

# Fisheries Management (Aquaculture) Regulation 2024

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New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2029

### Authorisation

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# Fisheries Management (Aquaculture) Regulation 2024



New South Wales

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# Fisheries Management (Aquaculture) Regulation 2024



New South Wales

## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Fisheries Management (Aquaculture) Regulation 2024*.

### 2 Commencement

This regulation commences on 1 September 2024.

**Note—**

This regulation replaces the *Fisheries Management (Aquaculture) Regulation 2017*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

### 3 Definitions

- (1) The dictionary in Schedule 4 defines words used in this regulation.
- (2) In this regulation, a reference to a permit of a particular class is a reference to a permit of the class referred to in section 5(1).

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

### 4 Activities that are not aquaculture—the Act, s 142

For the Act, section 142, definition of **aquaculture**, paragraph (e), the storing or penning of fish in waters before sale by a commercial fisher is prescribed.

## Part 2 Aquaculture permits

### Division 1 General

#### 5 Classes of aquaculture permits—the Act, s 144(2)

- (1) For the Act, section 144(2), the following classes of aquaculture permits are

prescribed—

- (a) a **class A permit** authorising extensive aquaculture on public water land or land the subject of an aquaculture lease,
- (b) a **class B permit** authorising intensive aquaculture on public water land or land the subject of an aquaculture lease,
- (c) a **class C permit** authorising extensive aquaculture to be undertaken otherwise than on public water land or land the subject of an aquaculture lease,
- (d) a **class D permit** authorising intensive aquaculture to be undertaken otherwise than on public water land or land the subject of an aquaculture lease,
- (e) a **class E permit** authorising extensive freshwater aquaculture to be undertaken at 2 or more privately owned locations otherwise than on public water land or land the subject of an aquaculture lease,
- (f) a **class F permit** authorising a person to operate a fish pond, tank or other structure with a view to charging members of the public for the right to fish in the pond, tank or structure,
- (g) a **class H permit** authorising the operation of a fish hatchery or a marine vegetation hatchery.

(2) In this section—

**fish hatchery** means a place where the progeny of fish are produced for sale.

**marine vegetation hatchery** means a place where the progeny of marine vegetation are produced for sale.

## **6 Persons carrying out exempt activities do not require aquaculture permits—the Act, s 144(4)**

(1) For the Act, section 144(4), a person who carries out an exempt activity is excluded from the operation of the Act, section 144 in relation to the exempt activity.

(2) In this section—

**exempt activity** means the following—

- (a) the cultivation of ornamental fish by a person in a pond, tank or other structure if the total capacity of all structures in which the person cultivates the ornamental fish is less than 10,000L,
- (b) the keeping of fish by a person in a confined area for the purposes of selling the fish alive if the person does not cultivate the fish.

**ornamental fish** means fish cultivated for exhibition or sale in the aquarium industry

but does not include—

- (a) fish cultivated for human consumption, or
- (b) fish cultivated for stocking—
  - (i) a farm dam, within the meaning of the Act, section 198A, or
  - (ii) public water land.

## **Division 2 Applications for, issue of, and variation of permits**

### **7 Fee payable when applying for aquaculture permit—the Act, s 145(2)(c)**

- (1) For the Act, section 145(2)(c), an application for an aquaculture permit must be accompanied by the fee specified in Schedule 3, Part 2, item 1 for the application.
- (2) If a person makes 2 or more applications for an aquaculture permit at the same time, the total fee required to be paid for the applications is the sum of—
  - (a) the highest application fee that applies to 1 of the applications, and
  - (b) the amount specified in Schedule 3, Part 2, item 2 for each additional application.

### **8 Additional grounds for refusing aquaculture permit—the Act, s 146(2)(h)**

For the Act, section 146(2)(h), the Minister may refuse to issue an aquaculture permit if—

- (a) the applicant has been convicted or found guilty of an offence under the Act or regulations made under the Act, or
- (b) the Minister believes, on reasonable grounds, there is a risk that, if the activity to which the permit relates were authorised—
  - (i) fish, whether cultivated or naturally occurring, could become infected with a particular disease, or
  - (ii) the environment of the area where it is proposed to carry on the activity would be damaged, or
- (c) the applicant has previously had an aquaculture permit suspended or cancelled.

### **9 Fee for requesting variation of aquaculture permit—the Act, s 148(1A)**

- (1) For the Act, section 148(1A), a request by the holder of an aquaculture permit to vary the permit under the Act, section 148(1) must be accompanied by the fee specified in Schedule 3, Part 2, item 3 for the request.
- (2) If the permit holder requests to vary 2 or more permits at the same time, the total fee required to be paid for the requests is—

- (a) if each request is to make the same variation to each permit and the permits are of the same class—a single fee that is the fee for a request to vary a single permit of the class, or
- (b) if each request is to make the same variation to each permit and the permits are of different classes—a single fee that is the highest of the fees that would have applied if the requests had been made separately, or
- (c) otherwise—the sum of—
  - (i) the highest fee that would have applied if the requests had been made separately, and
  - (ii) the amount specified in Schedule 3, Part 2, item 4 for each other request.

### **Division 3 Permit conditions for movement of aquaculture species and material between aquaculture production areas—the Act, s 152(1)(a)**

**Note—**

The [Biosecurity Regulation 2017](#), Part 3, Divisions 2 and 3 impose additional obligations on aquaculture permit holders who deal with oysters.

#### **10 Definitions for division**

In this division—

***aquaculture production area*** means the following—

- (a) an estuary of the following bodies of water—
  - (i) Bega River,
  - (ii) Bellinger River and Kalang River,
  - (iii) Bermagui River,
  - (iv) Botany Bay and Georges River,
  - (v) Brisbane Water,
  - (vi) Brunswick River,
  - (vii) Burrill Lake,
  - (viii) Camden Haven River,
  - (ix) Clarence River,
  - (x) Clyde River,

- (xi) Conjola Lake,
- (xii) Crookhaven River and Shoalhaven River,
- (xiii) Hastings River,
- (xiv) Hawkesbury River, including Patonga Creek,
- (xv) Hunter River,
- (xvi) Macleay River,
- (xvii) Manning River,
- (xviii) Merimbula Lake,
- (xix) Moruya River,
- (xx) Nambucca River,
- (xxi) Nelson Lagoon,
- (xxii) Pambula River,
- (xxiii) Richmond River,
- (xxiv) Sandon River,
- (xxv) Tomaga River,
- (xxvi) Towamba River (Kiah),
- (xxvii) Tuross Lake,
- (xxviii) Tweed River,
- (xxix) Wagonga Inlet,
- (xxx) Wallaga Lake,
- (xxxi) Wallis Lake,
- (xxxii) Wapengo Lagoon,
- (xxxiii) Wonboyn River,
- (xxxiv) Wooli Wooli River.

**Note—**

If more than 1 body of water is listed in an entry above, the estuaries of the bodies of water are treated as a single aquaculture production area.

- (b) the tidal waters of Port Stephens, including the bays, inlets and tributaries upstream of a line drawn from the southernmost point of Yacaaba Head to the northernmost point of Tomaree Head, including the estuaries of the following—
  - (i) Karuah River,
  - (ii) Myall River,
  - (iii) Tilligerry Creek,
- (c) the following marine waters—
  - (i) marine waters of Jervis Bay,
  - (ii) marine waters of Twofold Bay,
  - (iii) other marine waters over which an aquaculture lease has been granted,
- (d) land-based hatcheries,
- (e) land-based nurseries.

**aquaculture shipment log book** means a log book, in the form approved by the Secretary under section 13, kept by the holder of an aquaculture permit for the purposes of complying with the record-keeping requirements under the Act, including record-keeping requirements under conditions imposed by this division.

**aquaculture species** includes molluscs and marine vegetation.

**catching and cultivation material** means equipment and materials placed in an aquaculture production area and used for cultivating aquaculture species or on which aquaculture species larvae from natural spawning events may settle, including the following—

- (a) baskets,
- (b) cylinders,
- (c) ropes,
- (d) slats,
- (e) sticks,
- (f) trays.

**estuary** has the same meaning as in the [Coastal Management Act 2016](#).

**land-based hatchery**—

- (a) means a place—

- (i) where the progeny of aquaculture species are produced for sale, and
  - (ii) that is immediately adjacent to an estuary or marine waters, and
  - (iii) from or into which water from the adjacent estuary or marine waters is pumped, and
- (b) is taken to be part of the same aquaculture production area as the immediately adjacent estuary or marine waters.

**land-based nursery—**

- (a) means a place—
- (i) where the progeny of aquaculture species are held for the purpose of moving the progeny into an estuary or marine waters, and
  - (ii) that is immediately adjacent to an estuary or marine waters, and
  - (iii) from or into which water from the adjacent estuary or marine waters is pumped, and
- (b) is taken to be part of the same aquaculture production area as the immediately adjacent estuary or marine waters.

**mollusc—**

- (a) includes the following—
- (i) bivalve molluscs,  
**Examples of bivalve molluscs—**  
oysters, mussels, pipis and cockles
  - (ii) gastropod molluscs, and  
**Example of a gastropod mollusc—**  
abalone
- (b) does not include cephalopod molluscs.

**Example of a cephalopod mollusc—**

octopus

**oyster** includes the Akoya Pearl Oyster, *Pinctada imbricata*.

**11 Condition to give notice and keep records before moving aquaculture species or catching and cultivation material from aquaculture production areas—the Act, s 152(1)(a)**

- (1) It is a condition of an aquaculture permit that authorises aquaculture in relation to an aquaculture species that, if the permit holder intends to move any aquaculture

species or catching and cultivation material from an aquaculture production area to another aquaculture production area, the permit holder must, before moving the species or material—

- (a) notify the Department, in accordance with this section, of the permit holder's intention to move the species or material from the aquaculture production area to the other aquaculture production area, and
- (b) record the following details in the permit holder's aquaculture shipment log book—
  - (i) the aquaculture species or catching and cultivation material to be moved,
  - (ii) the aquaculture production area from which the species or material will be moved,
  - (iii) the aquaculture production area to which the species or material will be moved.

(2) The notice under subsection (1)(a) must—

- (a) be given not less than 2 hours and not more than 2 weeks before moving the aquaculture species or catching or cultivation material, and
- (b) be given in 1 of the following ways—
  - (i) in person,
  - (ii) by post,
  - (iii) electronically, and
- (c) include the following details—
  - (i) the name of the permit holder,
  - (ii) the permit number,
  - (iii) if applicable—the aquaculture species to be moved,
  - (iv) if applicable—the type of catching and cultivation material to be moved,
  - (v) the estimated date and time of the movement of the aquaculture species or catching and cultivation material,
  - (vi) the aquaculture production area from which the aquaculture species or catching and cultivation material is intended to be moved,
  - (vii) the aquaculture production area to which the aquaculture species or catching and cultivation material is intended to be moved.

- (3) It is a condition of the aquaculture permit for the aquaculture production area to which aquaculture species or catching and cultivation material is moved that the permit holder must keep a copy of the record referred to in subsection (1)(b) for at least 2 years.
- (4) The requirements to give notice and make and keep records under the conditions imposed by this section do not apply to—
  - (a) the movement of aquaculture species or catching and cultivation material within an aquaculture production area, or
  - (b) the movement of packaged, purified or market grade aquaculture species from an aquaculture production area if the aquaculture species are consigned directly to a market, wholesaler or retailer.

