



New South Wales

# Fishing Legislation Amendment (Right to Fish) Bill 2019

## 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 amend the *Fisheries Management Act 1994* (the **1994 Act**) as follows—
  - (i) to constitute an independent statutory body to be known as the NSW Recreational Fishing Council (the **NSWRF Council**) and provide for its members, functions and procedure,
  - (ii) to enable the NSWRF Council to order an audit of the recreational fishing trust funds established under the 1994 Act,
  - (iii) to require the Minister to consult with the NSWRF Council in relation to priority species and commercial quantities of fish the subject of certain aggravated offences,
  - (iv) to enable designated fishing activities to be declared or amended only by an amending Act,
  - (v) to require the Minister to consult with the NSWRF Council and various other entities representing recreational fishing interests before revising existing fishery management strategies,
  - (vi) to require the Minister to consult with the NSWRF Council before making or amending a fishing closure,
  - (vii) to recommend the State provide compensation to commercial fishers for reduction in or loss of income due to a fishing closure,
  - (viii) to recommend the State provide revenue from recreational fishing fees to assist in activities, to be administered by the NSWRF Council, that provide recreational

- fishing and boating infrastructure and educational programs to promote recreational fishing,
- (ix) to remove doubt that the official receipt issued for payment of a recreational fishing fee is evidence of the holder's authority to take fish,
  - (x) to make it clear that a copy of a tax invoice issued on payment of a recreational fishing fee over the telephone or by electronic means is an official receipt for the purposes of the 1994 Act,
  - (xi) to remove a general power of the Minister to take any other action available for the purpose of cancelling commercial fishing entitlements acquired under the 1994 Act,
  - (xii) to remove a power of the Minister to require a fishing determination to be made by the Total Allowable Fishing Committee or the Secretary,
  - (xiii) to require the Minister to consult with the NSWRF Council before directing the allocation of non-commercial fishing determinations,
  - (xiv) to require the Secretary to undertake public consultation before making a fishing determination required by the regulations,
  - (xv) to require the Minister to carry out public consultation when reviewing existing regulatory restrictions in light of non-commercial fishing determinations,
  - (xvi) to limit the time within which the Share Management Fisheries Appeal Panel (the *Share Appeal Panel*) must set a date for the hearing of an appeal,
  - (xvii) to limit the time within which the Share Appeal Panel must determine an appeal,
  - (xviii) to enable a person who is eligible to make appeals in relation to the allocation of 2 or more classes of quota shares to elect to have the appeals heard together and to enable the regulations to prescribe a combined fee for these appeals,
  - (xix) to require the Minister to consult with aquaculture permit holders before making a fishing closure relating to the area to which the permit applies,
  - (xx) to replace the Minister's power to undertake research for the purposes of the 1994 Act with a power to engage researchers to carry out independent research for those purposes,
  - (xxi) to prevent restrictions being imposed under any law on access to or across public land for the purpose of recreational fishing unless public consultation is first carried out,
- (b) to amend the *Marine Estate Management Act 2014* (the **2014 Act**) as follows—
- (i) to include as members of the Marine Estate Management Authority between 2 and 6 nominees of peak bodies representing recreational fishers and a nominee of the NSWRF Council,
  - (ii) to provide for a 5-year moratorium on the declaration of marine parks,
  - (iii) to prevent regulations under the 2014 Act from prohibiting recreational fishing in a marine park,
  - (iv) to prevent management rules for a marine park from prohibiting recreational fishing in a marine park,
  - (v) to prevent the Minister from prohibiting recreational fishing in a marine park by notification under the 2014 Act,
- (c) to make various consequential or ancillary amendments to those Acts, including making provision for matters of a savings or transitional nature.

## 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 the day that is 3 months after the date of assent to the proposed Act.

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

### **Designated fishing activities and fishery management strategies**

**Schedule 1[2]** removes the power of the Governor to declare new designated fishing activities under the 1994 Act, or amend or repeal existing designated fishing activities, by proclamation on the recommendation of the Minister. Instead, an amending Act will be required to declare, amend or repeal designated fishing activities.

