

**Aquaculture (Miscellaneous)**

**Amendment Bill 2010**

**CONSULTATION BOOKLET**



I am pleased to release this draft amendment Bill to the *Aquaculture Act 2001* for your consideration and comment.

South Australia is home to Australia's most diverse range of aquaculture sectors with a world class reputation for quality seafood and environmental sustainability. Of South Australia's total seafood production, 56% originates from aquaculture production. This trend is reflected worldwide with expectations that, by 2020, aquaculture will produce 60% of the global seafood demand.

The success of aquaculture development in South Australia is in no small part due to the South Australian Government's aquaculture resource management framework. Central to this framework is the *Aquaculture Act 2001*, a unique piece of legislation dedicated to aquaculture in the state that provides certainty to industry and the community. The Act is the first of its kind in Australia and has, as a primary objective, the ecologically sustainable development of aquaculture.

South Australia's approach to planning and management has been recognized internationally by the Food and Agricultural Organisation of the United Nations as a case study for Australian aquaculture management

Notwithstanding South Australia's leading role, it is important to review our legislation regularly so that we can continue to guide, develop and maintain this vital industry, whilst retaining our best practice approach. As such I ask that you carefully consider the amendments proposed to the *Aquaculture Act 2001*, and make comments or suggestions with respect to these and any improvements to the Act as a whole.

A handwritten signature in black ink that reads "Michael O'Brien". The signature is written in a cursive, flowing style.

The Hon. Michael O'Brien  
Minister for Agriculture, Food and Fisheries

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## Introduction

The operating environment of aquaculture in South Australia has developed from a relatively small base to the large and successful industry in operation today. The commencement of the *Aquaculture Act 2001* (the Act) in July 2002 has been widely recognised as a model legislative framework that has provided industry and other stakeholders in South Australia with confidence, transparency and certainty in respect of the management and development of aquaculture.

Aquaculture continues to be one of the fastest growing primary industries in the country and is greatly contributing to South Australia's economic growth and regional development. In 2008/09 the value of the South Australian aquaculture industry's was estimated to have a farm gate value of over \$246 million, representing 53% of the State's total value of seafood production, with associated direct business turnover impacts in the processing, transport, retail and food sectors of \$78 million. This activity generated further business turnover (output) of \$364 million in other South Australian industries. As such the total value of South Australia's aquaculture industry's output was estimated at over \$688 million.<sup>1</sup>

Indications are that there is significant potential for further industry growth, not only in established sectors such as tuna and oyster farming, but also in other marine finfish, shellfish, biotechnology and land-based aquaculture. South Australia's aquaculture industry is the most diverse in Australia in terms of the range of species farmed in marine, coastal and inland facilities.

The Act provides the necessary over-arching framework to facilitate aquaculture development in South Australia. The new and developing aquaculture industry is greatly assisting regional economic development and will help meet the targets contained in South Australia's Strategic Plan<sup>2</sup> including:

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<sup>1</sup> Econsearch 2010, '*The Economic Impact of Aquaculture on the South Australian State and Regional Economies, 2008/09*'. A report prepared for PIRSA Aquaculture, 27 July 2010.

<sup>2</sup> South Australia's Strategic Plan is currently under review.

- Target 1.1 – Economic Growth;
- Target 1.5 – Business Investment;
- Target 1.10 – Jobs; and
- Target 1.14 – Total Exports;

### **Further Information**

Enquiries about the draft *Aquaculture (Miscellaneous) Amendment Bill 2010* should be directed to Mr Lambertus Deluca-Lopez or Ms Rebecca Hayes, Fisheries and Aquaculture Division, Department for Primary Industries and Resources SA, telephone (08) 8226 0314 or email [pirsa.aquaculture@sa.gov.au](mailto:pirsa.aquaculture@sa.gov.au).

### **Your comments and feedback are invited**

Written comment on the content of the draft Bill or suggestions for provisions that should be incorporated in an amended *Aquaculture Act 2001* are invited to be submitted by 18 March 2011. Comments should be provided using the Comments Pro-forma sheet available to download from the website: <http://www.pir.sa.gov.au/aquaculture>, or a copy can be sent to you by Mr Lambertus Deluca-Lopez or Ms Rebecca Hayes on telephone (08) 8226 0314 or email [pirsa.aquaculture@sa.gov.au](mailto:pirsa.aquaculture@sa.gov.au).

The Comments Pro-forma sheet should be sent or emailed to:

Fisheries & Aquaculture Division  
Department for Primary Industries and Resources SA  
GPO Box 1625  
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E-mail: [pirsa.aquaculture@sa.gov.au](mailto:pirsa.aquaculture@sa.gov.au)

## **Background and explanatory papers**

### ***Overview***

The *Aquaculture (Miscellaneous) Amendment Bill 2010* (the draft Bill) will build upon the framework established by the Act and aims to streamline processes and reduce red tape. It also aims to further promote fair and transparent decision-making with respect to the management and access to State water resources, whilst maintaining the balance between social, economic and environmental needs of the community.

Amendments to the Act are considered appropriate to keep the legislation up-to-date with the rapid development of industry practice, aquaculture management practice, administrative best practice and the on-going ecologically sustainable development of the aquaculture industry.

It is anticipated the draft Bill will achieve the following:

- Rationalise the class of aquaculture leases;
- Promote improved management of the aquaculture industry to ensure ecologically sustainable development into the future;
- promote improved commercial value in aquaculture leases; and
- Provide provisions for the smooth transition of interests and processes as a result of the amendments.

