



Australian Capital Territory

# Fisheries Legislation Amendment Act 2019

A2019-27

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J2018-358

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Australian Capital Territory

# **Fisheries Legislation Amendment Act 2019**

**A2019-27**

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An Act to amend legislation about fisheries, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Fisheries Legislation Amendment Act 2019*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

### 3 Legislation amended

This Act amends the following legislation:

- [Fisheries Act 2000](#)
- [Fisheries Regulation 2001](#)
- [Nature Conservation Act 2014](#).

*Note* This Act also amends other legislation (see sch 1).



## Part 2 Fisheries Act 2000

### 4 Objects Section 3 (b)

*omit*

mentioned in the [Environment Protection Act 1997](#), section 2 (2)

### 5 New section 3 (2)

*insert*

(2) In this section:

*ecologically sustainable development*—see the [Nature Conservation Act 2014](#), section 6 (4).

### 6 Part 2

*substitute*

## Part 2 Fisheries management plan

### 5 Meaning of *fisheries management plan*

In this Act:

*fisheries management plan*—

- (a) means a plan for the ACT detailing how fish and fisheries may be appropriately managed; and

**Examples**

- 1 conservation of fish in certain areas
- 2 stocking fish into waters

- (b) includes anything required to be included by a conservator guideline; and

- (c) may apply, adopt or incorporate an instrument as in force from time to time.

*Note* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

## 6 Preparation and public consultation

- (1) The conservator may prepare a draft fisheries management plan.
- (2) If the conservator prepares a draft fisheries management plan, the conservator must also prepare a notice about the draft fisheries management plan (a *public consultation notice*).
- (3) A public consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the conservator about the draft fisheries management plan; and
    - (ii) submissions may be given to the conservator only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) include the draft fisheries management plan.
- (4) A public consultation notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (5) If the conservator notifies a public consultation notice for a draft fisheries management plan—
  - (a) anyone may give a written submission to the conservator about the draft fisheries management plan; and
  - (b) the submission may be given to the conservator only during the public consultation period; and

- (c) the person making the submission may, in writing, withdraw the submission at any time.
- (6) At the end of the public consultation period, the conservator must—
- (a) consider any submissions received during the consultation period; and
  - (b) make any revision to the draft fisheries management plan that the conservator considers appropriate; and
  - (c) state in the draft fisheries management plan a date on which the plan will be reviewed.

## 7 Approval of plan

- (1) If the conservator has prepared a fisheries management plan under section 6, the conservator—
- (a) if the plan involves a significant activity—must give the plan to the Minister for approval; or
  - (b) in any other case—may approve the plan.
- (2) A fisheries management plan approved by the conservator is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

*Note 2* The power to make a fisheries management plan includes the power to amend or repeal the plan. The power to amend or repeal the plan is exercisable in the same way, and subject to the same conditions, as the power to make the plan (see [Legislation Act](#), s 46).

*Note 3* Minor amendments may be made to the plan under s 10.

- (3) In this section:
- significant activity***, for a fisheries management plan, means—
- (a) commercial fishing; or
  - (b) commercial trade of fish; or

- (c) any other activity prescribed by regulation.

## **8 Minister to approve plan**

- (1) If the conservator gives a fisheries management plan to the Minister for approval, the Minister must—
  - (a) approve the plan; or
  - (b) direct the conservator to revise the plan under section 9.
- (2) A fisheries management plan approved by the Minister is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

*Note 2* The power to make a fisheries management plan includes the power to amend or repeal the plan. The power to amend or repeal the plan is exercisable in the same way, and subject to the same conditions, as the power to make the plan (see [Legislation Act](#), s 46).

*Note 3* Minor amendments may be made to the plan under s 10.

## **9 Minister's direction to revise plan**

- (1) This section applies if the conservator gives a fisheries management plan to the Minister for approval under section 8 or review under section 11.
- (2) The Minister may direct the conservator to take 1 or more of the following actions in relation to the plan:
  - (a) carry out further stated consultation;
  - (b) consider a relevant report;
  - (c) revise the plan in a stated way.
- (3) The conservator must—
  - (a) give effect to the direction; and

- (b) resubmit the fisheries management plan to the Minister for approval.
- (4) Section 8 applies to a fisheries management plan resubmitted by the conservator.

## 10 Minor amendments to plan

- (1) This section applies if—
  - (a) a fisheries management plan is in force (the *existing plan*); and
  - (b) the conservator considers that minor amendments to the existing plan are appropriate.
- (2) The conservator—
  - (a) may prepare an amended fisheries management plan, incorporating the minor amendments; and
  - (b) need not comply with section 7 (1) (a); and
  - (c) may make the fisheries management plan, as amended.

*Note* A fisheries management plan approved by the conservator is a disallowable instrument (see s 7 (2)).

- (3) In this section:

***minor amendment***, of a fisheries management plan, means an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan.

### Examples

- 1 minor correction to improve effectiveness
- 2 omission of something redundant
- 3 technical adjustment to improve efficiency

## 11 Review of plan

- (1) The conservator must review a fisheries management plan—
  - (a) on the date stated in the plan; or
  - (b) at request of the Minister.
- (2) If the fisheries management plan involves a significant activity, the conservator must prepare a notice about the review (a **public consultation notice**).
- (3) A public consultation notice must state—
  - (a) that the conservator is reviewing the fisheries management plan; and
  - (b) that anyone may give a written submission to the conservator about the fisheries management plan; and
  - (c) that submissions must be given to the conservator only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the **public consultation period**); and
  - (d) where the fisheries management plan is available for inspection.
- (4) A public consultation notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).
- (5) If the conservator notifies a public consultation notice about the review of the fisheries management plan—
  - (a) anyone may give a written submission to the conservator about the plan; and
  - (b) the submission may be given to the conservator only during the public consultation period; and
  - (c) the person making the submission may, in writing, withdraw the submission at any time.

- (6) At the end of the review, the conservator—
- (a) may make minor amendments to the plan; or
  - (b) may prepare a new fisheries management plan; or
  - (c) if the conservator reasonably believes the plan is no longer needed—
    - (i) if the plan involves a significant activity—must give the plan to the Minister for review; or
    - (ii) in any other case—may revoke the plan.
- (7) If the conservator gives a plan to the Minister under subsection (6), the Minister may direct the conservator to revise the plan under section 9.

## **12 Fisheries management plan—conservator to implement**

If a fisheries management plan is in force, the conservator must—

- (a) take reasonable steps to implement the plan; and
- (b) consider the plan when making decisions under this Act.

## **7 Section 13**

*substitute*

## **13 Fishing closures**

- (1) The conservator may prohibit the taking of fish from, or the introduction of fish into, public waters for a stated period (a ***fishing closure***).

- (2) A fishing closure is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (3) If the conservator reasonably believes that a fishing closure is required urgently, the conservator may commence the fishing closure on a day or at a time earlier than its notification day.

**Examples—when fishing closure required urgently**

- 1 to contain an outbreak of disease
- 2 to protect a species of fish that has been significantly impacted by unusual environmental conditions in certain waters

- (4) If a fishing closure commences on a day or at a time earlier than its notification day, the conservator must—

- (a) give additional public notice about the closure; and
- (b) display a notice about the closure in a conspicuous place at or near the public waters.

*Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1). The requirement in s (4) is in addition to the requirement for notification on the legislation register as a disallowable instrument.

## 8 Sections 14 to 16

*omit*

, in writing,



**9 New section 16A**

*insert*

**16A Declaration of possession limit**

- (1) The Minister may declare the maximum amount of a species of fish that a person may possess.

**Example**

The Minister declares a possession limit of 2 Murray Cod, within 100m of public waters. Claire goes fishing and catches 2 Murray Cod, taking them home and freezing them for later consumption. The next day, Claire catches another 2 Murray Cod. Because Claire is not in possession of more than 2 Murray Cod within 100m of the public waters, there is no breach of the possession limit.

- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**10 Declaration of fishing gear  
Section 17 (1)**

*substitute*

- (1) The Minister may declare fishing gear—
- (a) that may be used for taking fish; or
  - (b) that is prohibited for taking fish.

**11 New sections 18 and 18A**

*in part 3, insert*

**18 Declaration of exempt species**

- (1) The conservator may declare a species of fish to be an exempt species (an *exempt species declaration*).
- (2) In making an exempt species declaration, the conservator must consider—
  - (a) the need to protect native species in the ACT; and
  - (b) the need to conserve the significant ecosystems of the ACT, NSW and Australia.
- (3) An exempt species declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**18A Declaration of critical habitat**

- (1) The conservator may declare aquatic habitat, or a part of aquatic habitat to be critical habitat (a *critical habitat declaration*).
- (2) In making a critical habitat declaration, the conservator must consider—
  - (a) the need to protect native species in the ACT; and
  - (b) the need to conserve the significant ecosystems of the ACT, NSW and Australia.
- (3) A critical habitat declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**12 Part 4***substitute***Part 4 Fisheries licences****Division 4.1 Licences—preliminary****19 Meaning of *fisheries licence***

In this Act:

*fisheries licence* means a licence that authorises the licensee to carry out 1 or more activities (the *licensed activity*) that would otherwise be an offence under this Act.

