

South Australia

**AQUACULTURE ACT 2001**

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An Act to regulate marine and inland aquaculture; and for other purposes.

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*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **24 November 2003**.*

*Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.*

**AQUACULTURE ACT 2001**

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Aquaculture Act 2001 No. 66 of 2001  
[Assented to 6 December 2001]<sup>1</sup>

as amended by

River Murray Act 2003 No. 35 of 2003 [Assented to 31 July 2003]<sup>2</sup>

<sup>1</sup> Came into operation (except ss. 49 & 50 and Part 10 Division 4) 1 July 2002: *Gaz.* 27 June 2002, p. 2681; ss. 49 & 50 and Part 10 Division 4 came into operation 11 November 2002: *Gaz.* 31 October 2002, p. 3978.

<sup>2</sup> Schedule (cl. 2) came into operation 24 November 2003: *Gaz.* 20 November 2003, p. 4203.

**NOTE:**

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix.*

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**Aquaculture Act 2001**

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**Short title**

1. This Act may be cited as the *Aquaculture Act 2001*.

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**Interpretation**

3. In this Act—

"**AAC**" means the Aquaculture Advisory Committee established under Part 10 Division 2;

"**aquaculture**" means farming of aquatic organisms for the purposes of trade or business or research, but does not include an activity declared by regulation not to be aquaculture;

"**aquaculture emergency zone**"—*see* Part 4 Division 1;

"**aquaculture exclusion zone**"—*see* Part 4 Division 1;

"**aquaculture lease**" means an aquaculture lease under Part 6;

"**aquaculture licence**" means an aquaculture licence under Part 7;

"**aquaculture policy**" means an aquaculture policy under Part 4;

"**aquaculture zone**"—*see* Part 4 Division 1;

"**aquatic organism**" means an aquatic organism of any species, and includes the reproductive products and body parts of an aquatic organism;

"**ATAB**" means the Aquaculture Tenure Allocation Board established under Part 10 Division 3;

"**authorised person**", in relation to a marked-off area of an aquaculture lease, means—

- (a) a lessee under the lease or a person acting on the authority of a lessee under the lease; or
- (b) if a person who is not a lessee under the lease is a holder of a corresponding licence in respect of an area that comprises or includes the marked-off area—that person or a person acting on the authority of that person;

"**condition**" includes a limitation and reservation;

"**corresponding licence**", in relation to an aquaculture lease or proposed aquaculture lease, means an aquaculture licence in respect of all or part of the area of the lease or proposed lease authorising the same class of aquaculture as that specified by the lease or proposed lease;

"**council**" means a council within the meaning of the *Local Government Act 1999*;

"**development lease**" means a development lease under Part 6 Division 3;

"**director**" of a corporation includes a person occupying or acting in the position of director of the corporation whether validly appointed to occupy or duly authorised to act in the position or not, and includes a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act;

"**ecologically sustainable**"—*see* section 4;

"**emergency lease**" means an emergency lease under Part 6 Division 5;

"**EPA**" means the Environment Protection Authority established under the *Environment Protection Act 1993*;

"**farming of aquatic organisms**" means an organised rearing process involving propagation or regular stocking or feeding of the organisms or protection of the organisms from predators or other similar intervention in the organisms' natural life cycles;

"**fisheries officer**" means a fisheries officer within the meaning of the *Fisheries Act 1982*;

"**mandatory provisions**"—*see* Part 4 Division 1;

"**marked-off area**" of an aquaculture lease means an area of the lease with boundaries that are marked off or indicated in the manner required under the conditions of the lease or a corresponding licence;

"**Murray-Darling Basin**" has the same meaning as in the *Murray-Darling Basin Act 1993*;

"**pilot lease**" means a pilot lease under Part 6 Division 2;

"**prescribed criteria**"—*see* Part 4 Division 1;

"**production lease**" means a production lease under Part 6 Division 4;

"**prospective aquaculture zone**"—*see* Part 4 Division 1;



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"**public authority**" includes a Minister, statutory authority or council;

"**River Murray Protection Area**" means a River Murray Protection Area under the *River Murray Act 2003*;

"**standard conditions**"—*see* Part 4 Division 1;

"**State waters**" means waters that are—

- (a) within the limits of the State and vested in the Crown; or
- (b) coastal waters of the State under the *Coastal Waters (State Powers) Act 1980* of the Commonwealth (as amended from time to time or an Act enacted in substitution for that Act);

"**waters**" includes land underlying waters.

**Ecologically sustainable development**

**4.** (1) Development is **ecologically sustainable** if it is managed to ensure that communities provide for their economic, social and physical well-being while—

- (a) natural and physical resources are maintained to meet the reasonably foreseeable needs of future generations; and
- (b) biological diversity and ecological processes and systems are protected; and
- (c) adverse effects on the environment are avoided, remedied or mitigated.

(2) In making decisions as to whether development is ecologically sustainable or to ensure that development is ecologically sustainable—

- (a) long-term and short-term economic, environmental, social and equity considerations should be effectively integrated; and
- (b) if there are threats of serious or irreversible environmental harm, lack of full scientific certainty should not be taken to justify the postponement of decisions or measures to prevent the environmental harm.

**Crown bound**

**5.** (1) This Act binds the Crown not only in right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

**Application of Act**

**6.** This Act applies within the State and State waters and to waters beyond and adjacent to State waters to the full extent of the extraterritorial power of the Parliament.

**Interaction with other Acts**

7. This Act is in addition to and does not limit or derogate from the provisions of any other Act.

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**Part 2—Objects of Act**

**Objects of Act**

8. (1) The objects of this Act are—

- (a) to promote ecologically sustainable development of marine and inland aquaculture; and
- (b) to maximise benefits to the community from the State's aquaculture resources; and
- (c) otherwise to ensure the efficient and effective regulation of the aquaculture industry.

(2) The Minister must, in the administration of this Act, have regard to, and seek to further, the objects.

## Part 3—Efficient administrative practices

### Efficient administrative practices

9. (1) The Minister and other relevant Ministers are to endeavour to ensure that practices are established to integrate and expedite administrative processes under this Act and other Acts so far as is practicable for the efficient and effective regulation of the aquaculture industry.

(2) Directions may be given by a relevant Minister for the purposes of subsection (1) that will be binding (according to their terms) on a body or persons engaged in the administration of an Act for which the relevant Minister has responsibility.

