

South Australia

Aquaculture (Miscellaneous) Amendment Bill 2010

A BILL FOR

An Act to amend the *Aquaculture Act 2001*.

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Part 1—Preliminary

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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 (Miscellaneous) Amendment Act 2010*.

2—Commencement

5 (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by the Governor.

(2) Part 2 and Schedule 1 Part 2 and Part 3 will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

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

Part 2—Amendment of *Aquaculture Act 2001*

4—Amendment of long title

Long title—after "aquaculture" insert:

15 and related activities

5—Amendment of section 3—Interpretation

(1) Section 3, after definition of *Adelaide Dolphin Sanctuary* insert:

ancillary area—see section 11(2)(ba);

- (2) Section 3, definition of *aquaculture emergency zone*—delete the definition and substitute:

aquaculture equipment means—

- (a) a farming structure; or
(b) equipment used to 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;

- (3) Section 3, definition of *aquaculture lease*—delete "*aquaculture lease*" and substitute:

aquaculture lease or *lease*

- (4) Section 3, definition of *aquaculture licence*—delete the definition and substitute:

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

- (5) Section 3—after the definition of *aquaculture policy* insert:

aquaculture related activity means—

- (a) towing a farming structure, or a component of a farming structure, by means of navigable vessel to or from the area of a corresponding licence; or
(b) storing, maintaining, repairing or cleaning a farming structure in State waters; or
(c) an activity of a class declared by regulation to be an aquaculture related activity;

- (6) Section 3, definition of *corresponding licence*—delete "authorising the same class of aquaculture as that specified by the lease or proposed lease" and substitute:

(whether or not it also authorises an aquaculture related activity)

- (7) Section 3, definition of *development lease*—delete the definition

- (8) Section 3—after the definition of *farming of aquatic organisms* insert:

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;

- (9) Section 3, definition of *fisheries officer*—delete "*Fisheries Act 1982*" and substitute:

Fisheries Management Act 2007

- (10) Section 3, after the definition of *marked off area* insert:

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

- (11) Section 3, definition of *prospective aquaculture zone*—delete the definition

(12) Section 3—after the definition of *public authority* insert:

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

public register—see section 80;

(13) Section 3—after the definition of *relevant Minister* insert:

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;

(14) Section 3—after the definition of *State waters* insert:

suitable person—see section 4A;

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

6—Insertion of section 4A

After section 4 insert:

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.

7—Amendment of section 7—Interaction with other Acts

(1) Section 7—delete "This" and substitute:

Subject to subsection (2), this

(2) Section 7—after its present contents as amended by this section (now to be designated as subsection (1) insert:

- (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.

8—Amendment of section 11—Nature and content of policies

(1) Section 11(2)(a)—after "which" insert:

aquaculture or

(2) Section 11(2)(b)—delete paragraph (b) and substitute:

(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*);

(ba) designate part of an aquaculture zone as an area for the storing, maintaining, repairing or cleaning of farming structures or for other purposes related to the carrying on of aquaculture related activities (an *ancillary area*);

(3) Section 11(2)(d)—delete paragraph (d)

(4) Section 11—after subsection (3a) insert:

(3b) An aquaculture policy may not designate an area as an ancillary area except with the concurrence of the Minister responsible for the administration of the *Harbors and Navigation Act 1993*.

(3c) 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.

9—Amendment of section 12—Procedures for making policies

Section 12(3)(c)(iii)—delete subparagraph (iii) and substitute:

(iii) any other instruments prescribed by regulation.

10—Amendment of section 13—Parliamentary scrutiny

(1) Section 13—after subsection (3) insert:

(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.

(2) Section 13—after subsection (8) insert:

(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.

11—Amendment of section 14—Certain amendments may be made by Gazette notice only

(1) Section 14(1)—after paragraph (b) insert:

(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) in order to designate, or revoke the designation of, part of an aquaculture zone as an ancillary area; or

(bc) 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

(2) Section 14—after subsection (1) insert:

(1a) A notice may not designate an area as an ancillary area except with the concurrence of the Minister responsible for the administration of the *Harbors and Navigation Act 1993*.

12—Amendment of section 16—Offence to contravene mandatory provisions of policy

Section 16, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$10 000.

Expiation fee: \$1 000.

13—Substitution of section 17

Section 17—delete the section and substitute:

17—Requirement for licence

A person must not—

(a) carry on aquaculture in an area; or

(b) carry on an aquaculture related activity,

unless authorised to do so by an aquaculture licence.

