

South Australia

## **Fisheries Management Act 2007**

An Act to provide for the conservation and management of the aquatic resources of the State, the management of fisheries and aquatic reserves, the regulation of fishing and the processing of aquatic resources, the protection of aquatic habitats, aquatic mammals and aquatic resources and the control of exotic aquatic organisms and disease in aquatic resources; to repeal the *Fisheries Act 1982* and the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalisation) Act 1987*; to make related amendments to other Acts; and for other purposes.

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## Legislative history

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

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Fisheries Management Act 2007*.

#### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

#### **3—Interpretation**

- (1) In this Act, unless the contrary intention appears—

*Aboriginal person* means a person of Aboriginal descent who is accepted as a member by a group in the community who claim Aboriginal descent;

***aboriginal traditional fishing*** means fishing engaged in by an Aboriginal person for the purposes of satisfying personal, domestic or non-commercial, communal needs, including ceremonial, spiritual and educational needs, and using fish and other natural marine and freshwater products according to relevant aboriginal custom;

***aboriginal traditional fishing management plan***—see section 60;

***Adelaide Dolphin Sanctuary*** has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

***advisory committee*** means an advisory committee established under section 20;

***aquaculture*** has the same meaning as in the *Aquaculture Act 2001*;

***aquaculture fish*** means fish farmed under an aquaculture licence;

***aquaculture licence*** has the same meaning as in the *Aquaculture Act 2001*;

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

***aquatic mammal*** means a seal or sea lion (order Pinnipedia) or a dolphin or whale (order Cetacea);

***aquatic plant*** means an aquatic plant of any species, and includes the reproductive products and parts of an aquatic plant;

***aquatic reserve*** means any waters, or land and waters, declared by proclamation to constitute an aquatic reserve;

***aquatic resource*** means fish or aquatic plants;

***aquatic resources of the State*** means aquatic resources of the waters to which this Act applies but does not include aquatic resources being farmed under an aquaculture licence;

***arrangement*** means—

- (a) an arrangement made by the State with the Commonwealth under Part 4 Division 1 (whether or not it is also made with another State or other States);  
or
- (b) an agreement made by the State with 1 or more other States under Part 4 Division 3;

***Australian fishing zone*** means the Australian fishing zone as defined in the Commonwealth Act;

***authorised person*** means a fisheries officer, scientific observer or sea ranger;

***authority*** means a licence, permit, registration, authorisation or other authority under this Act;

***boat*** means a vessel or craft that is used, or is capable of being used, as a means of transportation on water;

***coastal waters*** has the same meaning as in the Commonwealth Act;

***commercial fishing*** means fishing for a commercial purpose;

***commercial purpose*** means the purpose of trade or business;

**commercial quantity** means a quantity declared by the regulations to be a commercial quantity for the purposes of this Act;

**Commonwealth Act** means the *Fisheries Management Act 1991* of the Commonwealth;

**Commonwealth Minister** means the Minister for the time being administering the Commonwealth Act and any other Minister performing and exercising functions and powers under section 60 of the Commonwealth Act;

**condition** includes a limitation;

**contravene** includes not comply with;

**corresponding law** means a law of the Commonwealth or another State or a Territory of the Commonwealth declared by the regulations to be a law corresponding to this Act;

**council** has the same meaning as in the *Local Government Act 1999*;

**developmental fishery** means a fishery declared by the regulations to be a developmental fishery for the purposes of this Act;

**device** means an implement, apparatus, device or substance for taking or facilitating the taking of an aquatic resource;

**director** of a body corporate includes a person occupying or acting in the position of a director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position, and includes any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to act;

**Director of Fisheries** or **Director** means the person for the time being holding or acting in the office of the Director of Fisheries under Part 3 Division 1;

**ecologically sustainable development**—see section 7(5);

**entitlement** under a fishery authority means—

- (a) a gear entitlement; or
- (b) a quota entitlement; or
- (c) an entitlement of a prescribed kind;

**ERD Court** means the Environment, Resources and Development Court;

**exemption** means an exemption granted under this Act;

**exotic aquatic organism** means fish or an aquatic plant of a species that is not endemic to the waters to which this Act applies; and **exotic fish** and **exotic aquatic plant** have corresponding meanings;

**fish** means an aquatic animal other than—

- (a) an aquatic bird, an aquatic mammal, a reptile or an amphibian; or
- (b) an aquatic animal of a kind declared by the regulations to be excluded from the ambit of this definition;

**Fisheries Council** or **Council** means the Fisheries Council of South Australia established by section 11;



***fisheries officer*** means—

- (a) the Director; or
- (b) a police officer; or
- (c) a person appointed as a fisheries officer under section 80;

***fishery***—

- (a) in Part 4—means a class of fishing activities identified in an arrangement under that Part as a fishery to which the arrangement applies;
- (b) in any other case—means a class of fishing activities declared by the regulations to constitute a fishery for the purposes of this Act (other than Part 4);

***fishery authority*** means a fishery licence or fishery permit;

***fishery licence*** means a licence in respect of a fishery under Part 6 Division 1;

***fishery permit*** means a permit in respect of a fishery under Part 6 Division 1;

***fishing activity*** or ***fishing*** means the act of taking an aquatic resource, or an act preparatory to, or involved in, the taking of an aquatic resource;

***fish of a priority species*** means—

- (a) abalone (*Haliotis* spp.) of all species; or
- (b) southern rock lobster (*Jasus edwardsii*); or
- (c) a species of fish declared by the regulations to be a priority species for the purposes of this Act;

***fish processor*** means a person who, for a commercial purpose, processes, stores, transports or deals with fish or other aquatic resources;

***foreign boat*** has the same meaning as in the Commonwealth Act;

***Fund*** means the Fisheries Research and Development Fund continued in existence under section 21;

***gear entitlement*** under a fishery authority means the maximum number of devices of a particular kind that the holder of the authority may lawfully use at any 1 time for the purpose of taking fish pursuant to the authority;

***indigenous land use agreement*** means an indigenous land use agreement registered under Part 2 Division 3 of the *Native Title Act 1993* of the Commonwealth;

***Joint Authority*** means a Joint Authority established under section 61 of the Commonwealth Act of which the Minister is a member;

***Joint Authority Fishery*** means a fishery in respect of which there is in force an arrangement under Part 4 Division 2 under which the fishery is to be under the management of a Joint Authority;

***management plan*** means a management plan under Part 5;

***Minister for the Adelaide Dolphin Sanctuary*** means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

**Minister for the River Murray** means the Minister to whom the administration of the *River Murray Act 2003* is committed;

**native title group** means a native title group under section 24CD of the *Native Title Act 1993* of the Commonwealth;

**noxious**, in relation to an aquatic resource, means a species of aquatic resource declared by the Minister by notice in the Gazette to be a noxious species for the purposes of this Act;

**plant** includes alga;

**prescribed apparatus** means apparatus of a kind prescribed by the regulations for the purpose of counting, grading, weighing or sizing fish;

**prescribed procedure** means a procedure prescribed by the regulations for determining the weight of a fish catch;

**processing**—

- (a) in relation to fish—means scaling, gilling, gutting, filleting, freezing, chilling, packing or any other activity involved in preparing fish for sale;
- (b) in relation to any other aquatic resource—means any activity involved in preparing the resource for sale;

**protected species** means a species of aquatic resource declared by the regulations to be a protected species for the purposes of this Act;

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

**purchase** means—

- (a) purchase or take in exchange; or
- (b) agree or offer to purchase or take in exchange; or
- (c) receive, or accept or take delivery, under an agreement to purchase or take in exchange; or
- (d) cause, suffer or permit an act referred to in a preceding paragraph;

**quota entitlement** under a fishery authority means the total quantity of aquatic resource of a particular class that may be taken under the authority during a quota period;

**quota period** means the period during which a total allowable catch or total allowable commercial catch may be taken;

**recreational fishing** means fishing other than commercial fishing or aboriginal traditional fishing;

**registered boat**—

- (a) means a boat registered under Part 6 Division 1 for use under a fishery authority; and
- (b) includes a boat used in the place of a boat referred to in paragraph (a) with the consent of the Minister and in accordance with the conditions (if any) of that consent;

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**registered fish processor** means a person who is registered as a fish processor under Part 6 Division 3;

**registered master**—

- (a) means a person registered under Part 6 Division 1 as master of a boat that may be used under a fishery authority; and
- (b) includes a person acting in the place of a person referred to in paragraph (a) with the consent of the Minister and in accordance with the conditions (if any) of that consent;

**registered owner**—

- (a) in relation to a registered boat—means, subject to paragraph (b), the holder of the fishery authority under which the registered boat may be used; or
- (b) in relation to a boat being used by the holder of a fishery authority under this Act in place of a boat registered under Part 6 Division 1—means the holder of that authority;

**register of authorities**—see section 116(1)(a);

**register of exemptions**—see section 116(1)(b);

**repealed Act** means the *Fisheries Act 1982*;

**River Murray** has the same meaning as in the *River Murray Act 2003*;

**scientific observer** means a person appointed as a scientific observer under section 80;

**sea ranger** means a person appointed as a sea ranger under section 80;

**sell** means—

- (a) sell or give in exchange; or
- (b) agree or offer to sell or give in exchange; or
- (c) have in possession or control, expose, store, consign or deliver for sale or exchange; or
- (d) cause, suffer or permit an act referred to in a preceding paragraph;

**species** includes a subspecies or variety;

**State** includes a Territory;

**take**, in relation to an aquatic resource, means catch, take or obtain the resource (whether dead or alive) from any waters or kill or destroy the resource in any waters;

**total allowable catch**, in relation to a fishery, means the total quantity of aquatic resources of a particular class that may be taken from the waters of the fishery during a particular period;

**total allowable commercial catch**, in relation to a fishery, means the total quantity of aquatic resources of a particular class that may be taken from the waters of the fishery during a particular period for a commercial purpose;

**waters** means—

- (a) any sea or inland waters (including any body of water or watercourse of any kind whether occurring naturally or artificially created); and

- (b) the bed of such waters.
- (2) A class of fishing activities may be defined in an instrument under this Act by reference to all or any of the following factors:
  - (a) a species of aquatic resource;
  - (b) a description of aquatic resource by reference to sex, size, weight or any other characteristic;
  - (c) a number or quantity of aquatic resource;
  - (d) a period of time;
  - (e) an area of waters or a place;
  - (f) a method of fishing;
  - (g) a class or number of boats;
  - (h) a class of persons;
  - (i) a purpose of activities;
  - (j) any other factor.
- (3) In this Act—
  - (a) a reference to *engaging in a fishing activity of a class* is to be construed as a reference to doing an act that falls within the defined class and as including a reference to—
    - (i) using a device for the purpose of the activity; or
    - (ii) using a boat for the purpose of the activity; or
    - (iii) being in charge of, or acting as a member of the crew of, a boat that is being used for the purpose of the activity; or
    - (iv) diving in waters for the purpose of the activity; or
    - (v) causing, assisting, suffering or permitting a person to do an act referred to in this section;
  - (b) a reference to *waters* includes a reference to the intertidal and supra tidal zones of waters;
  - (c) a reference to the *waters of a fishery* is a reference to the waters in relation to which the fishery is constituted.
- (4) For the purposes of this Act, an aquatic resource will not be regarded as having been taken if it is taken but immediately returned to the water unencumbered in any way and with as little injury or damage as possible.

#### **4—Declaration of aquatic reserves**

- (1) The Governor may, by proclamation—
  - (a) declare that waters, or land and waters, specified in the proclamation, constitute an aquatic reserve; and
  - (b) assign a name to the aquatic reserve so constituted.

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- (2) Land cannot form part of an aquatic reserve unless the land has been placed under the care, control and management of the Minister.
  - (3) The Governor may, by subsequent proclamation—
    - (a) abolish an aquatic reserve; or
    - (b) alter the boundaries of an aquatic reserve; or
    - (c) alter the name of an aquatic reserve.

## 5—Application of Act

- (1) Subject to any limitations expressly prescribed in this Act, this Act applies—
  - (a) in relation to all waters that are within the limits of the State; and
  - (b) except for purposes relating to a fishery that is to be managed in accordance with the law of the Commonwealth under an arrangement under Part 4 Division 2 or purposes prescribed by paragraph (d)—in relation to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone; and
  - (c) for purposes relating to a fishery that is to be managed in accordance with the law of the State under an arrangement under Part 4 Division 2—in relation to any waters to which the legislative powers of the State extend, with respect to that fishery, whether under section 5 of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth or otherwise; and
  - (d) for purposes relating to recreational fishing activities engaged in otherwise than by use of a foreign boat (other than recreational fishing activities prohibited or regulated under a plan of management determined under section 17 of the Commonwealth Act)—in relation to any waters to which the legislative powers of the State extend with respect to such activities.
- (2) This Act does not apply in relation to an activity (other than the taking of aquatic resources for a commercial purpose or the introduction of exotic aquatic organisms or disease in aquatic resources) engaged in relation to inland waters if those waters are surrounded by land that is in the ownership, possession or control of the same person (being a person other than the Crown or an instrumentality of the Crown).
- (3) Native title and native title rights and interests are not affected by the operation of this Act except to the extent authorised under the *Native Title Act 1993* of the Commonwealth.

## 6—Ownership of aquatic resources of State

- (1) *The Crown in right of the State owns all aquatic resources (whether living or dead) of the State.*
- (2) *Property in aquatic resources of the State passes—*
  - (a) *to the holder of a licence, permit or other authority granted under this Act when taken in accordance with that licence, permit or other authority; or*
  - (b) *to any other person when taken lawfully in circumstances in which no licence, permit or other authority is required under this Act for the taking.*

## Part 2—Objects of Act

### 7—Objects of Act

- (1) An object of this Act is to protect, manage, use and develop the aquatic resources of the State in a manner that is consistent with ecologically sustainable development and, to that end, the following principles apply:
  - (a) proper conservation and management measures are to be implemented to protect the aquatic resources of the State from over-exploitation and ensure that those resources are not endangered;
  - (b) access to the aquatic resources of the State is to be allocated between users of the resources in a manner that achieves optimum utilisation and equitable distribution of those resources to the benefit of the community;
  - (c) aquatic habitats are to be protected and conserved, and aquatic ecosystems and genetic diversity are to be maintained and enhanced;
  - (d) recreational fishing and commercial fishing activities are to be fostered for the benefit of the whole community;
  - (e) the participation of users of the aquatic resources of the State, and of the community more generally, in the management of fisheries is to be encouraged.
- (2) The principle set out in subsection (1)(a) has priority over the other principles.
- (3) A further object of this Act is that the aquatic resources of the State are to be managed in an efficient and cost effective manner and targets set for the recovery of management costs.
- (4) The Minister, the Director, the Council, the ERD Court and other persons or bodies involved in the administration of this Act, and any other person or body required to consider the operation or application of this Act (whether acting under this Act or another Act), must—
  - (a) act consistently with, and seek to further the objects of, this Act; and
  - (b) insofar as this Act applies to the Adelaide Dolphin Sanctuary, seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
  - (c) insofar as this Act applies to the River Murray, seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (5) For the purposes of subsection (1), ***ecologically sustainable development*** comprises the use, conservation, development and enhancement of the aquatic resources of the State in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being while—
  - (a) sustaining the potential of aquatic resources of the State to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguarding the life-supporting capacity of the aquatic resources of the State; and

- (c) avoiding, remedying or mitigating adverse effects of activities on the aquatic resources of the State,

(taking into account the principle that if there are threats of serious or irreversible damage to the aquatic resources of the State, lack of full scientific certainty should not be used as a reason for postponing measures to prevent such damage).

## **Part 3—Administration**

### **Division 1—Minister and Director**

#### **8—Minister**

- (1) The Minister has the functions and powers assigned or conferred by or under this Act.
- (2) If a document appears to bear the common seal of the Minister, it will be presumed, in the absence of proof to the contrary, that the common seal of the Minister was duly affixed to the document.

#### **9—Director**

- (1) The office of the Director of Fisheries continues in existence.
- (2) The Director is a Public Service employee.

#### **10—Delegation**

- (1) The Minister may delegate a function or power of the Minister under this Act (other than this power of delegation) to—
  - (a) the Director; or
  - (b) the Council; or
  - (c) any other person or body (including a person for the time being holding or acting in a specified office or position).
- (2) The Director may delegate a function or power of the Director under this Act (other than this power of delegation) to a Public Service employee (including a person for the time being holding or acting in a specified office or position).
- (3) 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 delegator to act in a matter; and
  - (d) is revocable at will.
- (4) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (5) In legal proceedings, an apparently genuine certificate, purportedly signed by the Minister or the Director containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## Division 2—Fisheries Council of South Australia

### 11—Establishment of Council

- (1) The Fisheries Council of South Australia is established.
- (2) Subject to subsection (3), the Council consists of—
  - (a) the Director (*ex officio*); and
  - (b) at least 9 other members appointed by the Governor on the nomination of the Minister, being persons chosen from a list of persons submitted by a selection committee (the *Ministerial Selection Committee*).
- (3) A member of the Ministerial Selection Committee cannot be chosen or nominated as a member of the Council.
- (4) Each member of the Council must have expertise in fisheries management and at least 1 must be a person with knowledge and experience of aboriginal traditional fishing.
- (5) The membership of the Council must include persons who together have, in the Minister's opinion, expertise in the following areas:
  - (a) commercial fishing and the processing of aquatic resources;
  - (b) recreational fishing;
  - (c) research and development relevant to the use of aquatic resources;
  - (d) conservation of aquatic resources;
  - (e) socio-economics;
  - (f) business;
  - (g) law.
- (6) Before nominating a person or persons for appointment to the Council, the Minister must, by notice published in a newspaper circulating generally throughout the State, invite expressions of interest for appointment to the Council within a period specified in the notice and must submit any expressions of interest received in response to the notice to the Ministerial Selection Committee for its consideration.
- (7) The Ministerial Selection Committee consists of 7 members appointed by the Minister of whom—
  - (a) 1 must be a person selected from a panel of 3 persons nominated by a body that, in the Minister's opinion, represents the interests of the seafood industry; and
  - (b) 1 must be a person selected from a panel of 3 persons nominated by a body that, in the Minister's opinion, represents the interests of the commercial fishing sector; and
  - (c) 1 must be a person selected from a panel of 3 persons nominated by a body that, in the Minister's opinion, represents the interests of the recreational fishing sector; and



- (d) 1 must be a person selected from a panel of 3 persons nominated by a body that, in the Minister's opinion, represents the community interest in the conservation of aquatic resources, aquatic habitats and aquatic ecosystems.
- (8) The Ministerial Selection Committee must submit to the Minister a list of persons considered by the Committee to be suitable candidates for appointment as members of the Council.
- (9) The Ministerial Selection Committee must, in preparing the list—
  - (a) consider any expressions of interest for appointment to the Council submitted by the Minister under subsection (6); and
  - (b) have regard to the qualification requirements of subsections (4) and (5).
- (10) Members of the Ministerial Selection Committee will hold office on terms and conditions determined by the Minister.

