environmental Planning and Assessment Act 1979 relating to assessment of fishing activities	1
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	(Section 3)	4
[1] Part 5, Division 5		5
	Insert after Division 4 of Part 5:	6
Division 5	Environmental assessment of fishing activities	7
115G	Definitions	8
	In this Division:	9
	<i>designated fishing activity</i> means a fishing activity to which this Division applies as provided by section 115H.	10
	<i>fish, fishery, fishing activity</i> and <i>share management fishery</i> have the respective meanings given in the <i>Fisheries Management Act 1994</i> .	11
	<i>fisheries approval</i> means a licence, endorsement or permit, of any kind, issued or renewed under the <i>Fisheries Management Act 1994</i> or the regulations under that Act.	12
	<i>Fisheries Minister</i> means the Minister administering the <i>Fisheries Management Act 1994</i> .	13
	<i>fishery management strategy</i> means a fishery management strategy for a designated fishing activity under Part 1A of the <i>Fisheries Management Act 1994</i> .	14
	<i>fishing regulatory controls</i> means the provisions of the following instruments that regulate, prohibit or authorise fishing activities:	15
	(a) the <i>Fisheries Management Act 1994</i> and the regulations under that Act,	16
	(b) management plans under the <i>Fisheries Management Act 1994</i> ,	17
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to assessment of fishing activities

- (c) fishing closures under section 8 of the *Fisheries Management Act 1994*, 1
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- (d) fisheries approvals, 3
- (e) determinations of the TAC Committee under Division 4 of Part 2 of the *Fisheries Management Act 1994*, 4
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- (f) policies approved by the Fisheries Minister with respect to the administration of the *Fisheries Management Act 1994* and the regulations under that Act, 6
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- (g) any relevant environmental planning instrument referred to in section 115Q (5). 9
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proponent of a fishing activity means: 11

- (a) in the case of a share management fishery—the holders of shares in the fishery or, if shares have not yet been issued on a provisional or permanent basis, the persons who are entitled to be allocated shares in the fishery, or 12
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- (b) in the case of any other fishery—the fishers or other persons who carry out, or propose to carry out, the fishing activity. 16
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115H Application of Division to designated fishing activities 19

- (1) This Division applies to designated fishing activities described in Schedule 1A to the *Fisheries Management Act 1994*. 20
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- (2) This Division extends to the following activities (but only if the activity is such a designated fishing activity): 22
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 - (a) the stocking of waters with fish, 24
 - (b) the placing of nets around beaches or other waters to protect the public from sharks, 25
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 - (c) the harvesting of marine vegetation. 27

For that purpose, a reference in this Division to a fishing activity or fishery includes a reference to any such activity. 28
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- (3) This Division does not apply to aquaculture within the meaning of the *Fisheries Management Act 1994*. 30
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115I	Designated fishing activities to be assessed under this Division	1
(1)	Environmental assessments of designated fishing activities are to be undertaken in accordance with this Division.	2 3
(2)	A draft fishery management strategy is required for a designated fishing activity that is the subject of such an environmental assessment.	4 5 6
	Note. Section 7E of the <i>Fisheries Management Act 1994</i> deals with the contents of such a strategy (including the incorporation of the relevant management plan).	7 8 9
(3)	The environmental assessment is to be undertaken on the basis of the activity described in the draft strategy.	10 11
(4)	The environmental assessment is to assess the likely cumulative environmental impact of the designated fishing activity carried out by all the proponents as authorised by the applicable fishing regulatory controls described in the draft strategy.	12 13 14 15
115J	Environmental impact statements to be prepared	16
(1)	An environmental impact statement in respect of a designated fishing activity must be prepared for the purposes of an environmental assessment under this Division.	17 18 19
(2)	An environmental impact statement is required even if it would not be required under Division 3 if that Division applied to the carrying out of the designated fishing activity.	20 21 22
(3)	An environmental impact statement is to be prepared in accordance with the requirements of Division 3, and the regulations under that Division, relating to the preparation of such statements.	23 24 25 26
(4)	The Fisheries Minister is to make arrangements for the preparation of an environmental impact statement, including engaging a person to be responsible for the preparation of the statement.	27 28 29 30
(5)	The Fisheries Minister may, under those arrangements, require the proponents of the designated fishing activity to provide information or carry out investigations for the statement and to contribute to the cost of the preparation of the statement.	31 32 33 34

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(6)	As soon as practicable after an environmental impact statement has been prepared and before public notice is given under section 115K, the Fisheries Minister is to give a copy of the statement to the Director.	1 2 3 4
115K	Publicity and examination of environmental impact statements	5
(1)	The Fisheries Minister must give public notice of the preparation of an environmental impact statement under this Division and make a copy of the statement available for public inspection in accordance with the requirements for environmental impact statements made by section 113.	6 7 8 9 10
(2)	A copy of the relevant draft fishery management strategy is to accompany any copy of the environmental impact statement that is made available for public inspection in accordance with this section.	11 12 13 14
(3)	Any person may, during the period specified in the public notice under subsection (1), inspect the environmental impact statement and may, within that period, make representations in writing to the Fisheries Minister with respect to the designated fishing activity to which the statement relates.	15 16 17 18 19
(4)	Copies of all such representations received by the Fisheries Minister are to be provided, as soon as practicable, to the Director.	20 21 22
(5)	The Director may, unless an inquiry has been directed under section 115L:	23 24
(a)	examine or cause to be examined in the Department the environmental impact statement and any relevant representations, and	25 26 27
(b)	forward to the Fisheries Minister, as soon as practicable, a report containing the findings of that examination together with any recommendations arising from that examination.	28 29 30 31
	The Director must make that report public.	32

(6) If the Director notifies the Fisheries Minister that the environmental impact statement and representations are to be examined in the Department, the Fisheries Minister must not make a determination under section 115N with respect to the designated fishing activity until the report of the Director has been forwarded to the Fisheries Minister.	1 2 3 4 5 6
115L Public inquiry into designated fishing activity	7
(1) The Minister administering this Act may direct an inquiry under section 119 with respect to all or any of the environmental aspects of a designated fishing activity the subject of an environmental impact statement prepared under this Division.	8 9 10 11 12
(2) The Minister administering this Act is to consider the findings and recommendations of the Commission of Inquiry that has conducted the inquiry and forward to the Fisheries Minister a copy of the findings and recommendations (together with any advice on whether there are environmental grounds on which the activity should be permitted, modified or prevented).	13 14 15 16 17 18
(3) If the Minister administering this Act notifies the Fisheries Minister that an inquiry is to be conducted, the Fisheries Minister must not make a determination under section 115N with respect to the designated fishing activity until the findings and recommendations (and any advice) have been forwarded to the Fisheries Minister.	19 20 21 22 23 24
115M Special provisions relating to threatened species conservation	25
(1) An environmental assessment under this Division of a designated fishing activity is to include an assessment of the effect or likely effect on the following:	26 27 28
(a) critical habitat,	29
(b) threatened species, populations and ecological communities and their habitats.	30 31

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to assessment of fishing activities

- (2) An environmental impact statement under this Division must include a species impact statement if the designated fishing activity is to be carried out in critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats. 1
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- (3) The Fisheries Minister, in considering a species impact statement under this Division, must have regard to the terms of any recovery plans or threat abatement plans relating to the area to which the statement applies for the purpose of assessing any effect on a threatened species, population or ecological community, or its habitat. 6
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- (4) The Fisheries Minister must not make a determination under section 115N with respect to a designated fishing activity that is to be carried out in critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats unless the Minister has consulted the Minister administering the *Threatened Species Conservation Act 1995*. This subsection does not apply if the critical habitat or the threatened species, population or ecological community relate to fish or marine vegetation. 12
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- (5) In consulting under subsection (4), the Minister administering the *Threatened Species Conservation Act 1995* must provide the Fisheries Minister with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination with respect to the designated fishing activity. The Fisheries Minister must include any recommendations not accepted by the Fisheries Minister (and the reasons for not accepting them) in the public report of the Fisheries Minister's determination. 21
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- (6) The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under subsection (4)) must take into consideration the matters referred to in section 112E of this Act. 30
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- Note.** This section incorporates the relevant obligations under Division 3 with respect to threatened species conservation. 34
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- 115N Determination with respect to environmental assessment** 1
- (1) The Fisheries Minister is to make a determination with respect to the designated fishing activity the subject of an environmental impact statement for the purpose of attaining the objects of this Act relating to the protection and the enhancement of the environment and the objects of the *Fisheries Management Act 1994*. 2
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- (2) When making the determination, the Fisheries Minister is to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the designated fishing activity (including the effect of the activity on the matters referred to in section 111 (2)–(4)). 8
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- Note.** The duty of the Fisheries Minister under this section is in similar terms to the duty imposed on determining authorities by section 111 to consider the environmental impact of activities. 13
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- (3) The Fisheries Minister is to consider: 16
- (a) the environmental impact statement and the representations duly received by the Fisheries Minister with respect to the designated fishing activity to which the statement relates, and 17
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- (b) any report on the statement and recommendations of the Director that are forwarded to the Fisheries Minister under section 115K, and 21
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- (c) any findings and recommendations of a Commission of Inquiry and advice of the Minister administering this Act that are forwarded to the Fisheries Minister under section 115L, and 24
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- (d) the matters required to be considered under section 115M relating to threatened species conservation. 28
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- (4) The Fisheries Minister may make any of the following determinations: 30
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- (a) a determination to permit the designated fishing activity to be carried out, 32
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Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 relating
to assessment of fishing activities