### ***Explanatory Notes – Key Issues***

These explanatory notes will help guide you through the key areas proposed in the draft Bill. Some of the major changes are discussed below. Then, more detailed explanatory notes covering the consolidated Act addressing each section follow.

#### **Aquaculture-related activities**

A definition of an *aquaculture related activity* is proposed to enable the regulation of certain ancillary activities that are routinely undertaken by the aquaculture industry but do not currently fall within the meaning or scope of

the current definition of aquaculture. The related activities need to be brought within the ambit of the Act to ensure adequate regulation for the protection of the environment and benefit of the aquaculture industry generally.

### **Development Leases**

The draft Bill completely removes development leases from the Act. This will create a significant reduction in current administrative measures without compromising the adequacy of the aquaculture management regime. This amendment provides that the term and rate of development under a development lease can be managed through a production lease. As part of the transitional provisions all development leases will automatically become a production lease with the same terms and conditions as those that apply to the existing development lease.

### **Research leases**

The concept of a research lease has been included into the Act to provide dedicated waters for research activities. By doing so, research providers and aquaculture farmers will not be competing with each other for water. It is proposed that the grant of a research lease and corresponding licence will be at the discretion of the Minister, as will the term of the research lease. A research lease will be renewable, however it will not be transferable and the holder of the corresponding licence must be the same as the holder of the research lease.

### **Emergency measures**

The draft Bill proposes to remove the current impractical emergency zone regime. Emergency zones will no longer exist under the Act as these have proved to be inadequate and unnecessarily restrictive. Under the new regime, emergencies will be more readily dealt with by allowing the Minister to grant an emergency lease upon his or her initiative where the Minister considers an emergency situation exists or is imminent. The Minister will have the power to grant an emergency lease in State waters but not in an exclusion zone.

### **Standard conditions of policy**

To aid in improving the efficient management and development of aquaculture activities a provision has been inserted stating that standard conditions for leases or licences contained in an aquaculture policy will apply to all leases and licenses as at the time the policy becomes effective regardless of when the lease and licence were granted. As a result, amendments to policies will be applied to existing leases and licences unless the policy expressly states otherwise.

### **Division of leases**

Amendments provide greater clarity for the subdivision of an aquaculture lease. The substitution of one or more leases within the area of the original lease will not be taken to be a grant and will therefore not require the concurrence of the Minister for the administration of the *Harbours and Navigation Act 1993*. This clarifies the current interpretation of the operation of the Act and the practice followed by PIRSA and the Department of Transport, Energy and Infrastructure.

### **Registration of third party interests**

The public register has been modified to allow for the registration of a third party (for example a mortgagee) on an aquaculture lease or licence. Currently third party's are 'noted' on a lease or licence. However, this does not provide the third party with a level of security or protection of their interest in the asset which is otherwise provided by the inclusion of registrable rights under the Act. This provision will make an aquaculture asset more commercially attractive to lenders and it is anticipated this higher level of security will assist the aquaculture industry to raise funds and develop further into the future.

### **Amalgamation of leases**

Currently the Act does not allow for the amalgamation of adjoining leases of the same type. In practice this is a costly restriction on the growth of industry activity in State waters. The insertion of this head of power in section 91 allows the detail for the arrangements to be provided in the Regulations.

## **Tenure Allocation and the Aquaculture Tenure Allocation Board (ATAB)**

The provisions in the Act relating to the grant of an aquaculture lease and corresponding licence and the role of ATAB have worked well in practice, however to assist in the encouragement of aquaculture development, it is considered pertinent to amend the provisions slightly and to allow easier access to certain zones in State waters.

As such the draft Bill proposes two types of mechanisms in which to 'release' tenure. The current 'public call' system will be maintained and a new non-public call or 'on application' regime will be introduced to enhance flexibility. Accordingly, certain zones will allow for applications to be received throughout the year and be processed accordingly (much like the current pilot lease system outside a zone). The draft Bill proposes to identify an aquaculture zone to be *public call area* by inclusion of a term within the aquaculture policy. The policy will thereby designate the zone or part thereof as an area in which applications for leases may only be made in accordance with a public call for applications. Where a policy does not designate a zone or part of a zone as a *public call area*, the zone will be open to applications on an ongoing basis. The transitional arrangements under the draft Bill will initially designate all existing aquaculture zones as public call areas.

# Aquaculture Act 2001 (with proposed amendments)

## Explanatory Notes – section by section

(Sections in grey text are not affected by the proposed amendments and are provided to assist with the overall reading and understanding of the Act and amendments proposed by the draft Bill)

