

REGULATIONS UNDER THE FISHERIES ACT 1982

Scheme of Management (Lakes and Coorong Fishery) Regulations 1991

being

No. 110 of 1991: *Gaz.* 27 June 1991, p. 2178¹

as varied by

No. 183 of 1991: *Gaz.* 22 August 1991, p. 639

No. 108 of 1992: *Gaz.* 25 June 1992, p. 1934²

No. 123 of 1993: *Gaz.* 24 June 1993, p. 2066³

No. 10 of 1994: *Gaz.* 10 March 1994, p. 703⁴

No. 100 of 1994: *Gaz.* 23 June 1994, p. 1818⁵

No. 153 of 1994: *Gaz.* 1 September 1994, p. 684⁶

No. 146 of 1995: *Gaz.* 29 June, 1995, p. 3160⁷

No. 151 of 1996: *Gaz.* 20 June 1996, p. 3008⁸

No. 161 of 1996: *Gaz.* 27 June 1996, p. 3163⁹

No. 130 of 1997: *Gaz.* 13 May 1997, p. 1958¹⁰

¹ Came into operation 27 June 1991: reg. 2.

² Came into operation 25 June 1992: reg. 2.

³ Came into operation 24 June 1993: reg. 2.

⁴ Came into operation 10 July 1994: reg. 2.

⁵ Came into operation 23 June 1994: reg. 2.

⁶ Came into operation 1 September 1994: reg. 2.

⁷ Came into operation 29 June 1995: reg. 2.

⁸ Came into operation 20 June 1996: reg. 2.

⁹ Came into operation 27 June 1996: reg. 2.

¹⁰ Came into operation 13 May 1997: reg. 2.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

Citation

1. These regulations may be cited as the *Scheme of Management (Lakes and Coorong Fishery) Regulations 1991*.

Commencement

2. These regulations will come into operation on 27 June 1991.

Revocation

3. The *Scheme of Management (Lakes and Coorong Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1664), as varied, are revoked.

Interpretation

4. (1) In these regulations unless the contrary intention appears—

"the Act" means the *Fisheries Act 1982*:

"coastal waters" means the waters of the ocean and all bays, gulfs, straits, passages, inlets and estuaries of the State that are subject to the tidal influence of the sea:

"director", in relation to a body corporate, has the meaning assigned to that term by section 60 of the *Corporations Law*:

"the fishery" means the Lakes and Coorong Fishery constituted by these regulations:

"Lakes and Coorong" means the waters of the Coorong, Lake Alexandrina, Lake Albert and the coastal waters out to three nautical miles from low water mark from the seaward extension of the Goolwa Beach Road to the jetty at Kingston:

"mesh net" has the same meaning as in the *Fisheries (General) Regulations 1984* and includes a drum net as defined in those regulations:

"mesh net entitlement" means the maximum number of mesh nets that the holder of a licence in respect of the fishery may lawfully use at any one time for the purpose of taking fish pursuant to the licence:

"the revoked regulations" means the regulations revoked by regulation 3:

"SARDI" means the South Australian Research and Development Institute:

"yabbie pot" has the same meaning as in the *Fisheries (General) Regulations 1984* and includes a drop net and hoop net as defined in those regulations:

"yabbie pot entitlement" means the maximum number of yabbie pots that the holder of a licence in respect of the fishery may lawfully use at any one time for the purpose of taking fish pursuant to the licence.

(2) For the purposes of these regulations, a person is an associate of another if—

(a) they are partners;

3.

- (b) they are parties to a contract, arrangement or understanding, the purpose or effect of which is that one will act at the direction of, or in accordance with, the wishes or instructions of another when, for the purposes of trade or business, he or she engages or refrains from engaging in a fishing activity of a class that constitutes a fishery;
- (c) one is a body corporate and the other is a director or secretary of, or the holder of a share in, that body corporate;
- (d) they are bodies corporate that are related to each other for the purposes of the *Corporations Law*;
- (e) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;

or

- (f) a chain of relationships can be traced between them under one or more of the above paragraphs.

(3) For the purposes of these regulations—

- (a) "share", in relation to a body corporate, has the meaning assigned to that term by section 9 of the *Corporations Law*;
- (b) a person is the holder of a share in a body corporate if—
 - (i) he or she is beneficially entitled to that share;or
 - (ii) he or she has a relevant interest in that share;

and

- (c) a person has a relevant interest in a share in a body corporate if the person has a relevant interest in a share for the purposes of the *Corporations Law*.