**12 Condition to give notice and keep records before moving aquaculture species or catching and cultivation material from interstate into New South Wales—the Act, s 152(1)(a)**

- (1) It is a condition of an aquaculture permit that authorises aquaculture in relation to an aquaculture species that, if the permit holder intends to move aquaculture species or catching and cultivation material into an aquaculture production area in NSW from another State or a territory, the permit holder must, before the species or material leaves the other State or territory—
  - (a) notify the Department, in accordance with this section, of the permit holder's intention to move species or material into the aquaculture production area in New South Wales from the other State or territory, and
  - (b) record the following details in the permit holder's aquaculture shipment log book—
    - (i) the aquaculture species or catching and cultivation material moved,
    - (ii) the other State or territory from which the species or material is moved,
    - (iii) the aquaculture production area to which the species or material is moved.
- (2) The notice under subsection (1)(a) must—
  - (a) be given not less than 48 hours and not more than 2 weeks before moving the aquaculture species or catching or cultivation material, and
  - (b) be given in 1 of the following ways—
    - (i) in person,
    - (ii) by post,

- (iii) electronically, and
- (c) include the following details—
  - (i) the name of the permit holder who is the recipient of the shipment in New South Wales,
  - (ii) the permit number of the recipient permit holder,
  - (iii) if applicable—the aquaculture species to be moved,
  - (iv) if applicable—the type of catching and cultivation material to be moved,
  - (v) the estimated date and time of the movement of the species or materials,
  - (vi) the location in the other State or territory from which the aquaculture species or catching and cultivation material is intended to be moved,
  - (vii) the aquaculture production area into which the aquaculture species or catching and cultivation material is intended to be moved.
- (3) It is a condition of the aquaculture permit for the aquaculture production area into which aquaculture species or catching and cultivation material is moved that the permit holder must keep a copy of the record referred to in subsection (1)(b) for at least 2 years.
- (4) The requirements to give notice and make and keep records under the conditions imposed by this section do not apply to the movement of packaged, purified or market grade aquaculture species from another State or a Territory if the aquaculture species are consigned directly to a market, wholesaler or retailer.

### **13 Aquaculture shipment log books**

The Secretary may approve the form, including an electronic form, in which a permit holder must keep records for the purposes of the conditions imposed by this division.

## **Division 4 Annual contributions by permit holders towards costs of administration—the Act s 156(1)(a)**

### **14 Permit holders to pay contributions towards costs of administration—the Act, s 156(1)(a)**

- (1) A permit holder of an aquaculture permit must, for each annual contribution period during which the permit holder holds an aquaculture permit, pay the Minister an annual contribution towards the costs of administration of the Act, Part 6 that are directly attributable to industry.
- (2) The amount of the annual contribution for the contribution period is the amount specified in Schedule 3, Part 2, item 5, regardless of the number of aquaculture

permits held by the permit holder during the contribution period.

- (3) The permit holder may pay the annual contribution—
  - (a) in a single payment of the total amount of the contribution, or
  - (b) by quarterly instalments.
- (4) The Minister must give each permit holder a written notice (an **annual contributions notice**) for each annual contribution period that the permit holder is required to pay an annual contribution under subsection (1) that includes—
  - (a) if the permit holder elects to pay in a single payment—
    - (i) the amount to be paid, and
    - (ii) the date, being at least 30 days after the date of giving the notice, by which the amount is payable, or
  - (b) if the permit holder elects to pay by quarterly instalments—
    - (i) the amount of, or the way of calculating the amount of, each instalment, and
    - (ii) the dates, the first of which must be at least 30 days after the date of giving the notice, by which the instalments are payable.
- (5) If the permit holder fails to pay an amount or instalment in accordance with an annual contributions notice, the Minister may treat the total unpaid balance of the annual contribution as an overdue amount of annual contribution due and payable by the permit holder.
- (6) In this section—

**annual contribution period** means the period of 12 months beginning on 1 July in each year.

#### **15 Costs of administration directly attributable to industry—the Act, s 156(1)(a)**

For the Act, section 156(1)(a), the following costs of administration of the Act, Part 6 are directly attributable to industry—

- (a) the cost of developing, implementing and ensuring compliance with strategies, policies and regulations under the Act, Part 6 for the orderly management and development of sustainable and viable aquaculture industries,
- (b) the cost of providing administrative services in connection with aquaculture permit and aquaculture lease transactions, including, in particular, the costs associated with the following—
  - (i) collecting fees and contributions,

- (ii) assessing permits,
- (iii) granting leases.

## **Division 5 Annual contributions by permit holders towards costs of research—the Act, s 156(1)(c) and (d)**

### **16 Permit holders to pay contributions towards costs of research—the Act, s 156(1)(c) and (d)**

- (1) A permit holder must, for each annual contribution period during which the permit holder holds an aquaculture permit, pay the Minister an annual contribution towards the following costs—
  - (a) for the Act, section 156(1)(c)—the cost of carrying out research into aquaculture that will benefit the NSW aquaculture industry, including research by the Fisheries Research and Development Corporation established under the *Primary Industries Research and Development Act 1989* of the Commonwealth,
  - (b) for the Act, section 156(1)(d)—the costs incurred to maintain committees appointed by the Minister under the Act, section 157(4) in relation to the aquaculture research trust account.
- (2) The amount of the annual contribution for the contribution period is the amount specified in Schedule 3, Part 2, item 6.
- (3) If a person holds 2 or more aquaculture permits, the annual contribution for the person is the highest annual contribution that applies to any 1 of the person's permits.
- (4) The permit holder may pay the annual contribution—
  - (a) in a single payment of the total amount of the contribution, by a date determined by the Minister and notified to the permit holder in writing, or
  - (b) by quarterly instalments.
- (5) The Minister must give each permit holder a written notice (an **annual contributions notice**) for each annual contribution period that the permit holder is required to pay an annual contribution under subsection (1) that includes—
  - (a) if the permit holder elects to pay in a single payment—
    - (i) the amount to be paid, and
    - (ii) the date, being at least 30 days after the date of giving the notice, by which the amount is payable, or
  - (b) if the permit holder elects to pay by quarterly instalments—

- (i) the amount of, or the way of calculating the amount of, each instalment, and
  - (ii) the dates, the first of which must be at least 30 days after the date of giving the notice, by which the instalments are payable.
- (6) If the permit holder fails to pay an instalment in accordance with an annual contributions notice, the Minister may treat the total unpaid balance of the annual contribution as an overdue amount of annual contribution due and payable by the permit holder.
- (7) If the total area to which an aquaculture permit relates is less than 1ha, the contribution payable under this section is the contribution payable for 1ha.
- (8) In this section—
- annual contribution period** means the period of 12 months beginning on 1 July in each year.

**17 Establishment of aquaculture research trust account—the Act, s 157(10)(a)**

- (1) The Minister must establish and operate a separate research trust account (the **aquaculture research trust account**) under the Act, section 157(2) for the purposes for which contributions are made under section 16(1).
- (2) The research trust account must be established at an authorised deposit-taking institution located in New South Wales.
- (3) The name of the research trust account must include the words “Aquaculture Research Trust Account”.
- (4) Money held in the aquaculture research trust account—
  - (a) is vested in the Minister, and
  - (b) must be applied in accordance with this division.
- (5) The Minister may invest money held in the aquaculture research trust account that is not immediately required for the purposes specified in section 16(1)—
  - (a) in accordance with the [Trustee Act 1925](#), Part 2, Division 2, as if the money were trust funds, or
  - (b) on deposit with the Treasurer.
- (6) Subject to this division, the Minister may determine the way in which the aquaculture research trust account is operated.

**18 Payments into aquaculture research trust account—the Act, s 157(3)**

- (1) The following must be paid into the aquaculture research trust account—

- (a) all contributions paid under this division by permit holders,
- (b) all contributions recovered under the Act, section 288C from permit holders,
- (c) the interest or other income accruing from investing the money in the aquaculture research trust account.

(2) The Minister must ensure all money referred to in subsection (1) is paid into the aquaculture research trust account.

**19 Payments out of the aquaculture research trust account—the Act, section 157(3)**

Amounts may be paid out of the aquaculture research trust account only for the following purposes—

- (a) meeting costs incurred in carrying out the purposes for which contributions are made under section 16(1) for which the Aquaculture Research Trust Account was established, and
- (b) meeting expenses incurred by the Minister in administering the aquaculture research trust account.

**20 Aquaculture research trust fund committee—the Act, s 157(10)(b)**

Schedule 1 applies to a committee appointed by the Minister under the Act, section 157(4) in relation to the aquaculture research trust account.

**Division 6 Commercial farm development plans**

**21 Commercial farm development plans**

- (1) For the Act, section 191(l), a commercial farm development plan must—
  - (a) be in a form approved by the Minister, and
  - (b) not be inconsistent with the relevant development plan, and
  - (c) include—
    - (i) a biosecurity risk management plan, and
    - (ii) for a commercial farm development plan that relates to a class A or class B permit and for which a lease maintenance development plan is required under the relevant development plan—a lease maintenance development plan.
- (2) The Minister may, at any time—
  - (a) review a commercial farm development plan, including for the purpose of confirming the plan is consistent with the relevant development plan, and

(b) require the permit holder to prepare a new or updated commercial farm development plan.

(3) For the Act, section 152(2)(f), it is a condition of an aquaculture permit that the permit holder must prepare a new or updated commercial farm development plan if required by the Minister.

(4) For the Act, section 152(2)(f), it is a condition of an aquaculture permit that the permit holder must prepare a new or updated commercial farm development plan if—

(a) any of the following circumstances occur—

(i) the permit holder requests a variation of the permit under the Act, section 148 and the variation results in—

(A) an increase in the area within which the permit holder is authorised to undertake aquaculture, or

(B) a change in the type of aquaculture that may be undertaken within the area, including a change in the species of fish or marine vegetation that may be cultivated or kept,

(ii) the permit holder is affected by the granting of an additional aquaculture lease under the Act, section 163,

(iii) the permit holder is affected by the subletting of a lease under the Act, section 172,

(iv) the permit holder is affected by the transfer of a lease under the Act, section 173, and

(b) after reviewing the plan in the context of the circumstances, the Minister is satisfied that the plan is insufficient or not appropriate.

(5) A permit holder required to update a commercial farm development plan under subsection (4) must pay the fee specified in Schedule 3, Part 2, item 7.

(6) In this section—

**biosecurity risk management plan** means a plan detailing how biosecurity risks will be managed under the permit.

**lease maintenance development plan** means a plan detailing how the lease will be maintained.

**relevant development plan**, in relation to a commercial farm development plan, means the development plan determined by the Minister under the Act, section 143 that applies in relation to the type of aquaculture carried out under the permit to which the commercial farm development plan relates.

## **Part 3 Condition of class A and class B permits requiring holder to provide security—the Act, s 152(1)(a) and (5)**

### **Division 1 Preliminary**

#### **22 Definitions for part**

In this part—

**aquaculture lease annual default arrangement payment security trust account**—see section 34(1).

**aquaculture lease cash deposit security trust account**—see section 33(1).

**authorised guarantor** means—

- (a) an authorised deposit-taking institution, or
- (b) a corporation authorised to carry on an insurance business in Australia.

**bank guarantee financial arrangement** means a guarantee issued by an authorised guarantor that indemnifies the Crown to the extent of the required amount to secure the performance of a permit holder's compliance obligations.

**cash deposit financial arrangement** means an arrangement under which a permit holder deposits the required amount with the Minister to guarantee the performance of the permit holder's compliance obligations.

**compliance obligations**, in relation to a permit holder or former permit holder, means—

- (a) the permit holder or former permit holder's obligations under the condition imposed on the permit under the Act, section 162, and
- (b) if the permit holder or former permit holder is or was the lessee of the leased area to which the permit applies—
  - (i) the permit holder's or former permit holder's compliance with the Act, section 170, and
  - (ii) the permit holder's or former permit holder's compliance with the Act, section 171, and
- (c) if the permit holder or former permit holder is not or was not the lessee of the leased area to which the permit applies—
  - (i) the lessee's compliance with the Act, section 170, and
  - (ii) the lessee's compliance with the Act, section 171.

**default financial arrangement** means the arrangement under which a class A permit

holder is required to pay the annual security payments in accordance with Division 4 to guarantee the performance of the permit holder's compliance obligations.

**elective financial arrangement** means any of the following kinds of financial arrangements—

- (a) a bank guarantee financial arrangement,
- (b) a cash deposit financial arrangement,
- (c) a combination of the financial arrangements under paragraph (a) and paragraph (b) collectively under which the required amount to guarantee the performance of the permit holder's compliance obligations is guaranteed or deposited.