### Part 1 – Preliminary

	Clause	Explanation
<b>Short title</b> (No change to this section)	1	The 'short title' is the <i>Aquaculture Act 2001</i> .
<b>Interpretation</b>	3	This section clarifies the meaning of important words and phrases used in the body of the Act – there are new and amended definitions proposed.
<b>Ecologically sustainable development</b> (No change to this section)	4	This section defines ecologically sustainable development as development that balances the economic, social and physical well-being of a community and the protection of natural and physical resources, biodiversity and ecological processes.
<b>Suitable person to be granted licence</b>	4A	The draft proposes to formalise the concept of a 'suitable person' test for the assessment of a person to hold an aquaculture licence. The 'suitable person' requirement has been in the Act since its commencement. However this provision will give formal clarification, guidance and transparency to the Minister when making a decision to grant a corresponding licence under subsection 35(9)(a)(ii) and subsection 36(3)(a)(ii). Criteria contained in this provision includes, offences against any other state, Territory or Commonwealth legislation relating to aquaculture, fishing or the environment, cancellation of or disqualification from holding a relevant authorisation and the financial capacity of a person to comply with obligations under the Act. This test is also applied in the assessment of whether proper cause exists for the cancellation or suspension of a licence.
<b>Crown Bound</b> (No change to this section)	5	The Act binds the Crown to the terms and conditions of the Act but does not make it liable to be prosecuted for an offence should it not comply fully with the legislation.
<b>Application of Act</b> (No change to this section)	6	This clause establishes the limits to the Act's applicability.
<b>Interaction with other Acts</b>	7	The Act does not limit or derogate from the provisions of any other Act.  The exception (as an amendment) is a limitation on the <i>Development Act 1993</i> to activities being undertaken within the area of an emergency lease. As a consequence, the provisions of the <i>Development Act 1993</i> will not apply to development within

		the area of an emergency lease, and accordingly approval under the <i>Development Act 1993</i> will not be sought.
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## Part 2 – Objects of Act

	Clause	Explanation
<b>Objects of Act</b> (No change to this section)	8	The Act aims to promote the ecologically sustainable development of aquaculture to maximise community benefit from the State's aquaculture resources and to regulate the aquaculture industry efficiently and effectively.

## Part 3 – Efficient administrative practices

	Clause	Explanation
<b>Efficient administrative practices</b> (No change to this section)	9	This clause recognises the need for administrative cooperation in the operation of other relevant legislation to ensure the efficient and effective regulation of the aquaculture industry

## Part 4 – Aquaculture policies

### Division 1 – General

	Clause	Explanation
<b>Interpretation</b> (No change to this section)	10	A reference to an aquaculture policy (including a draft policy) also includes a reference to an amendment or revocation of an aquaculture policy.
<b>Nature and content of policies</b>	11	<p>The draft provides amendments to the provisions for the making of aquaculture policies by the Minister. Aquaculture policies may identify various zones in which different classes of aquaculture may be permitted or excluded.</p> <p>Amendments to this section include:</p> <ol style="list-style-type: none"> <li>1. Removal of the concept of a prospective aquaculture zone. Removal is sought as it is preferred to zone where the necessary scientific investigations have been carried out.</li> <li>2. Removal of an aquaculture emergency zone as new emergency arrangements are being proposed.</li> <li>3. Provision for new standard conditions created by policies to be applied to existing leases and licences unless the policy states otherwise to assist in streamlining administrative processes.</li> <li>4. Ability for a policy to designate an aquaculture zone as an area in which applications for leases may only be made in accordance with a public call.</li> <li>5. Designate part of an aquaculture zone as an area in which an aquaculture related activity may be carried on (an</li> </ol>

		<p><i>ancillary area).</i></p> <p>The draft further proposes that where an area is designated as an ancillary area, concurrence of the Minister responsible for the <i>Harbors and Navigation Act 1993</i> must be sought. A final amendment relates to the application of policies prescribing standard conditions.</p>
<b>Procedures for making policies</b>	12	<p>This clause sets out the procedures for making an aquaculture policy and to this extent remains unchanged.</p> <p>This is a small amendment which clarifies relevant instruments that need to be assessed when preparing policies and policy reports to be prescribed by regulation.</p>
<b>Parliamentary scrutiny</b>	13	<p>Once approved by the Minister, an aquaculture policy must be referred to the Environment, Resources and Development Committee (ERDC) of the Parliament for consideration.</p> <p>To prevent the referral of a policy to the ERDC during the Christmas and new year period, a prescribed period has been inserted and will have the effect of disregarding the 28 day rule if it falls between 15 December and 15 January of any year when the ERDC does not sit.</p>
<b>Certain amendments may be made by Gazette notice only</b>	14	<p>A minor change to an aquaculture policy may be made by notice in the Gazette (substantive changes must comply with the procedure for making a policy).</p> <p>Subsection 14(1)(ba) allows the Minister to amend a policy in order to designate or revoke an aquaculture zone as a public call area. This will allow the policy to be more flexible.</p> <p>Subsection 14(1)(bb) allows the Minister to designate or revoke the designation of part of an aquaculture zone as an ancillary area.</p> <p>Subsection 14(1)(bc) allows for the amendment of existing policies by gazette where the amendment is as a result of the making or revocation of the Act, regulations or an aquaculture policy.</p> <p>A final amendment requires concurrence of the Minister responsible for the administration of the <i>Harbors and Navigation Act 1993</i> to any designation of an area as an ancillary area.</p>
<b>Availability and evidence of policies</b> (No change to this section)	15	<p>Copies of an aquaculture policy must be available for inspection and purchase by the public.</p>

## Division 2 – Contravention of mandatory provisions

	Clause	Explanation
<b>Offence to</b>	16	It is an offence to contravene a mandatory provision of an aquaculture policy. There has been a change in the maximum penalty which has been reduced from \$35 000 to \$10 000. The

<b>contravene mandatory provisions of policy</b>		decrease in the maximum penalty reflects the decision to issue expiation notices for these matters. As such an expiation fee of \$1 000 has also been added. This provides for the enforcement or the ability to take action in regard to less serious breaches that would not ordinarily be prevented.
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## Part 5 - Requirement for a licence

	Clause	Explanation
<b>Requirement for a licence</b>	17	Amendments to this section mean that a person must not carry on aquaculture or an aquaculture related activity without an appropriate licence (this is essentially a rephrasing of the section for the purposes of clarity). There is a maximum penalty of \$35 000.