(3) However, this section is not to be taken to authorise a direction that would be inconsistent with a provision of this or another Act or that would govern the nature of a decision that may be made under an Act (as distinct from the processes leading up to the making of a decision).

(4) In this section—

"**relevant Minister**" means a Minister responsible for the administration of an Act that has application in relation to aquaculture.

## Part 4—Aquaculture policies

### Division 1—General

#### Interpretation

10. In this Division—

- (a) a reference to a **draft aquaculture policy** includes a reference to a draft amendment or revocation of an aquaculture policy; and
- (b) a reference to an **aquaculture policy** includes a reference to an amendment or revocation of an aquaculture policy.

#### Nature and content of policies

11. (1) The Minister may make aquaculture policies for any purpose directed towards securing the objects of this Act.

(2) An aquaculture policy may do one or more of the following according to the terms of the policy:

- (a) identify a zone within State waters (an **aquaculture zone**) in which specified classes of aquaculture will be permitted (subject to this Act and other applicable Acts);
- (b) identify a zone within State waters (a **prospective aquaculture zone**) that has effect for a specified period not exceeding 3 years during which investigations are to be completed to determine whether the zone should become an aquaculture zone in which specified classes of aquaculture will be permitted (subject to this Act and other applicable Acts);
- (c) identify a zone within State waters (an **aquaculture exclusion zone**) in which no aquaculture will be permitted;
- (d) identify a zone within State waters (an **aquaculture emergency zone**) for emergency relocation of aquaculture operations of a specified class;
- (e) prescribe matters to be taken into account in the determination of applications for licences or in the making of other decisions under this Act (**prescribed criteria**);
- (f) prescribe provisions that will be conditions of licences or leases (**standard conditions**);
- (g) prescribe provisions that will constitute offences under Division 2 (**mandatory provisions**);
- (h) make any other provision contemplated by this Act or necessary or expedient for the purpose of securing the objects of this Act.

(3) The provisions of aquaculture policies may vary in their operation according to the zones or other areas, or the classes of aquaculture, or other circumstances, to which they are expressed to apply.

(3a) Insofar as an aquaculture policy applies within the Murray-Darling Basin, the policy must seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act and, in particular, should contain prescribed criteria to this effect.

(4) An aquaculture policy may—

- (a) operate by making reference to a standard or other document published by a specified body, with or without specified modifications, and as in force at a specified time or from time to time; and
- (b) provide for a matter to be determined according to the discretion of the Minister.

#### **Procedures for making policies**

12. (1) The Minister may prepare draft aquaculture policies.

(2) The Minister must, in the preparation of a draft policy, obtain and consider the advice of the AAC.

(3) The Minister must prepare a report in relation to a draft policy containing—

- (a) an explanation of the purpose and effect of the draft policy; and
- (b) a summary of any background and issues relevant to the draft policy and of the analysis and reasoning applied in formulating the policy; and
- (c) an assessment of the consistency of the draft policy with—
  - (i) the Planning Strategy and any relevant Development Plan under the *Development Act 1993*; and
  - (ii) any relevant environment protection policy under the *Environment Protection Act 1993*; and
  - (iii) any other relevant plans or policies.

(4) The Minister must, after preparation of the draft policy and related report, refer the policy and report—

- (a) to any body prescribed for the purposes of this section; and
- (b) to any public authority whose area of responsibility is, in the opinion of the Minister, likely to be affected by the policy.

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(5) The Minister must also, after preparation of the draft policy and related report, cause an advertisement to be published in the *Gazette* and in a newspaper circulating generally in the State—

- (a) giving notice of places at which the draft policy and the report, or copies of the draft policy and the report, are to be available for inspection and, if copies are to be available for purchase, of places at which copies may be purchased; and
- (b) inviting interested persons to make written submissions in relation to the draft policy within a period specified in the advertisement (being not less than 2 months from the date of publication of the advertisement).

(6) The Minister must consult with and consider the advice of the AAC on all matters raised as a result of consultation under subsections (4) and (5) and on any alterations that the Minister proposes should be made to the draft policy.

(7) The Minister then may, after completion of consultation—

- (a) by notice in the *Gazette*, approve the draft policy; or
- (b) alter the draft policy and, by notice in the *Gazette*, approve the draft policy as altered; or
- (c) decline to approve the draft policy.

(7a) The Minister must not approve a draft policy that will apply within a River Murray Protection Area without the concurrence of the Minister to whom the administration of the *River Murray Act 2003* is committed.

(8) The Minister must, in a *Gazette* notice approving a draft policy, fix a day on which the policy will come into operation.

**Parliamentary scrutiny**

**13.** (1) If the Minister approves an aquaculture policy under this Division, the Minister must, within 28 days, refer the policy to the Environment, Resources and Development Committee of the Parliament.

(2) The Environment, Resources and Development Committee must, after receipt of an aquaculture policy under subsection (1)—

- (a) resolve that it does not object to the policy; or
- (b) resolve to suggest amendments to the policy; or
- (c) resolve to object to the policy.

(3) If, at the expiration of 28 days from the day on which the policy was referred to the Environment, Resources and Development Committee, the Committee has not made a resolution under subsection (2), it will be conclusively presumed that the Committee does not object to the policy and does not itself propose to suggest any amendments to the policy.

(4) If an amendment is suggested under subsection (2)(b)—

(a) the Minister may, by notice in the *Gazette*, proceed to make such an amendment to the policy; or

(b) the Minister may report back to the Committee that the Minister is unwilling to make the amendment suggested by the Committee (and, in such a case, the Committee may resolve that it does not object to the policy as originally made, or may resolve to object to the policy).

(5) If the Environment, Resources and Development Committee resolves to object to a policy, copies of the policy must be laid before both Houses of Parliament.

(6) If either House of Parliament passes a resolution disallowing a policy laid before it under subsection (5), the policy ceases to have effect.

(7) A resolution is not effective for the purposes of subsection (6) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the policy was laid before the House.

(8) If a resolution is passed under subsection (6), notice of the resolution must forthwith be published in the *Gazette*.

**Certain amendments may be made by *Gazette* notice only**

**14.** (1) The Minister may, by notice in the *Gazette*, amend an aquaculture policy—

(a) in order to correct an error in the policy; or

(b) in order to make a change of form (not involving a change of substance) in the policy; or

(c) if the policy itself or the regulations provide that a change of a specified kind may be made to the policy by amendment under this section—in order to make a change of that kind.