**recoverable costs**, in relation to a permit, means any of the following relating to the leased area to which the permit applies—

- (a) costs and expenses specified in the Act, section 162(6), in relation to work undertaken under the Act, section 162(4), less the proceeds of any sale applied under the Act, section 162(6),
- (b) costs and expenses specified in the Act, section 170(5), in relation to work undertaken under the Act, section 170(4), less the proceeds of any sale applied under the Act, section 170(5),
- (c) costs and expenses specified in the Act, section 171(5), in relation to work undertaken under the Act, section 171(4), less the proceeds of any sale applied under the Act, section 171(5).

**required amount**, for an elective financial arrangement, means the amount specified in Schedule 3, Part 2, item 8.

**security condition**, of a permit, means the condition imposed on the permit under section 23(1) or (2).

## **Division 2 Condition of class A and class B permits for permit holder to guarantee compliance obligations—the Act, s 152(1)(a) and (5)**

### **23 Condition of class A and class B permits requiring holder to guarantee compliance obligations—the Act, s 152(1)(a) and (5)**

- (1) It is a condition of a class A permit that—
  - (a) if the permit holder is the holder of a class 1 lease—the permit holder must guarantee the performance of the permit holder's compliance obligations either—
    - (i) under the default financial arrangement in accordance with this part, or
    - (ii) under an elective financial arrangement entered into and maintained by the

permit holder in accordance with this part, or

- (b) otherwise—the permit holder must guarantee the performance of the permit holder’s compliance obligations by entering into and maintaining an elective financial arrangement in accordance with this part.
- (2) It is a condition of a class B permit that the permit holder must guarantee the performance of the permit holder’s compliance obligations under an elective financial arrangement entered into and maintained in accordance with this part.
- (3) A class A permit holder to whom subsection (1)(a) applies must, within 60 days after the permit is granted, give the Minister written notice (an ***election notice***) confirming—
- (a) the kind of financial arrangement under which the permit holder has chosen to guarantee the permit holder’s compliance obligations to satisfy the security condition of the permit, and
  - (b) if the permit holder has chosen to enter into an elective financial arrangement to satisfy the security condition of the permit—that the permit holder has entered into the elective financial arrangement.
- (4) However, a class A permit holder to whom subsection (1)(a) applies is taken to have chosen to guarantee the permit holder’s compliance obligations under the default financial arrangement if the permit holder—
- (a) fails to give the Minister an election notice, or
  - (b) gives the Minister an election notice that confirms the permit holder has chosen to enter into an elective financial arrangement but does not confirm that the permit holder has entered into the arrangement in accordance with subsection (3)(b).

#### **24 Permit holder may change financial arrangements—the Act, s 152(1)(a) and (5)**

- (1) A permit holder who enters into an elective financial arrangement for the purposes of satisfying the security condition of the permit may, at any time with the approval of the Minister—
- (a) for a class A or class B permit holder—change the kind of elective financial arrangement to another kind of elective financial arrangement, or
  - (b) for a class A permit holder of a class 1 lease—end the elective financial arrangement and guarantee the permit holder’s compliance obligations under the default financial arrangement.
- (2) A relevant class A permit holder may, at any time, choose to opt out of the default financial arrangement and enter into an elective financial arrangement for the purposes of satisfying the security condition of the permit.

(3) In this section—

**relevant class A permit holder** means a class A permit holder who—

- (a) chooses, under section 23(3), to guarantee the permit holder's compliance obligations under the default financial arrangement, or
- (b) is taken to have chosen, under section 23(4), to guarantee the permit holder's compliance obligations under the default financial arrangement.

## 25 Period for which financial arrangements must be maintained

A permit holder must maintain a financial arrangement required under this part until—

- (a) the permit is not longer in force under the Act, section 151(1), and
- (b) the Minister has given the person written notice that the Minister is satisfied the person has satisfied the person's compliance obligations.

## Division 3 Forfeiture and refunds of amounts under elective financial arrangements—the Act, s 152(5)

### 26 Liability to forfeit secured amounts

- (1) This section applies if the Minister or an agent of the Minister incurs any recoverable costs in relation to a permit for which an elective financial arrangement is in effect for the purposes of the security condition of the permit (the **relevant permit**).
- (2) The Minister may give the person who holds or held the relevant permit written notice (a **recovery notice**) requiring the person to pay the amount of the recoverable costs (the **recoverable amount**) within a period specified in the recovery notice, being a period of not less than 14 days from the date on which the recovery notice is given to the person.
- (3) If the person fails to pay the recoverable amount in accordance with the recovery notice, the Minister may forfeit to the Crown the recoverable amount from any amount (a **security amount**) deposited or secured under the financial arrangement relating to the relevant permit entered into by the person under this part.
- (4) If the whole or part of the recoverable amount is to be forfeited under an elective financial arrangement that is, or includes, a bank guarantee financial arrangement—
  - (a) the Minister must give the authorised guarantor under the financial arrangement written notice of the amount to be forfeited under the bank guarantee financial arrangement (a **forfeiture notice**), and
  - (b) the authorised guarantor must pay the amount to the Minister within 7 days after receiving the forfeiture notice.

- (5) The recoverable amount is recoverable by proceedings brought in a court of competent jurisdiction as a debt due to the Crown.
- (6) To avoid doubt, an amount may be forfeited under this section even if the person who entered into the financial arrangement no longer holds the permit to which the financial arrangement relates.

## **27 Entitlement to refunds under cash deposit financial arrangements**

- (1) This section applies if, at the time a permit ceases to be in force under the Act, section 151(1)—
  - (a) a cash deposit financial arrangement is in effect for the purposes of the security condition of the permit, and
  - (b) the Minister is satisfied the permit holder has no remaining compliance obligations.
- (2) The permit holder is entitled to the following, less any amount the Minister certifies to be attributable to administration costs—
  - (a) a refund of the deposited amount, less any amount forfeited under section 26,
  - (b) payment of any interest accrued on the investment of the deposit.

## **Division 4 Default financial arrangement—the Act, s 152(1)(a) and (5)**

### **Subdivision 1 Preliminary**

#### **28 Application of division**

This division—

- (a) applies to a permit holder if the default financial arrangement is in effect for the purposes of the security condition of the permit, and
- (b) sets out the terms of the default financial arrangement.

#### **29 Definitions for division**

In this division—

***annual default arrangement payment*** means the annual payment payable under section 30(1).

***annual default arrangement payment period*** means a 12-month period beginning on 1 July in each year.

### **Subdivision 2 Annual default arrangement payments payable under**

## **default financial arrangement—the Act, s 152(1)(a) and(5)**

### **30 Annual default arrangement payments**

- (1) A permit holder must, for each annual default arrangement payment period during which the default financial arrangement is in effect for the purposes of the security condition of the permit, pay the Minister—
  - (a) if the Secretary is satisfied that all leases held under the permit meet the requirements for materials and construction method use on oyster aquaculture areas specified in the Aquaculture Strategy—the annual payment specified in Schedule 3, Part 2, item 9(a), or
  - (b) otherwise—the annual payment specified in Schedule 3, Part 2, item 9(b).
- (2) If the total area of the leased area or areas to which the permit relates is less than 1ha, the annual default arrangement payment payable is the amount payable for 1ha.
- (3) The permit holder may pay the annual default arrangement payment—
  - (a) in a single payment of the total amount of the annual default arrangement payment, or
  - (b) by quarterly instalments.
- (4) The Minister must give each permit holder a written notice (an **annual default arrangement payment notice**) that includes the following information—
  - (a) if the permit holder elects to pay in a single payment—
    - (i) the amount to be paid, and
    - (ii) the date, being at least 30 days after the date of giving the notice, by which the amount is payable, or
  - (b) if the permit holder elects to pay by quarterly instalments—
    - (i) the amount of, or the way of calculating the amount of, each instalment, and
    - (ii) the dates, the first of which must be at least 30 days after the date of giving the notice, by which the instalments are payable.
- (5) If a permit holder fails to pay an amount or instalment in accordance with an annual default arrangement payment notice, the Minister may treat the total unpaid balance of the annual default arrangement payment as an overdue amount of annual default arrangement payment due and payable by the permit holder.
- (6) An election by the permit holder to end the default arrangement and enter into an elective financial arrangement under section 24(2) does not affect the liability of the

permit holder to pay the class A annual contribution for—

- (a) the annual default arrangement payment period in which the election is made, or
- (b) any previous annual default arrangement payment period for which the default financial arrangement was in effect.

(7) In this section—

**Aquaculture Strategy** means the *NSW Oyster Industry Sustainable Aquaculture Strategy*, published by the Department and as in force from time to time.

**31 Additional annual default arrangement payment payable by certain class A permit holders—the Act, s 152(1)(a) and (5)**

- (1) This section applies to a class A permit holder of a class 1 lease if the permit holder ends an elective financial arrangement and enters into the default financial arrangement under section 24(1)(b).
- (2) The permit holder must pay the Minister a contribution (an **additional annual default arrangement payment**) for each previous class A annual default arrangement payment period in which the permit was in force, even if the permit was in force for only part of the previous annual contribution period.
- (3) The additional annual default arrangement payment is payable in addition to the annual default arrangement payments under section 30.
- (4) The amount of the additional annual default arrangement payment is the total of the amounts that would have been payable by the permit holder as annual default arrangement payments under section 30 if the default financial arrangement had been in effect for the purposes of the security condition for the permit for each of the previous annual default arrangement payment periods.
- (5) The permit holder must pay the additional contribution not more than 30 days after the date the permit holder enters into the default financial arrangement under section 24(1)(b).
- (6) If a permit holder fails to pay all or part of the additional class A contribution in accordance with subsection (5), the Minister may treat the total unpaid balance of the additional annual default arrangement payment as an overdue amount of additional annual default arrangement payment due and payable by the permit holder.

(7) In this section—

**previous annual default arrangement payment period** means a 12-month period commencing on 1 July in a year before the permit holder entered into the default financial arrangement, but excluding any period before 1 July 2001.

### **Subdivision 3 Enforcement of compliance obligations under default financial arrangement—the Act, s 152(1)(a) and (5)**

#### **32 Minister may enforce compliance obligations under default financial arrangements**

- (1) This section applies if—
  - (a) the default financial arrangement is in effect for the purposes of the security condition of a permit, and
  - (b) the Minister becomes aware the permit holder has not met the permit holder's compliance obligations.
- (2) The Minister may, by written notice served on the permit holder (a **performance notice**), require the permit holder to perform the compliance obligations.
- (3) The performance notice must state the period (the **compliance period**), of not less than 14 days from the day the notice is served on the permit holder, within which the permit holder must perform the compliance obligations.
- (4) The Minister may withdraw from the aquaculture lease annual default arrangement payment security trust account an amount equal to the recoverable costs relating to the permit holder's failure to perform the compliance obligation if—
  - (a) the permit holder fails to perform the obligation within the compliance period, and
  - (b) the Minister certifies in writing that all reasonably practicable steps have been taken to recover the recoverable costs from the permit holder.
- (5) Subsection (4) applies even if—
  - (a) any proceedings brought under the Act to recover the recoverable costs as a debt have been unsuccessful, and
  - (b) the person who failed to perform the compliance obligation is no longer a permit holder.

### **Division 5 Trust accounts for cash deposits and annual contributions—the Act, s 152(5)**

#### **33 Aquaculture lease cash deposit security trust account—the Act, s 152(5)**

- (1) The Minister must establish and operate a separate trust account (the **aquaculture lease cash deposit security trust account**) for the purposes for which amounts are deposited under cash deposit financial arrangements under this part.
- (2) The aquaculture lease cash deposit security trust account must be established at an authorised deposit-taking institution located in New South Wales.

