



New South Wales

# Fisheries Management Amendment (Aboriginal Fishing) Bill 2017

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Fisheries Management Act 1994* to enable payments to be made out of the Aboriginal Fishing Trust Fund established under that Act, to provide assistance to Aboriginal communities in relation to cultural fishing and commercial fishing activities. The assistance is proposed to be provided through grants and loans, and the acquisition of fishing assets for the use and benefit of Aboriginal communities. This Bill also makes ancillary and consequential amendments.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

**Schedule 1 [9]** inserts proposed section 237B into the *Fisheries Management Act 1994* (the *principal Act*) to enable the Minister for Primary Industries to approve an Aboriginal fishing assistance program (a *program*), being a program for the purpose of providing assistance to Aboriginal communities in relation to Aboriginal cultural fishing and commercial fishing or fishing-related activities. These programs may provide for the making of grants or loans to Aboriginal persons and entities, the acquisition of *fishing assets* (being shares in a share

management fishery, operational items or operating equipment necessary to the function of fishing operations, and any other thing the regulations may prescribe) by the Minister for the benefit of Aboriginal communities and access to, or the use of, those fishing assets by Aboriginal persons and entities. The Minister is to obtain and have regard to the advice or recommendations of any relevant advisory council on Aboriginal fishing before approving a program.

Assistance provided under a program may be subject to such terms and conditions as the Minister thinks fit. Loans may be subject to interest or interest free, and may be secured or unsecured. **Schedule 1 [9]** inserts proposed section 237C to enable the Rural Assistance Authority, constituted under the *Rural Assistance Act 1989*, to enter into loans under a program on behalf of the Minister, and to administer loans under a program, if so authorised by the Minister.

Fishing assets acquired under a program are to be held by the Fisheries Administration Ministerial Corporation (the *FAMC*), constituted under the principal Act. **Schedule 1 [2]** makes an ancillary amendment to confer on the FAMC the proposed functions of the Minister in relation to fishing assets. Access to, or the use of, fishing assets acquired under a program may be subject to the payment of a fee.

**Schedule 1 [9]** inserts proposed section 237D to provide for various exemptions relating to the FAMC as the holder of shares in a share management fishery under a program. The proposed section disapplies a provision in the principal Act for forfeiture of shares for certain offences, in relation to shares so held by the FAMC. The proposed section also exempts the FAMC from liability as a shareholder for certain contraventions of management plans by persons it may nominate under the principal Act to take fish on its behalf in the fishery in which it holds shares, from liability to pay to the Secretary of the Department of Industry (the *Secretary*) the value of any fish caught by a person so nominated in excess of its shareholder allocation and from liability as a shareholder to pay any community contribution or management charge.

**Schedule 1 [6]** expressly authorises payments to be made out of the Aboriginal Fishing Trust Fund (the *Fund*) for the costs of providing a program.

**Schedule 1 [3]** (in relation to proposed paragraphs (a1)–(a4)) makes a consequential amendment to require payment into the Fund of certain money received or recovered under a program (including in respect of loans and grants, and the proceeds of any sale of, or fees for access to or use of, a fishing asset).

**Schedule 1 [3]** (in relation to proposed paragraph (a5)), **[4] and [5]** clarify and broaden the scope of payments that may be made into the Fund by expressly including any money advanced by the Treasurer, any grant or donation of money, and any money appropriated by the Parliament of the Commonwealth, for the purposes of the Fund.

**Schedule 1 [1] and [8]** make consequential amendments to cross-reference definitions.

**Schedule 1 [7]** makes a consequential amendment to broaden the type of advisory council that the Minister is to consult (if relevant) in connection with expenditure from the Fund.

**Schedule 1 [10]** makes a consequential amendment to broaden the scope of an existing provision to enable the Secretary to recover money due or payable under the principal Act as a debt due to the Crown.



New South Wales

# Fisheries Management Amendment (Aboriginal Fishing) Bill 2017

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New South Wales

# Fisheries Management Amendment (Aboriginal Fishing) Bill 2017

No. , 2017

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## A Bill for

An Act to amend the *Fisheries Management Act 1994* in relation to the use of the Aboriginal Fishing Trust Fund; and for related purposes.

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**The Legislature of New South Wales enacts:**

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**1 Name of Act**

2

This Act is the *Fisheries Management Amendment (Aboriginal Fishing) Act 2017*.