(2) An amendment under this section comes into operation on the day fixed in the notice of the amendment.



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**Availability and evidence of policies**

**15.** (1) Copies of each aquaculture policy and of each standard or other document referred to in an aquaculture policy must be kept available for inspection and purchase by the public during ordinary office hours at an office determined by the Minister.

(2) In any legal proceedings, evidence of the contents of an aquaculture policy or of a standard or other document referred to in an aquaculture policy may be given by production of a document certified by the Minister as a true copy of the policy, standard or other document.

(3) An apparently genuine document purporting to be a certificate of the Minister will be accepted as such a certificate in the absence of proof to the contrary.

**Division 2—Contravention of mandatory provisions**

**Offence to contravene mandatory provisions of policy**

**16.** A person who contravenes a mandatory provision of an aquaculture policy is guilty of an offence.

Maximum penalty:           \$35 000.

## **Part 5—Requirement for licence**

### **Requirement for licence**

17. A person must not carry on aquaculture except as authorised by an aquaculture licence granted by the Minister.

Maximum penalty:           \$35 000.

## **Part 6—Leases**

### **Division 1—General**

#### **Application of Part**

**18.** This Part applies to an area comprised of—

- (a) State waters; or
- (b) State waters and adjacent land within the meaning of the *Harbors and Navigation Act 1993*.

#### **Requirement for lease**

**19.** An aquaculture licence may not be granted in respect of an area to which this Part applies unless the area is the subject of an aquaculture lease granted by the Minister.

#### **Concurrence under Harbors and Navigation Act**

**20.** The power of the Minister to grant an aquaculture lease in respect of an area to which this Part applies is subject to the requirement under section 15 of the *Harbors and Navigation Act 1993* for the concurrence of the Minister responsible for the administration of that Act.

#### **Leases not permitted in respect of aquaculture exclusion zones**

**21.** An aquaculture lease may not be granted in respect of an area within an aquaculture exclusion zone.

#### **General process for grant of leases**

**22.** (1) All aquaculture leases are to be granted on application under this Part.

(2) An application for an aquaculture lease—

(a) must be made to the Minister in the manner and form required by the Minister; and

(b) must be accompanied by a fee of the amount determined by the Minister.

(3) An applicant for an aquaculture lease must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

(4) The grant of an aquaculture lease must be notified in the *Gazette*.

(5) If the Minister decides not to grant an application for an aquaculture lease, the Minister must, at the request of the applicant, give the applicant a written statement of the Minister's reasons for the decision.

**Certain lease applications to follow public call for applications**

**23.** If an aquaculture lease is to be granted through an allocation process approved by ATAB, applications for the lease may only be made following a public call for such applications and in accordance with the process so approved.

**Grant of leases to be preceded by decision as to licences**

**24.** The Minister may not grant an aquaculture lease, or make a public call for applications for an aquaculture lease, unless a decision has been made by the Minister under Part 7 that a corresponding licence will be granted containing specified conditions.

**Form of leases**

**25.** (1) An aquaculture lease must specify the class of aquaculture that may be carried on in the area of the lease.

(2) The conditions of an aquaculture lease may—

- (a) fix the term of the lease (subject to this Act) and provide for its renewal;
- (b) fix amounts payable, whether as rent or otherwise, for or under the lease;
- (c) provide for variation of the lease or its conditions by the Minister (but not so as to extend the area of the lease or the class of aquaculture that may be carried on in the area);
- (d) provide for cancellation of the lease by the Minister and the grounds for cancellation;
- (e) prevent or regulate the grant of subleases;
- (f) make any other provision the Minister considers appropriate.

**Classes of leases**

**26.** Aquaculture leases are divided into the following classes:

- (a) pilot leases;
- (b) development leases;
- (c) production leases;
- (d) emergency leases.

**Division 2—Pilot leases**

**Pilot leases outside aquaculture zones**

**27.** A pilot lease may only be granted in respect of an area comprising or including State waters outside of an aquaculture zone.

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**Allocation process for pilot leases within prospective aquaculture zones**

**28.** A pilot lease in respect of an area comprising or including State waters within a prospective aquaculture zone may only be granted to an applicant determined through an allocation process approved by ATAB involving the drawing of lots or some other similar process.

**Term of pilot leases**

**29.** (1) The term of a pilot lease is 12 months or a lesser period specified in the lease.

(2) A pilot lease is renewable for successive terms but not so the aggregate of the terms exceeds 3 years.

(3) This section has effect subject to provisions of a pilot lease for the renewal or cancellation of the lease.

**Pilot leases not transferable**

**30.** A pilot lease is not transferable.

**Licences may only be held by lessees**

**31.** Only the lessee under a pilot lease may hold the corresponding licence.

**Division 3—Development leases**

**Granting of development leases limited to aquaculture zones**

**32.** A development lease may only be granted in respect of an area comprising or including State waters within an aquaculture zone.

**Competitive allocation process required**

**33.** A development lease may only be granted through an allocation process approved by ATAB involving tendering or some other similar competitive process.

**Conversion of pilot leases to development leases**

**34.** (1) The holder of a pilot lease may apply to the Minister for conversion of the lease to a development lease.

(2) The Minister may convert a pilot lease on an application made under this section not more than 60 days before the end of a term of the pilot lease if—

- (a) the State waters comprising or included in the area of the pilot lease are within an aquaculture zone; and
- (b) the Minister is satisfied that aquaculture has been carried on in the area of the pilot lease during each term of the pilot lease that meets performance criteria specified by the conditions of the pilot lease.

(3) The Minister may convert a pilot lease on an application made not more than 60 days before the end of the last term for which the pilot lease may be renewed if—

- (a) the Minister is satisfied that—
  - (i) conversion of the pilot lease to a development lease would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and
  - (ii) aquaculture has been carried on in the area of the pilot lease during each term of the pilot lease that meets performance criteria specified by the conditions of the pilot lease; and
- (b) the matter has been referred to the EPA under Part 8 and the EPA has approved the conversion of the lease.

(4) An application for conversion of a pilot lease under this section—

- (a) must be made to the Minister in the manner and form required by the Minister; and
- (b) must be accompanied by a fee of an amount determined by the Minister.