*Note 1* Some activities are unsuitable for a fisheries licence (see s 26 (1), def *suitable activity*, par (b)).

*Note 2* A fisheries licence is not required for recreational fishing that does not involve an activity that is an offence under this Act.

**20 Meaning of *recreational group licence***

In this Act:

*recreational group licence* means a licence that authorises a group of people to take fish in circumstances that would otherwise be an offence under this Act.

**Division 4.2 Licences—application and suitability****21 Application**

- (1) A person may apply to the conservator for a fisheries licence.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the activity for the licence; and

- (c) include complete details of suitability information about—
  - (i) the applicant; and
  - (ii) if the applicant is a corporation—each influential person for the applicant; and
  - (iii) if someone other than the applicant is to have management or control of the activity for the licence—each person who is to have management or control; and
  - (iv) the activity for the licence.

*Note 1* **Suitability information**, about a person—see s 24.  
**Suitability information**, about an activity—see s 27.

*Note 2* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 3* A fee may be determined under s 114 for this provision.

- (3) In this section:

***influential person***, for a corporation, means—

- (a) an executive officer of the corporation; or
- (b) a person who may exercise a relevant power in relation to the corporation.

**Examples—par (a)**

director, secretary

**Example—par (b)**

an influential shareholder

***relevant power***, for a corporation, means a power to—

- (a) take part in a directorial, managerial or executive decision for the corporation; or
- (b) elect or appoint a person as an executive officer in the corporation; or

- (c) exercise a significant influence in relation to the conduct of the corporation.

## **22 Recreational group licence application**

- (1) A person may apply to the conservator for a recreational group licence for a group of people.
  - (2) The application must—
    - (a) be in writing; and
    - (b) state the activity for the licence; and
    - (c) state the period for which the activity will be undertaken.
  - (3) The conservator may issue the licence to the applicant only if reasonably satisfied that—
    - (a) the applicant, and each member of the group for the licence, is a suitable person to hold a fisheries licence; and
    - (b) the activity is a suitable activity for a fisheries licence; and
    - (c) issuing the licence is not inconsistent with a conservator guideline.
- Note* **Suitable activity**, for a fisheries licence—see s 26.
- (4) The conservator must, as soon as practicable—
    - (a) decide the application; and
    - (b) tell the applicant about the decision.
  - (5) The conservator may issue the licence subject to any condition the conservator reasonably believes is necessary to meet the objects of this Act.
  - (6) A person commits an offence if—
    - (a) the person holds a recreational group licence; and
    - (b) the licence is subject to a condition; and

(c) the person fails to comply with the condition.

Maximum penalty: 50 penalty units.

(7) An offence against subsection (6) is a strict liability offence.

### **23 Who is a *suitable person* to hold a fisheries licence—pt 4**

(1) In this part:

*suitable person*, to hold a fisheries licence, means a person who the conservator is satisfied is a suitable person to hold the licence.

(2) In deciding whether a person is a suitable person to hold a fisheries licence, the conservator must consider each of the following:

- (a) suitability information about the person;
- (b) any information given to the conservator under section 25 (Suitability of people—further information about people).

### **24 Meaning of *suitability information* about a person—pt 4**

In this part:

*suitability information*, about a person, means information about—

- (a) any conviction of, or finding of guilt against, the person for an offence against the following:
  - (i) this Act;
  - (ii) the *Animal Welfare Act 1992*;
  - (iii) the *Domestic Animals Act 2000*;
  - (iv) the *Environment Protection Act 1997*;
  - (v) the *Nature Conservation Act 2014*;
  - (vi) the *Water Resources Act 2007*;

- (vii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act or an Act mentioned in subparagraphs (ii) to (vi); and

**Examples**

- 1 *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)
- 2 *National Parks and Wildlife Act 1974* (NSW)
- 3 *Threatened Species Conservation Act 1995* (NSW)

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (b) any noncompliance by the person with a requirement under an Act mentioned in paragraph (a); and
- (c) any refusal of an application by the person for a fisheries licence, permit or other authority (however described) under an Act mentioned in paragraph (a); and
- (d) any other matter relevant to the person's ability to appropriately carry on an activity in relation to an animal, plant or land; and
- (e) any other matter prescribed by regulation.

**25 Suitability of people—further information about people**

- (1) This section applies if the conservator is making a decision about whether a person is a suitable person to hold a fisheries licence.
- (2) The conservator may, by written notice given to the applicant (a *personal information notice*), require the applicant to give the conservator stated information about 1 or more of the following people, not later than a stated reasonable time:
  - (a) the applicant;
  - (b) if the applicant is applying for a recreational group licence for a group of people—any known member of the group;

- (c) if the applicant is a corporation—an influential person for the corporation.
- (3) The conservator need not decide whether a person is a suitable person to hold a fisheries licence if—
  - (a) the conservator has given the person a personal information notice; and
  - (b) the person does not comply with the notice.

**26 What is a *suitable activity* for a fisheries licence?**

- (1) In this Act:  
*suitable activity*, for a fisheries licence—
  - (a) means an activity that the conservator is satisfied is suitable for the licence; but
  - (b) does not include an activity prescribed by regulation as an unsuitable activity.
- (2) In deciding whether an activity is suitable for a fisheries licence, the conservator must consider each of the following:
  - (a) suitability information about the activity;
  - (b) any information about the activity given to the conservator under section 28;
  - (c) any relevant consideration for suitability of an activity under the *Nature Conservation Act 2014*, section 268 (2) (e) to (g).



**27 What is *suitability information* about an activity?**

(1) In this Act:

*suitability information*, about an activity, means information about—

- (a) the impact of the activity; and
- (b) the purpose of the activity; and

**Examples**

scientific research, education

- (c) the place where and time when the activity is to be carried out; and
- (d) if the activity involves a native species or species of animal that is a pest animal—the number of and species of each animal involved in the activity; and
- (e) any other matter prescribed by regulation.

*Note* The conservator must also consider suitability information for an activity when deciding to amend a fisheries licence (see s 34 and s 36).

(2) In this section:

*pest animal*—see the [Pest Plants and Animals Act 2005](#), dictionary.

**28 Suitability of activities—further information about activity**

- (1) This section applies if the conservator is making a decision about whether an activity is a suitable activity for a fisheries licence.
- (2) The conservator may, by written notice given to the applicant (an *activity information notice*), require the applicant to give the conservator stated information about the activity, not later than a stated reasonable time.

- (3) The conservator need not decide whether an activity is a suitable activity for a fisheries licence if—
  - (a) the conservator has given the applicant an activity information notice; and
  - (b) the applicant does not comply with the notice.

**29 Suitability of activities—risk management plan**

- (1) This section applies if the conservator is—
  - (a) making a decision about whether an activity is a suitable activity for a fisheries licence; and
  - (b) satisfied that carrying on the activity in accordance with the licence is likely to cause undue risk to people or property.
- (2) The conservator may, by written notice given to the applicant (a *risk management plan notice*), require the applicant to prepare a risk management plan for the licence.
- (3) The risk management plan must—
  - (a) identify the risks to people and property; and
  - (b) set out the procedures, practices and arrangements for eliminating or minimising the risks.
- (4) The conservator need not decide an application for a fisheries licence if—
  - (a) the conservator has given the applicant a risk management plan notice; and
  - (b) the applicant does not comply with the notice.

## Division 4.3 Licences—decision

### 30 Licence—decision on application

- (1) This section applies if the conservator receives an application for a fisheries licence.
  - (2) The conservator may issue the licence to the applicant only if reasonably satisfied that—
    - (a) the applicant is a suitable person to hold the licence; and
    - (b) if the applicant is a corporation—each influential person for the applicant is a suitable person to hold the licence; and
    - (c) if someone other than the applicant is to have management or control of the activity for the licence—each person who is to have management or control of the activity is a suitable person to hold the licence; and
    - (d) the activity is a suitable activity for the licence; and
    - (e) issuing the licence is not inconsistent with a conservator guideline; and
    - (f) if the conservator requires that the applicant prepare a risk management plan—the risk management plan will eliminate or minimise any identified risks.
- Note* **Suitable activity**, for a fisheries licence—see s 26.  
**Suitable person**, to hold a fisheries licence—see s 23.
- (3) The conservator must, not later than the required time—
    - (a) decide the application; and
    - (b) tell the applicant about the decision on the application.

