

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

FISHERIES BILL 2000

EXPLANATORY MEMORANDUM

**Circulated with the authority of
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Minister for Urban Services**

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Background and Outline

The Bill will repeal the existing *Fishing Act 1967* (the Act). In its current form, the Act emphasises protection of exotic angling species and is seen as inadequate in protecting native species caught by recreational fishers. It also is regarded as inadequate in preventing commercial fishers from other jurisdictions from trading in the ACT with illegal catches. This was estimated by NSW Fisheries in 1995 to be worth approximately \$17 million per year.

A review of the Act commenced in mid 1995 and addressed known fishing community concerns and analysed relevant laws in other jurisdictions. The aims of the review were to:

- examine the adequacy of the current fishing laws;
- seek public comment on the proposed changes to these laws; and
- recommend changes to improve the efficiency of administration of the law to ensure that recreational fishing in the ACT is fair, equitable, enjoyable and sustainable.

The population of the ACT has trebled since the introduction of the current Act and many technological improvements to fishing equipment have occurred, resulting in far greater fishing pressure and catches being landed. The review identified changes to the existing legislation that are required to satisfy the Government's and community's expectations in relation to sustainable fishing.

The resulting Bill is an Act about the management of fisheries and will lead to a more sustainable future for ACT fisheries.

Fisheries Bill 2000

Part 1 – Preliminary

Clauses 1 to 2 are formal requirements. They deal with the short title of the Bill and commencement provisions.

Clause 3 sets out the objects of the Bill. The objects have significantly altered from the original *Fishing Act 1967*.

Clause 4 provides for a dictionary of terms used within the Bill and notifies that the dictionary is located at the end of the Bill.

Part 2 - Declarations

Clause 5 empowers the Minister to make a declaration that prohibits taking fish from public waters for a given period. The provision allows the Minister

to set conditions on the prohibition, which means the prohibition can be in relation to a particular area only, or in relation to a particular species only. It can also be used to set fishing seasons. This prohibition is called a fishing closure.

Clause 6 empowers the Minister to declare species of fish to be noxious. It will be an offence to return any of these declared noxious fish to the water after they have been caught. Conservation officers will have power to seize and destroy such fish.

Clause 7 empowers the Minister to declare prohibited sizes or weights of particular species of fish. This will prevent people from removing fish from their environment until they have matured.

Clause 8 empowers the Minister to declare specific quantities of species of fish that may be taken by a person in one day. This is known colloquially as the "bag limit".

Clause 9 empowers the Minister to declare the types of fishing gear that may be used for taking fish. By default, unacceptable fishing gear, such as spear guns and drum nets will be prohibited as they will not be listed.

Clause 10 provides that any of the instruments declared by the Minister within this Part are disallowable under the *Subordinate Laws Act 1989*.

PART 3 – LICENCES

Division 3.1 – Kinds of Licences

Clause 11 identifies the kinds of licences that may be issued by the Conservator of Flora and Fauna. Licences are divided into three categories - commercial fishing licences, scientific licences and import and export licences.

Clauses 12, 13 and 14 identify the types of activities that can be undertaken with each specific licence.

Division 3.2 – Issue of licences

Clause 15 sets out the requirements for an application for a licence as described within Division 3.1.

Clause 16 notifies that the Conservator of Flora and Fauna may require additional information from an applicant in relation to an application for a licence.

Clause 17 requires that the Conservator of Flora and Fauna must make a decision in respect of an application for a licence.

Clause 18 governs the relevant considerations the Conservator of Flora and Fauna must take into account in deciding to grant or not grant a commercial fishing licence.

Clause 19 does the same in relation to the grant of scientific licences.

Clause 20 does the same in relation to the grant of import and export licences.

Clause 21 identifies the length of time that licences remain valid.

Clause 22 allows for specific conditions and exemptions to be placed on an issued licence.

Clause 23 allows for a licence to be altered by the Conservator of Flora and Fauna, either of his own motion or on application by the holder. This clause also identifies the procedures to be followed by the Conservator should he or she decide to alter the licence.

Clause 24 clarifies the rights granted by a licence, stating that it does not grant any right to enter land.

Clause 25 sets out the procedure to be followed by a person who wishes to surrender a licence.

Clause 26 empowers the Conservator of Flora and Fauna to cancel a licence. The grounds upon which a licence may be cancelled are stated and the procedure to be followed by the Conservator is prescribed.

Clause 27 requires that a register be established and maintained relating to all commercial, scientific and import and export licences issued.

Clause 28 provides that a person can inspect the register of commercial, scientific and import and export licence holders upon the payment of a determined fee.