(4) In these regulations, a reference to the taking of fish includes a reference to an act preparatory to, or involved in the taking of the fish.

Note: For definition of divisional penalties see Appendix 2.

Constitution of the fishery

5. (1) The Lakes and Coorong Fishery is constituted.

(2) The Lakes and Coorong Fishery consists of—

- (a) the taking of fish specified in schedule 1 in the Lakes and Coorong; and
- (b) the taking of razor fish (*Pinna bicolor*) in the Lakes and Coorong for the purpose of bait.

No further licences to be granted

6. The licences in respect of the fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the fishery subject to the provisions of the Act and these regulations, and no other licence may be granted in respect of the fishery.

Expiry of licences

7. A licence in respect of the fishery expires on 30 June following the date of its last renewal.

Renewal of licences

8. (1) A licence in respect of the fishery may be renewed by the Director on application made before or within 12 months after the expiry of the licence.

(2) An application to renew a licence in respect of the fishery must—

(a) be made by the holder of the licence or, if the licence has expired, by the person who last held the licence;

and

(b) be made in writing in a form approved by the Director and signed by the applicant.

(3) Where an application to renew a licence is made before the expiry of the licence, the renewal of the licence takes effect from the expiry of the licence.

(4) Where an application to renew a licence is made after the expiry of the licence, the renewal of the licence takes effect from the date on which the application is granted.

(5) The Director may not renew a licence unless the applicant has paid—

(a) —

(i) a fee of \$2 924;

or

(ii) the first instalment of that fee, in accordance with subregulation (6);

and

(b) the amount of any previous renewal fee remaining payable in respect of the licence, together with any additional amount payable for late payment of an instalment of the renewal fee.

(6) Where an application to renew a licence is made before or within three months after the expiry of the licence, the renewal fee may be paid by four equal instalments payable on or before the date of renewal of the licence and 1 October, 1 January and 1 April following the date of renewal.

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(7) The Director may impose a condition of a licence requiring payment of an additional amount not exceeding 10 per cent of the amount of any instalment not paid in full within 21 days after the instalment became payable.

(8) Where—

(a) an instalment of a renewal fee for a licence is not paid in full on or before the due date;

or

(b) an additional amount is required to be paid for late payment of an instalment of a renewal fee,

the amount unpaid may be recovered from the holder of the licence or the person who last held the licence as a debt due to the Crown.

Refund on surrender of licence

8a. Where a licence in respect of the fishery is surrendered, the Director must, on application by the former licensee, refund an amount that bears to the renewal fee last paid in respect of the licence the same proportion as the number of complete months from the date of surrender to the following 1 July bears to 12.

Transfer of licence

9. (1) A licence granted in respect of the fishery may be transferred with consent of the Director.

(2) An application for consent to the transfer of a licence must be a joint application made by the holder of the licence and the transferee.

(3) The application—

(a) must be made in writing in a form approved by the Director;

(b) must contain the information specified in schedule 2;

(c) must contain a nomination by the holder of the licence of the person to whom the licence is to be transferred;

and

(d) must be verified by the applicants by statutory declaration.

(4) The application must be lodged with the Director together with—

(a) the licence to be transferred;

(b) a form of return as required by these regulations completed by the holder of the licence up to the date of application;

and

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(c) an application fee of \$200.

(5) Before consenting to the transfer of a licence, the Director must be satisfied as to the following matters:

(a) that the licence to be transferred has not been suspended;

(b) that no proceedings alleging an offence under the Act are pending or likely to be commenced in the State against the holder of the licence;

(c) that the transfer is to one person only;

(d) that the transferee is a natural person who—

(i) is at least 15 years of age;

and

(ii) has not, within the period of three years preceding the date of application, been convicted in the State or elsewhere in Australia of an offence involving a breach of any legislation relating to fishing;

(e) that no proceedings alleging an offence involving a breach of any legislation relating to fishing are pending or likely to be commenced in the State or elsewhere in Australia against the transferee;

(f) that the transferee does not already hold a licence in respect of the fishery or any other fishery;

(g) that the transferee is not an associate of a person who holds such a licence;

and

(h) if any boat registered by endorsement of the licence is the subject of, is registered by endorsement of, or is otherwise referred to in, a licence, permit, authority or other entitlement to take fish granted under the Commonwealth Act or the laws of another State or Territory—

(i) that the entitlement is either to be transferred together with the fishery licence to the transferee or to be surrendered on or before the transfer of the fishery licence;

or

(ii) that—

(A) the transfer of the fishery licence separately from entitlement is not likely to result in fishing activities that endanger or overexploit fishery resources;

and

7.

