

2014

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

MAGISTRATES COURT (FISHERIES INFRINGEMENT NOTICES)

AMENDMENT REGULATION 2014 (No 1)

SL 2014-28

EXPLANATORY STATEMENT

**Presented by
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Magistrates Court (Fisheries Infringement Notices) Amendment Regulation 2014 (No 1)

Outline

The objects of the *Fisheries Act 2000* are to conserve native fish species and their habitats, to manage sustainably the fisheries of the ACT, to provide high quality and viable recreational fishing and to cooperate with other Australian jurisdictions in sustaining fisheries and protecting native fish species. In summary, in conjunction with the *Fisheries Regulation 2001*, the Fisheries Act provides for the management of fisheries in the ACT. This management includes the enforcement of a number of offences outlined in the legislative scheme.

The *Magistrates Court (Fisheries Infringement Notices) Regulation 2004* (the regulation) is made under part 3.8 of the *Magistrates Court Act 1930* to create a system of infringement notices for certain offences against the Fisheries Act and the Fisheries Regulation. Schedule 1 of the regulation specifies the offence provisions of the fisheries legislation under which infringement notices may be issued, and outlines the relevant infringement penalties for those offences.

The purpose of the *Magistrates Court (Fisheries Infringement Notices) Amendment Regulation 2014* (Amendment Regulation) is to amend schedule 1 of the regulation to ensure that the numbering aligns with the relevant offences in the Fisheries Act and ensure that the offences in schedule 1 are suitable as infringement notice offences.

The offences in schedule 1 of the regulation are strict liability offences. When preparing the amendments in the Amendment Regulation the suitability of existing infringement notice offences were reviewed. The amendments reflect this review and the offences in schedule 1 are appropriate as infringement notice offences.

The Amendment Regulation will ensure that the objects of the Fisheries Act are met in an efficient and effective manner, and lead to a more sustainable future for ACT fisheries.

Magistrates Court (Fisheries Infringement Notices) Amendment Regulation 2014 (No 1)

Detail

Clause 1 – Name of regulation

This is a technical clause that explains that the regulation is the *Magistrates Court (Fisheries Infringement Notices) Amendment Regulation 2014 (No 1)*.

Clause 2 – Commencement

This clause provides that the regulation commences on the day after its notification day.

Clause 3 – Legislation amended

This clause explains that the regulation will amend the Magistrates Court (Fisheries Infringement Notices) Regulation.

Clause 4 – Section 12 (a)

This clause amends s 12 (a) by substituting ‘or’ for ‘and’. This amendment clarifies that a conservation officer may serve an infringement notice or a reminder for an infringement notice.

Clause 5 – Schedule 1

This clause substitutes two new tables of fisheries legislation infringement notice offences and penalties. This amendment aligns the numbering of provisions with the Fisheries Act and the Fisheries Regulation and inserts and removes a number of infringement notice offences and penalties. The numbering in column 1 of the table in part 1.1 of schedule 1 has been amended to reflect the insertions and deletions of infringement notice penalties which resulted from amendments to the Fisheries Act made by the *Criminal Code Harmonisation Act 2005*.

The amendments in this clause have no effect on the penalties for the infringement notice offences, and have not changed the offence penalties outlined in the Fisheries Act and the Fisheries Regulation.

Part 1.1 of schedule 1

Item 3 in the table of part 1.1 of schedule 1 has been amended so that the penalties in columns 3 and 4 correctly reflect the penalty amounts in s 46 (2) of the Fisheries Act. This amendment has no effect on the penalty for this infringement notice offence.

Section 46 (3) has been inserted into item 4 of the table to provide that if a fish dealer does not make a record of all fish the dealer receives, processes, or sells in accordance with any direction from the conservator, the fish dealer may receive an infringement notice.

Section 47 (3) has been inserted into item 7 of the table to provide that if a person makes a record as required under s 46 (3), and does not keep the record for at least 5 years, the person may receive an infringement notice.

Section 48 has been removed from the table and replaced with s 48(1). This is a minor administrative amendment to correctly reflect the numbering in the Fisheries Act. This section provides that if a person required under section 47 to keep a record is asked to produce the record by a conservation officer, the person must produce the record to the conservation officer.

Section 49(3) has been removed as a substantial penalty is attached to the offence and it is not suitable as an infringement notice offence.

Section 61(2) has been removed as it is not a strict liability offence and is not suitable as an infringement notice offence.

Section 74(1) has been removed as it is not a strict liability offence and is not suitable as an infringement notice offence.

Section 75 has been removed from the table and replaced with s 75(1). This is a minor administrative amendment to correctly reflect the numbering in the Fisheries Act. This section provides that the holder of a scientific licence commits an offence if the holder takes a fish for the scientific or other purposes stated in the licence and taking the fish is not authorised by the licence.

Section 76(1) has been removed as a substantial penalty is attached and it is not suitable as an infringement notice offence.

Section 77(1) has been removed as it is not a strict liability offence and it is not suitable as an infringement notice offence.

Section 78 has been removed as it is not a strict liability offence and it is not suitable as an infringement notice offence.

Section 79 has been removed from the table and replaced with s 79(1). This is a minor administrative amendment to correctly reflect the numbering in the Fisheries Act. This provision provides that a person commits an offence if the person releases a live fish into public waters and the person does not have the conservator's written approval to release the fish.

Section 80(3) has been inserted into item 15 of the table to provide that a person commits an offence if the person possesses a fish and the fish was taken in contravention of a fishing closure. This section replaces section 80(2).

Section 81(1) has been removed as it is not a strict liability offence and it is not suitable as an infringement notice offence.

Section 81(3) has been inserted into item 16 of the table to provide that a person commits an offence if the person possesses a fish that was taken from public waters and is of a size or weight that is prohibited under a declaration under section 15. This section replaces section 81(2).

Section 82 has been removed from the table and replaced with s 82(2). This is a minor administrative amendment to correctly reflect the numbering in the Fisheries Act. This provision provides that a person commits an offence if the person takes, in a day, more fish of the species than the quantity allowed under the declaration.

Section 83(1) has been inserted into item 18 to provide that a person must not behead or fillet a fish in or beside public waters.

Section 85(2) has been removed as it is not appropriate as an infringement notice offence. The offence relevant to this section is covered under section 85(1), which is listed as item 20 in the table.

Section 86 has been removed from the table and replaced with s 86(1). This is a minor administrative amendment to correctly reflect the numbering in the Fisheries Act. This provision provides that a person commits an offence if the person uses fishing gear in or beside public waters and the use of fishing gear is not permitted by a declaration under section 17.

Section 86 has been removed from the table and replaced with s 86(2). This is a minor administrative amendment to correctly reflect the numbering in the Fisheries Act. This provision provides that a person commits an offence if the person is in or beside any public waters in possession of fishing gear and the use of the fishing gear is not permitted by a declaration under section 17.

Part 1.2 of schedule 1

Section 5 has been removed from the table and replaced with s 5(2). This is a minor administrative amendment to correctly reflect the numbering in the Fisheries Act.