

South Australia

# **Aquaculture Act 2001**

An Act to regulate marine and inland aquaculture; 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 *Aquaculture Act 2001*.

### 3—Interpretation

In this Act—

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

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

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

*aquaculture equipment* means—

- (a) a farming structure; or
- (b) equipment used to anchor or indicate the presence of farming structures; or
- (c) a barge used to feed aquatic organisms; or
- (d) equipment used to mark-off or indicate the boundaries of a licence area; or
- (e) other equipment used for the purposes of aquaculture;

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

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

**aquaculture licence** or **licence** means a corresponding licence under Part 6 or an aquaculture licence under Part 7;

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

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

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

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

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

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

**condition** includes a limitation and reservation;

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

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

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

**ecologically sustainable**—see section 4;

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

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

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

**farming structures** means structures used for the farming of aquatic organisms and includes sea cages and racks, longlines and submerged lines used for aquaculture, together with their associated baskets, barrels, lanterns and other culture units;

**fisheries officer** means a fisheries officer within the meaning of the *Fisheries Management Act 2007*;

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

**marine park** has the same meaning as in the *Marine Parks Act 2007*;

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

**Minister's assessment guidelines** means guidelines published by the Minister under section 60A;

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

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

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

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

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

**public call area**—see section 11(2)(b);

**public register**—see section 80;

**relevant Act** means—

- (a) in relation to the Adelaide Dolphin Sanctuary—the *Adelaide Dolphin Sanctuary Act 2005*; or
- (b) in relation to a marine park—the *Marine Parks Act 2007*; or
- (c) in relation to a River Murray Protection Area or the Murray-Darling Basin—the *River Murray Act 2003*;

**relevant Minister** means—

- (a) in relation to the Adelaide Dolphin Sanctuary—the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed; or
- (b) in relation to a marine park—the Minister to whom the administration of the *Marine Parks Act 2007* is committed; or
- (c) in relation to a River Murray Protection Area or the Murray-Darling Basin—the Minister to whom the administration of the *River Murray Act 2003* is committed;

**relevant statutory authorisation** means an approval, consent, licence, permit or other authorisation or entitlement granted, arising or required under an Act or any other law of this State or another State or Territory of the Commonwealth relating to aquaculture, fishing or environment protection;

**research lease** means a research lease under Part 6 Division 4A;

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

**specially protected area** means—

- (a) the Adelaide Dolphin Sanctuary; or
- (b) a marine park; or
- (c) a River Murray Protection Area;

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

*State waters* means waters that are—

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

*suitable person*—see section 4A;

*vary licence conditions* includes revoke licence conditions or impose further licence conditions;

*waters* includes land underlying waters.

#### **4—Ecologically sustainable development**

- (1) Development is *ecologically sustainable* if it is managed to ensure that communities provide for their economic, social and physical well-being while—
  - (a) natural and physical resources are maintained to meet the reasonably foreseeable needs of future generations; and
  - (b) biological diversity and ecological processes and systems are protected; and
  - (c) adverse effects on the environment are avoided, remedied or mitigated.
- (2) In making decisions as to whether development is ecologically sustainable or to ensure that development is ecologically sustainable—
  - (a) long-term and short-term economic, environmental, social and equity considerations should be effectively integrated; and
  - (b) if there are threats of serious or irreversible environmental harm, lack of full scientific certainty should not be taken to justify the postponement of decisions or measures to prevent the environmental harm.

#### **4A—Suitable person to be granted licence**

In determining whether a person is a suitable person to be granted an aquaculture licence, the Minister may take into account—

- (a) any offence committed by the person, or, in the case of a corporation, by a director of the corporation, against this Act or any other law of this State or another State or a Territory of the Commonwealth relating to aquaculture, fishing or environment protection; and
- (b) whether the person, or, in the case of a corporation, a director of the corporation, has held a relevant statutory authorisation that has been cancelled or suspended or has been disqualified from obtaining such an authorisation; and
- (c) the financial and other capacity of the person to comply with obligations under this Act.

#### **5—Crown bound**

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

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

## **6—Application of Act**

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

## **6A—Licence or other right is not personal property for the purposes of Commonwealth Act**

A right, entitlement or authority granted by or under this Act is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

## **7—Interaction with other Acts**

- (1) Subject to subsection (2), this Act is in addition to and does not limit or derogate from the provisions of any other Act.
- (2) The *Development Act 1993* does not apply to development within the area of an emergency lease for the purposes of carrying on the activities authorised by a corresponding licence.

## **Part 2—Objects of Act**

### **8—Objects of Act**

- (1) The objects of this Act are—
  - (a) to promote ecologically sustainable development of marine and inland aquaculture; and
  - (b) to maximise benefits to the community from the State's aquaculture resources; and
  - (c) otherwise to ensure the efficient and effective regulation of the aquaculture industry.
- (2) The Minister must, in the administration of this Act, have regard to, and seek to further, the objects.

## **Part 3—Efficient administrative practices**

### **9—Efficient administrative practices**

- (1) The Minister and other relevant Ministers are to endeavour to ensure that practices are established to integrate and expedite administrative processes under this Act and other Acts so far as is practicable for the efficient and effective regulation of the aquaculture industry.
- (2) Directions may be given by a relevant Minister for the purposes of subsection (1) that will be binding (according to their terms) on a body or persons engaged in the administration of an Act for which the relevant Minister has responsibility.



- (3) However, this section is not to be taken to authorise a direction that would be inconsistent with a provision of this or another Act or that would govern the nature of a decision that may be made under an Act (as distinct from the processes leading up to the making of a decision).
- (4) In this section—  
*relevant Minister* means a Minister responsible for the administration of an Act that has application in relation to aquaculture.

## Part 4—Aquaculture policies

### Division 1—General

#### 10—Interpretation

In this Division—

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

#### 11—Nature and content of policies

- (1) The Minister may make aquaculture policies for any purpose directed towards securing the objects of this Act.
- (2) An aquaculture policy may do one or more of the following according to the terms of the policy:
- (a) identify a zone within State waters (an *aquaculture zone*) in which aquaculture or specified classes of aquaculture will be permitted (subject to this Act and other applicable Acts);
- (b) designate an aquaculture zone or part of an aquaculture zone as an area in which applications for leases may only be made in accordance with a public call for applications (a *public call area*);
- (c) identify a zone within State waters (an *aquaculture exclusion zone*) in which no aquaculture will be permitted;
- (e) prescribe matters to be taken into account in the determination of applications for licences or in the making of other decisions under this Act (*prescribed criteria*);
- (f) prescribe provisions that will be conditions of licences or leases (*standard conditions*);
- (g) prescribe provisions that will constitute offences under Division 2 (*mandatory provisions*);
- (h) make any other provision contemplated by this Act or necessary or expedient for the purpose of securing the objects of this Act.

- (3) The provisions of aquaculture policies may vary in their operation according to the zones or other areas, or the classes of aquaculture, or other circumstances, to which they are expressed to apply.
- (3a) Insofar as an aquaculture policy applies within a specially protected area or the Murray-Darling Basin, the policy must seek to further the objects and objectives of the relevant Act and of any relevant policy or plan prepared under the relevant Act, and in particular, should contain prescribed criteria to this effect.
- (3b) If an aquaculture policy prescribes standard conditions, those conditions will, subject to the terms of the policy, apply to an aquaculture lease or aquaculture licence whether granted before or after the making of the policy and prevail over other conditions of such a lease or licence to the extent of any inconsistency.
- (4) An aquaculture policy may—
  - (a) operate by making reference to a standard or other document published by a specified body, with or without specified modifications, and as in force at a specified time or from time to time; and
  - (b) provide for a matter to be determined according to the discretion of the Minister.

## **12—Procedures for making policies**

- (1) The Minister may prepare draft aquaculture policies.
- (2) The Minister must, in the preparation of a draft policy, obtain and consider the advice of the AAC.
- (3) The Minister must prepare a report in relation to a draft policy containing—
  - (a) an explanation of the purpose and effect of the draft policy; and
  - (b) a summary of any background and issues relevant to the draft policy and of the analysis and reasoning applied in formulating the policy; and
  - (c) an assessment of the consistency of the draft policy with—
    - (i) the Planning Strategy and any relevant Development Plan under the *Development Act 1993*; and
    - (ii) any relevant environment protection policy under the *Environment Protection Act 1993*; and
    - (iii) any other instruments prescribed by regulation.
- (4) The Minister must, after preparation of the draft policy and related report, refer the policy and report—
  - (a) to any body prescribed for the purposes of this section; and
  - (b) to any public authority whose area of responsibility is, in the opinion of the Minister, likely to be affected by the policy.

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- (5) The Minister must also, after preparation of the draft policy and related report, cause an advertisement to be published in the Gazette and in a newspaper circulating generally in the State—
- (a) giving notice of places at which the draft policy and the report, or copies of the draft policy and the report, are to be available for inspection and, if copies are to be available for purchase, of places at which copies may be purchased; and
  - (b) inviting interested persons to make written submissions in relation to the draft policy within a period specified in the advertisement (being not less than 2 months from the date of publication of the advertisement).
- (6) The Minister must consult with and consider the advice of the AAC on all matters raised as a result of consultation under subsections (4) and (5) and on any alterations that the Minister proposes should be made to the draft policy.
- (7) The Minister then may, after completion of consultation—
- (a) by notice in the Gazette, approve the draft policy; or
  - (b) alter the draft policy and, by notice in the Gazette, approve the draft policy as altered; or
  - (c) decline to approve the draft policy.
- (7a) The Minister must not approve a draft policy that will apply within a specially protected area without the concurrence of the relevant Minister.
- (7b) If the Minister to whom this Act is committed and a relevant Minister cannot reach agreement in a case where subsection (7a) applies, the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).
- (8) The Minister must, in a Gazette notice approving a draft policy, fix a day on which the policy will come into operation.