**Schedule 1[3]** requires the Minister to undertake consultation with the NSWRF Council (constituted by **Schedule 1[26]**) and various other entities representing recreational fishing interests before revising an existing fishery management strategy (required by the 1994 Act to be prepared in relation to each designated fishing activity) and before setting or revising priorities for the implementation of any action contemplated by a fishery management strategy. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

### **General fisheries management—fishing closures and possession limits**

**Schedule 1[4] and [5]** require the Minister to consult with the NSWRF Council before making a fishing closure under the 1994 Act or amending or revoking a fishing closure.

**Schedule 1[6]** recommends the State provide compensation to commercial fishers whose income is lost or reduced as a direct result of a fishing closure. The compensation is for the estimated value of the loss or reduction in income, calculated on an annual basis and payable annually as a lump sum or by way of instalments. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

**Schedule 1[7]** requires the Minister to consult with the NSWRF Council before recommending the making of regulations by the Governor to amend the 1994 Act to specify priority species or commercial quantities of fish (the taking, selling or possession of which constitutes circumstances of aggravation in offences under the 1994 Act of taking or selling prohibited size fish and taking or possessing fish in excess of bag or possession limits). The consultation requirement applies also in relation to regulations to amend or omit priority species or commercial quantities of fish already specified in the 1994 Act.

### **Recreational fishing fee**

**Schedule 1[9]** recommends the State provide revenue from recreational fishing fees to assist certain activities, to be administered by the NSWRF Council, involving the building and maintenance of recreational fishing and boating infrastructure on, or on land adjacent to, private land used by recreational fishers (with the consent of the landowner) and the provision of educational programs that promote and encourage participation in recreational fishing.

**Schedule 1[10]** restates a provision concerning the status of an official receipt that is issued on payment of a recreational fishing fee to remove a statement that the receipt is not an authority to take fish (and ancillary wording). A note to the restated provision refers to the existing power of a fisheries officer to require recreational fishers to produce an official receipt as evidence of their authority to take fish, and to an existing provision that makes it an offence for a recreational fisher to take fish without having an official receipt in his or her immediate possession. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

**Schedule 1[8]** makes it clear that a copy of a tax invoice issued on payment of a recreational fishing fee over the telephone or by electronic means that specifies a receipt number is an official receipt for the purposes of the 1994 Act.

### **Acquisition of commercial fishing entitlements**

**Schedule 1[12]** removes a general power exercisable by the Minister to take any other action available to the Minister for the purpose of terminating commercial fishing entitlements following a declaration by the Minister of the acquisition of those entitlements. (The general power is in addition to the specific powers of the Minister to cancel shares in a share management fishery and

to cancel commercial fishing licences for that purpose.) **Schedule 1[11]** makes a consequential amendment.

### **Fishing determinations**

**Schedule 1[13]** removes a power of the Minister to require a fishing determination (of total allowable catch of fish or total allowable fishing effort) to be made under the 1994 Act by the Total Allowable Fishing Committee or the Secretary, with the result that a fishing determination may only be made by that Committee or the Secretary if required by the regulations under the 1994 Act. **Schedule 1[15] and [16]** make consequential amendments. **Schedule 1[31]** contains related provisions of a savings or transitional nature.

**Schedule 1[18]** requires the Minister to consult with the NSWRF Council before directing the allocation of a non-commercial fishing determination among fishers or classes of fishers, or the manner and extent to which, and the fishers or classes of fishers among whom, a non-commercial fishing determination is to be allocated.

**Schedule 1[14]** requires the Secretary to undertake public consultation before making a fishing determination that is required to be made by the regulations but (in the absence of the regulations specifying who is to make the determination) directed by the Minister to be made by the Secretary.

**Schedule 1[17] and [28]** make consequential amendments.

**Schedule 1[19]** requires the Minister to undertake public consultation in relation to reviews of regulations and other instruments under the 1994 Act that the Minister is required to undertake in light of any non-commercial fishing determination and any allocation of that determination.