- (3) The name of the account must include the words “Aquaculture Lease Cash Deposit Security Trust Account”.
- (4) Subject to this division, the Minister may determine the way in which the account is operated.
- (5) The following amounts must be paid into the account—
  - (a) all amounts deposited with the Minister by permit holders under a cash deposit financial arrangement,
  - (b) the interest or other income accruing from investing the money in the account.
- (6) The Minister must ensure all amounts referred to in subsection (5)(a) and (b) are paid to the credit of the aquaculture lease cash deposit security trust account.
- (7) The money held in the aquaculture lease cash deposit security trust account—
  - (a) is vested in the Minister as trustee, and
  - (b) must be applied in accordance with this division.
- (8) Amounts may be paid out of the account only for the purposes authorised under this part.
- (9) The Minister may invest money held in the account—
  - (a) in accordance with the [Trustee Act 1925](#), Part 2, Division 2, as if the money were trust funds, or
  - (b) on deposit with the Treasurer.

**34 Aquaculture lease annual default arrangement payment security trust account—the Act, s 152(5)**

- (1) The Minister must establish and operate a separate trust account (the ***aquaculture lease annual default arrangement payment security trust account***) for the purposes of the default financial arrangement under this part.
- (2) The account must be established at an authorised deposit-taking institution located in New South Wales.
- (3) The name of the account must include the words “Aquaculture Lease Annual Default Arrangement Payment Security Trust Account”.
- (4) Subject to this division, the Minister may determine the way in which the account is operated.
- (5) The following amounts must be paid into the account—

- (a) all annual default arrangement payments and additional default arrangement payments paid under this division by permit holders,
  - (b) all annual default arrangement payments and additional default arrangement payments recovered under the Act, section 288C from permit holders,
  - (c) the interest or other income accruing from investing the money in the account.
- (6) The Minister must ensure all amounts referred to in subsection (5)(a) and (b) are paid to the credit of the aquaculture lease annual default arrangement payment security trust account.
- (7) The money held in the account—
- (a) is vested in the Minister as trustee, and
  - (b) must be applied in accordance with this division.
- (8) Amounts may be paid out of the account only for the following purposes—
- (a) meeting the recoverable costs incurred by the Minister in carrying out a compliance obligation of a permit holder in relation to whom the default financial arrangement applies,
  - (b) meeting the expenses incurred by the Minister in administering the account.
- (9) The Minister may invest money held in the account—
- (a) in accordance with the *Trustee Act 1925*, Part 2, Division 2, as if the money were trust funds, or
  - (b) on deposit with the Treasurer.

### **35 Minister to monitor permit holder's compliance obligations**

For the purposes of minimising the amounts being withdrawn from the trust accounts established and operated under this division, the Minister must arrange for the lease areas to which each class A or class B permit relates to be inspected every 3 years to identify matters relating to the compliance obligations for the permit holders.

## **Part 4 Aquaculture leases—the Act, Part 6, Div 3**

### **Division 1 Preliminary**

#### **36 Definitions for part**

In this part—

**class 1 lease**—see section 37(1)(a).

**class 2 lease**—see section 37(1)(b).

**class 3 lease**—see section 37(1)(c).

**class 4 lease**—see section 37(1)(d).

**lease offer notice**—see section 43(1).

**online system**, for Division 9—see section 60.

**proposed lease notice**—see section 42(1).

**reserve premium**, in relation to a lease offered by auction—see section 43(2)(g)(iv).

**year**, for Division 6—see section 50.

## **Division 2 Classification of aquaculture leases—the Act, s 163**

### **37 Classes of aquaculture leases**

(1) The following classes of aquaculture leases may be granted under the Act, Part 6—

(a) a **class 1 lease** for a leased area if—

(i) extensive aquaculture is undertaken on the area and a majority of the area under cultivation is in water less than 6m deep, or

(ii) the leased area comprises or includes a bed from which oysters are dredged, whether or not the bed is less than 6m deep,

(b) a **class 2 lease** for a leased area if—

(i) extensive aquaculture is undertaken on the area and a majority of the area under cultivation is in water at least 6m deep, and

(ii) the area does not comprise or include a bed from which oysters are dredged,

(c) a **class 3 lease** for a leased area if intensive aquaculture is undertaken on the area,

(d) a **class 4 lease** for a leased area if fish ranching is undertaken on the area.

(2) The depths referred to in this section must be measured at the lowest astronomical tide.

(3) In this section—

**fish ranching** is the artificial stocking of an area with juvenile fish of a species that is able to roam freely and feed on naturally available food.

## **Division 3 Applications for aquaculture leases**

### **38 Applications for aquaculture leases—the Act, section 163(8)**

An application for an aquaculture lease must be—

- (a) made to the Minister, and
- (b) in the approved form, and
- (c) accompanied by the processing fee specified in Schedule 3, Part 2, item 10.

### **39 Grounds for refusing applications—the Act, section 163(8)**

The Minister may refuse an application for an aquaculture lease if—

- (a) for an applicant who is an individual—the applicant is disqualified under the Act, section 161 from holding an aquaculture permit, or
- (b) for an applicant that is a corporation—the applicant, or a director or another person involved in the management of the applicant, is disqualified under the Act, section 161 from holding an aquaculture permit, or
- (c) the applicant has outstanding rent, contributions or other amounts payable to the Minister for another aquaculture lease, or
- (d) the applicant has, in the Minister’s opinion, a poor record of managing 1 or more other leased areas, or
- (e) in the Minister’s opinion, it would not be in the public interest to grant the lease to the applicant.

### **40 Applicant’s obligations to mark proposed lease area—the Act, s 191(e)**

- (1) The Secretary may give directions to an applicant for an aquaculture lease about—
  - (a) marking out the boundaries of the area to which the application relates, and
  - (b) maintaining the marking out of the boundaries of the area.
- (2) The applicant must mark out the boundaries of the area, in accordance with the Secretary’s directions under subsection (1), within—
  - (a) 30 days after being given the directions, or
  - (b) a longer period allowed by the Secretary.

Maximum penalty—10 penalty units.

- (3) The Minister may refuse to consider an application for an aquaculture lease if the applicant—

- (a) has not marked out the boundaries of the area in accordance with the Secretary's directions, or
  - (b) has not maintained the markings in accordance with the Secretary's directions.
- (4) The applicant must remove the markings within—
- (a) 30 days after the application for the aquaculture lease is granted, refused or withdrawn, or
  - (b) a longer period allowed by the Secretary.
- Maximum penalty—10 penalty units.

**41 Minister's obligations when granting aquaculture lease—the Act, section 163(4) and (8)**

- (1) The Minister must give the proposed lessee the following documents—
- (a) a copy of the plan of the area,
  - (b) a draft lease document in accordance with Schedule 2, Form 1.
- (2) The Minister must not grant the aquaculture lease unless the proposed lessee lodges with the Minister the draft lease document signed by the proposed lessee within—
- (a) 60 days after being given the documents under subsection (1), or
  - (b) a further period allowed by the Minister.
- (3) As soon as reasonably practicable after granting the aquaculture lease, the Minister must—
- (a) give the lessee a statement specifying—
    - (i) the fees, rents or other amounts payable by the lessee in connection with the grant of the lease, and
    - (ii) the due date by which each of the fees, rents and amounts must be paid, and
  - (b) publish notice of the granting of the lease in the Gazette, including details of the lessee.
- (4) The lessee must pay in full the fees, rents and amounts referred to in subsection (3)(a)(i) by the due dates specified in the statement.

**Division 4 Aquaculture leases offered by auction, public tender or**

## **ballot—the Act, s 163(8)**

### **42 Public notice before offering aquaculture leases by auction, public tender or ballot**

- (1) If the Minister decides that an area should be offered for lease by auction, public tender or ballot, the Minister must publish a notice (a **proposed lease notice**)—
  - (a) in the Gazette, and
  - (b) on a publicly available website administered by the department.

#### **Note—**

Under the Act, section 163(6), the Minister may lease land by auction, public tender or ballot even if an application has been made for a lease of the land.

- (2) The proposed lease notice must include the following information—
  - (a) the area proposed to be offered for lease,
  - (b) the method by which it is proposed to offer the lease,
  - (c) any covenants or conditions to which the disposal of the lease, if offered, will be subject,
  - (d) the period (the **submission period**) within which persons may make written submissions to the Minister objecting to the leasing of the area.
- (3) The submission period must be a period of at least 30 days after the date the notice is published.
- (4) The Minister must send a copy of the proposed lease notice to each association representing holders of aquaculture permits that has notified the Minister of the association's interest in being notified of the area being offered for lease.
- (5) The Minister must consider any written submissions objecting to the leasing of the area made within the submission period.
- (6) This section does not apply if the area proposed to be offered for lease is the subject of a development plan.
- (7) In this section—

**development plan** has the same meaning as in the Act, section 143.

### **43 Notice of offer of aquaculture leases by auction, public tender or ballot**

- (1) If, after considering any written submissions under section 42(5), the Minister decides to offer the lease by auction, public tender or ballot, the Minister must publish a notice (a **lease offer notice**)—

- (a) in the Gazette, and
  - (b) on a publicly available website administered by the Department.
- (2) The lease offer notice must include the following information—
- (a) whether the area is offered for lease by auction, public tender or ballot,
  - (b) the persons, or class of persons, eligible to participate in the auction, public tender or ballot,
  - (c) a description sufficient to identify the area offered for lease,
  - (d) the term of the lease,
  - (e) the way in which details of proposed covenants and conditions may be obtained,
  - (f) the proposed annual rent under the lease,
  - (g) if the lease is offered by auction—
    - (i) the date, time and place of the auction, and
    - (ii) the date by which persons must apply to the Minister for approval as a registered bidder at the auction, and
    - (iii) the criteria for eligibility for, and how to apply for, approval as a registered bidder at the auction, and
    - (iv) the minimum premium that registered bidders may offer at the auction (the **reserve premium**),
  - (h) if the lease is offered by public tender—
    - (i) the closing date and time for submitting tenders, and
    - (ii) the place at which tenders must be submitted, and
    - (iii) the criteria for eligibility to participate in the tender, and
    - (iv) the minimum premium that tenderers may offer under a tender,
  - (i) if the lease is offered by ballot—
    - (i) the closing date and time for submitting ballots applications, and
    - (ii) the place at which ballot applications must be submitted, and
    - (iii) the criteria for eligibility to participate in the ballot, and
    - (iv) the premium the successful applicant will be required to pay,

- (j) any information that bidders, tenderers or applicants for the lease are required to provide.

#### **44 Approval of registered bidders for aquaculture leases offered by auction**

- (1) This section applies if the Minister decides to offer an aquaculture lease by auction.
- (2) A person may apply to the Minister to be approved as a registered bidder for the auction.
- (3) The application must be made in accordance with any requirements set out in the lease offer notice for the lease.
- (4) The Minister must, before the date of the auction, decide the application by—
  - (a) approving the person as a registered bidder for the auction, or
  - (b) refusing to approve the person as a registered bidder for the auction.
- (5) The Minister may refuse to approve a person under subsection (4)(b) if—
  - (a) the bidder does not meet the criteria for eligibility for approval as a registered bidder specified in the lease offer notice for the lease, or
  - (b) if the bidder is an individual—the bidder is disqualified from holding an aquaculture permit under the Act, section 161, or
  - (c) if the bidder is a corporation—the bidder, or a director or another person involved in the management of the bidder, is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (d) the bidder has outstanding rent, contributions or other amounts payable to the Minister for other aquaculture leases, or
  - (e) the bidder has, in the Minister’s opinion, a poor record of managing 1 or more leased areas, or
  - (f) in the Minister’s opinion, it would not be in the public interest to grant the lease to the bidder.

#### **45 Aquaculture leases offered by auction**

- (1) This section applies if an aquaculture lease is offered by auction.
- (2) A person who is approved as a registered bidder for the auction under section 44(4)(a) may participate in the auction in accordance with this division.
- (3) The bid of the registered bidder who offers the highest premium above the reserve premium for the lease (the **highest bidder**) must be accepted, subject to the highest bidder, immediately after the acceptance of the bid, paying the auctioneer the

premium offered under the bid.