- (b) a determination to permit the designated fishing activity to be carried out subject to such modifications as will in the Fisheries Minister's opinion eliminate or reduce the detrimental effect of the activity on the environment, 1
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- (c) a determination to prevent the carrying out of the designated fishing activity or any part of the activity. 5
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The Fisheries Minister must make the determination public as soon as practicable after it is made. 7
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Note. This subsection is in similar terms to section 112 (4) with respect to the actions of a determining authority once it has obtained and considered an environmental impact statement on an activity that is likely to significantly affect the environment. Section 7F of the *Fisheries Management Act 1994* requires the Fisheries Minister to revise the relevant draft fishery management strategy (and publish the approved strategy) so as to reflect the result of the determination. 9
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- (5) If the approval of the Minister administering this Act is required under section 115O for a determination under this section, the Fisheries Minister is to make a preliminary determination before seeking approval under that section. A determination is not made under this section until a final determination is made in accordance with section 115O. 16
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- (6) When giving effect to a determination, the Fisheries Minister is to comply with the applicable provisions of the *Fisheries Management Act 1994* and the regulations under that Act. 22
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- (7) A determination under this section does not prevent the imposition from time to time of new fishing regulatory controls applicable to a designated fishing activity, or changes from time to time to those controls. 25
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Note. See also section 115Q (3) which only excludes a fishing approval from the requirement for individual environmental assessment under this Part if it is issued or renewed in accordance with the determination of the environmental assessment under this section. 29
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115O Approval of Minister administering this Act required for designated fishing activity where Fisheries Minister is or is declared to be proponent 33
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- (1) This section applies to: 36
- (a) any designated fishing activity of which the Fisheries Minister is the proponent, and 37
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- (b) any other designated fishing activity in respect of which the Fisheries Minister is declared to be the proponent by the Minister administering this Act by order published in the Gazette: 1
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(i) with the approval of the Fisheries Minister, or 5
(ii) if there is a dispute between the Minister administering this Act and the Fisheries Minister, with the approval of the Premier. 6
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- (2) The Fisheries Minister is not to make a final determination under section 115N with respect to a designated fishing activity to which this section applies without the approval of the Minister administering this Act. If the approval is subject to conditions, the final determination must accord with those conditions. 9
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- (3) Division 4 applies (with any necessary modifications) to an approval of the Minister administering this Act required under this section in the same way as it applies to an approval of that Minister required under that Division. 15
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- 115P Re-assessment of designated fishing activity** 19
- (1) A further environmental assessment of a designated fishing activity is to be undertaken under this Division if: 20
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(a) a review of the relevant fishery management strategy is indicated by the strategy because the specified performance indicators are not being met, and 22
23
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(b) the review results in proposed changes to the strategy, and 25
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(c) the proposed changes to fishing regulatory controls are likely, in the opinion of the Fisheries Minister, to significantly affect the environment (including threatened species, populations or ecological communities or their habitats). 27
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- (2) A further environmental assessment may be limited to an assessment that relates to the proposed changes to fishing regulatory controls. 32
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115Q	Application of other provisions of this Act	1
(1)	The provisions of this Part (other than this Division) do not apply to or in respect of a designated fishing activity.	2 3
(2)	Despite subsection (1), those provisions apply to a designated fishing activity if the Fisheries Minister has not made a determination with respect to the activity under this Division before:	4 5 6 7
(a)	1 July 2003, except as provided by paragraph (b), or	8
(b)	a later date prescribed by the regulations for the purposes of that fishing activity.	9 10
	In that case, those provisions cease to apply if the determination is made after that date.	11 12
(3)	Despite subsection (1), those provisions apply to a fisheries approval that relates to a designated fishing activity if:	13 14
(a)	until a determination is made by the Fisheries Minister with respect to the activity under section 115N—the fisheries approval does not authorise commercial fishing activities and is granted or renewed for a period exceeding 12 months, or	15 16 17 18 19
(b)	after such a determination is made—the fisheries approval is not granted or renewed in accordance with the determination.	20 21 22
(4)	A designated fishing activity cannot be made subject to a requirement for development consent under Part 4.	23 24
(5)	An environmental planning instrument cannot prohibit or otherwise regulate a designated fishing activity (or any part of such an activity) unless the Fisheries Minister has approved those provisions before the instrument is made.	25 26 27 28
[2]	Part 5A (sections 115G–115N)	29
	Re-number sections 115G–115N as sections 116A–116H.	30

Schedule 2	Amendment of Fisheries Management Act 1994 relating to environmental assessment	1
		2
	(Section 4)	3
[1]	Section 4 Definitions	4
	Omit the definition of <i>management plan</i> from section 4 (1). Insert instead:	5
	<i>management plan</i> means:	6
	(a) in relation to a share management fishery—a management plan for the fishery made under Division 5 of Part 3, or	7
		8
		9
	(b) in relation to any other fishery—a management plan under the regulations referred to in section 40 (2) (a).	10
		11
[2]	Part 1A	12
	Insert after Part 1:	13
	Part 1A Fishery management strategies	14
	7A Definitions	15
	In this Part:	16
	<i>designated fishing activity</i> means a fishing activity described in Schedule 1A.	17
		18
	<i>EPA Act</i> means the <i>Environmental Planning and Assessment Act 1979</i> .	19
		20
	<i>fishing activity</i> includes any activity that may be the subject of environmental assessment under Division 5 of Part 5 of the EPA Act.	21
		22
		23
	<i>fishing regulatory controls</i> has the same meaning it has in Division 5 of Part 5 of the EPA Act.	24
		25

7B	Declaration of designated fishing activities	1
(1)	Schedule 1A describes designated fishing activities for the purposes of this Part.	2 3
(2)	The Governor may, by proclamation on the recommendation of the Minister, amend Schedule 1A by inserting, omitting or amending the description of a fishing activity.	4 5 6
(3)	The regulations may make provisions of a savings or transitional nature consequent on the amendment of Schedule 1A.	7 8 9
7C	Fishery management strategy for designated activities	10
(1)	The Minister is to arrange for the preparation of a draft fishery management strategy for each designated fishing activity.	11 12
(2)	The Minister may, from time to time, revise the existing strategy for an activity or arrange for the preparation of a new draft strategy for the activity (whether or not a review of the existing strategy is required because performance indicators are not being met).	13 14 15 16 17
7D	Purpose of fishery management strategy	18
(1)	A fishery management strategy is the strategy for achieving the objectives of this Act with respect to the designated fishing activity for which it is prepared. The draft strategy is the basis for environmental assessment under Division 5 of Part 5 of the EPA Act of that activity.	19 20 21 22 23
(2)	A draft strategy is to be prepared (in accordance with guidelines agreed between the Minister administering this Act and the Minister administering the EPA Act) so as to enable:	24 25 26
(a)	an environmental assessment consistent with the principles on which assessments of activities are undertaken under Part 5 of the EPA Act, and	27 28 29

(b)	the cumulative environmental impact of fisheries approvals under this Act to be assessed.	1 2
	Note. Division 5 of Part 5 of the EPA Act makes special provision for the environmental assessment of designated fishing activities. Section 115I of that Act requires the preparation of a draft fishery management strategy for any fishing activity that is subject to environmental assessment under that Division. The draft strategy is subject to public consultation in conjunction with the environmental impact statement for the assessment.	3 4 5 6 7 8
7E	Content of fishery management strategy	9
	A fishery management strategy is to:	10
(a)	describe the designated fishing activity for which it is prepared, and	11 12
(b)	incorporate any management plan or draft management plan for the fishery concerned, and	13 14
(c)	outline the fishing regulatory controls or proposed fishing regulatory controls applicable to the designated fishing activity, and	15 16 17
(d)	outline the likely interaction of the designated fishing activity with other fishing activities, and	18 19
(e)	include performance indicators to monitor whether the objectives of the strategy (and the management plan) and ecologically sustainable development are being attained, and	20 21 22 23
(f)	describe how the designated fishing activity is to be monitored, and	24 25
(g)	specify at what point a review of the strategy is required when a performance indicator is not being satisfied.	26 27
	Note. See section 57 for content of a management plan for a share management fishery.	28 29
7F	Revision of draft strategy and publication of approved strategy following environmental assessment	30 31
(1)	Following a determination under Division 5 of Part 5 of the EPA Act, the Minister is to revise the draft fishery management strategy for the designated fishing activity concerned so as to reflect the result of the determination.	32 33 34 35

(2) The Minister is to publish the approved strategy (as so revised) in connection with the publication of the determination under Division 5 of Part 5 of the EPA Act.	1 2 3
7G Management plan not to be made until completion of environmental assessment	4 5
(1) Until a determination is made under Division 5 of Part 5 of the EPA Act with respect to a designated fishing activity, the first management plan for the fishery concerned cannot be made.	6 7 8
(2) If the management plan for a share management fishery has not been made within the time required by section 42 (3), the Minister is not required to recommend that the description of the fishery be omitted from Schedule 1 if the Management Advisory Committee for the fishery approves of the retention of the fishery as a share management fishery.	9 10 11 12 13 14
[3] Section 42 Declaration of share management fisheries	15
Omit the note at the end of the section. Insert instead:	16
Note. The first management plan for a fishery cannot be made until the completion of environmental assessment—see section 7G.	17 18
[4] Section 128 Definitions	19
Insert in alphabetical order:	20
<i>this Act</i> includes Division 5 of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> .	21 22
[5] Section 227 Delegation by Minister	23
Insert at the end of the section:	24
(2) The Minister may also delegate to the Director any function of the Minister under Division 5 of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> (other than the function of making a determination under that Division with respect to a designated fishing activity).	25 26 27 28 29