(4) In this section:

***required time*** means the latest of the following:

- (a) if the conservator gives the applicant a personal information notice under section 25—28 days after the day the conservator receives the stated information;
- (b) if the conservator gives the applicant an activity information notice under section 28—28 days after the day the conservator receives the information;
- (c) if the conservator gives the applicant a risk management plan notice under section 29—28 days after the day the conservator receives the risk management plan;
- (d) 28 days after the day the conservator receives the application.

*Note* Failure to issue a fisheries licence within the required time is taken to be a decision not to issue the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

### **31 Licence—conditions**

- (1) A fisheries licence is subject to—
  - (a) any condition prescribed by regulation; and
  - (b) any other condition that the conservator reasonably believes is necessary to meet the objects of this Act.

**Examples—par (b)**

- 1 that the licensee may carry on the activity only during a stated season
- 2 that the licensee may carry on the activity only for non-commercial purposes

- (2) A person commits an offence if—
  - (a) the person holds a fisheries licence; and
  - (b) the licence is subject to a condition; and

(c) the person fails to comply with the condition.

Maximum penalty: 50 penalty units.

(3) An offence against this section is a strict liability offence.

### **32 Licence—term**

(1) A fisheries licence starts on the day stated in the licence.

(2) The conservator must not issue a fisheries licence for longer than 5 years.

(3) A fisheries licence expires on the day stated in the licence.

### **33 Licence—form**

(1) A fisheries licence must—

(a) be in writing; and

(b) include the following information:

(i) the name of the licensee;

(ii) a unique identifying number (the *licence number*);

(iii) the licensed activity;

(iv) the term of the licence;

(v) the conditions on the licence;

(vi) anything else prescribed by regulation.

(2) A fisheries licence may include anything else the conservator considers relevant.

## Division 4.4 Licences—amendment

### 34 Licence—amendment initiated by conservator

- (1) The conservator may, by written notice (an *amendment notice*) given to a licensee, amend a fisheries licence if satisfied that—
  - (a) the licensee is a suitable person to hold the licence as amended; and
  - (b) if the licensee is a corporation—each influential person for the licensee is a suitable person to hold the licence as amended; and
  - (c) the licensed activity is a suitable activity for the licence as amended.

*Note* *Suitable activity*, for a fisheries licence—see s 26.  
*Suitable person*, to hold a fisheries licence—see s 23.

- (2) However, the conservator may amend the licence only if—
  - (a) the conservator has given the licensee written notice of the proposed amendment (a *proposal notice*); and
  - (b) the proposal notice states that written submissions about the proposal may be made to the conservator before the end of a stated period of at least 14 days after the day the proposal notice is given to the licensee; and
  - (c) after the end of the stated period, the conservator has considered any submissions made in accordance with the proposal notice.
- (3) Subsection (2) does not apply to a person if the licensee applied for, or agreed in writing to, the amendment.
- (4) The amendment takes effect on the day the amendment notice is given to the licensee or a later day stated in the notice.

**35 Licence—application to amend licence**

- (1) A licensee may apply to the conservator to amend a fisheries licence.
- (2) A licensee must apply to the conservator for amendment of a fisheries licence if someone else (the *new person*) is to—
  - (a) have management or control of the licensed activity; or
  - (b) if the licensee is a corporation—become an influential person for the licensee.
- (3) The application must—
  - (a) be in writing; and
  - (b) if the application is under subsection (2)—include complete details of suitability information about the new person.

*Note 1* **Suitability information**, about a person—see s 24.

*Note 2* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 3* A fee may be determined under s 114 for this provision.

**36 Licence—decision on application to amend licence**

- (1) This section applies if the conservator receives an application to amend a fisheries licence under section 35.
- (2) The conservator may amend the licence only if satisfied that as amended—
  - (a) the licensee is a suitable person to hold the licence; and
  - (b) if the licensee is a corporation—each influential person for the licensee is a suitable person to hold the licence; and
  - (c) if someone other than the proposed new licensee is to have management or control of the activity for the licence—each person who is to have management or control of the activity is a suitable person to hold the licence; and

- (d) the licensed activity is a suitable activity for the licence; and
- (e) the licence is not inconsistent with any conservator guideline.

*Note* **Suitable activity**, for a fisheries licence—see s 26.  
**Suitable person**, to hold a fisheries licence—see s 23.

- (3) If the conservator decides to amend the licence, the conservator may impose or amend a condition on the licence.
- (4) The conservator must, not later than the required time—
  - (a) decide the application for amendment; and
  - (b) tell the licensee about the decision.
- (5) In this section:

**required time** means the latest of the following:

- (a) if the conservator gives a person mentioned in section 35 (2) a personal information notice under section 25—28 days after the day the conservator receives the stated information;
- (b) if the conservator gives the applicant an activity information notice under section 28—28 days after the day the conservator receives the information;
- (c) if the conservator gives the applicant a risk management plan notice under section 29—28 days after the day the conservator receives the risk management plan;
- (d) 28 days after the day the conservator receives the application.

*Note* Failure to amend a fisheries licence within the required time is taken to be a decision not to amend the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).



**36A Licence—replacing when lost, stolen or destroyed**

- (1) The conservator may issue a replacement fisheries licence to a licensee if satisfied that the licensee's original licence has been lost, stolen or destroyed.
- (2) For subsection (1), the conservator may require the licensee to give the conservator a statement verifying that the original licence has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 114 for this provision.

*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

**36B Licence—surrender**

- (1) A licensee may surrender a fisheries licence by giving written notice of the surrender (a *surrender notice*) to the conservator.

*Note* If a form is approved under s 115 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—
  - (a) the licence; or
  - (b) if the licence has been lost, stolen or destroyed—a statement by the licensee verifying that the licence has been lost, stolen or destroyed.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

**36C Offence—fail to notify change of name or address**

- (1) A person commits an offence if—
  - (a) the person is a licensee for a fisheries licence; and
  - (b) the person's name or address changes; and

(c) the person does not, within 30 days after the change, give the conservator—

- (i) written notice of the change; and
- (ii) the licence.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.

### **36D Licence—conservator to change name and address**

(1) This section applies if a licensee for a fisheries licence gives the conservator—

- (a) written notice of a change to the person's name or address; and
- (b) the licence.

(2) The conservator must enter the changed details on the licence and return it to the licensee.

## **Division 4.5 Licences—regulatory action**

### **36E Application—div 4.5**

This division also applies to the licensee of a recreational group licence as if a reference in this division to a fisheries licence were a reference to a recreational group licence.

### **36F Licence—grounds for regulatory action**

(1) Each of the following is a *ground for regulatory action* against a licensee for a fisheries licence:

- (a) the licensee has contravened, or is contravening, a provision of this Act;

(b) the licensee has contravened a condition of the licence.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

(2) In this section:

*licensee* includes, if the person is a corporation, each executive officer of the corporation.

### **36G Licence—regulatory action**

Each of the following is *regulatory action* when taken against a licensee for a fisheries licence:

- (a) imposing a condition on, or amending a condition on, the licence;
- (b) suspending the licence for a stated period or until a stated thing happens;
- (c) cancelling the licence;
- (d) cancelling the licence and disqualifying the person from applying for a fisheries licence for a stated period or until a stated thing happens.

### **36H Licence—taking regulatory action**

- (1) If the conservator proposes to take regulatory action in relation to a licensee for a fisheries licence, the conservator must give the licensee a written notice (a *show cause notice*) stating—
  - (a) details of the proposed regulatory action; and
  - (b) the grounds for the proposed regulatory action; and
  - (c) that the licensee may, not later than 14 days after the day the licensee is given the notice, give a written submission to the conservator about the proposed regulatory action.

- (2) In deciding whether to take the proposed regulatory action, the conservator must consider any submission given to the conservator in accordance with the show cause notice.
- (3) If the conservator believes on reasonable grounds that a ground for regulatory action has been established in relation to the licensee, the conservator may—
- (a) take the regulatory action stated in the show cause notice; or
  - (b) if the proposed regulatory action is cancelling the licence and disqualifying the person from applying for a fisheries licence—
    - (i) cancel the licence; or
    - (ii) suspend the licence; or
    - (iii) impose a condition on, or amend a condition on, the licence; or
  - (c) if the proposed regulatory action is cancelling the licence—
    - (i) suspend the licence; or
    - (ii) impose a condition on, or amend a condition on, the licence; or
  - (d) if the proposed regulatory action is suspending the licence—
    - (i) suspend the licence for a shorter period; or
    - (ii) impose a condition on, or amend a condition on, the licence.
- (4) Regulatory action under this section takes effect on—
- (a) the day the licensee is given written notice of the decision; or
  - (b) if the written notice states a later date of effect—that date.