- (4) If the highest bidder does not pay the premium under subsection (3)—
  - (a) the highest bidder's bid is taken to be rejected, and
  - (b) subsection (3) applies in relation to the bid of the person who offered the next highest premium above the reserve premium (the **next highest bidder**) as if the next highest bidder were the highest bidder.
- (5) The process under subsections (3) and (4) continues until the earlier of the following—
  - (a) a registered bidder whose bid is conditionally accepted (the **accepted bidder**) pays the premium offered under the bid,
  - (b) there are no remaining further bids offering a premium above the reserve premium, or
  - (c) the lease is withdrawn from auction.
- (6) The Minister may, at any time, withdraw the lease from auction.
- (7) The accepted bidder must, immediately after paying the premium, lodge an application for the lease with the Minister in accordance with this part.
- (8) The date on which the term of a lease offered by auction starts—
  - (a) is the date decided by the Minister and stated in the lease, and
  - (b) must not be earlier than the date on which the Minister approves the bidder for the purposes of lodging an application for the lease under this section.

#### **46 Aquaculture leases offered for public tender**

- (1) This section applies if an aquaculture lease is offered for public tender.
- (2) A person (a **tenderer**) may lodge a tender for the lease in accordance with this division.
- (3) The tender must—
  - (a) be lodged with the Minister by the closing date specified in the request for public tenders for the lease, and
  - (b) include a statement of the amount of the premium offered for the lease under the tender, and
  - (c) be accompanied by an application for the lease in accordance with this part.
- (4) The Minister must accept the tender of the tenderer offering the highest premium (the

**successful tenderer**), subject to the Minister approving the successful tenderer for the purposes of proceeding with an application for the lease under this subsection.

- (5) If the Minister approves the successful tenderer under subsection (4), the successful tenderer must pay the following to the Minister within 14 days, or a longer period allowed by the Minister—
  - (a) the premium offered under the successful tenderer's tender, and
  - (b) the processing fee specified in Schedule 3, Part 2, item 10.
- (6) If the Minister does not approve the successful tenderer under subsection (4), the successful tenderer does not pay an amount under subsection (5) or the successful tenderer withdraws the tender—
  - (a) the Minister may accept the tender of the tenderer offering the next highest premium (the **second tenderer**) under subsection (4) as if the second tenderer were the successful tenderer, and
  - (b) if the Minister accepts the tender of the second tenderer under paragraph (a), the process under subsection (5) and this subsection continues and applies as if the second tenderer were the successful tenderer until the Minister—
    - (i) approves a tenderer under subsection (4) and the tenderer pays the amounts under subsection (5), or
    - (ii) withdraws the offer of the lease for tender.
- (7) The Minister may, at any time, withdraw the offer of the lease from tender.
- (8) The Minister may refuse to approve a tenderer under subsection (4) if—
  - (a) the tenderer is not eligible to participate in the public tender, or
  - (b) the tenderer's tender does not comply with subsection (3), or
  - (c) if the tenderer is an individual—the tenderer is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (d) if the tenderer is a corporation—the tenderer, or a director or another person involved in the management of the tenderer, is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (e) the tenderer has outstanding rent, contributions or other amounts payable to the Minister for other aquaculture leases, or
  - (f) the tenderer has, in the Minister's opinion, a poor record of managing 1 or more other leased areas, or

- (g) the tenderer's tender contains conditions that are unacceptable to the Minister, or
  - (h) in the Minister's opinion, it would not be in the public interest to grant the lease to the tenderer.
- (9) The date on which the term of an aquaculture lease offered for tender starts—
- (a) is the date decided by the Minister and stated in the lease, and
  - (b) must not be earlier than the date on which the Minister approves the tenderer under this section.

#### **47 Aquaculture leases offered by ballot**

- (1) This section applies if an aquaculture lease is offered by ballot.
- (2) A person (a **ballot applicant**) may lodge an application for the lease in accordance with this division.
- (3) The Minister must accept the application of the ballot applicant (the **successful applicant**) that is first drawn from the ballot, subject to the Minister approving the successful applicant for the purposes of proceeding with the application for the lease under this subsection.
- (4) If the Minister approves the successful applicant under subsection (3), the successful applicant must, within 14 days after receiving the Minister's approval, pay to the Minister the premium for the lease stated in the lease offer notice for the ballot.
- (5) If the Minister does not approve the successful applicant under subsection (3), the successful applicant does not pay the premium under subsection (4) or the successful applicant withdraws the application—
  - (a) the Minister may draw another ballot application from the remaining ballot applications (the **next drawn application**), and
  - (b) the process under subsections (3)–(5) continues and applies in relation to the applicant under the next drawn application as if the next drawn application were the application first drawn from the ballot until—
    - (i) the Minister approves an applicant under subsection (3) and the applicant pays the premium for the lease under subsection (4), or
    - (ii) the Minister withdraws the offer of the lease by ballot.
- (6) The Minister may, at any time, withdraw the offer of the lease by ballot.
- (7) The Minister may refuse to approve an applicant under subsection (3) if—
  - (a) the applicant is not eligible to participate in the ballot, or

- (b) the applicant's ballot application does not comply with this part, or
  - (c) for an applicant who is an individual—the applicant is disqualified under the Act, section 161, from holding an aquaculture permit, or
  - (d) for an applicant that is a corporation—the applicant, or a director or another person involved in the management of the applicant, is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (e) the applicant has outstanding rent, contributions or other amounts payable to the Minister for other aquaculture leases, or
  - (f) the applicant has, in the Minister's opinion, a poor record of managing 1 or more other leased areas, or
  - (g) in the Minister's opinion, it would not be in the public interest to grant the lease to the applicant.
- (8) The date on which the term of an aquaculture lease offered by ballot starts—
- (a) is the date decided by the Minister and stated in the lease, and
  - (b) must not be earlier than the date on which the Minister approves the successful applicant under subsection (3).

## **Division 5 Renewal of aquaculture leases—the Act, s 167(7)**

### **48 Applications for renewal of aquaculture leases**

- (1) The lessee under an aquaculture lease may apply to renew the lease.
- (2) The application must be—
  - (a) made to the Minister in the approved form, and
  - (b) accompanied by the fee specified in Schedule 3, Part 2, item 11 for the application.
- (3) The Minister may refuse an application to renew made earlier than 12 months before end of the term of the lease.

### **49 Process for renewing aquaculture leases**

- (1) If the Minister decides to renew an aquaculture lease, the Minister must give the applicant the following documents—
  - (a) a copy of the plan of the area,
  - (b) a draft lease document in accordance with Schedule 2, Form 1.

- (2) The Minister must not renew the aquaculture lease unless the applicant lodges with the Minister the draft lease document signed by the applicant within—
  - (a) 60 days after being given the documents under subsection (1), or
  - (b) a longer period allowed by the Minister.
- (3) Subject to the Act, section 167, the Minister may refuse an application to renew an aquaculture lease if—
  - (a) if the applicant is an individual—the applicant is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (b) if the applicant is a corporation—the applicant, or a director or another person involved in the management of the applicant, is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (c) the applicant has outstanding rent, contributions or other amounts payable to the Minister for a lease, or
  - (d) the applicant has, in the Minister’s opinion, a poor record of managing 1 or more leased areas, or
  - (e) in the Minister’s opinion, it would not be in the public interest to renew the lease.
- (4) As soon as reasonably practicable after renewing an aquaculture lease, the Minister must—
  - (a) give the lessee a statement specifying—
    - (i) the fees, rents or other amounts payable by the lessee in connection with the grant of the lease, and
    - (ii) the due date by which each of the fees, rents and amounts must be paid, and
  - (b) publish notice of the renewal of the lease in the Gazette, including details of the lessee.
- (5) The lessee must pay in full the fees, rents and amounts referred to in subsection (4)(a)(i) by the due dates specified in the statement.

## **Division 6 Rent for aquaculture leases—the Act, s 165(4)**

### **50 Definition for division**

In this division—

**year** means a 12-month period beginning on 1 July in a year.

## 51 Minimum rent for leased areas

- (1) The minimum rent payable per year for a lease is the amount specified in Schedule 3, Part 2, item 12.
- (2) If 2 or more leases of the same class are held by the same lessee, the leases are to be treated as if they were a single lease for the purpose of determining the minimum rent payable for the leases.

## 52 Calculation of rent for aquaculture leases

- (1) The lessee under an aquaculture lease must pay the rent payable under the lease to the Minister.
- (2) The first payment of rent for an aquaculture lease that is granted or renewed is calculated as follows—

$$AP = \frac{DR}{365} \times AR$$

where—

**AP** represents the amount to be paid.

**DR** represents the number of days during the period beginning on the date when the lease begins and ending on the following 30 June.

**AR** represents the amount of rent payable under the lease for a full year.

- (3) For the year in which an aquaculture lease ends, the amount of rent payable is calculated as follows—

$$AP = \frac{DR}{365} \times AR$$

where—

**AP** represents the amount to be paid.

**DR** represents the number of days during the period beginning on the previous 1 July and ending on the date the lease ends.

**AR** represents the amount of rent payable under the lease for a full year.

- (4) The Minister must make an appropriate adjustment to the rent payments if the rent payable under an aquaculture lease—
  - (a) is redetermined by the Minister under the Act, section 165, or
  - (b) otherwise altered under subsection (2) or (3).

### **53 When rent is payable**

- (1) The first payment of rent under an aquaculture lease is payable by the date specified by the Minister in the lease statement for the lease.
- (2) After the first payment, the rent must be paid in advance, at the lessee's option—
  - (a) annually, by a date determined by the Minister and notified to the lessee in writing, or
  - (b) by instalments.
- (3) If the lessee elects to pay the rent by instalments, the Minister must—
  - (a) determine the amounts of the instalments payable or the way the instalments are calculated, and
  - (b) determine the dates by which the instalments are payable, and
  - (c) give the lessee written notice of—
    - (i) the amounts of the instalments or the way of calculating the amounts of the instalments, and
    - (ii) the dates by which the instalments are payable.
- (4) If the lessee fails to make a payment in accordance with a notice, the Minister may treat the total unpaid balance as an overdue amount of rent.
- (5) In this section—

**lease statement**, for an aquaculture lease means the statement referred to in section 41(3)(a) or 49(4)(a) relating to the lease.

## **Division 7 Sublease, transfer and transmission of aquaculture leases**

### **54 Obtaining Minister's consent to sublet leased area—the Act, ss 172 and 289(1)**

- (1) An application for the Minister's consent to the subletting of a leased area must be—
  - (a) made to the Minister in the approved form, and
  - (b) accompanied by—
    - (i) the processing fee specified in Schedule 3, Part 2, item 13, and
    - (ii) for each additional application for consent to sublet lodged on the same day—the processing fee specified in Schedule 3, Part 2, item 14.
- (2) The Minister must—

- (a) grant the application, or
  - (b) refuse to grant the application.
- (3) The Minister may refuse the application if—
- (a) if the sublessee is an individual—the sublessee is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (b) if the sublessee is a corporation—the sublessee, or a director or another person involved in the management of the sublessee, is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (c) the lessee or the sublessee has outstanding rent, contributions or other amounts payable to the Minister for an aquaculture lease, or
  - (d) the lessee or the sublessee has, in the Minister’s opinion, a poor record of managing 1 or more leased areas, or
  - (e) in the Minister’s opinion, it would not be in the public interest to grant the application.

**55 Obtaining Minister’s consent to transfer aquaculture lease—the Act, s 173(2)**

- (1) An application for the Minister’s consent to the transfer of an aquaculture lease must be—
- (a) made to the Minister in the approved form, and
  - (b) accompanied by—
    - (i) the lease document, and
    - (ii) the processing fee specified in Schedule 3, Part 2, item 15, and
    - (iii) for each additional application for consent to transfer an aquaculture lease lodged on the same day—the processing fee specified in Schedule 3, Part 2, item 16.
- (2) The Minister must—
- (a) grant the application, or
  - (b) refuse to grant the application.
- (3) The Minister may refuse the application if—
- (a) if the transferee is an individual—the transferee is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (b) if the transferee is a corporation—the transferee, or a director or another person

involved in the management of the transferee, is disqualified under the Act, section 161 from holding an aquaculture permit, or

- (c) the transferor or the transferee has outstanding rent, contributions or other amounts payable to the Minister for an aquaculture lease, or
- (d) the transferor or the transferee has, in the Minister's opinion, a poor record of managing 1 or more leased areas, or
- (e) in the Minister's opinion, it would not be in the public interest to grant the application.