### **13—Parliamentary scrutiny**

- (1) If the Minister approves an aquaculture policy under this Division, the Minister must, within 28 days, refer the policy to the Environment, Resources and Development Committee of the Parliament.
- (2) The Environment, Resources and Development Committee must, after receipt of an aquaculture policy under subsection (1)—
- (a) resolve that it does not object to the policy; or
  - (b) resolve to suggest amendments to the policy; or
  - (c) resolve to object to the policy.
- (3) If, at the expiration of 28 days from the day on which the policy was referred to the Environment, Resources and Development Committee, the Committee has not made a resolution under subsection (2), it will be conclusively presumed that the Committee does not object to the policy and does not itself propose to suggest any amendments to the policy.

- (3a) If the expiration of the 28 days referred to in subsection (3) falls during a prescribed period, the prescribed period is to be disregarded for the purposes of that subsection.
- (4) If an amendment is suggested under subsection (2)(b)—
- (a) the Minister may, by notice in the Gazette, proceed to make such an amendment to the policy; or
  - (b) the Minister may report back to the Committee that the Minister is unwilling to make the amendment suggested by the Committee (and, in such a case, the Committee may resolve that it does not object to the policy as originally made, or may resolve to object to the policy).
- (5) If the Environment, Resources and Development Committee resolves to object to a policy, copies of the policy must be laid before both Houses of Parliament.
- (6) If either House of Parliament passes a resolution disallowing a policy laid before it under subsection (5), the policy ceases to have effect.
- (7) A resolution is not effective for the purposes of subsection (6) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the policy was laid before the House.
- (8) If a resolution is passed under subsection (6), notice of the resolution must forthwith be published in the Gazette.
- (9) In this section—
- prescribed period* means—
- (a) 15 December to the following 15 January (inclusive); or
  - (b) the period commencing on the day on which the House of Assembly is dissolved for the purposes of a general election and ending on the day on which the Environment, Resources and Development Committee is reconstituted at the beginning of the first session of the new Parliament after that election.

#### **14—Certain amendments may be made by Gazette notice only**

- (1) The Minister may, by notice in the Gazette, amend an aquaculture policy—
- (a) in order to correct an error in the policy; or
  - (b) in order to make a change of form (not involving a change of substance) in the policy; or
  - (ba) in order to designate, or revoke the designation of, an aquaculture zone or part of an aquaculture zone as a public call area; or
  - (bb) if the Minister considers it necessary to amend the policy in consequence of an amendment to the Act or the making, variation or revocation of the regulations or the making, amendment or revocation of another aquaculture policy; or
  - (c) if the policy itself or the regulations provide that a change of a specified kind may be made to the policy by amendment under this section—in order to make a change of that kind.

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

## **15—Availability and evidence of policies**

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

## **Division 2—Contravention of mandatory provisions**

### **16—Offence to contravene mandatory provisions of policy**

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

Maximum penalty: \$10 000.

Expiation fee: \$1 000.

## **Part 5—Requirement for licence**

### **17—Requirement for licence**

A person must not carry on aquaculture unless authorised to do so by an aquaculture licence.

Maximum penalty: \$35 000.

## **Part 6—Leases**

### **Division 1—General**

#### **18—Application of Part**

This Part applies to an area comprised of—

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

#### **19—Requirement for lease**

- (1) An aquaculture licence may not be granted so as to authorise the carrying on of aquaculture in an area to which this Part applies unless the area is the subject of an aquaculture lease granted by the Minister.

- (2) However—
- (a) an aquaculture licence may be granted despite the area not being the subject of an aquaculture lease if the aquaculture is to be carried out on a navigable vessel as it operates within the area; and
  - (b) an aquaculture licence may be granted subject to conditions regulating the towing of farming structures containing stock by means of navigable vessel to or from the area of the lease and the feeding of the stock or the taking of other action in relation to the stock during the movement of the stock.

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

- (1) The power of the Minister to grant an aquaculture lease in respect of an area to which this Part applies is subject to the requirement under section 15 of the *Harbors and Navigation Act 1993* for the concurrence of the Minister responsible for the administration of that Act.
- (2) However, the concurrence of the Minister is not required—
- (a) for the substitution of an aquaculture lease following the division of lease areas into separate lease areas, or the amalgamation of lease areas, in accordance with the regulations; or
  - (b) for the grant of an emergency lease over an area that is not within a port or harbor within the meaning of the *Harbors and Navigation Act 1993*.

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

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

## **22—General process for grant and renewal of leases and corresponding licences**

- (1) Subject to section 40 (under which an emergency lease may be granted on the initiative of the Minister), an aquaculture lease may only be granted or renewed on application under this Part.
- (2) An application for the grant or renewal of an aquaculture lease—
- (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) must be accompanied by a fee of the amount determined by the Minister.
- (2a) An application for the grant of an aquaculture lease must be accompanied by an application for a corresponding licence.
- (2b) The term of a corresponding licence is co-extensive with the term of the lease, and the licence is renewed for a further term on each renewal of the lease (without any requirement for an application).
- (2c) Subsection (2b) has effect subject to the power of the Minister to suspend or cancel an aquaculture licence.
- (2d) An application for a corresponding licence—
- (a) must be made to the Minister in the manner and form required by the Minister; and

- (b) must be accompanied by an application fee for the licence of the amount prescribed by regulation.
- (3) An applicant for an aquaculture lease or corresponding licence must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.
- (4) The grant of an aquaculture lease must be notified in the Gazette.
- (5) If the Minister decides not to grant or renew an application for an aquaculture lease, the Minister must, at the request of the applicant, give the applicant a written statement of the Minister's reasons for the decision.

## **25—Lease conditions**

The conditions of an aquaculture lease may—

- (a) fix the term of the lease (subject to this Act); and
- (b) fix amounts payable, whether as rent or otherwise, for or under the lease; and
- (c) specify performance criteria to be met in relation to the lease; and
- (d) provide for cancellation of the lease by the Minister and the grounds for cancellation; and
- (e) provide for variation of the lease or its conditions by the Minister and the grounds for variation; and
- (f) provide for renewal of the lease; and
- (g) prevent or regulate the grant of subleases; and
- (h) make any other provision the Minister considers appropriate.

## **25A—Variation of lease or lease conditions by or with consent of lessee**

- (1) Subject to this section, an aquaculture lease or its conditions may be varied by the Minister by written notice to the lessee on application by or with the consent of the lessee.
- (2) The variation must not increase the size of the area leased.
- (3) If the variation consists of or involves the substitution of the area leased, the following provisions apply:
  - (a) the variation may not be made if the lease is registered under the *Real Property Act 1886*;
  - (b) if the original area leased was within an aquaculture zone, the new area leased must not be within a different aquaculture zone;
  - (c) if the new area leased is in a different location outside an aquaculture zone, the variation is subject to the requirement under section 15 of the *Harbors and Navigation Act 1993* for the concurrence of the Minister responsible for the administration of that Act as if the variation involved the grant of a lease;

- (d) the variation may not be made unless the holder of each corresponding licence has requested or consented to a variation of the conditions of the licence by substitution of the licence area and the EPA has approved the variation (to take effect on the variation of the lease).
- (4) If the public register includes a notation that a specified person has an interest in an aquaculture lease, the lease may not be varied unless the specified person consents to the variation.
- (5) An application for the variation of an aquaculture lease or its conditions—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) if the public register includes a notation that a specified person has an interest in the lease—must be accompanied by evidence that the person consents to the variation; and
  - (c) must be accompanied by a fee of the amount prescribed by regulation.
- (6) This section does not derogate from the Minister's power to vary the lease or its conditions on grounds specified in the conditions of the lease.

### **25B—Cancellation of lease**

- (1) The Minister may cancel an aquaculture lease on the grounds that—
  - (a) aquaculture has not commenced or has ceased to be carried on in the area leased; or
  - (b) performance criteria specified in the regulations or the lease have not been met; or
  - (c) an amount has not been paid for or under the lease in accordance with its conditions.
- (2) Before the Minister cancels an aquaculture lease under this section, the Minister must give the lessee written notice—
  - (a) specifying the matters alleged to constitute proper cause for cancellation of the lease; and
  - (b) stating that the Minister proposes to cancel the lease; and
  - (c) allowing the lessee a reasonable opportunity to show cause why the lease should not be cancelled.
- (3) This section does not derogate from the Minister's power to cancel a lease on grounds specified in the conditions of the lease.

### **25C—Surrender of lease**

- (1) An aquaculture lease may be surrendered with the consent of the Minister.
- (2) If the public register includes a notation that a specified person has an interest in an aquaculture lease, the lease may not be surrendered unless the specified person consents to the surrender.



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- (3) An application for the consent of the Minister to the surrender of an aquaculture lease—
- (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) if the public register includes a notation that a specified person has an interest in the lease—must be accompanied by evidence that the person consents to the surrender; and
  - (c) must be accompanied by a fee of the amount prescribed by regulation.

### **25D—Corresponding licences terminated on termination of lease**

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

### **26—Classes of leases**

Aquaculture leases are divided into the following classes:

- (a) pilot leases;
- (c) production leases;
- (ca) research leases;
- (d) emergency leases.