PART 4 – COMMERCIAL DEALING

Division 4.1 – Fish dealers

Clause 29 establishes the requirement for a dealer in fish to be registered. The limit on the number of fish that can be received within a given time frame will be prescribed by the regulations. This section prohibits receiving more than this limit unless the person is registered as a fish dealer. Retail seafood and fish outlets, fish dealers who buy from other fish dealers and persons who receive fish for purposes other than sale will not be required to register as fish dealers.

Clause 30 sets out the requirements for an application for a licence as a fish dealer.

Clause 31 requires the Conservator of Flora and Fauna to make a decision on an application for registration as a fish dealer, and sets out some considerations that must be taken into account.

Clause 32 specifies that registration as a fish dealer remains valid until the registration is either suspended or cancelled. This is intended to minimise paperwork, while retaining the ability to deal with people who ought not to be registered any longer.

Clause 33 allows the Conservator of Flora and Fauna to suspend a fish dealer's registration for failure to provide information as required by clause 41(2).

Clause 34 allows the Conservator of Flora and Fauna to cancel a fish dealer's registration if the dealer has been found guilty of an offence, or fails to provide information required under clause 41(2) within 14 days.

Clause 35 requires that a register is established and maintained relating to all fish dealer registrations issued.

Clause 36 provides that a person can inspect the register of fish dealers upon the payment of a determined fee

Division 4.2 – Commercial fishers

Clause 37 complements clause 29, making it an offence for a commercial fisher to sell a commercial quantity of fish to a person in one day unless that person is a registered fish dealer. The commercial quantity will be set by the regulations.

Part 5 – Records and Information

Division 5.1 – Keeping records and giving information

Clause 38 requires that commercial fishers and fish dealers are required to make records of all fish taken or sold and all fish received, processed or sold.

Clause 39 requires that a record made under clause 38 must be kept for a minimum of five years after it was made.

Clause 40 requires that a commercial fisher or a fish dealer must produce records required to be kept under clause 39 upon the request of a conservation officer.

Clause 41 empowers the Conservator of Flora and Fauna to require commercial fishers and fish dealers to provide information about the fish taken or sold, received or processed by him or her.

Clause 42 prohibits making false, misleading or incomplete records for the purpose of the division, or producing such records to a conservation officer.

Division 5.2 – Powers in relation to records

Clause 43 stipulates that a conservation officer may take possession of records produced by a person under clause 40. The clause further identifies the procedure to be followed by a conservation officer should he or she take possession of records.

Clause 44 empowers a conservation officer who has taken possession of records under clause 43 to copy or take extracts from records. In order to limit inconvenience to fishers and dealers, the records must be returned within a reasonable time unless they are needed for the prosecution of an offence.

Part 6 – Powers of Conservation Officers

This Part establishes powers and procedures in relation to enforcement of the Bill.

Clause 45 sets out the definition of occupier for Division 6.1, to remove doubt in the circumstances set out there.

Clause 46 sets out the circumstances under which a conservation officer may enter premises, namely if the occupier consents, it is a routine inspection (defined in clause 48) or if the conservation officer has a warrant.

Clause 47 sets out the manner in which a conservation officer must obtain consent to entry. The conservation officer must disclose the reason for entry, and, if consent is obtained, obtain a written acknowledgment from the occupier and provide him or her with a copy of the acknowledgment. Subsections 6 and 7 are intended to provide protection to citizens against this procedure not being followed.

Clause 48 provides for routine inspection of business premises, and allows a conservation officer to enter business premises of a fish dealer or commercial fisher when the premises are in use.

Clause 49 sets out the procedure for a conservation officer to obtain a warrant to enter premises. It is intended that a warrant can only be obtained if the conservation officer swears to facts establishing that there are reasonable grounds for suspecting that there is evidence of an offence against the Bill on the property. The content of the warrant is prescribed here, including the hours when entry is permitted, and the evidence that may be seized.

Clause 50 provides a procedure for a conservation officer to obtain a warrant without attending the office of the Magistrate if it is urgent or there are other special circumstances. There are safeguards to ensure that the warrant is

properly obtained, including requiring the warrant to be faxed to the officer, or if that is not possible, the officer is required to fill in a form with the relevant information, and at a later time provide it to the Magistrate, who must attach it to the original warrant.

Clauses 51, 52 and 53 set out the powers of conservation officers on entry of premises when the entry has been by consent (clause 51), by warrant (clause 53) and under the routine business inspection power.

Clause 54 requires a conservation officer to produce his or her identity card if requested by the occupier of premises that have been entered under clauses 47, 48 and 49.