(5) An applicant for conversion of a pilot lease must provide the Minister with any information required by the Minister for the purposes of determining the application, verified, if the Minister so requires, by statutory declaration.

(6) Conversion of a pilot lease to a development lease under this section will have effect from the end of the term of the pilot lease during which the application for conversion was made.

(7) On the conversion of a pilot lease under this section, the term of the corresponding licence is extended so that it is co-extensive with the term of the lease as converted.

(8) Conversion of a lease by the Minister under this section is not to be taken to constitute the granting of a lease for the purposes of this Act.

### **Term of development leases**

**35.** (1) The term of a development lease is 3 years or a lesser period specified in the lease.

(2) A development lease is renewable for successive terms but not so the aggregate of the terms exceeds 9 years.

(3) This section has effect subject to provisions of a development lease for the renewal or cancellation of the lease.

### **Transfer of development leases**

**36.** A development lease may be transferred by the lessee with the consent of the Minister.

## **Division 4—Production leases**

### **Conversion of development leases to production leases**

**37.** (1) The holder of a development lease may apply to the Minister for conversion of the lease to a production lease.

(2) The Minister may convert a development lease on an application made under this section not more than 60 days before the end of a term of the development lease if—

- (a) the State waters comprising or included in the development lease are within an aquaculture zone; and
- (b) the Minister is satisfied that aquaculture has been carried on in the area of the development lease during each term of the development lease that meets performance criteria specified by the conditions of the development lease.

(3) The Minister may convert a development lease on an application made not more than 60 days before the end of the last term for which the development lease may be renewed if—

- (a) the Minister is satisfied that—
  - (i) conversion of the development lease to a production lease would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and
  - (ii) aquaculture has been carried on in the area of the development lease during each term of the development lease that meets performance criteria specified by the conditions of the development lease; and
- (b) the matter has been referred to the EPA under Part 8 and the EPA has approved the conversion of the lease.

(4) An application for conversion of a development lease under this section—

- (a) must be made to the Minister in the manner and form required by the Minister; and
- (b) must be accompanied by a fee of an amount determined by the Minister.

(5) An applicant for conversion of a development lease must provide the Minister with any information required by the Minister for the purposes of determining the application, verified, if the Minister so requires, by statutory declaration.

(6) Conversion of a development lease to a production lease under this section will have effect from the end of the term of the development lease during which the application for conversion was made.

(7) On the conversion of a development lease under this section, the term of the corresponding licence is extended so that it is co-extensive with the term of the lease as converted.

(8) Conversion of a lease by the Minister under this section is not to be taken to constitute the granting of a lease for the purposes of this Act.

#### **Term of production leases**

**38.** (1) The term of a production lease is 20 years or a lesser period specified in the lease.

(2) A production lease is renewable for successive terms.

(3) This section has effect subject to provisions of a production lease for the renewal or cancellation of the lease.

#### **Transfer of production leases**

**39.** (1) A production lease may be transferred by the lessee if the Minister is given prior written notice of the transfer.

(2) The notice must include details of the transfer prescribed by regulation.

### **Division 5—Emergency leases**

#### **Granting of emergency leases limited to aquaculture emergency zones**

**40.** An emergency lease may only be granted in respect of an area comprising or including State waters within an aquaculture emergency zone.

#### **Granting of leases in circumstances of emergency**

**41.** The Minister may grant an emergency lease on the application of the holder of an aquaculture lease if—

- (a) an aquaculture emergency zone has been created for aquaculture operations of the class carried on in the area of the applicant's lease; and
- (b) the Minister is satisfied that circumstances of emergency exist such that the granting of the lease is warranted for the protection of the environment or the preservation of endangered aquaculture stock.

#### **EPA to be notified of emergency lease**

**42.** The Minister must ensure that the EPA is notified immediately of the grant of an emergency lease.

#### **Only holder of leases affected by emergency may hold emergency leases**

**43.** Only the holder of the lease affected by the emergency giving rise to the grant of an emergency lease may hold the emergency lease.



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**Term of emergency leases**

**44.** (1) The term of an emergency lease is 3 months or a lesser period specified in the lease.

(2) An emergency lease is renewable for successive terms but not so the aggregate of the terms exceeds 6 months.

(3) This section has effect subject to provisions of an emergency lease for the renewal or cancellation of the lease.

**Division 6—Occupation of marked-off areas**

**Exclusive occupation of marked-off areas**

**45.** Subject to the provisions of the lease, the lessee under an aquaculture lease has a right of exclusive occupation of the marked-off area of the lease.

**Control of marked-off areas**

**46.** (1) This section applies subject to any provisions of the aquaculture lease concerned, or a corresponding licence, that limit the powers of an authorised person in relation to a marked-off area.

(2) A person who has entered a marked-off area of an aquaculture lease must not fail, without reasonable excuse, to leave the area immediately if asked to leave by an authorised person.

Maximum penalty:           \$2 500 or imprisonment for 6 months.

(3) A person who has been asked to leave a marked-off area of an aquaculture lease by an authorised person must not re-enter the area unless the person has the express permission of an authorised person or a reasonable excuse for doing so.

Maximum penalty:           \$2 500 or imprisonment for 6 months.

(4) A person who, while present in the marked-off area of an aquaculture lease contrary to subsection (3), uses offensive language or behaves in an offensive manner is guilty of an offence.

Maximum penalty:           \$1 250.

(5) A person who is present in the marked-off area of an aquaculture lease must, if asked to do so by an authorised person, give his or her name and address to the authorised person.

Maximum penalty:           \$1 250.

(6) An authorised person who has asked another person to leave a marked-off area or to give a name and address, must, if the other person so requests, inform the other person of—

- (a) the authorised person's name and address; and
- (b) the capacity in which the person is an authorised person.

Maximum penalty: \$750.

(7) An authorised person must not address offensive language to, or behave offensively towards, a person in relation to whom the authorised person is exercising a power conferred by this section.

Maximum penalty: \$1 250.

**Interference with stock or equipment within marked-off areas**

**47.** (1) A person must not, without lawful excuse—

- (a) take or interfere with aquaculture stock within a marked-off area of an aquaculture lease; or
- (b) interfere with equipment that is being used for aquaculture within a marked-off area of an aquaculture lease, including equipment that is being used to mark off or indicate the boundaries of the marked-off area.

