



the debate.

**AQUACULTURE BILL**

Received from House of Assembly and read a first time.

**The Hon. K.T. GRIFFIN (Attorney-General):** I move:

*That this bill be now read a second time.*

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

#### Background

The purpose of this Bill is to improve the regulation of aquaculture in South Australia and to ensure the long term sustainability of the industry.

Aquaculture is an important and growing industry in this State and has significant benefits to regional South Australia. Its estimated value in 1999-2000 was \$260 million, directly employing over 1 100 people. In addition, it generated \$193 million and employed a further 1 400 people in associated industries. The estimated value of the industry in the year 2002-03 is in excess of \$330 million.

The Bill proposes the most fundamental reform of South Australian aquaculture legislation since the Fisheries Act was introduced in the early 1980s. This reform is necessary to ensure that the legislation keeps pace with the rapid growth of the aquaculture industry and the significant changes in technology that have occurred and will continue to occur.

The Bill provides for an integrated licensing and tenure system aimed at achieving an ecologically sustainable aquaculture industry in South Australia.

In a move to modernise the legislation, State Cabinet in December 1999 approved action to prepare an Aquaculture Bill to rectify the shortcomings of the *Fisheries Act 1982*, which currently regulates aquaculture.

Development of the Bill has been overseen by an interagency steering group of representatives of government bodies involved in regulating the industry and has been done in consultation with a community reference group which includes representatives from the aquaculture industry, the conservation movement, local government and the scientific community.

Following extensive industry and community consultation on a Discussion Paper released in August 2000, which set out a number of legislative options, Cabinet in May this year approved the drafting of an Aquaculture Bill.

In July this year, Cabinet approved the public release of a Consultation Draft *Aquaculture Bill 2001* which was the subject of extensive industry and community consultation between 18 July 2001 and 15 September 2001.

#### The Bill

The objects of the Bill are first, to promote the ecologically sustainable development of marine and land based aquaculture; second to maximise the benefits to the community from the State's aquaculture resources; and third to ensure the efficient and effective regulation of the aquaculture industry.

The Bill adopts a definition of ecologically sustainable development which has been designed to ensure consistency with the Commonwealth Environment Protection and Biodiversity Conservation legislation and the Intergovernmental Agreement on the Environment and relevant policy in this area. This definition encompasses the economic, social and physical well being of our communities while maintaining natural and physical resources, protecting biological diversity and ecological processes and avoiding adverse effects on the environment.

The Bill has been developed to comprehensively address resource and environmental management responsibilities associated with the aquaculture industry. This objective will be achieved through the introduction of an integrated licensing system and resource management framework with close linkages with the Environment Protection Authority.

#### Policies

The Bill provides for the making of aquaculture policies by the Minister. These policies will be key planning and management tools for the aquaculture industry. Policies may identify specific aquaculture zones and exclusion zones in marine areas and may prescribe conditions and offences under the Bill. Draft aquaculture policies are to be widely advertised and will be subject to Parliamentary scrutiny.

The Bill recognises the need to ensure consistency between aquaculture policies and other planning instruments. In particular, the proposed marine planning framework will play a significant role in shaping aquaculture policy in the State's marine waters.

The Bill also provides for an Aquaculture Advisory Committee to be made up of representatives from government, research, industry, environmental conservation and from local government. Its role is to provide advice to the Minister on aquaculture and the administration of the legislation.

#### Licences

The Bill requires any person conducting aquaculture to have licence granted by the Minister, a requirement which applies to aquaculture carried out in State waters as well as land based aquaculture. This overcomes the inconsistent manner in which the present legislation regulates the two types of aquaculture. Aquaculture licences may be granted for up to 10 years and are renewable for successive terms.

The Bill introduces a licensing system and resource management framework to comprehensively address the resource and environmental management responsibilities associated with the aquaculture industry.