- (B) the person or body that granted the entitlement concurs with the separate transfer of the licence.

Registration of boats

10. (1) An application to register a boat to be used in the fishery must be made in writing in a form approved by the Director and be accompanied by the applicant's licence in respect of the fishery.

(2) Before granting registration of the boat the Director must be satisfied that the applicant is the holder of a licence in respect of the fishery.

Registration as master

11. (1) An application to be registered as the master of a boat must be made in writing in a form approved by the Director and be accompanied by the applicant's licence in respect of the fishery.

(2) No person other than the holder of the licence may be registered as the master of a boat used pursuant to a licence in respect of the fishery.

Revocation of registration

12. (1) The Director may, on application by the holder of a licence in respect of the fishery, revoke any registration effected by endorsement of the licence.

(2) An application for revocation of a registration must be made in writing in a form approved by the Director and be accompanied by the licence on which the registration is endorsed.

Mesh net entitlement

13. The Director may impose or vary conditions on licences in respect of the fishery fixing mesh net entitlements as follows:

- (a) a mesh net entitlement may be fixed by condition of a licence but must not exceed 100;
- (b) the mesh net entitlement fixed by any such condition of a licence must, until the licence is transferred, be the number endorsed on the licence as the mesh net entitlement under the revoked regulations immediately before the commencement of these regulations subject to any subsequent variation made in accordance with paragraph (d);
- (c) where a person becomes the holder of a licence in respect of the fishery as a result of the transfer of the licence, the mesh net entitlement for that licence must be fixed at 25 subject to any subsequent variation made in accordance with paragraph (d);
- (d) the mesh net entitlement for a licence may, on application made in a manner and form approved by the Director by the holder of the licence and the holder of another licence in respect of the fishery, be increased by 25 provided that—
 - (i) the other licence is first surrendered to the Director;and

8.

- (ii) if the mesh net entitlement as so increased would exceed 100, the entitlement is fixed at 100 only.

Yabbie pot entitlement

14. The Director may impose or vary conditions on licences in respect of the fishery fixing yabbie pot entitlements as follows:

- (a) a yabbie pot entitlement may be fixed by condition of a licence but must not exceed 100;
- (b) the yabbie pot entitlement fixed by any such condition of a licence must, until the licence is transferred, be the number endorsed on the licence as the yabbie pot entitlement under the revoked regulations immediately before the commencement of these regulations subject to any subsequent variation in accordance with paragraph (d);
- (c) where a person becomes the holder of a licence in respect of the fishery as a result of the transfer of the licence, the yabbie pot entitlement for that licence must be fixed at 50 subject to any subsequent variation in accordance with paragraph (d);
- (d) the yabbie pot entitlement for a licence may, on application made in a manner and form approved by the Director by the holder of the licence and the holder of another licence in respect of the fishery, be increased by the amount of the yabbie pot entitlement for that other licence provided that—
 - (i) the other licence is first surrendered to the Director;and
 - (ii) if the yabbie pot entitlement as so increased would exceed 100, the entitlement is fixed at 100 only.

Fishing activities on the shore

15. The holder of a licence in respect of the fishery must not cause or permit—

- (a) a person to be engaged on the shore as his or her agent in a fishing activity of a class that constitutes the fishery unless—
 - (i) the holder of the licence is at the same time also engaged on the shore in a fishing activity of a class that constitutes the fishery;and
 - (ii) the holder of the licence and the other person remain, while so engaged, within 700 metres of each other;
- or
- (b) more than two persons to be engaged at the same time on the shore as his or her agents in a fishing activity of a class that constitutes the fishery.

Penalty: Division 6 fine.

Fishing activities on boats

16. (1) The holder of a licence in respect of the fishery must not cause or permit—

(a) a person to be engaged on a boat as his or her agent in a fishing activity of a class that constitutes the fishery unless—

(i) the holder of the licence is at the same time also engaged on a registered boat in a fishing activity of a class that constitutes the fishery;

and

(ii) the holder of the licence and the other person or persons remain, while so engaged, within 500 metres of each other;

or

(b) more than two persons to be engaged at the same time on a boat as his or her agents in a fishing activity of a class that constitutes the fishery.

Penalty: Division 6 fine.