Maximum penalty: Imprisonment for 2 years.

(2) A person must not enter a marked-off area of an aquaculture lease intending to commit an offence against subsection (1) in the area.

Maximum penalty: Imprisonment for 1 year.

(3) A court convicting a person of an offence against subsection (1) may, whether or not a penalty is imposed, order the person to pay to any person affected by the commission of the offence such compensation as the court considers proper for loss or damage suffered by that person as a result of the commission of the offence.

**Offence to pretend to be authorised person**

**48.** A person must not falsely pretend, by words or conduct, to have the powers of an authorised person under this Division.

Maximum penalty: \$1 250.

## **Part 7—Licences**

### **Applications for licences**

**49.** (1) All aquaculture licences are to be granted on application under this Part.

(2) An application for an aquaculture licence—

(a) must be made to the Minister in the manner and form required by the Minister; and

(b) must be accompanied by a fee of the amount prescribed by regulation.

(3) An applicant for an aquaculture licence must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

### **Grant of licences**

**50.** (1) The Minister may decide that a corresponding licence will be granted containing specified conditions in connection with an application for an aquaculture lease, or a proposed public call for applications for an aquaculture lease, under Part 6 if—

(a) the Minister is satisfied that the grant of the licence would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and

(b) the Minister—

(i) has caused public notice of the application or proposal to be published in a newspaper circulating generally in the State and invited interested persons to make written submissions on the application or proposal within the period allowed in the notice; and

(ii) has taken any such submissions into account; and

(c) the matter has been referred to the EPA under Part 8 and the EPA has approved the granting of the licence.

(2) If the Minister decides that a corresponding licence will be granted containing specified conditions, the Minister may, subject to this Act, grant the licence on an application subsequently made for the licence under this Part if the Minister is satisfied that the applicant is a suitable person to be granted the licence.

(3) Subject to this Act, the Minister may grant an aquaculture licence containing specified conditions on an application made under this Part (other than an application for a corresponding licence) if—

(a) the Minister is satisfied that—

- (i) the grant of the licence would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and
  - (ii) the applicant is a suitable person to be granted the licence; and
- (b) the Minister—
- (i) has caused public notice of the application to be published in a newspaper circulating generally in the State and invited interested persons to make written submissions on the application within the period allowed in the notice; and
  - (ii) has taken any such submissions into account; and
- (c) the matter has been referred to the EPA under Part 8 and the EPA has approved the granting of the licence.

(4) In determining whether a person is a suitable person to be granted an aquaculture licence, the Minister may take into account any offence committed by the applicant, or, in the case of a corporation, by a director of the applicant, against this Act or any other law of this State or another State or Territory of the Commonwealth relating to aquaculture, fishing or environment protection.

(5) The Minister must, at the request of a person who has made a written submission to the Minister under subsection (1) or (3), give the person a written statement of the Minister's reasons for the decision made by the Minister in relation to the matter on which submissions were invited.

### **Licences may be held jointly**

**51.** (1) An aquaculture licence may be held jointly by 2 or more persons.

(2) If a licence is held jointly by 2 or more persons, those persons are jointly and severally liable to meet the requirements of this Act imposed on a licensee.

### **Variation of licence conditions**

**52.** The conditions of an aquaculture licence may be varied by the Minister at any time by written notice to the licensee—

- (a) in the case of a licence of a class in relation to which standard conditions are prescribed by an aquaculture policy—as provided by the aquaculture policy; or
- (b) in any other case—if—
  - (i) the variation—

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- (A) is considered necessary by the Minister in order to prevent or mitigate significant environmental harm or the risk of significant environmental harm; or
  - (B) has been requested or consented to by the licensee; and
- (ii) the matter has been referred to the EPA under Part 8 and the EPA has approved the variation.

**Term of licences**

**53.** (1) An aquaculture licence is granted for a term of 10 years or a lesser period specified in the licence, and is renewable for successive terms on application under this section.

(2) An application for renewal of an aquaculture licence—

- (a) must be made to the Minister in the manner and form determined by the Minister; and
- (b) must be accompanied by a fee of the amount prescribed by regulation.

(3) However, if a licence is a corresponding licence in relation to an aquaculture lease, the term of the licence is co-extensive with the term of the lease, and the licence is renewed for a further term on each renewal of the lease (without any requirement for an application).

(4) This section has effect subject to the power of the Minister to suspend or cancel an aquaculture licence.

**Corresponding licences terminated on termination of lease**

**54.** If an aquaculture lease is cancelled or otherwise terminated, each corresponding licence is terminated.

**Transfer of licences**

**55.** (1) An aquaculture licence may be transferred by the licensee with the consent of the Minister.

(2) The holder of an aquaculture lease may exercise the right to transfer a corresponding licence (with the consent of the Minister) if the licensee is no longer entitled under the lease to occupy the licence area.

**Surrender of licences**

**56.** A licensee may, with the consent of the Minister, surrender the aquaculture licence to the Minister.

**Suspension or cancellation of licences**

**57.** (1) Proper cause exists for the suspension or cancellation of an aquaculture licence if—

- (a) the licensee obtained the licence improperly; or
- (b) the licensee has failed to comply with a condition of the licence; or
- (c) the licensee, or, in the case of a corporation, a director of the licensee, has committed an offence against any other law of this State or another State or Territory of the Commonwealth relating to aquaculture, fishing or environment protection.

(2) If proper cause exists for the suspension or cancellation of an aquaculture licence, the Minister may, by written notice to the licensee—

- (a) suspend the licence for a specified period or until the Minister terminates the suspension; or
- (b) cancel the licence.

(3) Before the Minister suspends or cancels an aquaculture licence the Minister must give the licensee written notice—

- (a) specifying the matters alleged to constitute proper cause for suspension or cancellation of the licence; and
- (b) stating the action that the Minister proposes to take; and
- (c) allowing the licensee a reasonable opportunity to show cause why the proposed action should not be taken.

**Power to require or carry out work**

**58.** (1) If—

- (a) a licensee fails to take an action required by a condition of the licensee's aquaculture licence; or
- (b) on cancellation or termination of an aquaculture licence in respect of an area comprising or including State waters, the former licensee fails to remove aquaculture equipment or stock from the State waters,

the Minister may, by written notice to the licensee or former licensee, direct the person to take the action, or to remove the equipment or stock (or both).