## 12—Presiding member and deputy presiding member

- (1) The Minister must appoint 1 of the members of the Council (the *presiding member*) to preside at meetings of the Council.
- (2) The Minister may appoint another member of the Council to be the deputy of the presiding member (the *deputy presiding member*) to preside at meetings of the Council in the absence of the presiding member.

## 13—Terms and conditions of membership

- (1) A member of the Council will be appointed on conditions determined by the Governor and 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) However, an appointed member of the Council may not hold office for consecutive terms that exceed 6 years in total.
- (3) The Governor may remove an appointed member of the Council 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 an appointed member of the Council 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) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or
  - (e) is absent without leave of the presiding member of the Council from 3 consecutive meetings of the Council; or
  - (f) is removed from office under subsection (3).

## **14—Vacancies or defects in appointment of members**

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

## **15—Remuneration**

An appointed member of the Council is entitled to remuneration, allowances and expenses determined by the Minister.

## **16—Functions of Council**

The Fisheries Council has the following functions:

- (a) to prepare management plans as required under this Act;
- (b) to conduct reviews of management plans;
- (c) to promote the co-management of fisheries;
- (d) to promote research, education and training in relation to fisheries and the management of fisheries;
- (e) to advise the Minister on the management of aboriginal traditional fishing, commercial fishing and recreational fishing;
- (f) to advise the Minister about fees to be paid in connection with fishery authorities;
- (g) to advise the Minister on the application of money in the Fund;
- (h) to advise the Minister on State-wide policies in relation to fisheries management and research;
- (i) to advise the Minister on matters relating to intergovernmental agreements and arrangements related to fisheries or fishing;
- (j) to advise the Minister on issues related to the allocation of access to aquatic resources in particular fisheries;
- (k) to prepare or promote codes of practice on best practice concerning matters of relevance to holders of fishery authorities;
- (l) to carry out such other functions as may be assigned or delegated to the Council by the Minister.

## **17—Council's procedures**

- (1) A majority of members of the Council constitutes a quorum of the Council.
- (2) If the presiding member and the deputy presiding member of the Council are both absent from a meeting of the Council, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by members of the Council at a meeting is a decision of the Council.
- (4) When a matter arises for decision at a meeting of the Council—
  - (a) each member present at the meeting (other than the member presiding at the meeting) has a deliberative vote; and

- (b) if the deliberative 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 the Council will, for the purposes of this section, be taken to be a meeting of the Council at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Council 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 Council becomes a valid decision of the Council despite the fact that it is not voted on at a meeting of the Council if—
  - (a) notice of the proposed resolution is given to all members of the Council in accordance with procedures determined by the Council; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, fax, e-mail or other written communication setting out the terms of the resolution.
- (7) The Council must have accurate minutes kept of its meetings.
- (8) Subject to this Act and any direction of the Minister, the Council may determine its own procedures.

### **18—Annual strategic plan**

- (1) The Council must, on or before 31 March in each year, prepare and submit to the Minister a plan of the Council's proposed operations for the next financial year.
- (2) The Minister may—
  - (a) accept the plan; or
  - (b) request that the plan be altered and adopt the plan as altered.

### **19—Annual report**

- (1) The Council must, on or before 30 September in each year, prepare and submit to the Minister a report on the operations of the Council during the previous financial year.
- (2) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

## **Division 3—Advisory committees**

### **20—Establishment of committees**

- (1) The Minister, or the Council with the approval of the Minister, may establish committees to provide advice to the Minister or the Council on any matter related to the administration of this Act.
- (2) The members of a committee established by the Minister will be appointed by the Minister and hold office for a term and on conditions determined by the Minister.

- (3) The members of a committee established by the Council will be appointed by the Council with the approval of the Minister and hold office for a term and on conditions determined by the Council with the approval of the Minister.
- (4) The membership of a committee must include persons who, in the opinion of the Minister, have expertise in fields relevant to those matters on which the committee is established to provide advice about and, in particular—
  - (a) a committee established to provide advice on the management of a fishery must include at least 1 person with expertise in fisheries management and at least 1 person with expertise in fisheries research;
  - (b) a committee established to provide advice on the allocation of the aquatic resources of a fishery must include persons who have expertise in issues related to that matter and who are cognisant of the interests of the various stakeholders in the fishery.
- (5) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as prescribed by the regulations; or
  - (b) insofar as the procedure is not prescribed by the regulations—as determined by the Minister.
- (6) A committee must submit to the Council for inclusion in each annual report of the Council a report prepared by the committee on its operations during the financial year to which the report relates.

## ***Division 4—Fisheries Research and Development Fund***

### ***21—Continuation of Fund***

- (1) *The Fisheries Research and Development Fund continues in existence.*
- (2) *The Fund will continue to be kept in a separate account at the Treasury.*
- (3) *The Fund consists of—*
  - (a) *money in the Fund immediately before the commencement of this Act; and*
  - (b) *money provided by Parliament for the purposes of the Fund; and*
  - (c) *grants, gifts and bequests made to the Minister for payment into the Fund; and*
  - (d) *fees, levies and charges paid under this Act; and*
  - (e) *income arising from investment of the Fund; and*
  - (f) *all other money that is required or authorised by or under this Act or another law to be paid into the Fund.*
- (4) *Money in the Fund that is not for the time being required for the purposes of this Act may be invested by the Minister with the approval of the Treasurer.*
- (5) *The Minister may apply a part of the Fund—*
  - (a) *in making a refund required or authorised by this Act to be made; and*
  - (b) *in payment of a reward under section 123; and*

- (c) *in payment of compensation payable to any person under this Act; and*
- (d) *in making any other payment required by this Act or another law to be made from the Fund; and*
- (e) *in payment of expenses of administering the Fund; and*
- (f) *in defraying the costs of administering and enforcing this Act.*

## **22—Accounts**

*The Minister must cause proper accounts to be kept in relation to the Fund.*

## **23—Audit**

*The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.*

# **Part 4—Commonwealth-State arrangements**

## **Division 1—Commonwealth-State joint authorities**

### **24—Powers and functions of Minister**

- (1) *The Minister may exercise a power conferred on the Minister by Part 5 of the Commonwealth Act, including a power or function of the Minister as a member of a Joint Authority.*
- (2) *If, in the exercise of a power conferred by Part 5 of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise the power conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.*

### **25—Judicial notice**

*All courts and persons acting judicially must take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that the person is, or was at a particular time, a member or deputy.*

### **26—Functions of Joint Authority**

*A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division 2 as are conferred on it by the law in accordance with which, under the arrangement, the fishery is to be managed.*

### **27—Delegation**

- (1) *A Joint Authority may, by instrument in writing, either generally or otherwise, delegate to a person any of its powers under this Act other than this power of delegation.*
- (2) *If a power delegated under subsection (1) is exercised by the delegate, the power will, for the purposes of this Act, be taken to have been exercised by the Joint Authority.*

- (3) *A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office, including an office—*
- (a) *in the service of; or*
  - (b) *in the service of an authority of; or*
  - (c) *under the law of,*
- the Commonwealth or another State of the Commonwealth.*
- (4) *A delegate of a Joint Authority is, in the exercise of delegated powers, subject to the directions of the Joint Authority.*
- (5) *A delegation under this section—*
- (a) *may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated); and*
  - (b) *continues in force despite any change in the membership of the Joint Authority.*
- (6) *A certificate signed by a member of a Joint Authority stating a matter with respect to a delegation under this section by the Joint Authority will, in the absence of proof to the contrary, be accepted as proof of the matter stated.*
- (7) *In legal proceedings, an apparently genuine document purporting to be a certificate referred to in subsection (6) will, in the absence of proof to the contrary, be taken to be such a certificate and to have been duly given.*
- (8) *Nothing in this Part is intended to prevent the delegation by a Joint Authority, in accordance with a law of the Commonwealth, of powers conferred on the Joint Authority by the law of the Commonwealth.*

## **28—Procedure of Joint Authorities**

- (1) *Sections 66 to 68 (inclusive) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.*
- (2) *A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or a deputy of that Minister, who took part in or made the decision will, in the absence of proof to the contrary, be accepted as proof that the decision, as recorded, was duly made.*
- (3) *In proceedings in a court, an instrument or other document signed on behalf of a Joint Authority will be taken to have been duly executed by the Joint Authority and, unless the contrary is proved, will be taken to be in accordance with a decision of the Joint Authority.*

## **29—Report of Joint Authority**

*The Minister must cause a copy of a report of a Joint Authority prepared under section 70 of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after preparation of the report.*

## ***Division 2—Arrangements with Commonwealth with respect to management of particular fisheries***

### ***30—Arrangement for management of certain fisheries***

- (1) *The State may, in accordance with section 74 of the Commonwealth Act, make an arrangement referred to in section 71 or 72 of that Act for the management of a particular fishery.*
- (2) *An arrangement may be terminated or amended as provided by the Commonwealth Act.*
- (3) *After an arrangement has been made but before the arrangement takes effect, authorities, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations, proclamations and notices may be made, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect but such an authority, endorsement, instrument, regulation, proclamation or notice does not have effect before the arrangement takes effect.*
- (4) *On termination of an arrangement, authorities, endorsements and other instruments granted, issued, renewed, made or executed, and regulations, proclamations and notices made, for the purposes of the operation of this Act as affected by the arrangement, cease to have effect.*
- (5) *After action for the purpose of the termination of an arrangement has been taken but before the termination takes effect, authorities, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations, proclamations and notices may be made, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated but such an authority, endorsement, instrument, regulation, proclamation or notice does not have effect before the termination of the arrangement takes effect.*

### ***31—Application of this Act to fisheries in accordance with arrangements***

*If there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State (whether or not also in accordance with some other law), the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to matters that occurred before the arrangement took effect.*

### ***32—Application of Commonwealth law to limits of State in accordance with arrangements***

*If there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the Commonwealth (whether or not also in accordance with some other law), the law of the Commonwealth applies to the limits of the State as a law of the State.*

### **33—Functions of Joint Authority**

- (1) *If, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State (whether or not also in accordance with some other law), the Joint Authority has the functions of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.*
- (2) *A Joint Authority must, in the performance of its functions under this section, act consistently with, and seek to further, the objects of this Act.*

### **34—Joint Authority to exercise certain powers instead of Minister or Director**

- (1) *Subject to this section, an authority or endorsement granted, issued, renewed or made under this Act otherwise than by virtue of this section does not authorise the doing of an act or thing in or in relation to a Joint Authority fishery.*
- (2) *The powers conferred before or after the commencement of this Part on the Minister or the Director, or the delegate of the Minister or the Director, by or under this Act (this Part excepted) or the regulations (including powers with respect to the grant, renewal, revocation and suspension of authorities) in respect of a Joint Authority fishery that is to be managed in accordance with the law of the State (whether or not also in accordance with some other law) are exercisable by the Joint Authority to the exclusion of the Minister or the Director or the delegate of the Minister or the Director.*
- (3) *An authority granted under this Act by a Joint Authority will contain conditions and limitations that it does not apply in relation to a Joint Authority fishery, or Joint Authority fisheries, not managed by that Joint Authority.*
- (4) *A Joint Authority may endorse an authority granted under this Act (including an authority granted by that Joint Authority or another Joint Authority) so as to extend the operation of the authority to matters to which the powers of the Joint Authority under this Act are applicable and, where such an endorsement is made—*
  - (a) *the endorsement ceases to have effect if the authority ceases to have effect; and*
  - (b) *the Joint Authority may suspend or revoke the endorsement as if it were an authority granted by the Joint Authority.*
- (5) *Subject to section 37(1)(b) and (c), if, at a time a fishery becomes a Joint Authority fishery, a regulation, proclamation or notice under this Act that would, but for this subsection, apply to the fishery, the regulation, proclamation or notice (as the case may be) ceases so to apply.*
- (6) *This section does not empower a Joint Authority to grant, or to take other action in respect of, an authority in respect of a foreign boat or to endorse such an authority.*



**35—Application of certain provisions relating to offences**

*For the purposes of the prosecution of a person for an offence under this Act in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery, a reference in the provision creating the offence to an authority of a particular kind is to be read as a reference to such an authority, or an endorsement of such an authority, granted, issued, renewed or made by the relevant Joint Authority.*

**36—Presumption relating to certain statements**

*A statement in an arrangement to the effect that specified waters—*

- (a) in the case of an arrangement to which the Commonwealth and the State are the only parties—are waters adjacent to the State; and*
- (b) in the case of any other arrangement—are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States,*

*will, for the purposes of this Act, be conclusively presumed to be correct.*

**37—Regulations relating to Joint Authority fishery**

- (1) If a Joint Authority is to manage a fishery in accordance with the law of the State (whether or not also in accordance with some other law), the Governor may, for the purpose of giving effect to a decision of the Joint Authority—*
  - (a) make regulations for the management of the fishery; or*
  - (b) make a regulation applying to the fishery a regulation made otherwise than under this section; or*
  - (c) vary a regulation made otherwise than under this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.*
- (2) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1)(a) or (b) or the amendment of a regulation in the manner referred to in subsection (1)(c).*
- (3) If a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made under this section, it will be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.*

**Division 3—Arrangements with other States****38—Arrangements with other States**

*The Minister may enter into an agreement with a Minister administering a corresponding law, or with an authority of another State concerned in the administration of that law, for the purpose of co-operation in furthering the objects of this Act (whether in this State or in that other State).*

### **39—Functions**

- (1) *For the purposes of this Division, the Minister may perform any power and exercise any function conferred on the Minister under Division 1 or Division 2 as if the Commonwealth Act applied under this Division.*
- (2) *Division 1 and Division 2 apply in respect of agreements under this Division, with such modifications as are necessary.*

## **Part 5—Management plans for commercial fishing, recreational fishing and aquatic reserves**

### **40—Interpretation**

In this Part, unless the contrary intention appears—

- (a) a reference to an *aquatic reserve* includes a reference to waters, or land and waters, proposed to be constituted as an aquatic reserve;
- (b) a reference to a *draft management plan* includes a reference to a draft amendment to, or the draft revocation of, a management plan previously made under this Part;
- (c) a reference to a *fishery* includes a reference to a class of fishing activities proposed to be constituted as a fishery;
- (d) a reference to a *management plan* includes a reference to an amendment to, or the revocation of, a management plan previously made under this Part.

### **41—Application of Part**

This Part does not apply to an aboriginal traditional fishing management plan.

### **42—Duty of Council to prepare management plans**

The Council must, if required by the Minister, prepare management plans for the following:

- (a) classes of commercial fishing activities;
- (b) classes of recreational fishing activities;
- (c) aquatic reserves.

### **43—General nature and content of management plans**

- (1) A management plan must—
  - (a) be consistent with the objects of this Act; and
  - (b) be consistent with any relevant aboriginal traditional fishing management plan; and
  - (c) set out the management objectives of the plan and strategies for achieving those objectives; and
  - (d) identify research needs and priorities; and
  - (e) set out the resources required to implement the plan; and
  - (f) take into account—

- (i) the advice of any committee of the Council established for that purpose by the Council; and
  - (ii) the provisions of the Planning Strategy and any relevant Development Plan under the *Development Act 1993*; and
  - (iii) the provisions of any document prescribed for the purposes of this paragraph (insofar as is relevant to the operation of this Act and reasonably practicable).
- (2) A management plan for a fishery must—
  - (a) identify the fishery to which the plan relates; and
  - (b) describe the biological, economic and social characteristics of the fishery; and
  - (c) identify the impacts or potential impacts of the fishery on its associated ecosystem or ecosystems, including impacts on non-target species of fish or other aquatic resources; and
  - (d) identify any ecological factors that could have an impact on the performance of the fishery; and
  - (e) assess the risks (if any) identified under paragraphs (c) and (d) to determine the most serious risks; and
  - (f) set out strategies for addressing those risks; and
  - (g) set out methods for monitoring the performance of the fishery and the effectiveness of the plan, including performance indicators, trigger points for review or action and progress reporting; and
  - (h) specify the share of aquatic resources to be allocated to each fishing sector under the plan; and
  - (i) prescribe a method, or establish an open and transparent process for determining the method, for adjusting allocations of aquatic resources between the different fishing sectors during the term of the plan; and
  - (j) provide that compensation will be paid to persons whose licences or licence entitlements are compulsorily acquired in order to reduce the share of aquatic resources allocated to the commercial fishing sector and increase the share allocated to another sector.
- (3) In determining the share of aquatic resources to be allocated to a particular fishing sector under the first management plan for an existing fishery, the share of aquatic resources to which that fishing sector had access at the time the Minister requested the Council to prepare the plan (based on the most recent information available to the Minister) must be taken into account.
- (4) A management plan may relate to more than 1 class of fishing activity or more than 1 aquatic reserve.
- (5) In this section—

***existing fishery*** means a fishery constituted under this Act by virtue of clause 5 of Schedule 1.

#### **44—Procedure for preparing management plans**

- (1) The Council must, in relation to a proposal to prepare a management plan—
  - (a) by notice published in a newspaper circulating generally within the State, give notice of the intention to prepare the management plan with a description of the general purpose of the proposed management plan; and
  - (b) prepare a draft of the management plan; and
  - (c) seek the views of a representative of all signatories to any indigenous land use agreement that is in force in relation to any of the area to which the plan relates in relation to the draft.
- (2) The Council must, after preparing a draft management plan, prepare a report containing—
  - (a) an explanation of the purpose and effect of the draft management plan; and
  - (b) a summary of the background and issues relevant to the draft management plan and of the analysis and reasoning applied in formulating the plan.
- (3) The Council must, after preparing the draft management plan and related report—
  - (a) refer the plan and report to—
    - (i) the Minister; and
    - (ii) the representative of all signatories to any indigenous land use agreement that is in force in relation to any area to which the plan relates; and
    - (iii) any advisory committee whose area of responsibility is affected by the plan; and
    - (iv) any public authority whose area of responsibility is, in the opinion of the Council, particularly affected by the plan; and
  - (b) cause an advertisement to be published in a newspaper circulating generally in the State—
    - (i) giving notice of places at which the draft management plan and report (or copies of the draft management plan and report) are to be available for inspection and, if copies are to be available for purchase, places at which copies may be purchased; and
    - (ii) inviting interested persons to make written submissions in relation to the draft management plan within a period specified in the advertisement (being not less than 2 months from the date of publication of the advertisement); and
    - (iii) stating that the submissions will be available for inspection as provided by subsection (5); and
    - (iv) appointing a place and time at which a public hearing will be commenced by the Council in which interested persons may appear to be heard in relation to the draft management plan and the submissions.