**56 Transmission of aquaculture lease on lessee's death—the Act, s 191(m1)**

An aquaculture lease is transmissible by operation of law on the death of the lessee, subject to the following being lodged with the Minister—

- (a) evidence of the following—
  - (i) the death of the lessee,
  - (ii) the entitlement of the person claiming the lease,
- (b) the lease document,
- (c) the processing fee specified in Schedule 3, Part 2, item 17,
- (d) for each additional application for the transmission of an aquaculture lease lodged on the same day—the processing fee specified in Schedule 3, Part 2, item 18.

**Division 8 Surrender, consolidation and subdivision of aquaculture leases**

**57 Surrender of aquaculture lease—the Act, ss 174(2) and 289(1)**

- (1) An application to surrender an aquaculture lease must be—
  - (a) made to the Minister in the approved form, and
  - (b) accompanied by—
    - (i) the processing fee specified in Schedule 3, Part 2, item 19, and
    - (ii) for each additional application to surrender an aquaculture lease lodged on the same day—the processing fee specified in Schedule 3, Part 2, item 20.
- (2) An application to surrender part of a leased area must be—
  - (a) made to the Minister in the approved form, and
  - (b) accompanied by—

- (i) a description sufficient to identify the part of the leased area to be surrendered, and
  - (ii) a survey diagram or plan depicting the part, and
  - (iii) the processing fee specified in Schedule 3, Part 2, item 21.
- (3) The Minister must—
  - (a) grant the application, or
  - (b) refuse to grant the application.
- (4) The surrender of a lease or of part of a leased area has no effect unless—
  - (a) the Minister has consented to the surrender, and
  - (b) if the Minister consents to the surrender subject to conditions—the lessee has complied with the conditions.
- (5) The Minister may refuse an application to surrender a lease or part of a leased area if—
  - (a) if the lessee is an individual—the lessee is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (b) if the lessee is a corporation—the lessee, or a director or another person involved in the management of the lessee, is disqualified under the Act, section 161 from holding an aquaculture permit, or
  - (c) the lessee has outstanding rent, contributions or other amounts payable to the Minister for an aquaculture lease, or
  - (d) the lessee has, in the Minister’s opinion, a poor record of managing 1 or more leased areas, or
  - (e) in the Minister’s opinion, it would not be in the public interest to consent to the surrender.
- (6) If the Minister consents to the surrender of part of a leased area, the Minister must give the lessee the following documents—
  - (a) a copy of the plan of the leased area under the new lease,
  - (b) a draft lease document for the leased area in accordance with Schedule 2, Form 1.
- (7) The surrender of part of a leased area has no effect unless the lessee lodges with the Minister the draft lease document signed by the lessee within—
  - (a) 60 days after being given the documents under subsection (6), or

(b) a longer period allowed by the Minister.

(8) The processing fee for the surrender of an aquaculture lease specified in Schedule 3, Part 2, item 19 is not payable if a lessee has made at the same time—

(a) an application for the surrender of part of a leased area under this section, and

(b) an application for the consolidation of 2 or more adjoining leased areas into a single lease under section 58.

**58 Consolidation of aquaculture leases—the Act, s 191(h)**

(1) An application by a lessee of 2 or more adjoining leased areas for the consolidation of the leases (the **original leases**) into a single lease (the **consolidated lease**) must be—

(a) made to the Minister in the approved form, and

(b) accompanied by the processing fee specified in Schedule 3, Part 2, item 22.

(2) The Minister must—

(a) grant the application, or

(b) refuse to grant the application.

(3) If the Minister grants the application—

(a) the Minister may decide—

(i) the term of the consolidated lease, and

(ii) the covenants and conditions of the consolidated lease, and

(iii) the rent payable for the consolidated lease, and

(iv) other matters necessary to prepare the consolidated lease document, and

(b) the Minister must give the lessee the following documents—

(i) a copy of the plan of the leased area comprised in the consolidated lease,

(ii) a draft lease document for the consolidated leased area in accordance with Schedule 2, Form 1.

(4) The consolidation of the original leases under this section does not extinguish any debt to the Crown or Minister relating to the original leases, except to the extent directed by the Minister.

(5) The consolidated lease has no effect unless the lessee lodges with the Minister the draft lease document signed by the lessee within—

- (a) 60 days after being given the documents under subsection (3)(b), or
- (b) a further period allowed by the Minister.

(6) The Minister must publish notice of the consolidation of the leases in the Gazette.

**59 Aquaculture lease may be subdivided—the Act, s 191(m1)**

- (1) An application by a lessee for the subdivision of a lease (the **original lease**) into 2 or more leases (the **resulting leases**) must be—
  - (a) made to the Minister in the approved form, and
  - (b) accompanied by the processing fee specified in Schedule 3, Part 2, item 23.
- (2) The Minister must—
  - (a) grant the application, or
  - (b) refuse to grant the application.
- (3) If the Minister grants the application—
  - (a) the term of each resulting lease must be the same as the remainder of the term of the original lease, and
  - (b) the Minister may decide—
    - (i) the covenants and conditions of the leases resulting from the subdivision, and
    - (ii) the rent payable for the leases, and
    - (iii) other matters necessary to prepare the lease documents, and
  - (c) the Minister must give the lessee the following documents—
    - (i) a copy of the plan of the leased area comprised in each lease,
    - (ii) a draft lease document for each leased area in accordance with Schedule 2, Form 1.
- (4) The subdivision of the original lease has no effect unless the lessee lodges with the Minister the draft lease documents signed by the lessee within—
  - (a) 60 days after being given the documents under subsection (3)(c), or
  - (b) a longer period allowed by the Minister.
- (5) The subdivision of the original lease does not extinguish a debt to the Crown or Minister relating to the original lease, except to the extent directed by the Minister.
- (6) The Minister must publish notice of the subdivision of the original lease in the Gazette.

- (7) The subdivision of the original lease does not affect the application of the Act, section 167(3) in relation to the first renewal of the resulting leases after the grant of the original lease.

## **Division 9 Aquaculture lease plans and documents**

### **60 Definition for division**

In this division—

**online system** means a facility approved by the Secretary to—

- (a) enable transactions for aquaculture permits and aquaculture leases to be carried out electronically, and
- (b) allow information and documents relating to aquaculture permits and aquaculture leases to be provided electronically.

### **61 Certified copy of lease or plan**

- (1) If an aquaculture lease document or a plan annexed to an aquaculture lease document is lost or destroyed, the Minister may give the lessee a certified copy of the document or plan, subject to—
  - (a) payment of the fee specified in Schedule 3, Part 2, item 24, and
  - (b) the lessee giving notice, in the approved form, setting out the circumstances in which the document or plan was lost or destroyed.
- (2) If, under an Act or law, the lessee must lodge the original of an aquaculture lease document with the Minister or another person, the lessee may instead lodge a certified copy of the document given to the lessee under subsection (1).
- (3) The Minister may—
  - (a) give a person a copy of a survey plan or map relating to an aquaculture lease, and
  - (b) certify the copy as being a true copy of the original, and
  - (c) charge a fee for the copy not more than the amount specified in Schedule 3, Part 2, item 25.
- (4) A lessee who gives the Minister a statutory declaration setting out the circumstances in which the original document or plan was lost or destroyed is taken to have given notice in the approved form.

### **62 Minister's duties in relation to endorsing lease documents**

- (1) The Minister must make an endorsement on a document attached to an aquaculture lease document to record a transfer, transmission, withdrawal or access way affecting

the lease.

- (2) The Minister may make a necessary endorsement on a document attached to an aquaculture lease document to record a consent or other matter affecting the lease.
- (3) The Minister must, at the request of the lessee and the other party to the dealing, endorse the particulars of a mortgage, charge or other interest to which an aquaculture lease document is subject on a document attached to the aquaculture lease document.
- (4) If a mortgage, charge or other interest affecting an aquaculture lease is discharged, the Minister must, at the request of the lessee and the other party to the dealing, endorse the particulars of the discharge on a document attached to the aquaculture lease document.
- (5) The Minister may refuse to consent to a dealing relating to an aquaculture lease, and may refuse to make an endorsement in relation to an aquaculture lease document, if—
  - (a) an undischarged mortgage, charge or other interest is endorsed on a document attached to the aquaculture lease document, and
  - (b) the mortgagee, chargee or holder of the interest has not consented to the dealing.
- (6) A request by a lessee for the Minister's endorsement under this section must be accompanied by the fee specified in Schedule 3, Part 2, item 26.
- (7) If a lessee requests more than 1 endorsement under this section at the same time, the request must be accompanied by the additional fee specified in Schedule 3, Part 2, item 27.
- (8) An endorsement under this section may be made using an online system if the endorsement relates to an application or document that may be made, given or lodged using an online system under section 66.

### **63 When Minister may require aquaculture lessee to lodge lease document**

- (1) To enable the Minister to make an endorsement in relation to an aquaculture lease document or for another lawful purpose, the Minister may, by written notice, direct a lessee or other person in possession of the lease document to lodge the lease document with the Minister within the period specified in the notice.
- (2) The Minister must return an aquaculture lease document lodged under this section as soon as practicable after the endorsement has been made or the purpose for which the document was lodged has been achieved.
- (3) A person who fails, without reasonable excuse, to comply with a direction under this section is guilty of an offence.

Maximum penalty for subsection (3)—10 penalty units.

**64 Correction of errors in aquaculture leases and other documents by Minister**

The Minister may correct an error in the following—

- (a) an aquaculture lease document,
- (b) a map, plan or other document relating to an aquaculture lease.

**65 Applications under this part—lost, destroyed or stolen lease documents**

- (1) This section applies if an application under this part in relation to an aquaculture lease—
  - (a) must be accompanied by the aquaculture lease document or a plan annexed to the lease document, and
  - (b) the original lease document or plan was lost, destroyed or stolen.
- (2) The applicant may instead lodge a notice, in the approved form, with the Minister setting out the circumstances in which the original lease document or plan was lost, destroyed or stolen.
- (3) An applicant who gives the Minister a statutory declaration setting out the circumstances in which the original lease document or plan was lost, destroyed or stolen is taken to have given notice in the approved form.

**66 Use of online system—the Act, ss 163(8), 167(7) and 191(h) and (m1)**

- (1) An application under section 38, 48, 54, 55 or 57-59 or a transmission lodged under section 56 may be made or lodged using an online system.
- (2) The following may be provided using an online system—
  - (a) an aquaculture lease document specified in section 61(2), if the requirements relating to certification have been satisfied,
  - (b) a request made by a lessee under section 62(3) or (4),
  - (c) a document specified in section 63(1),
  - (d) a notice specified in section 65(2).

**Division 10 Marking of leased areas, boat channels and access ways**

**67 Obligations of aquaculture lessee to mark out leased area**

- (1) A lessee must mark out the boundaries of the leased area—
  - (a) in accordance with relevant aquaculture industry development plans, and

(b) within—

- (i) 30 days after the beginning of the lease, or
- (ii) a longer period allowed by the Minister.

Maximum penalty—10 penalty units.

(2) If the Minister or a fisheries officer is satisfied that marking out the boundaries in accordance with relevant aquaculture industry development plans is impracticable or unsuitable in a particular case—

- (a) the Minister or the officer may direct the lessee in writing to mark out the boundaries in another way, and
- (b) the lessee must mark out the boundaries in the other way.

(3) A lessee must ensure the boundaries of the leased area continue to be marked as required by this section for the duration of the lease.

Maximum penalty—10 penalty units.

(4) A person must not mark out an area of public water land as a leased area held by the lessee, or in a way likely to lead persons to believe the area is leased, unless the person is—

- (a) the lessee of the area, or
- (b) authorised by the lessee to mark out the area.

Maximum penalty—10 penalty units.