(2) A person to whom a direction is given under subsection (1) must comply with the direction within the time allowed in the notice.

Maximum penalty:           \$35 000.

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(3) If a person fails to comply with a direction under subsection (1) within the time allowed in the notice, the Minister may cause the required action to be taken, and may recover the cost, as a debt, from the person.

(4) Equipment or stock removed by action taken by the Minister under subsection (3) is forfeited to the Crown and may be sold or otherwise disposed of as the Minister thinks fit.

## Part 8—Reference of matters to EPA

### Reference of matters to EPA

59. (1) The following matters are to be referred to the EPA:

- (a) whether a corresponding licence containing specified conditions should be granted in connection with an application for an aquaculture lease, or a proposed public call for applications for an aquaculture lease;
- (b) whether an aquaculture licence containing specified conditions should be granted on an application (other than an application for a corresponding licence);
- (c) whether a variation should be made to the conditions of an aquaculture licence (other than an aquaculture licence of a class in relation to which standard conditions are prescribed by an aquaculture policy);
- (d) whether a pilot lease should be converted to a development lease (other than a pilot lease with an area comprising or including State waters within an aquaculture zone);
- (e) whether a development lease should be converted to a production lease (other than a development lease with an area comprising or including State waters within an aquaculture zone).

(2) The EPA may, by notice to the Minister, request that the EPA be provided with specified information to enable it to determine its response to a matter referred to it under this section.

(3) The EPA must make its response to the Minister within the prescribed period (which will be extended by any period that the Minister takes to provide information requested by the EPA or any period that the Minister thinks fit to allow).

(4) The EPA must, in determining its response to a matter referred to it under this section, have regard to, and seek to further, the objects of the *Environment Protection Act 1993* and have regard to the general environmental duty and any relevant environment protection policies under that Act.

(5) The EPA is not subject to Ministerial direction in relation to the determination of its response to a matter referred to it under this section.

(6) The Minister may, before the EPA responds to a matter referred to it under this section, withdraw the reference or, at the request or with the consent of the EPA, vary the matter referred.

(7) If the EPA fails to make its response to the Minister within the period allowed under this section, it will be presumed that the EPA has responded that it approves the granting of the licence, the variation of the licence conditions or the conversion of the lease (as the case may be).



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(8) The Minister must ensure that the person directly affected by a matter referred to the EPA under this section is notified of the EPA's response.

(9) If the EPA's response is that it does not approve the granting of the licence, the variation of the licence conditions or the conversion of the lease (as the case may be), the EPA must, at the request of the Minister, give the Minister a written statement of the EPA's reasons for its decision.

## Part 9—Appeals

### Appeals

**60.** (1) The following appeals may be made to the Administrative and Disciplinary Division of the District Court:

- (a) an applicant for an aquaculture lease may appeal against a decision of the Minister under Part 7—
  - (i) that a corresponding licence will not be granted; or
  - (ii) fixing the conditions of a corresponding licence;
- (b) an applicant for a corresponding licence may appeal against a decision of the Minister under Part 7 that the licence will not be granted;
- (c) an applicant for an aquaculture licence (other than a corresponding licence) may appeal against a decision of the Minister under Part 7—
  - (i) that the licence will not be granted; or
  - (ii) fixing the conditions of the licence;
- (d) the holder of an aquaculture licence may appeal against a decision of the Minister under Part 7—
  - (i) varying the conditions of the licence; or
  - (ii) refusing to consent to the transfer or surrender of the licence; or
  - (iii) suspending or cancelling the licence.

(2) Subject to this section, an appeal must be instituted within one month of the making of the decision appealed against.

(3) The Minister must, on application by a person affected by a decision under Part 7, state in writing the reasons for the Minister's decision.

(4) If the reasons of the Minister are not given in writing at the time of making a decision and the person affected by the decision, within one month of the making of the decision, requires the Minister to state the Minister's reasons in writing, the time for instituting an appeal runs from the time when the person receives the written statement of those reasons.

(5) For the purposes of this Part, a response made by the EPA to the Minister within the time allowed under Part 8 that the EPA does not approve the granting of a licence will be taken to be a decision of the Minister that the licence will not be granted and the EPA's reasons for its decision will be taken to be the Minister's reasons.

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(6) The EPA will be a party to an appeal against a decision of the Minister relating to any matter referred to the EPA under Part 8.

## Part 10—Administration

### Division 1—Minister

#### Power of delegation

**61.** (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this or any other Act.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Minister to act in any matter; and
- (d) is revocable at will.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

#### Acquisition of land

**62.** Land (or any estate in land) may be acquired by the Minister for the purposes of this Act in accordance with the *Land Acquisition Act 1969*.

### Division 2—Aquaculture Advisory Committee

#### Establishment of Aquaculture Advisory Committee

**63.** The *Aquaculture Advisory Committee* ("AAC") is established.

#### Functions of AAC

**64.** The functions of the AAC are—

- (a) to advise the Minister on any matter relating to aquaculture that should, in the opinion of the AAC, be brought to the Minister's attention; and
- (b) to advise the Minister (on its own initiative or at the request of the Minister) on—
  - (i) the administration of this Act; and
  - (ii) the policies that govern, or should govern, the administration of this Act; and
  - (iii) proposals to make regulations under this Act, or to make amendments to this Act; and

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- (c) any other functions assigned to the AAC by this Act or the Minister.

**Membership of AAC**

**65.** (1) The AAC consists of 10 members appointed by the Governor of whom—

- (a) 1 must be a person nominated by the Minister, who will be the presiding member of the AAC; and
- (b) 1 must be a person engaged in the administration of this Act nominated by the Minister; and
- (c) 1 must be a person engaged in the administration of the *Environment Protection Act 1993* nominated by the Minister responsible for the administration of that Act; and
- (d) 4 must be persons nominated by the Minister who have, in the opinion of the Minister, appropriate practical knowledge of and experience in the aquaculture industry; and
- (e) 1 must be a person nominated by the Minister who has, in the opinion of the Minister, appropriate knowledge of and experience in research and development relevant to the aquaculture industry; and
- (f) 1 must be a person nominated by the Minister who has, in the opinion of the Minister, appropriate practical knowledge of and experience in environmental conservation and advocacy on environmental matters on behalf of community organisations; and
- (g) 1 must be a person chosen by the Minister from a panel of 3 persons nominated by the Local Government Association of South Australia.