### **Share Appeal Panel**

**Schedule 1[22]** requires the Share Appeal Panel established under the 1994 Act to determine an appeal within 90 days after the appeal is received. **Schedule 1[21]** makes a consequential amendment.

**Schedule 1[23]** requires the Chairperson of the Share Appeal Panel to fix the time, date and place for the hearing of an appeal, within 10 days after the appeal is received.

**Schedule 1[20]** enables a person who is eligible to make appeals to the Share Appeal Panel in relation to the allocation of 2 or more classes of quota shares to elect to have the appeals heard together. Provision is also made to enable the regulations made under the 1994 Act to prescribe a combined fee for these appeals that reflects the reduction in administrative costs of having the appeals heard together.

**Schedule 1[31]** contains related provisions of a savings or transitional nature.

### **Closing of aquaculture operations**

**Schedule 1[24]** requires the Minister to consult with an aquaculture permit holder before making a fishing closure prohibiting the taking of fish or marine vegetation cultivated or kept under the permit.

### **Research**

**Schedule 1[25]** replaces the power of the Minister to undertake research for the purposes of the 1994 Act and to exercise ancillary powers for those purposes with a power to engage suitably qualified persons to undertake independent research for the purposes of the 1994 Act and to exercise ancillary powers for those purposes.

### **NSW Recreational Fishing Council**

**Schedule 1[26]** constitutes the NSWRF Council, with a Board consisting of 11 members. The Council is a NSW Government agency but is generally not subject to the control or direction of the Minister in the exercise of its functions (although it must provide reports about its activities and any other information if requested to do so by the Minister).

The NSWRF Council is to investigate and advise the Minister or the Secretary on any matter concerning recreational fishing that is referred to it by the Minister or the Secretary or on its own initiative. The Council has any other functions that are conferred or imposed on it by or under the 1994 Act or any other Act, including the function of administering educational programs and other activities provided for in **Schedule 1[9]**, the auditing function provided for in **Schedule 1[27]**, and various specific consultative functions provided for in the proposed Act. **Schedule 1[26]** also makes express provision for the Minister or the Secretary to delegate any of their functions under the 1994 Act to the NSWRF Council.

**Schedule 1[1]** makes a consequential amendment to insert a definition.

**Schedule 1[30]** contains provisions about the membership and procedure of the Board of the NSWRF Council.

### **Recreational fishing trust funds**

**Schedule 1[27]** enables the NSWRF Council to order an audit of the financial statements relating to the Recreational Fishing (Freshwater) Trust Fund and the Recreational Fishing (Saltwater) Trust Fund established under the 1994 Act.

### **Restriction of recreational fishers' access to public land**

**Schedule 1[29]** prevents the operation of any legislative provision that enables restrictions to be imposed on recreational fishers' access to or across public land for the purposes of recreational fishing unless public consultation is carried out before any decision under the provision is made.

## **Schedule 2      Amendment of Marine Estate Management Act 2014 No 72**

### **Constitution of Marine Estate Management Authority**

**Schedule 2[1]** requires between 2 and 6 persons who are representatives of peak bodies that represent recreational fishers, and 1 person who is a nominee of the NSWRF Council, to be members of the Marine Estate Management Authority. **Schedule 2[6]–[15]** make consequential amendments. **Schedule 2[16]** contains related provisions of a savings or transitional nature.

### **Moratorium on declaration of marine parks**

**Schedule 2[2]** prevents the declaration of any new marine park for a period of 5 years after the date on which the proposed Act commences.

### **Prohibitions on recreational fishing in a marine park**

**Schedule 2[3]** prevents regulations under the 2014 Act from prohibiting recreational fishing in a marine park or entry into a marine park for that purpose.

**Schedule 2[4]** prevents management rules under the 2014 Act from prohibiting recreational fishing in a marine park or entry into a marine park for that purpose.

**Schedule 2[5]** prevents relevant Ministers from prohibiting recreational fishing in a marine park or entry into a marine park for that purpose by notification under the 2014 Act.