In the case of marine based aquaculture a 'corresponding licence' will apply in addition to the relevant lease. The term 'corresponding licence' relates to an aquaculture lease and means the aquaculture licence in respect of all or part of the area of the lease authorising the same class of aquaculture as that specified in the lease.

#### Leases

The Bill provides a flexible approach to the granting of rights to occupy State waters and provides security for aquaculture operators while protecting the interests of the community. Under the Bill, a licence may not be granted for aquaculture in State waters unless the area is subject to a lease granted by the Minister. The Bill allows for four types of lease, namely pilot, development, production and emergency leases.

Pilot leases may be available outside of an aquaculture zone for the purpose of aquaculture research or trials. They have a maximum term of 12 months with renewal up to 3 years. Pilot leases may, under certain conditions, be converted to development leases.

Development leases may only be granted in an aquaculture zone and have a maximum term of 3 years (renewable up to 9 years) and may, subject to certain conditions, be converted to production leases.

Production leases may only be granted in an aquaculture zone and have a maximum term of 20 years and are renewable for successive terms.

Emergency leases are only available in an emergency zone and have a maximum term of 3 months renewable up to 6 months.

The power of the Minister to grant an aquaculture lease is subject to the requirement under section 15 of the *Harbours and Navigation Act 1993* that the concurrence of the Minister responsible for that administration of that Act is obtained.

The Bill provides for the establishment of a Tenure Allocation Board to advise the Minister on the allocation of pilot, development and production leases.

The competitive allocation process will ensure a fair and efficient means of allocating the State's marine aquaculture resources.

The Bill provides for the establishment of marked-off areas to ensure the protection of aquaculture stock. It is intended that marked-off areas will be set by licence condition and will be kept to the minimum size required to protect stock and not unduly restrict public access.

Aquaculture leases will provide security of tenure, whilst licence will accommodate flexible regulatory and management practices.

#### Planning and development

Development planning and development approval for aquaculture both land based and in State waters, will continue to occur in accordance with the *Development Act 1993*.

Development Plans established under the *Development Act 1993* will be able to adopt aquaculture policies.

Existing rights of public consultation and participation in the assessment of aquaculture development proposals under the *Development Act 1993* are not affected by the Bill.

#### Role of EPA

In order to gain the benefits of an integrated licensing system while ensuring adequate environmental safeguards, the Environment Protection Authority will play a key role in approval and monitoring of aquaculture development. The Bill requires that prior to the Minister granting a licence, the Environment Protection Authority approve the licence and any amendment of conditions.

While the current aquaculture licensing provisions of the *Environment Protection Act 1993* will be revoked, the breadth of aquaculture operations examined by the Authority will increase. Accordingly, the Authority will be supported by increased resources to undertake its role in accordance with a service level agreement with Primary Industries and Resources SA.

Importantly, the Environment Protection Authority will retain existing powers to enforce the general environmental duty and environmental harm under the *Environment Protection Act 1993* as it relates to aquaculture.

To achieve efficient and effective administration of the Act, a Memorandum of Understanding will be developed between Primary Industries and Resources SA and the Environment Protection Authority.

**Appeals**  
The Bill provides for appeals on licensing decisions by the Minister to be made to the District Court by the applicant.

**Transitional provisions**  
The transitional provisions contained in the Bill provide that the Minister must, without any requirement for an application or payment of a fee, grant an appropriate aquaculture licence or lease to any person entitled to carry on aquaculture operations immediately before the commencement of the Bill. It is anticipated that the transitional provisions will fully bring the existing operators into line with the objects of the Bill on a staged basis.

**Competition review**  
National Competition Policy review of the Bill indicates that strictures on competition of the licensing, leasing and aquaculture policy aspects of the Bill are outweighed by the public benefits (ecological, social and economic) that flow from the proposed legislation.

**Fund**  
An Aquaculture Resources Management Fund will be established for the purposes of any investigations or other projects relating to the management of aquaculture resources or towards the costs of administration of this Act.