(2) At least 1 member of the AAC must be a woman and at least 1 must be a man.

**Terms and conditions of membership**

**66.** (1) A member of the AAC will be appointed on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) The Governor may appoint a person to be the deputy of a member of the AAC and the deputy may act as a member of the AAC during any period of absence of the member.

(3) The Governor may remove a member of the AAC from office—

- (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for misconduct; or
- (c) for failure or incapacity to carry out official duties satisfactorily.

(4) The office of a member of the AAC becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is removed from office under subsection (3).

### **Remuneration**

**67.** A member of the AAC is entitled to remuneration, allowances and expenses determined by the Minister.

### **Disclosure of interest**

**68.** (1) A member of the AAC who has a direct or indirect pecuniary or personal interest in a matter under consideration by the AAC—

- (a) must, as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the AAC; and
- (b) must not take part in any deliberations or decision of the AAC on the matter.

(2) A member of the AAC will not be taken to have an interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with the public or persons engaged in or associated with the aquaculture industry generally.

(3) A disclosure under this section must be recorded in the minutes of the AAC.

### **Validity of acts of AAC**

**69.** An act or proceeding of the AAC is not invalid by reason only of a vacancy in its membership or a defect in the election or appointment of a member.

### **Procedures of AAC**

**70.** (1) A quorum of the AAC consists of 6 members.

(2) If the presiding member of the AAC is absent from a meeting of the AAC, a member chosen by the members present at the meeting will preside.

(3) A decision carried by a majority of the votes cast by the members present at a meeting of the AAC is a decision of the AAC.

(4) Each member present at a meeting of the AAC has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

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(5) A conference by telephone or other electronic means between the members of the AAC will, for the purposes of this section, be taken to be a meeting of the AAC at which the participating members are present if—

- (a) notice of the conference is given to all members in the manner determined by the AAC for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of the AAC becomes a valid decision of the AAC despite the fact that it is not voted on at a meeting of the AAC if—

- (a) notice of the proposed resolution is given to all members of the AAC in accordance with procedures determined by the AAC; and
- (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(7) The AAC must have accurate minutes kept of its meetings.

(8) Subject to this Act, the AAC may determine its own procedures.

**Division 3—Aquaculture Tenure Allocation Board**

**Establishment of Aquaculture Tenure Allocation Board**

**71.** The *Aquaculture Tenure Allocation Board* ("ATAB") is established.

**Functions of ATAB**

**72.** The functions of ATAB are—

- (a) to advise the Minister (on its own initiative or at the request of the Minister) on any matter relating to the allocation of tenure for aquaculture; and
- (b) any other functions assigned to ATAB by this Act or the Minister.

**Membership of ATAB**

**73.** (1) ATAB consists of 6 members appointed by the Governor of whom—

- (a) 1 must be a person nominated by the Minister, who will be the presiding member of ATAB; and
- (b) at least 1 must be a qualified legal practitioner; and
- (c) at least 1 must have knowledge of, and experience in, business and commerce; and

(d) at least 1 must have qualifications and experience in marine biology or environmental management.

(2) At least 1 member of ATAB must be a woman and at least 1 must be a man.

### **Terms and conditions of membership**

**74.** (1) A member of ATAB will be appointed on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) The Governor may appoint a person to be the deputy of a member of ATAB and the deputy may act as a member of ATAB during any period of absence of the member.

(3) The Governor may remove a member of ATAB from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily.

(4) The office of a member of ATAB becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is removed from office under subsection (3).

### **Remuneration**

**75.** A member of ATAB is entitled to remuneration, allowances and expenses determined by the Minister.

### **Disclosure of interest**

**76.** (1) A member of ATAB who has a direct or indirect pecuniary or personal interest in a matter under consideration by ATAB—

(a) must, as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to ATAB; and

(b) must not take part in any deliberations or decision of ATAB on the matter.

(2) A member of ATAB will not be taken to have an interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with the public or persons engaged in or associated with the aquaculture industry generally.



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(3) A disclosure under this section must be recorded in the minutes of ATAB.

**Validity of acts of ATAB**

77. An act or proceeding of ATAB is not invalid by reason only of a vacancy in its membership or a defect in the election or appointment of a member.

**Procedures of ATAB**

78. (1) A quorum of ATAB consists of 4 members.

(2) If the presiding member of ATAB is absent from a meeting of ATAB, a member chosen by the members present at the meeting will preside.

(3) A decision carried by a majority of the votes cast by the members present at a meeting of ATAB is a decision of ATAB.

(4) Each member present at a meeting of ATAB has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) A conference by telephone or other electronic means between the members of ATAB will, for the purposes of this section, be taken to be a meeting of ATAB at which the participating members are present if—

- (a) notice of the conference is given to all members in the manner determined by ATAB for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of ATAB becomes a valid decision of ATAB despite the fact that it is not voted on at a meeting of ATAB if—

- (a) notice of the proposed resolution is given to all members of ATAB in accordance with procedures determined by ATAB; and
- (b) a majority of the members express concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written communication setting out the terms of the resolution.

(7) ATAB must have accurate minutes kept of its meetings.

(8) Subject to this Act, ATAB may determine its own procedures.

**Division 4—Fund**

**Aquaculture Resource Management Fund**

79. (1) The *Aquaculture Resource Management Fund* is established.

(2) The Fund must be kept as directed by the Treasurer.

(3) The Fund is to consist of the following money:

- (a) the prescribed percentage of fees (other than expiation fees) paid under this Act;
- (b) expiation fees and the prescribed percentage of penalties recovered in respect of offences against this Act;
- (c) rent or any other amount (not being fees) paid to the Minister under this Act;
- (d) any money appropriated by Parliament for the purposes of the Fund;
- (e) any money paid into the Fund at the direction or with the approval of the Minister and the Treasurer;
- (f) any income from investment of money belonging to the Fund;
- (g) any money paid into the Fund under any other Act.

(4) The Fund may be applied by the Minister (without further appropriation than this subsection)—

- (a) for the purposes of any investigations or other projects relating to the management of aquaculture resources; or
- (b) towards the costs of administration of this Act.