## **Division 2—Pilot leases**

### **27—Pilot leases outside aquaculture zones**

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

### **28—Granting of corresponding licence for pilot lease**

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

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

### **29—Term and renewal of pilot leases**

- (1) The term of a pilot lease is 12 months or a lesser period specified in the lease.
- (2) A pilot lease is renewable for successive terms but not so the aggregate of the terms exceeds 5 years.
- (3) This section has effect subject to provisions of this Act or a pilot lease for the renewal or cancellation of the lease.

### **30—Pilot leases not transferable**

A pilot lease is not transferable.

### **31—Licences may only be held by lessees**

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

## **Division 4—Production leases**

### **34—Granting of production leases limited to aquaculture zones**

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

### **35—Granting of production leases and corresponding licences in public call areas**

- (1) An application for a production lease in respect of an area within an aquaculture zone or part of an aquaculture zone designated as a public call area may only be made following a public call for such applications in accordance with this section.
- (2) In making a public call for applications, the Minister may—
  - (a) determine the particular area, or a maximum area, to be made available for lease; and
  - (b) establish criteria that must be met by applications, or determine weightings to be applied to applications, based on 1 or more of the following factors:
    - (i) the species of aquatic organism to be farmed;
    - (ii) the farming system;
    - (iii) the feeding system;
    - (iv) the purpose of the aquaculture;
    - (v) the size of the lease area;
    - (vi) the location of the lease area;
    - (vii) any other factor considered appropriate by the Minister; and
  - (c) determine that the call is to be in the form of a competitive tender with monetary bids.

- (3) A public call for applications must be made by notice published in a newspaper circulating generally in the State and may be advertised in any other manner that the Minister thinks fit.
- (4) The following information must be readily available to potential respondents to the public call for applications:
  - (a) the aquaculture zone or the part of the zone to which the public call relates;
  - (b) the area or the maximum area available for lease;
  - (c) any applicable criteria and weightings;
  - (d) information about the required manner and form of the applications;
  - (e) the period within which applications must be made.
- (5) ATAB must assess each of the applications received in accordance with a public call for applications taking into account—
  - (a) the objects of this Act; and
  - (b) any prescribed criteria or other relevant provisions of the applicable aquaculture policy; and
  - (c) any applicable criteria and weightings.
- (6) The assessment must be carried out in accordance with the Minister's assessment guidelines.
- (7) On completion of the assessment, ATAB must make recommendations to the Minister (disregarding any limit on the area available for lease) as to—
  - (a) any applications that should not be granted; and
  - (b) the order of merit of the other applications (and, to the extent that applications would otherwise be of the same order of merit, the order is to be determined by the drawing of lots and the Minister is to be informed of that fact).
- (8) Following receipt of ATAB's recommendations, the Minister is to determine the preferred applications and may negotiate with the applicants adjustments to the size and location of the areas sought to be leased so as to maximise the total area leased and resolve any conflict between the applications in relation to the area sought to be leased (to the extent that it is possible to do so without affecting the basis on which the applications were assessed in a material respect).
- (9) The Minister may grant a corresponding licence containing specified conditions on a preferred application if—
  - (a) the Minister is satisfied that—
    - (i) the grant of the licence would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and
    - (ii) the applicant is a suitable person to be granted the licence; and
  - (b) the Minister—

- (i) has caused public notice of the application to be published in a newspaper circulating generally in the State and invited interested persons to make written submissions on the application within the period allowed in the notice; and
    - (ii) has taken any such submissions into account; and
  - (c) the matter has been referred to the EPA under Part 8 and the EPA has approved the granting of the licence.
- (10) An aquaculture policy identifying an aquaculture zone may exclude the application of subsection (9)(b) in relation to an application for a lease within the zone in circumstances specified in the policy.
- (11) The Minister must, at the request of a person who has made a written submission to the Minister under subsection (9), give the person a written statement of the Minister's reasons for the decision made by the Minister in relation to the matter on which submissions were invited.
- (12) If a preferred application is withdrawn or a decision is made not to grant the lease or licence on the application, any application that would have been a preferred application if the application that is withdrawn or not granted had not been made may become a preferred application in relation to the public call and be dealt with accordingly.

### **36—Granting of production leases and corresponding licences if public call not required**

- (1) If an application is made for a production lease in respect of an area within an aquaculture zone or part of an aquaculture zone that is not designated as a public call area, ATAB must assess the application and the accompanying application for a corresponding licence, taking into account the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy and make a recommendation to the Minister as to whether or not the lease and corresponding licence should be granted.
- (2) The assessment must be carried out in accordance with the Minister's assessment guidelines.
- (3) The Minister may grant a corresponding licence containing specified conditions on the application if—
- (a) the Minister is satisfied that—
    - (i) the grant of the licence would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and
    - (ii) the applicant is a suitable person to be granted the licence; and
  - (b) the Minister—
    - (i) has caused public notice of the application to be published in a newspaper circulating generally in the State and invited interested persons to make written submissions on the application within the period allowed in the notice; and
    - (ii) has taken any such submissions into account; and

- (c) the matter has been referred to the EPA under Part 8 and the EPA has approved the granting of the licence.
- (4) An aquaculture policy identifying an aquaculture zone may exclude the application of subsection (3)(b) in relation to an application for a lease within the zone in circumstances specified in the policy.
- (5) The Minister must, at the request of a person who has made a written submission to the Minister under subsection (3), give the person a written statement of the Minister's reasons for the decision made by the Minister in relation to the matter on which submissions were invited.

### **37—Conversion of pilot leases to production leases**

- (1) The holder of a pilot lease may apply to the Minister for conversion of the lease to a production lease.
- (2) The Minister may convert a pilot lease on an application made under this section not more than 60 days and not less than 30 days before the end of a term of the pilot lease if—
  - (a) the State waters comprising or included in the pilot lease are within an aquaculture zone; and
  - (b) the Minister is satisfied that aquaculture has been carried on in the area of the pilot lease during each term of the pilot lease that meets performance criteria specified by the conditions of the pilot lease.
- (3) The Minister may convert a pilot lease on an application made not more than 90 days and not less than 60 days before the end of a term of the pilot lease if—
  - (aa) the aggregate of the terms of the pilot lease exceed 3 years; and
  - (a) the Minister is satisfied that—
    - (i) conversion of the pilot lease to a production lease would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and
    - (ii) aquaculture has been carried on in the area of the pilot lease during each term of the pilot lease that meets performance criteria specified by the conditions of the pilot lease; and
  - (b) the matter has been referred to the EPA under Part 8 and the EPA has approved the conversion of the lease.
- (4) An application for conversion of a pilot lease under this section—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) must be accompanied by a fee of an amount determined by the Minister.
- (4a) Despite subsections (2) and (3), the Minister may, at his or her discretion and on payment of the fee fixed by regulation, accept a late application for conversion of a pilot lease made before the end of the term of the lease.
- (5) An applicant for conversion of a pilot lease must provide the Minister with any information required by the Minister for the purposes of determining the application, verified, if the Minister so requires, by statutory declaration.

- (5a) If an application for conversion of a pilot lease has not been determined before the end of the term of the pilot lease, the term of the pilot lease is extended until such time as the application is determined (even if the aggregate of the terms of the lease will then exceed 5 years).
- (6) Conversion of a pilot lease to a production lease under this section will have effect from the end of the term of the pilot lease during which the application for conversion was made.
- (7) On the conversion of a pilot lease under this section, the term of the corresponding licence is extended so that it is co-extensive with the term of the lease as converted.
- (8) Conversion of a lease by the Minister under this section is not to be taken to constitute the granting of a lease for the purposes of this Act.

### **38—Term and renewal of production leases**

- (1) The term of a production lease is 20 years or a lesser period specified in the lease.
- (2) A production lease is renewable for successive terms.
- (3) This section has effect subject to provisions of this Act or a production lease for the renewal or cancellation of the lease.

### **39—Transfer of production leases**

- (1) A production lease may be transferred by the lessee if—
  - (a) the Minister consents to the transfer; and
  - (b) in a case where the public register includes a notation that a specified person has an interest in the lease—the specified person consents to the transfer.
- (2) An application for the consent of the Minister to the transfer of a production lease—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) if the public register includes a notation that a specified person has an interest in the lease—must be accompanied by evidence that the person consents to the transfer; and
  - (c) must be accompanied by a fee of the amount prescribed by regulation.

## **Division 4A—Research leases**

### **39A—Granting of research leases and corresponding licences**

- (1) A research lease may be granted in respect of an area comprising or including State waters within or outside of an aquaculture zone.
- (2) An application for a research lease may be made at any time, even if the lease is in respect of an area within a public call area.
- (3) Subject to this Act, the Minister may grant a corresponding licence for a research lease containing specified conditions on an application if—
  - (a) the Minister is satisfied that—

- (i) the grant of the licence would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and
  - (ii) the applicant is a suitable person to be granted the licence; and
- (b) the Minister—
- (i) has caused public notice of the application to be published in a newspaper circulating generally in the State and invited interested persons to make written submissions on the application within the period allowed in the notice; and
  - (ii) has taken any such submissions into account; and
- (c) the matter has been referred to the EPA under Part 8 and the EPA has approved the granting of the licence.
- (4) An aquaculture policy identifying an aquaculture zone may exclude the application of subsection (3)(b) in relation to an application for a lease within the zone in circumstances specified in the policy.
- (5) The Minister must, at the request of a person who has made a written submission to the Minister under subsection (3), give the person a written statement of the Minister's reasons for the decision made by the Minister in relation to the matter on which submissions were invited.