**36I Licence—immediate suspension**

- (1) This section applies if—
  - (a) the conservator gives a show cause notice to a licensee for a fisheries licence; and
  - (b) having regard to the grounds stated in the notice, the conservator believes on reasonable grounds that the fisheries licence should be suspended immediately because of a risk to—
    - (i) public safety; or
    - (ii) sustainability of a species of fish or aquatic habitat; or
    - (iii) the safety of a fish.
- (2) The conservator must give the licensee a written notice (an *immediate suspension notice*) suspending the person's licence.
- (3) The suspension of a fisheries licence under this section takes effect when the immediate suspension notice is given to the licensee.
- (4) The suspension of a fisheries licence under this section ends—
  - (a) if regulatory action is taken against the person—at the earlier of the following times:
    - (i) when the regulatory action takes effect;
    - (ii) 30 days after the day the immediate suspension notice is given to the person; or
  - (b) if regulatory action is not taken against the person—at the earlier of the following times:
    - (i) when the person is given written notice of the conservator's decision not to take regulatory action;
    - (ii) 30 days after the day the immediate suspension notice is given to the person.

**36J Licence—effect of suspension**

- (1) If the conservator suspends a fisheries licence, the licensee is, during the suspension—
  - (a) taken not to hold the licence; and
  - (b) disqualified from applying for a fisheries licence.
- (2) A suspended fisheries licence does not authorise the carrying on of any licensed activity under the licence during the suspension.

**36K Offence—fail to return amended, suspended or cancelled licences**

- (1) A person commits an offence if—
  - (a) the person is a licensee for a fisheries licence; and
  - (b) the licence is amended, suspended or cancelled under this division; and
  - (c) the person fails to return the licence to the conservator as soon as practicable (but not later than 7 days) after the day the person is given a reviewable decision notice under section 108.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

**36L Action by conservator in relation to amended or suspended licence**

- (1) This section applies if—
  - (a) a fisheries licence is amended or suspended under this part; and
  - (b) the licence is returned to the conservator.
- (2) For an amended fisheries licence, the conservator must—
  - (a) return the amended licence to the licensee; or

- (b) give the licensee a replacement licence that includes the amendment.
- (3) If a fisheries licence is suspended under this part and the suspension ends before the end of the term of the licence, the conservator must return the licence to the licensee when the suspension ends.

## **Division 4.6                      Licence—register**

### **36M                      Fisheries licence register**

- (1) The conservator must keep a register of fisheries licences and recreational group licences (the *fisheries licence register*).
- (2) The fisheries licence register must include the following details for each licence:
  - (a) the name of the licensee;
  - (b) the licence number;
  - (c) the licensed activity;
  - (d) the term of the licence;
  - (e) the conditions on the licence;
  - (f) anything else prescribed by regulation.

*Note*        **Licence number**—see s 33.

- (3) The fisheries licence register may include anything else the conservator considers relevant.
- (4) The fisheries licence register may be kept in any form, including electronically, that the conservator decides.

**36N Licence register—correction and keeping up-to-date**

- (1) The conservator may correct a mistake, error or omission in the licence register.
- (2) The conservator may change a detail included in the register to keep the register up-to-date.

**36O Offence—fail to keep records**

- (1) A person commits an offence if—
  - (a) the person is a licensee; and
  - (b) the person does not keep the records required by regulation for the licence.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
  - (a) the person is a licensee for an activity involving a priority species; and
  - (b) the person does not keep the records required by regulation for the licence.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

**13 Suspension of registration  
Section 41**

*omit*

notice under section 49 (3)

*substitute*

direction under section 64 (2)



**14 Cancellation of registration  
Section 42 (b)**

*omit*

notice under section 49 (3)

*substitute*

direction under section 64 (2)

**15 Part 6**

*substitute*

**Part 6 Aquaculture****46 Meaning of *aquaculture***

In this Act:

*aquaculture*—

- (a) means the farming of fish or aquatic vegetation for trade, business or research; but
- (b) does not include—
  - (i) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially); or
  - (ii) anything done in maintaining a collection of fish or aquatic vegetation that is not used for a commercial purpose; or
  - (iii) an activity prescribed by regulation.

**47 Aquaculture guidelines**

- (1) The conservator may make guidelines about how aquaculture may be undertaken in the Territory (the *aquaculture guidelines*).
- (2) In preparing aquaculture guidelines, the conservator must consider the following:
  - (a) any possible biosecurity risks;
  - (b) the species and numbers of fish suitable for aquaculture.
- (3) An aquaculture guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**48 Aquaculture limit**

A regulation may prescribe a threshold capacity over which a licence authorising aquaculture is required (an *aquaculture capacity limit*).

**49 Aquaculture offences**

- (1) A person commits an offence if—
  - (a) the person undertakes aquaculture; and
  - (b) the person does not comply with the aquaculture guidelines.Maximum penalty: 50 penalty units.
- (2) A person commits an offence if—
  - (a) the person undertakes aquaculture; and
  - (b) the capacity of the structure used to contain fish for the aquaculture is more than the aquaculture capacity limit; and
  - (c) the person does not hold a licence authorising the person to undertake the aquaculture.

Maximum penalty: 100 penalty units.

- (3) In this section:  
*aquaculture capacity limit*—see section 48.

**16 Part 7 heading**

*substitute*

## **Part 7 Enforcement**

**17 New division 7.1A**

*before division 7.1, insert*

### **Division 7.1A Fisheries officers**

**50 Appointment**

The director-general may appoint a person as a fisheries officer for this Act.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

**51 Identity cards**

- (1) The director-general must give each fisheries officer an identity card that states the person's name and appointment as a fisheries officer, and shows—
- (a) a recent photograph of the person; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry of the card; and

- (d) anything else prescribed by regulation.
- (2) A person commits an offence if the person—
  - (a) stops being a fisheries officer; and
  - (b) does not return the person's identity card to the director-general as soon as practicable (but within 7 days) after the day the person stops being a fisheries officer.

Maximum penalty: 5 penalty units.

- (3) Subsection (2) does not apply to a person if the person's identity card is—
  - (a) lost or stolen; or
  - (b) destroyed by someone else.
- (4) An offence against this section is a strict liability offence.

## **52 Fisheries officer must show identity card on exercising power**

- (1) If a fisheries officer exercises a power under this part that affects an individual, the fisheries officer must first show the fisheries officer's identity card to the individual.
- (2) If a fisheries officer exercises a power under this part that affects an entity, other than an individual, the fisheries officer must first show the fisheries officer's identity card to an individual the fisheries officer believes on reasonable grounds is an employee, officer or agent of the entity.

### **Examples—person other than an individual**

corporation, partnership

**18 Section 54***substitute***54 Power to enter premises**

- (1) For this Act, an authorised person may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
- Note* **Premises** includes land (whether vacant or occupied), a vehicle or a vessel (see dict).
- (b) at any time, enter premises with the occupier's consent; or
  - (c) at any reasonable time, enter premises—
    - (i) where a thing is kept under a fisheries licence; or
    - (ii) if the authorised person suspects that a fish that is not an exempt species, or a part of critical habitat, is on the premises; or
  - (d) enter premises in accordance with a search warrant; or
  - (e) at any time, enter premises if the authorised person believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or
  - (f) if a vehicle is stopped under section 67—enter the vehicle.
- (2) However, subsection (1) (a) and (c) do not authorise entry into a part of premises that is being used only for residential purposes.
- (3) For subsection (1) (e), the authorised person may enter the premises with any necessary and reasonable assistance and force.

- (4) An authorised person may, without the consent of the occupier of premises—
- (a) if the premises are land—enter the land to ask for consent to remain at the premises; or
  - (b) in any other case—enter land around the premises to ask for consent to enter the premises.
- (5) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (6) In this section:
- at any reasonable time* includes at any time when the public is entitled to use the premises or when the premises are open to or used by the public (whether or not on payment of money).

**54A Production of identity card**

An authorised person must not remain at premises entered under this part if the authorised person does not produce their identity card when asked by the occupier.

**19 Consent to entry  
Section 55**

*omit*

a conservation officer

*substitute*

an authorised person

**20 Section 55**

*omit*

the officer

*substitute*

the authorised person

**21 Section 55 (1)**

*omit*

another conservation officer

*substitute*

another authorised person

**22 Sections 56 to 58**

*omit*

conservation officer

*substitute*

fisheries officer

**23 Section 59**

*substitute*

**59 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;

- (c) take samples;
- (d) take photographs, films or audio, video or other recordings;
- (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note 1* **Premises** includes land (whether vacant or occupied), a vehicle or a vessel (see dict).