Maximum penalty: \$35 000.

14—Substitution of section 19

Section 19—delete the section and substitute:

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, 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.

15—Substitution of section 20

Section 20—delete the section and substitute:

20—Concurrence under Harbors and Navigation Act

- 5 (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.
- 10 (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
- 15 (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*.

16—Amendment of section 22—General process for grant and renewal of leases and corresponding licences

(1) Section 22(1)—delete subsection (1) and substitute:

- 20 (1) An aquaculture lease (other than an emergency lease) may only be granted or renewed on application under this Part.

(2) Section 22(2)—after "application for" insert:

the grant or renewal of

(3) Section 22—after subsection (2) insert:

- 25 (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).
- 30 (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
- 35 (b) must be accompanied by an application fee for the licence of the amount prescribed by regulation.

(4) Section 22(3)—after "aquaculture lease" insert:

or corresponding licence

(5) Section 22(4)—after "grant" insert:

or renewal

- (6) Section 22(5)—after "grant" insert:
or renew

17—Repeal of sections 23 and 24

Sections 23 and 24—delete the sections

5 **18—Substitution of section 25**

Section 25—delete the section and substitute:

25—Lease conditions

The conditions of an aquaculture lease may—

- 10 (a) fix the term of the lease (subject to this Act);
- (b) fix amounts payable, whether as rent or otherwise, for or under the lease;
- (c) provide for cancellation of the lease by the Minister—
- 15 (i) on grounds that specified performance criteria have not been met; or
- (ii) on any other specified grounds;
- (d) provide for renewal of the lease and for variation of the lease or its conditions on renewal;
- (e) prevent or regulate the grant of subleases;
- (f) make any other provision the Minister considers appropriate.

20 **19—Insertion of sections 25A to 25D**

After section 25 insert:

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

- 25 (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:
- 30 (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;

- 5
- (c) 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.
- 10
- (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
- 15
- (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.
- 20

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
- 25
- (b) performance criteria specified in the regulations have not been met.
- (2) 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

- 30
- (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.
- 35
- (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
- 40

- (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.

20—Amendment of section 26—Classes of leases

- (1) Section 26(b)—delete paragraph (b)
- (2) Section 26—after paragraph (c) insert:
 - (ca) research leases;

21—Repeal of section 28

Section 28—delete the section

22—Amendment of section 29—Term and renewal of pilot leases

- (1) Section 29(2)—delete "3 years" and substitute:
 - 5 years
- (2) Section 29(3)—after "provisions of" insert:
 - this Act or

23—Repeal of Part 6 Division 3

Part 6 Division 3—delete Division 3

24—Insertion of sections 34 to 36

Before section 37 insert:

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:
 - (a) the species of aquatic organism to be farmed;

- (b) the farming system;
- (c) the feeding system;
- (d) the purpose of the aquaculture;
- (e) the size of the lease area;
- 5 (f) the location of the lease area;
- (g) 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.

10 (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:

- 15 (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;
- 20 (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—

- 25 (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.

30 (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
- 35 (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).

- 5
- (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).
- 10
- (9) The Minister may grant a corresponding licence containing specified conditions on a preferred application if—
- 15
- (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
- 20
- (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
- 25
- (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 (10)(b) in relation to an application for a lease within the zone in circumstances specified in the policy.
- 30
- (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.
- 35
- (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

- 5 (1) On an application being 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.
- 10 (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—
- 15 (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
- 20 (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
- 25 (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.
- 30 (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.
- 35 (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.

25—Amendment of section 37—Conversion of pilot leases to production leases

- 40 (1) Section 37—delete "development lease" wherever occurring and substitute in each case:

pilot lease

(2) Section 37(2)—after "60 days" insert:

and not less than 30 days

(3) Section 37(3)—delete "not more than 60 days before the end of the last term for which the development lease may be renewed" and substitute:

5 not more than 90 days and not less than 60 days before the end of a term of the pilot lease

(4) Section 37(3)—before paragraph (a) insert:

(aa) the aggregate of the terms of the pilot lease exceed 3 years; and

(5) Section 37—after subsection (4) insert:

10 (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.

(6) Section 37—after subsection (5) insert:

15 (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).

20 **26—Amendment of section 38—Term and renewal of production leases**

Section 38(3)—after "provisions of" insert:

this Act or

27—Substitution of section 39

Section 39—delete the section and substitute:

25 **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.