Clause 55 empowers a conservation officer to travel on any body of water or on the banks of any waters, in addition to any other powers of entry.

Division 6.2 – Other Powers

Clause 56 provides a power to conservation officers to assist in identifying offenders and potential offenders by allowing them to require a person to give their name.

Clause 57 allows conservation officers to intervene where there is reason to believe that a person is fishing using gear that contravenes the Bill.

Clause 58 gives a broad power to seize items that are evidence of an offence under the Bill where it is necessary to seize the items in order to prevent their destruction or loss. Conditions for retention of items seized are covered in clause 60, which provides that receipts must be given for an item seized and that an item must be returned after 6 months or when it is no longer necessary to retain it as evidence.

Clause 59 provides for the seizure and destruction of noxious fish. Noxious fish are defined under the Bill.

Clause 61 provides a general right for a person to claim compensation from the Territory if they suffer loss as a result of the exercise of a power under the Bill, other than for the seizure of noxious fish. The power for a court to order compensation is limited to those circumstances where it is just to do so. Matters the court is to consider in making a ruling on compensation will be set out in the regulations. This is intended to ensure that a person who has suffered loss as a result of a conservation officer interrupting their commission of an offence will not be able to claim compensation, while giving protection to citizens against possible over-zealous behaviour of conservation officers.

Clause 62 makes it an offence to obstruct a conservation officer in the exercise of a power under the Bill.

Clauses 63 and 64 provide for offences of providing false and misleading information to the Conservator or a conservation officer. This is intended to apply in circumstances where a person provides false information in the course of an investigation, or in other circumstances, such as in an application for a licence.

Part 7 – Offences

Part 7 establishes a series of offences to give effect to the licensing scheme, the protection of fisheries declarations and restrictions on fishing gear.

Division 7.1 – Offences, licences and approvals

Clauses 65 through to 68 are intended to support compliance with the licence scheme by making it an offence to take fish for sale or processing for sale without a licence or otherwise than in accordance with a relevant licence. Possession of fish obtained illegally is also an offence.

Clause 69 supports the restrictions on noxious fish, by prohibiting possession of them without written approval from the Conservator.

Clause 70 supports the management of fisheries by the Conservator by making it an offence to release live fish without written approval from the Conservator. Release of fish back to where they were caught will not be illegal.

Division 7.2 – General offences

Clause 71 supports fishing closure declarations under clause 5, by making it an offence to contravene such a closure or to possess fish taken in contravention of a fishing closure.

Clause 72 provides the same support in relation to fish of prohibited size and weight.

Clause 73 establishes an offence to take more fish in a day than the maximum declared under clause 9.

Clause 74 is intended to provide protection to people who might unintentionally take fish in contravention of the Bill. It will not be an offence if the fish is immediately returned to the water and the Bill is otherwise being complied with.

Clause 75 is intended to prevent people from polluting public water with fish heads and entrails, while allowing recreational fishers to behead and fillet fish for immediate consumption.

Clause 76 prohibits use of live fin fish as bait or possession of such fish beside public waters. This is intended to allow prosecution of users of live bait even if they have not been caught directly in the act of using it.

Division 7.3 – Offences in relation to fishing gear

Clause 77 is intended to prevent a person setting lines and leaving them unattended.

Clause 78 is intended to support declarations in relation to permitted fishing gear under Clause 10, by prohibiting use of gear that is not permitted or possession of such gear while beside public waters.

Clause 79 is intended to control the use of commercial fishing gear. The Minister can determine the number of lines and nets, the size of nets and any other gear that will constitute commercial fishing gear by disallowable instrument. In the absence of a declaration, nothing will be defined as commercial fishing gear. The clause prohibits use and possession of commercial fishing gear by a person unless he or she holds a commercial fishing licence.

Division 7.4 – Protection of aquatic habitats

Clause 80 is intended to protect spawning areas by prohibiting disturbance or damage to spawn or spawning fish in public waters.

Part 8 – Infringement Notices For Certain Offences

Division 8.1 – Interpretation

The purpose of this part is to allow conservation officers to issue on the spot fines for breaches of the provisions of the Bill in a similar fashion to traffic infringement notices. The provisions of the part set up appropriate mechanisms and protections in relation to this process.

Clause 81 sets up the necessary definitions of date of service, infringement notice, infringement notice offence, infringement notice penalty and reminder notice.

Division 8.2 – Infringement and reminder notices

Clause 82 sets out the purpose of the division, and clarifies a number of matters, including that it is not compulsory for the infringement notice system to be used and that a person's liability for prosecution for an offence is not affected if they do not comply with the infringement notice.