3

**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Fisheries Management Act 1994</b>	1
	<b>No 38</b>	2
<b>[1] Section 4 Definitions</b>		3
	Insert in alphabetical order in section 4 (1):	4
	<i>Aboriginal fishing assistance program</i> —see section 237B.	5
<b>[2] Section 222B Fisheries Administration Ministerial Corporation</b>		6
	Insert after section 222B (1) (d):	7
	(e) section 237B (4) (b) and (c) and (9) (power of Minister to acquire and deal with fishing assets, and enter into contracts or other arrangements, in connection with Aboriginal fishing assistance programs).	8 9 10
<b>[3] Section 237A Aboriginal Fishing Trust Fund</b>		11
	Insert after section 237A (1) (a):	12
	(a1) any loan repayments, interest or other amounts payable or recovered in respect of loans under an Aboriginal fishing assistance program, and	13 14
	(a2) any repayment of the whole or any part of grants, or other amounts recovered in respect of grants, under an Aboriginal fishing assistance program, and	15 16 17
	(a3) any fees or other amounts payable or recovered for access to or the use of fishing assets under an Aboriginal fishing assistance program (including any amounts payable under any contract or other agreement for that access or use), and	18 19 20 21
	(a4) the proceeds of the sale of any fishing assets acquired under an Aboriginal fishing assistance program (less any reasonable costs incurred in selling the assets), and	22 23 24
	(a5) any money advanced by the Treasurer for the Fund, and	25
<b>[4] Section 237A (1) (b)</b>		26
	Insert “grant, donation,” after “any”.	27
<b>[5] Section 237A (1) (c)</b>		28
	Insert “or by the Parliament of the Commonwealth” after “Parliament”.	29
<b>[6] Section 237A (2A) and (2B)</b>		30
	Insert after section 237A (2):	31
	(2A) Without limiting subsection (2), there may be paid out of that Fund the costs of providing an Aboriginal fishing assistance program.	32 33
	(2B) The costs of providing an Aboriginal fishing assistance program include the following (if applicable):	34 35
	(a) amounts paid by way of grants or loans under the program,	36
	(b) the costs incurred in acquiring fishing assets under the program,	37
	(c) administrative costs incurred in the operation of the program.	38
<b>[7] Section 237A (3)</b>		39
	Omit “cultural”.	40

