**AQUACULTURE (MISCELLANEOUS) AMENDMENT BILL 2012**

**Legislative Council, 15 February 2012, pages 97-106**

Second reading

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women):**

Obtained leave and introduced a bill for an act to amend the Aquaculture Act 2001. Read a first time.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women): I move: That this bill be now read a second time.

This bill was introduced in this place on Thursday 10 November 2011. The bill I am seeking leave to introduce today is the same bill. To expedite passage this evening, I seek leave to insert the second reading of the bill and explanation of clauses in Hansard without my reading it. Leave granted. 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 30 per cent originated from aquaculture in 2009-10, representing 49 per cent of the total seafood value of production. This trend is reflected worldwide with expectations that, by 2020, aquaculture will produce 47 per cent of global seafood production.

The South Australian aquaculture industry continues to generate employment across the State, most of which is in regional South Australia. In 2009-10, South Australian aquaculture generated direct employment for approximately 1,800 persons and 1,700 flow-on jobs, a total of 3,400 jobs in the State, 71 per cent of which are in the regional areas of South Australia.

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.

The success of aquaculture development in South Australia can be attributed to the South Australian Government's aquaculture resource management framework and the strong partnership approach we have fostered with key stakeholder groups, particularly in the seafood industry. 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 its primary objective, the ecologically sustainable development of aquaculture.

The Aquaculture (Miscellaneous) Amendment Bill 2012 (the Bill) builds 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 of and access to, State marine water resources, whilst maintaining the balance between social, economic and environmental needs of the community.

Amendments to the Act contained in the Bill 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. The Bill will also further enhance and facilitate attraction of private investment to the aquaculture sector through the introduction of third party registrations on leases (similar to mortgage arrangements on property).

The development of the Bill has been aided by the consideration and input of the Aquaculture Advisory Committee, members of industry peak bodies and members of government agencies involved in regulating the aquaculture industry. With Cabinet's approval on 13 December 2010, the draft Bill was released for three months public consultation from 17 December 2010 to 18 March 2011. During this time advertisements promoting consultation were published in newspapers across South Australia, public meetings were held in Ceduna, Port Lincoln, Adelaide, Kadina and Kingston SE. During consultation, meetings were also offered to key government agencies, including DTEI and DENR and with key stakeholder bodies.

A separate process has commenced for the review of the supporting Aquaculture Regulations 2005 that are both consequential changes from the Bill, and other amendments Linked to regulatory improvements. This step will involve further consultation.

The Bill I

t is important to state at the outset that the objects of the Aquaculture Act 2001 (the Act) remain unchanged—namely ecologically sustainable development of marine and land-based aquaculture; maximisation of the benefits to the community from the State's aquaculture resources; and assuring the efficient and effective regulation of the aquaculture industry. It is with these principles in mind that the following key amendments are sought.

New definitions have been added to clarify that the Act encompasses the regulation of aquaculture equipment and farming structures held on licensed sites. This will bolster the regulation making powers of the Act to clearly enable the making of regulations dealing with such matters as the use of infrastructure including site markers, anchors and feed barges used on licensed sites. Previously the Act only regulated the farming activity, the infrastructure that did not contain stock on a licensed site was left unregulated. Holding sites and the maintenance of infrastructure will be managed on the licence under these very clear powers. The capacity to licence the towing of live aquaculture stock has also been included in order to be able to regulate the risks to the State from the movement of stock to and from a licensed site.

The Bill has given greater clarity and transparency to the determination of a suitable person who may be granted an aquaculture licence. The Minister will have the power to take into account such matters as the person's financial capacity to comply with the obligations of the Act and whether the person has committed any offences or has had any statutory authorisation relating to aquaculture, fishing or environmental protection cancelled or suspended. This will ensure that the State's aquaculture resources will only be granted to those who are prepared and committed to undertake aquaculture farming activity as regulated under the Act.

Further clarity has also been added by the Bill so that there will be no confusion as to the application of standard conditions of aquaculture policies. Once created under such a policy, those standard conditions will apply to all aquaculture leases and licences whether granted before or after the making of the policy and will prevail over any such lease or licence to address any inconsistency.