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(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

35

(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.

28—Insertion of Part 6 Division 4A

After Part 6 Division 4 insert:

Division 4A—Research leases**39A—Granting of research leases and corresponding licences**

- 5 (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.
- 10 (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—
- 15 (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—
- 20 (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
- 25 (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.
- 30

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.
- 35 (2) A research lease is renewable for successive terms but not, if the corresponding licence authorises the conduct of a particular research project, so that the term extends 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.

29—Substitution of sections 40 to 42

Sections 40 to 42 (inclusive)—delete the sections and substitute:

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.

30—Amendment of section 44—Term and renewal of emergency leases

- (1) Section 44(1)—delete "3 months" and substitute:
6 months
- (2) Section 44(2)—delete "6 months" and substitute:
the period reasonably required for response or recovery following the emergency
- (3) Section 44(3)—after "provisions of" insert:
this Act or

31—Insertion of section 44A

After section 44 insert:

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, that Minister are notified immediately of the grant or renewal of an emergency lease.

32—Amendment of section 47—Interference with stock or equipment within marked-off areas

Section 47(1)(b)—delete paragraph (b) and substitute:

- 5
- (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.

33—Insertion of Part 6 Division 7

After Part 6 Division 6 insert:

10

Division 7—Power to require or carry out work**48A—Power to require or carry out work**

- 15
- (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,
the Minister may, by written notice to the lessee or former lessee, direct the person to take the action, or to remove the equipment.
 - 20 (2) A person to whom a direction is given under subsection (1) must comply with the direction within the time allowed in the notice.
Maximum penalty: \$35 000.
 - 25 (3) If a person fails to comply with a direction under subsection (1) within the time allowed in the notice, the Minister may cause the required action to be taken, and may recover the cost, as a debt, from the person.
 - (4) Equipment 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.

30

34—Amendment of section 49—Applications for licences other than corresponding licences

- (1) Section 49(1)—delete subsection (1)
- (2) Section 49(2)—after "aquaculture licence" insert:
other than a corresponding licence
- 35 (3) Section 49(3)—after "aquaculture licence" insert:
other than a corresponding licence

35—Amendment of section 50—Grant of licences other than corresponding licences

- (1) Section 50(1) and (2)—delete subsections (1) and (2)
- (2) Section 50(3)—after "aquaculture licence" insert:
5 (other than a corresponding licence)
- (3) Section 50(3)—delete "(other than an application for a corresponding licence)"
- (4) Section 50(4)—delete subsection (4)
- (5) Section 50(5)—delete "(1) or"

36—Insertion of section 50A

10 After section 50 insert:

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

- (1) An aquaculture licence other than a corresponding licence is granted
15 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
20 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
25 suspend or cancel an aquaculture licence.

37—Substitution of sections 52 to 54

Sections 52 to 54 (inclusive)—delete the sections and substitute:

52—Licence conditions

- (1) On the grant of an aquaculture licence, the Minister may impose
30 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
35 farmed under the licence, for example, if the aquaculture is to be carried out for the purposes of research or a business involving tourism.

(3) If a licence authorises the licensee to carry on an aquaculture related activity comprised of storing, maintaining, repairing or cleaning farming structures in an area of State waters outside a licence area—

5 (a) the licence conditions may specify the area of State waters in which the licensee may carry on the activity (the **holding area**); and

(b) the holding area may be within or outside an aquaculture zone, but must not be within an aquaculture exclusion zone; and

10 (c) the holding area need not be within a lease area; and

(d) the holding area is not, for the purposes of this Act, to be taken to constitute a licence area; and

15 (e) except if the holding area is within a lease area or an ancillary area, the licence 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.

(4) The Minister may vary licence conditions by written notice to the licensee—

20 (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

25 (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—

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

(B) in order to specify, or vary the specification of, a holding area for the licence; or

35 (C) in order to prevent or mitigate significant environmental harm or the risk of significant environmental harm; or

(D) in consequence of contravention of this Act by the licensee; or

40 (E) 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.

5 (5) 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.

(6) 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.

10 (7) 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

15 (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.

(8) A licensee must not contravene a condition of the licence.

Maximum penalty: \$10 000.

20 Expiation fee: \$1 000.

53—Annual fees

25 (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.

30 (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.

35 (5) The Minister must cause written notice of the suspension or cancellation to be given to the holder of the licence.

38—Amendment of section 55—Transfer of licences

Section 55—after subsection (2) insert:

40 (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.