[6] Section 238B	1
Insert after section 238A:	2
238B Use of money in trust funds for environmental assessment and related expenses	3 4
The costs incurred in connection with environmental assessment under Division 5 of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> in respect of a fishery (including in connection with the preparation of a fishery management strategy) may be paid or reimbursed from the trust fund that relates to the fishery.	5 6 7 8 9 10
[7] Section 282A	11
Insert after section 282:	12
282A Enforcement of environmental assessment and management planning requirements	13 14
(1) This section applies to:	15
(a) proceedings under section 282 of this Act or section 123 of the EPA Act, or	16 17
(b) judicial review proceedings or any other proceedings, to remedy or restrain a breach or apprehended breach of Part 1A or Division 5 of Part 3 of this Act or of Division 5 of Part 5 of the EPA Act.	18 19 20 21
(2) A relevant fishing regulatory control (or proposed control) that prohibits or restricts the carrying out of fishing activities cannot, in any such proceedings, be invalidated, suspended, prevented from being made or taking effect or otherwise affected because of any such breach or apprehended breach unless:	22 23 24 25 26 27
(a) a reasonable period is provided by the court to enable compliance with the provision of this Act or the EPA Act concerned (including if necessary the preparation of a new fishery management strategy or a re-assessment under that Act), and	28 29 30 31 32

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assessment

(b)	the provision has not been complied with after the end of that period.	1 2
(3)	Words and expressions in this section have the same meaning as they have in Part 1A.	3 4
[8]	Section 284 Public consultation procedure	5
	Insert after section 284 (2):	6
(3)	A requirement under this Act to consult relevant commercial or recreational fishing industry bodies in connection with any such public opportunity to make submissions on a matter is a requirement to consult such bodies as the Minister considers have a sufficient interest in the matter.	7 8 9 10 11
[9]	Schedule 1A	12
	Insert after Schedule 1:	13
	Schedule 1A Designated fishing activities	14
	(Section 7B)	15
1	Share management fisheries	16
	Fishing activities for commercial purposes in a share management fishery specified in Schedule 1.	17 18
	Note. On the enactment of this Schedule, the abalone fishery and the lobster fishery were share management fisheries. On the commencement of Schedule 3 to the <i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i> , the ocean prawn trawl fishery, the ocean fish trawl fishery, the ocean hauling fishery, the ocean trap and line fishery, the estuary general fishery and the estuary prawn trawl fishery become share management fisheries.	19 20 21 22 23 24 25
2	Charter boat fishery	26
	Recreational fishing activities comprising the use of charter fishing boats (within the meaning of Part 4A).	27 28

3 Recreational fishery	1
Recreational fishing activities (except in the charter boat fishery referred to in clause 2).	2 3
4 Fish stocking	4
Fishing activities comprising the stocking of waters with fish:	5
(a) for which a permit of the Minister is required under section 216 of the Act, or	6 7
(b) by the Minister.	8
5 Shark meshing	9
Fishing activities comprising the placing of nets by the Minister around beaches and other waters to protect the public from sharks.	10 11 12

Schedule 3	Amendment of Fisheries Management Act	1
	1994 relating to commercial fisheries	2
	(Section 4)	3
[1]	Section 4 Definitions	4
	Insert in alphabetical order in section 4 (1):	5
	<i>category 1 share management fishery</i> means a fishery	6
	specified in Part 1 of Schedule 1.	7
	<i>category 2 share management fishery</i> means a fishery	8
	specified in Part 2 of Schedule 1.	9
[2]	Section 28 Function of TAC Committee	10
	Insert after section 28 (3):	11
	(4) The TAC Committee may also determine, in accordance with	12
	this Division, any other matter relating to fishing effort in a	13
	share management fishery if (and only if) required to do so by	14
	the Minister. This Division applies to the determination of any	15
	such matter in the same way as it applies to the determination	16
	of a total allowable catch.	17
[3]	Part 3, Division 1, heading	18
	Omit the heading. Insert instead: “ Division 1 Overview ”.	19
[4]	Section 41A	20
	Insert after section 41:	21
	41A Categories of share management fishery	22
	There are 2 categories of share management fishery, as follows:	23
	(a) category 1 share management fisheries,	24

(b)	category 2 share management fisheries.	1
	Note. The principal differences between category 1 and category 2 share management fisheries are as follows:	2
		3
(a)	Shares in a category 1 share management fishery are issued for a 10-year period and are automatically renewed. If the share management fishery is terminated, all the shares in the fishery are cancelled and compensation is payable to the shareholders. Shareholders in the fishery are liable to pay a community contribution for their right of access to the fishery.	4
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(b)	Shares in a category 2 share management fishery are issued for a 15-year period and are renewable. If the share management fishery is terminated by the Minister, the shares expire at the end of the 15-year period for which they were issued or renewed. Compensation is payable for the termination of the fishery (by its omission from Schedule 1) before the expiry of the current term of the shares, but is not payable for a termination by the Minister after that expiry. Shareholders in the fishery are not liable for a community contribution, but must pay a rental charge for their right of access to the fishery.	10
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[5]	Section 44 Omission of share management fishery	20
	Insert after section 44 (7):	21
	(8) This section does not apply:	22
	(a) if a description of a fishery is omitted from Part 2 of Schedule 1 after the fishery is terminated in accordance with Division 2A, or	23
		24
		25
	(b) if a description of a fishery is omitted from Part 2 of Schedule 1 and inserted in Part 1 of Schedule 1 (that is, the fishery is converted in accordance with Division 2A).	26
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		29
[6]	Part 3, Division 2A	30
	Insert after Division 2 of Part 3:	31
	Division 2A Termination and conversion of category 2 share management fisheries	32
		33
	45A Termination of category 2 share management fishery	34
	(1) The Minister may, by order published in the Gazette, terminate a category 2 share management fishery.	35
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fisheries

(2)	The termination takes effect when the current term of the shares in the fishery expires.	1 2
	Note. Shares in a category 2 share management fishery are issued for 15-year periods. Under section 73A, if a new management plan is not made by the end of the first 10 years of that 15-year period, and an order has not been made terminating the fishery, the shares are automatically renewed for a further 15 years. The effect of that provision is that shareholders must be given at least 5 years' notice of the termination of the fishery.	3 4 5 6 7 8 9
(3)	When the termination takes effect, the fishery is taken to cease to be a share management fishery.	10 11
(4)	The Minister is to recommend to the Governor that the description of the fishery be omitted from Schedule 1 after the termination takes effect.	12 13 14
45B	Regulations relating to terminated fisheries	15
(1)	The regulations may make provision for or with respect to the regulation and management of a category 2 share management fishery that is terminated under this Division.	16 17 18
(2)	Without limiting subsection (1), the regulations may declare the fishery to be a restricted fishery from the date the termination takes effect.	19 20 21
45C	Conversion of category 2 share management fishery to category 1	22 23
(1)	A category 2 share management fishery may be converted to a category 1 share management fishery.	24 25
(2)	A category 2 share management fishery is converted to a category 1 share management fishery if Schedule 1 is amended so as to omit the description of the fishery from Part 2 of Schedule 1 and insert that description of the fishery in Part 1 of Schedule 1.	26 27 28 29 30
(3)	A category 2 share management fishery cannot be redefined at the time of its conversion to a category 1 share management fishery, but the fishery may be redefined before or after its conversion.	31 32 33 34

45D Poll of shareholders	1
(1) The Management Advisory Committee for a category 2 share management fishery may request the Minister to hold a poll of shareholders on the question of whether the fishery should be converted to a category 1 share management fishery.	2 3 4 5
(2) Within 60 days after the request is made, the Minister is to:	6
(a) direct that the poll be taken, or	7
(b) refer the matter back to the Management Advisory Committee for reconsideration.	8 9
If the Committee confirms its request, the Minister must, within 60 days, direct that the poll be taken.	10 11
(3) For the purposes of a poll under this section:	12
(a) shareholders are entitled to one vote irrespective of the number of shares they hold, and	13 14
(b) 2 or more persons who hold shares jointly are entitled to only one vote, and	15 16
(c) a corporation that holds shares is required to nominate an individual to vote in the poll.	17 18
(4) The conversion of the fishery is supported at a poll if the number of votes in support of the conversion constitutes a majority of the persons eligible to vote in the poll.	19 20 21
(5) If the conversion of the fishery is supported at the poll, the Minister is, within 90 days, to recommend to the Governor that the appropriate amendment be made to Schedule 1 to effect the conversion.	22 23 24 25
(6) A poll in respect of a fishery is not to be conducted under this section more than twice during the period in which the management plan for the fishery remains in force.	26 27 28
(7) The regulations may make provision for or with respect to:	29
(a) the conduct of polls under this section, and	30
(b) the recovery of the costs of or in connection with a poll from shareholders in the fishery.	31 32

45E	General provisions relating to conversion	1
(1)	If a category 2 share management fishery is converted to a category 1 share management fishery:	2
		3
(a)	the fishery is taken, subject to the regulations, to continue to be a category 2 share management fishery for the purposes of this Part until the commencement of the management plan for the category 1 share management fishery, and	4
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(b)	the management plan for the category 2 share management fishery continues in force until that commencement (subject to any amendment of that plan in accordance with this Part), and	9
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		12
(c)	any entitlement to compensation under section 44 for the omission of the fishery from Schedule 1 before that commencement is to be determined on the basis that the fishery remains a category 2 share management fishery.	13
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		16
(2)	When the management plan for the category 1 share management fishery commences, all shares in the category 2 share management fishery are cancelled.	17
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		19
(3)	The regulations may make provision for or with respect to the conversion of a category 2 share management fishery to a category 1 share management fishery, including by modifying the application of this Part to the implementation of the category 1 share management fishery.	20
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[7]	Section 50 Method of determining eligibility and entitlement to shares	25
	Insert after section 50 (6):	26
(7)	If a category 2 share management fishery is converted to a category 1 share management fishery, the persons entitled to shares in the fishery are the persons who are shareholders in the category 2 share management fishery. The allocation of shares to any such person is to be made having regard to the shares held by the person in the category 2 share management fishery.	27
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[8] Section 55 Fishery that is existing restricted fishery	1
Insert after section 55 (2):	2
(3) Any provisions of the regulations that apply to such a restricted fishery apply (with any necessary modifications) as provisions of the regulations that apply to the limited access fishery, until those provisions are repealed.	3 4 5 6
[9] Section 73 Duration of shareholding—category 1 share management fishery	7 8
Omit “share management fishery” from section 73 (1).	9
Insert instead “category 1 share management fishery”.	10
[10] Section 73A	11
Insert after section 73:	12
73A Duration of shareholding—category 2 share management fishery	13
(1) Shares in a category 2 share management fishery are to be issued initially for a period of 15 years (calculated from the commencement of the management plan for the fishery).	14 15 16
(2) If by the end of the first 10 years of that 15-year period (or any subsequent period for which the shares are renewed):	17 18
(a) a new management plan has not been made under this Part, and	19 20
(b) there is no order in force under Division 2A that terminates the fishery at the end of current term of the shares in the fishery,	21 22 23
the shares are taken to be renewed for a further period of 15 years and the balance of the current period is terminated.	24 25
(3) If by the end of the first 10 years of that 15-year period (or any subsequent period for which the shares are renewed) a fishery review has been conducted and a new management plan has been made under this Part, the shares are taken to be renewed (from the date the new plan commences) for a further period of 15 years and the balance of the current period is terminated.	26 27 28 29 30 31