Clause 83 empowers a conservation officer to serve an infringement notice when he or she believes an offence has been committed for which an infringement notice can be served.

Clauses 84 and 85 provide for the content of the infringement notice. This includes relevant details of the person on whom it is being served and the

conservation officer, the details of the offence, the procedure for disputing the notice and the procedure for paying.

Clause 86 sets out the time in which the penalty must be paid. Clause 87 provides a procedure for the Conservator to allow an extension of time to pay.

Clause 88 provides for a person's liability in respect of an offence to be discharged if he or she pays the penalty on an infringement notice. It is intended that this clause will only operate if the notice has not been withdrawn and if a charge has not been laid in the Magistrate's Court.

Clause 89 provides a mechanism for a person to apply for withdrawal of an infringement notice.

Clause 90 provides a procedure for withdrawal of an infringement notice whether or not it has been paid. If the notice is withdrawn the Conservator must tell the person in writing of the withdrawal and the effect of it. Subclause 4 sets out the effect of the withdrawal, which is intended to set matters back as though the notice had never been served. This means that the penalty must be repaid, but also that proceedings in Court can now be brought against the person for the offence.

Clause 91 provides for the Conservator to send a reminder notice to a person who has not paid the penalty on an infringement notice nor disputed liability under clause 96.

Clauses 92 and 93 set out the information that must be in a reminder notice, similarly to the provisions in Clauses 84 and 85. The intended effect of the reminder notice provisions is to allow a reminder notice to be sent that increases the fee payable to discharge liability for the offence.

Clause 94 sets out the procedure for disputing liability, including the form (in writing) and the time limit.

Clause 95 provides a mechanism for a person to seek an extension of time to dispute liability.

Clause 96 sets out the procedure if liability is disputed. It is intended that the Conservator must lay an information within 90 days after liability is disputed or decide to take no further action. It is also intended that a person may discharge their liability after disputing liability if they pay the notice plus and prescribed costs and disbursements for commencing the proceedings.

Division 8.4 – Miscellaneous

Clause 97 is intended to facilitate proof of matters relating to the following of the procedures under Part 8, such as service of infringement notices, action in relation to requests for extension of time and payment or non-payment of the relevant penalty. It allows for proof of these matters by certificate signed by the Conservator.

Part 9 – Review of Decisions

This part sets up the right to appeal to the AAT for review of specified decisions of the Conservator.

Clause 98 established the right, and specifies the decisions it applies to.

Clause 99 requires the Conservator to provide written reasons for reviewable decisions, in accordance with the Code of Practice in effect under the AAT Act, which includes the requirement to give the person information about their right to appeal.

Part 10 – Miscellaneous

Clause 100 empowers to Conservator to delegate his powers under the Bill to any conservation officer.

Clause 101 is intended to make corporations and owners of businesses liable in the criminal sense for the acts and omissions of their employees and agents. The state of mind of the agent or employee is imputed to the business owner. The acts or omissions of agents and employees are taken to have been done by the owner unless the owner can show that they could not have reasonably prevented the act or omission. As a safeguard, the owner who is convicted as a result of these provisions cannot be punished by imprisonment.

Clause 102 provides that executive officer of a corporation is criminally liable for offences committed by the corporation. Combined with Clause 101, this is intended to allow prosecution of executive officers of corporations for the acts and omissions of its employees, so that the executive officers cannot stand behind the corporate shield.

As a safeguard, an executive officer will escape liability if he or she exercised due diligence to prevent the relevant act or omission that constitutes the offence, or if the executive officer could not have reasonably been expected to know about the contravention, given their position in the organisation. The executive officer will also have available any defence open to the corporation.

Clause 103 requires a licensee to produce his or her licence to the office of the Conservator within 2 days, if asked to do so by a conservation officer.

Clause 104 empowers the Minister to determine the fees payable under the Bill.

Clause 105 empowers the Conservator to approve forms for use under the Bill.

Clause 106 empowers the Executive to make regulations for matters covered in the Bill, and specifies some particular areas relating to fishing and fish handling.

Clause 107 allows the regulations to specify the penalties payable for offences dealt with by way of infringement notice.

Clause 108 repeals the *Fisheries Act 1967*.

Part 11 – Transitional Provisions and Consequential Amendments

Clause 109 sets out the definition of commencement day for this Part.

Clause 110 provides for the continuation of scientific licences under the *Fisheries Act 1967* to continue under the new Bill.

Clause 111 amends the *Nature Conservation Act 1980* to remove provisions that would duplicate or conflict with the provisions under this bill.