**68 Obligations of aquaculture lessee to mark out boat channel—the Act, s 191(e)**

(1) The Minister or a fisheries officer may give a lessee of an area adjoining a boat channel a written direction to mark out the boat channel.

(2) If the Minister or a fisheries officer gives a lessee a written direction under subsection (1), the lessee must mark out the boat channel—

- (a) in accordance with relevant aquaculture industry development plans, and
- (b) within—
  - (i) 30 days after receiving the written direction, or
  - (ii) a longer period allowed by the Minister.

Maximum penalty—10 penalty units.

(3) If the Minister or a fisheries officer is satisfied that marking out the boat channel in

accordance with relevant aquaculture industry development plans is impracticable or unsuitable in a particular case—

(a) the Minister or the officer may direct the lessee to mark out the area in another way, and

(b) the lessee must mark out the boat channel in the other way.

(4) A lessee must, unless the Minister or a fisheries officer directs otherwise, ensure the markings are maintained for the duration of the aquaculture lease.

Maximum penalty for subsection (4)—10 penalty units.

### **69 Obligations of aquaculture lessee to mark out access way**

(1) An application under the Act, section 175(1) must be accompanied by a certified copy of the map of the leased area marked with the proposed access way.

(2) If the Minister has determined an access way under the Act, section 175(2), the lessee must—

(a) mark out the access way within—

(i) 30 days after the Minister or a fisheries officer gives the lessee a written direction requiring the access way to be marked out, or

(ii) a further period allowed by the Minister, and

(b) mark out the access way in accordance with—

(i) relevant aquaculture industry development plans, or

(ii) if required by the Minister—the Minister’s directions under the Act, section 175.

Maximum penalty—10 penalty units.

(3) The lessee must ensure each of the posts, or the posts specified in the direction, must have fixed at or near the top a white sign or batten that has the words “ACCESS WAY” depicted—

(a) on the sign or batten, and

(b) in black letters not less than 75mm high.

Maximum penalty—10 penalty units.

(4) For an access way determined for a class 2 or class 3 lease, the lessee must mark out the access way in the way prescribed by the determination.

Maximum penalty—10 penalty units.

- (5) A lessee must ensure the markings required by this section are maintained for the duration of the term of the aquaculture lease, unless the access way is ended before the lease is ended.

Maximum penalty—10 penalty units.

#### **70 Notice to maintain markings**

- (1) If, during the term of an aquaculture lease, it appears to the Minister that the markings required by this division are not being properly maintained, the Minister may, by written notice given to the lessee, require the lessee, within a period specified in the notice, to ensure the markings comply with this division.
- (2) The period specified in the notice must be not less than 7 days after the notice is given to the lessee.
- (3) If the lessee fails to comply with the notice within the specified period, a fisheries officer may, with or without assistants—
  - (a) enter the lessee's area, and
  - (b) undertake the work necessary to ensure the markings comply with this division, including installing posts, signs and other structures.
- (4) The Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Crown the cost of carrying out work under this section.

#### **71 Minister may modify boundaries of leased area**

- (1) The Minister may modify the boundaries of a leased area to rectify errors of measurement.
- (2) If a modification increases or reduces the area of a leased area, the Minister may make a proportionate increase or reduction, as appropriate, to the rent, contributions and other amounts the lessee or permit holder must pay for the area.

### **Division 11 Public rights**

#### **72 Additional public right to which aquaculture lease is subject**

- (1) The right of the owner or lawful occupier of land adjoining a leased area to drain the surface water off the land onto the area is a recognised right for the Act, section 164(3).
- (2) A lessee is not entitled to compensation for damage to the leased area or to stock on the area caused by the reasonable exercise of the owner's or lawful occupier's right.
- (3) To avoid doubt, this section does not apply to water accumulated—

- (a) by an act of the owner or lawful occupier of land adjoining a leased area, or
- (b) by an act of an agent of the owner or lawful occupier of land adjoining a leased area, or
- (c) as a result of works on the land carried out by or with the approval of the owner or lawful occupier.

## **Part 5 Miscellaneous**

### **73 Information to be specified on containers of shellfish and other aquaculture products for sale—the Act, s 191(n)**

- (1) The purpose of this section is to prevent the spread of fish diseases.
- (2) A person must not consign or convey unopened shellfish for sale in a container that does not have marked, in a legible and durable way, on the outside of the container—
  - (a) the name of the consignor or packer, and
  - (b) the name in full of the estuary, bay or other area where the shellfish were grown, and
  - (c) the species of shellfish in the container.

Maximum penalty—50 penalty units.

- (3) A person must not consign or convey aquaculture products, other than shellfish, for sale in a container that does not have marked, in a legible and durable way, on the outside of the container—
  - (a) the name of the supplier, and
  - (b) the supplier's aquaculture permit number, and
  - (c) the batch identification details, and
  - (d) the species and type, for example, live fish, whole or gilled and gutted, of aquaculture product in the container.

Maximum penalty—50 penalty units.

- (4) A person must not, without reasonable excuse, consign or convey for sale in the same container unopened shellfish of different species.

Maximum penalty—50 penalty units.

- (5) This section does not apply to the consignment or conveyance of shellfish from 1 area to another area for further growth.

- (6) This section does not apply to the consignment or conveyance of live aquaculture products, other than shellfish, if—
- (a) bulk live fish transport containers are used in the consignment or conveyance, and
  - (b) records of the consignment or conveyance are kept in the transport vehicle.

- (7) In this section—

**batch identification details**, in relation to aquaculture products, means—

- (a) the date the aquaculture product was processed or packed, or
- (b) an identifier used in relation to the aquaculture product in accordance with a quality assurance program.

**bulk live fish transport containers** includes drums, vats and tanks.

**shellfish** means aquatic molluscs, crustaceans or echinoderms.

#### **74 Obligations of authorised deposit-taking institutions for trust accounts—the Act, s 157(10)**

- (1) This section applies to an authorised deposit-taking institution at which a trust account is kept under this regulation.
- (2) In relation to a transaction on a trust account kept under this regulation, the authorised deposit-taking institution incurs or has imputed to it the matters set out in subsection (3) that the authorised deposit-taking institution would not incur or have imputed to it if the account were kept for a person absolutely entitled to the money credited to the account.
- (3) The authorised deposit-taking institution—
- (a) does not have an obligation to make inquiries other than an obligation to which the authorised deposit-taking institution would be subject apart from this regulation, and
  - (b) does not have a liability, other than a liability to which the authorised deposit-taking institution would be subject apart from this regulation, and
  - (c) does not have imputed to the authorised deposit-taking institution knowledge of the right of a person to money credited to the trust account.
- (4) An authorised deposit-taking institution at which the Minister keeps a trust account under this regulation has no recourse against money at credit in the account in relation to a liability of the Minister to the authorised deposit-taking institution, other than a liability in relation to the account.

(5) In this section—

**recourse** includes a right by set-off, counterclaim, charge or otherwise.

## 75 Fee for permit

For the Act, section 191(k), an application for a permit under the Act, section 37 to authorise a person to take and possess fish or marine vegetation for aquaculture purposes must be accompanied by the fee specified in Schedule 3, Part 2, item 28.

## 76 Forms

The Minister may approve forms, including electronic forms, for the purposes of this regulation.

## 77 Savings

An act, matter or thing that, immediately before the repeal of the *Fisheries Management (Aquaculture) Regulation 2017*, had effect under that regulation continues to have effect under this regulation.

# Schedule 1 Provisions relating to members and procedure of trust account advisory committees

section 20

## Part 1 General

### 1 Definitions

In this schedule—

**chairperson** means the chairperson of a committee.

**committee** means a committee appointed by the Minister under the Act, section 157(4) in relation to a trust account.

**member** means a member of a committee.

## Part 2 Constitution

### 2 Terms of office of members

Subject to this schedule, a member holds office for the period, not more than 3 years, specified in the member's instrument of appointment, but is eligible, if otherwise qualified, for reappointment.

### 3 Appointment of members

(1) The Minister may convene a selection committee, including representatives of the

aquaculture industry, to recommend persons for appointment as members of a committee.

- (2) The chairperson of a committee must be the member of the committee for the time being appointed by the Minister as chairperson.

#### **4 Part-time appointments**

Members may hold office as part-time members.

#### **5 Remuneration**

A member is entitled to be paid the remuneration, including travelling and subsistence allowances, the Minister may from time to time determine for the member.

#### **6 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member and may revoke the appointment.
- (2) In the absence of a member, the member's deputy—
  - (a) may, if available, act in the place of the member, and
  - (b) while acting, has all the functions of the member and is taken to be the member.
- (3) For this section, a vacancy in the office of a member is taken to be an absence of the member.
- (4) A person acting in the place of a member is entitled to be paid the allowances the Minister may determine for the person.

#### **7 Vacancy in office of member**

The office of a member becomes vacant if the member—

- (a) dies, or
- (b) completes a term of office and is not reappointed, or
- (c) resigns the office by written instrument addressed to the Minister, or
- (d) is removed from office by the Minister under the Act, section 157(9), or
- (e) is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the committee or unless, before the end of 4 weeks after the last of the meetings, the member is excused by the committee for having been absent from the meetings, or
- (f) becomes personally insolvent, or

- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or
- (i) is convicted outside New South Wales of an offence that, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more.

## **8 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to the Act and this regulation, to be appointed to fill the vacancy.

## **9 Chairperson**

- (1) The chairperson vacates office as chairperson if the person—
  - (a) is removed from office by the Minister under this section, or
  - (b) resigns the office by written instrument addressed to the Minister, or
  - (c) stops being a member of the committee.
- (2) The Minister may remove the chairperson from office as chairperson.

## **10 Disclosure of pecuniary interests**

- (1) This section applies if—
  - (a) a member of a committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.
- (2) The member must, as soon as possible after becoming aware of the relevant facts, disclose the nature of the interest at a meeting of the committee.
- (3) It is sufficient disclosure of the nature of an interest relating to a specified company, body or person if the member has previously disclosed that the member—
  - (a) is a member or is in the employment of the company or body, or
  - (b) is a partner or is in the employment of the person, or
  - (c) has another specified interest relating to the company, body or person.
- (4) Particulars of a disclosure made under this section must be recorded by the members of the committee and made available to a person for inspection at all reasonable hours on payment of the fee determined by the members of the committee.

- (5) After a member of the committee has disclosed the nature of an interest in a matter, the member must not, unless the Minister or the other members of the committee otherwise determine—
  - (a) be present during a deliberation of the committee about the matter, or
  - (b) take part in a decision of the committee about the matter.
- (6) A member who has a direct or indirect pecuniary interest in a matter to which a disclosure relates must not—
  - (a) be present when the committee is making a determination for subsection (5), or
  - (b) take part in the making of the determination by the other members of the committee.
- (7) A contravention of this section does not invalidate a decision of the committee.
- (8) For this section, a member is not taken to have an interest in a matter only because the member is the holder of an aquaculture permit or aquaculture lease.

#### **11 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to an appointed member.
- (2) A provision made by or under another Act requiring a person who is the holder of a specified office under that Act to devote the whole of the person's time to the duties of the office, or prohibiting the person from engaging in employment outside the duties of the office, does not operate to disqualify a person from—
  - (a) holding the specified office and also the office of a member under this Act, or
  - (b) accepting and retaining remuneration payable to the person under this Act as a member.

#### **12 Personal liability**

A matter or thing done or omitted to be done by a committee, a member of a committee or a person acting under the direction of a committee does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing the Act or another Act, personally subject a member or a person to an action, liability, claim or demand.

### **Part 3 Procedure**

#### **13 General procedure**

The procedure for calling and holding meetings of a committee and for conducting business at meetings of a committee must, subject to directions by the Minister, be

determined by the committee.

#### **14 Quorum**

The quorum for a meeting of a committee is a majority of the committee's members for the time being.

#### **15 Presiding member**

- (1) The chairperson of a committee or, in the absence of the chairperson, a member elected by the members of the committee present at a meeting of the committee must preside at a meeting of the committee.
- (2) The presiding member has a deliberative vote and, if there is an equality of votes, has a second or casting vote.