[11] Section 77 Community contribution for access to category 1 share management fishery	1 2
Omit “share management fishery” from section 77 (1).	3
Insert instead “category 1 share management fishery”.	4
[12] Section 77A	5
Insert after section 77:	6
77A Rental charge for access to category 2 share management fishery	7 8
(1) Shareholders in a category 2 share management fishery are required to pay a rental charge for their right of access to the fishery.	9 10 11
(2) The amount of the rental charge, the method of its payment and other matters concerning its payment are to be provided for by the management plan.	12 13 14
(3) The maximum rental charge is \$100 for a 12-month period.	15
(4) The management plan for a fishery may provide for the adjustment of the maximum rental charge to take into account changes in the consumer price index. In that case, the maximum rental charge is the amount so adjusted.	16 17 18 19
(5) A person is exempt from paying the rental charge:	20
(a) if the person holds shares in another category 2 share management fishery and has paid a rental charge for the same period in respect of that other fishery (unless the management plan otherwise provides), or	21 22 23 24
(b) in such other circumstances as may be provided for by the management plan.	25 26
(6) This section applies in respect of a category 2 share management fishery:	27 28
(a) if the fishery is, before the commencement of limited access to the fishery, also a restricted fishery—on and from the day the fishery becomes a share management fishery, or	29 30 31 32

(b)	in any other case—on and from the day appointed for the commencement of limited access to the fishery.	1 2
(7)	Until the commencement of the management plan for the fishery, the Minister may determine the matters that under this section may be provided for by the plan.	3 4 5
(8)	For the purposes of this section:	6
(a)	an applicant for shares in a category 2 share management fishery who has duly lodged an appeal to the Share Appeal Panel, and whose appeal is pending, is taken to be a shareholder in the fishery, and	7 8 9 10
(b)	if a category 2 share management fishery is also a restricted fishery—a person authorised to take fish in the fishery is taken to be a shareholder in the fishery.	11 12 13
[13]	Section 78 Allocation of total allowable catch among shareholders in fishery	14 15
	Insert after section 78 (3):	16
(3A)	The management plan for a fishery that includes different kinds of fish may, for the purposes of this section, provide for different classes of shareholders in the fishery having regard to the kind of fish taken by the shareholders (including in connection with any catch history on which the criteria for shareholding in the fishery was based). The management plan may provide (despite subsection (3)) for the allocation of the total allowable catch of a particular kind of fish among the relevant class of shareholders only.	17 18 19 20 21 22 23 24 25
[14]	Section 230 Management Advisory Committees for fisheries	26
	Omit “Director” from section 230 (1). Insert instead “Minister”.	27
[15]	Section 230 (2) and (3)	28
	Omit the subsections. Insert instead:	29
(2)	The members of a Management Advisory Committee are to be appointed by the Minister and are to be:	30 31

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(a)	commercial fishers (or other prescribed persons) elected in accordance with the regulations by shareholders or commercial fishers, or persons who are likely to be shareholders or commercial fishers, in the fishery, and	1 2 3 4
(b)	persons representing other interested groups determined by the Minister in accordance with the regulations, and	5 6
(c)	a person appointed as chairperson of the Committee, being a person who is neither engaged in the administration of this Act nor engaged in commercial fishing in the fishery.	7 8 9 10
(3)	The chairperson of a Management Advisory Committee is entitled to attend and chair meetings of the Committee but is not entitled to vote at any such meeting.	11 12 13
[16]	Schedule 1 Share management fisheries	14
	Insert at the beginning of the Schedule:	15
	Part 1 Category 1 share management fisheries	16
[17]	Schedule 1, Parts 2 and 3	17
	Insert after clause 6:	18
	Part 2 Category 2 share management fisheries	19
7	Ocean prawn trawl fishery	20
	Description of fishery	21
	The ocean prawn trawl fishery consists of the use of an otter trawl net (prawns) to take fish from any of the following waters:	22 23 24
(a)	inshore waters,	25
(b)	offshore waters,	26
(c)	the waters of Coffs Harbour and Jervis Bay.	27

8 Ocean fish trawl fishery	1
Description of fishery	2
The ocean fish trawl fishery consists of the use of an otter trawl net (fish) to take fish from the following waters:	3 4
(a) ocean waters that are north of a line drawn due east from Barrenjoey Headland (other than the waters in which use of an otter trawl net (fish) is prohibited under the regulations under this Act),	5 6 7 8
(b) ocean waters that are not more than 3 nautical miles from the natural coast line and are south of a line drawn due east from Barrenjoey Headland.	9 10 11
9 Ocean hauling fishery	12
Description of fishery	13
(1) The ocean hauling fishery consists of the use of a hauling net or purse seine net to take fish from any of the following waters:	14 15
(a) ocean waters within 3 nautical miles of the natural coast line,	16 17
(b) the waters of Jervis Bay,	18
(c) the waters of Botany Bay east of a line drawn from Bear Island generally southeast to the northernmost extremity of Sutherland Point,	19 20 21
(d) the waters of Coffs Harbour.	22
(2) The ocean hauling fishery extends to the use of any net by the method of hauling to take fish from any of the waters referred to in subclause (1).	23 24 25
10 Ocean trap and line fishery	26
Description of fishery	27
The ocean trap and line fishery consists of the following:	28
(a) the use of a fish trap to take fish from ocean waters,	29
(b) the use of a line with hooks attached to take fish from ocean waters,	30 31

(c)	the use of a spanner crab net to take spanner crabs from ocean waters that are north of a line drawn due east from Korogoro Point (Hat Head).	1 2 3
11	Estuary general fishery	4
	Description of fishery	5
	The estuary general fishery consists of:	6
(a)	the taking of fish from estuarine waters by any lawful method other than prawn trawling, and	7 8
(b)	the taking of fish from ocean beaches by the method of hand picking.	9 10
12	Estuary prawn trawl fishery	11
	Description of fishery	12
	The estuary prawn trawl fishery consists of the use of an otter trawl net (prawns) to take prawns from estuarine waters.	13 14
	Part 3 Interpretation	15
13	Definitions	16
(1)	In this Schedule:	17
	<i>estuarine waters</i> means waters ordinarily subject to tidal influence (other than ocean waters).	18 19
	<i>inshore waters</i> means ocean waters that are not more than 3 nautical miles from the natural coast line.	20 21
	<i>natural coast line</i> , in relation to a fishery described in this Schedule, means the natural coast line as defined in Schedule 1 to the <i>Fisheries Management (General) Regulation 1995</i> , as in force at the date the description of the fishery was inserted in this Schedule.	22 23 24 25 26
	<i>ocean waters</i> means waters east of the natural coast line.	27
	<i>offshore waters</i> means ocean waters that are more than 3 nautical miles from the natural coast line and north of a line drawn due east from Barrenjoey Headland.	28 29 30

(2) A reference in the description of a fishery to a net or a trap is a reference to a net or trap of that description that may lawfully be used by a commercial fisher to take fish from the waters to which the fishery applies, as prescribed by the regulations from time to time in force under this Act.	1 2 3 4 5
[18] Schedule 1	6
Omit clause 9.	7
[19] Schedule 7 Savings, transitional and other provisions	8
Insert after Part 3:	9
Part 3A Provisions relating to share management fisheries	10 11
6B Appeals to Share Appeal Panel	12
(1) This clause applies in respect of a restricted fishery that becomes a category 2 share management fishery as a result of the amendments made to Schedule 1 by the <i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i> .	13 14 15 16 17
(2) Despite section 84, there is no appeal to the Share Appeal Panel in relation to any matter that was determined by the Minister before the restricted fishery became a share management fishery (such as a determination as to the catch history of a person) if the determination could have been made the subject of a review request under Division 6 of Part 8 of the <i>Fisheries Management (General) Regulation 1995</i> .	18 19 20 21 22 23 24
(3) The Share Appeal Panel is to refuse to hear an appeal in relation to any such matter.	25 26

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Schedule 3 Amendment of Fisheries Management Act 1994 relating to commercial
fisheries

[20] Schedule 7	1
Insert in Part 8 in appropriate numerical order:	2
19A Saving of arrangements relating to MACs consequent on amendments made by Fisheries Management and Environmental Assessment Legislation Amendment Act 2000	3 4 5
(1) A Management Advisory Committee established for a restricted fishery that becomes a category 2 share management fishery under the amendments made to Schedule 1 by the <i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i> is taken to have been established for the share management fishery.	6 7 8 9 10 11
(2) A Management Advisory Committee established by the Director under section 230 before the amendment of that section by the <i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i> is taken to have been established by the Minister.	12 13 14 15 16
(3) The members of the Management Advisory Committee are taken to have been appointed by the Minister.	17 18
(4) In the case of the Management Advisory Committee for the lobster fishery, the chairperson may (until 1 January 2004) be engaged in commercial fishing in that fishery (despite section 230 (2)).	19 20 21 22

