

House of Assembly—No 140

As laid on the table and read a first time, 26 May 2021

South Australia

**Aquaculture (Tourism Development) Amendment
Bill 2021**

A BILL FOR

An Act to amend the *Aquaculture Act 2001*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Aquaculture (Tourism Development) Amendment Act 2021*.

2—Commencement

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

3—Amendment provisions

- 10 In this Act, 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*

4—Insertion of Part 7A

After Part 7 insert:

Part 7A—Tourism development

58A—Preliminary

In this Part, unless the contrary intention appears—

aquaculture tourism development or *development*, means building work undertaken on land underlying State waters within the area of an aquaculture zone for the purposes of undertaking a commercial tourism activity, but does not include an activity, or activity of a class, prescribed by the regulations for the purposes of this definition;

aquaculture tourism development authorisation means an authorisation for aquaculture tourism development granted under section 58D(1);

building certifier has the same meaning as in the *Planning, Development and Infrastructure Act 2016*;

Building Rules has the same meaning as in the *Planning, Development and Infrastructure Act 2016*;

building work has the same meaning as in the *Planning, Development and Infrastructure Act 2016*;

commercial tourism activity means a tourism activity undertaken for fee or reward;

responsible person in respect of aquaculture tourism development, means each of the following persons:

- (a) the person by whom the development is undertaken;
- (b) any person who acquires the benefit of the development;
- (c) a person granted a tourism lease or tourism licence relating to the development;

tourism lease—means a lease granted under section 58E(1);

tourism licence—means a licence granted under section 58E(1).

58B—Application of *Planning, Development and Infrastructure Act 2016*

The *Planning, Development and Infrastructure Act 2016* does not apply to aquaculture tourism development.

58C—Offence to carry out aquaculture tourism development

A person must not carry out aquaculture tourism development unless authorised to do so under this Part.

Maximum penalty: \$35 000.

58D—Aquaculture tourism development authorisation

(1) Subject to this Act, the Minister may, on application, authorise aquaculture tourism development within an aquaculture zone if the Minister is satisfied that the relevant building work and commercial tourism activity comprising the development—

(a) will complement, promote, be of benefit to, or otherwise relate directly to aquaculture undertaken within the aquaculture zone; and

(b) can be undertaken in a manner that is ecologically sustainable; and

(c) are consistent with the objects of this Act and any relevant provisions of an applicable aquaculture policy.

(2) An aquaculture tourism development authorisation will be subject to the following conditions:

(a) a condition that before any building work is undertaken, the building work be certified by a building certifier as complying with the provisions of the Building Rules to the extent that is appropriate in the circumstances;

(b) such other conditions as the Minister thinks fit.

(3) A condition of an aquaculture tourism development authorisation—

(a) is binding on, and enforceable against, each responsible person for the aquaculture tourism development; and

(b) continues to apply in relation to the aquaculture tourism development and any related building or structure until—

(i) the condition is revoked by the Minister; or

(ii) the aquaculture tourism development authorisation is cancelled under subsection (8).

(4) The Minister may, subject to this Act, vary or revoke a condition applying under an aquaculture tourism development authorisation or impose a further condition on the authorisation—

(a) on application by a responsible person for the development; or

(b) with the consent of a responsible person for the development; or

(c) if the Minister considers that it is necessary—

(i) in order to correct an error or make a change of form (not involving a change of substance); or

