



Fishing (Licence Ownership and Interest) Registration Act 2001

An Act to establish a system of registration of ownership and interests in fishing licences

[Royal Assent 17 December 2001]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Fishing (Licence Ownership and Interest) Registration Act 2001*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act –

abalone quota licence means –

- (a) a licence conferred by a deed of agreement; or
- (b) a right assigned under a deed of agreement;

abalone quota unit means 1/3500th of the total allowable catch of abalone;

abalone quota unit number means the number allocated to an abalone quota unit under section 94 of the *Living Marine Resources Management Act 1995*;

approved form means a form approved by the Registrar;

deed of agreement means a deed of agreement relating to abalone –

(a) referred to in section 99 of the *Living Marine Resources Management Act 1995*; and

(b) under the *Fisheries Act 1959* and continued in force under the *Marine Resources (Savings and Transitional) Act 1995*;

licence means –

(a) an abalone quota licence; and

(b) a relevant licence;

record of original entry means the record referred to in section 13;

register means the register maintained under section 9;

Registrar means the person appointed under section 4;

relevant licence means –

(a) a fishing licence (giant crab); and

(b) a fishing licence (rock lobster); and

(c) any other prescribed licence;

total allowable catch means the total quantity of a kind or species of fish that may be taken from a fishery as determined under the *Living Marine Resources Management Act 1995*.

PART 2 - Registration of interest

Division 1 - Registrar

4. Registrar

(1) A Registrar is to be appointed subject to and in accordance with the *State Service Act 2000*.

(2) The function of the Registrar is to keep and maintain the register.

5. Delegation

The Registrar, by instrument in writing, may delegate any of his or her functions or powers, other than this power of delegation.

6. Immunity from liability

The Registrar does not incur any personal liability in respect of any act done or omitted to be done in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this or any other Act.

Division 2 - Registration

7. Application for registration

(1) A person to whom a relevant licence is to be transferred under the *Living Marine Resources Management Act 1995* must apply to the Registrar to be registered as the owner of that licence.

Penalty:

Fine not exceeding 5 penalty units.

(2) A person to whom an abalone quota licence is to be assigned must apply to the Registrar to be registered as the owner of that licence.

Penalty:

Fine not exceeding 5 penalty units.

(3) The holder of a licence, with the consent of any person registered as having an interest in that licence, may apply to the Registrar for another person specified in the application to be registered as having an interest in that licence.

(4) A person claiming to have an interest in a licence may apply to the Registrar to be registered as having that interest.

(5) An application is to be –

(a) in an approved form; and

(b) in the case of an application under subsections (2) and (3), accompanied by the relevant record of original entry; and

(c) accompanied by the prescribed fee.

8. Registration

(1) The Registrar, within 21 days after receipt of an application by a person under section 7(1) and payment of the prescribed fee, is to –

(a) register the person as the owner of the licence if satisfied that the licence has been transferred to that person under the *Living Marine Resources Management Act 1995*; or

(b) refuse to register the person as the owner of the licence if not so satisfied.

(2) The Registrar, within 21 days after receipt of an application by a person under section 7(2) and payment of the prescribed fee, is to –

(a) register the person as the owner of the licence if satisfied that the licence has been assigned to the person under a deed of agreement; or

(b) refuse to register the person as the owner of the licence if not so satisfied.

(3) The Registrar, within 21 days after receipt of an application under section 7(3) and payment of the prescribed fee, is to –

(a) register the person specified in the application as having the interest specified in the application if satisfied that the person has that interest; or

(b) refuse to register the person as having that interest if not so satisfied.

(4) The Registrar, within 21 days after receipt of an application by a person under section 7(4) and payment of the prescribed fee, is to –

(a) register the person as having the interest in a licence as specified in the application if satisfied that the person has that interest; or

(b) refuse to register the person as having an interest in that licence if not so satisfied.

(5) The Registrar, within 7 days after registering or refusing to register any matter under this section, by notice in writing, is to notify each applicant and any other person registered as having an interest in an application under section 7 –

(a) of any matter registered under this section; or

(b) of any refusal to register the matter.