- (4) However, the Council may, in relation to a particular draft management plan, with the approval of the Minister, dispense with the requirement for the holding of a public hearing if satisfied that it is not warranted in the circumstances.
- (5) If written submissions are made in response to an advertisement published under subsection (3)(b), a copy of those submissions must be made available for inspection by interested persons during ordinary business hours at the principal office of the Council from the end of the period specified for the making of submissions until the Council reports to the Minister on the draft management plan under this section.
- (6) At the time and place appointed for a public hearing, interested persons may appear and make submissions to the Council that are relevant to the draft management plan or the written submissions relating to the draft management plan.
- (7) The Council must consult with and consider the advice of the persons and bodies referred to in subsection (3)(a) on—
  - (a) the provisions of the draft management plan; and
  - (b) all matters raised as a result of public consultation under this section; and
  - (c) any alterations that the Council proposes should be made to the draft management plan.
- (8) The Council must then report to the Minister and the Minister may, after taking into account the report and recommendations of the Council on the matter—
  - (a) adopt the draft management plan; or
  - (b) alter the draft management plan and adopt the draft management plan as altered; or
  - (c) decline to adopt the draft management plan.
- (9) A management plan has no force or effect until adopted by the Minister.
- (10) On adopting a draft management plan, the Minister must cause notice of that fact to be published in the Gazette.
- (11) The Minister must, in the Gazette notice adopting a management plan, fix a date on which the plan will take effect.
- (12) A failure of the Council or the Minister to comply with a requirement of this section does not affect the validity of a management plan.

#### **45—Tabling of management plans**

The Minister must, within 12 sitting days after adopting a management plan, cause copies of the plan to be laid before both Houses of Parliament.

#### **46—Procedure for making certain amendments to management plans**

- (1) The Minister may, by notice in the Gazette, amend a management plan—
  - (a) to correct an error; or
  - (b) to make a change of form (not involving a change of substance) in the plan; or
  - (c) if the Governor is satisfied that the amendment would not substantially alter the plan; or

- (d) if the plan or the regulations provide that a change of a specified kind may be made by amendment under this section—to make a change of that kind.
- (2) An amendment under this section takes effect on the day fixed in the Gazette notice of the amendment.

#### **47—Duration of management plans**

- (1) A management plan for a developmental fishery or part of such a fishery expires—
  - (a) on the third anniversary of its commencement; or
  - (b) on the expiry date specified in the plan,whichever is the earlier.
- (2) Subject to this section, any other management plan expires—
  - (a) on the tenth anniversary of its commencement; or
  - (b) on the expiry date specified in the plan,whichever is the earlier.
- (3) If—
  - (a) a management plan is due to expire in 6 months or less; and
  - (b) a draft management plan to replace the existing plan has not yet been adopted by the Minister under this Part,

the Minister must, by notice in the Gazette published before the expiry of the plan, extend the term of the plan for a period specified in the notice (being a period of not less than 12 months and not more than 5 years).

- (4) The Minister may not extend the term of a management plan under subsection (3) more than once.
- (5) If the Minister has extended the term of an existing plan under subsection (3), the Minister must ensure that, during the extended term, he or she adopts a replacement management plan to come into effect on the expiry of the existing plan.

#### **48—Availability and evidence of management plans**

- (1) Copies of each management plan must be kept available for inspection and purchase by the public during ordinary office hours at a place or places determined by the Minister.
- (2) In legal proceedings, evidence of the contents of a management plan may be given by production of a document certified by the Minister as a true copy of the plan.
- (3) An apparently genuine document purporting to be a certificate of the Minister will be accepted as such in the absence of proof to the contrary.

#### **49—Review of management plans**

- (1) The Council may review a management plan at any time.
- (2) The Council must, as soon as practicable after the fifth anniversary of the commencement of a management plan, conduct a comprehensive review of the plan for the purpose of determining whether the plan should be amended, replaced or reinstated without amendment.

- (3) The Council must submit a report on the outcome of a review under this section to the Minister within 12 months after the commencement of the review.
- (4) The Minister must, within 12 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.
- (5) If a report under this section recommends that a management plan should be reinstated without amendment on its expiry, the plan may be so reinstated without following the procedures set out in section 44.
- (6) If a plan is to be reinstated under this section, the Minister must—
  - (a) adopt the plan; and
  - (b) cause notice of that fact to be published in the Gazette; and
  - (c) in the Gazette notice adopting the plan, fix a date on which the plan will take effect.

## **50—Implementation of management plans**

- (1) The Minister must manage commercial and recreational fishing activities and aquatic reserves in accordance with any relevant management plan adopted by the Minister under this Part.
- (2) This section does not affect the validity of an act or decision done or made under a provision of this Act (or any regulations under this Act).

## **Part 6—Regulation of fishing and processing**

### ***Division 1—Commercial fishing***

#### ***51—Interpretation***

*In this Division—*

***authority*** means a licence, permit or registration;

***licence*** means a fishery licence;

***permit*** means a fishery permit;

***registration*** means registration of any of the following:

- (a) a boat;
- (b) the master of a boat;
- (c) a device.

#### ***52—Obligation of commercial fishers to hold licence or permit***

*A person must not, for a commercial purpose, engage in a fishing activity of a class that constitutes a fishery unless—*

- (a) the person holds a licence or permit in respect of the fishery; or
- (b) the person is acting as the agent of a person holding a licence or permit in respect of the fishery.

*Maximum penalty:*

- (a) *in the case of a body corporate—*
  - (i) *if the offence involves the taking of fish of a priority species or a fishing activity engaged in for the purpose of taking fish of a priority species—\$500 000;*
  - (ii) *in any other case—\$100 000;*
- (b) *in the case of a natural person—*
  - (i) *if the offence involves the taking of fish of a priority species or a fishing activity engaged in for the purpose of taking fish of a priority species—\$250 000 or imprisonment for 4 years;*
  - (ii) *in any other case—\$50 000 or imprisonment for 2 years.*

**53—Obligation for boats and devices used in commercial fishing to be registered**

- (1) *A person must not, for a commercial purpose, use a boat, or cause, suffer or permit a boat to be used, for the purpose of engaging in a fishing activity of a class that constitutes a fishery unless—*
  - (a) *the boat—*
    - (i) *is registered for use under a licence or permit in respect of the fishery held by him or her or a person for whom he or she is acting as an agent; or*
    - (ii) *is being used in the place of a boat referred to in subparagraph (i) with the consent of the Minister and in accordance with the conditions (if any) of that consent; and*
  - (b) *the boat is in the charge of a natural person who—*
    - (i) *is registered as the master of a boat that may be used under the licence or permit; or*
    - (ii) *is acting in the place of a person referred to in subparagraph (i) with the consent of the Minister and in accordance with the conditions (if any) of that consent.*

*Maximum penalty:*

- (a) *in the case of a body corporate—\$250 000;*
- (b) *in the case of a natural person—\$50 000.*

- (2) *A person must not, for a commercial purpose, use a device, or cause, suffer or permit a device to be used, for the purpose of engaging in a fishing activity of a class that constitutes a fishery unless the device is registered for use under a licence or permit in respect of the fishery held by him or her or a person for whom he or she is acting as an agent.*

*Maximum penalty:*

- (a) *in the case of a body corporate—\$250 000;*
- (b) *in the case of a natural person—\$50 000.*



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**54—Applications for licences, permits or registration**

- (1) *An application for an authority must—*
  - (a) *be made in a manner and form approved by the Minister; and*
  - (b) *be signed by the applicant and completed in accordance with the instructions contained in the form; and*
  - (c) *be accompanied by the fee fixed by regulation or an instalment of the fee in accordance with the regulations.*
- (2) *An applicant must provide the Minister with such evidence as the Minister thinks appropriate as to the identity, age and address of the applicant and any other information required by the Minister for the purposes of determining the application.*
- (3) *A licence or permit granted to a natural person may include a photograph of the holder of the licence or permit and, consequently, an applicant for a licence or permit who is a natural person may be required by the Minister—*
  - (a) *to attend at a specified place for the purpose of having the applicant's photograph taken; or*
  - (b) *to supply the Minister with 1 or more photographs of the applicant as specified by the Minister.*
- (4) *An authority will not be issued by the Minister except on payment of the licence, permit or registration fee fixed by regulation or on payment (in accordance with the regulations) of an instalment of the relevant fee.*
- (5) *The Minister may, by notice in writing, require an applicant for an authority, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Minister's satisfaction.*
- (6) *If the applicant fails to comply with the notice under subsection (5), the Minister may, without further notice, refuse the application but keep the fee that accompanied the application.*
- (7) *An application—*
  - (a) *for a licence or permit in respect of a fishery—will be determined by the Minister subject to, and in accordance with, the regulations for the fishery;*
  - (b) *for registration of a boat to be used pursuant to a licence or permit in respect of a fishery—will not be granted by the Minister unless he or she is satisfied—*
    - (i) *that the applicant is the holder of a licence or permit in respect of the fishery that is in force; and*
    - (ii) *as to the matters prescribed by the regulations for the fishery;*
  - (c) *for registration of a person as the master of a boat to be used pursuant to a licence or permit in respect of a fishery—will not be granted by the Minister unless he or she is satisfied—*
    - (i) *that the applicant is the holder of a licence or permit in respect of the fishery that is in force; and*

- (ii) *that a boat is registered in the name of the applicant under this Division; and*
  - (iii) *that the person nominated as the proposed master is not disqualified from being registered as a master and is otherwise a fit and proper person to be master of the boat;*
- (d) *for registration of a device to be used pursuant to a licence or permit in respect of a fishery—will not be granted by the Minister unless he or she is satisfied—*
  - (i) *that the applicant is the holder of a licence or permit in respect of the fishery that is in force; and*
  - (ii) *as to the matters prescribed by the regulations for the fishery.*
- (8) *The Minister must, before determining an application that relates to, or is to apply in respect of, the River Murray, consult with the Minister for the River Murray.*
- (9) *The Minister must refuse to grant an application for a fishery authority if—*
  - (a) *the applicant is disqualified from holding or obtaining a fishery authority; or*
  - (b) *the applicant is a body corporate and a director of the body corporate is disqualified from holding or obtaining a fishery authority.*
- (10) *The Minister may refuse to grant an application for an authority in the following circumstances:*
  - (a) *the Minister is not satisfied the applicant is a fit and proper person to hold an authority of the kind to which the application relates;*
  - (b) *the Minister is of the opinion that the issue of the authority would be inconsistent with—*
    - (i) *an inter-governmental agreement or arrangement; or*
    - (ii) *any instrument made under this Act;*
  - (c) *in the case of an application to register a device—*
    - (i) *the applicant does not produce the device for examination after being requested by the Minister to do so; or*
    - (ii) *the applicant could not lawfully use the device in the fishery even if it were registered;*
  - (d) *prescribed grounds for the refusal exist.*

### **55—Conditions of licence, permit or registration**

- (1) *An authority may be subject to such conditions as the Minister thinks fit and specifies in the authority.*
- (2) *The Minister may at any time, by written notice given to the holder of an authority, vary or revoke a condition of the authority, or impose a further condition.*
- (3) *The holder of an authority must not contravene a condition of the authority.*

*Maximum penalty:*

- (a) *if the condition related to the holder's quota entitlement under the authority—\$20 000;*

(b) in any other case—\$10 000.

Expiation fee: \$500.

### **56—Duration of authority and periodic fee and return etc**

- (1) A licence remains in force (except for any period during which it is suspended) from the day on which it is granted—
  - (a) until it is surrendered or cancelled; or
  - (b) —
    - (i) if it is in respect of a fishery for which there is a management plan—until the management plan expires or is revoked; or
    - (ii) in any other case—for a period (not exceeding 10 years) specified in the licence.
- (2) A permit remains in force (except for any period during which it is suspended) from the day on which it is granted—
  - (a) until it is surrendered or cancelled; or
  - (b) for a period (not exceeding 3 years) specified in the permit.
- (3) Subject to this Act, registration remains in force until the expiry of the relevant licence or permit but if—
  - (a) the licence or permit is suspended under this Act for any period, the registration will be taken to have been suspended for the same period; or
  - (b) the licence or permit is cancelled or surrendered under this Act, the registration will be taken to have been cancelled or surrendered.
- (4) If a person registered as the master of a boat used pursuant to an authority is disqualified from being so registered, the registration will be taken to have been cancelled.
- (5) The holder of an authority must—
  - (a) in each year, pay to the Minister the relevant annual fee (in total or by instalments) in accordance with the regulations; and
  - (b) lodge with the Minister periodic returns in accordance with the regulations.
- (6) If the holder of an authority fails to pay the relevant annual fee (or an instalment of the relevant annual fee) in accordance with this section, the Minister may, by written notice, require the person to make good the default specified in the notice and, in addition, pay to the Minister the amount prescribed as a penalty for default.
- (7) If the holder of an authority fails to comply with a notice under subsection (6), the Minister may, by further written notice, suspend the person's authority until the notice under that subsection has been complied with.
- (8) The Minister may, on application by the holder of the licence or permit on which any registration is endorsed, revoke the registration.
- (9) In this section—
 

**annual fee** means the annual licence, permit or registration fee.

### **57—Transfer of licence or permit**

- (1) *A licence or permit is not transferable.*
- (2) *However, if the regulations for a fishery provides that licences or permits, or a class of licence or permit, in respect of the fishery are transferable, then, with the consent of the Minister, such a transfer may occur.*
- (3) *An application for consent to the transfer of a licence or permit must—*
  - (a) *be a joint application made by the holder of the licence or permit and the transferee; and*
  - (b) *be made in a manner and form approved by the Minister; and*
  - (c) *be signed by the applicants and completed in accordance with the instructions contained in the form; and*
  - (d) *be accompanied by the fee fixed by regulation.*
- (4) *The Minister may only consent to the transfer of a licence or permit if—*
  - (a) *the Minister is satisfied as to the matters prescribed by the regulations for the fishery; and*
  - (b) *where the register of authorities includes a notation that a specified person has an interest in the licence or permit—that person consents to the transfer.*
- (5) *If a licence or permit is transferable, the registration of a boat used under the licence or permit is also transferable.*
- (6) *If—*
  - (a) *a licence or permit is transferable; and*
  - (b) *the holder of the licence or permit dies,*

*the licence or permit (as the case may be) vests in the personal representative of the deceased (whether the personal representative is a natural person or body corporate) as part of the estate of the deceased but cannot be transferred in the course of the administration of the estate except with the consent of the Minister.*
- (7) *If a deceased licence or permit holder was, immediately before his or her death, registered as the master of a boat that may be used under the licence or permit—*
  - (a) *the boat may, while the licence or permit remains vested in the personal representative of the deceased, continue to be used for the purpose of engaging in fishing activities under the licence or permit if it is in the charge of a person who is acting with the consent of the Minister and in accordance with the conditions of that consent; and*
  - (b) *a person so acting will be taken to be acting under section 53(b)(ii).*
- (8) *A licence or permit that vests in the personal representative of a deceased licence or permit holder will, if it is not transferred within 2 years after the death of the licence or permit holder or such further period as may be approved by the Minister, be suspended pending such transfer.*

(9) *In this section—*

***personal representative means—***

- (a) *the executor of the will or administrator of the estate of the deceased licence or permit holder; or*
- (b) *in relation to any period for which there is not an executor or administrator—the Public Trustee.*

### **58—Acquisition of licences etc by Minister**

- (1) *If under a management plan for a fishery, the share of aquatic resources allocated between different fishing sectors is adjusted so that the share allocated to holders of licences in respect of the fishery is reduced and the share allocated to persons who do not hold such licences is increased, the Minister may, for the purpose of giving effect to the adjustment, acquire licences in respect of the fishery or entitlements under such licences.*
- (2) *An acquisition under subsection (1) must be made in accordance with the regulations.*
- (3) *Regulations made for the purposes of this section may—*
  - (a) *provide for a scheme of acquisition by the Minister and include in the scheme provision for compulsory acquisition and the payment of compensation to persons whose licences or entitlements are compulsorily acquired; and*
  - (b) *prescribe the method of calculation of amounts payable for the acquisition of licences or entitlements or as compensation for their compulsory acquisition; and*
  - (c) *provide for a process of objection and appeal in relation to the payment of compensation under the regulations.*

### **59—Obligation to carry authority and identification while engaging in fishing activities**

- (1) *Subject to the regulations, the holder of a licence or permit (being a natural person) must, at all times when he or she is engaging in any fishing activity under the licence or permit, carry with him or her—*
  - (a) *the licence or permit; and*
  - (b) *identification in the form issued by the Minister.*

*Maximum penalty: \$2 500.*

*Expiation fee: \$210.*

- (2) *Subject to the regulations, if a registered boat is being used on any waters for any purpose, the person in charge of the boat must carry with him or her—*
  - (a) *the licence or permit under which the boat may be used for the purpose of taking aquatic resources; and*
  - (b) *identification in the form issued by the Minister.*

*Maximum penalty: \$2 500.*

*Expiation fee: \$210.*

- (3) *Subject to the regulations, if a registered device is being used in or on any waters for any purpose—*
- (a) *if the device is not being used on or from a boat, the person using the device must carry with him or her—*
    - (i) *the licence or permit under which the device may be used; and*
    - (ii) *identification in the form issued by the Minister;*
  - (b) *in any other case, the person in charge of the boat must carry with him or her—*
    - (i) *the licence or permit under which the device may be used; and*
    - (ii) *identification in the form issued by the Minister.*

*Maximum penalty: \$2 500.*

*Expiation fee: \$210.*

## **Division 2—Aboriginal traditional fishing**

### **60—Management of aboriginal traditional fishing**

- (1) The Minister and a native title group that is party to an indigenous land use agreement may make an aboriginal traditional fishing management plan under the agreement for the management of specified aboriginal traditional fishing activities in a specified area of waters.
- (2) An aboriginal traditional fishing management plan under an indigenous land use agreement must—
  - (a) be consistent with—
    - (i) the agreement; and
    - (ii) the objects of this Act; and
    - (iii) any management plan under Part 5 that relates to the area of waters to which the plan applies; and
  - (b) include the management objectives of the plan; and
  - (c) specify the management tools and other measures to be used to achieve the management objectives; and
  - (d) identify the area of waters to which the plan applies; and
  - (e) identify any fisheries constituted in relation to those waters; and
  - (f) specify the classes of aboriginal traditional fishing activities that are authorised by the plan; and
  - (g) identify, or provide a mechanism for identifying, the classes of persons who are authorised to engage in aboriginal traditional fishing activities under the plan; and
  - (h) provide a method for determining how aboriginal traditional fishing activities may be distinguished from other kinds of fishing activities; and
  - (i) provide for any other matter relating to aboriginal traditional cultural fishing as required by the agreement.