## Part 6 - Leases

### Division 1 – General

	Clause	Explanation
<b>Application of Part</b> (No change to this section)	18	This Part, which deals with aquaculture leases, applies to State waters and adjacent land (within the meaning of the <i>Harbors and Navigation Act 1993</i> ).
<b>Requirement for a lease</b>	19	An aquaculture licence cannot be granted in relation to an area of State waters unless the Minister has granted an aquaculture lease for that area.  The amendment to this section is to exempt aquaculture being undertaken on a navigable vessel from the holding of an aquaculture lease. This provision is currently in the <i>Aquaculture Regulations 2005</i> and has been elevated to the Act as this is considered more appropriate.
<b>Concurrence under Harbors and Navigation Act</b>	20	If an aquaculture lease is situated on land vested in the Minister responsible for the administration of the <i>Harbors and Navigation Act 1993</i> , then that Minister must concur with the grant of the aquaculture lease in relation to that land.  The draft proposes to remove the requirement for concurrence following the division or amalgamation of a lease as these do not change the outer boundaries of existing leases and therefore do not affect other users of the waters.  With the proposed grant of an emergency lease it is recognised that the urgency of the matter requires action to be taken immediately.
<b>Leases not permitted in respect of aquaculture</b>	21	An aquaculture lease may not be granted in relation to an area that falls within an aquaculture exclusion zone.

<b>exclusion zones</b> (No change to this section)		
<b>General process for grant or renewal of leases and corresponding licences</b>	22	<p>An application for an aquaculture lease must be made under this Part in the required form and must contain the necessary information (verified by statutory declaration, if required by the Minister). If a lease is granted, notice must be published in the Gazette. If an application is refused, the Minister must give reasons if requested by the applicant.</p> <p>This section provides for a variation to the rules for the grant of a new aquaculture lease and corresponding licence. It now requires that an application for a corresponding licence be made in conjunction with the application for a lease. This amendment allows for the application to be assessed as a whole package enabling a more comprehensive assessment.</p> <p>The draft Bill proposes to move provisions previously at section 53 of the Act to section 22 for completeness. The provision states that where the licence is a corresponding licence, the term of the licence is co-extensive with the term of the aquaculture lease to which it relates, and will be automatically renewed on renewal of the lease.</p> <p>A provision relating to the renewal of a lease has been added to this section for completeness.</p>
<del><b>Certain lease applications to follow public call for applications</b></del>	23	This section has been removed from the Act as a new process for the allocation of tenure is proposed in section 36A.
<del><b>Grant of leases to be preceded by decision as to licences</b></del>	24	This section has been removed from the Act as a new process for the allocation of tenure is proposed in section 22.
<del><b>Form of leases</b></del> <b>Lease conditions</b>	25	<p>The draft removes the requirement for a lease to specify the class of aquaculture that may be carried on in the area of the lease as it is considered more appropriate for a licence to specify the class.</p> <p>There is also a name change to this provision as a result of the deletion.</p>
<b>Variation of lease or lease conditions by or with consent of lessee</b>	25A	The draft proposes to bring the current provisions contained in the Standard Lease Conditions Policy into the Act. It is considered to be a more appropriate location for this mechanism. The draft provides that the Act, rather than the lease, will govern the variation of the lease or lease conditions.
<b>Cancellation of</b>	25B	The draft proposes a position in which the Minister may establish standard performance criteria in the Regulations. Failure to meet

<b>Lease</b>		these conditions, or where aquaculture has never commenced or ceased to be carried out on a lease site, are all grounds under which the Minister may cancel a lease.
<b>Surrender of Lease</b>	25C	This provision outlines the consent provisions required for the surrender of a lease, including the required consent of any specified person on the public register.
<b>Corresponding licences terminated on termination of lease</b>	25D	This provision is simply a clarification that a corresponding licence ends upon the termination or cancellation of a lease.
<b>Classes of leases</b>	26	The amendments removes 'development lease' as a type of lease and adds 'research lease' as a type of aquaculture lease.  The amendment also outlines when it is appropriate for a research lease to be used. The concept of a research lease necessitates such a provision.

## Division 2 – Pilot leases

	<b>Clause</b>	<b>Explanation</b>
<b>Pilot leases outside aquaculture zones</b> (No change to this section)	27	A pilot lease may only be granted in relation to an area that is outside an aquaculture zone (as determined by an aquaculture policy).
<del><b>Allocation process for pilot leases within prospective zones</b></del>	28	The draft proposes to remove prospective zones from the Act (see section 11), this is a consequential amendment.
<b>Term and renewal of pilot leases</b>	29	The draft proposes to amend the maximum aggregate term of a pilot lease to not more than five years (up from 3 years). This term better reflects the time taken to set up infrastructure, obtain stock and provide for development of aquaculture activities on a lease site.
<b>Pilot leases not transferable</b> (No change to this section)	30	A pilot lease can not be transferred.
<b>Licences may only be held by lessees</b> (No change to this section)	31	The holder of a pilot lease must also hold the corresponding aquaculture licence.

### Division 3 – Development leases

	Clause	Explanation
<b>Deleted in entirety</b>	32-36	The draft removes development leases from the Act. It is recognised by this amendment that the term and rate of development of a development lease can be managed in the same manner with a production lease.