### **39B—Term and renewal of research leases**

- (1) The term of a research lease is 5 years or a lesser period specified in the lease.
- (2) A research lease is renewable for successive terms but not, if the corresponding licence authorises the conduct of a particular research project, so as to extend the term beyond the duration of the research project.
- (3) This section has effect subject to provisions of this Act or a research lease for the renewal or cancellation of the lease.

### **39C—Research leases not transferable**

A research lease is not transferable.

### **39D—Licences may only be held by lessees**

Only the lessee under a research lease may hold the corresponding licence.

## **Division 5—Emergency leases**

### **40—Granting of leases and corresponding licences in circumstances of emergency**

- (1) The Minister may grant an emergency lease in an area to which this Part applies, on his or her own initiative or on the application of the holder of a pilot lease, production lease or research lease, if the Minister is satisfied that circumstances of emergency exist such that the granting of the lease is warranted for the protection of the environment or the preservation of endangered aquaculture stock.

- (2) An emergency lease may be granted in respect of an area within or outside an aquaculture zone, but may not be granted in respect of an area within an aquaculture exclusion zone.
- (3) The Minister may grant a corresponding licence for an emergency lease containing specified conditions, on his or her own initiative or on application, without public notice of the application being published and without the matter being referred to the EPA.

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

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

#### **44—Term and renewal of emergency leases**

- (1) The term of an emergency lease is 6 months or a lesser period specified in the lease.
- (2) An emergency lease is renewable for successive terms but not so the aggregate of the terms exceeds the period reasonably required for response or recovery following the emergency.
- (3) This section has effect subject to provisions of this Act or an emergency lease for the renewal or cancellation of the lease.

#### **44A—EPA and Minister to be notified of emergency lease**

The Minister must ensure that the EPA and, in any case where concurrence of the Minister responsible for the administration of the *Harbors and Navigation Act 1993* is not required (see section 20), that Minister are notified of a proposal to grant or renew an emergency lease.

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

#### **45—Exclusive occupation of marked-off areas**

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

#### **46—Control of marked-off areas**

- (1) This section applies subject to any provisions of the aquaculture lease concerned, or a corresponding licence, that limit the powers of an authorised person in relation to a marked-off area.
- (2) A person who has entered a marked-off area of an aquaculture lease must not fail, without reasonable excuse, to leave the area immediately if asked to leave by an authorised person.  
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (3) A person who has been asked to leave a marked-off area of an aquaculture lease by an authorised person must not re-enter the area unless the person has the express permission of an authorised person or a reasonable excuse for doing so.  
Maximum penalty: \$2 500 or imprisonment for 6 months.



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

Maximum penalty: \$1 250.

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

Maximum penalty: \$1 250.

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

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

Maximum penalty: \$750.

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

Maximum penalty: \$1 250.

#### **47—Interference with stock or equipment within marked-off areas**

- (1) A person must not, without lawful excuse—

- (a) take or interfere with aquaculture stock within a marked-off area of an aquaculture lease; or
- (b) interfere with equipment used to mark-off or indicate the boundaries of the marked-off area of an aquaculture lease; or
- (c) interfere with aquaculture equipment within a marked-off area of an aquaculture lease.

Maximum penalty: Imprisonment for 2 years.

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

Maximum penalty: Imprisonment for 1 year.

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

#### **48—Offence to pretend to be authorised person**

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

Maximum penalty: \$1 250.

## **Division 7—Power to require or carry out work**

### **48A—Power to require or carry out work**

- (1) If—
  - (a) a lessee fails to take an action required by a condition of the lessee's aquaculture lease; or
  - (b) on cancellation or termination of an aquaculture lease, a former lessee fails to remove equipment used to mark-off or indicate the boundaries of a marked-off area of the lease, aquaculture equipment or stock from State waters,the Minister may, by written notice to the lessee or former lessee, direct the person to take the action, or to remove the equipment or stock.
- (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) Equipment or stock removed by action taken by the Minister under subsection (3) is forfeited to the Crown and may be sold or otherwise disposed of as the Minister thinks fit.

## **Part 7—Licences**

### **49—Applications for licences other than corresponding licences**

- (2) An application for an aquaculture licence other than a corresponding licence—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) must be accompanied by a fee of the amount prescribed by regulation.
- (3) An applicant for an aquaculture licence other than a corresponding licence must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

### **50—Grant of licences other than corresponding licences**

- (3) Subject to this Act, the Minister may grant an aquaculture licence (other than a corresponding licence) containing specified conditions on an application made under this Part if—
  - (a) the Minister is satisfied that—
    - (i) the grant of the licence would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable aquaculture policy; and

- (ii) the applicant is a suitable person to be granted the licence; and
  - (b) the Minister—
    - (i) has caused public notice of the application to be published in a newspaper circulating generally in the State and invited interested persons to make written submissions on the application within the period allowed in the notice; and
    - (ii) has taken any such submissions into account; and
  - (c) the matter has been referred to the EPA under Part 8 and the EPA has approved the granting of the licence.
- (5) The Minister must, at the request of a person who has made a written submission to the Minister under subsection (3), give the person a written statement of the Minister's reasons for the decision made by the Minister in relation to the matter on which submissions were invited.

#### **50A—Term and renewal of licences other than corresponding licences**

- (1) An aquaculture licence other than a corresponding licence is granted for a term of 10 years or a lesser period specified in the licence, and is renewable for successive terms on application under this section.
- (2) An application for renewal of an aquaculture licence—
  - (a) must be made to the Minister in the manner and form determined by the Minister; and
  - (b) must be accompanied by a fee of the amount prescribed by regulation.
- (3) An applicant for renewal of an aquaculture licence must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.
- (4) This section has effect subject to the power of the Minister to suspend or cancel an aquaculture licence.

#### **51—Licences may be held jointly**

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

#### **52—Licence conditions**

- (1) On the grant of an aquaculture licence, the Minister may impose licence conditions as contemplated by this Act or as the Minister considers necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the licence conditions may—
  - (a) limit the activities authorised by the licence; and
  - (b) prohibit or restrict the sale or supply of aquatic organisms farmed under the licence, for example, if the aquaculture is to be carried out for the purposes of research or a business involving tourism; and

- (c) regulate the storing, maintaining, repairing or cleaning of farming structures associated with the activity; and
  - (d) in the case of a corresponding licence—regulate the towing of farming structures containing stock by means of navigable vessel to or from the area of the corresponding licence and the feeding of the stock or the taking of other action in relation to the stock during the movement of the stock.
- (3) The Minister may vary licence conditions by written notice to the licensee—
- (a) on the renewal of the licence; or
  - (b) if the licence is a corresponding licence or is granted or renewed for a term exceeding 1 year—at any time during the period of 3 months following the anniversary of the date on which the licence was granted or renewed; or
  - (c) at any time—
    - (i) with the consent of the licensee; or
    - (ii) if the Minister considers that it is necessary to vary the condition—
      - (A) in order to correct an error or make a change of form (not involving a change of substance); or
      - (B) in order to prevent or mitigate significant environmental harm or the risk of significant environmental harm; or
      - (C) in consequence of contravention of this Act by the licensee; or
      - (D) in consequence of an amendment of the Act or the making, amendment or revocation of regulations or an aquaculture policy; or
    - (iii) as provided by a licence condition or the regulations.
- (4) However, the variation of a licence condition will not take effect unless the matter has been referred to the EPA under Part 8 and the EPA has approved the variation of the condition.
- (5) If the public register includes a notation that a specified person has an interest in the licence, the licence may not be varied with the consent of the licensee unless the specified person consents to the variation.
- (6) An application for the variation of conditions of a licence—
- (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) if the public register includes a notation that a specified person has an interest in the lease—must be accompanied by evidence that the person consents to the variation; and
  - (c) must be accompanied by a fee of the amount prescribed by regulation.
- (7) A licensee must not contravene a condition of the licence.  
Maximum penalty: \$10 000.  
Expiation fee: \$1 000.

### **53—Annual fees**

- (1) The holder of an aquaculture licence must, each financial year not later than the date specified by the Minister by written notice to the holder, pay to the Minister a fee of the amount prescribed by regulation.
- (2) If the holder of an aquaculture licence fails to pay a fee in accordance with this section, the Minister may, by written notice, require the holder to make good the default and, in addition, to pay to the Minister the amount prescribed by regulation as a penalty for default.
- (3) If the holder of the licence fails to comply with the notice within the period (of at least 14 days) specified in the notice, the licence is suspended until the notice is complied with.
- (4) If the holder of the licence fails to comply with the notice within 6 months after the giving of the notice, the licence is cancelled.
- (5) The Minister must cause written notice of the suspension or cancellation to be given to the holder of the licence.

### **55—Transfer of licences**

- (1) An aquaculture licence may be transferred by the licensee with the consent of the Minister.
- (2) The holder of an aquaculture lease may exercise the right to transfer a corresponding licence (with the consent of the Minister) if the licensee is no longer entitled under the lease to occupy the licence area.
- (3) If the public register includes a notation that a specified person has an interest in the licence, the Minister may only consent to the transfer if the specified person consents to the transfer.
- (4) An application for the consent of the Minister to the transfer of an aquaculture licence—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) if the public register includes a notation that a specified person has an interest in the licence—must be accompanied by evidence that the person consents to the transfer; and
  - (c) must be accompanied by a fee of the amount prescribed by regulation.

### **56—Surrender of licences**

- (1) A licensee may, with the consent of the Minister, surrender the aquaculture licence to the Minister.
- (2) If the public register includes a notation that a specified person has an interest in the aquaculture licence, the Minister may only consent to the surrender if the specified person consents to the surrender.

