



New South Wales

# **Fisheries Management (General) Amendment (Review Procedure) Regulation 1997**

under the

**Fisheries Management Act 1994**

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

Bob Martin

Minister for Mineral Resources and Minister for Fisheries

## **Explanatory note**

At present, under the *Fisheries Management Act 1994*, a person cannot take fish for sale in a restricted fishery unless the person has an endorsement on his or her commercial fishing licence, given by the Minister, that authorises the person to do so. Eligibility for an endorsement is determined according to criteria set out in the regulations for the fishery concerned. For instance, a person might be required to establish that the person has a catch history in the fishery.

The object of this Regulation is to establish a review procedure for determinations relating to a person's eligibility for an endorsement in a restricted fishery or catch history in a fishery. The review procedure applies only to certain new restricted fisheries. A review request must be made by the end of 1997. The Minister is to establish a panel to conduct the review.

This Regulation is made under the *Fisheries Management Act 1994*, including section 113 (2) (relating to eligibility for endorsements in restricted fisheries), section 116 (relating to restricted fisheries) and section 289 (the general regulation making power).

## **1997 No 78**

Clause 1 Fisheries Management (General) Amendment (Review Procedure) Regulation 1997

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# **Fisheries Management (General) Amendment (Review Procedure) Regulation 1997**

## **1 Name of Regulation**

This Regulation is the *Fisheries Management (General) Amendment (Review Procedure) Regulation 1997*.

## **2 Amendment of Fisheries Management (General) Regulation 1995**

The *Fisheries Management (General) Regulation 1995* is amended as set out in Schedule 1.

## **3 Notes**

The explanatory note does not form part of this Regulation.

## Schedule 1 Amendment

(Clause 2)

### Part 8, Division 6

Insert after Division 5:

#### **Division 6    Review of eligibility and catch history determinations—transitional**

##### **214A Application for review**

- (1) A person may request a review of a determination relating to the person's eligibility for an endorsement in a restricted fishery or a determination as to the person's catch history in a particular fishery.
- (2) A review request may be made only in respect of an eligibility or catch history determination that relates to the following:
  - (a) a class C endorsement in the ocean hauling restricted fishery, or
  - (b) any endorsement in the following fisheries:
    - (i) the ocean prawn trawl restricted fishery,
    - (ii) the ocean fish trawl restricted fishery,
    - (iii) the ocean trap and line restricted fishery,
    - (iv) the estuary prawn trawl restricted fishery,
    - (v) the estuary general restricted fishery.
- (3) The review request must:
  - (a) be made by 31 December 1997 in a form approved by the Director, and
  - (b) be lodged with the Director, and
  - (c) be accompanied by a fee of \$100 (for each restricted fishery in relation to which a review is sought).

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#### Schedule 1 Amendment

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- (4) The fee (or part of the fee) accompanying a review request is to be refunded following the review if the Minister directs that it be refunded. The Minister may direct that the fee (or part) be refunded if the Minister is of the opinion that it is appropriate in the circumstances of the case, for instance, because the review confirms submissions made by the applicant.

#### **214B Conduct of review**

- (1) If a review request is duly made, the Minister is to establish a panel to conduct the review.
- (2) The panel is to consist of 3 members, as follows:
  - (a) the chairperson of the panel, being a person who is neither engaged in the administration of the Act nor in commercial fishing and who, in the opinion of the Minister, is appropriately qualified to conduct the review,
  - (b) the Director or a nominee of the Director,
  - (c) a person with extensive practical experience in the commercial fishing industry (but not a person who has a financial interest in the fishery to which the review request relates).
- (3) The panel is to review the determination the subject of the review request and provide the Minister with a written report on the matter within the time specified by the Minister or any extension of that time granted by the Minister.
- (4) A decision of the panel is a decision supported by the majority of its members.
- (5) The procedure of the panel is, subject to this clause, to be determined by the panel.

#### **214C Grounds for review**

- (1) A panel that conducts a review may consider any circumstances that are relevant to the determination that is the subject of the review request.

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- (2) A panel that conducts a review may decide that a person is eligible for an endorsement in a restricted fishery, or should be eligible for an endorsement in the fishery, if the person who applied for the review satisfies the panel:
- (a) that the records relied on to make a determination whether the person is eligible for an endorsement (for example, catch history records or records of net registration) are, for reasons that are not attributable to the fault of the person, inaccurate or incomplete and, on the basis of verified records produced to the panel by the person, the person does in fact satisfy the eligibility criteria for the endorsement, or
  - (b) that a determination as to the catch history associated with the person's fishing business is incorrect and, on the basis of verified records produced to the panel by the person, the person does in fact satisfy the eligibility criteria for the endorsement, or
  - (c) if eligibility is based on the person's activities in a fishery during a particular period, that:
    - (i) the person suffered illness or other incapacity for a significant period and the illness or incapacity substantially affected his or her ability to satisfy the eligibility criteria for the endorsement, or
    - (ii) the person lost his or her commercial fishing boat due to accident or misadventure and the loss substantially affected his or her ability to satisfy the eligibility criteria for the endorsement, or
    - (iii) the person was engaged in fishing during that period and for other significant reasons (that are not attributable to the fault of the person) the person was unable to satisfy the eligibility criteria.

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- (3) This clause does not limit the inclusion in a report by a panel of any other decision or recommendation relating to a person's entitlements in a restricted fishery.
- (4) In this clause, *verified record* means a document prescribed for the purposes of section 51 (4) of the Act (dealing with determination of catch history).

**Note.** Clause 128 sets out the documents that are prescribed for the purposes of section 51 (4) of the Act.

### 214D Action by Minister following review

- (1) On receipt of a report by a panel, the Minister may:
  - (a) in accordance with the decision of the panel, confirm the determination that was reviewed by the panel or set that determination aside and substitute a new determination, or
  - (b) refer the matter back to the panel (together with comments or recommendations) for further consideration.
- (2) The Minister may, following a review, determine that a person is eligible for an endorsement in a restricted fishery, even though the person does not satisfy the eligibility criteria for the endorsement, only if the panel decides that the person should be eligible for an endorsement. If the Minister makes such a determination, the person is taken, for the purposes of the provisions of this Part that deal with eligibility for an endorsement in the fishery concerned, to be eligible for the endorsement.
- (3) A person who applies for a review under this Division is to be notified of the outcome of the application as soon as practicable after it is known.

### 214E Transitional

This Division extends to a determination referred to in clause 214A that was made before the commencement of this Division.