(2) A boat used by a person as the agent of the holder of a licence in respect of the fishery in a fishing activity of a class that constitutes the fishery—

(a) need not be in the charge of a registered master;

and

(b) need not be registered provided that it is marked with the same distinguishing mark and in the same way as the boat registered by endorsement of the licence.

Furnishing of returns

17. (1) The holder of a licence in respect of the fishery must—

(a) fill out a return, in a form determined by the Minister, in respect of each calendar month during the currency of the licence;

(b) include in the return such information as the Chief Executive Officer of SARDI, with the approval of the Minister, requires;

and

(c) date and sign the return and certify that the information contained in the return is complete and accurate, and post and deliver the return to the office of the Chief Executive Officer of SARDI within 15 days of the end of the month to which it relates.

Penalty: Division 6 fine.

10.

(2) Where the holder of a licence in respect of the fishery takes no fish pursuant to the licence during a particular calendar month, he or she is required by subregulation (1) to furnish a return in respect of that period indicating that no fish were taken.

Copies of returns must be made

18. The holder of a licence in respect of the fishery must—

(a) make a copy of each return that he or she fills out pursuant to these regulations before the return is sent or delivered to the Chief Executive Officer of SARDI;

and

(b) retain a copy for the period of one year from the last day of the month to which the return relates.

Penalty: Division 6 fine.

SCHEDULE 2
Information required in application for consent to licence transfer

The following information is to be contained in an application for consent to transfer a licence:

1. Full name of the holder of the licence.
2. The licence number.
3. Full name, date of birth, address (residential and postal) and telephone number of the transferee.
4. The price to be paid for the transfer of—
 - (a) the licence;and
 - (b) any boat, equipment, registration endorsed on the licence or other matter or thing being transferred as part of the transaction.
5. Details of any boat to be used by the transferee to take fish including—
 - (a) its length (where surveyed—surveyed length);
 - (b) the number of its current survey certificate;
 - (c) the year of its construction;
 - (d) the material of which its hull is made;
 - (e) its main colour;
 - (f) its name;
 - (g) its registration number.
6. Details of the number of persons who are to assist the transferee to take fish from the boat or otherwise.
7. Details of the person who is to be the registered master of the boat.
8. Details of any device to be used to take fish.
9. Statements by the transferee as to whether or not the transferee—
 - (a) holds a licence in respect of any fishery;
 - (b) is the associate of a person who holds a licence in respect of any fishery;
 - (c) is a party to a contract, arrangement or understanding, the purpose or effect of which is that he or she will act at the direction of, or in accordance with, the wishes or instruction of another person in relation to the transferee's activities pursuant to the licence;
 - (d) has, during the three years immediately preceding the date of the application, been convicted by a court of a State or Territory of the Commonwealth of an offence involving a breach of legislation relating to fishing;

13.

(e) has, at the date of the application, any proceedings alleging an offence involving a breach of any legislation relating to fishing pending or likely to commence in the State or elsewhere in Australia.

10. Details in respect of any of the statements made by the transferee in respect of the matters referred to in clause 9.

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APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Regulation No. 130 of 1997, reg. 4)

4. (1) A licence renewal fee prescribed by regulation 8 of the principal regulations as varied by these regulations applies in relation to a licence period commencing after the commencement of these regulations.

(2) Despite regulation 3, a licence renewal fee prescribed by regulation 8 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence period that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence period**" means the period of 12 months commencing on 1 July in any year.

Legislative History

Regulation 4(1):	definition of "SARDI" inserted by 123, 1993, reg. 3
Regulation 5(2):	substituted by 161, 1996, reg. 3
Regulation 8(2):	substituted by 183, 1991, reg. 2(a)
Regulation 8(5):	inserted by 183, 1991, reg. 2(b); varied by 108, 1992, reg. 3; 123, 1993, reg. 4; 100, 1994, reg. 3; 146, 1995, reg. 3; 151, 1996, reg. 3; 130, 1997, reg. 3
Regulation 8(6) - (8):	inserted by 183, 1991, reg. 2(b)
Regulation 8a:	inserted by 108, 1992, reg. 4
Regulation 17(1):	varied by 108, 1992, reg. 5(b); 123, 1993, reg. 5
Regulation 18:	varied by 123, 1993, reg. 6
Schedule 1:	varied by 10, 1994, reg. 3; 153, 1994, reg. 3; 161, 1996, reg. 4
Schedule 2	
Clause 4:	varied by 183, 1991, reg. 3
Schedule 3:	revoked by 108, 1992, reg. 6

APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25