The Bill ensures that the 28 day timeframe set for consideration of aquaculture policies by the Environment Resources and Development Committee of Parliament is not eroded by the Christmas holiday period or in periods near general elections. Such periods will be disregarded in the 28 day timeframe. This was recommended by the Environment Resources and Development Committee itself. Now policies can be referred to this committee at any time without compromising the opportunity for parliamentary scrutiny.

The concurrence of the Minister responsible for the administration of the Harbors and Navigation Act 1993 to the grant of an aquaculture lease has been clarified in the Bill with the effect that concurrence is not required where a lease is subdivided or two leases are amalgamated. In these situations the leases are replaced or substituted with a new lease or leases within the same area. This substitution is not a 'grant' for the purpose of seeking the concurrence of the Minister responsible for the administration of the Harbors and Navigation Act 1993. This section also establishes that concurrence is not required for an emergency lease unless it is to be granted within the boundary of a port or harbor.

The Bill removes a mandatory requirement for the lease to specify a class of aquaculture as, in practice, it has long been considered more appropriate for a licence to specify this. The Bill also provides that the lease may specify performance criteria to be met by the lessee. All leases granted since 2006 have performance criteria as it is a key management tool to ensure all State waters set aside for aquaculture are actually used for this purpose and not left undeveloped for speculators simply seeking to make a profit from a lease entitlement. Allowing leased areas to remain undeveloped is not consistent with the objective of the Act relating to maximising benefits to the State from the use of State resources.

The Bill introduces a power for the Minister to cancel an aquaculture lease where no aquaculture is being conducted; where the performance criteria have not been met or where lease fees have not been paid. While these conditions are present in all leases granted since 2006, before this time some long-term leases were granted without them and the conditions on those leases did not always enable their variation for this reason. This section creates consistency in this regard and also inserts procedural fairness steps that the Minister must follow before any cancellation may take effect. This provision will make all leases subject to these requirements and will thereby ensure that leases are held only for ongoing aquaculture activities.

The classes of lease have been varied to remove development leases. The removal of development leases simplifies current administrative measures, reducing red tape, without compromising the adequacy of the aquaculture management regime. The term and rate of development under a development lease can be managed in the same way through a production lease. Removing the development lease reduces the need for lease conversion into a production lease after nine years.

As part of the transitional provisions of this Bill all development leases will automatically become a production lease with the same terms and conditions as those that applied to the existing development lease. The Minister will now be required to give consent to the transfer of production leases in the same way consent was required for the transfer of development leases. As part of further measures to streamline administrative process and reduce red tape, the provision for the allocation of pilot leases in prospective zones has been removed together with the provision for prospective zones as the latter have not been used in practice and there is no longer any perceived need for them.

To help foster innovation and new aquaculture development, the maximum aggregate term of a pilot lease has been increased to not more than five years (up from 3 years). This term better reflects the time that is required to set up a new aquaculture farm including the establishment of infrastructure, obtaining stock, providing for development of aquaculture activities which may include proof of concept on a lease site, to a scale considered suitable for the grant of a longer term lease arrangement under a production lease. This timeframe also allows proper environmental monitoring of the site before any consideration of conversion to a production lease. The lease may be converted after three years if the Minister is satisfied with the performance of the activity on the site.

A new scheme for the grant of leases within aquaculture zones that is more flexible and more transparent to those involved has been provided in the Bill. As part of further measures to streamline administrative processes, the Bill identifies two methods by which to 'release' tenure or access rights to areas of State waters within aquaculture zones. The current 'public call' system has been retained and will follow an advertised call for applications in much the same way as is currently provided for in the Aquaculture Act 2001.

As part of further measures to streamline administrative process and reduce red tape, applications for a lease and corresponding licence are now to be made at the same time (as a package). The applications however, will still be considered by the Aquaculture Tenure Allocation Board.