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- (ii) in order to prevent or mitigate significant environmental harm or the risk of significant environmental harm; or
- (iii) in order to prevent or mitigate a risk of harm to a person or a class of person; or
- (iv) in consequence of contravention of this Act by a person; or
- 10 (v) in consequence of an amendment of the Act or the making, amendment or revocation of regulations or an aquaculture policy; or
- (d) as provided by a condition of the authorisation.
- (5) The Minister must, before varying or revoking a condition or imposing a further condition under subsection (4), be satisfied that the aquaculture tourism development, subject to the proposed
- 15 conditions, will be consistent with the matters in subsection (1).
- (6) However, the variation, revocation or imposition of a condition of an aquaculture tourism development authorisation will not take effect unless, in the case of a matter that is required to be referred to the EPA under section 59, the matter has been so referred and the EPA
- 20 has approved the variation of the condition.
- (7) A person who contravenes, or fails to comply with, a condition of an aquaculture tourism development authorisation is guilty of an offence.
- Maximum penalty: \$10 000.
- 25 Expiation fee: \$1 000.
- (8) The Minister may cancel an aquaculture tourism development authorisation—
- (a) on breach of a condition of the authorisation; or
- 30 (b) on application made by a responsible person for the authorisation; or
- (c) in accordance with the terms of the authorisation.
- (9) The cancellation of an aquaculture tourism development authorisation under subsection (8)(b) may be subject to such terms and conditions as the Minister thinks fit.
- 35 (10) An application under this section must—
- (a) be made to the Minister in the manner and form required by the Minister; and
- (b) be accompanied by the prescribed fee.

58E—Tourism leases and tourism licences

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- (1) Subject to this Part, the Minister may, in connection with an aquaculture tourism development authorisation in an aquaculture zone, grant a lease of, or a licence over, land underlying State waters within the aquaculture zone as the Minister considers appropriate for the purposes of the aquaculture tourism development.
- (2) A tourism lease or a tourism licence granted under subsection (1) will be subject to such terms and conditions as the Minister thinks fit (but must not be granted for a period greater than 30 years).

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58F—Concurrences and consents

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- (1) The power of the Minister to grant an aquaculture tourism development authorisation, a tourism lease or a tourism licence in relation to certain land is subject to—
- (a) if the land is vested in the Minister responsible for the administration of the *Harbors and Navigation Act 1993*, the requirement under section 15 of that Act for the concurrence of that Minister; and
- (b) if the land is vested in any other entity, the concurrence of that other entity; and
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- (c) the concurrence of any other entity that may be responsible for the care, control and management of the land.
- (2) An aquaculture tourism development authorisation, a tourism lease or a tourism licence may only be granted in relation to certain land with the consent of—
- 25
- (a) if the land is located within the area of an aquaculture lease—
- (i) the lessee of the aquaculture lease; and
- (ii) any person specified on the register under section 80(2a) as holding an interest in the aquaculture lease; and
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- (b) if the land is located within the area of an aquaculture licence—
- (i) the holder of the aquaculture licence; and
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- (ii) any person specified on the register under section 80(2a) as holding an interest in the aquaculture licence.

58G—Public notice

Before granting an aquaculture tourism development authorisation or a related tourism lease or tourism licence on application under this Part, the Minister must—

- 5 (a) give notice of the application by notice published on a website determined by the Minister or in a newspaper circulating generally in the State and in any other manner that the Minister thinks fit; and
- 10 (b) take into account any submissions received in response to the notice within a period following publication of the notice specified by the Minister (which must be at least 10 business days).

58H—Power to require or carry out work

- 15 (1) If a person fails to take any action required to be taken by the person under a condition of an aquaculture tourism development authorisation, a tourism lease, a tourism licence, or imposed on the cancellation of an aquaculture tourism development authorisation, the Minister may, by written notice to the person, direct the person to take the relevant action.
- 20 (2) A person to whom a direction is given under subsection (1) must comply with the direction within the time allowed in the notice.
Maximum penalty: \$35 000.
- 25 (3) If a person fails to comply with a direction under subsection (1) within the time allowed in the notice, the Minister may cause the required action to be taken, and may recover the cost, as a debt, from the person.
- (4) Any property removed by action taken by the Minister under subsection (3) is forfeited to the Crown and may be sold or otherwise disposed of as the Minister thinks fit.