Schedule 4	Amendment of Fisheries Management Act 1994 relating to recreational fishing fee	1 2
	(Section 4)	3
[1]	Section 4 Definitions	4
	Omit the definition of <i>recreational freshwater fisher</i> from section 4 (1). Insert instead:	5 6
	<i>recreational fisher</i> means a fisher who takes fish by any method, otherwise than for sale.	7 8
[2]	Part 2, Division 4A	9
	Omit the Division. Insert instead:	10
	Division 4A Recreational fishing fee	11
	34A Definitions	12
	In this Division:	13
	<i>fishing fee</i> means a recreational fishing fee payable under this Division.	14 15
	<i>fishing fee exemption certificate</i> means a certificate issued under section 34I and in force.	16 17
	<i>official receipt</i> means a receipt issued under this Division for payment of a recreational fishing fee.	18 19
	34B Recreational fishing fee	20
	A recreational fishing fee is payable by recreational fishers as required by this Division.	21 22
	34C Recreational fishers required to pay fishing fee	23
	(1) A fishing fee is payable by all recreational fishers, unless exempted by or under this section.	24 25

- (2) A fisher is exempt from paying a fishing fee: 1
- (a) if the fisher is under 18 years of age, or 2
 - (b) if the fisher is of or over 18 years of age and is only 3
assisting a fisher under 18 years of age to take fish by 4
means of a single rod or line, or 5
 - (c) if the fisher holds a licence, permit or other authority 6
under this Act or the regulations and is taking fish in 7
accordance with that licence, permit or other authority, 8
or 9
 - (d) if the fisher is engaging in recreational fishing activities 10
that are exempt from payment of a fishing fee by virtue 11
of a fishing fee exemption certificate that is in force, or 12
 - (e) if the fisher is taking fish from water subject to an 13
aquaculture permit and is taking fish to which the 14
permit relates, or 15
 - (f) if the fisher is an Aboriginal (within the meaning of the 16
Aboriginal Land Rights Act 1983) and: 17
 - (i) is taking fish from freshwater, or 18
 - (ii) is taking fish from other waters pursuant to a 19
native title right or interest that is the subject of 20
an approved determination of native title or of a 21
claim entered on the Register of Native Title 22
Claims (within the meaning of the *Native Title 23
Act 1993* of the Commonwealth), or 24
 - (g) if the fisher is taking fish from an aquarium, or from a 25
body of water of a class exempted by the regulations, or 26
 - (h) if the fisher is a fisher of a class exempted by the 27
regulations. 28
- (3) The regulations may require recreational fishers to produce 29
evidence that they are exempt from paying a fishing fee. 30
- 34D Periods for which fishing fee payable 31**
- (1) A fishing fee is payable for any period during which a 32
recreational fisher takes fish from any waters otherwise than for 33
sale. 34

-
- (2) A fishing fee may be paid for any of the following periods: 1
- (a) a period of 3 days, 2
 - (b) a period of 1 month, 3
 - (c) a period of 12 months, 4
 - (d) a period of 3 years. 5
- (3) The regulations may prescribe other periods for which a fishing 6
fee may be paid (whether in addition to, or substitution for, the 7
periods referred to in subsection (2)). 8
- 34E Amount of fishing fee** 9
- (1) The amount of the fishing fee is (subject to this section): 10
- (a) for a period of 3 days—\$5, or 11
 - (a) for a period of 1 month—\$10, or 12
 - (b) for a period of 12 months—\$25, or 13
 - (c) for a period of 3 years—\$70. 14
- (2) The regulations may prescribe a different amount for any such 15
period and may prescribe the amount for any other period for 16
which a fishing fee may be paid. 17
- 34F Reductions in fishing fee payable** 18
- The regulations may provide for reductions in the amount of 19
the fishing fee otherwise payable by persons of a specified 20
class. 21
- 34G Issue of receipt on payment of fishing fee** 22
- (1) A person who pays a fishing fee is entitled to be issued with an 23
official receipt for the payment. 24
- (2) A receipt is evidence of the payment of the fishing fee and not 25
an authority to take fish, and accordingly cannot be refused or 26
made subject to any conditions. 27
- (3) A receipt is to be in a form approved by the Minister. 28

(4) The regulations may make provision for the issue of replacement receipts for receipts that are lost, destroyed or damaged.	1 2 3
(5) A receipt is not transferable.	4
34H Arrangements for collection of fishing fees and issue of receipts	5
(1) The Director may enter into arrangements with any person for the collection of fishing fees and the issue of official receipts. A person who enters into such an arrangement is an authorised agent for the purposes of this Act.	6 7 8 9
(2) The Director is to ensure that sufficient arrangements are made to enable the payment of fishing fees in convenient locations throughout the State.	10 11 12
(3) An arrangement may make provision for the payment of a commission to the authorised agent, whether by way of the retention of a percentage of the amount of fishing fees paid or by way of a separate payment.	13 14 15 16
(4) An arrangement may make provision for the authorised agent to make specified records, and follow specified procedures, with respect to the collection and remittance of fishing fees and the issue of official receipts.	17 18 19 20
34I Fishing fee exemption certificates	21
(1) The Minister may issue a fishing fee exemption certificate in respect of any recreational fishing activities.	22 23
(2) A certificate exempts persons carrying out those recreational fishing activities from the obligation to pay a fishing fee under this Division.	24 25 26
(3) A certificate may be issued:	27
(a) to a person in respect of recreational fishing activities that are carried out under the supervision or guidance of the person (or an employee or agent of the person), or	28 29 30
(b) to the owner of a boat (or another person authorised by the owner) in respect of recreational fishing activities that are carried out on the boat, or	31 32 33

(c)	to such other persons or class of persons, and in respect of such other activities, as the regulations may prescribe.	1 2
(4)	The fee (if any) payable for the certificate and other matters concerning the certificate are to be prescribed by the regulations. The fee for the certificate is taken to be a fishing fee paid under this Division for the purposes of Division 3 of Part 8.	3 4 5 6 7
34J	Offences	8
(1)	A recreational fisher who is required by this Division to pay a fishing fee is guilty of an offence if the fisher fails to pay the fishing fee. Maximum penalty: 20 penalty units.	9 10 11 12
(2)	A recreational fisher who is required by this Division to pay a fishing fee is guilty of an offence if the fisher does not have an official receipt for the payment of the fishing fee in his or her possession when taking fish from any waters. Maximum penalty: 20 penalty units.	13 14 15 16 17
(3)	For the purposes of proceedings under this section, a person who is in possession of fishing gear on, in or adjacent to any waters is presumed conclusively to be taking fish from those waters (even though the person takes or proposes to take fish only from other waters outside the State). The regulations may provide exemptions from this subsection.	18 19 20 21 22 23
(4)	In this section, <i>official receipt</i> includes any evidence of the payment of a fishing fee recognised by the regulations for the purposes of this section.	24 25 26
[3]	Section 232 Definitions	27
	Insert in alphabetical order in section 232:	28
	<i>recreational fishing fees</i> means the fishing fees paid under Division 4A of Part 2 and any other fees or payments received in connection with the administration of that Division.	29 30 31

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Schedule 4 Amendment of Fisheries Management Act 1994 relating to recreational
fishing fee

[4] Section 233 Establishment of trust funds	1
Omit section 233 (1) (b). Insert instead:	2
(b) a Recreational Fishing (Saltwater) Trust Fund,	3
[5] Section 233 (1) (c1)	4
Insert after section 233 (1) (c):	5
(c1) a Charter Fishing Trust Fund,	6
[6] Section 234 Recreational Fishing (Freshwater) Trust Fund	7
Omit section 234 (1) (a). Insert instead:	8
(a) any amount or proportion of the recreational fishing fees that is allocated to that Fund by the Minister under this section, and	9 10 11
(a1) all other payments received in connection with the administration of Part 2 (including fees and charges paid under Part 2 or the regulations made under that Part) that are not required to be paid into any other trust fund, and	12 13 14 15 16
[7] Section 234 (3) and (4)	17
Omit section 234 (3). Insert instead:	18
(3) The Minister may, from time to time, determine the amount or proportion of the recreational fishing fees to be allocated to that Fund.	19 20 21
(4) The Minister is to consult a relevant advisory council on recreational fishing established under section 229 about:	22 23
(a) the allocation of recreational fishing fees to that Fund, and	24 25
(b) policies and priorities for expenditure from that Fund.	26

[8] Section 235 Recreational Fishing (Saltwater) Trust Fund	1
Omit “Recreational Fishing (Estuarine and Marine) Trust Fund” from section 235 (1).	2
Insert instead “Recreational Fishing (Saltwater) Trust Fund”.	3
	4
[9] Section 235 (1) (c)	5
Omit the paragraph. Insert instead:	6
(c) all recreational fishing fees, other than any amount or proportion of those fees allocated to the Recreational Fishing (Freshwater) Trust Fund, and	7
	8
	9
[10] Section 236A	10
Insert after section 236:	11
236A Charter Fishing Trust Fund	12
(1) There is to be paid into the Charter Fishing Trust Fund:	13
(a) all fees and charges paid under Part 4A and the regulations under that Part, and	14
	15
(b) any gift or bequest of money for the purposes of that Fund, and	16
	17
(c) any other money appropriated by Parliament for the purpose of that Fund or required by law to be paid into that Fund.	18
	19
	20
(2) There may be paid out of that Fund:	21
(a) the costs of taking measures to enhance charter fishing, and	22
	23
(b) the costs of carrying out research into charter boat fishing, and	24
	25
(c) the costs of management and administration of charter fishing boat operations, and	26
	27
(d) the costs of ensuring compliance with charter fishing boat regulatory controls, and	28
	29
(e) the costs of consultative arrangements with owners and operators of charter fishing boats.	30
	31