*Note 2* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 20 penalty units.

## 24 Sections 60 and 61

*omit*

conservation officer

*substitute*

fisheries officer

## 25 Identity cards must be produced Section 62

*omit*



**26**      **Entry into waters, and along banks etc**  
**Section 63**

*omit*

A conservation officer may for this Act, at any time, pass along (with a boat or otherwise) any public waters or

*substitute*

An authorised person may for this Act, at any time, pass along

**27**      **Divisions 7.2 and 7.3**

*substitute*

**Division 7.2                  Other powers****64                  Direction to provide information**

- (1) This section applies if an authorised person suspects on reasonable grounds that a person has information or documents reasonably required by the authorised person for the administration or enforcement of this Act.
- (2) The authorised person may direct the person to provide the information or documents to the authorised person (an *information direction*).
- (3) The direction must be in writing and state—
  - (a) the name of the person to whom it is directed; and
  - (b) the information or documents required to be provided; and
  - (c) why the information or documents are required; and
  - (d) when the direction must be complied with (the *due date*), being a day at least 2 days after the day the direction is given to the person; and

- (e) that if the information is not provided by the due date the person may be committing an offence under section 65.

*Note* The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).

## **65 Offence—fail to comply with information direction**

- (1) A person commits an offence if the person—

- (a) is subject to an information direction; and
- (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) An offence against this section is a strict liability offence.

- (3) This section does not apply if—

- (a) the person did not know, and could not reasonably be expected to know or find out, the information required under the direction; or
- (b) the person did not have reasonable access to the documents required under the direction; or
- (c) the authorised person did not produce the authorised person's identity card for inspection by the person as soon as practicable after giving the direction.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

**66 Immediate information direction**

- (1) An authorised person may require a person to state the person's name and home or business address (a *name and address direction*) if the authorised person believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) If the authorised person believes on reasonable grounds that the person's response to a name and address direction is false or misleading, the authorised person may direct the person to produce evidence (an *evidence direction*)—
- (a) as soon as practicable; or
  - (b) if the person does not have evidence reasonably available—to the authorised person's office within 2 business days after the day the direction is given.
- (4) A person commits an offence if the person—
- (a) is subject to—
    - (i) a name and address direction; or
    - (ii) an evidence direction; and
  - (b) fails to comply with the direction.

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

**67 Direction to stop vehicle containing fish etc**

- (1) This section applies if an authorised person believes on reasonable grounds that a person has committed, is committing or is about to commit an offence against this Act.
- (2) The authorised person may, to exercise a function under part 7 (Enforcement), direct the driver of the vehicle to stop the vehicle (a *stop vehicle direction*)—
  - (a) without delay; or
  - (b) at the nearest place that the vehicle can be safely stopped as indicated by the authorised person.

*Note* An authorised person can enter a vehicle stopped under this section (see s 54 (1) (f)) and inspect or examine, etc anything in the vehicle (see s 59).

- (3) A direction may be given to a driver orally or by means of a sign or signal (electronic or otherwise) or in any other way.
- (4) A direction to a driver ceases to be operative to the extent that an authorised person—
  - (a) gives the driver or other person a later inconsistent direction; or
  - (b) indicates to the driver that the direction is no longer operative.
- (5) However, an authorised person may direct a vehicle to be stopped only for the amount of time necessary for the authorised person to exercise the function.

*Note* The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).

- (6) In this section:  
*in*, a vehicle, includes on the vehicle.  
*vehicle* includes vessel.

**68 Offence—fail to comply with stop vehicle direction**

- (1) A person commits an offence if the person—
  - (a) is subject to a stop vehicle direction under section 67; and
  - (b) fails to comply with the direction.Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the authorised person did not produce the authorised person's identity card for inspection by the person as soon as practicable after giving the direction.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

**69 Direction to remove gear from water**

- (1) This section applies if an authorised person believes on reasonable grounds that a person is using fishing gear in contravention of this Act.
- (2) An authorised person may direct a person to remove from waters any fishing gear being used by the person.
- (3) If an authorised person gives a direction to a person, the authorised person must—
  - (a) tell the person that it is an offence if the person fails to comply with the direction; and
  - (b) give the direction in a language, or way of communicating that the person is likely to understand.
- (4) A person commits an offence if the person—
  - (a) is subject to a direction under subsection (2); and
  - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) This section does not apply to a person if—
  - (a) the person has a reasonable excuse for failing to comply with the direction; or
  - (b) the authorised person did not produce the authorised person's identity card for inspection by the person as soon as practicable after giving the direction.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (6) (see [Criminal Code](#), s 58).

## 70 Urgent directions

- (1) This section applies if an authorised person reasonably believes that a person—
  - (a) has breached, is breaching or is about to breach a fisheries licence; or
  - (b) has contravened, is contravening or is about to contravene a provision of this Act; or
  - (c) has engaged in, is engaging in or is about to engage in conduct that may threaten the management of fisheries.
- (2) The authorised person may direct (an *urgent direction*) the person to—
  - (a) take action to stop the breach, contravention or threat; or
  - (b) cease conduct causing the breach, contravention or threat.
- (3) An urgent direction must either—
  - (a) state—
    - (i) the action to be taken; and
    - (ii) when the direction must be complied with; or

- (b) state—
  - (i) the conduct not to be undertaken; and
  - (ii) how long the direction is in force.

### **71 Offence—fail to comply with urgent direction**

- (1) A person commits an offence if the person—
  - (a) is subject to an urgent direction; and
  - (b) fails to take reasonable steps to comply with the direction.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the authorised person did not produce the authorised person's identity card for inspection by the person as soon as practicable after giving the direction.

### **72 Authorised person's directions**

- (1) This section applies if—
  - (a) 1 or more of the following is in waters:
    - (i) a native fish species;
    - (ii) critical habitat; and
  - (b) the authorised person reasonably believes that the occupier of the waters may engage in conduct that may threaten native fish species or critical habitat.
- (2) The authorised person may give the occupier a direction about the protection or conservation of the species, community or habitat (an *authorised person's direction*).
- (3) An authorised person's direction must not be inconsistent with a fisheries management plan.

- (4) An authorised person's direction must—
- (a) be in writing; and
  - (b) state when the direction must be complied with, being a day at least 14 days after the day the direction is given to the occupier.

*Note* The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).

**72A Offence—fail to comply with authorised person's direction**

- (1) A person commits an offence if the person—
- (a) is subject to an authorised person's direction; and
  - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person took reasonable steps to comply with the authorised person's direction.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

**72B Treatment directions**

- (1) This section applies if an authorised person reasonably believes that a person—
- (a) is keeping a fish and—
    - (i) the fish is carrying a disease or suffers from a condition; and



- (ii) it is necessary or desirable for a particular kind of treatment to be carried out in connection with the disease or condition; or
- (b) is the occupier of land that—
  - (i) has waters containing an aquatic habitat; and
  - (ii) it is necessary or desirable for a particular treatment to be carried out in connection with the habitat.
- (2) The authorised person may direct the keeper of the fish or the occupier of the land to carry out a stated treatment on the fish or aquatic habitat (a *treatment direction*).

**Examples—treatment direction of aquatic habitat**

- 1 removing fallen timber
  - 2 removing an invasive plant species
  - 3 draining a dam
- (3) In deciding whether to make a treatment direction, the authorised person must consider—
    - (a) if the treatment direction is in relation to a fish—the following:
      - (i) the likelihood of the disease infecting other fish;
      - (ii) the impact of the disease if it were to infect other fish;
      - (iii) any matter prescribed by regulation; or
    - (b) if the treatment direction is in relation to an aquatic habitat—the following:
      - (i) the impact if the direction were not followed;
      - (ii) any matter prescribed by regulation.
  - (4) A treatment direction must be in writing and state the following:
    - (a) the fish or aquatic habitat to which it relates;

- (b) if the direction is made in relation to a fish—the disease or condition to which it relates;
- (c) the treatment to be carried out;
- (d) when the direction must be complied with.

*Note* The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).

### **72C Offence—fail to comply with treatment direction**

A person commits an offence if the person—

- (a) is subject to a treatment direction; and
- (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

### **72D Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
  - (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against this Act; and

- (b) the seizure is necessary to prevent the thing from being—
  - (i) concealed, lost or destroyed; or
  - (ii) used to commit, continue or repeat the offence.
- (4) Also, an authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (5) The powers of an authorised person under subsections (3) and (4) are additional to any powers of the authorised person under subsection (1) or (2) or any other territory law.
- (6) Having seized a thing, an authorised person may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
  - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 20 penalty units.