The second and new form of tenure release is an 'on application' regime where no public call will be required. Accordingly, certain zones will allow for applications to be received throughout the year and any applications received will be assessed by the Aquaculture Tenure Allocation Board and processed accordingly. This will permit aquaculture farmers to make applications at any time which commercially suit them and will not require them to wait for a public call process. This scheme will be applied to zones which are determined by the Minister to be of lesser commercial interest and will be utilised to encourage investment whenever possible. In practice the Aquaculture Advisory Committee will review any proposed change to the application regime of an aquaculture policy and recommend appropriate action for the Minister.

In either case all applications will be assessed by the Aquaculture Tenure Allocation Board against set criteria, taking into account the objects of the Act, assessment guidelines approved by the Minister and the provisions of the aquaculture policy governing the relevant waters. Grading of applications by the Aquaculture Tenure Allocation Board may be subject to weighting of relevant criteria.

The guidelines provide relevant criteria for pre-selection and will provide a greater level of transparency to the assessment process for the applicant. The draft Bill proposes that the Ministerial guidelines be gazetted and be available on the internet, providing clarity and confidence in the process to prospective applicants and the wider public. The guidelines will be available to everyone before a public call is made.

The assessment of the lease and licence applications, once they have passed the tenure allocation process, will then undergo the same environmental and public scrutiny currently afforded to such applications.

To continue to foster and enhance the innovation and research that has underpinned the success of aquaculture industry development in South Australia, the concept of a research lease has been included in the Bill to enable certain waters to be dedicated to research activities. By doing so, research providers and aquaculture farmers will not be competing with each other for access to State waters. It is proposed that the grant of a research lease and corresponding licence will be at the discretion of the Minister. The term of the research lease will be five years or less. A research lease will be renewable but not as to extend beyond the research project. It will not be transferable and the holder of the corresponding licence must be the same as the holder of the research lease. Applications for these leases may be made at any time.

To improve administrative process and reduce red tape, a new regime for the grant of emergency leases has been introduced in this Bill. Emergency leases will no longer require an aquaculture emergency zone to exist as the type, area and effect of any emergency is not predictable. The Minister may, on her or his own initiative or upon application, grant an emergency lease if the Minister considers that emergency circumstances exist that warrant such action. They may be granted inside or outside an aquaculture zone, but not within an aquaculture exclusion zone, without public notice or referral to the Environment Protection Authority as time will be of the essence. The concurrence of the Minister responsible for administering the Harbors and Navigation Act 1993 will be required only if it is necessary to grant an emergency lease within a port or harbor.

The provisions of the Bill allow an emergency 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. The Minister is required to ensure that the Environment Protection Authority and the Minister responsible for the administration of the Harbors and Navigation Act 1993 are notified of a proposal to grant or renew an emergency lease. This arrangement will enable swift and effective action to be taken to move aquaculture stock that may be in danger to a safer location pending the end of the emergency. Should it be necessary, more permanent arrangements can be made for the movement of the site in the normal manner consistent with the provisions of the Act.

The current power for the Minister to require or carry out work on a licence has been extended to require or carry out work on a lease. The Minister may now direct a lessee or former lessee to take action or remove equipment in certain circumstances in much the same was as is currently possible in relation to a licensee. Failure 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 from the lessee or former lessee. It should not be forgotten that aquaculture leases exist in State waters and any dangers to other users of these waters resulting from aquaculture activity should be minimised. For example, abandoned sites must be secured and clearly marked until any existing infrastructure is removed.

The Bill modifies and expands the provisions dealing with licence conditions and variation of licence conditions, clarifying the scope of such conditions and the time at which variations may be made. It also introduces an offence of contravening a condition of licence, with the maximum penalty being $10,000 or expiation fee of $1,000.

To provide for greater business certainty and to enhance the attractiveness of investment in the South Australian aquaculture industry, an important change has been introduced by this Bill to provide for the ability to register the interest of a third party (for example a mortgagee) on an aquaculture lease or licence. Currently third parties are noted on a lease or licence but this does not provide the third party with a level of security or protection of their interest in the asset. Once registered the third party is required to consent to the transfer and variation of a lease or licence. The Minister must also give a registered third party written notice of any proceedings for an offence, of any notice proposing to cancel or not renew a lease, of any notice to suspend or cancel a licence or direct a lessee or licensee to carry out work. This new provision will foster greater investment in aquaculture activity in this State and is supported by the Australian Bankers Association.