**Other legislation**  
Following advice from the Attorney-General's Department, no specific mention has been made in the Bill to Native Title. The advice is that the *Native Title Act* 'future act' provisions would seem to apply without the need for any specific reference in the State legislation.

The Bill also makes consequential amendments to the *Fisheries Act 1982* and the *Environment Protection Act 1993*. The Bill is intended to streamline the regulation of the aquaculture industry and to supersede relevant legislation except as specifically provided for the consequential amendments. The Bill provides that it operates in addition to other relevant legislation. The operation of the *Environment Act 1993* will continue in relation to aquaculture development.

**Conclusion**  
The Bill is an important development in the regulation and long term sustainability of the aquaculture industry in South Australia.

I commend the bill to the house.

Explanation of clauses

#### PART 1

#### PRELIMINARY

**Clause 1: Short title**  
This clause is formal.

**Clause 2: Commencement**  
The measure will be brought into operation by proclamation.

**Clause 3: Interpretation**  
This clause sets out definitions for terms used in the measure. Some of the terms include 'aquaculture', 'aquaculture lease', 'aquaculture licence' and 'aquaculture policy'.

**Clause 4: Ecologically sustainable development**  
For the purposes of this measure, ecologically sustainable development is 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.

**Clause 5: Crown bound**  
This measure binds the Crown.

**Clause 6: Application of Act**  
This measure applies to the State, State waters and waters beyond State Waters to the extent of the extraterritorial power of Parliament.

**Clause 7: Interaction with other Acts**  
This measure does not limit or derogate from the provisions of any other Act.

#### PART 2

#### OBJECTS OF ACT

**Clause 8: Objects of Act**  
The objects of the measure are to promote 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 9: Efficient administrative practices**

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 10: Interpretation

A reference to an aquaculture policy (including a draft policy) also includes a reference to an amendment or revocation of an aquaculture policy.

###### Clause 11: Nature and content of policies

This clause provides 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. A zone may also be identified (a prospective aquaculture zone) as an area in which investigations may be carried out to determine whether in fact, aquaculture of a particular class should be permitted. An aquaculture policy may also set out matters that must be taken into account in determining an application for an aquaculture lease or licence, as well as conditions that will form part of the lease or licence. An aquaculture policy may vary in its terms depending on the area, zone and class of aquaculture to which it applies.

###### Clause 12: Procedures for making policies

This clause sets out the procedures for making an aquaculture policy. A draft policy must be prepared in consultation with the Aquaculture Advisory Committee (AAC) set up under Part 10 of this measure, and along with an explanatory report, the Minister must refer the policy to any prescribed body and any public authority affected by the policy. An advertisement must also be published in the *Gazette* and a newspaper advising where copies of the draft policy and report may be obtained and inviting submissions from interested persons. If there are any proposed alterations to the policy as a result of the consultation process, the Minister must obtain the advice of the AAC. The Minister may then approve the draft policy (as altered) by notice in the *Gazette* and fix a date for its operation.

###### Clause 13: Parliamentary scrutiny

Once approved by the Minister, an aquaculture policy must be referred to the Environment, Resources and Development Committee of the Parliament for consideration. The Committee may object, approve or suggest amendments to the policy. The Minister may accept any suggested amendments, and give notice in the *Gazette*. If the Committee objects to the policy, it must be laid before both Houses of Parliament, either of which may pass a resolution to disallow the policy. In this case, the policy would then cease to have effect.

**Clause 14: Certain amendments may be made by Gazette notice only**

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 outlined above).

###### Clause 15: Availability and evidence of policies

Copies of an aquaculture policy must be available for inspection and purchase by the public.

#### DIVISION 2—CONTRAVENTION OF MANDATORY PROVISIONS

###### Clause 16: Offence to contravene mandatory provisions of policy

It is an offence to contravene a mandatory provision of an aquaculture policy, and there is a maximum penalty of \$35 000 for doing so.