- (8) An offence against subsection (7) is a strict liability offence.

**72E Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously at the place of seizure under section 72D (Power to seize things).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

**72F Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.

- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

## **72G Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect the thing; and
- (b) photograph the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

**72H Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
- (a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—
    - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
  - (b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
    - (i) a prosecution for an offence connected with the thing is not begun within 1 year after the day of the seizure; or
    - (ii) a prosecution for an offence connected with the thing is begun within 1 year after the day of the seizure but the court does not find the offence proved; or
  - (c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the [Magistrates Court Act 1930](#), section 132 (Disputing liability for infringement notice offence) and—
    - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section; or
    - (ii) the Magistrates Court does not find the offence proved.

- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
  - (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the waste manager directs.

### **Division 7.3                      Miscellaneous**

#### **72I                      Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

#### **72J                      Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
  - (a) an authorised person; or
  - (b) a person assisting an authorised person.

- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

**28 New division 8.1A**

*before division 8.1, insert*

**Division 8.1A Preliminary**

**73 Exempt conduct—pt 8**

For an offence under this part, a person's conduct is *exempt conduct* if—

- (a) the person's conduct is undertaken in accordance with 1 of the following:
  - (i) a fisheries licence;
  - (ii) a fisheries management plan;
  - (iii) a cultural resource management plan;
  - (iv) a native species conservation plan; or
- (b) the person is an authorised person exercising a function under this Act.

*Note* The defendant has an evidential burden in relation to the matters mentioned in this section (see [Criminal Code](#), s 58).



**29 Sections 74 and 75**

*substitute*

**74 Taking fish for sale without licence etc**

- (1) A person commits an offence if the person takes fish from public waters with the intention of—
- (a) selling the fish; or
  - (b) processing the fish for sale.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- (2) This section does not apply to a person if the person's conduct is exempt conduct.

**75 Taking fish contrary to licence**

- (1) The holder of a fisheries licence commits an offence if—
- (a) the licence holder takes a fish; and
  - (b) the fisheries licence does not permit the holder to take the fish.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the licence holder unintentionally takes the fish; and
  - (b) the licence holder immediately returns the fish to the waters from which it was taken with the least possible injury.

**30 Importing or exporting live fish without authority  
Section 76 (1) (b) (i)**

*substitute*

- (i) hold a licence authorising the import or export; or

**31 Section 76 (2) and (3)**

*substitute*

- (2) A person commits an offence if—
- (a) the person is the holder of a licence authorising the import of live fish into, or the export of live fish from, the ACT; and
  - (b) the person imports a live fish into, or exports a live fish from, the ACT; and
  - (c) the import or export is not authorised by the licence.

Maximum penalty: 50 penalty units.

- (3) This section does not apply to—
- (a) fish bought from a registered fish dealer for human consumption; or
  - (b) fish of an exempt species; or
  - (c) a person if the person's conduct is exempt conduct.

**32 Sections 76A to 76C**

*substitute*

**76A Trafficking in commercial quantity of fish of priority species**

- (1) A person commits an offence if the person—
- (a) traffics in a commercial quantity of fish of a priority species; and
  - (b) does not hold a licence authorising the trafficking.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (2) This section does not apply if—
- (a) the person receives or processes the fish for personal or domestic consumption; and
  - (b) the fish was received from a licensed supplier.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

### **76B Taking commercial quantity of fish of priority species**

A person commits an offence if the person—

- (a) takes a commercial quantity of fish of a priority species; and
- (b) does not hold a licence authorising the taking.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

### **76C Possessing commercial quantity of fish of priority species**

- (1) A person commits an offence if the person—
- (a) possesses a commercial quantity of fish of a priority species; and
  - (b) does not hold a licence authorising the possession.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (2) This section does not apply if—
- (a) the person received the fish for personal or domestic consumption; and
  - (b) the fish was received from a licensed supplier.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

**33 Section 78**

*substitute*

**78 Noxious fish**

- (1) A person commits an offence if the person possesses noxious fish.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) A person commits an offence if the person traffics noxious fish.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) Subsection (1) does not apply if the person holds a permit under the *Pest Plants and Animals Act 2005* authorising the possession.
- (4) This section does not apply if the person's conduct is exempt conduct.

**34 Release of fish  
Section 79 (1) (b)**

*substitute*

- (b) the person does not hold a licence authorising the release of the fish.

**35 Section 79 (1), penalty**

*substitute*

Maximum penalty: 50 penalty units.

**36 Section 79 (2)**

*substitute*

- (2) This section does not apply if—
  - (a) the fish was taken from public waters; and

- (b) the fish is released to the waters from which it was taken; and
- (c) releasing the fish does not contravene a fishing closure.

**37 Section 80**

*substitute*

**80 Fishing closure offences**

- (1) A person commits an offence if—
  - (a) a fishing closure is in force for waters; and
  - (b) the person contravenes the fishing closure.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply if the person's conduct is exempt conduct.

**38 Prohibited size and weight offences  
Section 81 (3), penalty**

*substitute*

Maximum penalty: 50 penalty units.

**39 Section 82 heading**

*substitute*

**82 Offence—exceed quantity limit****40 Section 82 (2), penalty**

*substitute*

Maximum penalty: 50 penalty units.

**41 New section 82 (4)**

*insert*

- (4) This section does not apply if the person's conduct is exempt conduct.

**42 New section 82A**

*insert*

**82A Offence—exceed possession limit**

- (1) A person commits an offence—
- (a) if the person possesses an amount of fish of a particular species; and
  - (b) the amount of fish is more than the possession limit.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply if the person's conduct is exempt conduct.

**43 Use of fishing gear generally  
Section 85 (1), penalty**

*substitute*

Maximum penalty: 50 penalty units.

**44 Non-permitted fishing gear  
Section 86 (2) (a)**

*substitute*

- (a) the person is—
- (i) in or beside public waters; and
  - (ii) in possession of fishing gear; and

**45 New section 86 (4)**

*insert*

- (4) This section does not apply if the person's conduct is exempt conduct.

**46 New sections 86A and 86B**

*insert*

**86A Offence—use prohibited gear**

- (1) A person commits an offence if—
- (a) the person uses fishing gear in waters; and
  - (b) the gear is prohibited fishing gear.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if—
- (a) the person is—
    - (i) in or beside waters; and
    - (ii) in possession of fishing gear; and
  - (b) the gear is prohibited fishing gear.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) This section does not apply if the person's conduct is exempt conduct.

**86B Offence—prohibited gear retail display**

- (1) A person commits an offence if—
- (a) the person displays fishing gear for sale by retail; and
  - (b) the gear is prohibited fishing gear; and

(c) the person does not display a retail display sign.

Maximum penalty: 50 penalty units.

(2) An offence against this section is a strict liability offence.

(3) In this section:

*retail display sign* means a sign—

(a) containing the following statement:

‘Use of this fishing gear is restricted/prohibited in the ACT.’; and

(b) placed prominently so that it can be seen and read easily by a person at or near the display; and

(c) with the statement on the sign printed in—

(i) a colour that contrasts with the background colour of the sign; and

(ii) Arial bold typeface in a size not less than 50 point.

## **47 Use and possession of commercial fishing gear Section 87 (1) to (3)**

*substitute*

(1) A person commits an offence if the person—

(a) uses commercial fishing gear in or beside public waters; and

(b) does not hold a licence authorising the use of the gear.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if the person—

(a) the person is—

(i) in or beside public waters; and



- (ii) in possession of commercial fishing gear; and
  - (b) does not hold a licence authorising the use of the gear.
- Maximum penalty: 50 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.

#### **48 Section 88**

*substitute*

#### **88 Meaning of *aquatic habitat***

- (1) In this Act:
- aquatic habitat*—
- (a) means a habitat in public waters; and
  - (b) includes—
    - (i) water, soil, stones, fallen timber and vegetation; and
    - (ii) anything else prescribed by regulation.

- (2) In this section:

*habitat*—see the [Nature Conservation Act 2014](#), dictionary.

#### **88A Spawning areas and aquatic habitat**

- (1) A person commits an offence if the person—
- (a) does something that disturbs or damages spawn or spawning fish in public waters; and
  - (b) does not have the conservator's written approval to do the thing.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if the person—
- (a) damages or disturbs part of an aquatic habitat; and

(b) does not have the conservator's written approval.

Maximum penalty: 30 penalty units.

(3) A person commits an offence if the person—

(a) damages or disturbs critical habitat; and

(b) does not have the conservator's written approval.

Maximum penalty: 100 penalty units.

(4) This section does not apply if the person's conduct is exempt conduct.