- (3) An application for the consent of the Minister to the surrender of an aquaculture licence—
- (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) if the public register includes a notation that a specified person has an interest in the licence—must be accompanied by evidence that the person consents to the surrender; and
  - (c) must be accompanied by a fee of the amount prescribed by regulation.

### **57—Suspension or cancellation of licences**

- (1) Proper cause exists for the suspension or cancellation of an aquaculture licence if—
- (a) the licensee obtained the licence improperly; or
  - (b) the licensee has failed to comply with a condition of the licence; or
  - (c) the licensee, or, in the case of a corporation, a director of the licensee, has committed an offence against this Act or any other law of this State or another State or Territory of the Commonwealth relating to aquaculture, fishing or environment protection; or
  - (d) a relevant statutory authorisation held by the licensee, or, in the case of a corporation, a director of the licensee, has been cancelled or suspended or the licensee, or, in the case of a corporation, a director of the licensee, has been disqualified from obtaining such an authorisation.
- (2) If proper cause exists for the suspension or cancellation of an aquaculture licence, the Minister may, by written notice to the licensee—
- (a) suspend the licence for a specified period or until the Minister terminates the suspension; or
  - (b) cancel the licence.
- (3) Before the Minister suspends or cancels an aquaculture licence the Minister must give the licensee written notice—
- (a) specifying the matters alleged to constitute proper cause for suspension or cancellation of the licence; and
  - (b) stating the action that the Minister proposes to take; and
  - (c) allowing the licensee a reasonable opportunity to show cause why the proposed action should not be taken.

### **58—Power to require or carry out work**

- (1) If—
- (a) a licensee fails to take an action required by a condition of the licensee's aquaculture licence or by this Act; or
  - (ab) on suspension of an aquaculture licence in respect of an area comprising or including State waters, the licensee fails to remove aquaculture stock, or aquaculture equipment, from the State waters; or

- (b) on cancellation or termination of an aquaculture licence in respect of an area comprising or including State waters, the former licensee fails to remove aquaculture equipment or stock from the State waters,

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

- (2) A person to whom a direction is given under subsection (1) must comply with the direction within the time allowed in the notice.  
Maximum penalty: \$35 000.
- (3) If a person fails to comply with a direction under subsection (1) within the time allowed in the notice, the Minister may cause the required action to be taken, and may recover the cost, as a debt, from the person.
- (4) Equipment or stock removed by action taken by the Minister under subsection (3) is forfeited to the Crown and may be sold or otherwise disposed of as the Minister thinks fit.

## Part 8—Reference of matters to EPA

### 59—Reference of matters to EPA

- (1) The following matters are to be referred to the EPA:
- (a) whether a corresponding licence containing specified conditions should be granted in connection with an application for an aquaculture lease (other than an emergency lease);
  - (b) whether an aquaculture licence (other than a corresponding licence) containing specified conditions should be granted on an application;
  - (c) whether a variation should be made to the conditions of an aquaculture licence (other than standard conditions prescribed by an aquaculture policy);
  - (d) whether a pilot lease should be converted to a production lease (other than a pilot lease in an area comprising or including State waters within an aquaculture zone).
- (2) The EPA may, by notice to the Minister, request that the EPA be provided with specified information to enable it to determine its response to a matter referred to it under this section.
- (3) The EPA must make its response to the Minister within the prescribed period (which will be extended by any period that the Minister takes to provide information requested by the EPA or any period that the Minister thinks fit to allow).
- (4) The EPA must, in determining its response to a matter referred to it under this section, have regard to, and seek to further, the objects of the *Environment Protection Act 1993* and have regard to the general environmental duty and any relevant environment protection policies under that Act.
- (5) The EPA is not subject to Ministerial direction in relation to the determination of its response to a matter referred to it under this section.

- (6) The Minister may, before the EPA responds to a matter referred to it under this section, withdraw the reference or, at the request or with the consent of the EPA, vary the matter referred.
- (7) If the EPA fails to make its response to the Minister within the period allowed under this section, it will be presumed that the EPA has responded that it approves the granting of the licence, the variation of the licence conditions or the conversion of the lease (as the case may be).
- (8) The Minister must ensure that the person directly affected by a matter referred to the EPA under this section is notified of the EPA's response.
- (9) If the EPA's response is that it does not approve the granting of the licence, the variation of the licence conditions or the conversion of the lease (as the case may be), the EPA must, at the request of the Minister, give the Minister a written statement of the EPA's reasons for its decision.

## **Part 9—Appeals**

### **60—Appeals**

- (1) The following appeals may be made to the Administrative and Disciplinary Division of the District Court:
  - (a) an applicant for an aquaculture lease may appeal against a decision of the Minister—
    - (i) that a corresponding licence will not be granted; or
    - (ii) fixing the conditions of a corresponding licence;
  - (b) an applicant for a corresponding licence may appeal against a decision of the Minister that the licence will not be granted;
  - (c) an applicant for an aquaculture licence (other than a corresponding licence) may appeal against a decision of the Minister—
    - (i) that the licence will not be granted; or
    - (ii) fixing the conditions of the licence;
  - (d) the holder of an aquaculture licence may appeal against a decision of the Minister—
    - (i) varying the conditions of the licence; or
    - (ii) refusing to consent to the transfer or surrender of the licence; or
    - (iii) suspending or cancelling the licence.
- (1a) However, there is no right of appeal in relation to an application for a production lease or a corresponding licence if the application is made in response to a public call for applications and the application was not an application determined by the Minister under this Act to be a preferred application (see section 35(8)).
- (2) Subject to this section, an appeal must be instituted within one month of the making of the decision appealed against.
- (3) The Minister must, on application by a person affected by a decision that may be the subject of an appeal, state in writing the reasons for the Minister's decision.



- (4) If the reasons of the Minister are not given in writing at the time of making a decision and the person affected by the decision, within one month of the making of the decision, requires the Minister to state the Minister's reasons in writing, the time for instituting an appeal runs from the time when the person receives the written statement of those reasons.
- (5) For the purposes of this Part, a response made by the EPA to the Minister within the time allowed under Part 8 that the EPA does not approve the granting of a licence will be taken to be a decision of the Minister that the licence will not be granted and the EPA's reasons for its decision will be taken to be the Minister's reasons.
- (6) The EPA will be a party to an appeal against a decision of the Minister relating to any matter referred to the EPA under Part 8.

## **Part 10—Administration**

### **Division 1—Minister**

#### **60A—Guidelines for ATAB assessment of lease and corresponding licence applications**

- (1) The Minister may, by notice in the Gazette, publish guidelines for the assessment by ATAB of applications for leases and corresponding licences under this Act.
- (2) The Minister may, by subsequent notice in the Gazette, vary or revoke the guidelines.
- (3) The Minister must cause an up-to-date copy of the guidelines to be kept available for members of the public on an Internet site.

#### **61—Power of delegation**

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this or any other Act.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Minister to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

#### **62—Acquisition of land**

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

### **Division 2—Aquaculture Advisory Committee**

#### **63—Establishment of Aquaculture Advisory Committee**

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

## **64—Functions of AAC**

The functions of the AAC are—

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

## **65—Membership of AAC**

- (1) The AAC consists of 11 members appointed by the Governor of whom—
  - (a) 1 must be a person nominated by the Minister, who will be the presiding member of the AAC; and
  - (b) 1 must be a person engaged in the administration of this Act nominated by the Minister; and
  - (c) 1 must be a person engaged in the administration of the *Environment Protection Act 1993* nominated by the Minister responsible for the administration of that Act; and
  - (ca) 1 must be a person engaged in the administration of the *Harbors and Navigation Act 1993* nominated by the Minister responsible for the administration of that Act; and
  - (d) 4 must be persons nominated by the Minister who have, in the opinion of the Minister, appropriate practical knowledge of and experience in the aquaculture industry; and
  - (e) 1 must be a person nominated by the Minister who has, in the opinion of the Minister, appropriate knowledge of and experience in research and development relevant to the aquaculture industry; and
  - (f) 1 must be a person nominated by the Minister who has, in the opinion of the Minister, appropriate practical knowledge of and experience in environmental conservation and advocacy on environmental matters on behalf of community organisations; and
  - (g) 1 must be a person chosen by the Minister from a panel of 3 persons nominated by the Local Government Association of South Australia.
- (2) At least 1 member of the AAC must be a woman and at least 1 must be a man.

## **66—Terms and conditions of membership**

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

- (2) The Governor may appoint a person to be the deputy of a member of the AAC and the deputy may act as a member of the AAC during any period of absence of the member.
- (3) The Governor may remove a member of the AAC from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of the AAC becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (3).

### **67—Remuneration**

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

### **68—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the AAC will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the aquaculture industry generally, or a substantial section of those engaged in or associated with the aquaculture industry.

### **69—Validity of acts of AAC**

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

### **70—Procedures of AAC**

- (1) A quorum of the AAC consists of 6 members.
- (2) If the presiding member of the AAC is absent from a meeting of the AAC, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting of the AAC is a decision of the AAC.
- (4) Each member present at a meeting of the AAC has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A conference by telephone or other electronic means between the members of the AAC will, for the purposes of this section, be taken to be a meeting of the AAC at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the AAC for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.

- (6) A proposed resolution of the AAC becomes a valid decision of the AAC despite the fact that it is not voted on at a meeting of the AAC if—
  - (a) notice of the proposed resolution is given to all members of the AAC in accordance with procedures determined by the AAC; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (7) The AAC must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the AAC may determine its own procedures.