9. Register

(1) The Registrar is to maintain a register in any form, including in an electronic format.

(2) The register is to contain the following:

(a) the name and address of the owner of a licence or person having an interest in a licence;

(b) the date of registration;

(c) in the case of an abalone quota licence –

- (i) the number of each abalone quota unit attached to that licence; and
 - (ii) the number of the abalone quota unit to which the interest relates; and
 - (iii) details of the deed of agreement to which the abalone quota unit and the interest relate;
- (d) in the case of a relevant licence –
- (i) the type of the licence; and
 - (ii) the number of quota units that are permanently held on the licence; and
 - (iii) the number of quota units to which the interest relates;
- (e) any of the above details relevant to a person taken to be registered under clause 2 of Schedule 1;
- (f) any of the above details relevant to a person taken to be registered under clause 3 of Schedule 1;
- (g) the date of any variation to an entry in the register;
- (h) any other matter the Registrar considers appropriate.
- (3) The Registrar is to make the register available for public inspection during normal business hours.
- (4) The Registrar, on application and payment of the prescribed fee, may provide a copy of an entry in, or an extract from, the register.
- (5) A copy of an entry in, or an extract from, the register –
- (a) is to be signed by the Registrar; or
 - (b) is to bear a facsimile of the Registrar's signature.

10. Cancellation or variation by application

- (1) A person who is registered as the owner of a licence, with the consent of any other person registered as having an interest in that licence, may apply to the Registrar to –
- (a) cancel the entry in the register in relation to that licence; or
 - (b) vary any details of that entry.
- (2) An application is to be –

- (a) in an approved form; and
 - (b) accompanied by the prescribed fee.
- (3) The Registrar, on receipt of an application and on payment of the prescribed fee, may –

- (a) subject to subsection (4), cancel the entry in the register; or
- (b) vary the entry in the register.

(4) The Registrar is not to cancel an entry in the register in relation to the ownership of a licence unless –

(a) in relation to a relevant licence, the Minister has granted an application for the transfer of the licence under section 82 of the *Living Marine Resources Management Act 1995*; or

(b) in relation to an abalone quota licence, the Secretary has accepted an assignment of rights under a deed of agreement in relation to the abalone quota licence.

(5) The Registrar, by notice in writing, is to notify the person registered as the owner of a licence and any other person registered as having an interest in that licence of any cancellation or variation of an entry in the register relating to that licence.

11. Amendment or cancellation by Registrar

(1) The Registrar may amend the register to ensure that the register is an accurate record.

(2) The Registrar is to cancel every entry in the register in relation to a licence under the *Living Marine Resources Management Act 1995* –

(a) on the surrender or cancellation of the licence; or

(b) 60 days after the licence has expired and an application for the grant of a new licence has not been made under that Act; or

(c) if an application for the renewal of the licence has been refused and the licence has expired.

(3) The Registrar, by notice in writing, is to notify the owner of a licence and each person registered as having an interest in a licence of any amendment or cancellation of an entry in the register relating to the licence.

12. Entry in register

An entry in the register specifying that a person has an interest in a licence does not give that interest any force that it would not have had if this Act had not been enacted.

Division 3 - Record of original entry

13. Record of original entry

(1) As soon as practicable after the commencement of this Act, the Registrar is to issue a record of original entry in respect of each abalone quota unit specified in an abalone quota licence to the holder of that licence.

(2) The record of original entry is to specify the following:

(a) the name and address of the holder of the abalone quota licence;

(b) the abalone quota unit number to which the record relates;

(c) details of the original deed of agreement to which the abalone quota unit relates;

(d) the date of issue of the record;

(e) the details of any entry in the register relating to an interest in the abalone quota licence in respect of that abalone quota unit;

(f) any other details the Registrar considers appropriate.

(3) A record of original entry –

(a) is to be signed by the Registrar; or

(b) is to bear a facsimile of the Registrar's signature.