### Division 4 – Production leases

	Clause	Explanation
<b>Granting of production leases limited to aquaculture zones</b>	34	<p>The draft amends the Act so that a production lease may only be granted in respect of an area comprising or including State waters within an aquaculture zone (or by way of a conversion of a pilot lease). This is consistent with the provisions previously applied to a development lease which are now proposed for deletion.</p> <p>Note: production leases do exist outside a zone through the process of 'conversion' from a pilot lease (see below).</p>
<b>Granting of production leases and corresponding licences in public call areas</b>	35	<p>The draft proposes a re-working of the current public call process, combining the application for a lease and corresponding licence and making the role of the Aquaculture Tenure Allocation Board (ATAB) more readily definable.</p> <p>Broadly this new section provides the following:</p> <ol style="list-style-type: none"> <li>1. An application for a production lease in respect of an area designated as a public call area may only be made following a public call.</li> <li>2. In making a public call for applications, the Minister may, amongst other things, determine the particular area, or a maximum area, to be made available for lease.</li> <li>3. The Minister may also determine that the call is to be in the form of a competitive tender with monetary bids as is the case with the existing Act.</li> <li>4. A public call for applications must be made by notice published in a newspaper circulating generally in the State with certain information being made readily available to potential respondents.</li> <li>5. The assessment of applications must be carried out in accordance with the Minister's assessment guidelines and there are criteria ATAB must have regard to when assessing applications.</li> <li>6. ATAB's role following assessment is clearly outlined, including a process for determining the order of merit where applicants are assessed to be of equal merit.</li> <li>7. The Minister will have the power to negotiate with applicants as to the size and location of leases, where necessary to ensure the objects of the Act are achieved.</li> <li>8. This section also covers the grant of a corresponding licence, formalising the suitable person test and establishes the requirement to advertise the application</li> </ol>

		<p>publicly and provide the same to the EPA for its approval.</p> <p>9. The draft section requires advertisement of the application and referral to the EPA, however a policy may exclude the requirement to publicly advertise in certain circumstances.</p> <p>10. The Minister must, at the request of a person who has made a written submission in response to an advertisement, give the person a written statement of the Minister's reasons for the decision.</p> <p>11. The draft Bill allows for the Minister to deal with another application as the preferred application in a situation where the original preferred application is withdrawn or a decision is made not to grant the lease or licence on the original preferred application.</p>
<b>Granting of production leases and corresponding licences if public call not required</b>	36	The draft proposes a system whereby, following a decision by the Minister, interested persons may apply at any time for tenure in certain zones without the requirement for a public call. The arrangements for the assessment and advertising of the applications remains the same as that set out in section 36A.
<b>Conversion of pilot leases to production leases</b>	37	The draft amends the section to allow conversion from a pilot lease to a production lease. This amendment results from the removal of development leases from the Act (see sections 32-36 above).
<b>Term and renewal of production leases</b>	38	<p>The draft provides for an administrative amendment which establishes the form and manner of a production lease renewal application.</p> <p>The draft allows the Minister to renew a production lease on his or her own initiative where the Minister considers it necessary or appropriate to bind the lessee to the conditions of the lease for the protection or restoration of the environment.</p>
<b>Transfer of production leases</b>	39	The draft proposes that the Minister be required to consent to the transfer of a production lease. It is considered appropriate for the Minister to do this given the waters are a state owned asset. The draft also requires the consent of a person who has a noted interest in a lease (eg. a mortgagee).

#### Division 4A – Research leases

	<b>Clause</b>	<b>Explanation</b>
<b>Granting of research leases and corresponding licences</b>	39A	<p>The draft proposes that a research lease may be granted inside or outside an aquaculture zone. It is also proposed that a research lease may be granted within a zone at anytime, even if the lease is in respect to a zone which is a public call area.</p> <p>The draft section outlines the matters the Minister is satisfied of before deciding to grant a corresponding licence.</p> <p>The draft section requires advertisement of the application and</p>

		referral to the EPA, however a policy may exclude the requirement to publicly advertise in certain circumstances.
<b>Term and renewal of research leases</b>	39B	The draft proposes that the Minister may determine the term of the research lease based upon the project and its projected term. The draft provides for the renewal of a research lease and the manner in which an application for renewal must be made.
<b>Research leases not transferable</b>	39C	Research leases will not be transferable.
<b>Licences may only be held by lessees</b>	39D	Due to the nature and purpose of a research lease, only the holder of the research lease will be able to hold the corresponding licence.

### Division 5 – Emergency leases

	<b>Clause</b>	<b>Explanation</b>
<b>Granting of leases and corresponding licences in circumstances of emergency</b>	40	<p>The draft proposes to create a new regime for emergency leases. Under the new regime an emergency lease will no longer require an emergency zone to exist. The Minister will, on his or her initiative or upon application, grant an emergency lease if the Minister considers that emergency circumstances exist that warrant such action.</p> <p>An emergency lease may be granted inside or outside a zone and without public notice or referral to the Environment Protection Authority.</p>
<b>Only holder of leases affected by emergency may hold emergency leases</b> (No change to this section)	43	An emergency lease can only be held by the holder of the lease that is affected by the emergency.
<b>Term and renewal of emergency leases</b>	44	The draft proposes that the aggregate term of an emergency lease change from a maximum of 6 months and be replaced with a provision allowing the lease to be renewed for a term commensurate with the length of the emergency. It is considered more practical and flexible to manage an emergency lease in this manner.
<b>EPA and Minister to be notified of emergency lease</b>	44A	The Minister is to ensure that the Environment Protection Authority and the Minister responsible for the administration of the <i>Harbors and Navigation Act 1993</i> are notified immediately of the grant or renewal of an emergency lease.