### **Division 3—Aquaculture Tenure Allocation Board**

#### **71—Establishment of Aquaculture Tenure Allocation Board**

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

#### **72—Functions of ATAB**

The functions of ATAB are—

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

#### **73—Membership of ATAB**

- (1) ATAB consists of 6 members appointed by the Governor of whom—
  - (a) 1 must be a person nominated by the Minister, who will be the presiding member of ATAB; and
  - (b) at least 1 must be a qualified legal practitioner; and
  - (c) at least 1 must have knowledge of, and experience in, business and commerce; and
  - (d) at least 1 must have qualifications and experience in marine biology or environmental management; and
  - (e) at least 1 must have knowledge of or relevant to the farming of aquatic organisms.
- (2) At least 1 member of ATAB must be a woman and at least 1 must be a man.

#### **74—Terms and conditions of membership**

- (1) A member of ATAB will be appointed on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may appoint a person to be the deputy of a member of ATAB and the deputy may act as a member of ATAB during any period of absence of the member.
- (3) The Governor may remove a member of ATAB from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or

- (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of ATAB becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (3).

### **75—Remuneration**

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

### **76—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the ATAB will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the aquaculture industry generally, or a substantial section of those engaged in or associated with the aquaculture industry.

### **77—Validity of acts of ATAB**

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

### **78—Procedures of ATAB**

- (1) A quorum of ATAB consists of 4 members.
- (2) If the presiding member of ATAB is absent from a meeting of ATAB, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting of ATAB is a decision of ATAB.
- (4) Each member present at a meeting of ATAB has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A conference by telephone or other electronic means between the members of ATAB will, for the purposes of this section, be taken to be a meeting of ATAB at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by ATAB for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.

- (6) A proposed resolution of ATAB becomes a valid decision of ATAB despite the fact that it is not voted on at a meeting of ATAB if—
  - (a) notice of the proposed resolution is given to all members of ATAB in accordance with procedures determined by ATAB; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written communication setting out the terms of the resolution.
- (7) ATAB must have accurate minutes kept of its meetings.
- (8) Subject to this Act, ATAB may determine its own procedures.

## **Division 4—Fund**

### **79—Aquaculture Fund**

- (1) The *Aquaculture Fund* is established.
- (2) The Fund must be kept as directed by the Treasurer.
- (3) The Fund is to consist of the following money:
  - (a) the prescribed percentage of fees (other than expiation fees) paid under this Act;
  - (b) expiation fees and the prescribed percentage of penalties recovered in respect of offences against this Act;
  - (c) rent or any other amount (not being fees) paid to or recovered by the Minister under this Act;
  - (d) any money appropriated by Parliament for the purposes of the Fund;
  - (e) any money paid into the Fund at the direction or with the approval of the Minister and the Treasurer;
  - (f) any income from investment of money belonging to the Fund;
  - (g) any money paid into the Fund under any other Act.
- (4) The Fund may be applied by the Minister (without further appropriation than this subsection)—
  - (a) for the purposes of any investigations or other projects relating to the management of aquaculture resources; or
  - (ab) for the purposes of research or development relating to the aquaculture industry; or
  - (ac) for the purposes of taking action to remove or recover aquaculture equipment or stock, or equipment used to mark-off or indicate the boundaries of a marked-off area of a lease, in accordance with this Act; or
  - (b) towards the costs of administration of this Act.
- (5) The Minister may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

## Division 5—Public register

### 80—Public register

- (1) The Minister must maintain a public register.
- (2) The register must contain—
  - (a) in respect of each application for an aquaculture lease, for the conversion of a pilot lease to a production lease or for an aquaculture licence—
    - (i) the name of the applicant; and
    - (ii) a description of the class of lease or licence sought; and
    - (iii) in the case of a lease, a description of the lease area or proposed lease area; and
    - (iv) in the case of a licence authorising aquaculture, a description of—
      - (A) the proposed licence area; and
      - (B) the species of aquatic organisms proposed to be farmed; and
      - (C) the farming system proposed to be used; and
  - (b) the terms and conditions of each aquaculture lease and aquaculture licence issued under this Act; and
  - (c) the names of the lessees and licensees; and
  - (d) an accurate description of the area of the lease or licence; and
  - (e) a summary of each environmental monitoring report furnished to the Minister in accordance with the regulations or the conditions of the licences; and
  - (f) any other information (other than commercially sensitive information) the Minister considers appropriate to the public register.
- (2a) The Minister must, on application by the holder of an aquaculture lease or licence and payment of the fee fixed by regulation, make a notation on the register that a specified person nominated by the holder has an interest in the lease or licence.
- (2b) If the register includes a notation that a specified person has an interest in an aquaculture lease or licence—
  - (a) the Minister must give written notice to that person of—
    - (i) any proceedings for an offence against this Act commenced against the holder of the lease or licence setting out particulars of the alleged offence; and
    - (ii) any notice given to the holder of the lease or licence proposing to cancel or not to renew the lease, suspend or cancel the licence or vary the lease or licence conditions; and
    - (iii) any notice given to the holder of the lease or licence directing the holder to take action required by conditions of the lease or licence; and

- (b) the Minister must, on application by that person, remove that notation from the register.
- (2c) The Minister may remove from the register information relating to—
  - (a) applications that have been determined; or
  - (b) leases or licences that have been cancelled or otherwise terminated.
- (3) The public register may be kept in the form of a computer record.

### **81—Public register to be available for inspection**

- (1) The public register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Minister.
- (2) The Minister must ensure that copies of material on the public register can be purchased for a reasonable fee at the public office, or public offices, at which the register is kept available for inspection.
- (3) The Minister must ensure that the public register can be inspected at a website determined by the Minister.

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

### **82—Fisheries officers and their powers**

- (1) Fisheries officers may exercise their powers under the *Fisheries Management Act 2007* for the purposes of the administration and enforcement of this Act.
- (2) This Act is to be read as if the provisions of Part 8 Division 1 Subdivision 2 and Subdivision 5 of the *Fisheries Management Act 2007* were incorporated in this Act (subject to any modifications prescribed by regulation) together with any definitions contained in the *Fisheries Management Act 2007* of terms used in those provisions.

## **Part 10A—Compliance with general environmental duty and environment protection policies**

### **82A—Administration of general environmental duty and environment protection policies by Minister and fisheries officers**

- (1) For the purposes of the *Environment Protection Act 1993*—
  - (a) the Minister will be taken to be an administering agency; and
  - (b) as an administering agency, the Minister will be taken to have the function of administering, enforcing and giving effect to the general environmental duty and environment protection policies under that Act in relation to—
    - (i) activities carried out or purportedly carried out under an aquaculture lease or licence; or
    - (ii) activities prescribed by regulation; and
  - (c) sections 18B and 18D of that Act will be taken not to apply to the Minister as an administering agency; and
  - (d) the conferral of the function on the Minister as an administering agency is not to be taken to limit or affect the performance of that function by the EPA; and



- (e) a reference in that Act to an administering agency is, in relation to the Minister, a reference to the administering agency only in relation to the function conferred on the Minister as an administering agency; and
  - (f) the Minister may exercise the power of the EPA to appoint a fisheries officer to be an authorised officer for the purposes of the function conferred on the Minister as an administering agency.
- (2) Any matter relating to the performance of the function conferred on the Minister as an administering agency may be disclosed to the EPA.

## Part 11—Miscellaneous

### 82B—Death, bankruptcy etc of lessee or licensee

- (1) If a person holding an aquaculture lease or an aquaculture licence dies, the personal representative of the deceased, or some other person approved by the Minister on application, is to be taken to hold the lease or licence in the place of the deceased as from the date of the death until the expiration of 6 months from that date, or until such later day as may be fixed by the Minister.
- (2) If a person holding an aquaculture licence becomes bankrupt or insolvent, the official receiver may carry on aquaculture under the licence as if the official receiver held the licence in place of the person.
- (3) If a body corporate holding an aquaculture licence is being wound up or is under administration, receivership or official management, a person vested by law with power to administer the affairs of the body corporate may carry on aquaculture under the licence as if the person held the licence in place of the body corporate.

### 83—Annual reports

- (1) The administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act must, on or before 30 September in each year, present a report to the Minister on the operation and administration of this Act during the previous financial year.
- (2) A report required under this section may be incorporated in the annual report of the relevant administrative unit.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

### 85—False or misleading 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 under this Act.

Maximum penalty: \$5 000.

### 86—Service of documents

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

- (b) be posted in an envelope addressed to the person—
    - (i) at the person's last known address; or
    - (ii) at the person's address for service; or
  - (c) be left for the person at the address for service with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission or e-mail to a facsimile number or e-mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) The address for service of a lessee or licensee under this Act is the address for the person that appears in the public register maintained by the Minister under this Act.

### **87—Continuing offence**

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
  - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

### **88—Liability of directors**

- (1) If a corporation is guilty of an offence against section 17 or 58, each director of the corporation is guilty of an offence and is liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (1a) If a corporation is guilty of an offence against section 16 or 52, each director of the corporation is guilty of an offence and is liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
- (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
  - (b) the director was in a position to influence the conduct of the corporation in relation to the commission of such an offence; and
  - (c) the director failed to exercise due diligence to prevent the commission of the offence.
- (2) A director of a corporation may be prosecuted and convicted of an offence under this section whether or not the corporation has been prosecuted or convicted of the offence committed by the corporation.

## 89—General defence

- (1) It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
- (2) This section does not apply in relation to a person who is charged with an offence under section 88.

## 89A—Confidentiality

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate any information relating to trade processes or financial 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; or
  - (d) to an agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions.

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.