(5) The Minister may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

## **Division 5—Public register**

### **Public register**

**80.** (1) The Minister must maintain a public register.

(2) The register must contain—

- (a) details of each application for an aquaculture lease, for the conversion of an aquaculture lease from one class to another or for an aquaculture licence; and
- (b) the terms and conditions of each aquaculture lease and aquaculture licence issued under this Act; and
- (c) the names of the lessees and licensees; and
- (d) an accurate description of the area of the lease or licence; and

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- (e) details of each environmental monitoring report furnished to the Minister in accordance with aquaculture licence conditions; and
- (f) any other information (other than commercially sensitive information) the Minister considers appropriate to the public register.

(3) The public register may be kept in the form of a computer record.

**Public register to be available for inspection**

**81.** (1) The public register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Minister.

(2) The Minister must ensure that copies of material on the public register can be purchased for a reasonable fee at the public office, or public offices, at which the register is kept available for inspection.

(3) The Minister must ensure that the public register can be inspected at a website determined by the Minister.

**Division 6—Fisheries officers and their powers**

**Fisheries officers and their powers**

**82.** (1) Fisheries officers may exercise their powers under the *Fisheries Act 1982* for the purposes of the administration and enforcement of this Act.

(2) This Act is to be read as if the provisions of Part 3 Division 3 of the *Fisheries Act 1982* were incorporated in this Act (subject to any modifications prescribed by regulation) together with any definitions contained in the *Fisheries Act 1982* of terms used in those provisions.

## Part 11—Miscellaneous

### Annual reports

**83.** (1) The administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act must, on or before 30 September in each year, present a report to the Minister on the operation and administration of this Act during the previous financial year.

(2) A report required under this section may be incorporated in the annual report of the relevant administrative unit.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

### Immunity of persons engaged in administration of Act

**84.** (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

### False or misleading information

**85.** A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty:           \$5 000.

### Service of documents

**86.** (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—

- (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person—
  - (i) at the person's last known address; or
  - (ii) at the person's address for service; or
- (c) be left for the person at the address for service with someone apparently over the age of 16 years; or
- (d) be transmitted by facsimile transmission or e-mail to a facsimile number or e-mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

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(2) The address for service of a lessee or licensee under this Act is the address for the person that appears in the public register maintained by the Minister under this Act.

**Continuing offence**

**87.** (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

**Liability of directors**

**88.** (1) If a corporation commits an offence against this Act, each director of the corporation is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as is fixed for the principal offence.

(2) A director of a corporation may be prosecuted and convicted of an offence under this section whether or not the corporation has been prosecuted or convicted of the offence committed by the corporation.

**General defence**

**89.** It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

**Evidentiary**

**90.** (1) In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Minister certifying—

- (a) that a person named in the certificate was at a specified time a delegate of the Minister unconditionally or subject to specified conditions; or
- (b) that a person named in the certificate was or was not at a specified time the holder of a specified aquaculture lease or licence; or
- (c) that a provision set out in the certificate was at a specified time a condition of a specified aquaculture lease or licence,

is, in the absence of proof to the contrary, proof of the matters certified.

- (2) In proceedings for an offence against this Act, an allegation in the complaint—
- (a) that a person named in the complaint was an authorised person on a specified day in relation to a specified marked-off area; or
  - (b) that a person named in the complaint was at a specified time a fisheries officer; or
  - (c) that an organism in relation to which an act or omission is alleged to have been done or made was an aquatic organism of a specified species or was an aquatic organism having a specified characteristic,

is, in the absence of proof to the contrary, proof of the matter alleged.

(3) In proceedings for an offence against this Act, evidence of a distance, height, depth or position as determined by the use of an electronic, sonic, optical, mechanical or other device by a fisheries officer or any other competent person will, in the absence of proof to the contrary, be accepted as proof of the distance, height, depth or position.

(4) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that a place or area described or indicated by him or her was or was not within a specified aquaculture lease or licence area or a specified marked-off area will, in the absence of proof to the contrary, be accepted as proof of the matter so stated.

### **Regulations**

**91.** (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), those regulations may make provision for or relating to—

- (a) the furnishing to the Minister by a lessee or licensee of information, records or periodic returns relating to aquaculture carried on in the area of the lease or licence; and
- (b) periodic fees payable by a licensee, and other fees in respect of any matter under this Act, and their payment, recovery or waiver; and
- (c) exemptions (conditional or unconditional) from specified provisions of this Act; and
- (d) fines, not exceeding \$5 000, for offences against the regulations; and
- (e) facilitation of proof of the commission of offences against the regulations.

(3) The regulations may—

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- (a) be of general application or vary in their application according to prescribed factors;
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.

**Review of Act**

**92.** The Minister must, within 5 years after the commencement of this Act or any provision of this Act—

- (a) cause a report to be prepared on the operation of this Act; and
- (b) cause a copy of the report to be laid before each House of Parliament.

## Schedule—Transitional provisions

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### Part 2—Transitional provisions

#### Transitional provisions

3. (1) This Act applies to aquaculture operations whether commenced to be carried on before or after the commencement of this clause.

(2) The Minister must, without any requirement for an application or payment of a fee, grant an aquaculture licence, or an aquaculture lease and licence, as the case may require, to any person entitled to carry on aquaculture operations immediately before the commencement of this clause, being a licence, or lease and licence, that the Minister determines to be appropriate under this Act having regard to the person's entitlement to carry on aquaculture operations immediately before that commencement.

(3) A person referred to in subclause (2) must, if the Minister so requires, surrender a licence or lease held by the person immediately before the commencement of this clause that was granted for aquaculture purposes.



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**APPENDIX**

**LEGISLATIVE HISTORY**

**Amendments**

The *Aquaculture Act 2001* amended the following:

*Environment Protection Act 1993*  
*Fisheries Act 1982*

**Legislative History**

Long title:	amended under <i>Legislation Revision and Publication Act 2002</i> 24.11.03
Section 2:	omitted under <i>Legislation Revision and Publication Act 2002</i> 24.11.03
Section 3:	definition of "Murray-Darling Basin" inserted by 35, 2003, Sched. cl. 2(a) definition of "River Murray Protection Area" inserted by 35, 2003, Sched. cl. 2(b)
Section 11(3a):	inserted by 35, 2003, Sched. cl. 2(c)
Section 12(7a):	inserted by 35, 2003, Sched. cl. 2(d)
Schedule	
Part 1:	omitted under <i>Legislation Revision and Publication Act 2002</i> 24.11.03