14. Lost or damaged record of original entry

(1) The holder of a record of original entry may apply to the Registrar for a replacement record of original entry if the original record of original entry is lost or damaged.

(2) An application is to be –

(a) in an approved form; and

(b) accompanied by proof of identity; and

(c) accompanied by a statutory declaration in respect of the facts and circumstances of the loss or damage; and

(d) accompanied by the prescribed fee.

(3) On receipt of an application and payment of the prescribed fee, the Registrar is to –

(a) issue a replacement record of original entry clearly marked as such; and

(b) notify each person holding an interest to which the record of original entry relates.

15. Evidence

(1) A copy of an entry in, or an extract from, the register provided under section 9(4) is evidence of the facts contained in it.

(2) A record of original entry is evidence of the facts contained in it.

PART 3 - Miscellaneous

16. Applications for review

(1) A person who holds or claims to hold an interest in a licence may apply to the Magistrates Court (Administrative Appeals Division) for a review of –

(a) an entry in the register relating to that licence; or

(b) a refusal to register under section 8(4)(b); or

(c) the cancellation of an entry in the register relating to that licence; or

(d) the variation of an entry in the register relating to that licence.

(2) In addition to its powers under the *Magistrates Court (Administrative Appeals Division) Act 2001*, the Magistrates Court (Administrative Appeals Division) may order the Registrar to –

(a) cancel an entry in the register; or

(b) make an entry in the register; or

(c) re-enter a cancelled entry in the register; or

(d) make or omit a specified variation of an entry in the register.

17.

18. Judicial notice of certain signatures

All courts and persons acting judicially must take judicial notice of –

- (a) the signature of a person who is or has been the Registrar; and
- (b) the fact that the person holds or has held the office of Registrar.

19. False and misleading statements

A person, in making an application or providing information or any document, must not –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter knowing that without that matter the application, information or document is false or misleading.

Penalty:

Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months.

20. Compensation not payable

Compensation is not payable in respect of anything done or omitted to be done in good faith by the Registrar in the performance or exercise, or purported performance or exercise, of a function or power under this Act.

21. Regulations generally

- (1) The Governor may make regulations for the purpose of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

(4) The regulations may authorise any matter to be determined, applied or regulated by the Registrar.

22. Regulations relating to fees

(1) The Governor may make regulations prescribing fees and charges in respect of any matter under this Act.

(2) Regulations made under this section may –

(a) prescribe a fee –

(i) specifying a set amount; or

(ii) specifying a rate or proportion by which the fee is to be calculated; or

(b) prescribe any other method of calculating the fee.

23. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and

(b) the department responsible to the Minister for Primary Industries, Water and Environment in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.

24. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 1 have effect.

25.

The amendments effected by this section have been incorporated into the authorised version of the *Living Marine Resources Management Act 1995*.

SCHEDULE 1 - Savings and transitional provisions

Section 9(2)(e) and (f) and 24

1. Interpretation

In this Schedule –

commencement day means the day on which this Act commences.

2. Registration under Living Marine Resources Management Act 1995

(1) The holder of a relevant licence whose name appears as the holder of that licence in the register kept under section 298 of the Living Marine Resources Management Act 1995 immediately before the commencement day is, on that day, taken to be registered as the owner of that licence under this Act.

(2) The holder of an abalone quota licence whose name appears as the holder of that licence in the register kept under section 298 of the Living Marine Resources Management Act 1995 immediately before the commencement day is, on that day, taken to be registered as the owner of that licence under this Act.

3. Registered interest in deed of agreement

A person with an interest in a deed of agreement whose name appears as the person whose interest is registered on the register of interests kept under section 103 of the Living Marine Resources Management Act 1995 immediately before the commencement day is, on that day, taken to be registered as having that interest under this Act.

Table Of Amendments

Act	Number and year	Date of commencement
Fishing (Licence Ownership and Interest) Registration Act 2001	No. 96 of 2001	1.7.2002
Administrative Appeals (Miscellaneous Amendments) Act 2003	No. 68 of 2003	15.12.2003