**49 Delegation  
Section 109**

*after*

a conservation officer

*insert*

or authorised person

**50 Criminal liability of executive officers  
Section 111 (6), definition of *relevant offence*, new  
paragraph (aa)**

*before paragraph (a), insert*

(aa) section 36O (Offence—fail to keep records);

**51 Section 111 (6), definition of *relevant offence*,  
paragraph (b)**

*substitute*

(b) section 49 (2) (Aquaculture offences);

**52 New section 111A**

*insert*

**111A Evidentiary certificates**

- (1) The conservator may give a signed certificate—
  - (a) stating that on a stated date, or during a stated period, a stated person was or was not a licensee; and
  - (b) if the person was a licensee—including details of the person’s nature conservation licence.
- (2) A certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a certificate under this section is taken to be a certificate.

**53 Production of licences  
Section 112 (1)**

*substitute*

- (1) A licensee commits an offence if—
  - (a) a conservation officer or fisheries officer requests that the licensee produce their licence for inspection at the officer’s office; and
  - (b) the licensee does not comply with the request within 2 working days after the day the request is made.

Maximum penalty: 5 penalty units.

**54 Section 113***substitute***113 Minister's guidelines**

- (1) The Minister may make guidelines (the *Minister's guidelines*) about the exercise of the conservator's functions in relation to the following:
  - (a) the granting of a fisheries licence involving a significant activity;
  - (b) the conditions that the conservator may impose on a fisheries licence involving a significant activity;
  - (c) the considerations the conservator must have in deciding whether to register an applicant for a fish dealer's registration.
- (2) The conservator must comply with the Minister's guidelines.
- (3) A Minister's guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) In this section:

*significant activity*, in relation to a fisheries licence, means—

- (a) commercial fishing; or
- (b) commercial trade of fish; or
- (c) any other activity prescribed by regulation.

**113A Conservator guidelines**

- (1) The conservator may make guidelines (the *conservator guidelines*) about the following:
  - (a) the exercise of the conservator's functions under this Act;

- (b) matters relating to fisheries licences (except for fisheries licenses involving a significant activity);
- (c) the conservation and management of fisheries;
- (d) any other matters prescribed by regulation.

*Note* The power to make guidelines includes the power to amend or repeal the guidelines. The power to amend or repeal the guidelines is exercisable in the same way, and subject to the same conditions, as the power to make the guidelines (see [Legislation Act](#), s 46).

- (2) The conservator guidelines may apply, adopt or incorporate an instrument as in force from time to time.
- (3) A conservator guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (4) The [Legislation Act](#), section 47 (6) does not apply in relation to an instrument applied, adopted or incorporated as in force from time to time under this section.

*Note* An instrument applied, adopted or incorporated under this section does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#) s 47 (7)).

- (5) In this section:

*significant activity*, in relation to a fisheries licence, means—

- (a) commercial fishing; or
- (b) commercial trade of fish; or
- (c) any other activity prescribed by regulation.

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**55 Sections 114 (1) and 115 (1)**

*omit*

, in writing,

**56 Regulation-making power  
New section 116 (2) (d)**

*insert*

(d) the administration of licences.

**57 New part 13**

*insert*

**Part 13 Transitional—Fisheries  
Legislation Amendment Act 2019**

**122 Definitions—pt 13**

In this part:

*commencement day* means the day the *Fisheries Legislation Amendment Act 2019*, section 3 commences.

*old licence* means a licence—

- (a) under any of the following, as in force before the commencement day:
  - (i) section 20 (Commercial fishing licences);
  - (ii) section 21 (Scientific licences);
  - (iii) section 22 (Import and export licences);
  - (iv) section 22A (Priority species licences); and
- (b) in force immediately before the commencement day.

**123 Old licences**

An old licence is, on the commencement day, taken to be a licence issued under section 30 (Licence—decision on application)—

- (a) in the same terms as the old licence; and
- (b) subject to the same conditions as the old licence.

**124 Old licences—application**

- (1) This section applies if—
  - (a) before the commencement day a person applied for a licence; and
  - (b) immediately before the commencement day, the conservator had not decided the application.
- (2) The application is, on the commencement day, taken to be an application for a licence under section 21 (Application).

**125 Expiry—pt 13**

This part expires 4 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**58 Schedule 1**

*substitute*

**Schedule 1 Reviewable decisions**

(see pt 10)

| column 1<br>item | column 2<br>section | column 3<br>decision                          | column 4<br>entity                     |
|------------------|---------------------|-----------------------------------------------|----------------------------------------|
| 1                | 22                  | refuse to issue recreational group licence    | applicant for licence                  |
| 2                | 30                  | refuse to issue fisheries licence             | applicant for licence                  |
| 3                | 31                  | issue licence with conditions                 | applicant for licence                  |
| 4                | 36 (2)              | amend licence                                 | licensee                               |
| 5                | 36 (3)              | issue amended licence with conditions         | licensee                               |
| 6                | 36A                 | refuse to issue replacement fisheries licence | licensee                               |
| 7                | 36H (3)             | take regulatory action                        | licensee                               |
| 8                | 36I (2)             | suspend licence                               | licensee                               |
| 9                | 39                  | refuse to register fish dealer                | applicant for registration             |
| 10               | 41                  | suspend fish dealer's licence                 | entity that has registration suspended |
| 11               | 42                  | cancel fish dealer's licence                  | entity that has registration cancelled |

**59 Dictionary, definition of *aquaculture***

*substitute*

***aquaculture***—see section 46.



**60 Dictionary, new definitions**

*insert*

*aquatic habitat*—see section 88.

*authorised person*—

(a) means a fisheries officer; and

(b) includes—

(i) a conservation officer; and

(ii) a police officer.

*authorised person's direction*—see section 72.

**61 Dictionary, definition of *commercial fishing licence***

*omit*

**62 Dictionary, new definitions**

*insert*

*conservator guidelines* means a guideline made under section 113A.

*critical habitat* means aquatic habitat, or a part of aquatic habitat, declared as critical habitat under section 18A.

*critical habitat declaration*—see section 18A (1).

*cultural resource management plan*—see the *Nature Conservation Act 2014*, dictionary.

*custodian*, for an area of land—see the *Planning and Development Act 2007*, section 333.

*exempt conduct*, for part 8 (Offences)—see section 73.

*exempt species* means a species of fish declared to be an exempt species under section 18.

*exempt species declaration*—see section 18 (1).

*fisheries licence*—see section 19.

*fisheries licence register*—see section 36M.

*fisheries management plan*—see section 5.

*fisheries officer* means a person appointed under section 50.

**63 Dictionary, definition of *fish of a priority species*, new paragraph (aa)**

*insert*

(aa) Murray Cod; and

**64 Dictionary, new definitions**

*insert*

*ground for regulatory action*—see section 36F.

*identity card* means—

- (a) in relation to a fisheries officer—an identity card issued to the person under section 51; or
- (b) in relation to a conservation officer—an identity card issued to the person under the [Nature Conservation Act 2014](#), section 29; or
- (c) in relation to a police officer—proof of identification of a type approved for general purposes by the chief police officer.

**65 Dictionary, definition of *import and export licence***

*omit*

**66 Dictionary, new definitions**

*insert*

*information direction*—see section 64 (2).

*lease*—see the *Planning and Development Act 2007*, section 235.

**67 Dictionary, definition of *licence***

*omit*

**68 Dictionary, definition of *licensee***

*substitute*

*licensee* means the holder of—

- (a) a fisheries licence; or
- (b) a recreational group licence.

**69 Dictionary, new definitions**

*insert*

*possession limit*—see section 16A.

*premises* includes—

- (a) land (whether vacant or occupied); and
- (b) a vehicle; and
- (c) a vessel.

**70 Dictionary, definition of *priority species licence***

*omit*

**71 Dictionary, definitions of *private waters* and *public waters***

*substitute*

*private waters* means—

- (a) waters on private land that are not public waters; and
- (b) waters under an aquaculture licence.

*public waters*—

- (a) means—
  - (i) waters on public land; and
  - (ii) a waterway; and
  - (iii) waters of a dam, water storage or other control structure situated on a waterway; but
- (b) does not include waters under an aquaculture licence.

**72 Dictionary, new definition of *recreational group licence***

*insert*

*recreational group licence*—see section 20.

**73 Dictionary, definition of *register***

*omit*

**74 Dictionary, new definition of *regulatory action***

*insert*

*regulatory action*—see section 36G.

**75 Dictionary, definition of *scientific licence***

*omit*

**76 Dictionary, new definitions**

*insert*

*stop vehicle direction*—see section 67 (2).

*suitability information*—

- (a) about a person, for part 4 (Fisheries licences)—see section 24; or
- (b) about an activity, for part 4 (Fisheries licences)—see section 27.