#### **16 Voting**

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is the decision of the committee.

#### **17 Transaction of business outside meetings or by telephone**

- (1) The committee may decide to transact the committee's business by circulating papers among all the members of the committee.
- (2) A written resolution approved in writing by a majority of the members is taken to be a decision of the committee made at a meeting of the committee.
- (3) The committee may decide to transact the committee's business at a meeting at which some or all members participate by telephone or other electronic means, but only if a member who speaks on a matter before the meeting may be heard by the other members.
- (4) For the approval of a resolution under subsection (2) or a meeting held in accordance with subsection (3), the chairperson and the other members have the same voting rights the members have at an ordinary meeting of the committee.
- (5) A resolution approved under subsection (2) must be recorded in the minutes of the meetings of the committee.
- (6) For subsection (1), papers may be circulated electronically among the members.

#### **18 First meeting**

The Minister may call the first meeting of a committee in the way the Minister decides.

## **Schedule 2 Forms**

### **Form 1**

*Fisheries Management Act 1994*

AQUACULTURE LEASE/RENEWAL OF AQUACULTURE LEASE

I, the Minister for *[portfolio]*, lease on behalf of the Crown the area described below to you, the lessee, for the term, at the rent and on the conditions, if any, specified below.

**Your name**

**Your address**

**Lease class**

**Location of lease**

**Area of lease**

**Term of lease**

**Expiry date of lease**

**Rent payable for the lease per year**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

**Special conditions applicable to the lease**

**Note—**

The rent is subject to periodic redetermination as provided by the *Fisheries Management Act 1994*, section 165(2).

**Lessee's covenants**

You, the lessee, agree that you will—

- (a) comply with the *Fisheries Management Act 1994* (**the Act**) and the *Fisheries Management (Aquaculture) Regulation 2024* (**the regulation**), and
- (b) pay rent for your leased area yearly in advance or by instalments as required by the Act and the regulation, and
- (c) ensure your leased area is used only for aquaculture, and the cultivation of fish or marine vegetation on the leased area is carried out in accordance with a relevant aquaculture industry development plan notified from time to time by the Secretary of the Department, and
- (d) ensure your leased area is kept in a neat and tidy condition to the satisfaction of the Secretary of the Department.

You also agree to adjust the areas of cultivation on your leased area so as to allow safe navigation if existing channels change or something else happens requiring the channels to be altered.

**Conditions of the lease**

It is a condition of the lease that I may cancel the lease if you fail to comply with a notice served on you—

- (a) in accordance with the Act, section 162(2), and

(b) in your capacity as the holder of an aquaculture permit, and

(c) within the period specified in the notice.

**Note—**

This is a condition of the lease referred to in the Act, section 177(1)(d). Section 177 specifies other grounds on which the lease may be cancelled, including non-payment of rent.

Date—

*[insert signature]*

My or my delegate's signature

*[insert signature]*

Witness to my or my delegate's signature

*[insert signature]*

Your signature

*[insert signature]*

Witness to your signature

## **Schedule 3 Fees, charges and contributions**

### **Part 1 Adjustment of fees for inflation**

#### **1 Calculation of fee units**

(1) For this schedule, a **fee unit** is—

(a) in the financial year 2024-25—\$100, and

(b) in each later financial year—the amount calculated as follows—

$$AP = \frac{DR}{365} \times AR$$

where—

**A** is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

**B** is the CPI number for the March quarter of 2024.

(2) The amount of a fee unit must be rounded to the nearest cent and an amount of 0.5 cents must be rounded down.

(3) The amount of a fee calculated by reference to a fee unit must be rounded to the nearest dollar and an amount of 50 cents must be rounded down.

(4) If the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, the amount for the previous financial year applies instead.

(5) As soon as practicable after the CPI number for the March quarter is first published by the Australian Bureau of Statistics, the Secretary of the Department must—

(a) notify the Parliamentary Counsel of the amount of the fee unit for the next

financial year so notice of the amount may be published on the NSW legislation website, and

(b) give notice on a publicly available website administered by the Department of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this part.

(6) This section operates to change an amount of a fee that is calculated by reference to a fee unit and the change is not dependent on the notification or other notice required by this section.

(7) This section does not apply to a fee specified in a dollar amount.

(8) In this section—

**CPI number** means the Consumer Price Index in the latest published series of the index.

**financial year** means a period of 12 months commencing on 1 July.

## Part 2 Fees, charges and contributions

Item	Matter for which fee, charge or contribution is payable	Amount
1	Application for aquaculture permit, section 7(1)—	
	(a) class A permit	3.2 fee units
	(b) class B permit	3.2 fee units
	(c) class C permit	4.83 fee units
	(d) class D permit	8.03 fee units
	(e) class E permit	6.42 fee units
	(f) class F permit	4.83 fee units
	(g) class H permit	8.03 fee units
2	Additional application for aquaculture permit, section 7(2)(b)	1.6 fee units
3	Request for variation of aquaculture permit, section 9(1)—	
	(a) class A permit	1.6 fee units
	(b) class B permit	1.6 fee units
	(c) class C permit	2.41 fee units

	(d) class D permit	4.01 fee units
	(e) class E permit	3.21 fee units
	(f) class F permit	2.41 fee units
	(g) class H permit	4.01 fee units
4	Additional request for variation of aquaculture permit, section 9(2)(c)(ii)	0.8 fee units
5	Annual contribution for industry administration costs, section 14(2)	5.61 fee units
6	Annual contribution for research, section 16(2)—	
	(a) class A permit—for each hectare or part of a hectare of area to which the permit relates	0.5 fee units
	(b) class B permit—for each hectare or part of a hectare of area to which the permit relates	0.5 fee units
	(c) class C permit	3.2 fee units
	(d) class D permit—the greater of—	
	(i) the minimum contribution, or	6.4 fee units
	(ii) for each hectare or part of a hectare of total water area available for aquaculture, not including water storage or effluent storage areas, to which the permit relates	1.36 fee units
	(e) class E permit	3.2 fee units
	(f) class F permit	3.2 fee units
	(g) class H permit—the greater of—	
	(i) the minimum contribution, or	6.4 fee units
	(ii) for each hectare or part of a hectare of total water area available for aquaculture, not including water storage or effluent storage areas, to which the permit relates	1.36 fee units
7	Application for review of updated commercial farm development plan, section 21(5)	1.6 fee units
8	Required amount for financial arrangements to provide security, section 22—for each hectare or part of a hectare of leased area or areas to which the permit relates	\$1,000

9	Annual default arrangement payment—	
	(a) for a permit holder referred to in section 30(1)(a)—for each hectare or part of a hectare of leased area or areas to which the permit relates	0.3 fee units
	(b) for a permit holder referred to in section 30(1)(b)—for each hectare or part of a hectare of leased area or areas to which the permit relates	0.5 fee units
10	Application for aquaculture lease, sections 38(c) and 46(5)(b)—	
	(a) class 1 lease	8.03 fee units
	(b) class 2 lease	8.03 fee units
	(c) class 3 lease	8.03 fee units
	(d) class 4 lease	12.83 fee units
11	Application for renewal of aquaculture lease, section 48(2)(b)—	
	(a) online application	4.83 fee units
	(b) paper-based application	6.42 fee units
12	Minimum rent payable per year for aquaculture lease, section 51(1)—the greater of—	
	(a) the minimum amount, or	1.6 fee units
	(b) for each hectare or part of a hectare of leased area	0.6 fee units
13	Application for consent to sublet, section 54(1)(b)(i)	5.61 fee units
14	Additional application for consent to sublet lodged on same day, section 54(1)(b)(ii)	0.82 fee units
15	Application for consent to transfer aquaculture lease, section 55(1)(b)(ii)	8.82 fee units
16	Additional application for consent to transfer aquaculture lease lodged on same day, section 55(1)(b)(iii)	0.82 fee units
17	Transmission of aquaculture lease on lessee’s death, section 56(c)	5.61 fee units
18	Additional application for transmission of aquaculture lease lodged on same day, section 56(d)	0.82 fee units
19	Application to surrender aquaculture lease, section 57(1)(b)(i)	4.01 fee units
20	Additional application to surrender aquaculture lease lodged on same day, section 57(1)(b)(ii)	0.82 fee units

21	Application to surrender part of leased area, section 57(2)(b)(iii)	5.61 fee units
22	Application for consolidation of aquaculture leases, section 58(1)(b)	6.42 fee units
23	Application for subdivision of aquaculture lease, section 59(1)(b)	6.42 fee units
24	Certified copy of lease or plan, section 61(1)(a)	0.82 fee units
25	Copy of survey plan or map, section 61(3)(c)	0.82 fee units
26	Request for endorsement, section 62(6)	1.6 fee units
27	Additional request for endorsement lodged on same day, section 62(7)	0.32 fee units
28	Application for permit to take and possess fish or marine vegetation, section 75	2.4 fee units

## Schedule 4 Dictionary

section 3

**annual default arrangement payment**, for Part 3, Division 4—see section 29.

**annual default arrangement payment period**, for Part 3, Division 4—see section 29.

**approved form** means a form approved by the Minister under section 76.

**aquaculture lease annual default arrangement payment security trust account**, for Part 3—see section 34(1).

**aquaculture lease cash deposit security trust account**, for Part 3—see section 33(1).

**aquaculture production area**, for Part 2, Division 3—see section 10.

**aquaculture research trust account**—see section 17.

**aquaculture shipment log book**, for Part 2, Division 3—see section 10.

**aquaculture species**, for Part 2, Division 3—see section 10.

**authorised guarantor**, for Part 3—see section 22.

**bank guarantee financial arrangement**, for Part 3—see section 22.

**cash deposit financial arrangement**, for Part 3—see section 22.

**catching and cultivation material**, for Part 2, Division 3—see section 10.

**chairperson**, for Schedule 1—see Schedule 1, section 1.

**class 1 lease**, for Part 4—see section 37.

**class 2 lease, for Part 4**—see section 37.

**class 3 lease, for Part 4**—see section 37.

**class 4 lease**, for Part 4—see section 37.

**class A permit**—see section 5(1)(a).

**class B permit**—see section 5(1)(b).

**class C permit**—see section 5(1)(c).

**class D permit**—see section 5(1)(d).

**class E permit**—see section 5(1)(e).

**class F permit**—see section 5(1)(f).

**class H permit**—see section 5(1)(g).

**committee**, for Schedule 1—see Schedule 1, section 1.

**compliance obligations**, in relation to a permit holder or former permit holder, for Part 3—see section 22.

**default financial arrangement**, for Part 3—see section 22.

**elective financial arrangement**, for Part 3—see section 22.

**estuary**, for Part 2, Division 3, has the same meaning as in the [Coastal Management Act 2016](#).

**extensive aquaculture** means aquaculture undertaken without providing supplementary food for the fish or marine vegetation being cultivated.

**fee unit**, for Schedule 3—see Schedule 3, section 1.

**food** includes any form of nutrient.

**intensive aquaculture** means aquaculture undertaken by providing supplementary food for the fish or marine vegetation being cultivated, whether or not naturally occurring food is consumed or available for consumption by the fish or marine vegetation.

**land-based hatchery**, for Part 2, Division 3—see section 10.

**land-based nursery**, for Part 2, Division 3—see section 10.

**lease offer notice**—see section 43(1).

**member**, for Schedule 1—see Schedule 1, section 1.

**mollusc**, for Part 2, Division 3—see section 10.

**online system**, for Part 4, Division 9—see section 60.

**oyster**, for Part 2, Division 3—see section 10.

**proposed lease notice**, for Part 4—see section 42(1).

**recoverable costs**, in relation to a permit, for Part 3—see section 22.

**required amount**, for an elective financial arrangement, for Part 3—see section 22.

**reserve premium**, in relation to a lease, for Part 4—see section 43(2)(g).

**security condition**, of a permit, for Part 3—see section 22.

**the Act** means the [Fisheries Management Act 1994](#).

**year** for Part 4, Division 6—see section 50.