The Bill clarifies the fee structure for lessees and licensees and elevates provisions dealing with annual fees for licensees to the level of the Act, replacing the periodic fees that are currently managed under the regulations.

Membership of the Aquaculture Advisory Committee is expanded from 10 to 11 members, the additional member being a person engaged in the administration of the Harbors and Navigation Act 1993.

The Aquaculture Resource Management Fund will be known as the Aquaculture Fund, with the Fund proposed to be applied to two additional purposes, namely research and development relating to the aquaculture industry, and removing or recovering aquaculture equipment, stock or lease markers should that action be required to be taken under the Act.

To further enhance the environmental management of aquaculture activities conducted in South Australia, the Bill deems the Minister to be an administering agency for the purposes of the Environment Protection Act 1993 and enables the Minister to appoint fisheries officers (who currently have the power to administer and enforce the Aquaculture Act 2001) as authorised officers under the Environment Protection Act 1993. This is proposed so that powers under the Environment Protection Act 1993 may be used by the Minister and those officers to enforce the general environmental duty and relevant environment protection policies in relation to aquaculture activities. These powers will only be used in the context of activities carried out on aquaculture lease or licence sites or activities prescribed by regulation. To further enhance business certainty, the Bill clarifies succession arrangements, providing certain persons with powers to carry on aquaculture should a lessee or licensee die, become bankrupt or insolvent, or, in the case of a body corporate, become wound up or under administration, receivership or official management.

A confidentiality provision is included, making it an offence for persons engaged in the administration of the Act to divulge trade processes or financial information gathered in the course of official duties unless its use falls within the limited exceptions of the provision.

The Bill provides important enhancements to a unique and respected Act that has underpinned the sustainable development of the South Australian aquaculture industry. These enhancements will assist in ensuring the continued sustainability of the aquaculture industry in South Australia into the future. I commend the Bill to the Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions These clauses are formal.

Part 2—Amendment of Aquaculture Act 2001

4—Amendment of section 3—Interpretation

A new definition of aquaculture equipment is added to support new provisions relating to the removal of aquaculture equipment from sites on cancellation or suspension of a lease or licence and to support the exclusive occupation provision relating to an aquaculture lease. A new definition of farming structures is added for the purposes of the definition of aquaculture equipment and for use in connection with provisions relating to licence conditions and the regulation making power.

The new term public register is added to the interpretation section to support references to it added by clauses 24, 35, 36 and 45. The new scheme is intended to provide a level of security to financiers by allowing an interest in a lease or licence to be noted on the public register of leases and licences and requiring the consent of the person holding the interest to the transfer of the lease or licence. This scheme is similar to that applying to fishery licences.

The definition of varying licence conditions is required to accommodate the proposed improvement in flexibility when dealing with conditions.

5—Insertion of section 4A—Suitable person to be granted licence

The new section specifies the factors that may be taken into account in considering whether a person is a suitable person to be granted a licence, namely:

• any offence committed by the person, or, in the case of a corporation, by a director of the corporation, against the Act or any other law of this State or another State or a Territory of the Commonwealth relating to aquaculture, fishing or environment protection; and

• whether the person, or, in the case of a corporation, a director of the corporation, has held a relevant statutory authorisation that has been cancelled or suspended or has been disqualified from obtaining such an authorisation; and

• the financial and other capacity of the person to comply with obligations under the Act.

6—Amendment of section 7—Interaction with other Acts

The amendment disapplies the Development Act 1993 to development within the area of an emergency lease for the purposes of carrying on the activities authorised by a corresponding licence.

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

This amendment is central to the removal of the concept of prospective aquaculture zone from the Act and to the inclusion of the new concept of a public call area within an aquaculture zone.

The reference to aquaculture emergency zones is removed. Because the site of an emergency cannot be predicted, it is proposed to remove the need to establish a zone before granting an emergency lease.