- (3) The Minister must cause notice of an aboriginal traditional fishing management plan made under an indigenous land use agreement to be published in the Gazette fixing the date on which the plan will take effect.

### **61—Availability and evidence of aboriginal traditional fishing management plans**

- (1) Copies of each aboriginal traditional fishing management plan must be kept available for inspection and purchase by the public during ordinary office hours at a place or places determined by the Minister.
- (2) In legal proceedings, evidence of the contents of an aboriginal traditional fishing management plan may be given by production of a document certified by the Minister as a true copy of the plan.
- (3) An apparently genuine document purporting to be a certificate of the Minister will be accepted as such in the absence of proof to the contrary.

## ***Division 3—Processing***

### ***62—Obligation of fish processors to be registered***

- (1) *A person must not act as a fish processor unless he or she is registered as a fish processor under this Division.*

*Maximum penalty:*

- (a) *in the case of a body corporate—\$50 000;*
- (b) *in the case of a natural person—\$10 000.*
- (2) *However, a person is not required to be registered as a fish processor if—*
- (a) *the person only processes aquatic resources obtained from a registered fish processor; or*
- (b) *the person—*
- (i) *is the holder of a fishery authority or aquaculture licence; and*
- (ii) *only processes aquatic resources taken under the fishery authority, or aquatic resources farmed under the aquaculture licence (as the case may be) for sale to a registered fish processor or directly to persons who consume such aquatic resources; or*
- (c) *the person belongs to a prescribed class of persons.*
- (3) *A registered fish processor must not use any premises, place, boat or vehicle for or in connection with processing, storing, transporting or dealing with aquatic resources unless the premises, place, boat or vehicle is specified in the certificate of registration.*

*Maximum penalty:*

- (a) *in the case of a body corporate—\$50 000;*
- (b) *in the case of a natural person—\$10 000.*

*Expiation fee: \$500.*

- (4) *Aquatic resources present in any premises, place, boat or vehicle specified in the certificate of registration of a registered fish processor will be taken to be present for a commercial purpose.*

### **63—Classes of registration**

- (1) *There are the following classes of registration of fish processor for the purposes of this Act:*
  - (a) *fish processors registration—registration authorising a person—*
    - (i) *to engage in any activity involved in processing aquatic resources for the purposes of trade or business; and*
    - (ii) *to store, transport and deal with aquatic resources for the purposes of trade or business;*
  - (b) *restricted registration—registration as a fish processor subject to conditions limiting the activities authorised under the registration—*
    - (i) *to the storage of aquatic resources; or*
    - (ii) *to the transport of aquatic resources; or*
    - (iii) *to the buying and selling of aquatic resources on behalf of another without ever taking physical possession of the aquatic resources; or*
    - (iv) *to such activities involving the processing of aquatic resources as the Minister thinks fit.*
- (2) *Conditions limiting the activities that may be carried out under the authority of registration—*
  - (a) *may be imposed by the Minister on the grant of the registration; and*
  - (b) *may be varied or revoked by the Minister at any time on application by the registered fish processor.*

### **64—Applications for registration**

- (1) *An application for registration as a fish processor must—*
  - (a) *be made in a manner and form approved by the Minister; and*
  - (b) *be signed by the applicant and completed in accordance with the instructions contained in the form; and*
  - (c) *specify the premises, places, boats and vehicles proposed to be used by the applicant for or in connection with processing, storing, transporting or dealing with aquatic resources; and*
  - (d) *be accompanied by the fee fixed by regulation or an instalment of the fee in accordance with the regulations.*
- (2) *An applicant must provide the Minister with such evidence as the Minister thinks appropriate as to the identity, age and address of the applicant and any other information required by the Minister for the purposes of determining the application.*
- (3) *The Minister may refuse to grant an application for registration in the following circumstances:*
  - (a) *the Minister is not satisfied the applicant is a fit and proper person to hold registration of the kind to which the application relates;*
  - (b) *prescribed grounds for the refusal exist.*



- (4) *Registration will not be granted by the Minister except on payment of the registration fee fixed by regulation or on payment (in accordance with the regulations) of an instalment of the registration fee.*

### **65—Conditions of registration**

- (1) *It is a condition of registration as a fish processor that the processor will only process, store, transport or deal with aquatic resources of a class specified in the registration.*
- (2) *Registration as a fish processor may be subject to such other conditions (in addition to conditions limiting the activities that may be carried out under the authority of the registration) as the Minister thinks fit and specifies in the registration.*
- (3) *The Minister may at any time, by written notice given to a registered fish processor, vary or revoke a condition of the registration, or impose a further condition.*
- (4) *A registered fish processor must not contravene a condition of the registration.*

*Maximum penalty:*

- (a) *in the case of a body corporate—\$50 000;*  
(b) *in the case of a natural person—\$10 000.*

*Expiation fee: \$500.*

### **66—Duration of registration and periodic fee and return etc**

- (1) *Registration remains in force (except for any period during which it is suspended) from the day on which it is granted—*
- (a) *until it is surrendered or cancelled; or*  
(b) *for a period (not exceeding 3 years) specified in the registration.*
- (2) *A registered fish processor must—*
- (a) *in each year, pay to the Minister the annual fee (in total or by instalments) in accordance with the regulations; and*  
(b) *lodge with the Minister periodic returns in accordance with the regulations.*
- (3) *If a registered fish processor fails to pay the annual fee (or an instalment of the annual fee) in accordance with this section, the Minister may, by written notice, require the person to make good the default and, in addition, pay to the Minister the amount prescribed as a penalty for default.*
- (4) *If a registered fish processor fails to comply with a notice under subsection (3), the Minister may, by further written notice, suspend the person's registration until the notice under that subsection has been complied with.*
- (5) *The Minister will, on granting an application for registration, specify in the certificate of registration the premises, places, boats and vehicles proposed to be used by the registered fish processor for or in connection with processing, transporting, storing or dealing with aquatic resources.*

## ***Division 4—Miscellaneous***

### ***67—Misuse of authorities***

*A person must not—*

- (a) except as contemplated by this Act or without other reasonable excuse, give any other person the possession or control of an authority that is not in the name of that other person; or*
- (b) except as contemplated by this Act or without other reasonable excuse, have in his or her possession or control an authority that is not in his or her name; or*
- (c) by words or conduct, falsely represent that he or she is the person named in an authority.*

*Maximum penalty: \$5 000.*

### ***68—Issue of duplicate authority***

*On application by the holder of an authority and payment of the fee fixed by regulation, the Minister may, if satisfied—*

- (a) that the authority has been lost, stolen or destroyed; or*
- (b) that other proper cause exists,*

*issue to the holder a duplicate authority.*

### ***69—Effect of suspension of authority***

*While an authority is suspended under this Act it has no force or effect.*

## ***Part 7—Offences***

### ***Division 1—Offences relating to fishing activities***

#### ***70—Prescribed fishing activities prohibited***

*A person must not engage in a fishing activity of a prescribed class.*

*Maximum penalty:*

- (a) if the fishing activity involves fish of a priority species—*
  - (i) for a first offence—\$10 000;*
  - (ii) for a second offence—\$20 000;*
  - (iii) for a third or subsequent offence—\$35 000;*
- (b) in any other case—*
  - (i) for a first offence—\$5 000;*
  - (ii) for a second offence—\$10 000;*
  - (iii) for a third or subsequent offence—\$20 000.*

*Expiation fee: A fee determined in accordance with the regulations.*

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**71—Taking, injuring etc aquatic mammals and protected species prohibited**

(1) A person must not—

- (a) take an aquatic mammal or aquatic resource of a protected species; or
- (b) injure, damage or otherwise harm an aquatic mammal or aquatic resource of a protected species.

*Maximum penalty:*

- (a) if the offence involves an aquatic mammal—
  - (i) in the case of a body corporate—\$250 000;
  - (ii) in the case of a natural person—\$100 000 or imprisonment for 2 years;
- (b) in any other case—
  - (i) for a first offence—
    - (A) in the case of a body corporate—\$50 000;
    - (B) in the case of a natural person—\$10 000;
  - (ii) for a second or subsequent offence—
    - (A) in the case of a body corporate—\$100 000;
    - (B) in the case of a natural person—\$20 000.

*Expiation fee:* In the case of an offence not involving an aquatic mammal—\$500.

(2) A person must not—

- (a) interfere with, harass or molest an aquatic mammal or aquatic resource of a protected species; or
- (b) cause or permit interference with, harassment or molestation of, an aquatic mammal or aquatic resource of a protected species.

*Maximum penalty:*

- (a) if the offence involves an aquatic mammal—
  - (i) in the case of a body corporate—\$250 000;
  - (ii) in the case of a natural person—\$100 000 or imprisonment for 2 years;
- (b) in any other case—
  - (i) for a first offence—
    - (A) in the case of a body corporate—\$50 000;
    - (B) in the case of a natural person—\$10 000;
  - (ii) for a second or subsequent offence—
    - (A) in the case of a body corporate—\$100 000;
    - (B) in the case of a natural person—\$20 000.

*Expiation fee:* In the case of an offence not involving an aquatic mammal—\$500.

- (3) *In proceedings for an offence against this section, it is a defence if the defendant proves—*
- (a) *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; or*
  - (b) *that the act alleged to constitute the offence was authorised by or under some other Act or law.*

**72—Sale, purchase or possession of aquatic resources without authority prohibited**

- (1) *Subject to this section, if a person sells or purchases an aquatic resource taken in waters to which this Act applies but not under an authority, the person is guilty of an offence.*

*Maximum penalty:*

- (a) *in the case of a body corporate—*
    - (i) *if the offence involves the sale or purchase of fish of a priority species—\$250 000;*
    - (ii) *in any other case—\$100 000;*
  - (b) *in the case of a natural person—*
    - (i) *if the offence involves the sale or purchase of fish of a priority species—\$50 000 or imprisonment for 4 years;*
    - (ii) *in any other case—\$20 000 or imprisonment for 2 years.*
- (2) *Subject to this section, if a person sells or purchases, or has possession or control of—*
- (a) *an aquatic resource taken in contravention of this Act or a corresponding law; or*
  - (b) *an aquatic resource of a protected species; or*
  - (c) *an aquatic resource of a prescribed class,*
- the person is guilty of an offence.*

*Maximum penalty:*

- (a) *in the case of a body corporate—*
  - (i) *if the offence involves the sale or purchase of fish of a priority species or the possession or control of fish of a priority species for the purposes of sale—\$250 000;*
  - (ii) *in any other case—\$100 000;*
- (b) *in the case of a natural person—*
  - (i) *if the offence involves the sale or purchase of fish of a priority species or the possession or control of fish of a priority species for the purposes of sale—\$50 000 or imprisonment for 4 years;*
  - (ii) *in any other case—\$20 000.*

- (3) *In proceedings for an offence against subsection (2)—*
- (a) *if it is proved that a person had a commercial quantity of an aquatic resource of any species in his or her possession or control, it will be presumed, in the absence of proof to the contrary, that the person had that aquatic resource in his or her possession or control for the purposes of sale;*
  - (b) *if it is proved that a person had a commercial quantity of an aquatic resource of any species in his or her possession or control in circumstances in which it is reasonable to presume that the aquatic resources were taken by that person in waters to which this Act applies, it will be presumed, in the absence of proof to the contrary, that the person took the aquatic resources from such waters.*
- (4) *Regulations made for the purposes of subsection (2)(c) may prescribe a class of aquatic resource comprised of or including an aquatic resource taken elsewhere than in waters to which this Act applies.*
- (5) *In proceedings for an offence against this section, it is a defence if the defendant proves—*
- (a) —
    - (i) *that the aquatic resources to which the proceedings relate—*
      - (A) *were purchased from a person whose ordinary business was the selling of such aquatic resources; and*
      - (B) *were purchased in the ordinary course of that business; or*
    - (ii) *that the defendant did not take the aquatic resources in contravention of this Act or a corresponding law; and*
  - (b) *that the defendant did not know, and had no reason to believe, that the aquatic resources were (as the case may be)—*
    - (i) *aquatic resources taken in waters to which this Act applies but not under an authority; or*
    - (ii) *aquatic resources taken in contravention of this Act or a corresponding law; or*
    - (iii) *aquatic resources of a protected species; or*
    - (iv) *aquatic resources of a prescribed class.*
- (6) *In proceedings for an offence against subsection (2) relating to aquatic resources of a class prescribed for the purposes of that subsection, if it is proved—*
- (a) *that the defendant was not—*
    - (i) *the holder of an authority authorising the taking of aquatic resources of that class; or*
    - (ii) *a registered fish processor; and*
  - (b) *that the defendant sold or purchased or had possession or control of more than the prescribed quantity of aquatic resources of that class,*  
*the offence is proved unless the defendant establishes the defence under subsection (5).*

**73—Possession of prescribed quantity of aquatic resource in prescribed circumstances**

- (1) *A person must not, in prescribed circumstances, have in his or her possession a quantity of fish or other aquatic resource exceeding the quantity fixed by the regulations for the purposes of this section.*

*Maximum penalty:*

- (a) *if the fishing activity involves fish of a priority species—*
- (i) *for a first offence—\$10 000;*
  - (ii) *for a second offence—\$20 000;*
  - (iii) *for a third or subsequent offence—\$35 000;*
- (b) *in any other case—*
- (i) *for a first offence—\$5 000;*
  - (ii) *for a second offence—\$10 000;*
  - (iii) *for a third or subsequent offence—\$20 000.*

*Expiation fee: \$315.*

- (2) *In proceedings for an offence against this section, it is a defence if the defendant proves that—*
- (a) *the fish or other aquatic resource was taken for a commercial purpose under an authority; or*
  - (b) *the fish or other aquatic resource was kept under an aquaculture licence; or*
  - (c) *the person has a prescribed defence.*

**74—Unauthorised trafficking in fish of priority species prohibited**

- (1) *A person must not, unless authorised to do so under this Act—*
- (a) *traffic in a commercial quantity of fish of a priority species; or*
  - (b) *have possession or control of a commercial quantity of fish of a priority species.*

*Maximum penalty:*

- (a) *in the case of a body corporate—\$500 000;*
- (b) *in the case of a natural person—\$100 000 or imprisonment for 4 years.*

- (2) *In subsection (1)—*

*traffic in fish includes—*

- (a) *sell fish; and*
- (b) *take fish for sale; and*
- (c) *receive fish; and*
- (d) *process fish; and*
- (e) *engage in any act preparatory to an act referred to in a preceding paragraph.*

**75—Interference with lawful fishing activities prohibited**

- (1) *A person must not, without reasonable excuse—*
- (a) *obstruct or interfere with a lawful fishing activity; or*
  - (b) *interfere with aquatic resources taken in the course of a lawful fishing activity.*

*Maximum penalty: \$5 000.*

*Expiation fee: \$315.*

- (2) *If a person is obstructing or interfering with a lawful fishing activity in contravention of subsection (1), the person must, at the request of a person engaged in the lawful fishing activity, cease or discontinue the obstructive conduct or interference or remove the obstruction.*

*Maximum penalty: \$5 000.*

*Expiation fee: \$315.*

- (3) *A court by which a person is found guilty of an offence against this section may, whether or not a penalty is imposed, order the defendant to pay to a 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.*

**Division 2—Miscellaneous offences****76—Entering etc aquatic reserve, or engaging in fishing activity in aquatic reserve, without authorisation prohibited**

*Except as authorised by the regulations or a permit issued by the Minister, a person must not—*

- (a) *enter or remain in an aquatic reserve; or*
- (b) *engage in a fishing activity in an aquatic reserve.*

*Maximum penalty:*

- (a) *for a first offence—\$5 000;*
- (b) *for a second offence—\$10 000;*
- (c) *for a third or subsequent offence—\$20 000.*

*Expiation fee: \$315.*

**77—Disturbance of water beds, or removal or interference with animals or plants, in aquatic reserve without authorisation prohibited**

- (1) *Except as authorised by the regulations or a permit issued by the Minister, a person must not engage in an operation involving or resulting in—*
- (a) *disturbance of the bed of any waters forming part of an aquatic reserve; or*
  - (b) *removal of or interference with aquatic or benthic animals or plants of any waters forming part of an aquatic reserve.*

*Maximum penalty:*

- (a) *for a first offence—\$5 000;*
- (b) *for a second offence—\$10 000;*

(c) *for a third or subsequent offence—\$20 000.*

*Expiation fee: \$315.*

(2) *In subsection (1)—*

*aquatic or benthic animals or plants includes mangroves but does not include a species of fin fish, shark, crustacean, mollusc, echinoderm, coelenterata or annelid prescribed for the purposes of this section.*

### **78—Unauthorised activities relating to exotic organisms or noxious species prohibited**

(1) *A person must not, except as authorised by a permit issued by the Minister—*

(a) *bring, or cause to be brought, into the State; or*

(b) *sell, purchase or deliver; or*

(c) *have possession or control of,*

*aquatic resources of a noxious species.*

*Maximum penalty:*

(a) *in the case of a body corporate—\$250 000;*

(b) *in the case of a natural person—\$120 000.*

(2) *A person must not, except as authorised by a permit issued by the Minister—*