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Schedule 4 Amendment of Fisheries Management Act 1994 relating to recreational
fishing fee

(3) The Minister is to consult any relevant advisory council established under section 229 about policies and priorities for expenditure from that Fund.	1 2 3
[11] Section 257 Power to require production of fishing authority	4
Omit section 257 (5). Insert instead:	5
(5) In this section, <i>fishing authority</i> includes, in the case of any fishing activity for which a person is required to pay a recreational fishing fee, an official receipt for the fee under Division 4A of Part 2.	6 7 8 9
[12] Schedule 7 Savings, transitional and other provisions	10
Insert in Part 3 in appropriate numerical order:	11
6A Payment of recreational freshwater fishing fee before extension to saltwater fishing	12 13
(1) A recreational freshwater fishing fee paid under Division 4A of Part 2 of this Act before the substitution of that Division by the <i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i> is taken to be a recreational fishing fee paid under that Division, as so substituted, for the balance of the period after that substitution for which the recreational freshwater fishing fee was paid.	14 15 16 17 18 19 20
(2) The official receipt issued for the payment of the recreational freshwater fishing fee is taken to be an official receipt under that Division, as so substituted, for the balance of that period.	21 22 23
[13] Schedule 7	24
Insert in Part 8 in appropriate numerical order:	25
19B Change in name of Trust Fund	26
The Recreational Fishing (Saltwater) Trust Fund is a continuation of, and the same Fund as, the Recreational Fishing (Estuarine and Marine) Trust Fund.	27 28 29

Schedule 5	Amendment of Fisheries Management Act 1994 relating to acquisition of commercial fishing entitlements	1
		2
		3
	(Section 4)	4
[1] Part 2, Division 4B		5
	Insert after Division 4A of Part 2:	6
Division 4B	Acquisition of commercial fishing entitlements	7
34K Purpose of Division		8
	The purpose of this Division is to provide an equitable mechanism for the reallocation of fisheries resources and for the payment of compensation to commercial fishers for the acquisition of their fishing entitlements.	9 10 11 12
34L Declaration by Minister of acquisition of entitlements		13
	(1) The Minister may, by order published in the Gazette:	14
	(a) declare that any fishery (or part of a fishery) specified in the order is a fishery to which this Division applies, and	15 16
	(b) specify the relevant commercial fishing entitlements that are to be acquired under this Division.	17 18
	(2) For the purposes of this Division:	19
	(a) any such declaration is an <i>acquisition declaration</i> , and	20
	(b) the fishery (or the part of a fishery) to which the declaration relates is the <i>declared fishery</i> , and	21 22
	(c) the specified commercial fishing entitlements are the <i>acquired entitlements</i> .	23 24

34M	Consultation on proposed acquisition declaration	1
	The Minister is required to give the following persons and bodies an opportunity to make submissions on any proposed acquisition declaration and to take any submission that is duly made into account:	2
		3
		4
		5
	(a) the persons whose commercial fishing entitlements are proposed to be acquired,	6
		7
	(b) any advisory council on recreational fishing and any relevant advisory council on commercial fishing established under section 229,	8
		9
		10
	(c) the local community in the area affected by the proposed declaration.	11
		12
	Note. Section 284 sets out the public consultation procedure.	13
34N	Termination of commercial fishing entitlements following declaration of acquisition	14
		15
	(1) As soon as practicable after an acquisition declaration, the Minister is to cancel the acquired entitlements.	16
		17
	(2) For that purpose, the Minister may do any one or more of the following:	18
		19
	(a) cancel any shares in a share management fishery,	20
	(b) cancel a commercial fishing licence,	21
	(c) take any other action available to the Minister.	22
34O	Entitlement to compensation for acquired entitlements	23
	(1) The persons who held acquired entitlements that are cancelled under this Division are entitled (subject to this Division) to compensation from the State for the market value of the entitlements they held:	24
		25
		26
		27
	(a) as at 19 January 2000, subject to paragraph (b), or	28
	(b) as at a later date notified in the acquisition declaration.	29
	(2) If the amount of the compensation is not agreed between the Minister and the person entitled to compensation, the Minister	30
		31

is to determine the amount after a review of the matter by a panel constituted by the Minister in accordance with the regulations.	1 2 3
(3) If the person entitled to compensation is not satisfied with the review of the matter by the panel, the Minister may (at the person's request) refer the matter to the Valuer-General for advice as to the amount of compensation required to be paid under this section.	4 5 6 7 8
(4) A person who is dissatisfied with the amount of compensation offered to the person under this Division or with any delay in the payment of compensation may appeal to the Land and Environment Court.	9 10 11 12
(5) The regulations may make provision for or with respect to the payment of compensation in accordance with this Division.	13 14
[2] Section 284 Public consultation procedure	15
Insert after section 284 (1) (b):	16
(b1) an acquisition declaration under Division 4B of Part 2,	17

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Schedule 6 Amendments to fisheries management and environmental assessment
legislation relating to habitat protection

Schedule 6	Amendments to fisheries management and environmental assessment legislation relating to habitat protection	1
		2
		3
	(Sections 3 and 4)	4
		5
6.1	Environmental Planning and Assessment Act 1979	6
[1]	Section 91 What is “integrated development”?	7
	Omit “in any waters” from the matter relating to section 201 of the <i>Fisheries Management Act 1994</i> in the table to section 91 (1).	8
		9
[2]	Section 91 (1), table	10
	Insert after the matter relating to section 205 of the <i>Fisheries Management Act 1994</i> :	11
		12
		13
	s 219	permit to:
		(a) set a net, netting or other material, or
		(b) construct or alter a dam, floodgate, causeway or weir, or
		(c) otherwise create an obstruction, across or within a bay, inlet, river or creek, or across or around a flat

6.2 Fisheries Management Act 1994	1
[1] Section 4 Definitions	2
Insert in alphabetical order in section 4 (1):	3
<i>native title holder</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	4
<i>registered native title body corporate</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	5
<i>registered native title claimant</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	6
[2] Section 194 Declaration of aquatic reserves	7
Omit section 194 (2). Insert instead:	8
(2) The purpose of declaring an area to be an aquatic reserve is to conserve the biodiversity of fish and marine vegetation and, consistently with that purpose:	9
(a) to protect fish habitat in the reserve, or	10
(b) to provide for species management in the reserve, or	11
(c) to protect threatened species, populations and ecological communities (within the meaning of Part 7A) in the reserve, or	12
(d) to facilitate educational activities and scientific research.	13
[3] Section 195 Consent required for declarations	14
Omit section 195 (4). Insert instead:	15
(4) This section does not apply:	16
(a) to an area of water (other than freshwater) and the land submerged by that water below mean high water mark, or	17
(b) to an area vested in the Minister, or	18
(c) to an area subject to an aquaculture lease.	19

[4] Sections 195A–195C	1
Insert after section 195:	2
195A Consent of owners	3
If an owner of land whose consent is required under section 195 to the declaration of an area as an aquatic reserve cannot, after diligent inquiry, be found or identified, the declaration may be made without the consent of that owner.	4 5 6 7
195B Meaning of “diligent inquiry”	8
(1) For the purposes of section 195A, <i>diligent inquiry</i> to identify a person is the taking of the following actions:	9 10
(a) the searching of the following registers:	11
(i) the Register kept under the <i>Real Property Act 1900</i> , and	12 13
(ii) the General Register of Deeds kept under the <i>Conveyancing Act 1919</i> , and	14 15
(iii) the National Native Title Register kept under the <i>Native Title Act 1993</i> of the Commonwealth,	16 17
(b) placing, on a board or other structure in a conspicuous place on the land concerned, a notice:	18 19
(i) stating that it is intended to declare the land as part of an aquatic reserve, and	20 21
(ii) inviting the owner of the land to contact the Minister at a specified address,	22 23
(c) publishing a notice referred to in paragraph (b) in a newspaper circulating in the vicinity of the land concerned and in a newspaper circulating generally in New South Wales.	24 25 26 27
(2) For the purposes of section 195A, a person who is a native title holder is taken to have been unable, after diligent inquiry, to be found or identified if:	28 29 30
(a) notice of the proposed declaration is served by the Minister in accordance with section 288A, and	31 32

(b)	at the expiration of the period of 4 months commencing on service of the notice, the person is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.	1 2 3 4
195C	Existing interests and changes in ownership	5
(1)	A declaration of an aquatic reserve in relation to an area is not affected by:	6 7
(a)	an existing interest in respect of land in the area, or	8
(b)	a change of ownership of land in the area.	9
(2)	Subject to this Act, a provision of this Act or the regulations has effect in relation to an area of an aquatic reserve despite any such existing interest or change of ownership, unless the provision otherwise specifies.	10 11 12 13
[5]	Section 196 Revocation or variation of declaration	14
	Insert after section 196 (4):	15
(5)	The provisions of sections 195 to 195C apply to a variation of a declaration that adds an area to an aquatic reserve in the same way as those provisions apply to the declaration of an aquatic reserve.	16 17 18 19
[6]	Section 197A	20
	Insert after section 197:	21
197A	Management plans for aquatic reserves	22
(1)	The Minister may arrange for the preparation of a draft management plan for an aquatic reserve.	23 24
(2)	The management plan for an aquatic reserve may make provision for or with respect to the following:	25 26
(a)	the objectives of the aquatic reserve,	27
(b)	the regulation of activities in the aquatic reserve in order to achieve those objectives,	28 29
(c)	performance indicators to monitor whether the objectives of the reserve are being attained,	30 31