New subsection (3b) puts beyond doubt that if standard conditions of lease or licence are included in an aquaculture policy the conditions apply to all leases and licences regardless of when they were granted and that standard conditions imposed by an aquaculture policy prevail over other conditions of a lease or licence in the event of inconsistency.

8—Amendment of section 12—Procedures for making policies

This amendment makes it clear that plans or policies against which a draft policy must be assessed are those established under an Act.

9—Amendment of section 13—Parliamentary scrutiny

The period allowed for the Environment, Resources and Development Committee to pass a resolution relating to an aquaculture policy received by it is proposed to be adjusted so that the Christmas/New Year period and any election period is disregarded.

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

The Minister is authorised to amend an aquaculture policy by notice in the Gazette if the Minister considers it necessary to amend the policy in consequence of an amendment to the Act or the making, amendment or revocation of the regulations or another aquaculture policy. For example, if this Bill is enacted, the removal of provisions dealing with aquaculture emergency zones from aquaculture policies may be effected by notice in the Gazette. The Minister is also authorised to amend an aquaculture policy by notice in the Gazette in order to designate, or revoke the designation of, an aquaculture zone as a public call area.

11—Amendment of section 16—Offence to contravene mandatory provisions of policy An expiation fee is introduced for breach of any mandatory provision of an aquaculture policy. When initially enacted it was envisaged that mandatory provisions would involve serious breaches worthy of a significant penalty. However, that has not turned out to be the case and allowing for expiable offences will provide a greater level of flexibility at the level of policies.

12—Substitution of section 17—Requirement for licence This clause is consequential on introducing a separate offence for breach of licence conditions (see new section 52(7)).

13—Substitution of section 19—Requirement for lease This amendment elevates an exemption currently contained in the regulations to the level of the Act. It allows for the granting of an aquaculture licence in an area that is not the subject of an aquaculture lease to a person carrying on aquaculture on a navigable vessel as it operates within State waters. Out of an abundance of caution it also allows for the granting of a licence subject to conditions regulating the towing of farming structures containing stock by means of navigable vessel to or from the area of the lease and the feeding of the stock or the taking of other action in relation to the stock during the movement of the stock.

14—Substitution of section 20—Concurrence under Harbors and Navigation Act

Section 20 is amended so that concurrence of the relevant Minister is not required— • for the substitution of an aquaculture lease following the division of lease areas into separate lease areas, or the amalgamation of lease areas, in accordance with the regulations; or

• for the grant of an emergency lease over an area that is not within a port or harbor within the meaning of the Harbors and Navigation Act 1993.

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

This section is reworked so that it covers both the grant and renewal processes for leases and the process for application for a corresponding licence. A licence application is to accompany the lease application.

16—Substitution of sections 23 to 25

The deletion of sections 23 and 24 reflect the change in processes for applying for leases and corresponding licences. The provisions substituting for section 25 involve a reorganisation and expansion of the general provisions dealing with conditions, variation, cancellation and surrender of leases.

Lease conditions are currently dealt with in section 25. New section 25 expressly refers to the specification of performance criteria.

New section 25A deals with variation of lease or lease conditions on application by or with the consent of the lessee. It ensures that the variation will not include an increase in the size of the area leased. It makes more transparent the arrangements under which the area subject to lease may be varied. It also ensures that the consent of any person with a registered interest in the lease will be required.

New section 25B deals with cancellation of the lease if—

• aquaculture has not commenced or has ceased to be carried on in the area leased; or

• performance criteria specified in the regulations or the lease have not been met; or

• an amount has not been paid for or under the lease in accordance with its conditions.

New section 25C deals with surrender of a lease and protects the interest of any person with a registered interest in the lease. New section 25D deals with a matter currently dealt with in section 54.

17—Amendment of section 26—Classes of leases The reference to development leases is removed and a reference to research leases added.

18—Substitution of section 28—Granting of corresponding licence for pilot lease

Current section 28 is deleted because it dealt with pilot leases in prospective aquaculture zones (which are being removed from the Act).

New section 28 deals with the process for the granting of a corresponding licence for a pilot lease. As with other types of lease, public notice is required.