*suitable activity*, for a fisheries licence, for part 4 (Fisheries licences)—see section 26.

*suitable person*, to hold a fisheries licence, for part 4 (Fisheries licences)—see section 23.

*traffic*, in fish, includes the following:

- (a) sell the fish;
- (b) possess or gain possession or control of the fish with the intention of selling any of it;
- (c) receive the fish;
- (d) process the fish.

*treatment direction*—see section 72B.

*urgent direction*—see section 70 (2).

*waterway*—see the [Water Resources Act 2007](#), section 10.

## Part 3 Fisheries Regulation 2001

### 77 New section 4AA

*before section 4A, insert*

### 4AA Aquaculture capacity limit—Act, s 48

The prescribed aquaculture capacity limit is 10 000L.

### 78 Commercial quantity—Act, dict, def *commercial quality* New section 4A (aa)

*insert*

(aa) Murray Cod—20 or more;

## Part 4 Nature Conservation Act 2014

### 79 Chapter 6 exceptions New section 153 (2) (a) (iv) and (v)

*after the note, insert*

- (iv) undertaken in accordance with a cultural resource management plan; or

*Note* **Cultural resource management plan**—see s 168A.

- (v) undertaken in accordance with a fisheries management plan; or

*Note* **Fisheries resource management plan**—see the dictionary.

### 80 New chapter 7A

*insert*

## Chapter 7A Cultural resource management plan

### 168A Meaning of *cultural resource management plan*

In this Act:

*cultural resource management plan*—

- (a) means a plan about access to land and resources for cultural use; and
- (b) includes anything required to be included by a conservator guideline; and

*Note* **Conservator guidelines**—see s 23.

- (c) may apply, adopt or incorporate an instrument as in force from time to time.

**Example—instrument that may be applied, adopted or incorporated**  
a fisheries management plan under the *Fisheries Act 2000*

*Note* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disappplied (see s 47 (7)).

### **168B Preparation of draft cultural resource management plan**

- (1) In preparing a draft cultural resource management plan that relates to an area of land, the conservator must—
  - (a) develop the plan in partnership with any person who is a Ngunnawal traditional custodian; and
  - (b) consult the United Ngunnawal Elders Council; and
  - (c) consult the relevant person for the stated land; and
  - (d) consider any relevant requirements under the [territory plan](#).

- (2) In this section:

*relevant person*, for land, means—

- (a) if the land is leased land—the lessee of the land; and
- (b) if the land is unleased land or public land—the custodian of the land.

### **168C Draft cultural resource management plan—revision and submission to Minister**

- (1) If the conservator has completed consultation under section 168B for a draft cultural resource management plan, the conservator must—
  - (a) consider any submissions received during the consultation; and



- (b) make any revisions to the draft plan that the conservator considers appropriate.
- (2) The conservator must then submit the plan to the Minister for approval.

**168D Draft cultural resource management plan—Minister to approve, return or reject**

- (1) If the conservator submits a cultural resource management plan to the Minister for approval, the Minister must—
  - (a) approve the plan; or
  - (b) return the plan to the conservator and direct the conservator to take 1 or more of the following actions in relation to it:
    - (i) carry out stated further consultation;
    - (ii) consider a relevant report;
    - (iii) revise the plan in a stated way; or
  - (c) reject the plan.
- (2) A cultural resource management plan approved by the Minister is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

*Note 2* The power to make a cultural resource management plan includes the power to amend or repeal the plan. The power to amend or repeal the plan is exercisable in the same way, and subject to the same conditions, as the power to make the plan (see [Legislation Act](#), s 46).

*Note 3* Minor amendments may be made to the plan under s 168F.

**168E Draft cultural resource management plan—Minister’s direction to revise etc**

- (1) This section applies if the Minister gives the conservator a direction under section 168D (1) (b).
- (2) The conservator must—
  - (a) give effect to the direction; and
  - (b) resubmit the draft plan to the Minister for approval.
- (3) The Minister must decide, under section 168C, what to do with the resubmitted draft plan.

**168F Cultural resource management plan—minor amendments**

- (1) This section applies if—
  - (a) a cultural resource management plan is in force (the *existing plan*); and
  - (b) the conservator considers that minor amendments to the existing plan are appropriate.
- (2) The conservator—
  - (a) may prepare a new draft cultural resource management plan, incorporating the minor amendments into the existing plan; and
  - (b) need not comply with the requirements in sections 168B to 168D; and
  - (c) may make the cultural resource management plan, as amended.

- (3) An amended cultural resource management plan made by the conservator is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

*Note 2* The power to make a cultural resource management plan includes the power to amend or repeal the plan. The power to amend or repeal the plan is exercisable in the same way, and subject to the same conditions, as the power to make the plan (see [Legislation Act](#), s 46).

- (4) In this section:

***minor amendment***, of a cultural resource management plan, means an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan.

**Examples**

- 1 minor correction to improve effectiveness
- 2 omission of something redundant
- 3 technical adjustment to improve efficiency

**168G Cultural resource management plan—conservator to implement**

- (1) If a cultural resource management plan is in force, the conservator must take reasonable steps to implement the plan.
- (2) In implementing the plan, the conservator may authorise another person to take action to implement the plan.

**168H Cultural resource management plan—reporting**

- (1) The conservator must report to the Minister about the cultural resource management plan at least once every 5 years.
- (2) The Minister must consider the report and may take any action the Minister considers appropriate.

- (3) The Minister may make the report publicly accessible not later than 30 days after the day the conservator gives the report to the Minister.

**Example—publicly accessible**

published on the directorate website

**168I Cultural resource management plan—review**

- (1) The conservator must review the cultural resource management plan on request from—
- (a) the Human Rights Commissioner; or
  - (b) the Minister.
- (2) In conducting the review, the conservator must consult with the following in relation to any land mentioned in the plan:
- (a) any person who is a Ngunnawal traditional custodian;
  - (b) a relevant person under section 168B.
- (3) After completing the review, the conservator—
- (a) must report to the Minister about the review; and
  - (b) may provide the Minister with a recommendation regarding the plan.
- (4) A recommendation must be accompanied by a report setting out any issues raised under the review.
- (5) If the conservator makes a recommendation to the Minister, the Minister must respond to the conservator about the recommendation.

**81 Chapter 9 exceptions  
New section 252 (2) (a) (v)**

*after the note, insert*

- (v) undertaken in accordance with a cultural resource management plan; or

*Note Cultural resource management plan*—see s 168A.

**82 Conservator may close reserve  
Section 259 (1)**

*substitute*

- (1) This section applies if—
  - (a) the conservator reasonably believes that public access to a reserve may—
    - (i) endanger public safety; or
    - (ii) interfere with the management of the reserve; or
  - (b) an area of a reserve is to be used as part of a cultural resource management plan.

**83 Part 10.2 exceptions  
New section 261 (2) (c)**

*before the note, insert*

- (c) the conduct constituting the offence is undertaken in accordance with a cultural resource management plan.

**84 Power to enter premises  
Section 338 (4)**

*substitute*

- (4) A conservation officer may, without the consent of the occupier of premises—
- (a) if the premises are land—enter the land to ask for consent to remain at the premises; or
  - (b) in any other case—enter land around the premises to ask for consent to enter the premises.

**85 Dictionary, new definitions**

*insert*

*cultural resource management plan*—see section 168A.

*fisheries management plan*—see the *Fisheries Act 2000*, section 5.

## Schedule 1      Pest Plants and Animals Act 2005—Consequential amendments

(see s 3)

### [1.1]      New section 10 (2) (c)

*insert*

(c) in accordance with a fisheries licence.

### [1.2]      Section 10A (2) (b)

*substitute*

(b) under a permit or in accordance with a fisheries licence.

### [1.3]      New section 22 (2)

*insert*

(2) This section does not apply to a prohibited pest animal that is a fish if the person is keeping the fish in accordance with a fisheries licence.

### [1.4]      New section 24 (2) and (3)

*insert*

(2) This section does not apply to a prohibited pest animal that is a fish if—

- (a) the fish is not a noxious fish; and
- (b) the person has taken the fish from waters; and
- (c) the person returns the fish to the same waters from which it was taken.

(3) In this section:

*noxious fish*—see the *Fisheries Act 2000*, dictionary.

**[1.5] Dictionary, new definition of fisheries licence**

*insert*

*fisheries licence*—see the *Fisheries Act 2000*, dictionary.

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 16 May 2019.

**2 Notification**

Notified under the [Legislation Act](#) on 2 October 2019.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Fisheries Legislation Amendment Bill 2019, which was passed by the Legislative Assembly on 17 September 2019.

Acting Clerk of the Legislative Assembly