#### PART 5

#### REQUIREMENT FOR LICENCE

###### Clause 17: Requirement for licence

A person must not carry on aquaculture without an appropriate licence. There is a maximum penalty of \$35 000.

#### PART 6

#### LEASES

##### DIVISION 1—GENERAL

###### Clause 18: Application of Part

This Part, which deals with aquaculture leases, applies to State waters and adjacent land (within the meaning of the *Harbors and Navigation Act 1993*).

###### Clause 19: Requirement for lease

An aquaculture licence cannot be granted in relation to an area unless the Minister has granted an aquaculture lease for that area.

###### Clause 20: Concurrence under Harbors and Navigation Act

If an aquaculture lease involves land vested in the Minister responsible for the administration of the *Harbors and Navigation Act 1993*, then that Minister must concur with the grant of the aquaculture lease in relation to that land.

*Clause 21: Leases not permitted in respect of aquaculture exclusion zones*

An aquaculture lease may not be granted in relation to an area that falls within an aquaculture exclusion zone.

*Clause 22: General process for grant of leases*

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.

*Clause 23: Certain lease applications to follow public call for applications*

An aquaculture lease may be granted through a public call for applications made in accordance with the procedure approved by the Aquaculture Tenure Allocation Board (ATAB), set up under Part 10 of this measure.

*Clause 24: Grant of leases to be preceded by decision as to licences*

An aquaculture lease must not be granted unless the Minister has decided that a corresponding licence will be granted under Part 7 of the measure.

*Clause 25: Form of leases*

An aquaculture lease must specify the class of aquaculture that may be carried out under the lease and may contain other conditions including the term of the lease, the rent or other amounts payable and grounds for cancellation.

*Clause 26: Classes of leases*

There are four classes of aquaculture lease: a pilot lease, a development lease, a production lease and an emergency lease.

**DIVISION 2—PILOT LEASES***Clause 27: Pilot leases outside aquaculture zones*

A pilot lease may only be granted in relation to an area that is outside an aquaculture zone (as determined by an aquaculture policy).

*Clause 28: Allocation process for pilot leases within prospective aquaculture zones*

A pilot lease that involves an area in a prospective aquaculture zone may only be granted through a process approved by ATAB involving the drawing of lots.

*Clause 29: Term of pilot leases*

A pilot lease is for a term of 12 months or less and may be renewed subject to the terms of the lease and a maximum aggregate of three years.

*Clause 30: Pilot leases not transferable*

A pilot lease can not be transferred.

*Clause 31: Licences may only be held by lessees*

Only the lessee under a pilot lease can hold the corresponding aquaculture licence.

**DIVISION 3—DEVELOPMENT LEASES***Clause 32: Granting of development leases limited to aquaculture zones*

A development lease can only be granted in relation to an area in an aquaculture zone.

*Clause 33: Competitive allocation process required*

A development lease can only be granted through a tendering or other competitive process approved by ATAB.

*Clause 34: Conversion of pilot leases to development leases*

The holder of a pilot lease may apply to have the lease converted to a development lease within 60 days before the end of the term of the lease, if the area of the pilot lease is within an aquaculture zone and the Minister is satisfied that aquaculture carried out under the pilot lease meets the performance criteria set out by the pilot lease.

An application for conversion may also be made within 60 days of the end of the last term for which the pilot lease may be renewed if the Minister is satisfied the conversion is consistent with the objects of this measure and any relevant aquaculture policy, and is satisfied that aquaculture carried out under the pilot lease meets the performance criteria set out in that lease. In this case, the Environment Protection Authority must also approve the conversion.

An applicant for conversion of the lease must provide the Minister with any information required, and may have to verify that information by statutory declaration.

*Clause 35: Term of development leases*

A development lease is for a term of three years or less and may be renewed subject to the terms of the lease and a maximum aggregate of nine years.