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

The amendment allows renewal of pilot leases for an aggregate term of 5 years—an increase from the current 3 years.

20—Repeal of Part 6 Division 3 Division 3 deals with development leases and is deleted because that type of lease is no longer to be available. Effectively, development and production leases are to be rolled into a single class of lease, the production lease.

21—Insertion of sections 34 to 36

Division 4 (Production leases) is reworked to give effect to the collapsing of development and production leases. The current arrangements are that a pilot lease may be converted to a development lease or a development lease directly granted and then that a development lease may be converted into a production lease. The new process involves the direct grant of a production lease or the conversion of a pilot lease into a production lease.

New section 34 (Granting of production leases limited to aquaculture zones) is the equivalent of the current section 32 in relation to development leases.

New section 35 (Granting of production leases and corresponding licences in public call areas) and the next section establish an entirely new process for the granting of production leases. This section governs the process if a public call is required. The Minister is to set the area or maximum area to be made available for lease and the criteria against which applications for leases will be assessed. The Minister may determine that the call is to be in the form of a competitive tender with monetary bids. The Aquaculture Tenure Allocation Board (ATAB) is to assess each of the applications received in response to a public call against the objects of the Act, the terms of the relevant zone policy and any applicable criteria and weightings that have been determined by the Minister. The assessment is to be carried out in accordance with the Minister's assessment guidelines. ATAB must then make recommendations to the Minister as to any applications that should not be granted and the order of merit of the remaining applications. The Minister is then to determine the preferred applications and can conduct negotiations to work out optimum arrangements for lease areas and the number of leases. The process for advertising corresponding licences and referring them to the Environment Protection Authority then comes into play (subject to the zone policy). If someone drops out or a decision is made not to grant the lease or licence, there is the potential for renegotiation with other preferred applicants.

New section 36 (Granting of production leases and corresponding licences if public call not required) provides that an application for a lease and licence in an area that is not subject to the processes set out in the preceding section is to be assessed by ATAB taking into account the object of the Act and the relevant zone policy. The assessment is to be carried out in accordance with the Minister's assessment guidelines. A recommendation is then to be made to the Minister as to whether or not the lease and corresponding licence should be granted. The usual process for advertising the application for the corresponding licence and referring it to the Environment Protection Authority applies subject to the zone policy.

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

This section is altered so that it governs conversion of a pilot lease (rather than a development lease) into a production lease. Currently an application for conversion is to be made not more than 60 days before the end of the term (or the last term) of the lease.

It is proposed to alter this to a window between 90 and 60 days before the end of the term in order to give the Minister time within which to determine the application.

An amendment is also made to ensure that the pilot lease continues if the application cannot be determined before the end of the term of the lease.

23—Amendment of section 38—Term and renewal of production leases

This amendment is consequential on the introduction into the Act of provisions that deal with cancellation of a lease.

24—Substitution of section 39—Transfer of production leases

This amendment ensures that a production lease may only be transferred with the consent of any person holding an interest in the lease noted on the public register.

25—Insertion of Part 6 Division 4A—Research leases

The new Division introduces a new class of lease—the research lease. A research lease can be granted in respect of any State waters (whether within or outside an aquaculture zone) and an application for such a lease may be made at any time (even if the area is a public call area). The usual process for advertising the application for the corresponding licence and referring it to the Environment Protection Authority applies subject to any relevant zone policy.

New section 39B provides that the maximum term of a research lease is 5 years. A research lease is renewable for successive terms but not, if the corresponding licence authorises the conduct of a particular research project, so that the term extends beyond the duration of the research project.

Under new section 39C a research lease is not transferable and under new section 39D only the lessee under a research lease may hold the corresponding licence.

26—Substitution of sections 40 to 42 Page

This clause introduces a new scheme for the granting of emergency leases and corresponding licences. The requirement for an aquaculture emergency zone to be created before an emergency lease may be granted is removed. A lease may be granted on application of the holder of a pilot lease, production lease or research lease or on the initiative of the Minister. The Minister must be satisfied that circumstances of emergency exist such that the granting of the lease is warranted for the protection of the environment or the preservation of endangered aquaculture stock.