## Division 6 – Occupation of marked-off areas

	Clause	Explanation
<b>Exclusive occupation of marked-off areas</b> (No change to this section)	45	A lessee has the right of exclusive occupation of the area marked-off under the aquaculture lease subject to provisions of the lease.
<b>Control of marked-off areas</b> (No change to this section)	46	If requested by an authorised person, a person must leave a marked off area of an aquaculture lease immediately unless they have a reasonable excuse. That person must not re-enter the area without the permission of the authorised person, and must not use offensive language if asked to leave. If requested by an authorised person, a person who has been asked to leave must give their name and address. A range of penalty's apply.
<b>Interference with stock or equipment within marked-off areas</b>	47	This amendment makes the interference with equipment indicating a boundary of an aquaculture lease and interference with aquaculture equipment within a lease area separate offences.  The penalty and compensation provisions remain unchanged.
<b>Offence to pretend to be authorised person</b> (No change to this section)	48	It is an offence to pretend to be an authorised person.

## Division 7 – power to require or carry out work

	Clause	Explanation
<b>Power to require or carry out work – (Lease)</b>	48A	The draft provides the Minister with the power to direct a lessee or former lessee to take action or remove equipment in certain circumstances. Failure of the person to comply with the Minister's direction may result in a penalty and the Minister will be able to organise for the work to be done and recover the associated costs as a debt from the lessee or former lessee.

## Part 7 - Licences

	Clause	Explanation
<b>Application for licences other than corresponding licences</b>	49	The draft removes applications for corresponding licences from this part as they are now dealt with under Part 6 (together with a lease application). Accordingly, this section will only apply to land-based licences or a licence for an aquaculture related activity.

<b>Grant of licences other than corresponding licences</b>	50	The draft removes the section pertaining to corresponding licences and retains those sections relating to an aquaculture licence (other than a corresponding licence), for example a land-based licence or licence for a related activity. The sections pertaining to a corresponding licence have been moved to section 22 for completeness.
<b>Term and renewal of licences other than corresponding licences</b>	50A	This section was previously section 53 and has been moved up so that it is located with other provisions that relate to licences other than corresponding licences for completeness.  The section sets a maximum term for a licence as ten years and is renewable for successive terms. A licence must be applied for in the manner and form required by the Minister and the applicant must provide information as required by the Minister to assist in the determination of the application and by statutory declaration where requested.
<b>Licences may be held jointly</b> (No change to this section)	51	An aquaculture licence may be held jointly by two or more persons, who will be held jointly and severally liable to meet obligations under the licence.
<b>Licence conditions</b>	52	The draft proposes a range of conditions for licences (including corresponding licences) including the limitation, restriction or prohibition of certain activities. The draft also proposes the concept of a 'holding area' where an aquaculture activity may be carried on. Expiation and penalties are proposed for the breach of a licence condition.
<del><b>Term of licences</b></del>	<del>53</del>	Section deleted and moved to section 50A.
<del><b>Corresponding licences terminated on termination of lease</b></del>	<del>54</del>	The provisions of this section are now found at section 25D for completeness.
<b>Annual fees</b>	53	This amendment incorporates the power of the Minister to impose annual fees currently found in the regulations. The detail regarding the fees is left to the regulations. It also provides for the cancellation of a licence on grounds of non-payment of an annual fee.
<b>Transfer of licences</b>	55	The draft requires the Minister to obtain the consent of a person or body holding a registered interest in a licence to a transfer of that licence. This recognises the legal rights of the third party.
<b>Surrender of licences</b>	56	An aquaculture licence may be surrendered with the consent of the Minister.  The draft requires the Minister to obtain the consent of a person or body holding a registered interest in a licence to the surrender of that licence. This recognises the legal rights of the third party.
<b>Suspension or cancellation of</b>	57	The Minister may suspend or cancel a licence if there is proper cause to do so (there is proper cause to do so if the licensee obtained the licence improperly or failed to comply with a

<b>licences</b>		<p>condition of the licence or committed an offence against this measure or another relevant Act relating to aquaculture, fishing or environment protection). Before a licence is suspended or cancelled, the Minister must give written notice to the licensee setting out the matters alleged to constitute proper cause, and the action the Minister proposes to take. The licensee must be given reasonable opportunity to show cause why the proposed action should not be taken.</p> <p>An amendment has been made to what may constitute proper cause for the suspension or cancellation of an aquaculture licence. As such an offence to the Aquaculture Act or the cancellation, suspension or disqualification of a person or Director of a company from the holding of a relevant statutory authorisation will also constitute proper cause.</p>
<b>Power to require or carry out work</b>	58	<p>The Minister may direct a licensee to take action required by a condition of the licence, or require the removal or stock or equipment on the cancellation or termination of a licence. If a person fails to comply with such a direction, the Minister may cause the required action to be taken and recover the costs from the person.</p> <p>The section has been amended to empower the Minister to direct a person where they have failed to carry out actions required by the Aquaculture Regulations.</p>

## Part 8 – Reference of matters to EPA

	<b>Clause</b>	<b>Explanation</b>
<b>Reference of matters to EPA</b>	59	<p>The draft makes some minor consequential amendments as a result of the removal of development leases from the Act. It also removes referral to the EPA for a variation of licence conditions as prescribed by an aquaculture policy. This is an acknowledgement that the EPA has already had input into the creation of the policy and reflects the current practice of including more information in zone policies.</p>