(a) *release or permit to escape into any waters—*

(i) *exotic fish; or*

(ii) *aquaculture fish; or*

(iii) *fish that have been kept apart from their natural habitat; or*

(b) *deposit in any waters—*

(i) *fish of a kind referred to in paragraph (a); or*

(ii) *exotic aquatic plants.*

*Maximum penalty:*

(a) *in the case of a body corporate—\$250 000;*

(b) *in the case of a natural person—\$120 000.*

(3) *The Minister must, before making a decision on an application for a permit that relates to, or is to apply in respect of, the Adelaide Dolphin Sanctuary, consult with the Minister for the Adelaide Dolphin Sanctuary.*

(4) *The Minister must, before making a decision on an application for a permit that relates to, or is to apply in respect of, the River Murray, consult with the Minister for the River Murray.*



### ***Division 3—Temporary prohibition of certain fishing activities etc***

#### ***79—Temporary prohibition of certain fishing activities etc***

- (1) *The Minister may, by notice in the Gazette—*
  - (a) *declare that it is unlawful for a person to engage in a fishing activity of a specified class during a specified period;*
  - (b) *declare that it is unlawful for a person to have possession or control of aquatic resources of a specified species during a specified period;*
  - (c) *vary or revoke such a declaration.*
- (2) *A declaration under subsection (1) remains in force for a period, not exceeding 12 months, specified in the declaration and may be renewed once for a further period not exceeding 12 months.*
- (3) *The Minister must, on the request of the Minister for the Adelaide Dolphin Sanctuary, make a declaration under subsection (1), or vary or revoke such a declaration, in relation to a fishing activity undertaken in respect of the Adelaide Dolphin Sanctuary.*
- (4) *The Minister must, on the request of the Minister for the River Murray, make a declaration under subsection (1), or vary or revoke such a declaration, in relation to a fishing activity undertaken in respect of the River Murray.*
- (5) *If a request is made under subsection (4), notice of the direction must be published in the Gazette as soon as practicable.*
- (6) *If, in the opinion of the Minister, it is necessary to take urgent action to safeguard public health or protect the aquatic resources of the State, the Minister, or a fisheries officer authorised by the Minister, may—*
  - (a) *direct a person or persons of a specified class to not engage in a fishing activity of a specified class during a specified period;*
  - (b) *vary or revoke such a direction.*
- (7) *A direction or authorisation under subsection (6) must be given in written form unless the Minister or fisheries officer considers that impracticable by reason of the urgency of the situation, in which case, it may be given orally.*
- (8) *If an authorisation is given orally, written notice of the authorisation must be given to the person to whom it relates as soon as practicable.*
- (9) *A person must not—*
  - (a) *engage in a fishing activity in contravention of a declaration or direction under this section; or*
  - (b) *have possession or control of aquatic resources in contravention of a declaration under this section.*

*Maximum penalty:*

- (a) *for a first offence—\$5 000;*
- (b) *for a second offence—\$10 000;*
- (c) *for a third or subsequent offence—\$20 000.*

*Expiation fee: \$315.*

## ***Part 8—Enforcement***

### ***Division 1—Authorised persons***

#### ***Subdivision 1—Appointment of authorised persons***

##### ***80—Appointment of fisheries officers, scientific observers and sea rangers***

- (1) *The Minister may appoint a suitable person to be a fisheries officer, scientific observer or sea ranger for the purposes of this Act.*
- (2) *A fisheries officer is not eligible for appointment as a scientific observer.*
- (3) *An appointment under subsection (1) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of a fisheries officer, scientific observer or sea ranger (as the case may be).*
- (4) *The Minister must issue to an authorised person appointed under this section an identity card—*
  - (a) *containing the person's name and a photograph of the person; and*
  - (b) *specifying that the person is a fisheries officer, scientific observer or sea ranger (as the case may be) for the purposes of this Act; and*
  - (c) *stating any limitation on the person's authority.*
- (5) *Subject to this Act, an authorised person appointed under this section must, at the request of a person in relation to whom the authorised person intends to exercise powers under this Act, produce for the inspection of the person his or her identity card.*
- (6) *If a fisheries officer who is a police officer is not in uniform, the officer must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for the inspection of the person his or her warrant card.*
- (7) *The Minister may, by written notice served on a person appointed as an authorised person under this section—*
  - (a) *vary or revoke a condition of an appointment imposed under subsection (3);*  
*or*
  - (b) *revoke the appointment and require the person to return immediately his or her identity card to the Minister.*
- (8) *A person must not fail or refuse to comply with a requirement of the Minister made under subsection (7)(b).*  
*Maximum penalty: \$250.*

#### ***Subdivision 2—Fisheries officers***

##### ***81—General powers of fisheries officers***

- (1) *A fisheries officer may—*
  - (a) *if the fisheries officer reasonably suspects—*

- 
- (i) *that any premises, land, waters, boat or vehicle is being, has been or is intended to be, used for, or in connection with, an activity regulated by this Act, at any time, enter, search and inspect and, where necessary for the purpose, break into or open a part of, or thing in, the premises, land, waters, boat or vehicle; or*
- (ii) *that—*
- (A) *an offence against this Act has been, is being or is about to be committed on or in a boat, vehicle, train or aircraft; or*
- (B) *there is on or in a boat, vehicle, train or aircraft evidence of an offence against this Act or a corresponding law, enter and search the boat, vehicle, vessel, train or aircraft; or*
- (b) *if the fisheries officer reasonably suspects that anything has been done or omitted to be done, or is intended to be done or omitted to be done, in contravention of this Act in relation to aquatic resources—attach to or implant in the aquatic resources identification devices and, where necessary for the purpose of finding or gaining access to the aquatic resources, break or open any receptacle or other thing in which the aquatic resources are or may be contained; or*
- (c) *if the fisheries officer reasonably suspects that anything has been done or omitted to be done in contravention of this Act in relation to aquatic resources or that it affords evidence of an offence against this Act—seize and retain the aquatic resources; or*
- (d) *if the fisheries officer reasonably suspects that anything has been done or omitted to be done in contravention of this Act in relation to any boat, vehicle, device, equipment or other thing, or that it affords evidence of an offence against this Act—seize and retain the boat, vehicle, device, equipment or other thing; or*
- (e) *require a person who the fisheries officer reasonably suspects is engaging, is intending to engage, or has engaged, in an activity regulated by this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; or*
- (f) *require a person who the fisheries officer reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions about those matters; or*
- (g) *require a person to produce documents, including a written record that reproduces in an understandable form, information stored by computer or other process; or*
- (h) *examine, copy or take extracts from documents or records so produced or require a person to provide a copy of any such document or record; or*
- (i) *require a person holding an authority or required to hold an authority to produce the authority for inspection; or*
- (j) *take photographs, films or video or audio recordings; or*

- (k) *give directions required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration or enforcement of this Act.*
- (2) *A fisheries officer may only exercise—*
  - (a) *the powers conferred by subsection (1) as reasonably required for the administration and enforcement of this Act; and*
  - (b) *the power conferred by subsection (1)(a) in respect of premises on the authority of a warrant issued by a magistrate or justice.*
- (3) *However, a warrant is not required to exercise the power conferred by subsection (1)(a) in relation to non-residential premises if—*
  - (a) *the premises are used by a fish processor for, or in connection with, processing, storing, transporting or dealing with aquatic resources for the purposes of trade or business; or*
  - (b) *the fisheries officer has reason to believe that, in the circumstances, urgent action is required.*
- (4) *A warrant may not be issued unless the magistrate or justice (as the case may be) is satisfied that the warrant is reasonably required in the circumstances.*
- (5) *An application for the issue of a warrant—*
  - (a) *may be made either personally or by telephone; and*
  - (b) *must be made in accordance with any procedures prescribed by the regulations.*
- (6) *If aquatic resources that are liable to seizure are contained in a receptacle or container, the receptacle or container and all its contents may be seized and retained.*

## **82—Power of fisheries officer to search persons for evidence of certain offences**

- (1) *If a fisheries officer reasonably suspects that a person has on or about his or her body evidence of a prescribed offence, the fisheries officer may search the person.*
- (2) *In searching a person under this section, a fisheries officer—*
  - (a) *may run his or her hands over the person's outer clothing; and*
  - (b) *may require the person to remove a coat, jacket, hat or shoes the person is wearing, and may run his or her hands over the person's remaining outer clothing; and*
  - (c) *if the fisheries officer sees or detects any thing that he or she reasonably suspects is, or contains, evidence of a prescribed offence, may require the person to surrender that item for inspection; and*
  - (d) *may use reasonable force to remove an item from a person if the person does not comply with a requirement to remove or surrender the item under paragraph (b) or (c); and*
  - (e) *may inspect an item that a person has removed or surrendered, or that has been removed from a person; and*

- (f) *must conduct the search in a manner that affords, to the extent that the circumstances of the search permit, reasonable privacy to the person being searched; and*
  - (g) *must conduct the search as quickly as is reasonably practicable in the circumstances of the search.*
- (3) *A search must be conducted by a person of the same sex as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search.*
- (4) *A fisheries officer who conducts a search under this section must, as soon as possible after completing the search, make a written record of the search setting out—*
- (a) *the grounds on which the search was conducted; and*
  - (b) *the time and place of the search; and*
  - (c) *the name of the person who conducted the search; and*
  - (d) *the name of the person who was searched; and*
  - (e) *the results of the search.*
- (5) *In this section—*
- prescribed offence*** *means an offence against section 52, 72, 74, 78 or 119.*

### **83—Powers of fisheries officers relating to exotic aquatic organisms and aquaculture fish**

- (1) *The Minister may authorise a fisheries officer in writing to take whatever action is, in the opinion of the Minister, necessary or desirable to—*
- (a) *search for and destroy exotic aquatic organisms or aquaculture fish; and*
  - (b) *limit the consequences of presence of the exotic aquatic organisms or aquaculture fish,*
- despite the fact that the action may constitute a trespass or cause loss or damage to property.*
- (2) *If a fisheries officer reasonably suspects that an offence has been committed in relation to an exotic aquatic organism or aquaculture fish, the fisheries officer may—*
- (a) *search for and destroy the exotic aquatic organism or aquaculture fish and, for that purpose, may take whatever action is, in the opinion of the Minister, necessary or desirable; and*
  - (b) *take whatever action is, in the opinion of the Minister, necessary or desirable to limit the consequences of the offence or to ameliorate the damage caused by the offence,*
- despite the fact that the action may constitute a trespass or cause loss or damage to property.*

### **84—Power of fisheries officer to arrest persons without warrant**

- (1) *A fisheries officer may arrest a person without warrant if—*
- (a) *the person hinders or assaults an authorised person, a person accompanying or assisting a fisheries officer or any other person engaged in the administration or execution of this Act; or*

- (b) *the fisheries officer reasonably suspects that the person has committed an offence against this Act or a corresponding law and—*
- (i) *when required to do so under section 81—*
- (A) *the person failed to state truthfully his or her name or usual place of residence; or*
- (B) *the person failed to produce true evidence of his or her identity; or*
- (ii) *the fisheries officer has reasonable grounds for believing that the person would, if not arrested—*
- (A) *fail to attend court in answer to a summons issued in respect of the offence; or*
- (B) *continue the offence or repeat the offence; or*
- (C) *alter, destroy, conceal or fabricate evidence relating to the offence; or*
- (D) *intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.*
- (2) *On arresting a person under this section, the fisheries officer must immediately convey the person, or cause the person to be conveyed, to the nearest police station.*
- (3) *If—*
- (a) *a person resists arrest under this section; or*
- (b) *a person who is arrested under this section escapes from lawful custody, the person is guilty of an offence.*
- Maximum penalty: \$10 000 or imprisonment for 2 years.*
- (4) *A fisheries officer may use such reasonable force as is necessary for the effective exercise of the power conferred by subsection (1) or discharge of the duty imposed by subsection (2).*

### **85—Corresponding laws may confer powers and functions**

- (1) *A corresponding law may confer powers or functions on fisheries officers.*
- (2) *If a power or function is conferred on fisheries officers under subsection (1), a fisheries officer may exercise the power or perform the function, as the case requires.*

### **86—Fisheries officer may be assisted in exercise of powers etc**

- (1) *A fisheries officer may, while acting in the exercise of powers or discharge of duties under this Act, be accompanied by any person and, if he or she reasonably believes that it is necessary in the circumstances, request a suitable person to assist him or her in the exercise or discharge of those powers or duties.*
- (2) *A person, while assisting a fisheries officer in response to a request for assistance, has and may exercise all such powers of a fisheries officer as are reasonably necessary for the purpose.*

- (3) *A fisheries officer may, if he or she believes that it is necessary for the purpose of enforcing the provisions of this Act, request the person in charge of a boat or vehicle to make the boat or vehicle available for his or her use.*
- (4) *If a fisheries officer makes use of a boat or vehicle under subsection (3), the Minister may pay to the person who would otherwise have been entitled to the use of the boat or vehicle at that time such compensation as the Minister considers proper for any loss incurred as a result of the boat or vehicle being made available for use by the fisheries officer.*

### **Subdivision 3—Scientific observers**

#### **87—Functions of scientific observer**

- (1) *A scientific observer has such functions as may be assigned to the scientific observer by the Minister under this section.*
- (2) *The Minister may confer on a scientific observer either or both of the following functions:*
  - (a) *to collect data about a fishery, fish habitat or aquatic resource;*
  - (b) *to conduct scientific research in relation to a fishery, fish habitat or aquatic resource.*
- (3) *A scientific observer may, at a reasonable time while aboard a registered boat on official duties—*
  - (a) *have access to any part of the boat or any thing in or on the boat as may be necessary to carry out official duties; and*
  - (b) *receive and transmit messages and communicate with the shore and other boats.*
- (4) *A scientific observer must, when carrying out official duties aboard a registered boat, have regard to the fishing activities being carried out on the boat.*

#### **88—Placement of scientific observer on registered boat**

- (1) *The Minister must give the holder of a fishery authority written notice of the Minister's intention to place a scientific observer on a registered boat used under the fishery authority.*
- (2) *The notice must specify a period (commencing not earlier than the date specified in the notice) during which the registered boat must not be used under the fishery authority except while a scientific observer is aboard the boat.*
- (3) *A registered boat to which the notice relates must not, during the period specified in the notice, be used under a fishery authority unless a scientific observer is aboard the boat at all times while it is being so used.*
- (4) *If subsection (3) is contravened, the registered owner of the boat and the registered master of the boat are each guilty of an offence.*  
*Maximum penalty: \$20 000.*

### ***Subdivision 4—Sea rangers***

#### ***89—Functions of sea ranger***

*A sea ranger has such functions as may be assigned to the sea ranger by the Minister.*

### ***Subdivision 5—Miscellaneous***

#### ***90—Provisions relating to things seized***

- (1) *If a thing is seized under this Part, the following provisions apply:*
- (a) *the thing seized must be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister—*
    - (i) *on application, authorises its release to the person from whom it was seized or a person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(i)(B)); or*
    - (ii) *in the case of fish or another perishable thing, orders that it be forfeited to the Crown;*
  - (b) *if proceedings for an offence against this Act related to the thing seized are commenced within the prescribed period after its seizure and the defendant is found guilty of the offence, the court must consider the question of forfeiture and—*
    - (i) *if the thing seized has not been forfeited by order of the Minister—*
      - (A) *order that it be forfeited to the Crown; or*
      - (B) *where it has been released under paragraph (a)(i), order that it be forfeited to the Crown or order that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit; or*
      - (C) *make no order for forfeiture; or*
    - (ii) *if the thing seized has been forfeited by order of the Minister—*
      - (A) *confirm the order for forfeiture; or*
      - (B) *quash the order for forfeiture,**as the court considers appropriate in the circumstances;*
  - (c) *if—*
    - (i) *the thing seized has not been released under paragraph (a)(i); and*
    - (ii) *proceedings for an offence against this Act related to the thing seized—*
      - (A) *are not commenced within the prescribed period after its seizure; or*
      - (B) *are commenced within the prescribed period after its seizure and the defendant is not found guilty of the offence; or*



- (C) *are commenced within the prescribed period after its seizure and the defendant is found guilty of the offence but either no order for forfeiture is made under paragraph (b)(i) or an order is made under paragraph (b)(ii) quashing the order for forfeiture,*

*the person from whom the thing was seized or a person who had legal title to it at the time of its seizure is entitled to recover, by action in a court of competent jurisdiction—*

- (iii) *if the thing seized has not been forfeited by order of the Minister—the thing itself or, if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure; or*
  - (iv) *if the thing seized has been forfeited by order of the Minister—compensation of an amount equal to its market value at the time of its seizure or, if it has been sold, the amount realised by its sale;*
- (d) *despite paragraph (c), if fish or another perishable thing is seized in relation to an expiable offence and the offence is expiated—*
- (i) *the fish or other perishable thing is, if it has not already been forfeited to the Crown by order of the Minister, forfeited to the Crown by force of this paragraph; and*
  - (ii) *whether it has been forfeited by order of the Minister or under this paragraph, no compensation may be recovered in respect of the fish or other perishable thing by a person;*
- (e) *if the thing seized is forfeited to the Crown under this section, it may be disposed of by sale, destruction or otherwise as the Minister directs;*
- (f) *if compensation is payable under this subsection, the money required for that purpose must be paid out of the Fund.*
- (2) *Despite subsection (1), if—*
- (a) *a fisheries officer finds a device for taking fish unattended and, under this section, seizes the device and fish caught or trapped by the device; and*
  - (b) *the owner of the device is unknown,*

*the following provisions apply:*

- (c) *the Minister may order that the fish (if any) be forfeited to the Crown, in which case, the fish may be disposed of by sale, destruction or otherwise as the Minister directs and any proceeds of sale must be paid into the Fund;*
- (d) *notice of the seizure of the device must be given in accordance with the regulations;*
- (e) *if, after the expiration of 1 month from the giving of the notice, the owner remains unknown and the Minister determines that there is reason to believe that the device had been, was being, or was intended to be, used in contravention of this Act, the Minister may order that it be forfeited to the Crown, in which case it may be disposed of by sale, destruction or otherwise as the Minister directs and any proceeds of sale must be paid into the Fund.*