## 90—Evidentiary

- (1) In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Minister certifying—
  - (a) that a person named in the certificate was at a specified time a delegate of the Minister unconditionally or subject to specified conditions; or
  - (b) that a person named in the certificate was or was not at a specified time the holder of a specified aquaculture lease or licence; or
  - (c) that a provision set out in the certificate was at a specified time a condition of a specified aquaculture lease or licence,is, in the absence of proof to the contrary, proof of the matters certified.
- (2) In proceedings for an offence against this Act, an allegation in the complaint—
  - (a) that a person named in the complaint was an authorised person on a specified day in relation to a specified marked-off area; or

- (b) that a person named in the complaint was at a specified time a fisheries officer; or
- (c) that an organism in relation to which an act or omission is alleged to have been done or made was an aquatic organism of a specified species or was an aquatic organism having a specified characteristic,

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

- (3) In proceedings for an offence against this Act, evidence of a distance, height, depth or position as determined by the use of an electronic, sonic, optical, mechanical or other device by a fisheries officer or any other competent person will, in the absence of proof to the contrary, be accepted as proof of the distance, height, depth or position.
- (4) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that a place or area described or indicated by him or her was or was not within a specified aquaculture lease or licence area or a specified marked-off area will, in the absence of proof to the contrary, be accepted as proof of the matter so stated.
- (5) In proceedings for an offence against this Act, if it is proved that aquatic organisms were present in the area of a licence at a specified time or date it will be presumed, in the absence of proof to the contrary, that the aquatic organisms were being farmed for the purposes of trade or business or research at that time or date.

## **91—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), those regulations may make provision for or relating to—
  - (a) the furnishing to the Minister by a lessee or licensee of information, records or periodic returns relating to aquaculture carried on in the area of the lease or licence; and
  - (b) fees in respect of any matter under this Act and the payment, recovery, refund or waiver of fees payable under this Act; and
  - (ba) the division of lease areas into separate lease areas or the division of licence areas into separate licence areas; and
  - (bb) the amalgamation of lease areas or licence areas; and
  - (bc) the storing, maintaining, repairing or cleaning of a farming structure in State waters; and
  - (bd) the towing by vessel of a farming structure containing stock; and
  - (c) exemptions (conditional or unconditional) from specified provisions of this Act or providing for the Minister to grant exemptions (conditional or unconditional) from specified provisions of the regulations; and
  - (d) fines (not exceeding \$10 000) for offences against the regulations; and
  - (da) expiation fees (not exceeding \$1 000) for alleged offences against the regulations; and
  - (e) facilitation of proof of the commission of offences against the regulations.

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

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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).

### Legislation amended by principal Act

The *Aquaculture Act 2001* amended the following:

*Environment Protection Act 1993*

*Fisheries Act 1982*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2001	66	<i>Aquaculture Act 2001</i>	6.12.2001	1.7.2002 ( <i>Gazette</i> 27.6.2002 p2681) except ss 49, 50 and Pt 10 Div 4—11.11.2002 ( <i>Gazette</i> 31.10.2002 p3978)
2003	35	<i>River Murray Act 2003</i>	31.7.2003	Sch (cl 2)— 24.11.2003 ( <i>Gazette</i> 20.11.2003 p4203)
2005	5	<i>Adelaide Dolphin Sanctuary Act 2005</i>	14.4.2005	Sch 2 (cll 2—4)—1.7.2005 ( <i>Gazette</i> 2.6.2005 p1684)
2007	4	<i>Fisheries Management Act 2007</i>	8.3.2007	Sch 2 (cl 2)—1.12.2007 ( <i>Gazette</i> 15.11.2007 p4241)
2007	60	<i>Marine Parks Act 2007</i>	29.11.2007	Sch 1 (cll 2—4)—6.11.2008 ( <i>Gazette</i> 6.11.2008 p5055)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 16 (ss 31—33)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2011	11	<i>Statutes Amendment (Personal Property Securities) Act 2011</i>	14.4.2011	Pt 2 (s 4)—16.6.2011 ( <i>Gazette</i> 16.6.2011 p2610)
2012	27	<i>Aquaculture (Miscellaneous) Amendment Act 2012</i>	12.7.2012	Sch 1 (Pts 1 & 4)—12.7.2012: s 2(1); Pt 2 (ss 4—53) & Sch 1 (Pts 2 & 3)—25.10.2012 ( <i>Gazette</i> 25.10.2012 p4768)
<b>2013</b>	<b>16</b>	<b><i>Statutes Amendment (Directors' Liability) Act 2013</i></b>	<b>23.5.2013</b>	<b>Pt 5 (ss 8 &amp; 9)—17.6.2013 (<i>Gazette</i> 6.6.2013 p2498)</b>

2015 8 *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015* 18.6.2015 Pt 5 (ss 33—36)—1.7.2015 (*Gazette* 25.6.2015 p3076)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	24.11.2003
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	24.11.2003
s 3		
Adelaide Dolphin Sanctuary	inserted by 5/2005 Sch 2 (cl 2(1))	1.7.2005
<i>aquaculture emergency zone</i>	<i>deleted by 27/2012 s 4(1)</i>	25.10.2012
aquaculture equipment	inserted by 27/2012 s 4(1)	25.10.2012
aquaculture lease or aquaculture lease	amended to read aquaculture lease or lease by 27/2012 s 4(2)	25.10.2012
<i>aquaculture licence</i>	<i>deleted by 27/2012 s 4(3)</i>	25.10.2012
aquaculture licence or licence	inserted by 27/2012 s 4(3)	25.10.2012
<i>development lease</i>	<i>deleted by 27/2012 s 4(4)</i>	25.10.2012
farming structures	inserted by 27/2012 s 4(5)	25.10.2012
fisheries officer	amended by 27/2012 s 4(6)	25.10.2012
marine park	inserted by 60/2007 Sch 1 cl 2(1)	6.11.2008
<i>Minister for the Adelaide Dolphin Sanctuary</i>	<i>inserted by 5/2005 Sch 2 (cl 2(2))</i>	1.7.2005
	<i>deleted by 60/2007 Sch 1 cl 2(2)</i>	6.11.2008
Minister's assessment guidelines	inserted by 27/2012 s 4(7)	25.10.2012
Murray-Darling Basin	inserted by 35/2003 Sch cl 2(a)	24.11.2003
<i>prospective aquaculture zone</i>	<i>deleted by 27/2012 s 4(8)</i>	25.10.2012
public call area	inserted by 27/2012 s 4(9)	25.10.2012
public register	inserted by 27/2012 s 4(9)	25.10.2012
relevant Act	inserted by 60/2007 Sch 1 cl 2(3)	6.11.2008
relevant Minister	inserted by 60/2007 Sch 1 cl 2(3)	6.11.2008
relevant statutory authorisation	inserted by 27/2012 s 4(10)	25.10.2012

**Aquaculture Act 2001—17.6.2013 to 30.6.2015**

## Legislative history

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research lease	inserted by 27/2012 s 4(10)	25.10.2012
River Murray Protection Area	inserted by 35/2003 Sch cl 2(b)	24.11.2003
specialty protected area	inserted by 60/2007 Sch 1 cl 2(4)	6.11.2008
suitable person	inserted by 27/2012 s 4(11)	25.10.2012
vary licence conditions	inserted by 27/2012 s 4(11)	25.10.2012
s 4A	inserted by 27/2012 s 5	25.10.2012
s 6A	inserted by 11/2011 s 4	16.6.2011
s 7		
s 7(1)	s 7 amended and redesignated as s 7(1) by 27/2012 s 6(1), (2)	25.10.2012
s 7(2)	inserted by 27/2012 s 6(2)	25.10.2012
Pt 4		
s 11		
s 11(2)	amended by 27/2012 s 7(1), (2)	25.10.2012
	(d) deleted by 27/2012 s 7(3)	25.10.2012
s 11(3a)	inserted by 35/2003 Sch cl 2(c)	24.11.2003
	substituted by 60/2007 Sch 1 cl 3	6.11.2008
<i>s 11(3b)</i>	<i>inserted by 5/2005 Sch 2 (cl 3)</i>	<i>1.7.2005</i>
	<i>deleted by 60/2007 Sch 1 cl 3</i>	<i>6.11.2008</i>
s 11(3b)	inserted by 27/2012 s 7(4)	25.10.2012
s 12		
s 12(3)	amended by 27/2012 s 8	25.10.2012
s 12(7a)	inserted by 35/2003 Sch cl 2(d)	24.11.2003
	substituted by 60/2007 Sch 1 cl 4	6.11.2008
s 12(7b)	inserted by 5/2005 Sch 2 (cl 4)	1.7.2005
	substituted by 60/2007 Sch 1 cl 4	6.11.2008
<i>s 12(7c)</i>	<i>inserted by 5/2005 Sch 2 (cl 4)</i>	<i>1.7.2005</i>
	<i>deleted by 60/2007 Sch 1 cl 4</i>	<i>6.11.2008</i>
s 13		
s 13(3a)	inserted by 27/2012 s 9(1)	25.10.2012
s 13(9)	inserted by 27/2012 s 9(2)	25.10.2012
s 14		
s 14(1)	amended by 27/2012 s 10	25.10.2012
s 16	amended by 27/2012 s 11	25.10.2012
Pt 5		
s 17	substituted by 27/2012 s 12	25.10.2012
Pt 6		
Pt 6 Div 1		
s 19	substituted by 27/2012 s 13	25.10.2012
s 20	substituted by 27/2012 s 14	25.10.2012
s 22		