## Part 9 – Appeals

	<b>Clause</b>	<b>Explanation</b>
<b>Appeals</b>	60	<p>This clause sets out appealable decisions under the Act to the Administrative and Disciplinary Division of the District Court.</p> <p>The draft provides that there is no appeal mechanism where an application made in response to a public call is not determined to be the preferred application.</p>

## Part 10 - Administration

### Division 1 – Minister

	Clause	Explanation
<b>Guidelines for ATAB assessment of lease and corresponding licence applications</b>	60A	The draft provides a new section which enables the Minister to publish, by notice in the Gazette, guidelines by which the ATAB will assess applications for leases and corresponding licences. The guidelines may be varied or revoked by subsequent gazette notice. The section also requires the Minister to make these guidelines available to the public on an internet site. This change is designed to improve transparency.
<b>Power of delegation</b> (No change to this section)	61	The Minister may delegate his or her functions and powers under this Act. Those delegations may be further delegated.
<b>Acquisition of land</b> (No change to this section)	62	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

	Clause	Explanation
<b>Establishment of Aquaculture Advisory Committee</b> (No change to this section)	63	This clause establishes the Aquaculture Advisory Committee (AAC). The AAC is an expertise based advisory body for the Minister.
<b>Functions of AAC</b> (No change to this section)	64	In addition to other functions that may be assigned to it, the functions of the AAC are to advise the Minister on matters relating to aquaculture and on the administration of this Act and the policies governing its administration.
<b>Membership of AAC</b>	65	This clause sets out special requirements for the membership of the AAC.  It was considered appropriate to amend the membership of the AAC to include a person engaged in the administration of the <i>Harbors and Navigation Act 1993</i> .
<b>Terms and conditions of membership</b> (No change to this section)	66	A member of the AAC is appointed for a term not exceeding three years (and may be eligible for reappointment). The Governor may remove a Committee member for breach of a condition of appointment, misconduct or failing to carry out his or her duties. A position is vacated if a member dies, resigns or is not reappointed on expiration of the term of appointment.
<b>Remuneration</b> (No change to this section)	67	A Committee member is entitled to remuneration, allowances and expenses as determined by the Minister.
<b>Conflict of interest</b>	68	An AAC member who has a conflict of interest in relation to a matter being considered by the Committee, must disclose that

<b>under Public Sector (Honesty and Accountability) Act</b> (No change to this section)		interest and not take part in any deliberations or decisions of the Committee in relation to the matter.
<b>Validity of acts of AAC</b> (No change to this section)	69	A vacancy in its membership, or a defect in the appointment of a member will not invalidate an act or proceeding of AAC.
<b>Procedures of AAC</b> (No change to this section)	70	This clause sets out the procedures of AAC proceedings and decision making processes and includes provisions covering quorums, presiding members, voting, telephone conferences and minute keeping.

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

	<b>Clause</b>	<b>Explanation</b>
<b>Establishment of Aquaculture Tenure Allocation Board</b> (No change to this section)	71	This clause establishes the Aquaculture Tenure Allocation Board (ATAB).
<b>Functions of ATAB</b> (No change to this section)	72	In addition to any other functions assigned by the Minister or this section, the functions of ATAB are to advise the Minister on matters relating to the allocation of tenure.
<b>Membership of ATAB</b> (No change to this section)	73	This clause sets out the special membership requirements of the ATAB.  A minor amendment to the ATAB membership introduces knowledge of or relevant to the farming of aquatic organisms as a requirement. This reflects the important role undertaken by the ATAB in assessing lease and licence applications as a package. It was considered important that at least one member had a good understanding of farming practices generally to enable this assessment.
<b>Terms and conditions of membership</b> (No change to this section)	74	A member of ATAB is appointed for a term not exceeding three years (and may be eligible for reappointment). The Governor may remove a Board member for breach of a condition of appointment, misconduct or failing to carry out his or her duties. A position is vacated if a Board member dies, resigns or is not reappointed on expiration of the term of appointment.
<b>Remuneration</b> (No change to this section)	75	A Board member is entitled to remuneration, allowances and expenses as determined by the Minister.
<b>Conflict of interest under Public Sector (Honesty and</b>	76	An ATAB member who has a conflict of interest in relation to a matter being considered by the Board, must disclose that interest and not take part in any deliberations or decisions of the Board in relation to the matter.

<b>Accountability) Act</b> (No change to this section)		
<b>Validity of acts of ATAB</b> (No change to this section)	77	A vacancy in its membership or a defect in the appointment of a member will not invalidate an act or proceeding of ATAB.
<b>Procedures of ATAB</b> (No change to this section)	78	This clause sets out the procedures of ATAB proceedings and decision making processes and includes provisions covering quorums, presiding members, voting, telephone conferences and minute keeping.

#### Division 4 – Fund

	Clause	Explanation
<b>Aquaculture Fund</b>	79	The draft amends the name of the fund and also clarifies the use of fund monies to include the purposes of research and development relating to the aquaculture industry.  A further amendment clarifies the ability of the Minister to use the Fund to recover money for the purposes of taking action to remove or recover aquaculture stock or equipment in accordance with the Act.