27—Amendment of section 44—Term and renewal of emergency leases the

The amendment removes the arbitrary limit of 6 months as the maximum period for an emergency lease and allows the lease to continue for the period reasonably required for response or recovery following the emergency.

28—Insertion of section 44A—EPA and Minister to be notified of emergency lease

This amendment ensures that the EPA and the harbors and navigation Minister are informed of any proposal to grant or renew an emergency lease.

29—Amendment of section 47—Interference with stock or aquaculture equipment within marked-off areas This amendment clarifies the scope of the offence and ensures that all relevant equipment of a lessee or licensee within a marked-off area of a lease is protected.

30—Insertion of Part 6 Division 7—Power to require or carry out work

The new provision is designed to ensure that on the cancellation or termination of an aquaculture lease, the Minister may take steps to ensure that the site is cleaned up as required by condition of the lease and that all stock and equipment is removed. Relevant directions may be given and, if not complied with, action may be taken and the cost of doing so recovered as a debt.

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

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

These amendments clarify that the scope of the sections is confined to licences other than corresponding licences. The processes for corresponding licences is dealt with in earlier provisions.

33—Insertion of section 50A—Term and renewal of licences other than corresponding licences

This matter is currently dealt with in section 53.

34—Substitution of sections 52 to 54

New section 52 applies to an inland licence and to a corresponding licence. It gives some examples of the matters that may be included in licence conditions. It also makes it clear that licence conditions may be varied on renewal of the licence or at least once each year in the case of a licence for a period extending beyond 1 year.

Licence conditions may also be varied with the consent of the licensee, as provided by licence condition or the regulations or if the Minister considers it necessary to vary the condition—

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

• in order to prevent or mitigate significant environmental harm or the risk of significant environmental harm; or

• in consequence of contravention of the Act by the licensee; or

• in consequence of an amendment of the Act or the making, amendment or revocation of regulations or an aquaculture policy.

The recent regulations standardised many of the requirements that were formerly in licence conditions and aquaculture policies and imposed the requirements in the form of regulations. As a consequence of this it was necessary to vary licence conditions. To the extent that the requirements were matters of environmental significance the current provisions enable variation of the licence conditions. Subclause (3)(c)(ii)(D) puts beyond doubt that all such consequential variations of licence conditions are authorised.

The requirement to refer the variations to the EPA is retained.

New section 53 deals with annual fees for licences.

35—Amendment of section 55—Transfer of licences

This amendment ensures that a licence may only be transferred with the consent of any person holding an interest in the licence noted on the public register.

36—Substitution of section 56—Surrender of licences

This amendment ensures that a licence may only be surrendered with the consent of any person holding an interest in the licence noted on the public register.

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

Under the current scheme contravention of a licence condition or of another law relating to aquaculture may lead to suspension or cancellation of a licence but contravention of a regulation is just dealt with as an offence. To facilitate enforcement of the scheme, a number of matters that have previously, or could be, dealt with as conditions of licence have now been included in the regulations in order to make contravention an expiable offence. However, logically, these matters should also, in appropriate cases, lead to suspension or cancellation of the licence. The amendment provides for this result.

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

For the reasons set out in relation to the previous clause, section 58 is amended to ensure that contravention of a regulation that requires a licensee to take action may lead to the issuing of a direction for compliance and, if non-compliance continues, action by the Minister and the recovery of the costs of taking the action. Enforcement of this kind is suitable where it is important that the action be taken, for example, the taking of a benthic assessment recording as part of the overall scheme for environmental monitoring.

An additional ground for requiring work to be undertaken is added, namely, if on suspension of an aquaculture licence in respect of an area comprising or including State waters, the licensee fails to remove aquaculture stock, or aquaculture equipment, from the State waters.

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

These amendments are consequential.

40—Amendment of section 60—Appeals

New subsection (1) provides that there is no right of appeal in relation to an application for a production lease or a corresponding licence if the application is made in response to a public call for applications and the application was not an application determined by the Minister under the Act to be a preferred application.

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

New section 60A enables the Minister to gazette guidelines to be followed by ATAB in the assessment of applications under the Act, and requires the Minister to publish the guidelines on the internet.