58I—Removal of unauthorised development

- 30 (1) If a person carries out aquaculture tourism development without authorisation, the Minister may, by written notice to the person, direct the person to—
- 35 (a) remove any built structure, infrastructure, plant, goods and other property connected to the development from the area; and
- (b) reinstate and rehabilitate the area of the development, and any other affected area, to the condition existing before the development.
- 40 (2) A person to whom a direction is given under subsection (1) must comply with the direction within the time allowed in the notice.
Maximum penalty: \$35 000.

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

(4) If aquaculture tourism development has been carried out without an authorisation under this Part and the person responsible for carrying out the development cannot be found despite reasonable efforts, the Minister may—

(a) cause action that may be required by direction under subsection (1) to be taken; and

(b) recover the cost, as a debt, from any person found to be responsible for carrying out the aquaculture tourism development.

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

5—Amendment of section 59—Reference of matters to EPA

(1) Section 59(1)—after paragraph (d) insert:

(e) whether an aquaculture tourism development authorisation containing specified conditions should be granted under Part 7A;

(f) whether a variation should be made to the conditions of an aquaculture tourism development authorisation under Part 7A.

(2) Section 59(1a)—delete "subsection (1)(a) or (b) or" and substitute:

subsection (1)(a), (b) or (e),

(3) Section 59(1a)—after "subsection (1)(c)" insert:

or a variation of the conditions of an aquaculture tourism development authorisation referred to in subsection (1)(f)

(4) Section 59—after subsection (1a) insert:

(1b) Subsection (1) does not apply in the case of an aquaculture tourism development authorisation of a class approved by the EPA as not having, or being unlikely to have, an adverse effect on the environment.

(5) Section 59(7)—delete "or the conversion of the lease" and substitute:

, the conversion of the lease, the granting of the aquaculture tourism development authorisation or the variation of the aquaculture tourism development authorisation conditions

(6) Section 59(9)—delete "or the conversion of the lease" and substitute:

, the conversion of the lease, the granting of the aquaculture tourism development authorisation or the variation of the aquaculture tourism development authorisation conditions

6—Amendment of section 60—Reviews

Section 60(1)—after paragraph (d) insert:

or

(e) an applicant for an aquaculture tourism development authorisation under Part 7A is dissatisfied with—

(i) a decision of the Minister not to grant an aquaculture tourism development authorisation, a tourism lease or a tourism licence under that Part; or

(ii) a decision of the Minister fixing the conditions of an aquaculture tourism development authorisation, a tourism lease or a tourism licence under that Part,

7—Amendment of section 80—Public register

(1) Section 80(2)—after paragraph (e) insert:

(ea) a description of each application for an aquaculture tourism development authorisation and related tourism lease or tourism licence under Part 7A; and

(eb) a description of each aquaculture tourism development authorisation, tourism lease and tourism licence granted under Part 7A; and

(2) Section 80(2a)—after "aquaculture lease or licence" insert:

, or a tourism lease or tourism licence under Part 7A,

(3) Section 80(2b)—after "aquaculture lease or licence" insert:

, or a tourism lease or tourism licence under Part 7A

8—Amendment of section 82B—Death, bankruptcy etc of lessee or licensee

(1) Section 82B(1)—after "an aquaculture licence" insert:

, or a tourism lease or tourism licence under Part 7A,

(2) Section 82B(1)—delete "6 months" and substitute:

2 years

9—Amendment of section 88—Liability of directors

(1) Section 88(1)—delete "or 58" and substitute:

, 58, 58C or 58H(2)

(2) Section 88(1a)—delete "or 52" and substitute:

, 52 or 58D(7)

10—Amendment of section 90—Evidentiary

Section 90(1)—after paragraph (c) insert:

or

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- (d) that a person named in the certificate was or was not at a specified time a responsible person for a specified aquaculture tourism development authorisation under Part 7A; or
- (e) that a person named in the certificate was or was not at a specified time the holder of a specified tourism lease or tourism licence under Part 7A,