(3) *In this section—*

***prescribed period*** means 12 months or such longer period as the court may, on application by the Minister, allow.

### **91—Offence to hinder etc authorised persons**

(1) *A person must not—*

- (a) *hinder or use abusive, threatening or insulting language to an authorised person, a person accompanying or assisting a fisheries officer or another person engaged in the administration of this Act; or*
- (b) *fail to comply with a requirement made of the person by a fisheries officer under section 81; or*
- (c) *fail to comply with a direction given to the person by a fisheries officer under section 81; or*
- (d) *in response to a requirement made of the person by a fisheries officer under section 81(1)(e)—*
  - (i) *state a name or address that is false; or*
  - (ii) *produce false evidence of his or her identity; or*
- (e) *in response to a requirement made of the person by a fisheries officer under section 81(1)(f)—fail to give information or answer a question to the best of the person's knowledge, information or belief; or*
- (f) *in response to a requirement made of the person by a fisheries officer under section 81(1)(g)—produce a document or record that the person knows, or ought to know, is false or misleading in a material particular; or*
- (g) *by words or conduct, falsely represent that the person is an authorised person.*

*Maximum penalty: \$5 000.*

(2) *A person must not assault an authorised person, a person accompanying or assisting a fisheries officer or another person engaged in the administration of this Act.*

*Maximum penalty: \$10 000 or imprisonment for 2 years.*

## **Division 2—Orders made by Minister**

### **92—Protection orders**

- (1) *The Minister may issue a protection order under this Division for the purpose of securing compliance with this Act.*
- (2) *A protection order—*
  - (a) *must be in the form of a written notice served on the person to whom the notice is issued; and*
  - (b) *must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and*
  - (c) *must state the grounds on which it is made with reasonable particularity; and*

- 
- (d) *may impose any requirement reasonably required for the purpose for which the order is issued, including 1 or more of the following:*
- (i) *a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister;*
  - (ii) *a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;*
  - (iii) *a requirement that the person take specified action in a specified way and within a specified period;*
  - (iv) *a requirement that the person comply with any specified code or standard prepared or published by the Minister or by another specified body;*
  - (v) *a requirement that the person undertake specified tests or monitoring;*
  - (vi) *a requirement that the person provides the Minister with specified results or reports;*
  - (vii) *a requirement that the person appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and*
- (e) *must state that the person may, within 14 days, appeal to the ERD Court against the order.*
- (3) *A fisheries officer may, if of the opinion that urgent action is required for the protection of a fish habitat, issue an emergency protection order imposing requirements of a kind referred to in subsection (2)(d) as reasonably required for the protection of the fish habitat.*
- (4) *An emergency protection order may be issued orally but, in that event, the person to whom the order is issued must be advised immediately of the person's right to appeal to the ERD Court against the order.*
- (5) *If an emergency protection order is issued orally, the fisheries officer who issued it must confirm it in writing at the earliest opportunity by written notice given to the person to whom it applies.*
- (6) *If an emergency protection order is issued, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written protection order issued by the Minister and served on the relevant person.*
- (7) *The Minister or a fisheries officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other protection order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.*
- (8) *The Minister may, by written notice served on a person to whom a protection order has been issued, vary or revoke the order.*

- (9) *A person to whom a protection order is issued must comply with the order.*

*Maximum penalty: \$10 000.*

*Expiation fee: \$500.*

### **93—Action on non-compliance with protection order**

- (1) *If the requirements of a protection order are not complied with, the Minister may take any action required by the order.*
- (2) *Action may be taken on the Minister's behalf by a fisheries officer or another person authorised by the Minister for the purpose.*
- (3) *A person taking action under this section may enter any relevant place or vehicle at any reasonable time.*
- (4) *The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the protection order.*
- (5) *If an amount is recoverable from a person by the Minister under this section—*
- (a) *the Minister may, by written notice to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and*
  - (b) *the amount together with any interest charge so payable is, until paid, a charge in favour of the Minister on any land owned by the person in relation to which the protection order is registered under this Division.*

### **94—Reparation orders**

- (1) *If the Minister is satisfied that a person has caused harm to a fish habitat by contravention of this Act, the Minister may issue a reparation order requiring the person—*
- (a) *to take specified action within a specified period to make good any resulting damage to the fish habitat; or*
  - (b) *to make a payment or payments into an approved account to enable action to be taken to address any resulting damage to the fish habitat,*
- or both.*
- (2) *A reparation order—*
- (a) *must be in the form of a written notice served on the person to whom it is issued; and*
  - (b) *must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and*
  - (c) *must state the grounds on which it is made with reasonable particularity; and*
  - (d) *may include requirements for action to be taken to prevent or mitigate further harm to the fish habitat, or for a plan of action to be prepared to the satisfaction of the Minister; and*
  - (e) *may include requirements for specified tests or monitoring; and*

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- (f) *may include requirements for providing to the Minister specified results or reports; and*
  - (g) *may include requirements that the person to whom it is issued appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and*
  - (h) *in the case of an order requiring payment into an approved account, may provide that payments must occur in accordance with a scheme specified by the Minister (either at the time of the making of the order or at a later time when the extent or impact of any action has been assessed or finally determined); and*
  - (i) *must state that the person may, within 14 days, appeal to the ERD Court against the order.*
- (3) *A fisheries officer may, if of the opinion that urgent action is required to prevent or mitigate further harm, issue an emergency reparation order containing requirements of a kind referred to in subsection (2), other than a requirement for payment into an approved account.*
  - (4) *An emergency reparation order may be issued orally but, in that event, the person to whom it is issued must be advised immediately of the person's right to appeal to the ERD Court against the order.*
  - (5) *If an emergency reparation order is issued orally, the fisheries officer who issued it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.*
  - (6) *If an emergency reparation order is issued, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written reparation order issued by the Minister and served on the relevant person.*
  - (7) *The Minister or a fisheries officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other reparation order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.*
  - (8) *The Minister may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.*
  - (9) *A person to whom a reparation order is issued must comply with the order.*  
*Maximum penalty: \$50 000.*

### **95—Action on non-compliance with reparation order**

- (1) *If the requirements of a reparation order are not complied with, the Minister may take any action required by the order.*
- (2) *Action taken by the Minister under subsection (1) may be taken on the Minister's behalf by a fisheries officer or another person authorised by the Minister for the purpose.*
- (3) *A person taking action under this section may enter any relevant place or vehicle at any reasonable time.*

- (4) *The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the reparation order.*
- (5) *If an amount is recoverable from a person by the Minister under this section—*
  - (a) *the Minister may, by written notice to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and*
  - (b) *the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the reparation order is registered under this Division.*

### **96—Reparation authorisations**

- (1) *If the Minister is satisfied that a person has caused harm to a fish habitat by contravention of this Act, the Minister may (whether or not a reparation order has been issued to the person) issue a reparation authorisation under which fisheries officers or other persons authorised by the Minister for the purpose may take specified action on the Minister's behalf to make good any resulting damage to the fish habitat.*
- (2) *A reparation authorisation—*
  - (a) *must be in the form of a written notice; and*
  - (b) *must specify the person alleged to have caused the harm (whether by name or a description sufficient to identify the person); and*
  - (c) *must state the grounds on which it is made with reasonable particularity; and*
  - (d) *may include authorisation for action to be taken to prevent or mitigate further harm to the fish habitat.*
- (3) *The Minister must, as soon as practicable after issuing a reparation authorisation, serve a copy of the authorisation on the person alleged to have caused the harm.*
- (4) *The Minister may, by written notice, vary or revoke a reparation authorisation and must, as soon as practicable after doing so, serve a copy of the notice on the person alleged to have caused the harm.*
- (5) *If a person other than a fisheries officer is authorised to take action under subsection (1), the following provisions apply:*
  - (a) *the Minister must issue the person with an instrument of authority;*
  - (b) *the person may exercise such powers of a fisheries officer as are reasonably required for the purpose of taking action under that subsection;*
  - (c) *the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to a fisheries officer;*
  - (d) *the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of a fisheries officer.*
- (6) *A person taking action under a reparation authorisation may enter any relevant place or vehicle at any reasonable time.*

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- (7) *The reasonable costs and expenses incurred by the Minister in taking action under a reparation authorisation may be recovered by the Minister as a debt from the person who caused the relevant harm.*
- (8) *If an amount is recoverable from a person by the Minister under this section—*
- (a) *the Minister may, by written notice to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and*
  - (b) *the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the reparation authorisation is registered under this Division.*

### **97—Related matters**

- (1) *The Minister should, so far as is reasonably practicable, consult with any other public authority that may also have power to act with respect to the particular matter before the Minister issues a protection order, reparation order or reparation authorisation under this Division.*
- (2) *Subsection (1) does not apply—*
- (a) *if action is being taken under this Act as a matter of urgency; or*
  - (b) *in any other circumstance of a prescribed kind.*
- (3) *A person cannot claim compensation from—*
- (a) *the Minister or the Crown; or*
  - (b) *a fisheries officer; or*
  - (c) *a person acting under the authority of the Minister or a fisheries officer,*
- in respect of a requirement imposed under this Division or on account of any act or omission undertaken or made in the exercise (or purported exercise) of a power under this Division.*

### **98—Registration of orders or authorisations by Registrar-General**

- (1) *If—*
- (a) *the Minister issues an order or authorisation under this Division; and*
  - (b) *the order or authorisation is issued in relation to an activity carried out on land, or requires a person to take action on or in relation to land,*
- the Minister may apply to the Registrar-General for the registration of the order or authorisation in relation to that land.*
- (2) *An application under this section must—*
- (a) *define the land to which it relates; and*
  - (b) *comply with any requirement imposed by the Registrar-General for the purposes of this section.*

- (3) *The Registrar-General must—*
- (a) *on due application under subsection (2); and*
  - (b) *on lodgement of a copy of the relevant order or authorisation,*  
*register the order or authorisation in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.*
- (4) *An order or authorisation registered under this section is binding on each owner and occupier from time to time of the land.*
- (5) *The Registrar-General must, on application by the Minister, cancel the registration of an order or authorisation in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.*
- (6) *The Minister may, if the Minister thinks fit, apply to the Registrar-General for cancellation of the registration of an order or authorisation under this section in relation to land, and must do so—*
- (a) *on revocation of the order or authorisation; or*
  - (b) *in respect of—*
    - (i) *an order—*
      - (A) *on full compliance with the requirements of the order;*
      - (B) *if the Minister has taken action under this Division to carry out the requirements of the order—on payment to the Minister of any amount recoverable by the Minister in relation to the action so taken; or*
    - (ii) *an authorisation—on payment to the Minister of any amount recoverable by the Minister under this Division in relation to the action taken in pursuance of the authorisation.*

### **99—Effect of charge**

*A charge imposed on land under this Division has priority over—*

- (a) *any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and*
- (b) *any other charge on the land other than a charge registered prior to registration under this Division of the relevant order or authorisation in relation to the land.*

### **Division 3—Court orders**

#### **100—Additional orders court can make on conviction**

- (1) *A court that convicts a person of an offence against this Act may, by order, in addition to imposing any other penalty, do 1 or more of the following as it thinks fit:*
- (a) *impose conditions on a specified authority, or vary conditions of a specified authority, held by the person;*



- (b) *suspend a specified authority held by the person;*
  - (c) *disqualify the person from holding or obtaining an authority of a specified class;*
  - (d) *disqualify the person from being the director of a body corporate that holds an authority of a specified class;*
  - (e) *prohibit the person from being in, on, or in the vicinity of, specified waters without a lawful purpose;*
  - (f) *prohibit the person from any 1 or more of the following:*
    - (i) *engaging in a fishing activity of a specified class;*
    - (ii) *being in or on a specified boat, boats of a specified class or boats carrying devices of a specified class;*
    - (iii) *being in or on any specified premises or place used in connection with the processing of aquatic resources;*
    - (iv) *having possession of devices of a specified class;*
    - (v) *having possession of fish or other aquatic resources of a specified class.*
- (2) *An order under subsection (1) may be made either on the court's own initiative or on the application of the prosecution.*

### **101—Orders ERD Court may make on application by Minister**

*The ERD Court may, on application by the Minister, make an order of a kind referred to in section 100(1) against a person if the Court is satisfied that—*

- (a) *an order of that kind has been made against the person under a corresponding law; and*
- (b) *the making of the order is justified in the circumstances of the case.*

### **102—Provisions relating to orders under this Division**

- (1) *The court may stipulate that a suspension, disqualification or prohibition order under this Division is to apply—*
- (a) *permanently; or*
  - (b) *for a specified period; or*
  - (c) *until further order.*
- (2) *A person who contravenes an order under this Division is, in addition to liability for contempt of the order, guilty of an offence.*  
*Maximum penalty: \$100 000.*
- (3) *In proceedings for an offence against subsection (2) involving an alleged contravention of an order prohibiting a person from being in, on, or in the vicinity of, particular waters without a lawful purpose, the prosecution need not prove the absence of a lawful purpose and the burden is on the defendant to prove a purpose on which he or she relies.*

- (4) *If an authority has been suspended under this Division, the authority may be renewed but remains subject to suspension until the expiration of the period of suspension.*
- (5) *If an appeal has been instituted against a conviction, an order made under this Division by the convicting court is suspended until determination of the appeal.*

## **Division 4—Demerit points scheme**

### **103—Interpretation**

- (1) *In this Division—*

**associate of a person means—**

- (a) *a relative of the person or of the person's spouse or domestic partner; or*
- (b) *a body corporate where the person or a relative of the person or of the person's spouse or domestic partner has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or*
- (c) *a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in paragraph (b) is a beneficiary; or*
- (d) *an employee, employer or partner of the person; or*
- (e) *a person declared by the regulations to be an associate of the other person for the purposes of this Division;*

**beneficiary of a trust includes an object of a discretionary trust;**

**domestic partner means a person who is a domestic partner within the meaning of the Family Relationships Act 1975, whether declared as such under that Act or not;**

**eligible transferee, in relation to an authority to be transferred, means a person who—**

- (a) *is not disqualified, or liable to disqualification, under this Act from holding or obtaining an authority; and*
- (b) *is not an associate of the holder of the authority;*

**expiate includes pay the amount payable in connection with an infringement notice or penalty notice issued under a law of another State in respect of an alleged offence;**

**relative of a person means the spouse, domestic partner, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;**

**relevant interest has the same meaning as in the Corporations Act 2001 of the Commonwealth;**

**spouse—a person is the spouse of another if they are legally married.**

- (2) *In this Division, a reference to an offence committed by a person includes a reference to an offence allegedly committed by a person that the person has expiated.*

**104—Demerit points for certain offences**

- (1) *If a person is found guilty of, or expiates, an offence against this Act of a kind prescribed by the regulations, the number of demerit points prescribed by the regulations in relation to that offence is, subject to this section, incurred by that person.*
- (2) *Demerit points are not incurred for an offence if the offender has already incurred demerit points for that offence by virtue of being granted an order for relief under the Expiation of Offences Act 1996 in respect of an expiation notice for that offence.*
- (3) *A person who is granted an order for relief under the Expiation of Offences Act 1996 in respect of an expiation notice for an offence that attracts demerit points under this Division will, for the purposes of this Division, be taken to have expiated that offence on the day on which the order is granted.*
- (4) *If a person is found guilty of, or expiates, 2 or more offences arising from the same incident, demerit points are incurred only in respect of the offence (or 1 of the offences) that attracts the most demerit points.*
- (5) *Demerit points incurred or recorded by or in relation to a person under a corresponding law will be taken to be incurred by that person under this Division.*
- (6) *If a court by which a person is found guilty of an offence is satisfied by evidence given on oath immediately on the finding of guilt that the offence is trifling, or that any other proper cause exists, it may order that a reduced number of demerit points, or no demerit points, are incurred by the person in respect of that offence.*
- (7) *The Minister must cause the demerit points incurred by a person under this Division to be recorded against a fishery authority if—*
  - (a) *the person who incurred the demerit points is the holder of the fishery authority and the demerit points were incurred in relation to an offence committed or allegedly committed by the person against a prescribed provision of this Act; or*
  - (b) *the person who incurred the demerit points is the registered master of a boat registered for use under the fishery authority and the demerit points were incurred in relation to an offence committed or allegedly committed by the person against section 120(4).*

**105—Consequences of certain number of demerit points being incurred by person or recorded against authority**

- (1) *If a natural person has incurred an aggregate of 200 or more demerit points in respect of offences committed within a period of 5 years up to and including the most recent date on which the person committed an offence in respect of which the person incurred demerit points, the person is liable to be disqualified under this Division—*
  - (a) *from holding or obtaining an authority; and*
  - (b) *from being a director of a body corporate that holds an authority; and*
  - (c) *from being registered as the master of a boat used pursuant to an authority, for a period of 10 years.*

- (2) *If a body corporate has incurred an aggregate of 200 or more demerit points in respect of offences committed within a period of 5 years up to and including the most recent date on which the body corporate committed an offence in respect of which the body corporate incurred demerit points—*
- (a) *the body corporate; and*
  - (b) *each director of the body corporate,*
- is liable to be disqualified under this Division from holding or obtaining an authority for a period of 10 years.*
- (3) *If—*
- (a) *an aggregate of 200 or more demerit points are recorded against a fishery authority in respect of offences committed within a 5 year period up to and including the most recent date on which an offence was committed in respect of which demerit points were recorded against the fishery authority; and*
  - (b) *the fishery authority is not transferable,*
- the fishery authority is liable to be cancelled under this Division.*

**106—Notices to be sent by Minister when certain number of demerit points are incurred or recorded**

- (1) *The Minister must notify a person when—*
- (a) *the person has incurred a number of demerit points equal to or exceeding one-half of the number that results in the person becoming liable to be disqualified under section 105; or*
  - (b) *a number of demerit points equal to or exceeding one-half of the number that results in an authority held by the person becoming liable to cancellation or compulsory acquisition under this Division are recorded against the authority.*
- (2) *Notice under this section must be in writing and may be given personally or sent by post.*
- (3) *The operation of this Division is not affected by any failure to comply with subsection (1).*

**107—Notices to be sent by Minister when person becomes liable to disqualification or authority is to be cancelled**

- (1) *If a person is liable to be disqualified under section 105, the Minister must give the person notice of the disqualification.*
- (2) *If a fishery authority is liable to cancellation under section 105, the Minister must give the holder of the authority notice of the cancellation.*
- (3) *A notice of disqualification must inform the person to whom it is given—*
- (a) *that the person is disqualified—*
    - (i) *from holding or obtaining an authority; and*
    - (ii) *from being a director of a body corporate that holds an authority;*
- and*