#### Division 5 – Public register

	Clause	Explanation
<b>Public register</b>	80	The draft details what information is required to be kept on the public register for current leases, licences and applications. It also provides for the notation of a third party's interest in a particular lease or licence and the Ministers obligations to that third party in the case of legal proceedings and cancellation or suspension of the lease or licence.
<b>Public register to be available for inspection</b> (No change to this section)	81	The register must be available for free inspection by the public during normal office hours at a public office and on the internet. Copies must also be available for purchase for a reasonable fee.

#### Division 6 – Fisheries officers and their powers

	Clause	Explanation
<b>Fisheries officers and their powers</b>	82	Fisheries officers may exercise the powers they have under the Fisheries Act 1982, in the administration and enforcement of this measure. The draft now provides for the inclusion of Part 8 Division 1 subdivision 5 of the <i>Fisheries Management Act 2007</i> . This allows for powers in regard to the proper administration of seized items

		is also incorporated in the Act.
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## Part 11 - Miscellaneous

	Clause	Explanation
<b>Death, bankruptcy etc of lessee or licensee</b>	82A	The draft proposes to allow an executor or administrator in the case of a deceased proprietor or the official receiver or administrator in the case of insolvency, bankruptcy or where a company is being wound up, to hold an aquaculture licence or carry on aquaculture in place of the original licence holder.
<b>Annual reports</b> (No change to this section)	83	A report must be provided to the Minister on the operation and administration of the Act during the previous financial year, and the report must be laid before both Houses of Parliament.
<b>False or misleading information</b> (No change to this section)	85	It is an offence for a person to make a false or misleading statement in relation to the provision of information in accordance with the Act.
<b>Service of documents</b> (No change to this section)	86	This clause sets out the requirements for the service of any documents under this Act.
<b>Continuing offence</b> (No change to this section)	87	This clause provides that if a person is convicted of an offence that relates to a continuing act or omission, the person may be liable to an additional penalty for each day that the act or omission continued (but not so as to exceed one tenth of the maximum penalty for the offence).
<b>Liability of directors</b> (No change to this section)	88	If a corporation commits an offence against this measure, each director of the corporation may also be prosecuted for the offence, and if guilty, may be liable for the same penalty as fixed for the principal offence.
<b>General defence</b> (No change to this section)	89	This clause provides a general defence where a defendant proves the alleged offence was not committed intentionally and did not result from any failure of the defendant to take reasonable care to avoid commission of the offence.
<b>Confidentiality</b>	89A	The draft proposes confidentiality obligations on persons engaged or formerly engaged in the administration of the Act and relating to trade processes or financial information. Penalties apply for a breach of this section. This strengthens obligations currently existing within the South Australian Government generally.
<b>Evidentiary</b>	90	To assist in proceedings for an offence against this Act, this clause provides that certain matters, if certified by the Minister, alleged in the complaint, or stated in evidence, will be proof of the matter certified, alleged or stated, in the absence of proof to the contrary.  The draft provides a new subsection, which reverses the onus of proof. Where aquatic organisms are present in an area, it will be presumed, unless proven to the contrary, that those aquatic organisms were being farmed for the purposes or trade, business or research at that time.
<b>Regulations</b>	91	The draft provides express support for regulations by providing for the division of lease and licence areas. This amendment also

		increases the level of penalty that may be imposed by the regulations. This was designed to make the penalty the same as that for breach of lease conditions and will become \$10 000.
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## Schedule 1 – Revocation, transitional and validation provisions

### Part 1 – Preliminary

	Clause	Explanation
<b>Interpretation</b>	1	This section clarifies the meaning of important words and phrases.

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

	Clause	Explanation
<b>Revocation of policy</b>	2	This provision revokes the <i>Aquaculture (Standard Lease Conditions) Policy 2005</i> as the provisions of this policy are now contained in the Act.

### Part 3 – Transitional provisions

	Clause	Explanation
<b>Aquaculture zones to be taken to be public call areas</b>	3	The draft proposes to make all aquaculture zones public call areas, upon commencement of the new Act, until such time as the Minister chooses to gazette otherwise.
<b>Development leases and corresponding licences to continue as production leases and corresponding licences</b>	4	The draft provides that all development leases and corresponding licences in force under the Act immediately before the commencement of this clause will automatically become production leases and corresponding licences subject to the same terms and conditions previously held under the Act upon its commencement.
<b>Licences</b>	5	The draft confirms that a licence in force immediately before the commencement of this clause will not, as a matter of transition, authorise the carrying on of aquaculture related activities. Licence holders will need to apply for a variation to their licence conditions to have these provisions included.
<b>Application of amendments to existing leases and</b>	6	The draft proposes 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.

<b>licences</b>		
<b>Variation of existing leases by Minister on renewal</b>	7	The draft proposes that following commencement of this part the Minister may upon renewal 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. The second part of the section requires the Minister to give the lease holder and any registered interested person reasonable time to make submissions on the proposed variation.

#### **Part 4 – Validation provisions**

	<b>Clause</b>	<b>Explanation</b>
<b>Aquaculture leases and licences</b>	8	The draft validates all previously granted, renewed or transferred leases and licences. This is an administrative measure to ensure the validity of tenure.
<b>Delegations</b>	9	The draft validates any decisions or actions taken by a Public Service employee which may have been carried out under an invalid delegation.
<b>Regulations and policies</b>	10	The draft validates the force and effect of the <i>Aquaculture Variation Regulations 2006</i> and the <i>Aquaculture (Standard Lease Conditions) Policy 2005</i> as if the terms and conditions of these instruments were made under the Act.

**Copy of *Aquaculture (Miscellaneous) Amendment Bill 2010***

(See separate attachment)