<b>[8] Section 237A (4)</b>	1
Insert after section 237A (3):	2
(4) In this section:	3
<i>fishing assets</i> has the meaning given by section 237B.	4
<b>[9] Sections 237B–237D</b>	5
Insert after section 237A:	6
<b>237B Aboriginal fishing assistance programs</b>	7
(1) The Minister may approve one or more programs (an <i>Aboriginal fishing assistance program</i> ) for the purpose of providing assistance to Aboriginal communities in relation to either or both of the following:	8
(a) Aboriginal cultural fishing,	9
(b) fishing or fishing-related activities for a commercial purpose ( <i>commercial fishing activities</i> ).	10
(2) An Aboriginal fishing assistance program may include provision for any or all of the following:	11
(a) the making of grants or loans to Aboriginal persons, Aboriginal entities or persons acting on behalf of Aboriginal entities, for the purpose of Aboriginal cultural fishing or commercial fishing activities,	12
(b) the acquisition of fishing assets by the Minister, for the purpose of benefiting Aboriginal communities,	13
(c) access to, or the use of, those fishing assets by Aboriginal persons or Aboriginal entities.	14
<b>Note.</b> Section 28 of the <i>Public Authorities (Financial Arrangements) Act 1987</i> provides that Part 3 of that Act (which regulates the investment of money by public authorities) does not affect any statutory power to make grants, loans or other forms of financial assistance that are not in the nature of investments.	15
(3) The Minister is to obtain and have regard to the advice or recommendations of any relevant advisory council on Aboriginal fishing before approving an Aboriginal fishing assistance program.	16
(4) The Minister may, for the purpose of giving effect to an Aboriginal fishing assistance program:	17
(a) grant or lend money to an Aboriginal person, Aboriginal entity or person acting on behalf of an Aboriginal entity, or	18
(b) acquire fishing assets, or	19
(c) enter into a contract or other arrangement with an Aboriginal person, Aboriginal entity or person acting on behalf of an Aboriginal entity.	20
(5) Assistance granted under an Aboriginal fishing assistance program may be subject to such terms and conditions as the Minister thinks fit.	21
(6) Loans granted under an Aboriginal fishing assistance program may be subject to interest or interest free, and may be secured or unsecured.	22
(7) Fishing assets acquired under an Aboriginal fishing assistance program are to be held by the Fisheries Administration Ministerial Corporation.	23
(8) Access to, or the use of, fishing assets under an Aboriginal fishing assistance program may be subject to the payment of a fee or otherwise.	24
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- (9) The Minister may sell any fishing asset held by the Fisheries Administration Ministerial Corporation under an Aboriginal fishing assistance program and exercise any other functions of the owner of a fishing asset. 1  
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- (10) The regulations may make further provision for Aboriginal fishing assistance programs, including by providing for application and assessment processes in relation to a program. 4  
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- (11) In this section: 7  
*Aboriginal entity* means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated) owned, managed or operated by Aboriginal persons. 8  
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*fishing assets* means the following: 11  
(a) shares in a share management fishery, 12  
(b) any operational items or operating equipment necessary to the function of fishing operations (for example, fishing vessels, fishing gear or hatchery infrastructure), 13  
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(c) any other thing prescribed by the regulations as being included in this definition. 16  
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- 237C Rural Assistance Authority may administer Aboriginal fishing assistance program** 18  
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- (1) The Minister may authorise the Rural Assistance Authority (the *Authority*): 20  
(a) to enter into a loan or other contract under an Aboriginal fishing assistance program on behalf of the Minister, and 21  
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(b) to administer any loan or other contract entered into under an Aboriginal fishing assistance program. 23  
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- (2) The Authority is subject to the control and direction of the Minister in the exercise of any functions conferred on it by or under this section. 25  
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- (3) Subject to subsection (2): 27  
(a) the Authority may exercise in relation to a loan or other contract entered into under an Aboriginal fishing assistance program any function that the Authority has under section 35 of the *Rural Assistance Act 1989* in relation to assistance granted by it (as if a loan granted under the Aboriginal fishing assistance program were assistance granted by the Authority under that Act), and 28  
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(b) section 44 of the *Rural Assistance Act 1989* applies to assistance granted under an Aboriginal fishing assistance program as if applications for loans under an Aboriginal fishing assistance program were made to the Authority, and 34  
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(c) section 46 of the *Rural Assistance Act 1989* applies to loans granted under an Aboriginal fishing assistance program as if they were assistance granted under a program under that Act and as if statements made to the Minister in connection with loans were statements made to the Authority. 38  
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- (4) The regulations may apply, with or without modification, any other provisions of the *Rural Assistance Act 1989* to or in respect of an Aboriginal fishing assistance program administered wholly or partly by the Authority. 43  
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- (5) All money received or recovered by or on account of the Authority under an Aboriginal fishing assistance program is to be paid into the Aboriginal Fishing Trust Fund, despite Part 5 of the *Rural Assistance Act 1989*. 46  
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(6)	The Authority may, with the approval of the Minister, deduct from any money received or recovered by the Authority under an Aboriginal fishing assistance program the costs incurred by the Authority in the exercise of its functions under this section (being costs that would otherwise be payable from the Aboriginal Fishing Trust Fund).	1 2 3 4 5
(7)	Money deducted under subsection (6) is to be paid into the Rural Assistance Authority Fund established under the <i>Rural Assistance Act 1989</i> .	6 7
(8)	Despite subsection (5), the Minister may transfer the amount of any loan under an Aboriginal fishing assistance program into the Rural Assistance Authority Fund to facilitate the administration of the loan by the Authority under this section. The amount so transferred is to be paid out of that Fund only for that purpose.	8 9 10 11 12
<b>237D</b>	<b>Special exemptions for Aboriginal fishing assistance programs</b>	13
(1)	Section 65 does not apply to the Fisheries Administration Ministerial Corporation as the holder of shares in a share management fishery under an Aboriginal fishing assistance program, in relation to a designated contravention (within the meaning of section 65 (2)) of a management plan by a person nominated by the Corporation to take fish in the fishery.	14 15 16 17 18
(2)	Section 75 does not apply to shares in a share management fishery held by the Fisheries Administration Ministerial Corporation under an Aboriginal fishing assistance program. Accordingly, shares so held cannot be forfeited under that section.	19 20 21 22
(3)	The Fisheries Administration Ministerial Corporation is not liable to pay any community contribution or management charge under Division 7 of Part 3 as the holder of shares in a share management fishery under an Aboriginal fishing assistance program.	23 24 25 26
(4)	Section 81 (1) does not apply to the Fisheries Administration Ministerial Corporation as the holder of shares in a share management fishery under an Aboriginal fishing assistance program, in relation to the taking of fish by a person nominated by the Corporation to take fish in the fishery.	27 28 29 30
<b>[10]</b>	<b>Section 288C Recovery of money</b>	31
	Omit “or contribution”. Insert instead “, contribution or other money due or”.	32