- (iii) *from being registered as the master of a boat used pursuant to an authority,*  
*for a period of 10 years; and*
  - (b) *that any transferable authority held by the person—*
    - (i) *must, within 180 days after the date specified in the notice, be transferred to an eligible transferee; and*
    - (ii) *is suspended until any such transfer has taken effect; and*
    - (iii) *if not transferred as required by the notice, will be compulsorily acquired by the Minister in accordance with the regulations; and*
  - (c) *that any authority held by the person that is not transferable is cancelled.*
- (4) *Notice under this section must be in writing and may be given personally or sent by post.*

### **108—Disqualification etc and discounting of demerit points**

- (1) *A disqualification or cancellation under this Division takes effect on the day specified in the notice of disqualification or cancellation given under section 107.*
- (2) *If a transferable authority held by a person to whom a notice of disqualification is given is not transferred as required by the notice, the Minister must acquire the authority compulsorily in accordance with the regulations.*
- (3) *An authority that is compulsorily acquired under this section cannot subsequently be issued to—*
  - (a) *the person from whom it was so acquired; or*
  - (b) *an associate of that person.*
- (4) *If a person is given a notice of disqualification under section 107—*
  - (a) *the person is disqualified—*
    - (i) *from holding or obtaining an authority; and*
    - (ii) *from being a director of a body corporate that holds an authority; and*
    - (iii) *from being registered as the master of a boat used pursuant to an authority,*  
*for a period of 10 years; and*
  - (b) *any transferable authority held by the person is, by force of this section, suspended until transferred in accordance with the notice; and*
  - (c) *any authority held by the person that is not transferable is, by force of this section, cancelled.*
- (5) *If a disqualification has taken effect under this section, the following demerit points are discounted:*
  - (a) *all demerit points in respect of the offence that brought the aggregate of the demerit points to 200 or more (and led to the notice of disqualification being sent to the person under section 107);*

- (b) *all demerit points in respect of offences committed prior to the time at which the person committed that offence (whether or not the person had been convicted of, or had expiated, those offences when the disqualification took effect).*
- (6) *If an authority that is liable to compulsory acquisition is transferred as required under this Division, all demerit points recorded against the authority are discounted.*

### **109—Court not to take into account demerit points in determining penalty**

*In determining the penalty to be imposed on a person convicted of an offence against this Act, the court must not take into account the fact that, in consequence of the conviction, demerit points will be incurred by the person.*

## **Division 5—Miscellaneous**

### **110—Additional penalty based on value of aquatic resources**

- (1) *Subject to subsection (2), this section applies to an offence against this Act involving the taking, sale or purchase, or possession or control, of aquatic resources.*
- (2) *This section does not apply to an offence against section 78(1).*
- (3) *If a person is convicted of an offence to which this section applies, the court must, in addition to imposing any other penalty prescribed by this Act, impose a penalty equal to—*
- (a) *5 times the amount determined by the convicting court to be the wholesale value of the aquatic resources at the time at which the offence was committed; or*
- (b) *\$100 000,*
- whichever is the lesser amount.*
- (4) *For the purposes of this section, aquatic resources taken in contravention of this Act or a corresponding law will be taken to have a wholesale value equivalent to that of aquatic resources of the same class taken lawfully.*

## **Part 9—Review and appeals**

### **Division 1—Internal review**

#### **111—Review of certain decisions of Minister**

- (1) *A person aggrieved by a decision of the Minister—*
- (a) *to refuse an application for the issue or renewal of an authority; or*
- (b) *to refuse an application for consent to transfer an authority; or*
- (c) *to impose conditions on an authority or vary a condition of an authority,*
- may, within 1 month of the day on which the decision is made, apply to the Minister for a review of the decision.*
- (2) *The Minister must, if required by the applicant for the review, state in writing the reasons for the decision that is the subject of the application for review.*

- (3) *If the reasons of the Minister are not given to the applicant for the review in writing at the time of making the decision and that person, within 28 days of the making of the decision, requires the Minister to state the reasons in writing, the time for instituting a review runs from the time at which that person receives the written statement of those reasons.*
- (4) *An application for a review must be made in accordance with the regulations.*
- (5) *The Minister must review the decision that is the subject of an application for review under this section.*
- (6) *An applicant for review must, if so required by the Minister—*
  - (a) *appear personally before the Minister in support of the application; and*
  - (b) *provide any information sought by the Minister; and*
  - (c) *verify information provided to the Minister by statutory declaration.*
- (7) *An applicant for review may be assisted before the Minister by an agent or representative (not being a legal practitioner).*
- (8) *On a review under this section, the Minister—*
  - (a) *may confirm or vary the decision under review or set aside the decision and substitute a new decision; and*
  - (b) *must provide the applicant for review with a written statement of the reasons for making the decision.*

## ***Division 2—Appeals***

### ***112—Appeal to District Court against decision of Minister***

- (1) *An applicant for a review under Division 1 who is not satisfied with the decision of the Minister on the review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.*
- (2) *An appeal must be instituted within 28 days from the time the appellant receives the written statement of the reasons for making the decision appealed against.*

### ***113—Appeals to ERD Court against protection or reparation order***

- (1) *A person to whom a protection order or reparation order has been issued under Part 8 Division 2 may appeal to the ERD Court against the order or any variation of the order.*
- (2) *An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.*
- (3) *Subject to this section, an appeal must be made within 21 days after the order is issued or the variation is made.*
- (4) *The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by subsection (3).*

- (5) *Unless otherwise determined by the Court, an appeal must be referred in the first instance to a conference under section 16 of the Environment, Resources and Development Court Act 1993 (and the provisions of that Act will then apply in relation to that appeal).*
- (6) *Subject to subsection (7), the institution of an appeal does not affect the operation of the order to which the appeal relates or prevent the taking of action to implement the order.*
- (7) *The Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of an order if the Court is satisfied that it is appropriate to do so having regard to—*
- (a) the possible consequences to a fish habitat or aquatic resources and the interests of any persons who may be affected by the appeal; and*
  - (b) the need to secure the effectiveness of the hearing and determination of the appeal.*
- (8) *An order under subsection (7)—*
- (a) may be varied or revoked by the Court by further order; and*
  - (b) is subject to such conditions as are specified in the order; and*
  - (c) has effect until—*
    - (i) the end of the period of operation (if any) specified in the order; or*
    - (ii) the decision of the Court on the appeal comes into operation, whichever is the earlier.*
- (9) *The Court must not make an order under subsection (7) unless each party to the appeal has been given a reasonable opportunity to make submissions in relation to the matter.*
- (10) *The Court may, on hearing an appeal under this section do one or more of the following:*
- (a) confirm, vary or revoke the order appealed against;*
  - (b) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;*
  - (c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.*

#### **114—Constitution of ERD Court**

*The following provisions apply in respect of the constitution of the ERD Court when exercising jurisdiction under this Act:*

- (a) the Court may be constituted in a manner provided by the Environment, Resources and Development Court Act 1993 or may, if the Presiding Member of the Court so determines, be constituted of a Judge and 1 commissioner;*
- (b) the provisions of the Environment, Resources and Development Court Act 1993 apply in relation to the Court constituted of a Judge and 1 commissioner in the same way as in relation to a full bench of the Court;*



- (c) *the Court may not be constituted of or include a commissioner unless—*
- (i) *in a case where only 1 commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or*
  - (ii) *in any other case—at least 1 commissioner,*
- is a commissioner who has been specifically designated by the Governor as a person who has expertise in fields that are relevant to the jurisdiction conferred on the Court by this Act.*

## **Part 10—Miscellaneous**

### **Division 1—General**

#### **115—Exemptions**

- (1) *Subject to this section, the Minister may, by notice in the Gazette—*
- (a) *exempt a person or class of persons, subject to such conditions as the Minister thinks fit and specifies in the notice, from specified provisions of this Act; or*
  - (b) *vary or revoke an exemption, or a condition of an exemption, under this section or impose a further condition.*
- (2) *The Minister must, before making an exemption that relates to, or is to apply in respect of, the Adelaide Dolphin Sanctuary, consult with the Minister for the Adelaide Dolphin Sanctuary.*
- (3) *The Minister must, before making an exemption that relates to, or is to apply in respect of, the River Murray, consult with the Minister for the River Murray.*
- (4) *The Minister may not exempt a person or class of persons from a provision of a management plan or regulations for a fishery or an aboriginal traditional fishing management plan or regulations relating to aboriginal traditional fishing.*
- (5) *An exemption under this section operates for a period (not exceeding 12 months) specified in the notice of exemption.*
- (6) *A person who contravenes a condition of an exemption is guilty of an offence.*  
*Maximum penalty: \$10 000.*  
*Expiation fee: \$500.*

#### **116—Registers**

- (1) *The Minister must keep the following registers:*
- (a) *a register of authorities;*
  - (b) *a register of exemptions;*
  - (c) *a register of persons who have been disqualified under this Act from holding or obtaining an authority;*
  - (d) *a register of persons who have been disqualified under this Act from being registered as the master of a boat used pursuant to an authority;*

- (e) *a register of persons who have been disqualified under this Act from being the director of a body corporate that holds an authority.*
- (2) *The register of authorities must include, in relation to each authority—*
  - (a) *the full name and postal address of each person in whose name the authority is held; and*
  - (b) *in the case of an authority held in the name of a body corporate—the full name and postal address of each director of the body corporate; and*
  - (c) *particulars of any conditions to which the authority is subject; and*
  - (d) *the number of demerit points recorded against the authority; and*
  - (e) *in the case of a fishery authority—*
    - (i) *the full name and postal address of the registered master of a boat registered for use under the authority; and*
    - (ii) *particulars of any boat registered for use under the authority; and*
    - (iii) *particulars of any device registered for use under the authority; and*
    - (iv) *particulars of any quota entitlements under the authority; and*
    - (v) *a history of all transfers of the authority made since the commencement of this Act; and*
    - (vi) *in the case of a fishery licence—any notation that a person specified by the holder of the licence has an interest in the licence; and*
    - (vii) *information prescribed by the regulations; and*
    - (viii) *any other information as the Minister thinks fit.*
- (3) *The register of exemptions must include, in relation to each exemption—*
  - (a) *the full name and postal address of each person to whom the exemption applies; and*
  - (b) *particulars of any condition to which the exemption is subject; and*
  - (c) *information prescribed by the regulations; and*
  - (d) *any other information as the Minister thinks fit.*
- (4) *The registers referred to in subsection (1)(c), (d) and (e)—*
  - (a) *must not include any person who is dead; and*
  - (b) *must include, in relation to each person on the register—*
    - (i) *the full name and postal address of the person; and*
    - (ii) *the date on which the disqualification took effect.*
- (5) *The Minister must, on application by the holder of a fishery licence and payment of the fee fixed by regulation, make a notation on the register of authorities that a specified person nominated by the holder of the licence has an interest in the licence.*

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- (6) *If the register of authorities includes a notation that a specified person has an interest in a fishery licence—*
- (a) *where proceedings for an offence against this Act are commenced against the holder of the licence or a registered master of a boat used under the licence, the Minister must give or cause to be given to the person specified in the notation written notice setting out particulars of the alleged offence; and*
  - (b) *the Minister must, on application by that person, remove that notation from the register.*
- (7) *The registers will be kept in a manner and form determined by the Minister.*
- (8) *The registers must be kept available for inspection, without fee, by members of the public—*
- (a) *during ordinary office hours at a public office, or public offices, determined by the Minister; and*
  - (b) *on a web site determined by the Minister.*
- (9) *A member of the public may, on payment of the fee fixed by regulation, obtain a copy of any part of a register kept under this Act.*

### **117—Recovery of fees, levies and other amounts**

A fee, levy or other amount payable under this Act is recoverable by action in a court of competent jurisdiction as a debt due to the Minister.

### **118—Statutory declarations**

If a person is required under this Act to provide information to the Minister, the Director or a prescribed authority, the Minister, Director or prescribed authority (as the case may be) may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Minister, Director or prescribed authority.

### **119—False or misleading statement or information**

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, or record kept, under this Act.

Maximum penalty:

- (a) if the case where the offence involved the making of a false or misleading statement, or the provision of false or misleading information, relating to a quota entitlement under a fishery authority—
  - (i) if the offender is a body corporate—\$300 000;
  - (ii) if the offender is a natural person—\$60 000;
- (b) in any other case—
  - (i) if the offender is a body corporate—\$100 000;
  - (ii) if the offender is a natural person—\$20 000.

## **120—Offences committed by bodies corporate or agents, or involving registered boats**

- (1) If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he or she proves that he or she exercised all reasonable diligence to prevent the commission of the offence.
- (2) If a person is guilty of an offence against this Act committed while he or she was acting as the agent of another person, that other person is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.
- (3) If a registered boat is used in or in connection with the commission of an offence against this Act, the registered owner of the boat is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.
- (4) Without limiting the effect of this section—
  - (a) if the registered master of a registered boat is not the registered owner and—
    - (i) the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be done by the registered owner, constitute an offence against this Act; or
    - (ii) the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be done by the registered owner, constitute an offence against this Act,the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this Act;
  - (b) if—
    - (i) an employee or other agent of the registered owner or the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be done by the registered owner, constitute an offence against this Act; or
    - (ii) an employee or other agent of the registered owner or the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be done by the registered owner, constitute an offence against this Act,then—

- (iii) the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this Act; or
- (iv) if the registered owner is not the registered master, the registered owner and the registered master are each guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this Act.

### 121—Commencement of prosecutions

- (1) Proceedings for an offence against this Act must be commenced—
  - (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—any time within 3 years after the date of the alleged commission of the offence or, with the authorisation of the Director of Public Prosecutions, at any later time within 5 years after the date of the alleged commission of the offence.
- (2) An apparently genuine document purporting to be signed by the Director of Public Prosecutions authorising the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

### 122—Self-incrimination

If a natural person is required to give information, answer a question or produce, or provide a copy of, a document or record under Part 8 and the information, answer, document or record would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless give the information, answer the question or produce, or provide a copy of, the document or record, but the information, answer, document or record will not be admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty other than proceedings in respect of the making of a false or misleading statement or declaration.

### 123—Rewards

The Minister may pay a reward, not exceeding the prescribed amount, to a person who provides information leading to the conviction of a person for an offence against this Act.

### 124—Confidentiality

- (1) A person engaged or formerly engaged in the administration of this Act or the repealed Act must not divulge or communicate information obtained (whether by that person or otherwise) in the course of official duties except—
  - (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or

- (c) in connection with the administration of this Act, the repealed Act or a corresponding law; or
- (d) to a law enforcement, prosecution or administrative authority of a place outside this State, where the information is required for the proper administration or enforcement of a law of that place relating to fishing; or
- (e) for the purposes of any legal proceedings arising out of the administration of this Act, the repealed Act or a corresponding law.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (4) Despite any other law to the contrary, the Minister, the Director or any other person to whom a return is provided under this Act by the holder of a fishery licence or other authority cannot be required by subpoena or otherwise to produce to a court any information contained in such a return.

## **125—Service**

- (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 at the person's last known residential, business or (in the case of a corporation) registered address; or
  - (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by fax transmission or e-mail to a fax 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).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

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**126—Evidentiary provisions**

- (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 or was not at a specified time the holder of a specified authority; or
  - (b) that a provision set out in the certificate was at a specified time a condition of a specified authority; or
  - (c) that a boat specified in the certificate was or was not at a specified time a registered boat; or
  - (d) that a person specified in the certificate was or was not at a specified time a registered master in relation to a specified boat; or
  - (e) that an amount specified in the certificate was at a specified time the wholesale value of a specified species of aquatic resource; or
  - (f) that the Minister had or had not consented to the use of a boat specified in the certificate in the place of a specified registered boat at a specified time; or
  - (g) that the Minister had or had not consented to a person specified in the certificate being in charge of a specified boat in the place of the registered master at a specified time,

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

- (2) In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by a fisheries officer certifying—
- (a) that aquatic resources taken by, or in the possession or control of, a specified person, was, on a specified day, of a specified weight, measure or count; and
  - (b) that the weight, measure or count was determined by means of a prescribed procedure or by use of prescribed apparatus,

is, in the absence of proof to the contrary, proof of the weight, measure or count of that aquatic resource.

- (3) In proceedings for an offence against this Act, an allegation in the complaint—
- (a) that a person named in the complaint was at a specified time a fisheries officer or scientific observer; or
  - (b) that aquatic resources in relation to which any act or omission is alleged to have been done or made was an aquatic resource of a specified species, sex, size or weight, or was an aquatic resource having any other specified characteristic; or
  - (c) that any purpose specified in the complaint was the purpose for which any act was done,

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

- (4) In proceedings for an offence against this Act, if it is proved that an aquatic resource was in the possession or control of a person on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, it will be presumed, in the absence of proof to the contrary, that the aquatic resource was taken by that person from such waters or area of waters on that day.

- (5) In proceedings for an offence against this Act, if it is proved that on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, a person had in his or her possession or control any aquatic resource and a device capable of being used for taking such aquatic resource, it will be presumed, in the absence of proof to the contrary, that the person took the aquatic resource by means of that device on that day from such waters or area of waters.
- (6) In proceedings for an offence against this Act, if it is proved that an aquatic resource was in a boat on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, it will be presumed in the absence of proof to the contrary, that the boat was used for the purpose of taking the aquatic resource from such waters or area of waters on that day.
- (7) In proceedings for an offence against this Act, if it is proved that on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, a person had in his or her possession or control a device that is prohibited under this Act or the use of which is prohibited in such waters or area of waters, it will be presumed, in the absence of proof to the contrary, that the person had used that device for the purpose of taking aquatic resources in such waters or area of waters on that day.
- (8) 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.
- (9) 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 within waters specified by or under this Act will, in the absence of proof to the contrary, be accepted as proof of the matter so stated.
- (10) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that any packaging, label, slip or mark on the outside or inside of a receptacle, container, box or package of aquatic resources consigned for or on sale was marked with or contained the name or brand of any person will, in the absence of proof to the contrary, be accepted as proof that person consigned those aquatic resources for or on sale.