*Clause 36: Transfer of development leases*

A development lease may be transferred with the consent of the Minister.

**DIVISION 4—PRODUCTION LEASES***Clause 37: Conversion of development leases to production leases*

A lessee of a development lease may apply to the Minister to convert the lease to a production lease. An application may be made within 60 days of the end of the term of the development lease if the relevant area is within an aquaculture zone and the Minister is satisfied aquaculture carried out under the lease meets the performance criteria set out in the development lease.

The lease may also be converted if an application is made within 60 days of the end of the last term for which the development lease may be renewed if the Minister is satisfied the conversion of the lease to a production lease is consistent with the objects of this measure and any relevant aquaculture policy, and is satisfied aquaculture carried out under the development lease meets the performance criteria specified in that lease. Approval of the EPA is also required before the lease may be converted in these circumstances.

An applicant for conversion of the lease must provide information required by the Minister, and may need to verify the information by statutory declaration.

*Clause 38: Term of production leases*

A production lease has a maximum term of 20 years and is renewable for successive terms subject to the terms of the lease.

*Clause 39: Transfer of production leases*

A lessee may transfer a production lease, but must give notice of the transfer to the Minister along with any other prescribed details of the transfer.

**DIVISION 5—EMERGENCY LEASES***Clause 40: Granting of emergency leases limited to aquaculture emergency zones*

An emergency lease may only be granted in relation to an area that is within an aquaculture emergency zone.

*Clause 41: Granting of leases in circumstances of emergency*

An emergency lease may be granted if the aquaculture emergency zone relates to the class of aquaculture carried out by the applicant under their aquaculture lease, and there is an emergency resulting in a need to protect the environment or aquaculture stock.

*Clause 42: EPA to be notified of emergency lease*

The Minister is to ensure that the Environment Protection Authority is notified immediately of the grant of an emergency lease.

*Clause 43: Only holder of leases affected by emergency may hold emergency leases*

An emergency lease can only be held by the holder of the lease that is affected by the emergency.

*Clause 44: Term of emergency leases*

An emergency aquaculture lease has a maximum term of three months and may be renewed subject to the terms of the lease and a maximum aggregate of six months.

**DIVISION 6—OCCUPATION OF MARKED-OFF AREAS***Clause 45: Exclusive occupation of marked-off areas*

A lessee has the right of exclusive occupation of the area marked-off under the aquaculture lease subject to provisions of the lease.

*Clause 46: Control of marked-off areas*

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. The authorised person must not use offensive language or behave offensively in exercising the power under this measure. The powers of an authorised person under this provision may be limited by the lease or a corresponding licence.

*Clause 47: Interference with stock or equipment within marked-off areas*

It is an offence to interfere with or take aquaculture stock or equipment in a marked-off area of an aquaculture lease. A person convicted of an offence under this clause may be ordered to pay compensation for loss or damage due to the offence.

*Clause 48: Offence to pretend to be authorised person*  
It is an offence to pretend to be an authorised person.

**PART 7  
LICENCES***Clause 49: Applications for licences*

An applicant for an aquaculture licence must apply in the required form and provide such information as required by the Minister (which must be verified by statutory declaration if requested).

*Clause 50: Grant of licences*

The Minister may grant a corresponding licence in relation to an application for an aquaculture lease, or a public call for applications for an aquaculture lease, if the Minister is satisfied it would be consistent with the objects of this measure and any relevant aquaculture policy, and notice of the application has been advertised in a newspaper inviting submissions from interested persons. The Minister must also be satisfied that the applicant is a suitable person having regard to any prior offences against this measure or a similar one relating to aquaculture, fishing or environment protection). The EPA must also give its approval before the licence is granted.

A licence (other than a corresponding licence) may be granted by the Minister if the grant of the licence is consistent with the objects of this measure and any relevant aquaculture policy and the applicant is a suitable person. The Minister must also publish in a newspaper, notice of the application and invite submissions from interested persons. The EPA must also give its approval before the licence is granted.