39—Substitution of section 56

Section 56—delete the section and substitute:

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.

40—Amendment of section 57—Suspension or cancellation of licences

- (1) Section 57(1)(c)—after "offence against" insert:

this Act or

- (2) Section 57(1)—after paragraph (c) insert:

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.

41—Amendment of section 58—Power to require or carry out work

Section 58(1)(a)—after "aquaculture licence" insert:

or by the regulations

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

- (1) Section 59(1)(a)—delete ", or a proposed public call for applications for an aquaculture lease" and substitute:
(other than an emergency lease)
- 5 (2) Section 59(1)(b)—delete paragraph (b) and substitute:
(b) whether an aquaculture licence (other than a corresponding licence) containing specified conditions should be granted on an application;
- (3) Section 59(1)(c)—delete "an aquaculture licence of a class in relation to which standard conditions are" and substitute:
10 standard conditions
- (4) Section 59(1)(d)—delete "development lease (other than a pilot lease with" and substitute:
production lease (other than a pilot lease in
- (5) Section 59(1)(e)—delete paragraph (e)

15 **43—Amendment of section 60—Appeals**

- (1) Section 60(1)—delete "under Part 7" wherever occurring
- (2) Section 60—after subsection (1) insert:
(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.
- 20 (3) Section 60(3)—delete "under Part 7" and substitute:
that may be the subject of an appeal

25 **44—Insertion of section 60A**

Before section 61 insert:

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

- 30 (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.
- 35 (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.

45—Amendment of section 65—Membership of AAC

- (1) Section 65(1)—delete "10 members" and substitute:
11 members

(2) Section 65(1)—after paragraph (c) insert:

- (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

5 **46—Amendment of section 73—Membership of ATAB**

Section 73(1)—after paragraph (d) insert:

and

- (e) at least 1 must have knowledge of or relevant to the farming of aquatic organisms.

10 **47—Amendment of section 79—Aquaculture Fund**

(1) Section 79(1)—delete "*Resource Management*"

(2) Section 79(3)(c)—after "paid to" insert:

or recovered by

(3) Section 79(4)—after paragraph (a) insert:

15 (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

20 **48—Amendment of section 80—Public register**

(1) Section 80(2)(a)—delete paragraph (a) and substitute:

25 (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

30 (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

35 (C) the farming system proposed to be used; and

(2) Section 80(2)(e)—delete paragraph (e) and substitute:

(e) a summary of each environmental monitoring report furnished to the Minister in accordance with the regulations or the conditions of the licences; and

(3) Section 80—after subsection (2) insert:

(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.

49—Amendment of section 82—Fisheries officers and their powers

Section 82(2)—after "Subdivision 2" insert:

and Subdivision 5

50—Insertion of section 82A

Before section 83 insert:

82A—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 or an aquaculture related activity under the licence as if the official receiver held the licence in place of the person.

- 5 (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 or an aquaculture related activity under the licence as if the person held the licence in place of the body corporate.

51—Insertion of section 89A

After section 89 insert:

89A—Confidentiality

- 10 (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—
- 15 (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
- 20 (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.

- 25 (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—
- 30 (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.

52—Amendment of section 90—Evidentiary

35 Section 90—after subsection (4) insert:

- 40 (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.

53—Amendment of section 91—Regulations

- (1) Section 91(2)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:
- (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
 - (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

54—Repeal of section 92

Section 92—delete the section

55—Repeal of Schedule

Schedule—delete the Schedule

Schedule 1—Revocation, transitional and validation provisions

Part 1—Preliminary

1—Interpretation

In this Schedule—

- (a) *principal Act* means the *Aquaculture Act 2001*; and
- (b) words and expressions have the same meanings as in the principal Act.

Part 2—Revocation of *Aquaculture (Standard Lease Conditions) Policy 2005*

2—Revocation of policy

The *Aquaculture (Standard Lease Conditions) Policy 2005* is revoked.

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:

- 5 (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;
- 10 (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—Licences

15 Subject to express conditions of licence to the contrary, an aquaculture licence in force immediately before the commencement of this clause does not authorise the carrying on of aquaculture related activities.

6—Application of amendments to existing leases and licences

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

20 7—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.
- 25 (2) Before taking action under subsection (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.

30 Part 4—Validation provisions

8—Aquaculture leases and licences

35 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.

9—Delegations

5 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.

10—Regulations and policies

10 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.