## **Division 2—Regulations**

### **127—General**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Regulations under this Act may—
  - (a) make provisions of a savings or transitional nature consequent on the enactment of this Act or the commencement of specified provisions of this Act or specified regulations under this Act;
  - (b) include evidentiary provisions to facilitate proof of breaches of the regulations for the purposes of proceedings for offences;
  - (c) prescribe fees for the purposes of this Act and regulate the payment, refund, waiver or reduction of such fees;



- (d) prescribe amounts payable for late payment of fees so prescribed;
  - (e) prescribe demerit points for offences against this Act;
  - (f) prescribe expiation fees not exceeding \$750 for alleged offences against the regulations;
  - (g) subject to subsection (3), prescribe fines not exceeding \$20 000 for contravention of, or non-compliance with, a regulation.
- (3) A regulation made under section 128 may prescribe fines not exceeding \$100 000 for contravention of, or non-compliance with, a regulation.
- (4) Fees or demerit points prescribed by the regulations may be differential, varying according to any factor stated in the regulations.
- (5) A provision referred to in subsection (2)(a) may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (6) To the extent to which a provision referred to in subsection (2)(a) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the Crown), the rights of that person existing before the date of its publication; or
  - (b) to impose liabilities on any person (other than the Crown) in respect of anything done or omitted to be done before the date of its publication.
- (7) The regulations may adopt, wholly or partially and with or without modification—
- (a) a code relating to matters in respect of which regulations may be made under this Act; or
  - (b) an amendment to such a code.
- (8) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.
- (9) The regulations or a code adopted by the regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
  - (b) be of general or limited application; and
  - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Director or a prescribed authority.

- (10) If a code, standard or other document is adopted under subsection (7) or (9) as it is in force from time to time, any alteration to the code, standard or other document will not take effect for the purposes of this Act—
- (a) before a day on which notice of the alteration is published by the Minister in the Gazette; and
  - (b) if the Minister so specifies in a notice under paragraph (a), until a day specified by the Minister.
- (11) If—
- (a) a code is adopted by the regulations; or
  - (b) the regulations, or a code adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,
- then—
- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
  - (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
  - (e) the code, standard or other document has effect as if it were a regulation made under this Act.

### **128—Regulations relating to conservation and management of aquatic resources, management of fisheries and aquatic reserves and regulation of fishing**

- (1) Subject to this section, the Governor may make regulations for the conservation and management of the aquatic resources of the State, the management of fisheries and aquatic reserves and the regulation of fishing.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) make provision for the management of a fishery (and without limiting the matters for which provision may be made)—
    - (i) limit the applications for licences or permits in respect of the fishery to those that may be considered by the Minister to those made during a specified period or to those made during a specified period after a call by the Minister for applications or otherwise;
    - (ii) prescribe the maximum number of licences or permits that may be in force in respect of a fishery or that may be granted in relation to applications made during a specified period or during a specified period after a call for applications;
    - (iii) prescribe qualifications that applicants for licences or permits in respect of the fishery must possess to be eligible to be granted the licences or permits and any other matters to which the Minister must have regard in determining eligibility for licences or permits in respect of the fishery;

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- (iv) prescribe a procedure under which applicants for licences or permits in respect of the fishery who are eligible to be granted licences or permits may be selected for the available number of licences or permits;
  - (v) provide that no further licences or permits in respect of the fishery may be granted;
  - (vi) provide that only the holder of a licence or permit in respect of a fishery may be registered as the master of a boat used pursuant to the licence or permit;
  - (vii) prescribe matters of which the Minister must be satisfied before granting the registration of a boat;
  - (viii) prescribe and provide for any security to be given by the holder of a licence or permit in respect of a fishery for due compliance with the provisions of this Act;
  - (ix) authorise the transfer of licences in respect of the fishery or a class of licence in respect of the fishery;
  - (x) prescribe matters of which the Minister must be satisfied before consenting to the transfer of a licence in respect of the fishery;
  - (xi) prescribe matters that may be the subject of conditions of licences or permits in respect of the fishery;
  - (xii) prescribe a quota system for the fishery and for that purpose (without limiting the matters which may be provided for)—
    - (A) require the Minister to fix a total allowable catch, or total allowable commercial catch, for the fishery, specify the method by which the total allowable catch, or total allowable commercial catch, is to be determined and prescribe the circumstances in which the total allowable catch, or total allowable commercial catch, may be varied by the Minister during a quota period;
    - (B) provide for the allocation of quota entitlements to holders of licences or permits in respect of the fishery;
  - (xiii) in respect of a miscellaneous fishery provide for licences or permits of different kinds by empowering the Minister to impose conditions on the licences or permits limiting the class of fishing activities that may be engaged in pursuant to the licences or permits, limiting the term for which a licence or permit may remain in force or imposing any other limitation or restriction;
  - (xiv) empower or require a court convicting the holder of a licence or permit in respect of the fishery of an offence of contravening or failing to comply with a condition of the licence or permit to order that the conditions of the licence or permit be varied by the Minister in the manner specified in the regulations;

- (b) make provision for the rationalisation or restructuring of a fishery (other than by way of adjustments in allocations of aquatic resources referred to in section 58) and for that purpose (without limiting the matters for which provision may be made)—
  - (i) provide a scheme for the acquisition of licences or entitlements under licences by the Minister and include in the scheme provision for compulsory acquisition and the payment of compensation to persons whose licences or entitlements are compulsorily acquired;
  - (ii) prescribe the method of calculation of amounts payable for the acquisition of licences or entitlements or as compensation for their compulsory acquisition;
  - (iii) provide for a process of objection and appeal in relation to the payment of compensation under the regulations;
  - (iv) provide for the imposition of levies for the purpose of funding the costs of acquiring licences or entitlements;
- (c) identify zones within an area of waters to which an aboriginal traditional fishing management plan applies—
  - (i) to which entry by persons other than Aboriginal persons is restricted or prohibited;
  - (ii) within which fishing activities other than aboriginal traditional fishing activities are restricted or prohibited;
- (d) require persons who engage in aboriginal traditional fishing activities, or aboriginal traditional fishing activities of a specified class, to hold a permit issued by the Minister and regulate the granting and renewal of permits, and the imposition of conditions on permits;
- (e) require and regulate—
  - (i) the application or affixing of a mark or other distinguishing feature to registered boats and other boats of a prescribed class;
  - (ii) the removal of prescribed marks or other distinguishing features from boats that have ceased to be registered under this Act and other boats of a prescribed class;
- (f) prohibit, regulate or restrict the use of registered boats for recreational fishing;
- (g) require and regulate the application or affixing of marks or other distinguishing features to devices and equipment used for or in connection with fishing activities;
- (h) prescribe and regulate the devices and equipment to be installed in or carried on boats used for fishing activities;
- (i) prohibit, restrict or regulate the carrying or possession of devices;
- (j) require and provide for the registration of devices;
- (k) prescribe methods for determining the size or weight of fish or other aquatic resources;

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- (l) restrict or regulate the treatment, handling, storage, movement or dealing by persons engaged in fishing activities of or with fish or other aquatic resources taken in the course of those fishing activities;
    - (m) regulate fishing competitions;
    - (n) require persons engaged in fishing activities of a prescribed class to provide returns relating to those fishing activities and any matters ancillary or incidental to or connected with those fishing activities and make provision for the form and lodgment of the returns.
  - (3) The Governor may only make regulations relating to aboriginal traditional fishing on the recommendation of the Minister.
  - (4) The Minister may recommend the making of regulations relating to aboriginal traditional fishing if—
    - (a) the Minister is satisfied that the regulations are necessary or desirable for the purpose of giving effect to an aboriginal traditional fishing management plan made with a native title group under Part 6 Division 2; and
    - (b) the regulations are, in the opinion of the Minister, consistent with the plan and the indigenous land use agreement under which the plan was made; and
    - (c) the Minister has consulted the native title group and given due consideration to any comments made by the group in relation to the regulations.

### **129—Regulations relating to processing of aquatic resources**

- (1) The Governor may make regulations for the regulation of processing of aquatic resources and matters ancillary or incidental to or connected with such processing, and, without limiting the generality of the foregoing, may by such regulations—
  - (a) prescribe the records to be kept by fish processors;
  - (b) require fish processors to provide returns relating to the processing of aquatic resources and any matters ancillary or incidental to or connected with such processing;
  - (c) regulate the manner in which and the means by which aquatic resources may be delivered, consigned or transported for processing;
  - (d) regulate the manner in which aquatic resources are received and stored by fish processors, including the labelling of receptacles in which they are received and stored and the treatment of and dealing with processed aquatic resources;
  - (e) prohibit or restrict the sale, purchase, possession or control by fish processors of aquatic resources of a prescribed class;
  - (f) prohibit or regulate the use of boats in relation to the storage, processing, treatment of and dealing with aquatic resources;
  - (g) provide for the issue of seals and other marks for the labelling, and packages for the consignment, of processed aquatic resources;
  - (h) empower fisheries officers to take samples of any products of aquatic resources of a prescribed class for the purpose of analysis and provide that no compensation is payable for the taking of such samples.

- (2) Regulations made under subsection (1)(e) may prescribe a class of aquatic resources comprised of or including aquatic resources taken elsewhere than in waters to which this Act applies.

### **130—Regulations relating to control of exotic aquatic organisms and disease**

The Governor may make regulations for the control of exotic aquatic organisms and the prevention, control and eradication of disease in aquatic resources, and, without limiting the generality of the foregoing, may by such regulations—

- (a) require a person who carries on aquaculture or keeps aquatic resources to notify the Minister, the Director or a prescribed authority of the occurrence of disease or symptoms of disease in the aquatic resources farmed or kept by that person;
- (b) prohibit, restrict or regulate the bringing into the State or possession or control of aquatic resources that may be affected by disease;
- (c) require a person who carries on aquaculture or keeps aquatic resources to provide returns relating to that activity and any matters ancillary or incidental to or connected with that activity;
- (d) regulate the disposal of water in which exotic aquatic organisms have been kept;
- (e) prescribe the powers of fisheries officers for the detection, prevention, elimination or control of disease in aquatic resources;
- (f) prescribe and provide for the measures to be taken and the powers of the Minister, the Director and other fisheries officers for the recovery, eradication or containment of exotic fish or other aquatic resources that have been released or have escaped into any waters, or exotic aquatic plants that have been deposited into any waters, or for the treatment of waters contaminated by water in which exotic aquatic organisms have been kept.

## **Division 3—Review of Act**

### **131—Review of Act by Minister**

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the results of the review to be submitted to him or her.
- (2) The review must be undertaken after the tenth anniversary of the commencement of this Act and the report must be submitted to the Minister before the twelfth anniversary of that commencement.
- (3) The Minister must, within 12 sitting days after receiving the report under this section, cause copies of the report to be laid before both Houses of Parliament.

## **Schedule 1—Repeals and transitional provisions**

### ***Part 1—Repeals***

#### ***1—Repeal of fisheries legislation***

*The following Acts are repealed:*

- (a) the Fisheries Act 1982;*
- (b) the Fisheries (Gulf St. Vincent Prawn Fishery Rationalisation) Act 1987.*

### **Part 2—Transitional provisions**

#### **2—Minister**

The body corporate constituted of the Minister under this Act is the same as the body corporate constituted of the Minister under the repealed Act.

#### **3—Commonwealth-State arrangements**

*An arrangement under Part 2 Division 3 of the repealed Act in force immediately before the commencement of this clause will, on that commencement, be taken to be an arrangement under Part 4 Division 2 of this Act.*

#### **4—Fisheries officers**

*A person appointed and holding office as a fisheries officer under the repealed Act immediately before the commencement of this clause, will on that commencement, be taken to be a fisheries officer appointed under this Act and any condition applying to the appointment of the officer under the repealed Act will be taken to continue to apply to the appointment under this Act.*

#### **5—Fisheries and fishery licences**

- (1) A fishery constituted under the repealed Act in existence immediately before the commencement of this clause will, on that commencement, be taken to be a fishery constituted under this Act and any regulations prescribing a scheme of management for the fishery under the repealed Act in force immediately before that commencement will, on that commencement, continue in force as if they were regulations for the management of the fishery made under this Act.*
- (2) A fishery licence issued under section 34(1) of the repealed Act in force immediately before the commencement of this clause will, on that commencement, be taken to be a fishery licence issued under section 52 of this Act and—*
  - (a) any conditions to which the licence was subject under the repealed Act immediately before that commencement will be taken to continue to apply to the licence under this Act as if they had been imposed under this Act; and*
  - (b) a boat registered by endorsement of the licence under the repealed Act immediately before that commencement will be taken to be registered for use under the licence under this Act; and*

- (c) *a person registered as a master by endorsement of the licence under the repealed Act immediately before that commencement will be taken to be registered as a master of a boat that may be used under the licence under this Act; and*
  - (d) *a device registered for use pursuant to the licence under the repealed Act immediately before that commencement will be taken to be registered for use pursuant to the licence under this Act.*
- (3) *A consent under section 34(2) of the repealed Act in force immediately before that commencement will be taken to continue in force as a consent under section 53(1) of this Act and any conditions that applied to the consent under the repealed Act immediately before that commencement will be taken to continue to apply to the consent under this Act.*

### **6—Fish processor registrations**

*A person registered as a fish processor under the repealed Act immediately before the commencement of this clause will, on that commencement, be taken to be registered as a fish processor under this Act and any restrictions, limitations or conditions that applied to the registration of the person under the repealed Act immediately before that commencement will be taken to continue to apply to the registration of the person under this Act as if they had been imposed under this Act.*

### **7—Temporary prohibitions of fishing activities**

- (1) *A declaration under section 43(1) of the repealed Act in force immediately before the commencement of this clause will, on that commencement, continue in force as if it were a declaration under section 79(1) of this Act.*
- (2) *A direction under section 43(2) of the repealed Act in force immediately before the commencement of this clause will, on that commencement, continue in force as if it were a direction under section 79(6) of this Act.*
- (3) *An authorisation under section 43(2) of the repealed Act in force immediately before the commencement of this clause will, on that commencement, continue in force as if it were an authorisation under section 79(6) of this Act.*

### **8—Aquatic reserves and marine parks**

- (1) *Any waters, or land and waters, constituting an aquatic reserve under section 47 of the repealed Act immediately before the commencement of this clause will, on that commencement, be taken to constitute an aquatic reserve under section 4 of this Act.*
- (2) *Any waters, or land and waters, constituting a marine park under section 48 of the repealed Act immediately before the commencement of this clause will, on that commencement, be taken to constitute an aquatic reserve under section 4 of this Act.*

### **9—Permits**

- (1) *A permit issued under section 48G(1) of the repealed Act in force immediately before the commencement of this clause will, on that commencement, be taken to be a permit issued under section 76 of this Act and any conditions to which the permit was subject under the repealed Act immediately before that commencement will be taken to continue to apply to the permit as if they had been imposed under this Act.*



- (2) *A permit issued under section 48G(2) of the repealed Act in force immediately before the commencement of this clause will, on that commencement, be taken to be a permit issued under section 77 of this Act and any conditions to which the permit was subject under the repealed Act immediately before that commencement will be taken to continue to apply to the permit as if they had been imposed under this Act.*
- (3) *A permit issued under section 49 of the repealed Act in force immediately before the commencement of this clause will, on that commencement, be taken to be a permit issued under section 78(1) of this Act and any conditions to which the permit was subject under the repealed Act immediately before that commencement will be taken to continue to apply to the permit as if they had been imposed under this Act.*
- (4) *A permit issued under section 50 of the repealed Act in force immediately before the commencement of this clause will, on that commencement, be taken to be a permit issued under section 78(2) of this Act and any conditions to which the permit was subject under the repealed Act immediately before that commencement will be taken to continue to apply to the permit as if they had been imposed under this Act.*

## **10—Exemptions**

*An exemption under section 59 of the repealed Act in force immediately before the commencement of this clause will, on that commencement, be taken to be an exemption under section 115 of this Act and any conditions to which the exemption was subject under the repealed Act immediately before that commencement will be taken to continue to apply to the exemption under this Act as if they had been imposed under this Act.*

## **11—Register of authorities**

*The register of authorities maintained under the repealed Act continues in existence as the register of authorities under this Act.*

## **Schedule 2—Related amendments**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

*In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.*

### **Part 2—Amendment of Aquaculture Act 2001**

#### **2—Amendment of section 82—Fisheries officers and their powers**

- (1) *Section 82—delete "Fisheries Act 1982" wherever occurring and substitute in each case:*

*Fisheries Management Act 2007*

- (2) *Section 82(2)—delete "Part 3 Division 3" and substitute:*

*Part 8 Division 1 Subdivision 2*

### ***Part 3—Amendment of Criminal Assets Confiscation Act 2005***

#### ***3—Amendment of section 3—Interpretation***

*Section 3, definition of serious offence, (c)(ii)—delete subparagraph (ii) and substitute:*

- (ii) *an offence against section 52, 53, 72 or 74 of the Fisheries Management Act 2007;*

### ***Part 4—Amendment of Criminal Law (Undercover Operations) Act 1995***

#### ***4—Amendment of section 2—Interpretation***

*Section 2, definition of serious criminal behaviour, (c)—delete paragraph (c) and substitute:*

- (c) *an offence against section 52, 53, 72 or 74 of the Fisheries Management Act 2007;*

### ***Part 5—Amendment of Harbors and Navigation Act 1993***

#### ***5—Amendment of section 4—Interpretation***

*Section 4(1), definition of fishing vessel, (b)—delete "a fish farm" and substitute:  
aquaculture*

### ***Part 6—Amendment of Livestock Act 1997***

#### ***6—Amendment of section 3—Interpretation***

- (1) *Section 3(1)—after the definition of exotic disease insert:*

*fish has the same meaning as in the Fisheries Management Act 2007;*

*fish farm means an area in which fish are farmed pursuant to an aquaculture licence under the Aquaculture Act 2001;*

- (2) *Section 3(1), definition of livestock—delete the definition and substitute:*

*livestock means animals kept or usually kept in a domestic or captive state, including—*

- (a) *poultry; and*
- (b) *fish kept or usually kept in an aquarium or fish farm; and*
- (c) *bees for which a hive is kept;*

#### ***7—Amendment of section 63—Appointments***

*Section 63—after subsection (4) insert:*

- (5) *A fisheries officer under the Fisheries Management Act 2007 has all the powers and functions of an inspector under this Act in relation to fish.*

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## Legislative history

### Notes

- In this version provisions that are uncommenced appear in italics.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2007	4	<i>Fisheries Management Act 2007</i>	8.3.2007	1.9.2007 ( <i>Gazette 9.8.2007 p3298</i> ) except ss 6, 21—39, 51—59, 62—102, 110—116, Sch 1 (cll 1, 3—11) and Sch 2—1.12.2007 ( <i>Gazette 15.11.2007 p4241</i> ) and except ss 103—109—uncommenced