*Clause 51: Licences may be held jointly*  
An aquaculture licence may be held jointly by two or more persons, who will be jointly and severally liable to meet obligations under the licence.

*Clause 52: Variation of licence conditions*  
If a licence contains standard conditions prescribed by an aquaculture policy, those conditions may be varied by the Minister by giving notice to the licensee in accordance to the relevant aquaculture policy. A non-standard licence may be varied at the request of the licensee, or by the Minister, if he or she is satisfied it is necessary to avoid significant environmental disaster and the variation has been approved by the EPA.

*Clause 53: Term of licences*  
The maximum term for a licence is ten years and is renewable for successive terms. 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.

*Clause 54: Corresponding licences terminated on termination of lease*  
If an aquaculture lease is cancelled, any corresponding licences are also cancelled.

*Clause 55: Transfer of licences*  
An aquaculture licence may be transferred with the consent of the Minister.

*Clause 56: Surrender of licences*  
An aquaculture licence may be surrendered with the consent of the Minister.

*Clause 57: Suspension or cancellation of licences*  
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 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.

*Clause 58: Power to require or carry out work*  
The Minister may direct a licensee to take action required by a condition of the licence, or require the removal or stock or equipment in 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.

#### PART 8

##### REFERENCE OF MATTERS TO EPA

*Clause 59: Reference of matters to EPA*  
This clause sets out the matters under the measure that are to be referred to the EPA for consideration. In doing so, the EPA may request it be provided with information to enable it to respond. The determination of the EPA's response is governed by the same criteria as apply under the *Environment Protection Act 1993*. A person directly affected by a response of the EPA in relation to a matter referred to it, must be notified of that response. The EPA must, if requested by the Minister, give a written statement of reasons for any negative response.

#### PART 9 APPEALS

*Clause 60: Appeals*  
This clause sets out those persons entitled to appeal a decision of the Minister made under this measure to the Administrative and

Disciplinary Division of the District Court. These include an applicant for an aquaculture lease where the Minister has refused to grant a corresponding licence or has made the licence subject to certain conditions; an applicant who has been refused a corresponding licence or an aquaculture licence; and the holder of a licence where the Minister has varied the conditions, is refusing to consent to the transfer or surrender of the licence, or has suspended or cancelled the licence. An appeal must be instituted within one month of the making of the decision being appealed, or where applicable, within one month of the receipt of written reasons for the Minister's decision by the person appealing the decision. Where a matter has been referred to the EPA, a response of the EPA against the granting of a licence will be appealable as a decision of the Minister and the EPA will be a party to an appeal against any decision of the Minister in relation to the matter referred.

#### PART 10 ADMINISTRATION DIVISION 1—MINISTER

*Clause 61: Power of delegation*  
The Minister may delegate his or her functions and powers under this measure.

*Clause 62: Acquisition of land*  
Land may be acquired by the Minister for the purposes of this measure in accordance with the *Land Acquisition Act 1969*.

##### DIVISION 2—AQUACULTURE ADVISORY COMMITTEE

*Clause 63: Establishment of Aquaculture Advisory Committee*  
This clause establishes the Aquaculture Advisory Committee (AAC).

*Clause 64: Functions of AAC*  
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 measure and the policies governing its administration.

*Clause 65: Membership of AAC*  
This clause sets out special requirements for the membership of the AAC.

*Clause 66: Terms and conditions of membership*  
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.

*Clause 67: Remuneration*  
A Committee member is entitled to remuneration, allowances and expenses as determined by the Minister.

*Clause 68: Disclosure of interest*  
An AAC member who has a conflict of interest in relation to a matter being considered by the Committee, must disclose that interest and not take part in any deliberations or decisions of the Committee in relation to the matter.