s 22(1)	substituted by 27/2012 s 15(1)	25.10.2012
s 22(2)	amended by 27/2012 s 15(2)	25.10.2012
s 22(2a)—(2d)	inserted by 27/2012 s 15(3)	25.10.2012
s 22(3)	amended by 27/2012 s 15(4)	25.10.2012
s 22(5)	amended by 27/2012 s 15(5)	25.10.2012
ss 23 and 24	<i>deleted by 27/2012 s 16</i>	25.10.2012
s 25	substituted by 27/2012 s 16	25.10.2012
ss 25A—25D	inserted by 27/2012 s 16	25.10.2012
s 26	(b) deleted by 27/2012 s 17(1)	25.10.2012
	amended by 27/2012 s 17(2)	25.10.2012
Pt 6 Div 2		
s 28	substituted by 27/2012 s 18	25.10.2012
s 29		
s 29(2)	amended by 27/2012 s 19(1)	25.10.2012
s 29(3)	amended by 27/2012 s 19(2)	25.10.2012
Pt 6 Div 3	<i>deleted by 27/2012 s 20</i>	25.10.2012
Pt 6 Div 4		
ss 34—36	inserted by 27/2012 s 21	25.10.2012
s 37		
s 37(1)	amended by 27/2012 s 22(1)	25.10.2012
s 37(2)	amended by 27/2012 s 22(1), (2)	25.10.2012
s 37(3)	amended by 27/2012 s 22(1), (3), (4)	25.10.2012
s 37(4)	amended by 27/2012 s 22(1)	25.10.2012
s 37(4a)	inserted by 27/2012 s 22(5)	25.10.2012
s 37(5)	amended by 27/2012 s 22(1)	25.10.2012
s 37(5a)	inserted by 27/2012 s 22(6)	25.10.2012
s 37(6) and (7)	amended by 27/2012 s 22(1)	25.10.2012
s 38		
s 38(3)	amended by 27/2012 s 23	25.10.2012
s 39	substituted by 27/2012 s 24	25.10.2012
Pt 6 Div 4A	inserted by 27/2012 s 25	25.10.2012
Pt 6 Div 5		
s 40	substituted by 27/2012 s 26	25.10.2012
ss 41 and 42	<i>deleted by 27/2012 s 26</i>	25.10.2012
s 44		
s 44(1)	amended by 27/2012 s 27(1)	25.10.2012
s 44(2)	amended by 27/2012 s 27(2)	25.10.2012
s 44(3)	amended by 27/2012 s 27(3)	25.10.2012
s 44A	inserted by 27/2012 s 28	25.10.2012
Pt 6 Div 6		
s 47		
s 47(1)	amended by 27/2012 s 29	25.10.2012
Pt 6 Div 7	inserted by 27/2012 s 30	25.10.2012

## Aquaculture Act 2001—17.6.2013 to 30.6.2015

### Legislative history

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#### Pt 7

##### s 49

s 49(1) *deleted by 27/2012 s 31(1)* 25.10.2012

s 49(2) *amended by 27/2012 s 31(2)* 25.10.2012

s 49(3) *amended by 27/2012 s 31(3)* 25.10.2012

##### s 50

s 50(1) and (2) *deleted by 27/2012 s 32(1)* 25.10.2012

s 50(3) *amended by 27/2012 s 32(2), (3)* 25.10.2012

s 50(4) *deleted by 27/2012 s 32(4)* 25.10.2012

s 50(5) *amended by 27/2012 s 32(5)* 25.10.2012

##### s 50A

*inserted by 27/2012 s 33* 25.10.2012

##### ss 52 and 53

*substituted by 27/2012 s 34* 25.10.2012

##### s 54

*deleted by 27/2012 s 34* 25.10.2012

##### s 55

s 55(3) and (4) *inserted by 27/2012 s 35* 25.10.2012

##### s 56

*substituted by 27/2012 s 36* 25.10.2012

##### s 57

s 57(1) *amended by 27/2012 s 37(1), (2)* 25.10.2012

##### s 58

s 58(1) *amended by 27/2012 s 38(1), (2)* 25.10.2012

#### Pt 8

##### s 59

s 59(1) *amended by 27/2012 s 39(1)—(4)* 25.10.2012

*(e) deleted by 27/2012 s 39(5)* 25.10.2012

#### Pt 9

##### s 60

s 60(1) *amended by 27/2012 s 40(1)* 25.10.2012

s 60(1a) *inserted by 27/2012 s 40(2)* 25.10.2012

s 60(3) *amended by 27/2012 s 40(3)* 25.10.2012

#### Pt 10

##### s 60A

*inserted by 27/2012 s 41* 25.10.2012

##### s 65

s 65(1) *amended by 27/2012 s 42(1), (2)* 25.10.2012

##### s 68

*substituted by 84/2009 s 31* 1.2.2010

##### s 73

s 73(1) *amended by 27/2012 s 43* 25.10.2012

##### s 76

*substituted by 84/2009 s 32* 1.2.2010

##### s 79

s 79(1) *amended by 27/2012 s 44(1)* 25.10.2012

s 79(3) *amended by 27/2012 s 44(2)* 25.10.2012

s 79(4) *amended by 27/2012 s 44(3)* 25.10.2012

##### s 80

s 80(2) *amended by 27/2012 s 45(1), (2)* 25.10.2012

s 80(2a)—(2c)	inserted by 27/2012 s 45(3)	25.10.2012
s 82		
s 82(1)	amended by 4/2007 Sch 2 cl 2(1)	1.12.2007
s 82(2)	amended by 4/2007 Sch 2 cl 2(1), (2)	1.12.2007
	amended by 27/2012 s 46	25.10.2012
Pt 10A	inserted by 27/2012 s 47	25.10.2012
Pt 11		
s 82B	inserted by 27/2012 s 48	25.10.2012
<b>s 88</b>		
s 88(1)	<b>substituted by 16/2013 s 8</b>	<b>17.6.2013</b>
s 88(1a)	<b>inserted by 16/2013 s 8</b>	<b>17.6.2013</b>
<b>s 89</b>		
s 89(1)	<b>s 89 redesignated as s 89(1) by 16/2013 s 9</b>	<b>17.6.2013</b>
s 89(2)	<b>inserted by 16/2013 s 9</b>	<b>17.6.2013</b>
s 89A	inserted by 27/2012 s 49	25.10.2012
s 90		
s 90(5)	inserted by 27/2012 s 50	25.10.2012
s 84	<i>deleted by 84/2009 s 33</i>	<i>1.2.2010</i>
s 91		
s 91(2)	amended by 27/2012 s 51	25.10.2012
s 92	<i>deleted by 27/2012 s 52</i>	<i>25.10.2012</i>
<i>Sch before deletion by 27/2012</i>		
<i>Pt 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>24.11.2003</i>
<i>Sch</i>	<i>deleted by 27/2012 s 53</i>	<i>25.10.2012</i>

## Transitional etc provisions associated with Act or amendments

### *Aquaculture (Miscellaneous) Amendment Act 2012, Sch 1*

#### *Part 3—Transitional provisions*

#### **3—Aquaculture zones to be taken to be public call areas**

Until an aquaculture policy identifying an aquaculture zone is first amended following the commencement of this clause so as to designate the zone or part of the zone as a public call area, the whole of the zone will be taken to be a public call area for the purposes of the principal Act.

#### **4—Development leases and corresponding licences to continue as production leases and corresponding licences**

The following provisions apply in relation to a development lease in force under the principal Act immediately before the commencement of this clause:

- (a) the development lease will be taken to be a production lease;

- (b) the conditions of the production lease will be the same as the conditions of the development lease;
- (c) the term of the production lease will be the balance of the term of the development lease;
- (d) a corresponding licence in relation to the development lease will be taken to be a corresponding licence in relation to the production lease.

## **5—Application of amendments to existing leases and licences**

The amendments to the principal Act effected by this amending Act apply to an aquaculture lease or aquaculture licence whether granted before or after the commencement of the amendment.

## **6—Variation of existing leases by Minister on renewal**

- (1) The Minister may, when an aquaculture lease is first renewed following commencement of this clause, by written notice to the holder of the lease, vary the conditions of the lease so as to include conditions of a kind that could be included in the lease if it were being granted for the first time.
- (2) Before taking action under subclause (1), the Minister must give—
  - (a) the holder of the aquaculture lease; and
  - (b) if the public register includes a notation that a specified person has an interest in the lease—the specified person,

a reasonable opportunity to make submissions on the proposed action.

## ***Part 4—Validation provisions***

### **7—Aquaculture leases and licences**

All aquaculture leases and licences purportedly granted or transferred to a person or purportedly converted, renewed or varied before the commencement of this clause are declared to have been validly granted or transferred to the person or converted, renewed or varied despite a lack of power or regularity affecting the grant, transfer, conversion, renewal or variation and the leases and licences (as granted, transferred, converted, renewed or varied) are to be taken to have been valid from their inception.

### **8—Delegations**

If a Public Service employee has, before the date of assent to this Act, purported to exercise a power or function of the Minister under the principal Act, and the exercise of that power or function would have been valid if it had been carried out pursuant to a valid delegation by the Minister, the exercise of that power or function will be taken to have been valid.

### **9—Regulations and policies**

The *Aquaculture Variation Regulations 2006* and, until its revocation, the *Aquaculture (Standard Lease Conditions) Policy 2005* have the same force and effect, and will be taken to always have had the same force and effect, as if made under the principal Act as amended by this Act.

## Historical versions

Reprint No 1—24.11.2003

1.7.2005

1.12.2007

6.11.2008

1.2.2010

16.6.2011

12.7.2012 (electronic only)

25.10.2012