42—Amendment of section 65—Membership of AAC

The amendment expands the Aquaculture Advisory Council by 1 member, being a person engaged in the administration of the Harbors and Navigation Act 1993 nominated by the Minister responsible for the administration of that Act.

43—Amendment of section 73—Membership of ATAB

amendment requires at least 1 of the members of ATAB to have knowledge of or relevant to the farming of aquatic organisms.

44—Amendment of section 79—Aquaculture Fund

The name of the fund is altered and the purposes for which it may be applied expanded to include research or development and taking action to remove or recover aquaculture equipment or stock, or equipment used to markoff or indicate the boundaries of a marked-off area of a lease, in accordance with the Act.

45—Amendment of section 80—Public register

These amendments remove reference to the word 'details' as this word has led to unrealistic expectations of what may be included in a public register that can be inspected at a website. Subsection (2)(e) is altered as a consequence of dealing with requirements for environmental monitoring reports in the regulations rather than in licence conditions. Subsections (2a) and (2b) are added to deal with notation of an interest in a lease or licence on the public register of leases and licences. A person who holds an interest noted on the register is entitled to be informed if proceedings for an offence against the Act are commenced against the lease or licence holder or a notice of proposed suspension or cancellation is given to the lease or licence holder.

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

This amendment applies Part 8 Division 1 Subdivision 5 of the Fisheries Management Act 2007 in connection with the enforcement of the Act. This is a miscellaneous subdivision dealing with provisions relating to things seized and the offence of hindering an authorised person.

47—Insertion of Part 10A—Compliance with general environment duty and environment protection policies

New Part 10A allows the Minister to act as an administering agency under the Environment Protection Act for the administration of the general environmental duty and environment protection policies in relation to activities carried out or purportedly carried out under an aquaculture lease or licence or activities prescribed by regulation.

48—Insertion of section 82B—Death, bankruptcy etc of lessee or licensee new

New section 82B deals with the situations that occur when a lessee or licensee dies, becomes bankrupt or insolvent or is being wound up or is under administration, receivership or official management.

49—Insertion of section 89A—Confidentiality

New section 89A makes it an offence to disclose information about trade processes or financial information obtained in the administration of the Act.

50—Amendment of section 90—Evidentiary

A new evidentiary aid is included so that if it is proved that aquatic organisms were present in the area of a licence at a specified time or date it will be presumed, in the absence of proof to the contrary, that the aquatic organisms were being farmed for the purposes of trade or business or research at that time or date.

51—Amendment of section 91—Regulations

These amendments—

• provide express support for regulations providing for the division or amalgamation of lease areas and licence areas;

• increase the penalties and expiation fees that may be imposed by regulation to amounts considered appropriate to the nature of aquaculture businesses;

• recognise that annual fees are to be dealt with at the level of the Act;

• expressly contemplate regulations about storing, maintaining, repairing or cleaning farming structures in State waters or towing farming structures containing stock.

52—Repeal of section 92

Section 92 provided for review of the Act and is spent.

53—Repeal of Schedule

The Schedule included transitional provisions that are spent.

Schedule 1—Revocation, transitional and validation provisions

The transitional provisions ensure that the range of activities authorised by existing licences is not unduly expanded without the opportunity to impose appropriate conditions.

The validation provisions ensure that all leases and licences under the Act are valid despite any lack of power or regularity affecting the grant, transfer, conversion, renewal or variation of the leases and licences.

Because copies of all relevant delegations under section 61 of the Act have not been able to be located, the provisions validate past acts of employees of the Public Service that should have been undertaken as delegate of the Minister.

The Aquaculture Variation Regulations 2006 contain provisions about the division of lease areas and licence areas and the Aquaculture (Standard Lease Conditions) Policy 2005 contemplates the substitution of lease areas. Out of an abundance of caution an express source of power for both these matters is included in the Act by amendments in this measure. The validation provisions ensure that the regulations and policy are to be regarded as having been made with those sources of power in place.

Debate adjourned on motion of Hon. D.W. Ridgway.