*Clause 69: Validity of acts of AAC*  
A vacancy in its membership, or a defect in the appointment of a member will not invalidate an act or proceeding of AAC.

*Clause 70: Procedures of AAC*  
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

*Clause 71: Establishment of Aquaculture Tenure Allocation Board*  
This clause establishes the Aquaculture Tenure Allocation Board (ATAB).

*Clause 72: Functions of ATAB*  
In addition to any other functions assigned by the Minister or this measure, the functions of ATAB are to advise the Minister on matters relating to the allocation of tenure for aquaculture.

*Clause 73: Membership of ATAB*  
This clause sets out the special membership requirements of the Board.

*Clause 74: Terms and conditions of membership*  
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.

*Clause 75: Remuneration*

A Board member is entitled to remuneration, allowances and expenses as determined by the Minister.

*Clause 76: Disclosure of interest*

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.

*Clause 77: Validity of acts of ATAB*

A vacancy in its membership, or a defect in the appointment of a member will not invalidate an act or proceeding of ATAB.

*Clause 78: Procedures of ATAB*

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 79: Aquaculture Resource Management Fund*

An Aquaculture Resource Management Fund is established. The Fund is to consist of the following money:

- the prescribed percentage of fees (other than expiation fees);
- expiation fees and the prescribed percentage of penalties recovered in respect of offences;
- rent or any other amount (not being fees) paid to the Minister;
- any money appropriated by Parliament for the purposes of the Fund;
- any money paid into the Fund at the direction or with the approval of the Minister and the Treasurer;
- any income from investment of money belonging to the Fund;
- any other money paid into the Fund.

The Fund may be applied by the Minister for the purposes of any investigations or other projects relating to the management of aquaculture resources and towards administrative costs.

#### DIVISION 5—PUBLIC REGISTER

*Clause 80: Public register*

This clause requires the Minister to maintain a public register of aquaculture leases and licences that includes details about the terms and conditions of each lease or licence, the names of the lessees or licensees, a description of the area covered by the lease or licence, details of environmental monitoring reports and any other information the Minister considers appropriate (other than commercially sensitive information).

*Clause 81: Public register to be available for inspection*

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 5—FISHERIES OFFICERS AND THEIR POWERS

*Clause 82: Fisheries officers and their powers*

Fisheries officers may exercise the powers they have under the *Fisheries Act 1982*, in the administration and enforcement of this measure.

#### PART 11 MISCELLANEOUS

*Clause 83: Annual reports*

A report must be provided to the Minister on the operation and administration of this measure during the previous financial year, and the report must be laid before both Houses of Parliament.

*Clause 84: Immunity of persons engaged in administration of Act*  
No liability attaches to a person who exercises or discharges their powers and functions under this measure in good faith, but any such liability attaches instead to the Crown.

*Clause 85: False or misleading information*

It is an offence for a person to make a false or misleading statement in relation to the provision of information in accordance with this measure.

*Clause 86: Service of documents*

This clause sets out the requirements for the service of any documents under this measure.

*Clause 87: Continuing offence*

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).

*Clause 88: Liability of directors*

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.

*Clause 89: General defence*

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.

*Clause 90: Evidentiary*

To assist in proceedings for an offence against this measure, 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.

*Clause 91: Regulations*

The regulations that may be made under this measure include regulations for the provision of information, records and returns relating to aquaculture leases or licences, payment of fees, exemptions from provisions of this measure, and fines not exceeding \$5 000 for an offence against a regulation.

#### SCHEDULE

*Consequential Amendments and Transitional Provisions*

The Schedule sets out consequential amendments to the *Environment Protection Act 1993* and the *Fisheries Act 1982*. It also sets out a transitional provision in relation to persons lawfully carrying on aquaculture prior to the commencement of this measure.

**The Hon. P. HOLLOWAY** secured the adjournment of the debate.

#### ADJOURNMENT

At 12.01 a.m. the Council adjourned until Thursday 15 November at 11 a.m.