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(d)	reviews of the management plan,	1
(e)	any other matter for or with respect to which regulations may be made under this Act in respect of an aquatic reserve.	2 3 4
(3)	The Minister is required to give the public an opportunity to make submissions on any proposed management plan (including any proposed amendment to the plan or new plan) and to take any submission that is duly made into account.	5 6 7 8
(4)	A management plan for an aquatic reserve (including any amendment or new plan):	9 10
(a)	is to be made by regulation, and	11
(b)	may create an offence punishable by a penalty not exceeding 1,000 penalty units.	12 13
(5)	The management plan commences when the regulation making the plan commences.	14 15
(6)	If a provision of a management plan for an aquatic reserve is inconsistent with any other regulation under this Act relating to aquatic reserves, the management plan prevails.	16 17 18
[7]	Sections 198–198B	19
	Omit section 198. Insert instead:	20
198	Objects of Division	21
	The objects of this Division are to conserve the biodiversity of fish and aquatic vegetation and to protect fish habitat by providing for the management of dredging and reclamation work, consistent with the objectives of ecologically sustainable development.	22 23 24 25 26
198A	Definitions	27
	In this Division:	28
	<i>dredging work</i> means:	29
(a)	any work that involves excavating water land, or	30

(b)	any work that involves the removal of material from water land that is prescribed by the regulations as being dredging work to which this Division applies.	1 2 3
	<i>farm dam</i> means the backed up waters of any dam, or impoundment, located on land that is not public water land.	4 5
	<i>reclamation work</i> means any work that involves:	6
(a)	using any material (such as sand, soil, silt, gravel, concrete, oyster shells, tyres, timber or rocks) to fill in or reclaim water land, or	7 8 9
(b)	depositing any such material on water land for the purpose of constructing anything over water land (such as a bridge), or	10 11 12
(c)	draining water from water land for the purpose of its reclamation.	13 14
	<i>water land</i> means land submerged by water:	15
(a)	whether permanently or intermittently, or	16
(b)	whether forming an artificial or natural body of water,	17
	and includes wetlands and any other land prescribed by the regulations as water land to which this Division applies.	18 19
	<i>wetlands</i> includes marshes, mangroves, swamps, or other areas that form a shallow body of water when inundated intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities.	20 21 22 23 24
198B	Application of Division	25
	This Division applies to any dredging work or any reclamation work, except the following:	26 27
(a)	any dredging work or reclamation work carried out in respect of an artificial body of water, unless the body of water is permanently or intermittently connected to a natural body of water or unless the regulations otherwise provide,	28 29 30 31 32

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(b)	any dredging work or reclamation work carried out in respect of a farm dam, unless the regulations otherwise provide,	1 2 3
(c)	anything permitted by or under this Act (such as digging for bait),	4 5
(d)	anything exempted from this Division by the regulations.	6 7
[8]	Sections 199–201	8
	Omit “in any waters” wherever occurring from sections 199 (1), 200 (1) and 201 (1).	9 10
[9]	Section 204 Application and interpretation	11
	Insert in alphabetical order in section 204 (2):	12
	<i>foreshore</i> means any land adjacent to public water land, or adjacent to an area that is the subject of an aquaculture lease, that is below the highest astronomical tide level of the waters by which the land or area is submerged.	13 14 15 16
	<i>marine vegetation</i> means marine vegetation, whether living or dead.	17 18
[10]	Section 204 (2), definition of “protected area”	19
	Omit the definition. Insert instead:	20
	<i>protected area</i> means any public water land, or any area that is the subject of an aquaculture lease, and includes:	21 22
(a)	that part of the foreshore of any public water land or area that is the subject of an aquaculture lease that is below the mean high water mark of the waters by which the land or area is submerged, and	23 24 25 26
(b)	any other part of the foreshore of any public water land or area that is the subject of an aquaculture lease that is declared by the Minister, by order published in the Gazette, to be a protected area.	27 28 29 30

[11] Section 205A	1
Omit the section. Insert instead:	2
205A Exemptions	3
(1) This Division does not apply to any marine vegetation that is being cultivated or kept in accordance with the authority conferred by an aquaculture permit.	4 5 6
(2) The regulations may exempt any activity, class of activities, or area from the operation of this Division or from specified provisions of this Division.	7 8 9
[12] Section 217 Importation of live fish	10
Omit section 217 (1). Insert instead:	11
(1) A person must not bring into New South Wales live fish of a species to which this section applies except under the authority of a permit issued by the Minister.	12 13 14
Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.	15 16
[13] Section 217 (3)	17
Insert after section 217 (2):	18
(3) This section applies to any species of fish other than:	19
(a) fish that is indigenous to the waters of the State or of the waters of the sea adjacent to the State that are within the Australian fishing zone, or	20 21 22
(b) fish of a species, or class of species, exempted from the operation of this section by the regulations.	23 24
For the purposes of this section, <i>fish indigenous</i> to those waters is fish of a species that was established in those waters before European settlement.	25 26 27
[14] Section 218 Fishways to be provided in construction of dams and weirs	28
Omit “100 penalty units” from section 218 (3).	29
Insert instead “1,000 penalty units”.	30

Fisheries Management and Environmental Assessment Legislation
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Schedule 6 Amendments to fisheries management and environmental assessment
legislation relating to habitat protection

[15] Section 218 (5A)	1
Insert after section 218 (5):	2
(5A) This section does not apply to or in respect of any work or waters of a kind exempted from the operation of this section by the regulations.	3 4 5
[16] Section 218 (6), definition of “waterway”	6
Omit “whether regularly or intermittently”.	7
Insert instead “whether flowing regularly or intermittently, and includes any lagoon or other body of water that is intermittently subject to tidal influence or that intermittently flows into a river, creek or stream”.	8 9 10
[17] Section 219 Passage of fish not to be blocked	11
Omit section 219 (1). Insert instead:	12
(1) A person who:	13
(a) sets a net, netting or other material, or	14
(b) constructs or alters a dam, floodgate, causeway or weir, or	15 16
(c) otherwise creates an obstruction, across or within a bay, inlet, river or creek, or across or around a flat, so that:	17 18 19
(d) fish will or could be blocked or left stranded, or	20
(e) immature fish will or could be destroyed, or	21
(f) the free passage of fish will or could be obstructed, is guilty of an offence.	22 23
Maximum penalty: 1,000 penalty units.	24
[18] Section 219 (5)	25
Insert after section 219 (4):	26
(5) This section does not apply to or in respect of the following:	27
(a) any activity that is otherwise permitted by or under this Act or any other Act,	28 29

(b)	any activity that is done in accordance with a permit issued by the Minister under this Part,	1 2
(c)	any activity or waters of a kind exempted from the operation of this section by the regulations.	3 4
[19]	Section 220 Provisions relating to permits under this Part	5
	Omit “section 201 or 205” from section 220 (1A).	6
	Insert instead “section 201, 205 or 219”.	7
[20]	Section 284 Public consultation procedure	8
	Insert after section 284 (1) (e):	9
(e1)	a management plan for an aquatic reserve (including any amendment or new plan),	10 11
[21]	Section 288A	12
	Insert after section 288:	13
288A	Service of documents on native title holders	14
(1)	If a document is authorised or required by this Act or the regulations to be served on a person who is a native title holder in relation to an area, service of the document is taken to be effected in accordance with section 288 if the document is served on a registered native title body corporate in relation to the area.	15 16 17 18 19 20
(2)	If no approved determination of native title (within the meaning of the <i>Native Title Act 1993</i> of the Commonwealth) exists in relation to the area concerned, a document authorised or required by this Act or the regulations to be served on a person who is a native title holder who cannot be identified may be served on any such person by serving it, in a manner authorised by section 288 on:	21 22 23 24 25 26 27
(a)	any representative Aboriginal/Torres Strait Islander bodies for an area that includes the area concerned, and	28 29
(b)	any registered native title claimants in relation to the area concerned.	30 31

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Schedule 6 Amendments to fisheries management and environmental assessment
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[22] Schedule 7 Savings, transitional and other provisions	1
Insert after clause 16:	2
16A Management plans for aquatic reserves	3
Section 197A, as inserted by the <i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i> ,	4
extends to any aquatic reserve that was declared before the	5
commencement of that section.	6
	7

Schedule 7	Miscellaneous amendments to Fisheries Management Act 1994	1
		2
	(Section 4)	3
[1]	Section 40 Regulations relating to general management of fisheries	4
	Insert after section 40 (2) (d):	5
	(d1) regulating recreational fishing competitions (including requiring a permit for any such competition and prescribing a fee for the issue of a permit),	6
		7
		8
	(d2) prohibiting the possession or receipt of fish illegally taken, processed or dealt with in any place outside the State,	9
		10
		11
[2]	Section 127A Meaning of charter fishing boat	12
	Omit “principally”.	13
[3]	Section 127C Provisions relating to licensing of charter fishing boats	14
	Insert “(including for or with respect to permitting, prohibiting or restricting the use of a boat as both a charter fishing boat and a commercial fishing boat licensed under Division 2 of Part 4)” after “licences” in section 127C (8).	15
		16
		17
		18
[4]	Section 127D Commercial fishing boats may be licensed as charter fishing boats	19
	Omit the section.	20
		21
[5]	Section 183 Minister may declare quarantine area	22
	Insert after section 183 (4) (a):	23
	(a1) exclude specified provisions of this Division in respect of any fish or marine vegetation, or specified fish or marine vegetation, taken from or deposited in the quarantine area or any part of the quarantine area, and	24
		25
		26
		27

[6] Section 209 Declaration of noxious fish and noxious marine vegetation	1
Insert after section 209 (3):	2
(3A) A class of noxious fish declared under subsection (3) may be designated in the declaration as a pest species or a controlled species or by any other name.	3 4 5
[7] Section 264 Seizure of things (other than boats and motor vehicles) connected with fisheries offence	6 7
Insert “or motor vehicle” after “other than a boat”.	8
[8] Section 266 Seizure of fishing gear and other things (other than boats, motor vehicles or fish)	9 10
Omit subsection (2). Insert instead:	11
(2) This section does not apply to boats, motor vehicles or fish.	12
[9] Section 269 Forfeiture of boats and motor vehicles by order of court	13
Insert “or motor vehicle” after “boat” wherever occurring.	14
[10] Section 270 Return of boat or motor vehicle if relevant offence proceedings not taken	15 16
Insert “or motor vehicle” after “boat” wherever occurring.	17
[11] Section 271 Conviction to operate as forfeiture of things (other than boats and motor vehicles)	18 19
Insert “or motor vehicle” after “a boat” in subsection (1).	20
[12] Section 272 Forfeiture of things (other than boats and motor vehicles) where no relevant offence proceedings taken	21 22
Insert “or motor vehicle” after “a boat” in subsection (1).	23
[13] Section 272 (8)	24
Insert “and motor vehicles” after “boats”.	25

[14] Part 9, Division 4A	1
Insert after Division 4 of Part 9:	2
Division 4A Compliance audits	3
275A Application of Division	4
(1) This Division applies to:	5
(a) fishing activities, and	6
(b) aquaculture, and	7
(c) other activities regulated by Part 7.	8
(2) A reference in this Division to:	9
(a) a fishing activity includes a reference to aquaculture or to any such other activity, and	10 11
(b) a fishing approval includes a reference to an aquaculture permit or to a permit under Part 7 to carry out any such other activity.	12 13 14
(3) This Division does not affect other provisions of this Act, which provide for:	15 16
(a) conditions on fishing authorities, and	17
(b) functions exercisable by fisheries officers for the purpose of auditing compliance with this Act and the regulations.	18 19 20
275B Nature of compliance audit	21
A compliance audit is a periodic or particular documented evaluation of the fishing activity to which a fishing authority relates for either or both of the following purposes:	22 23 24
(a) to provide information to the persons carrying out or managing the fishing activity and to the persons administering this Act on compliance with legal requirements and relevant policies under this Act relating to the fishing activity,	25 26 27 28 29
(b) to enable those persons to determine whether the way the activity is carried on can be improved in order to promote the objects of this Act.	30 31 32

275C	Accreditation and regulation of compliance auditors	1
	The regulations may make provision for or with respect to the following:	2
		3
	(a) the accreditation of compliance auditors for the purposes of this Division,	4
		5
	(b) the fees payable for accreditation and the trust funds under Part 8 into which they are to be paid,	6
		7
	(c) the carrying out of compliance audits by compliance auditors.	8
		9
275D	Minister may require compliance audits by imposition of conditions on fishing authority	10
		11
	The Minister may, by the imposition of conditions on a fishing authority, require a compliance audit or audits to be undertaken to the satisfaction of the Minister by either or both of the following:	12
		13
		14
		15
	(a) by the holder of the fishing authority,	16
	(b) by a compliance auditor.	17
275E	Provisions relating to conditions for compliance audits	18
	(1) A condition requiring a compliance audit may be imposed at the time the fishing authority is issued or renewed or at any other time by notice in writing to the holder of the fishing authority. Such a condition may be varied or revoked by a similar notice.	19
		20
		21
		22
		23
	(2) Such a condition must specify the purpose of the audit.	24
	(3) Such a condition may require:	25
	(a) appointment of a compliance auditor to undertake the audit (either periodically or on particular occasions), and	26
		27
		28
	(b) approval by the Minister or other person of the compliance auditor before being appointed, and	29
		30
	(c) preparation of written documentation during the course of the audit, and	31
		32
	(d) preparation of an audit report, and	33

(e)	production to the Minister of the audit report.	1
(4)	Such a condition may specify the format and level of detail required for the audit.	2 3
275F	Certification of audit report	4
	The audit report for a compliance audit is taken not to have been duly produced to the Minister unless it is accompanied by:	5 6
(a)	a declaration signed by the holder of the fishing authority certifying that the holder has not knowingly provided any false or misleading information to the compliance auditor and has provided all relevant information to the auditor, and	7 8 9 10 11
(b)	a declaration signed by the compliance auditor:	12
(i)	setting out the auditor's qualifications, and	13
(ii)	certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.	14 15 16 17
275G	Offences	18
(1)	False or misleading information to auditor	19
	A person who provides information to a compliance auditor in connection with a compliance audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.	20 21 22 23
(2)	Information not provided to auditor	24
	The holder of a fishing authority who fails to provide information to a compliance auditor in connection with a compliance audit being carried out in relation to the fishing authority, knowing the information to be materially relevant to the audit, is guilty of an offence.	25 26 27 28 29
(3)	False or misleading information in audit report	30
	A compliance auditor who includes information in an audit report produced to the Minister in connection with a compliance audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.	31 32 33 34

(4) Information not included in audit report	1
A compliance auditor who fails to provide information in an audit report produced to the Minister in connection with a compliance audit, knowing the information to be materially relevant to the audit, is guilty of an offence.	2 3 4 5
(5) Retention of audit documentation	6
The holder of a fishing authority who:	7
(a) fails to retain any written documentation required to be prepared by the holder in connection with a compliance audit for a period of at least 5 years after the audit report concerned was produced to the Minister (or such other period as is prescribed by the regulations), or	8 9 10 11 12
(b) fails to produce during that period any such documentation to a fisheries officer on request,	13 14
is guilty of an offence.	15
Maximum penalty: 200 penalty units.	16
275H Self-incriminatory information not exempt	17
Information must be supplied by a person in connection with a compliance audit, and this Division applies to any such information that is supplied, whether or not the information might incriminate the person.	18 19 20 21
275I Use of information	22
(1) Any information in an audit report or other documentation supplied to the Minister in connection with a compliance audit may be taken into consideration by the Minister and used for the purposes of this Act.	23 24 25 26
(2) Without limiting the above, any such information is admissible in evidence in any prosecution of the holder of a fishing authority for any offence (whether under this Act or otherwise).	27 28 29

[15] Part 9, Division 7	1
Insert after Division 6 of Part 9:	2
Division 7 Prohibition orders	3
282B Definitions	4
In this Division:	5
<i>prohibition order</i> means an order made under section 282C.	6
<i>repeat offender</i> means a person who has been convicted of no fewer than 3 fisheries offences (occurring on separate occasions) whether of the same or of a different kind.	7 8 9
282C Prohibition orders may be made against repeat offenders	10
(1) A court that convicts a repeat offender of a fisheries offence may, on application by the prosecutor, make an order that prohibits the repeat offender from:	11 12 13
(a) engaging in specified commercial fishing activities, and	14
(b) being on any boat, or in any premises, of a kind specified in the order that are associated with those commercial fishing activities.	15 16 17
(2) The order may be made only if the court is satisfied that the order is necessary to prevent a threat to the sustainable management of a fisheries resource and that the threat justifies the restrictions to be imposed on the repeat offender.	18 19 20 21
282D Provisions relating to making of prohibition order	22
(1) A prohibition order may only be made within 6 months after the repeat offender is convicted of the fisheries offence giving rise to the order.	23 24 25
(2) A prohibition order may be made even if the person against whom the order is made has a legal or equitable interest in any boat or premises to which the prohibition order relates, or an entitlement to use the boat or premises to carry out fishing or other activities.	26 27 28 29 30

(3) A court may not make a prohibition order unless:	1
(a) it has given the repeat offender written notice of the application to make the order and of the proposed terms of the order that has been sought, and	2 3 4
(b) it has given the repeat offender a reasonable opportunity to make submissions to the court on the matter.	5 6
(4) A prohibition order under this section takes effect:	7
(a) if the person to whom it relates is present in court when it is made, at the time it is made, or	8 9
(b) in any other case, when it is served on the person to whom it relates.	10 11
282E Duration, variation and revocation of prohibition order	12
(1) A prohibition order remains in force, unless it is sooner revoked, for the period specified in the order, not exceeding 5 years.	13 14 15
(2) The court that made a prohibition order may, on application of the person against whom it was made, vary or revoke the order.	16 17
282F Appeal	18
(1) An appeal may be made against a prohibition order as if the order were part of the sentence for the fisheries offence giving rise to the order.	19 20 21
(2) A prohibition order is suspended during any period that an appeal (or application for leave to appeal) is pending against the conviction for the fisheries offence giving rise to the order.	22 23 24
(3) A prohibition order is revoked if the fisheries offence giving rise to the order is quashed.	25 26
(4) The appeal court may vary or revoke a prohibition order even if the conviction for the fisheries offence is not quashed.	27 28
282G Offence of contravening order	29
(1) A person who knowingly contravenes a prohibition order made against the person is guilty of an offence.	30 31
Maximum penalty: 200 penalty units or imprisonment for 1 year, or both.	32 33

(2) It is a sufficient defence to a prosecution under this section if the accused person establishes that he or she had a reasonable excuse for contravening the order.	1 2 3
[16] Schedule 7 Savings, transitional and other provisions	4
Insert at the end of clause 2 (1):	5
<i>Fisheries Management and Environmental Assessment Legislation Amendment Act 2000</i>	6 7

Schedule 8	Amendment of Native Title (New South Wales) Act 1994	1
		2
	(Section 5)	3
[1]	Section 104A Saving of native title rights and interests with respect to national parks and other reservations or dedications or declarations	4
		5
	Insert the following paragraph (appropriately lettered) at the end of section 104A (1):	6
		7
	() a notice under the <i>Fisheries Management Act 1994</i> that declares an area to be an aquatic reserve or part of an aquatic reserve.	8
		9
		10
[2]	Section 104A (3)	11
	Insert “, the <i>Fisheries Management Act 1994</i> ” before “and the regulations or other instruments”.	12
		13